

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

Final Agenda City of Fayetteville Arkansas City Council Meeting February 15, 2011

A meeting of the Fayetteville City Council will be held on February 15, 2011 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

1. Airport Board Annual Presentation – Ray Boudreaux

Agenda Additions:

A. Consent:

1. Approval of the October 18, 2010 Joint Firemen's Pension and City Council and February 1, 2011 City Council meeting minutes. **APPROVED**
2. **Bid #11-15 Elk River Construction, Inc.:** A resolution awarding Bid #11-15 and authorizing a contract with Elk River Construction, Inc. in the amount of \$84,825.00 plus a five percent (5%) project contingency for the construction of stream restoration at Niokaska Creek in Sweetbriar Park and approving a budget adjustment of \$9,066.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 26-11

3. **Bid #11-17 ADS Environmental Services, LLC:** A resolution awarding Bid #11-17 and authorizing the purchase of seventeen (17) sewer flow monitors from ADS Environmental Services, LLC in the amount of \$136,528.63 for installation in the city sewer collection system.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 27-11

4. **Police Recording System:** A resolution approving a budget adjustment in the amount of \$43,000.00 moving unused funds designated for the police recording system to the police building remodeling project.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 28-11

5. **Ogden Insurance Agency Donation Revenue:** A resolution approving a budget adjustment in the amount of \$100.00 representing donation revenue received from Ogden Insurance Agency for the Fire Department's annual employee service awards event.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 29-11

6. **Garver, LLC:** A resolution approving a contract with Garver, LLC in an amount not to exceed \$38,200.00 for the performance of an environmental assessment study for the Van Asche Boulevard extension project between Gregg Avenue and Garland Avenue.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 30-11

7. **McClelland Consulting Engineers, Inc. Task Order #4:** A resolution approving task order #4 to the contract with McClelland Consulting Engineers, Inc. contingent upon receipt of grant funding, authorizing the application and acceptance of a grant from the Federal Aviation Administration and Arkansas Department of Aeronautics to fund the project, and approving a budget adjustment.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 31-11

8. **Atlantic Machinery, Inc.:** A resolution authorizing the purchase of a Schwarze A9000 sweeper from Atlantic Machinery, Inc. of Silver Spring, Maryland, pursuant to a competitive bid through the National Joint Powers Alliance (NJPA) cooperative purchasing agreement, in the amount of \$190,100.00 for use by the Transportation Division, and approving a budget adjustment.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 32-11

B. Unfinished Business:

1. **Amend Title XV: ADM 09-3480 (Streamside Protection):** An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapter 155: Appeals, Chapter 156: Variances, and Chapter 168: Flood Damage Prevention Code in order to establish Streamside Protection Zones and adopt a Protected Streams map and Best Management Practices Manual. *This ordinance was left on the First Reading at the February 3, 2011 City Council meeting.*

THIS ITEM WAS LEFT ON THE SECOND READING.

2. **Huntingdon Heights Appeal:** An appeal of the City Engineer's determination regarding the driveway approach at 3172 Warwick Dr. *This item was tabled at the February 3, 2011 City Council meeting to the February 15, 2011 City Council meeting.*

TABLED TO MARCH 15, 2011 CITY COUNCIL MEETING.

C. New Business:

1. **Amend 2011 Adopted Budget:** A resolution amending the 2011 city budget by re-appropriating up to \$58,840,788.00 in bonded or ongoing capital projects, outstanding obligations and grant-funded items previously appropriated in the 2010 city budget but not completed or delivered in 2010.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 33-11

2. **Ozarks Electric Cooperative Corporation Cost-Share Agreement:** An ordinance to waive competitive bidding, to approve a cost-share agreement with Ozarks Electric Cooperative Corporation in the amount of \$38,250.48 for the extension of power to the Stone Mountain Water Pump Station, to approve a project contingency of \$7,500.00, and approve a budget adjustment of \$45,751.00.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5387

3. **RZN 10-3732 (Brown, 2600 Crossover Rd.):** An ordinance rezoning that property described in rezoning petition RZN 10-3732, for approximately 1.64 acres, located at 2600 Crossover Road from R-A, Residential Agricultural, to R-O, Residential Office.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5388

4. **VAC 10-3735 (Firestone):** An ordinance approving VAC 10-3735 submitted by H2 Engineering, Inc. for property located at 1965 Box Avenue to vacate a utility easement, a total of 240 square feet.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5389

5. **Appeal Chapter 166.18 of the UDC:** An appeal regarding staff interpretation of Chapter 166.18 of the UDC.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 34-11

City Council Tour: Monday, February 14, 2011 at 4:30 p.m. - Appeal Chapter 166.18 of the UDC – Paradigm Building, LLC, Tracy Hoskins, 3155 N. College Avenue.

Announcements:

Adjournment: 11:20 p.m.

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

Subject:	Roll				
	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	Absent			
	Gray	✓			
	Thiel	✓			
	Kinion	✓			
	Mayor Jordan	✓			

Subject:					
Motion To:			/		
Motion By:					
Seconded:					
	Petty				
	Tennant				
	Ferrell				
	Adams				
	Lewis				
	Gray				
	Thiel				
	Kinion				
	Mayor Jordan				

Subject:	Consent				
Motion To:					
Motion By:		<i>Approve</i>			
Seconded:		<i>Petty</i>			
		<i>Tennant</i>			
<i>Minutes</i> <i>Approved</i> <i>Passed</i> <i>26-11</i> <i>thru</i> <i>32-11</i>	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	<i>Absent</i>			
	Gray	✓			
	Thiel	✓			
	Kinion	✓			
	Mayor Jordan				

7-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Tennant				
	Ferrell				
	Adams				
	Lewis				
	Gray				
	Thiel				
	Kinion				
	Mayor Jordan				

Subject:		Amend Title XV: ADM 09-3480 (Streamside Protection)			
Motion To:		2nd Read	Amend Gardening Section + text Petty	Amend. 2-C, non invasive trees	
Motion By:		Kinion	Thiel	Petty	
Seconded:		Thiel	Thiel	Kinion	
B. 1 Unfinished Business Left on the Second Reading	Petty	Absent during the vote.	✓	N	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	N	
	Lewis	absent	absent	absent	absent
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Kinion	✓	✓	✓	
	Mayor Jordan				

6-0

7-0

5-2

Subject:		Huntingdon Heights Appeal			
Motion To:		Table to 2nd Meeting in March			
Motion By:		Thiel			
Seconded:		Gray			
B. 2 Unfinished Business Tabled to March 15, 2011	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	absent			
	Gray	✓			
	Thiel	✓			
	Kinion	✓			
	Mayor Jordan				

7-0

Subject:	Amend 2011 Adopted Budget				
Motion To:		Approve			
Motion By:		Kinion			
Seconded:		Petty			
C. 1 New Business <u>passed</u> 33-11	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	Absent			
	Gray	✓			
	Thiel	✓			
	Kinion	✓			
	Mayor Jordan				

7-0

Subject:	Ozarks Electric Cooperative Corporation Cost-Share Agreement				
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Thiel	Gray		
Seconded:		Adams	Ferrell		
C. 2 New Business <u>passed</u> 5387	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	absent	absent	absent	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Kinion	✓	✓	✓	
	Mayor Jordan				

7-0

7-0

7-0

Subject:		RZN 10-3732 (Brown, 2600 Crossover Rd.)			
Motion To:			2nd Read	3rd Read	Pass
Motion By:			Ferrell	Ferrell	
Seconded:			Petty	Tennant	
C. 3 New Business <u>passed</u> 5388	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	Absent	Absent	Absent	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Kinion	✓	✓	✓	
	Mayor Jordan				

7-0

7-0

7-0

Subject:		VAC 10-3735 (Firestone)			
Motion To:			2nd Read	3rd Read	Pass
Motion By:			Ferrell	Ferrell	
Seconded:			Thiel	Petty	
C. 4 New Business <u>passed</u> 5389	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	Absent	Absent	Absent	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Kinion	✓	✓	✓	
	Mayor Jordan				

7-0

7-0

7-0

Subject:	Appeal Chapter 166.18 of the UDC				
Motion To:		40 foot right of way approved	(Appeal denied)		
Motion By:		Ferrell			
Seconded:		Thiel			
C. 5 New Business <u>Appeal denied.</u> <u>New resolution passed.</u> 34-11	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	Absent			
	Gray	✓			
	Thiel	✓			
	Kinion	✓			
	Mayor Jordan				

7-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Tennant				
	Ferrell				
	Adams				
	Lewis				
	Gray				
	Thiel				
	Kinion				
	Mayor Jordan				



TO: Lioneld Jordan, Mayor

Kit Williams
City Attorney

THRU: Sondra Smith, City Clerk

Jason B. Kelley
Assistant City Attorney

FROM: Kit Williams, City Attorney

DATE: February 16, 2011

RE: Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of February 15, 2011

- 1. Bid #11-15 Elk River Construction, Inc.:** A resolution awarding Bid #11-15 and authorizing a contract with Elk River Construction, Inc. in the amount of \$84,825.00 plus a 5% project contingency for the construction of stream restoration at Niokaska Creek in Sweetbriar Park and approving a budget adjustment of \$9,066.00.
- 2. Bid #11-17 ADS Environmental Services, LLC:** A resolution awarding Bid #11-17 and authorizing the purchase of seventeen sewer flow monitors from ADS Environmental Services, LLC in the amount of \$136,528.63 for installation in the city sewer collection system.
- 3. Police Recording System:** A resolution approving a budget adjustment in the amount of \$43,000.00 moving unused funds designated for the police recording system to the police building remodeling project.
- 4. Ogden Insurance Agency Donation Revenue:** A resolution approving a budget adjustment in the amount of \$100.00 representing donation revenue received from Ogden Insurance Agency for the Fire Department's annual employee service awards event.
- 5. Garver, LLC:** A resolution approving a contract with Garver, LLC in an amount not to exceed \$38,200.00 for the performance of an environmental assessment study for the Van Asche Boulevard extension project between Gregg Avenue and Garland Avenue.

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7. **Atlantic Machinery, Inc.:** A resolution authorizing the purchase of a Schwarze A9000 sweeper from Atlantic Machinery, Inc. of Silver Spring, Maryland, pursuant to a competitive bid through the National Joint Powers Alliance Cooperative purchasing agreement, in the amount of \$190,100.00 for use by the Transportation Division, and approving a budget adjustment.
8. **Amend 2011 Adopted Budget:** A resolution amending the 2011 City Budget by reappropriating up to \$58,840,788.00 in bonded or ongoing capital projects, outstanding obligations and grant-funded items previously appropriated in the 2010 City Budget but not completed or delivered in 2010.
9. **Ozarks Electric Cooperative Corp. Cost-Share Agreement:** An ordinance to waive competitive bidding, to approve a cost-share agreement with Ozarks Electric Cooperative Corp. in the amount of \$38,250.48 for the extension of power to the Stone Mountain Water Pump Station, to approve a project contingency of \$7,500.00, and approve a budget adjustment of \$45,751.00.
10. **Appeal Chapter 166.18 of the UDC:** A resolution to approve a reduction of Master Street Plan right-of-way requirement in front of 3155 N. College to 40 feet from centerline and to deny Tracy Hoskins' appeal.

Aldermen

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B. Unfinished Business:

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Left on the First Reading

2. **Huntingdon Heights Appeal:** An appeal of the City Engineer's determination regarding the driveway approach at 3172 Warwick Dr. *This item was tabled at the February 3, 2011 City Council meeting to the February 15, 2011 City Council meeting.*

C. New Business:

- 1. Amend 2011 Adopted Budget:** A resolution amending the 2011 city budget by re-appropriating up to \$58,840,788.00 in bonded or ongoing capital projects, outstanding obligations and grant-funded items previously appropriated in the 2010 city budget but not completed or delivered in 2010.
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City Council Tour: Monday, February 14, 2011 at 4:30 p.m. - Appeal Chapter 166.18 of the UDC – Paradigm Building, LLC, Tracy Hoskins, 3155 N. College Avenue.

Announcements:

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RESOLUTION NO. _____

A RESOLUTION AWARDDING BID #11-15 AND AUTHORIZING A CONTRACT WITH ELK RIVER CONSTRUCTION, INC. IN THE AMOUNT OF \$84,825.00 PLUS A FIVE PERCENT (5%) PROJECT CONTINGENCY FOR THE CONSTRUCTION OF STREAM RESTORATION AT NIOKASKA CREEK IN SWEETBRIAR PARK AND APPROVING A BUDGET ADJUSTMENT OF \$9,066.00.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #11-15 and authorizes the Mayor to sign the contract with Elk River Construction, Inc. (attached as Exhibit "A") in the amount of \$84,825.00 plus a five percent (5%) project contingency for the construction of stream restoration at Niokaska Creek in Sweetbriar Park.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Budget Adjustment in the amount of \$9,066.00.

PASSED and APPROVED this 15th day of February, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

From: "Filipek, Steve" <sfilipek@agfc.state.ar.us>
To: <city_clerk@ci.fayetteville.ar.us>
Date: 2/9/2011 4:25 PM
Subject: Streamside Protection Ordinance

Please forward this to Mayor Jordan and all the City Council members.

I strongly support the Streamside Protection Ordinance and encourage you all to think of the future of Fayetteville and support this ordinance as well. Scientifically, economically and logically, it's the right thing to do.

Thank you for your consideration of this request,

Steve Filipek

From: Jed Hollan <jphollan@aol.com>
To: "city_clerk@ci.fayetteville.ar.us" <city_clerk@ci.fayetteville.ar.us>
Date: 2/10/2011 12:02 PM
Subject: Streamside Protection Ordinance

Please include me in the swelling ranks of those in favor of the captioned ordinance.

Jed Hollan

Founding president Trout Unlimited

Heber Springs AR

Sent from my iPhone

From: fsharp@pgtc.com <fsharp@pgtc.com>
To: <city_clerk@CI.FAYETTEVILLE.AR.US>
Date: 2/10/2011 2:34 PM
Subject: Distribution of this e-mail to City Council Members

Dear City Clerk:

I would appreciate your forwarding this e-mail to the Mayor and members of the City Council.

Thank you,
Frank Sharp

Dear Mayor and Members of the Council:

I would appreciate your supporting the Streamside Protection ordinance. As one that grew up with a hand-dug, totally inadequate, water well, I learned early on to appreciate the value of water. Later, running a USDA Government inspected food business for many years (the Ozark Mountain Smokehouse) our grant of inspection depended upon a supply of safe, abundant, affordable water. This is even more important for the large food processing companies upon which the economy of this area depends.

Let's protect our Beaver Lake treasure!

Frank Sharp
2062 S. Smokehouse Trail
Fayetteville, AR 72701
479-957-4069

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff *DM*

From: Jeremy Pate, Development Services Director *JP*

Date: February 07, 2011

Subject: ADM 10-3761 (Hoskins Appeal)

This memo provides additional information regarding the recent appeal filed by Tracy Hoskins with regard to Unified Development Code (UDC) §166.18 Master Street Plan Setbacks. Please note that in order for the Council to hear this item, it must be considered an appeal of staff's interpretation of Ch. 166.18 of the UDC, and not an appeal of the denial of a sign permit. An appeal of a denial of a sign permit may only be reviewed by the Circuit Court.

The applicant recently submitted a sign permit application for property located at 3155 N. College Avenue, followed by a site plan indicating a sign setback of 10 feet measured from the dedicated street right-of-way for N. College Avenue, which is 80 feet, or 40 feet measured from centerline. Staff denied the sign permit application due to the fact that the sign was not setback 10 feet as measured from the Master Street Plan right-of-way for N. College Avenue, most recently established in 2006 when Mr. Hoskins performed a major remodel for Haas Hall School and World Gym and constructed a building addition at this address. When Mr. Hoskins constructed the building addition the Master Street Plan right-of-way required 55 feet from centerline, which is indicated on the plans submitted and permitted at that time. At a later date, the City Council actually reduced the Master Street Plan right-of-way to 48.5 feet from centerline, from which staff is applying the current setback requirement for the sign permit.

Pursuant to §155.06, the applicant is appealing the Zoning and Development Administrator's interpretation of §166.18 Master Street Plan Setbacks. As we understand the submitted information, the applicant makes two cases in the appeal:

- 1) That the use of the word "established" in §166.18 is the same as "existing," and therefore the setback is only 40 feet from centerline. The appeal states "in my case, the established right-of-way setback line is 40 feet from centerline of North College," and
- 2) That sign setbacks are not subject to §166.18, since §166 is a development chapter and a sign does not fall under the category of development.

In staff's opinion §151 and §166.18 clearly address both points of the appeal, and supports the decision of the Zoning & Development Administrator's interpretation of the UDC resulting in the denial of the sign permit.

in its current form. First, the use of the term “established” must be clarified in the context of §166.18. The beginning of §166.18 reads:

“The city shall require the applicant/developer to *establish* a right-of-way setback line based on the right-of-way requirements for streets and highways designated by the Master Street Plan. Such setback line shall be considered the property line for such purpose of satisfying the requirements of the UDO.” (emphasis added)

Consequently, the adopted Master Street Plan right-of-way line is considered the property line for satisfying the requirements of Chapter 174 Signs, and a monument sign or other structure shall be setback at least 10 feet from the right-of-way line. Signs have been consistently permitted under this regulation for at least the past decade, including others submitted by Mr. Hoskins.

In support of the claim that a sign does not fall under the category of “development,” the applicant has provided a definition in the appeal letter. However, it does not appear that this language is taken from the UDC. Where a term is defined in the UDC, this definition is the most appropriate in the context of the UDC. §151 Definitions of the UDC provides the following related to development:

Development (Streets and Sidewalks). Shall include, but shall not be limited to, the construction of a new *improvement*, the construction of an addition to an existing *improvement*, or a parceling which results in the need for access and utilities. (emphasis added)

Development Plan (Development). A drawing showing all proposed *improvements* to a piece of property *such as* streets, parking lots, buildings, drives, *signs*, utilities, drainage, grading and planting by size and location. (emphasis added)

These definitions clearly support the idea that while a sign is not a large development in and of itself, a sign is considered an improvement similar to buildings and parking lots, and is therefore a category of development subject to the City’s regulatory authority and the Master Street Plan right-of-way setback requirements. Moreover, the sign being discussed is related to a site that has been expanded and redeveloped in recent years, which relates directly to Mr. Hoskin’s argument that the sign is part of a development that is drawing additional traffic to this site and thus has an impact on the area.

Based upon these criteria taken directly from the Unified Development Code, staff does not find a way to reasonably support Mr. Hoskins’ petition that his sign setbacks should be measured from the existing right-of-way line along College Avenue, which would be a vast departure in how the city permits sign applications. The Master Street Plan right-of-way was established at 55 feet from centerline in 2006 with the building permits issued for the development on this site; the more recent Master Street Plan actually reduced this right-of-way setback requirement to 48.5 feet from centerline. Staff finds that the proposed sign, as part of a development site, can be permitted only if in compliance with §166.18.

Alternate Solution

Staff has advised Mr. Hoskins that an alternative solution is available to either remedy or come closer to the result he is seeking for the sign on this particular property. As mentioned previously, the existing, dedicated right-of-way in this location is 40 feet from centerline. The Master Street Plan as currently adopted requires

48.5 feet from centerline. As you are aware, staff is in the process of updating the Master Street Plan. We are recommending that the Master Street Plan right-of-way for a Principal Arterial be reduced from 48.5 feet from centerline to 43.5 feet from centerline. Once adopted, this will allow signs and other structures to be five feet closer to the street, as measured from the front property line.

Staff recommends that the Council deny the administrative appeal, but approve a resolution that amends the Master Street Plan for this property to reflect the proposed Master Street Plan right-of-way of 43.5 feet from centerline. This will allow Mr. Hoskins some relief, while ensuring that the integrity of the Master Street Plan is continued. If desired, the Council could also amend the Master Street Plan to allow the current right-of-way, 40 feet from centerline, to be the established Master Street Plan right-of-way for this location. To Mr. Hoskin's point, we do not anticipate College Avenue to expand beyond a five-lane section in the near or mid-term future. It would be a City Council policy decision whether to hold to the currently adopted 48.5 feet right-of-way setback, allow the anticipated Master Street Plan right-of-way of 43.5 feet or reduce it further to 40 feet from centerline.



Departmental Correspondence



**LEGAL
DEPARTMENT**

www.accessfayetteville.org

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director
Jesse Fulcher, Planner – Current Planning

FROM: Kit Williams, City Attorney

A handwritten signature in black ink, appearing to read "Kit Williams", with a long horizontal line extending to the right.

DATE: February 7, 2011

RE: Tracy Hoskins' Appeal

Attached please find my memo of January 26, 2011 that I supplied to Jeremy Pate and Jesse Fulcher and which was requested and provided to Tracy Hoskins. I stand by the legal and constitutional analysis contained within that memo which concluded: "If the new development, here the construction of a sign, would not have such major traffic generating impact, we cannot demand dedication of right-of-way or prevent a landowner's use of a portion of his property because of a fictitious new property line."

I also stated: "Developments that would create substantial increases in traffic because of new or enlarged buildings, etc. could probably meet this 'rough proportionality' test and be required to dedicate right-of-way or even construct street improvements." Mr. Hoskins met this constitutionally required "rough proportionality" test in 2006 when he constructed a new or enlarged building at 3155 N. College Avenue where he now desires to place his monument sign. The plat he prepared for this construction of about 4,000 square feet of office space (attached) clearly shows that this construction triggered §166.18 **Master Street Plan Setbacks** and established a new "right-of-way setback line based upon the right-of-way requirements for streets and highways designated by the Master Street Plan."

If you look at the site plan plat prepared by Paradigm (which is owned by Mr. Hoskins) for its Commercial Center, you can see the previously dedicated 40 foot right-of-way from the center of College. Also shown is a "65' BUILDING SETBACK LINE" near the edge of Paradigm's building. Since this property is zoned C-2 Thoroughfare Commercial, its front setback requirement is 50 feet, not 65 feet. {§161.20(E) of the Unified Development Code} This extra 15 feet was what was required by the Master

Street Plan which was 110 feet for a principal arterial or 55 feet from centerline instead of the 40 feet of the actual dedicated right-of-way.

This additional 15 feet was not required to be dedicated by Paradigm or Mr. Hoskins when he built or enlarged his building. Instead his development merely established a new right-of-way setback line. However, from that point forward, “(s)uch setback line shall be considered the property line for such purpose of satisfying the requirements of the UDO.” (§166.18 **Master Street Plan Setbacks**)

Thus, Tracy Hoskins was required to and did “establish a right-of-way setback line based upon the right-of-way requirements for streets and highways designated by the Master Street Plan,” in 2006. All other setbacks in the UDC would then “be dimensioned from (this newly) established right-of-way setback line.” (§166.18) Because Mr. Hoskins’ development of a new or enlarged building on his property in 2006 would generate sufficient traffic to justify a fifteen foot increase in setback requirements (to which he not only failed to object, but actually showed on his plat), the setback for a sign should also be dimensioned from this setback line established in 2006.

§166.18 **Master Street Plan Setbacks** can now be constitutionally applied for Mr. Hoskins’ proposed sign location because of his 2006 establishment of the new 55 foot line for setbacks to begin. It is also clearly within the City’s statutory power.

“§14-56-418. Setback lines; authorization

When a master street plan has been adopted and filed as provided, the legislative body of the city, upon recommendation of the commission, may enact ordinances establishing setback lines on such streets and highways as are designated by the plan and may prohibit the establishment of any new structure or other improvements within the setback lines.”

Since what Mr. Hoskins did in 2006 in constructing a new or enlarged building would certainly be deemed “ ‘development of land’ under a valid regulation, then the Statute (A.C.A. §14-56-418) could provide authority for requiring reasonable right-of-way dedication.” *City of Jonesboro v. Vuncannon*, 310 Ark. 366, 837 S.W. 2d 286, 290 (1992). Thus, the City’s requirement to establish a new line from which to dimension setback requirements is both constitutionally and statutorily authorized.

MASTER STREET PLAN AMENDMENTS

The Planning Department has recommended that the setback line established by Mr. Hoskins' development in 2006 at 55 feet from centerline be reduced to 48½ feet from centerline because the City Council reduced the right-of-way requirements for principal arterials in the 2006 Master Street Plan amendments. Since construction of a sign is a "development" (requires a building permit), §166.18 can be used to **reduce** the required setback line from 55 feet to 48½ feet with no consideration of whether or not there is any impact upon the City's infrastructure needs. On the other hand, §166.18 cannot **increase** the setback distance without such a "rough proportionality" test to justify an increased restriction upon an applicant's property.

The City Council can reduce the Master Street Plan right-of-way requirements "in the event of undue hardship or practical difficulties" for a subject property. {§166.04 (B)(3)(a)(i) of the U.D.C.} Since the Planning Department is probably going to recommend a further reduction in Master Street Plan right-of-way requirements for College Avenue to 87 feet (43½ feet from centerline), the City Council could grant Tracy Hoskins this same reduction in advance of the formal adoption of the Master Street Plan amendments. If you did so, his "development" of the construction of his sign would trigger §166.18 provisions and change the line from which **all setback requirements** of the UDC would be measured from 55 feet from center line to 43½ feet from centerline. If you take no action, the legal and constitutional line for setbacks would only be reduced to 48½ feet from centerline from its current 55 feet from centerline.

3155 N College Ave

40' right-of-way line

REPAIRED EXISTING PARKING LOT -
ADDITION OF NEW LANDSCAPED ISLANDS
CONNECTED HIGHWAY ENTRANCES
IMPROVED LOT DRAINAGE

1 SITE PLAN

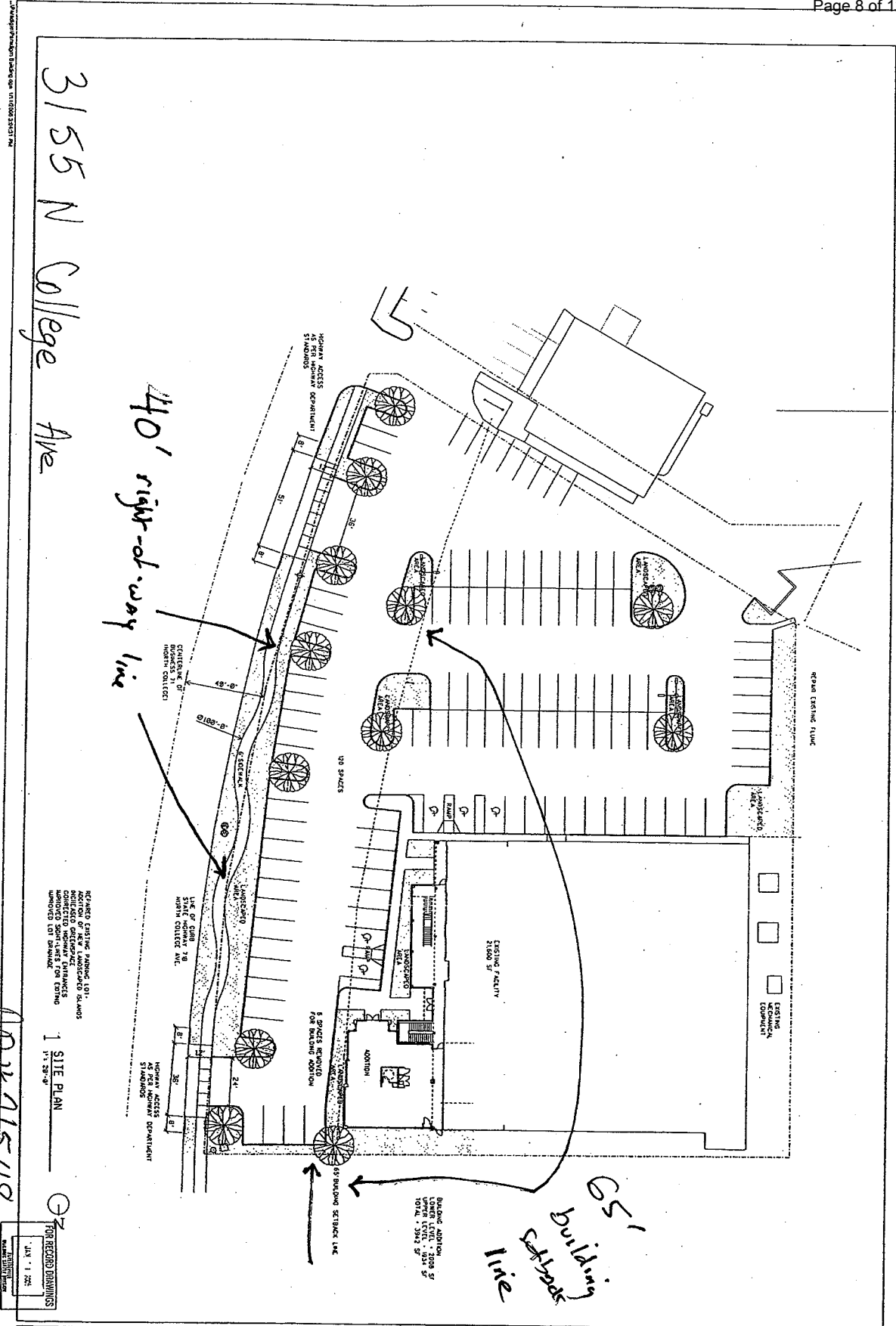
FOR RECORD DRAWINGS
JAN 1, 2006

C1

01/02/06

PARADIGM COMMERCIAL CENTER
FAYETTEVILLE, ARKANSAS

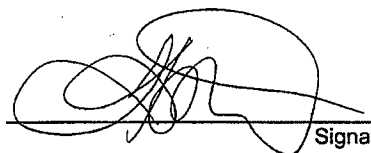
Paradigm
DEVELOPMENT



HP# 21548

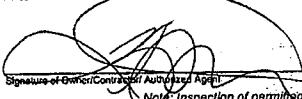
Certificate of Owner

The undersigned certifies to be the owner of the real property for which a site plan has been submitted to the City of Fayetteville, Arkansas as part of a building permit application and certifies that the structure to be built on said property will be located as reflected on said site plan, will comply with all setback requirements of the Fayetteville Zoning Ordinance (Appendix C to the Fayetteville Code of Ordinances), and will not encroach on any public utility easement. I understand that all inspections by City Inspectors will be made only to determine compliance with construction codes and not to assist the owner in properly locating the structure. I acknowledge my responsibility to insure, by boundary line survey if necessary, that the location of the structure will conform to the site plan that is attached to the Building Permit application and will meet all setback requirements of the Fayetteville Zoning Ordinance, and will not encroach on any public utility easement.



Signature of Owner

1-10-06 (date)

BUILDING PERMIT APPLICATION				Office Use Only																																			
City of Fayetteville Building Safety Division 113 West Mountain Street Fayetteville, AR 72701 Phone: 479-575-8233 Fax: 479-575-8316				Review Routing & Approval																																			
Date Submitted: <u>1-10-06</u> Permit #: <u>21548</u>				<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>DIVISION</th> <th>COPY TO:</th> <th>IS/OK</th> <th>APPROVAL DATE</th> </tr> <tr> <td>Planning</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Engineering</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Landscape</td> <td></td> <td></td> <td></td> </tr> <tr> <td>SW/Trails</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Solid Waste</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Fire</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Inspections</td> <td></td> <td></td> <td></td> </tr> </table>				DIVISION	COPY TO:	IS/OK	APPROVAL DATE	Planning				Engineering				Landscape				SW/Trails				Solid Waste				Fire				Inspections			
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Building will comply with Arkansas Energy Code Requirements (Yes/NA): ☒ Yes ☐ No ☐ NA Wall Insulation Type: Batt ☒ Cellulose ☐ Other _____ Is a retaining wall to be constructed? (Yes/No): <u>No</u> Engineering Approval: _____ Is slope of site greater than 15%? (Yes/No): <u>No</u> Engineering Approval: _____ Flood Plain? (Yes/No): <u>No</u> Base Flood Elevation: _____ Lowest Finished Floor: _____ Planning Approval: _____ Public Sewer: ☐ Y ☐ N AR Plbg. Approval #: _____ Washington Co. Septic Approval #: _____																																							
DESCRIPTION OF WORK: <u>Addition of 2-story office totaling 3942 sq. ft. / Both Levels</u>																																							
Use of Building: <u>Office</u> Previous Use: <u>NA</u>																																							
OFFICE USE FOR PLAN REVIEWERS ONLY:																																							
Construction Type: <u>VB</u>		Occupancy Group: <u>B</u>																																					
Max. Occupancy Load: <u>90 (no parking)</u>		Fire Zone: <u>N</u>																																					
Protection (hours): <u>0</u>		Sprinklered: Y: ☐ N: ☒																																					
NOTICE																																							
SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL, PLUMBING, GAS, MECHANICAL, AND SIGNS. THIS PERMIT BECOMES NULL AND VOID IF WORK/CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 6 MONTHS, OR IF WORK/CONSTRUCTION IS SUSPENDED OR ABANDONED FOR A PERIOD OF 6 MONTHS.																																							
I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of law and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.																																							
 Signature of Owner/Contractor Authorized Agent		<u>1-10-06</u> (Date)																																					
Note: Inspection of permitted work may reveal code violations not discovered during plan review.																																							



TO: **Jeremy Pate**, Development Services Director
Jesse Fulcher, Current Planning

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

FROM: **Kit Williams**, City Attorney

DATE: **January 26, 2011**

RE: **Appeal of Staff Interpretation of §166.18 Master Street Plan Setbacks**

Applicant Tracy Hoskins may not appeal a denial of a sign permit application except directly to Circuit Court. §174.02(C) and §155.01 However, Mr. Hoskins is not attempting to appeal the denial of his sign permit (which has not actually been denied), but only the staff's interpretation of §166.18 **Master Street Plan Setbacks** which staff believes controls the meaning of "street right-of-way" in the monument sign section of the Sign Ordinance and thus, the allowed location of the sign. This staff interpretation is subject to appeal to the City Council through §155.06(A)(1)(b) *Development Matters*.

§166.18 Master Street Plan Setbacks begins as follows:

"The city shall require the applicant/developer to establish a right-of-way setback line based on the right-of-way requirements for streets and highways designated by the Master Street Plan. Such setback line shall be considered the property line for such purpose of satisfying the requirements of the UDO."

The first issue here is whether a person only wishing to place a sign on his property for a business which is occupying an existing structure could be required by the City to dedicate additional street right-of-way. Constitutional protections (Fifth Amendment provisions) prevent governments, including cities, from demanding a greater exaction (right-of-way dedication) than the burden the new development will place upon the city's street infrastructure. A sign for an existing business in an existing building would appear to have too small of an impact on our street infrastructure needs to justify a demand that additional street right-of-way be dedicated. {Please see attached a copy of the memo I issued ten years ago (July 27, 2001) about the need for our land dedication ordinance requirements to

meet the “rough proportionality” test of the probable impact of development upon our infrastructure needs which was required by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374, 390 (1994).}

Although §166.18 does not specify that the developer/applicant “dedicate” land to meet the Master Street Plan recommendations, it requires an establishment of a setback line and states “(s)uch setback line shall be considered the **property line** for such purpose of satisfying the requirements of the UDO (now UDC).” (emphasis added) By not using the actual, already dedicated and currently existing street right-of-way line as the property line and substituting a new “property line” for UDC setbacks, the City would, in effect, be requiring dedication of this additional land. Any such dedication would therefore have to meet the Constitutional “rough proportionality” test.

Developments that would create substantial increases in traffic because of new or enlarged buildings, etc. could probably meet this “rough proportionality” test and be required to dedicate right-of-way or even construct street improvements. However, Jonesboro was determined by a Court to have been guilty of and liable for inverse condemnation when it required nine additional feet for street right-of-way pursuant to its Master Street Plan before it would grant a replat needed for development. *City of Jonesboro v. Vuncannon*, 310 Ark. 366, 837 S.W.2d 286 (1992). There the Arkansas Supreme Court noted that although the state statute gives cities “authority to promulgate a regulation. It does not directly authorize taking land without compensation.” *Id.* Jonesboro had to pay over \$5,000.00 in 1992 for its additional 9 feet of right-of-way.

Ordinances like statutes should be interpreted to be constitutionally and legally valid if possible. The first sentence of §166.18: “The city shall require the applicant/developer to establish a right-of-way setback line based on the requirements for streets and highways designated by the Master Street Plan,” would be valid as long as it is understood that establishing a new right-of-way setback line based upon the current Master Street Plan can only be required if the proposed development’s likely traffic generating potential would cause such an impact upon our street infrastructure needs at that location such that the right-of-way dedication would be roughly proportionate to the anticipated impact of the new development. If the new development, here the construction of a sign, would not have such major traffic generating impact, we cannot demand dedication of right-of-way or prevent a landowner’s use of a portion of his property because of a fictitious new property line.

Board Members

Mayor Jordan
Sondra E. Smith
Marion Doss
Pete Reagan
Gene Warford
Ronnie Wood

Chairman
Secretary
Position 1/Retired
Position 2/Retired
Position 3/Retired
Position 4/Retired



**Special Meeting Minutes
October 18, 2010
City Council
Firemen's Pension and Relief Fund Board of Trustees
Pension Review Board**

A Special meeting of the Fayetteville Firemen's Pension and Relief Fund Board of Trustees, City Council, PRB, and Actuary Jody Carreiro was held at 4:30 PM on October 18, 2010 in Room 326 of the City Administration Building.

Mayor Jordan called the meeting to order.

Present:

Fire Pension: Ronnie Wood, Pete Reagan, Marion Doss, Gene Warford, Sondra Smith and Mayor Jordan.

City Council: Brenda Thiel, Adella Gray, Bobby Ferrell, Sarah Lewis, Kyle Cook, Shirley Lucas and Matthew Petty.

Other Attendees: Kit Williams, City Attorney, Paul Becker, Finance & Internal Services Director, Jody Carreiro, Osborn, Carreiro & Associates, David Clark, Pension Review Board, Audience, and Press.

A meeting to discuss the insolvency of the Fayetteville Firefighters Pension Fund.

Special report from Jody Carreiro of Osborn, Carreiro & Associates Inc. Actuaries Consultants Analysts.

Jody Carreiro, Osborn, Carreiro & Associates Inc.: We have been the actuaries for the Fire and Police Pension Review Board for 20 years. These analysis have been different, it's different because we have had to stretch our muscles to do some of these things. Some of the Pension Board members have seen this and some of it will be new.

Mr. Carreiro presented a PowerPoint presentation regarding the actuarial report. A copy of his report and graphs is attached.

Now that everyone has retired the liability should be trailing off. Between 2007 and 2008 you had the last big DROP payment out of the plan. The Pension Review Board decided they were

going to review and adjust the discount assumption for the liabilities on a routine basis. They did that based on the returns of the previous five years. This created a \$3.8 million increase in liabilities from that change in assumptions. The discount factor going from 7% to 5% really increased those liabilities. There was a 23% increase in this last evaluation.

What we are presenting to you is a cash flow simulation process. The evaluation is a snapshot in a particular year versus in this cash flow simulation it is year by year the expected income and expected benefits for every year during this projection period. With an evaluation we have liability assumptions, interest, discount, mortality, and other things like that. With this we have some added assumptions about what the asset income pieces are going to be.

These assumptions are not guesses but they are not predictions either. They are not going to be accurate but they are going to give us the best idea of the direction that things are in. We hope it is right.

Page 11 and page 12 of the report is 10 years of financial history. At the bottom of page 11 is a line called non investment cash flow. Ignoring investment income is the income minus the expenses. That is important because we are in the phase of life of this plan that our non investment cash flow is an out flow. It is no longer net income because everyone is retired now. Ten years ago it was a small number and now it is up to about \$800,000 every year. That is our benefit payments, which the benefit payments have increased over the past ten years, the benefit payments less the income items is going to be over \$800,000 out flow every year.

Page 12 shows where the assets were ten years ago they were over \$12 million and now we are down to under \$6 million. We want to be closer to ten years of benefits in our assets and we are down to right at four years, which is too low. The last ten years in the market have been brutal. Market returns have been around 2% over a ten year period. There has been ten years of under performance.

The next several pages are the profiles. Page 15 shows you the age of all the retirees, page 17 and page 18 lists the plan provisions. Page 19 lists the benefit increases that this plan has received over the years. The base benefit in the law is 50% of pay. In 1996 that was increased from 50% to 65%, in 2001 the plan went from 65% to 90% of pay as a base benefit. In 2003 there was a three year temporary 3% COLA that was approved. In January 2007 you asked us if you could afford any other benefit increases and you could not at that time.

The liability assumptions are on page 20 through page 22, mortality assumptions is the big thing here. We did a study on all the fire and police plans in the State and determined the table. The 1983 Group Annuity Mortality Table was closest to the mortality of the folks through the period that ended at the end of 2007. We will continue to review that every few years to see if it needs to be updated. We also project based on the mortality of the retirees with spouses.

Pages 23 and page 24 is the asset projections assumptions. For each income piece we had to project how much income was going to be produced with that. The millage in the last several years has increased more than 2% per year. The 2% a year is a national real estate average.

Since everyone is retired there is not any employer match any more. The premium tax is very difficult to understand. In 2010 the plan received about \$123,000. It is based on a long complicated formula that allocates based on the cost of every old plan and every LOPFI plan and then a percent is applied to it, and then there is a second round to where hopefully you will get some more money. It has been hard to predict and it is not growing as fast as the needs of the pension plans. The pension plans on the LOPFI side and the old plan side both have growing cost. For this study we did not assume a discount rate, we assumed a portfolio. That portfolio is broken into six categories. Page 24 will show how much was allocated to those categories.

The first thing in the results to look at is on page 3. There are several charts that we are going to go through. With the portfolio we did 2000 simulations over 30 years in six different categories. We arranged the results from worst to best. What the graph tells us is that right now your fund has about 91% chance of using up assets before the liabilities. You have a risk of ruin of 91%. That is not very good. We do not want to ever run out of money. We would like a risk of ruin to be 5% and no more than 10%. That means we have a lot more risk than we want to have.

The next two graphs show what will happen if you are more conservative to take away some of the risk or more conservative to make more money. If you are more conservative it gets a little worse. Being more conservative does not give you enough earnings to increase anything. A more aggressive portfolio still has you running out of money in 12 years. It is fractionally better as far as the risk of ruin. It is just under 90%.

If you can find a 15% CD you could earn your way out of this hole. They do not exist. A 15% portfolio is not going to happen. It would have to be a 15% risk free portfolio to earn our way out.

If you add money to the plan over the next fifteen years you might make this plan solid or reduce our risk of ruin to 5%. It would take \$325,000 per year for 15 years and \$250,000 a year for 30 years. I don't think there is money to do that.

The following are possible actions you can take:

1. Maintain the current direction. There is a high probably of running out of money if we do not do anything.
2. Additional City contributions. City probably does not have the money.
3. Consolidation with LOPFI. City makes up any difference. The City pays the unfunded liability.
4. Benefit reductions. The opinion is that is not probably possible.

The benefits after 30 years are still \$665,000. That is just less than half the benefits that are being paid out now. Some of your retirees are not very old and many of them have spouses. This plan pays benefits to the spouses as well.

If the plan consolidates with LOPFI the estimated costs go up every year. The LOPFI amortization when you consolidate is based on a 15 year amortization but it is a level percent of payroll so it grows by 4% per year.

Mayor Jordan: Any comments or questions from the pension board?

Pete Reagan thanked Jody Carreiro and David Clark for coming. You talked about the local millage on your report. I will direct this towards Paul. I don't know if our numbers are going to be up or down. I suspect that in my own personal piece of property the amount it was appraised for is down for 2010. Does that mean our part of the millage will be down?

Paul Becker: From the projections on the assessed valuation I've seen it will not be down but it will not be up compared to last year. Next year I don't see a big decrease but we are not going to see much of an increase.

Pete Reagan: Thank you. Jody on the fire insurance premium tax do you see any way to increase that solely for old funds that are in distress and then roll it over into LOPFI once they become able to stand on their own?

Jody Carreiro: The current frame work to present to the legislature is that the old plans would get a portion of their calculated similar to now. Then there would be an extra portion based on unfunded, so the bigger your unfunded the more your portion would be. This second portion would be assuming the City did everything it could, now defining that is still in negotiations. The thing was the 1 mill but it may be a combination of 1 mill or a percent of a pay off of the unfunded. It maybe a deal where the City has to come up with a little extra money to get more extra money. The idea is the cities that are in need would be able to get some more. To be honest the proposal is that calculation would be based on base benefits. That wouldn't cover all your liability because you guys have a significant benefit increase. There will be a calculation based on base benefits and then that's the calculation that people will get help on.

Pete Reagan: Do you think it is possible to pass an increase in the fire insurance premium tax? Do you think that is a viable alternative?

Jody Carreiro: The proposal that's out there right now is a better distribution of money and a way to increase that pot faster. It is probably one of our best bets on doing that but frankly the Governor and DF&A are going to fight it tooth and nail because they need every penny they've got right now. Does it have a great chance, I don't know. I think there is a lot of support from both boards and they are building support from the Municipal League. Sondra was at the meeting where that committee voted to endorse it. I was almost surprised. We are beginning to come together. The Legislative Committee, whenever they meet again, will hear the same

presentation. If they get behind it too then we can sit down with the Governor and say there are a lot people behind this and here is a way to fix this problem long term. It's not going to bother your budget this year but it's going to cost more money in future years but this is a way you can fix this once and for all. That's the hope and direction. Whether it works I don't know.

Pete Reagan: Assuming this passes can you put a dollar figure to that piece?

Jody Carreiro: Not yet. Not until I know more of what some of these things mean and that's going to come from the discussion from other people.

Paul Becker: Jody I have seen your preliminary numbers. I think the thing we should let everybody know is that is not going to solve this problem. Changing the distribution of premium taxes is not going to be large enough to resolve this problem. I feel a responsibility to let you know where we are. You have to understand the Council, Mayor and Administration are looking at approximately a \$1.4 million short fall in the General Fund alone that we are going to have to come to grips with. We are either going to have to use reserves, cut capital, or cut operating expenses. It's a rather difficult time to have a discussion of coming up with additional funding.

Jody Carreiro: I understand.

Paul Becker: Especially when we are talking about, if I recall the numbers correctly, if we sent it to LOPFI your estimate is \$163,000 the first year graduating to roughly \$600,000 after 15 years or putting in \$250,000 over a 30 year period. You have to understand in these discussions the Council is already grappling with a problem beyond this.

City Attorney Kit Williams: I have attached an opinion letter to our budget every year for our auditors that says the City is not currently liable for any short fall in the pension fund. The pension fund is controlled by this Board. They are the ones that voted increases in it without the increase to 90% and a 3% COLA for five years we wouldn't have this kind of problem. The Mayor and City Clerk are also on the board but it's really the responsibility of the board and not the City, legally and in my opinion not even morally because there is nothing that the City Council can do to say you're spending too much money and you need to cut benefits. It's totally up to the board on that. This is their pension plan just like the police, they have their own independent board. It's not the City Council's responsibility legally or in my opinion morally. They have to decide as trustees. They have a fiduciary duty to every beneficiary out there to make sure this pension plan does not go bankrupt. We have a difference of opinion about some of the options. One option they did not discuss is an option I believe is the only true option available to this board and that is to reduce benefits. The benefits would not have to be reduced dramatically at this point in time. It would still be way over the 50% that the statute originally set this as but the Attorney General and this board disagrees with me. If the board decided to go forward like that someone or some pensioner might possibly sue the board and say no I am entitled to the full amount. A judge would then decide and basically we would have a true decision on it. My opinion is the board does have that inherent power. There are things within the statute that I believe give them the power and also there is the simple responsibility that they

have a fiduciary duty to preserve this pension plan. That gives them inherent rights to take whatever action is necessary within their power to make the plan last and not to have a 95% chance of this plan going broke.

This is not a surprise. More than four years ago I told them I was concerned about the pension plan and that they needed to reduce benefits. They have heard this for more than four years from me and that was in August 2006 before any crash in the market. That is after a big run up in the stock market where our financial advisors for the pension plans had done wonderful. She earned them lots and lots of money and yet their fund was still going down and that's why I could see the hand writing on the wall. That's why I asked them to consider that.

Alderman Ferrell: Kit, we talked about on any kind of benefit change that the Attorney General says he doesn't think that would be allowed. Did the Attorney General have to opine on any of these votes to increase benefits from 50% to 65% and 65% to 90%?

City Attorney Kit Williams: No. Every time benefits were increased by this board it went through the State Pension Board and they had to approve it. To approve it they always used a cash flow method at least for the last few years because actuarially it would not have made it. They used those assumptions, it use to be 6% growth then it went up to 7% growth and now it is back down to 5% growth. They are using the assumptions that the investment portfolio would grow fairly aggressively and when that did not happen that is why things got in trouble. The pension board always followed the law. They only approved increases when they were approved to do so by the State.

Sondra Smith: We proposed in two separate meetings a benefit reduction that the Mayor and I supported. In one meeting one other board member supported it but we did not have a majority vote to reduce the benefits.

Alderman Ferrell: What kind of reduction did you propose?

Mayor Jordan: Twenty percent wasn't it?

Sondra Smith: Jody gave us a presentation at one of the meetings. In that presentation he stated it would take a 20% to 23% reduction. One motion was a 20% reduction. I believe the other one was 23% or what Jody thought it would take to gets us even.

Mayor Jordan: Both votes failed.

Paul Becker: Jody, people have asked me about the cash flow analysis. We could not pass the actuarial analysis test because that is based on a five years of actuarial soundness. Is the cash flow analysis a statutory analysis, or is that defined by statute?

Jody Carreiro: The statute says the Pension Review Board can define actuarial soundness. For many years they defined actuarial soundness as if your assets over liabilities were over a certain

percent, whatever that was, and if your plan was making the calculated actuarial contributions. The calculated actuarial contributions, since everyone was eligible to retire in 2003 under these plans, they were quickly moving so that the amortization of any unfunded was over a fairly short period and rightfully so. The trouble with that is nobody can make that kind of a contribution. They weren't going to get it paid off in five years. The decision was made probably 15 years ago to use the cash flow method. The big thing about that was that millage and premium tax would continue after 2003. Those things would continue for quite some time and if we looked at the cash flows, what was coming in, and the expected benefit payments, and the plan was not expected to run out of money, then the board's definition of actuarial soundness was that the plan would then be sound. That is the method that was used for all of the benefit increases that this plan has had.

Paul Becker: That was an administrative decision by the PRB.

Jody Carreiro: That's correct.

Sondra Smith: There is one thing in the report on page 19 that I would like to point out. In the changes in benefits, on November 20, 2003 it says extend the DROP to 10 years, that was approved by the pension board to go to the City Council but the City Council voted against that and that motion failed. We did not extend the DROP to 10 years. We only had a five year DROP. That DROP is finished. I don't know if everyone here understands what the DROP was.

Alderman Ferrell: Would you explain that?

Sondra Smith: I don't know as much about it as some of these gentlemen here do. They were allowed to go ahead and work for an additional five years and money was set aside in a lump sum distribution for those pensioners during those five years because they weren't drawing from the pension fund during that time. The way I understand it their dollar amount was frozen that they could draw when they went on the DROP. So if they got any pay increases during those five years they would stay at the same level they were at when they went on the DROP.

Jody Carreiro: That's pretty good.

Sondra Smith: But in doing that there was an additional \$3.3 million paid out to 19 pensioners on the DROP plan. That may have made a little bit of difference too but you don't know whether they would have gone ahead and retired or continued working.

Jody Carreiro: Sondra did call me to point that out. I took it off my slide but I couldn't take it out of the book. There are lots of issues here that we can talk about. The benefit increases and all that evidentially puts a huge weight on this but those were all approved with some type of interest rate assumption. The market has treated us poorly for 10 years which is not anyone in this room's fault. You earn 2% for 10 years if your assumption is 5%, 6% or 7%, it doesn't matter you're way behind if you do that for 10 years. Whatever effect the DROP ultimately had it's hard to quantify but again that was an affect that was in there. This was not intended to try to

dissect all the affects of why we got here but maybe to throw out some ideas to spawn some discussion so that maybe we can find some solutions of how to get to where we need to be.

Alderman Petty: I looked back at the financial records provided for the fund and it seems that it's been obvious that this has not been actuarially sound for quit some time. I was wondering why benefits were raised so much in the first place? It doesn't seem like it was a responsible decision to begin with even when the market was gang buster the fund wasn't sound. Why has it taken so long to get to a point where we are talking about actions?

Mayor Jordan: That was before my time. I don't think I have voted for a benefit increase since I have been here. What were the circumstances that you all raised it from 50% to 90%?

Jody Carreiro: The fund was sound at the time every benefit increase was made or it would not have been made. It met the definition of soundness. Clearly since I did a lot of those actuarial reports I've sit around and said why, did we put in enough room for variance? Did we put in enough area that was there? I think based on what we knew at the time that each of those reports were done, what information we had, except for investment returns they have been pretty much been on track. I went back to some old cash flows and said where does it say we are in 2010. If I add what happened in the market from that point to 2010 it explains what the difference is. The plan was always sound and as your attorney has said they followed the proper steps each time the benefit was done.

Sondra Smith: If they had asked for the benefit increase on an actuarial soundness study would they have still gotten those benefit increases or was it because they asked for them on a cash flow basis?

Jody Carreiro: There were two definitions that were available, two ways to prove that you were actuarially sound. You could meet this assets over liabilities were over a certain percent or you could prove that this cash flow was going to meet my benefit out flows over the long term. Evidentially they didn't choose method number one, which says assets over liabilities had to meet a certain percentage, they chose method number two each time which said the income items as we knew them at that time were going to be greater than the benefit stream.

Alderman Petty: From my understanding what you just described and from the presentation it sounds like obviously mistaken projections were made about investment income. To me the fact is the board counted their chickens before they were hatched. That was something that was not right to do. Speaking for myself as a council member, if responsible decisions were being made by the board and benefits were at a responsible level, then I would be willing to step in as a City and help it reach solvency. Until we've seen a willingness to demonstrate action on the part of the board I'm not willing to do that. I hope today we can get this discussion started on how we are going to get these benefits lowered. I know the Attorney General and the City Attorney have a disagreement of opinion. Attorneys aren't judges and their opinions are wrong sometimes and it's up to a judge to figure that out. The Attorney General has been wrong before. I think this is a case where we need to go forward and we need to have the courage to do this so we can all do

our part. I'm not willing as a City Council member to take action on the part of the City until that is the case.

Alderman Thiel: I agree with Matthew. I feel like the board can vote to reduce their benefits and it may be challenged and it may not be challenged. I think the Council would like to help but the pensioners should help too.

Alderman Gray: I agree as well. The City does not have plenty of money. We've had to make some big cuts and we are going to make more cuts. I think we have to have everyone's help in making this balance and make it work.

Alderman Ferrell: On June 6, 2001 the market was on fire. Some of the returns coming in were incredible. I'm not an actuary and there's a lot more to it than looking at this year. Understanding that I still go back to the organizational function which says there are fiduciary obligations by a pension board. The fiduciary obligation means you are compelled to take a look at the solvency of this. That is where we are now and we need to figure out a way to get it back.

Alderman Lewis: Thank you for explaining some of this to me. I agree with Alderman Petty. I would have to ask myself, according to the probabilities in the current market, is this going to run out before I die. I have to ask myself if I would like for it to run out or if I would like it to last me longer. There is a chance that the market can turn around and if I leave some money in the market to come back up, then I can make more money. With the economy as slow as it is we are probably not going to see the bubble that we've seen in recent years that means I would want to stretch that out as long as I can. From a former grad students point of view I would want to be stretching every penny because across the board we are all trying to do that. We are all trying to squeeze out every bit of the City budget and our personal budgets. I would really like to see an effort to reduce those benefits and really look at the numbers, to see what that means for the individuals and how long would it be before there would be a reconsideration of that. It could be revisited if the market turns around. Even with this plan there are only three little bullet points that look at a reduction of benefits and it doesn't include all of the different reasons.

Alderman Lucas: I agree with what the Council members have said. When people retire from a company they usually have a choice of taking a big pay out that begins in 10 years or ends in 20 years or they take less and hope it lasts as long as they do. There is a board that decides this and decides how much you should get with your expected life expectancy. Like Bobby said it was the fiduciary duty of the board to make sure this lasted this long. I would like to see them work at doing that.

Alderman Cook: What is the LOPFI payout benefit? What is their percentage compared to this plans payout?

David Clark: LOPFI has a maximum benefit payout of 100% if the person works 34 years and one month under benefit program one. We don't have anyone there because this system is at

year 28 in its existence. That was a legislative change that occurred in 2009. It use to be a max of 85% if you were under program two or 80% if you were under program one.

On the discussion about the fiduciary responsibilities of the local board and how the benefit increase works, I'm not sure everybody fully understands how the benefit increase process occurs. The local board has to pass a resolution to be able to enact any type of benefit increase proposal. That takes six of seven board members signatures and your benefit increases had six of seven signatures. Two of those were your City official representatives which would have been your Mayor at the time.

Mayor Jordan: David, I have not voted for an increase.

David Clark: I said Mayor at the time. I understand that Mayor. These increases occurred before your time. I think everyone heard me correctly but it was before this Mayor was in office. The point being is that there was an employer representation on these benefits increases that occurred. Six fiduciaries signed the resolutions and it was processed through PRB. PRB did a cash flow analysis and said whether or not the fund could afford the increases and then pushed it back with the approval letter that it was up to that same board to go ahead and act on the benefit increases at that time. That is the reason why the PRB has said that there is a statutory provision 24-11-102 that says a local board can do a benefit increase. There is not a 24-11-102 and a half that says you can decrease benefits. There is a section that talks about prorating benefits in the year that the pension fund runs out of assets. That's the reason the Attorney General has come back and said, and the PRB agrees, that there is not a statutory provision to reduce benefits. Clearly there is some wisdom behind that, because of where the pension fund is at, but wisdom and what the state law allows at this time are not necessarily in alignment. That's the reason why PRB has tried to be very cautious in this report to not spend time on reducing benefits. If we got on board and said you need to reduce benefits that is going to interject the PRB into possibly a lawsuit that we don't want to be a party to. If you guys go through the benefit reduction process you have to question yourself whether or not this board is following state law. That's up to board to make that decision that's not up to me or the actuary. There is not a provision to actually roll benefits back on the local plan. It only indicates where the fund runs out of assets in that one year.

City Attorney Kit Williams: Actually that's not what the statute says. It says *should the fund provided for in this subchapter be insufficient to make full payment of the amount of pensions to all persons entitled there to, not in that year, then the fund shall be prorated among those entitled by proper authority as made to be deemed just and equitable.* It does not say you have to wait for the fund to hit the ground and die. It says if it shall be insufficient to make full payment of all money to the pension of all persons entitled there to. We just heard from Jody Carreiro that's where the fund is now.

David Clark: No it's not. The fund is not there. He said the report shows that it is 10 years out or perhaps 11 years out. So no sir that is not correct.

Kit Williams: It does not say you have to wait until the last year. It says if it becomes insufficient and I think we have seen it is insufficient at this point in time. If it is not going to be able to survive and pay full benefits the statute says they will be prorated. The difference between the Attorney General and myself is that they think the fund must be driven into the ground before this board can reduce benefits. My belief is they have a fiduciary duty and they can keep this fund from being driven into the ground.

Mayor Jordan: David we could end up in court by letting this thing run into the ground.

David Clark: Yes sir.

Mayor Jordan: I don't want this to go into the ground. I don't want these people without some kind of pension around here.

David Clark: I don't think they do either.

Mayor Jordan: We say we can't reduce benefits because we could end up in court but I can assure you when this thing runs into the ground some of these folks out here may take us to court and I don't blame them. It is our job to keep the thing a float. I agree with Shirley Lucas, you can take a big lump sum or you can reduce the benefits and keep it going and then reconsider it later and if things get better you can add back to it.

David Clark: I agree with that way of thinking. That common sense mind set, which is really what we are taking about here, is not in alignment with current state law. That is the position of PRB.

Alderman Gray: Jody, have you done any kind of calculation as to what kind of a reduction it would take? Can you give us an idea of what some of our pensioners and widows are getting and what it would mean to their monthly check?

Jody Carreiro: We did those calculations last year. They would be a little different now but there is a report that states what that reduction would mean. That's certainly calculations that are pretty straight forward to do. We have a profile page that we looked at earlier that showed how old everybody was and what their benefits were.

Kit Williams: Sondra do you have the monthly payment list?

Sondra Smith: Yes.

Alderman Ferrell: I worked for a big company and when you elected to retire you had options. You could elect to take an annuity or then in the case of your death you could elect to have a survivor's annuity which your survivor would get a discounted annuity. Is this the same deal?

Jody Carreiro: The state law in Arkansas, for the fire and police funds, is that their member gets a benefit and without having to take a reduction their spouse, that's defined in the law, keeps the same benefit. It is what's considered a very generous joint and survivor type annuity. Typically especially in the company setting you'll take \$95 instead of \$100 to get a 50% benefit for your wife. There is no reduction in state law and the spouse gets 100% of what the member was getting.

Kit Williams: That was the old plan but with the new plan in LOPFI they have to take a reduction if they want to cover their spouse.

David Clark: That's correct.

Kit Williams: How big of a reduction is that?

David Clark: If they do one of the "A" options there's hardly any reduction. If they do the "B" option, which is a continuing life time payment to the spouse its 50% of the life time benefit to the member or 75% of the value benefit goes to the survivor if they choose "B" 75. It is a pretty significant reduction but it also goes against the age difference of the member verses the surviving spouse.

Kit Williams: That is all of our current employees for police and fire that are working under this plan.

David Clark: That's right, yes.

Marion Doss: I think that is spousal benefits until they remarry. It's not forever.

Jody Carreiro: That's true it does have a remarriage provision.

Pete Reagan: Do you know what the current rate is for LOPFI employees for the Fayetteville Fire Department?

David Clark: Employer contribution?

Pete Reagan: Yes.

David Clark: I don't know off the top of my head.

Paul Becker: For fire?

Pete Reagan: Yes.

Paul Becker: I think it's a little over 23% if I remember correctly.

Pete Reagan: The City is paying 23% of payroll on every employee in the Fayetteville Fire Department for their pension fund.

Paul Becker: If my recollection is correct, yes.

Kit Williams: That is set by law, right?

David Clark: In effect it is because it's an annual evaluation process.

Pete Reagan: For the City Council members and the public that is watching the maximum that the City ever paid into the old fire pension fund and the old police fund was 6% of payroll. That did not start until 1983. Before that the City paid 1% of payroll into the fund. Also we talked about the minimum benefit that was set by state law was 50%, that's the minimum. Nothing can happen to that. I also want everyone to understand this fund has no COLA built into it. I think the LOPFI fund has a 3% compounded COLA built into it. The members of the old fund are not covered under social security. This is all that was offered to us when we hired on. We don't pay social security. We are not involved in the social security fund. This is our pension with no built in COLA.

Sondra Smith: Are the LOPFI benefits for the widows as generous as this plan?

David Clark: No, significantly different and it is because of the actuary reduction. If the member chooses one of the continuing lifetime benefits, it's not automatic that they have a lifetime benefit.

Sondra Smith: You're really comparing apples to oranges when you are comparing the old plan to the LOPFI plan.

David Clark: I tend to agree but you are still comparing fire fighters and police officers.

Paul Becker: We are talking about benefits for the current LOPFI. The salary is averaged over a five year period?

David Clark: Three years, the last ten years of employment we grab the highest 36 consecutive months within that 10 year period.

Paul Becker: If I recall the old plan did not average.

Pete Reagan: Base salary at retirement.

Paul Becker: If we are going to talk comparison about the plans we also have to consider that.

Sondra Smith: Does the LOPFI plan have the DROP?

David Clark: It does but it has a different DROP structure. It has a five year just like this plan does but if the person has 28 years of service 75% of their benefit goes into a DROP account as opposed to a 100% benefit. If they have something less than 28 years of service than it is 72% of their benefit goes into their DROP account.

Kit Williams: Would that have to be approved by the City Council?

David Clark: No, that is a product of state law. LOPFI already has the DROP so your current firefighters could go into DROP once they reach eligibility if they choose to do so.

Sondra Smith: I've been on this pension board since 2003 and I have been concerned ever since then. At one point in time I asked the question about if we raise benefits can we ever reduce them, it was my understanding we can. We can when the plan goes bankrupt basically. I did not vote for these two large increases because I wasn't here then, but I would not have voted for benefit increases knowing that you can never reduce them if you needed to. There was probably people that sat on that board at that point in time, other Mayors and City Clerk's that if they had know that benefits can not be reduced they probably wouldn't have voted for the benefit increases either. That's an assumption but I know I wouldn't have, knowing that in bad times we couldn't reduce the benefits.

Kit Williams: I think you can before it goes bankrupt.

Pete Reagan: I think that's the reason they have courts so lawyers can argue.

Kit Williams: So we can have decisions made.

Sondra Smith: We had a question about how much they are currently drawing and what a 20% reduction would be. We have several folks that are drawing under \$150 a month if they were a volunteer or a spouse of a volunteer. The majority of the pensioners draw anywhere from around \$1,600 a month to \$5,000, there are a few that a drawing under a \$1,000 per month but not very many. Most of them that are drawing under \$150 a month are retired volunteers.

Carl Springston: You have a retired assistant chief drawing less than \$500 a month.

Sondra Smith: There are a few drawing under \$1000 but not very many. I can run those percentages if you would like them.

Mayor Jordan: What does the board want to do? Do you want to wait?

Pete Reagan: My opinion is we need to wait and see what the proposal is from Municipal League. They are going to endorse a proposal and see what the numbers look like before anything is done. I've said all along the courts are made for attorneys to argue in. We've got our attorney who says we can reduce benefits and the Attorney General of the State of Arkansas who

says we can't. We have a session coming up. I've said all along I don't want to rush into this. We have been doing this for a year and a half now.

Mayor Jordan: So we will wait.

Pete Reagan: I would like to thank Jody and David for taking time out of their schedules to come up here and educate us on this.

Mayor Jordan: Is that the agreement of the board?

Marion Doss: How long are we talking about waiting for this change?

Pete Reagan: The session starts in January and runs until they get done.

Kit Williams: According to Paul it's still not going to be enough even if they pass it.

Pete Reagan: I understand but if there's more money coming into the fund we need to look at that.

Kit Williams: I will note that judges cannot make a decision unless there is a case in front of them. We can't bring a case in front of a judge at this point in time because there is no case in controversy. In order for there to be a case in controversy this board would have to take affirmative action to at least attempt to reduce the benefits. Then one of the beneficiaries out here could say, Attorney General they did something wrong and why don't you sue them for that. Then the Attorney General and I could go up in front of a judge and let the judge determine what the law is. If I am wrong there is not much down side for this. You have money in the pension fund to pay everyone back what they should have been getting because I was wrong and they should have got 100% instead of 70%. However if I'm right and you have figured out a way to fulfill your fiduciary duties and not let this fund go bankrupt, then you will have done that and a judge will say you have that power. If you continue to take no action then I don't know how it will ever get before a court until it is too late and all the money is gone.

Mayor Jordan: Again I will ask the board for a recommendation. Do you all want to wait?

Pete Reagan: Yes, that's my recommendation.

Gene Warford: I second it.

Marion Doss: I will say I am in favor. I would like to see when we find out about this some kind of a compromise. I would like to see consolidation. I don't know how the other board members feel about that, this is my personal opinion. I think that's the only hope to get this problem away from the City.

Mayor Jordan: My opinion would be if that is what you want to do we can wait until after April, it's your pension. I will go along with that if you want to do that.

Mayor Jordan thanked the City Council members, board members, retirees, and Jody and David for coming.

Meeting Adjourned at 6:00 PM

UNOFFICIAL

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

**City of Fayetteville Arkansas
City Council Meeting Minutes
February 15, 2011**

A meeting of the Fayetteville City Council was held on February 15, 2011 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

PRESENT: Alderman Gray, Thiel, Kinion, Petty, Tennant, Ferrell, Adams, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Lewis

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan: Connie Edmonston would like to announce an award the City received.

Connie Edmonston, Parks and Recreation Director: I am pleased to announce that the Arkansas Recreation and Park Association awarded Fayetteville Parks Trail Systems the Best in the State of Arkansas. We are very proud of that. She spoke on the various programs that the City currently offers regarding the trails.

Mayor Jordan: You do a tremendous job running the Parks Department so to you and your staff a great round of applause.

City Council Meeting Presentations, Reports and Discussion Items:

Airport Board Annual Presentation – Ray Boudreaux

Ray Boudreaux, Airport Director introduced the Airport Board members. He gave the annual Airport Board presentation for the year 2010.

Mayor Jordan: You, the staff and Airport Board do a fantastic job. I want to give you my thanks.

Agenda Additions: None

Consent:

Approval of the October 18, 2010 Joint Firemen's Pension and City Council and February 1, 2011 City Council meeting minutes.

Approved

Bid #11-15 Elk River Construction, Inc.: A resolution awarding Bid #11-15 and authorizing a contract with Elk River Construction, Inc. in the amount of \$84,825.00 plus a five percent (5%) project contingency for the construction of stream restoration at Niokaska Creek in Sweetbriar Park and approving a budget adjustment of \$9,066.00.

Resolution 26-11 as recorded in the office of the City Clerk.

Bid #11-17 ADS Environmental Services, LLC: A resolution awarding Bid #11-17 and authorizing the purchase of seventeen (17) sewer flow monitors from ADS Environmental Services, LLC in the amount of \$136,528.63 for installation in the city sewer collection system.

Resolution 27-11 as recorded in the office of the City Clerk.

Police Recording System: A resolution approving a budget adjustment in the amount of \$43,000.00 moving unused funds designated for the police recording system to the police building remodeling project.

Resolution 28-11 as recorded in the office of the City Clerk.

Ogden Insurance Agency Donation Revenue: A resolution approving a budget adjustment in the amount of \$100.00 representing donation revenue received from Ogden Insurance Agency for the Fire Department's annual employee service awards event.

Resolution 29-11 as recorded in the office of the City Clerk.

Garver, LLC: A resolution approving a contract with Garver, LLC in an amount not to exceed \$38,200.00 for the performance of an environmental assessment study for the Van Asche Boulevard extension project between Gregg Avenue and Garland Avenue.

Resolution 30-11 as recorded in the office of the City Clerk.

McClelland Consulting Engineers, Inc. Task Order #4: A resolution approving task order #4 to the contract with McClelland Consulting Engineers, Inc. contingent upon receipt of grant funding, authorizing the application and acceptance of a grant from the Federal Aviation

Administration and Arkansas Department of Aeronautics to fund the project, and approving a budget adjustment.

Resolution 31-11 as recorded in the office of the City Clerk.

Atlantic Machinery, Inc.: A resolution authorizing the purchase of a Schwarze A9000 sweeper from Atlantic Machinery, Inc. of Silver Spring, Maryland, pursuant to a competitive bid through the National Joint Powers Alliance (NJPA) cooperative purchasing agreement, in the amount of \$190,100.00 for use by the Transportation Division, and approving a budget adjustment.

Resolution 32-11 as recorded in the office of the City Clerk.

Alderman Petty moved to approve the Consent Agenda. Alderman Tennant seconded the motion. Upon roll call the motion passed 7-0. Alderman Lewis was absent.

Unfinished Business:

Amend Title XV: ADM 09-3480 (Streamside Protection): An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapter 155: Appeals, Chapter 156: Variances, and Chapter 168: Flood Damage Prevention Code in order to establish Streamside Protection Zones and adopt a Protected Streams map and Best Management Practices Manual. *This ordinance was left on the First Reading at the February 3, 2011 City Council meeting.*

Alderman Kinion moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 6-0. Alderman Petty was absent during the vote. Alderman Lewis was absent.

City Attorney Kit Williams read the ordinance.

Karen Minkel, Director of Strategic Planning and Internal Consulting: We went through all the questions and comments that we heard at the last Council meeting and Agenda Session. She briefly addressed those specific questions.

Alderman Ferrell: Just because it's in a utility easement doesn't remove the problem that it's in the riparian zone, which is what we are going to forbid other people to do if the property changes. Is that correct?

Karen Minkel: They would still be allowed to put in the same width of impervious surface if they follow the best management practices manual.

Alderman Ferrell: If the property changes hands at some particular time they would still be able to do that?

Karen Minkel: Yes.

Alderman Ferrell: The projected miles, how many of those in our trail system are going to be directly adjacent to the riparian zone?

Karen Minkel: What we know is that 20% of our future trails follow a stream corridor but when you look at that Master Trails Plan the line on the map can be deceptive because it's a negotiation for the easement. We typically try to locate out of the first 25 feet because the City has concerns about maintaining the integrity of the trail because of erosion problems on that stream. However if there is an existing utility easement it might make more sense to put it there. Also in that 25 feet you have to remember that a lot of that is along Scull Creek and that is a creek where development is really close to the creek and in some cases there may not have been a place to put it. The City would have to follow all the best management practices. Property owners are allowed that 12 foot width of impervious surfaces because they may need to put in a driveway or have another purpose.

I think there were also several comments about modifications that could be made to the ordinance. One was clarification about gardening. Staff agreed that it can be confusing so what we are suggesting is that in Subsection (E)(2)(l) it currently says management of lawns and gardens but no mechanized gardening is allowed we are asking that to be changed to say lawns and gardens. And in (E)(2)(l) take out mechanized cultivation entirely which will make it more clear to everyone.

The other modification was about woody vegetation. What we are proposing is to change that language in Subsection (E)(2)(c). Right now it says clearing of noninvasive woody vegetation and we agree that it could be confusing for someone reading it to determine if it is woody vegetation or not. We are proposing to change it so that it says clearing of noninvasive trees.

She continued to address questions and comments from the previous meetings and to explain the ordinance. She showed pictures of various creeks with erosion problems and pointed out that property owners are losing property.

Alderman Ferrell: Were there some other exceptions that the City received for Parks like mowing close to the water or were there at one time some things in there that the City exempted itself from?

Karen Minkel: No, the project team worked really hard to make sure that public and private property owners are being treated the same.

Alderman Thiel: I have had people say this ordinance will not allow you to mow within the buffer area.

Karen Minkel: In the best management practices we would recommend that you mow on the highest setting and that you mow several times per year rather than every week to allow your root system to grow and have more of a buffer in that area. This grandfathers in all current practices but we would encourage all property owners to take a look at that and if possible let the grass grow a bit more so you can maintain a better buffer.

Alderman Thiel: The ordinance does not prohibit it though?

Karen Minkel: Absolutely not.

Alderman Thiel: I had a call from someone about the agriculture practices being grandfathered in. Someone contacted me that had purchased almost 1/4 acre lot several years ago. They went to the City and made sure they could build on a portion of this lot and this will eliminate being able to build on this lot at all. Is that something we are going to do in this ordinance? Someone's property will be absolutely worthless?

Karen Minkel: No, there is a variance procedure in place for that very reason. In fact it says the lot cannot be made undevelopable or unbuildable. So that would be a perfect example of a lot that could qualify for a variance.

Alderman Thiel: I wonder if there is some way we can write that in the ordinance without a variance process.

City Attorney Kit Williams: That is already handled in a section and it really needs to be handled on a case by case basis. Each lot needs to be looked at before you can decide what kind of variances, if it is going to be a reduction of the setbacks, or in buildable area or what kind of variance setback is needed so the lot can be built upon. If they are not happy with the variance procedure they can appeal it to the City Council so before any lot would ever be deemed unbuildable it will be before this Council for your determination about whether a variance is appropriate or whether you think it is not appropriate. That is when you would take the possible chance of an actual constitutional taking. I think we need to leave the variance procedure as is because you can't make a general statement and automatically say every lot is going to be buildable.

Alderman Adams: One person wrote to me and said that this area of law is already covered by the flood plan rules. Have you spoken on that already?

Karen Minkel: I believe they might be referring to floodways. They are governed by federal law and not city but this includes areas that maybe outside of that floodway.

City Attorney Kit Williams: This is part of our chapter that deals with flood reduction. There are parts of the other ordinances that we have already passed that would impact anybody that has property with flooding problems. This is not the first ordinance that has any effect upon streams and flooding problems.

Karen Minkel: This could provide additional capacity for floods but the purpose of the two regulations is pretty different. One is related to flooding and this one is related to nutrient reduction. While they interact the primary purpose of the two codes are different as well.

Alderman Petty: Did you say you had two language related amendments to offer, one regarding gardening and the other regarding the definition of woody plants?

Karen Minkel: Yes and I can go over those again.

Alderman Petty: I think I understand them.

Alderman Petty moved to amend Subsection (E)(1)(a)(10) to say "management of lawns and gardens." Alderman Thiel seconded the motion.

Alderman Gray asked Karen to go over the gardening section again because she has had a lot of concerns about that.

Karen Minkel gave a brief explanation of the gardening amendment. Subsection (E)(1)(a)(10) currently says management of lawns and gardens but no mechanized cultivation is allowed. Staff is proposing that say management of lawns and gardens and also in Section (E)(2)(l), which is the list of called out prohibited practices, that you simply delete that. Right now it says cultivation and we are saying take it out.

Alderman Thiel: What department will be enforcing this and do we have the staff to go out and measure? I think there is going to be difficulty in measuring these distances.

Karen Minkel: We actually looked at this because we had concerns about additional work load. If there is a large development they will have a surveyor who can easily determine where this buffer area would be and call it out on a plan. We looked back at the people who were in the floodway or floodplain that had come through our office and it was less than 10 per year looking at statistics from the past four years. We looked at how many times our Floodplain Administrator might be asked to go out there and actually do a measurement for a property owner and less than 10 times per year seemed fairly minimal. In terms of enforcement it would be handled like all our other codes, it is complaint driven. The book of regulations is going to be when people have to come through our office for development or building permits and that is where we are really going to do the review. Some of these items are going to be an educational process and we fully anticipate that. We are hoping that with all the partnerships we formed we can provide those education materials because we think that is going to be the real tool that is used.

Mayor Jordan asked for the amendment to be read.

City Attorney Kit Williams: Did you want me to discuss the constitutionality of legality before we get into amendments?

Don Marr, Chief of Staff: We walk all streams on a five year cycle through our Engineering Division. While we have a complaint driven ordinance we also have a visual physical observation that has to take place so that each stream within the City boundaries are walked within that five year period. Items that don't come up through complaints or items that may not come up during a development process could potentially be identified that way as well.

City Attorney Kit Williams: I believe this proposed ordinance is clearly within the statutory power of the City Council to enact. I believe the reasonable regulations and variances within this ordinance should prevent it from being a constitutionally taking of anybody's property. He spoke on the constitutionality of the ordinance.

Alderman Ferrell: I understand you have to give us your best research and hang your hat on that. I would still say that I think it depends on whose ox is getting gored. I hope we never get to that point because I think a great amount of education has already went out to the citizens of this town. We are the most educated populous in this state so hopefully we can find a compromise on this thing.

Alderman Thiel: I would suggest that we wait on the amendment. This is a little confusing to the public and I think we are pretty much on board with the amendments. We can make them maybe after we have the public discussion.

A discussion followed on how public comment should be taken.

Colleen Gaston, Staff Attorney for Beaver Water District gave a brief presentation and addressed some of the misconceptions about the ordinance. She stated these types of requirements in general undoubtedly will have a positive effect on water quality. She also clarified Beaver Water District's role in the creation of this ordinance.

Alderman Thiel asked Colleen to explain what turbidity was.

Bob Morgan with Beaver Water District: Turbidity is actually a measure of the clarity or cloudiness of the water. It's a relationship between the amount of algae and suspended particles in the water.

Alderman Ferrell: After a big rainstorm and you have mud coming down the river, as it goes into the lake you can see it spread, the turbidity changes with the load, it is carried in there correct, the sediment?

Bob Morgan: Yes sir, the turbidity will start settling out as it comes into the lake.

Alderman Ferrell: So clearness is what most people would think about.

Bob Morgan: Actually it would be the inverse of clarity.

Colleen Gaston continued with her presentation and stated science shows that this will produce benefits.

Alderman Ferrell: I understand Fayetteville has a great watershed that goes into that but isn't Fayetteville the largest purchaser of water from Beaver Water District?

Colleen Gaston: I would assume so just because of the population.

Nancy Varvil, resident of 1824 Pine Cone that backs up to Hamstring Creek voiced her concerns about the debris and sediment that is continually washed onto her property. She stated I accept this legal oversight as necessary to maintain the health of our mountainside environment and the values of our properties there. She spoke in favor of the ordinance.

Jim Laubler, a resident just outside the city limits voiced his concerns with ordinance and stated this country is founded on individual rights and asked the Council to consider what their oaths are. He spoke against the ordinance.

Kevin Bavin, resident of Ward 2 near Niokaska Creek on Elm Street asked are we going to study the removal of phosphates as a total phosphorous load being taken off of the waste coming out of our sewer plants. What are we doing to figure out if that is going to help our situation? Is that removal of phosphates from dishwashing detergent going to confuse the results of this

proposal of this ordinance? He asked the Council to please slow down and think about what they are doing.

Angie Albright, resident of Ward 1 and representative of the Environmental Action Committee stated I am here to say on behalf of the committee that we whole heartedly support this. She asked the Council to think about not just the individual property owners but think about what is best for everyone. She encouraged the Council to support the ordinance.

Amy Robinson, resident of Ward 4 asked the Council to support the ordinance. She stated if we do not take these steps now we will pay for them exponentially later through the health and the economic deficits that we will incur, including the reduction of recreational use, increased cleanup cost and restoration and loss of property value, as well as land itself.

Lee Owen, Fayetteville resident stated I respectfully disagree with your ordinance. He asked the Council if this was affecting your property would you still vote for it. He stated if you are representing me I am asking you not to do it.

Terry Michaels, property owner near Spout Spring stated I am fully supportive of this ordinance and very proud that the City is considering it.

Bill Moler, resident of Ward 4 stated I am in support of this ordinance. I think it's needed and there is good solid science pointing to that need. City staff has done an extraordinary job of researching the situation, developing a best practices manual and drafting an ordinance. He pointed out that people have rights. He spoke in favor of the ordinance.

Halley Hoggatt, Fayetteville resident expressed his concerns with phosphorous and sediment and stated the purpose of the report in the introduction was an agreement to try and not have to meet the phosphorous output at the wastewater treatment plant. If the wastewater treatment plant is the problem then the City needs to take responsibility for their problem. We all are responsible for taking care of what comes out of the wastewater treatment plant.

Steve Harris, property owner on 15th Street near Town Branch questioned whether or not he would be grandfathered in and be able to use the land as he has used it for the last several years.

Mayor Jordan: That is what I understand.

Steve Harris also questioned the buffer area.

City Attorney Kit Williams: What he is referring to is new use. If you are currently doing something and it is grandfathered in you can't initiate a new action.

Steve Harris: It should say new action.

City Attorney Kit Williams: The ordinance is clear when it says if you are doing some sort of activity you may continue.

Steve Harris: You can read it either way. Also there is a section in there about stream crossings. If we put a tree lined buffer on both sides of the creek how am I going to access from one side to the other?

Alderman Thiel: Wasn't that in the best practices manual?

Steve Harris: It is in there but it doesn't really say.

Karen Minkel: If there is a current crossing it is grandfathered in. What it states in the ordinance is that stream crossings including driveways, roadways, trails or railroads are allowed when the City Engineer determines there is no practical and feasible alternative. If it is within the first 25 feet and a stream crossing would fall within that then you would have to follow the best management practices manual for that crossing.

Alderman Thiel: Does it say he has to build a crossing?

Karen Minkel: No, if you were you would follow the best practices manual.

Steve Harris: My situation is that I have a dirt crossing which washes out every time the creek gets up and I have to take my tractor and build a new crossing.

Mayor Jordan: I assume that is going to be grandfathered in.

City Attorney Kit Williams: Yes, if he has a crossing he can continue to use the crossing and maintain it.

Karen Minkel: If the crossing were destroyed then you would need to follow the best practices manual that is consistent with all our other ordinances. What it says is you are going to consider minimize or reduced stream crossings through proper planning and you are going to minimize the amount of excavation and filling. It goes on to tell you the methods that you can use to minimize your stream crossing impact.

Steve Harris: If you pass this ordinance who is going to maintain this buffer that we are putting down through there?

Mayor Jordan: The City will.

Steve Harris: The City is going to plant trees on it?

City Attorney Kit Williams: We are not maintaining the buffer.

Steve Harris: Who is going to maintain it?

Mayor Jordan: If you are maintaining it now you would be allowed to maintain it later on.

Steve Harris: So if it fills up with brush it is still going to be my responsibility to get it out of there.

City Attorney Kit Williams: The City is not trying to take over the creek or trying to maintain it. It's only trying to limit certain activities, which you are not doing now, that would be a degradation to the stream or creek. So if you are doing stuff now to maintain your creek side then you can continue to do that.

A discussion followed on whose responsibility it would be to maintain Mr. Harris's property when other problems occur along the creek.

Steve Harris: How does the City plan to enforce this ordinance?

Karen Minkel briefly explained how the City would enforce the ordinance.

Steve Harris expressed his concerns about the damages that flooding can have on his property and wondered what the City would do if that happened. He encouraged the City Council to walk the creek side to see the problem areas. He continued to speak against the ordinance.

Jerry Patton, Fayetteville resident stated I believe you are moving way too fast and this is not the time to do this. I am for clean water and property rights but I do not feel this is the right time to do this. He spoke against the ordinance.

Tom McKinney, representing the Arkansas Chapter of the Sierra Club expressed his concerns with growing development and its effects on our creeks. He stated the Sierra Club supports the ordinance and he encouraged the Council to not allow any weakening amendments.

Joanna Pollack, Fayetteville resident stated this ordinance protects our drinking water and our recreational areas and there is a much more economical value in our future when we protect our resources. She spoke in favor of the ordinance.

Warren Phillips, a citizen voiced his concerns about the affect this would have on property owners. He suggested that rather than approving this ordinance why not do something on a voluntary basis with a threat of your ordinance if it does not work out. He spoke against the ordinance.

Lee Kenburg, resident along Town Branch stream stated this ordinance is very important to the City. He gave examples of how this ordinance will protect the value of Fayetteville properties along streams. He continued to speak in favor of the ordinance.

Pat Tobin, Fayetteville property owner stated the City is going too far with this. He expressed his concerns and spoke against the ordinance.

Steve Lyle, Attorney for some of the property owners along Clear Creek stated the benefits of this ordinance have been overstated as far as reducing the nutrient levels that are a problem with the City. He asked is this going to have a significant impact or do we need to look at bigger issues. He expressed his concerns and spoke against the ordinance.

Joann Kvamme, resident of 1982 Greenview stated no property owner wants their property to be polluted and every one of us wants clean water. She pointed out ways that property owners could protect the streams. She suggested that the City give some sort of incentive to the people

that live in the floodplain areas to make them want to cooperate. She asked the Council to vote for the ordinance.

John Pennington, Cooperative Extension Service employee stated I have collected input from streamside landowners for the City as related to this ordinance. He encouraged the Council to look at the report that he submitted on his findings and somehow find a way to compromise with those that have conflicts it might be one of the best ways to do this.

Frank Sharp, resident of 2062 S. Smokehouse Trail shared his memories as a child dealing with the issues of water supply. He encouraged the Council to support the ordinance.

Lauren Hawkins, a citizen stated we all live up and down stream from someone. Let's embrace this opportunity to assist each other to do the right thing. She asked the Council to please support the ordinance.

Robert Kossieck, President of the NWA Property Rights Association commended the staff and Council for their concern about water quality. He stated however that the City is trying to fix something that is not broke. He expressed his concerns and spoke against the ordinance.

Mayor Jordan: Did the Illinois River Group say that we should not pass an ordinance?

Robert Kossieck: The Illinois River Watershed Protection group does all their work through teaching.

Mayor Jordan: I wanted to clarify your statement. Did you say they did not support the ordinance?

Robert Kossieck: They do not support the ordinance that is correct. They would like to see this as a voluntary teaching situation. He spoke against the ordinance.

Karen Reece, Fayetteville resident and Real Estate Broker expressed her concerns with property values and urged the Council to support the ordinance.

Liev Black, West Fork resident expressed her concerns with the pollution and sewage currently in the streams near her city and stated I would like to see this ordinance not only pass but also be a model for other communities.

Dot Neely, resident of Ward 1 stated while things may be looking pretty good for our area there are some dramatic changes projected. I see this ordinance as an opportunity to put in place safe guards that will help the whole community. She spoke in favor of the ordinance.

Bob Morgan with Beaver Water District commended the work that is being done by the Noland Wastewater Treatment Plant. They have optimized their operation and they have taken all the low hanging fruit in terms of phosphorous and nutrients. To get anymore out of that plant the cost goes up exponentially. It's easy to get down to 1 milligram per liter but as you go lower than that it gets much more difficult. If they get much lower than where they are right now they are probably going to end up putting in new filters which would raise the cost and raise the rates in the City. The whole point of this agreement was that it doesn't really make sense to spend that

much money on a plant to get a little bit more phosphorous out when the big issue is the non point sources of phosphorous.

Cynthia Haseloff, Steward of Mae Farm stated this ordinance personally insults me. No one is more aware than I am that I am a steward of this land. She spoke against the ordinance.

Felicia Farris, resident of Markham Hill, questioned if Ms. Minkel would address how many of the 1,300 would meet the criteria of being out of compliance. What education has been done prior to this? What is the penalty if you stay out of compliance? She stated concerns she had with the ordinance.

Peter Njuguna, Fayetteville resident expressed his concerns. He spoke against the ordinance.

Cindi Cope stated she applauds the streamside ordinance and hopes it passes.

Fran Alexander voiced her concerns and spoke on the environmental impacts of different substances.

Gladys Tiffany resident of Willow Street stated a lot of dissatisfaction with the ordinance comes from the fact that people are leery about being regulated. She spoke in favor of the ordinance.

David Jurgens speaking as a citizen of Fayetteville stated this ordinance protects my property more than it constrains my property. He urged his alderman to vote in favor of the ordinance.

As the Utilities Director of the City of Fayetteville he addressed various questions that had been brought up. This ordinance allows us to make the correct choices, and gives us the ability to do so. It protects my property rights and it helps the City in addressing the sources of the pollutants in the water ways. He spoke in favor of the ordinance

Kyle Johnson, Vice Steward of Mae Farms spoke in opposition of the ordinance.

Don Pitts resident of Fayetteville and property owner of Lokomotion stated his concern is when he develops his property further he will be limited to how he can put it along the stream. He would like to have his buildings close to the stream rather than parking lots.

Michael Ollie, Ward 2 resident: I see this ordinance as an inevitable future. He spoke in favor of the ordinance.

Eden Reif stated she thinks this ordinance is well reasoned and the right thing to do.

Kevin Cooper, Ward 4 resident urged the Council to vote for the ordinance.

David Orr, resident of 1564 West Cedar Street stated what I've heard tonight is a lot of the citizens who really are conscientious are afraid. They are afraid of something they don't understand. He spoke in favor of the ordinance.

Alderman Ferrell: Do you live along a stream?

David Orr: I do not live along a stream. If I owned property along a stream I would be demanding everyone along the stream be as conscientious as I've tried to be.

Alderman Ferrell: It was mentioned that berms could be built. How would you talk to the guy down the creek if you built a berm? It pushes water away from you but it goes down and gets a neighbor.

David Orr: I think berms are a bad idea. If I have a house and my neighbors upstream who I have no control over cause floods to be more intense, I'm going to do what it takes to protect my home.

Alderman Ferrell: Thank you.

Joe Edgmon, Former Mayor of Tontitown stated an ordinance is designed to protect the welfare of a city. Stick with the ordinance and if you see something that becomes a problem then you know you can address it.

Aubrey Shepherd stated he hopes people that are grandfathered in will understand but it seems they don't believe it and don't trust us. He spoke in favor of the ordinance.

Mayor Jordan: We have an amendment to vote on.

Alderman Thiel: Do we want to clarify it?

Alderman Petty clarified his amendment.

A discussion followed regarding the amendment.

The amendment was as follows: Alderman Petty moved to amend Subsection (E)(1)(a)(10) to say "management of lawns and gardens." Alderman Thiel seconded the motion.

Upon roll call the motion passed 7-0. Alderman Lewis was absent.

Alderman Thiel moved to amend (E)(2)(c) so that it says clearing of noninvasive trees. Alderman Kinion seconded the motion.

A discussion followed regarding the amendment.

Alderman Petty: I separated the amendments because I intend to vote against this amendment. He stated why he didn't support the amendment.

Upon roll call the motion passed 5-0. Aldermen Petty and Adams voting no. Alderman Lewis was absent.

The ordinance was left on the Second Reading

Huntingdon Heights Appeal: An appeal of the City Engineer's determination regarding the driveway approach at 3172 Warwick Dr. *This item was tabled at the February 3, 2011 City Council meeting to the February 15, 2011 City Council meeting.*

Jeremy Pate, Development Services Director gave a brief description of the ordinance. He stated we successfully convinced this applicant to delay his hearing tonight. The request is to table for two meetings.

City Attorney Kit Williams stated that will be March 15th.

Alderman Thiel moved to table the ordinance to the March 15, 2011 City Council meeting. **Alderman Gray** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Lewis** was absent.

This appeal was tabled to the March 15, 2011 City Council meeting.

New Business:

Amend 2011 Adopted Budget: A resolution amending the 2011 city budget by re-appropriating up to \$58,840,788.00 in bonded or ongoing capital projects, outstanding obligations and grant-funded items previously appropriated in the 2010 city budget but not completed or delivered in 2010.

Paul Becker, Finance Director gave a brief description of the resolution.

Alderman Kinion moved to approve the resolution. **Alderman Petty** seconded the motion. Upon roll call the resolution passed 7-0. **Alderman Lewis** was absent.

Resolution 33-11 as recorded in the office of the City Clerk.

Ozarks Electric Cooperative Corporation Cost-Share Agreement: An ordinance to waive competitive bidding, to approve a cost-share agreement with Ozarks Electric Cooperative Corporation in the amount of \$38,250.48 for the extension of power to the Stone Mountain Water Pump Station, to approve a project contingency of \$7,500.00, and approve a budget adjustment of \$45,751.00.

City Attorney Kit Williams read the ordinance.

David Jurgens, Utilities Director stated he had nothing to add.

Alderman Thiel moved to suspend the rules and go to the second reading. **Alderman Adams** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Lewis** was absent.

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Lewis was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked David to give a brief explanation regarding waiving competitive bidding.

David Jurgens: The reason for waiving competitive bidding is because Ozarks Electric owns the utility. They are the only ones that can do the work and authorize work on the utility.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Lewis was absent.

Ordinance 5387 as Recorded in the office of the City Clerk

RZN 10-3732 (Brown, 2600 Crossover Rd.): An ordinance rezoning that property described in rezoning petition RZN 10-3732, for approximately 1.64 acres, located at 2600 Crossover Road from R-A, Residential Agricultural, to R-O, Residential Office.

City Attorney Kit Williams read the ordinance.

Jeremy Pate stated the Planning Commission voted 7-1 to forward this to the Council with a recommendation of approval. He gave a brief description of the ordinance. He stated staff is recommending approval of the ordinance.

Alderman Ferrell: When this came along it had a serious impact on Mr. Brown. This has come through the Planning Commission and passed.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Petty seconded the motion.

JB Hayes, 2595 N Sherwood Dr. stated he appreciated the City Council's patience and service to the City of Fayetteville. He also stated he supports his friend and neighbor in his request for rezoning.

Alex Moore, grandson of Mr. Brown spoke on behalf of his grandfather: This property is not conducive for residential and the more logical choice would be for small office buildings.

Ben Israel, 1501 Starr Drive stated he started looking at this property in 2004 for Mr. Brown. At that time we felt the highest and best use of it was residential office. He asked the Council to consider the ordinance.

Alderman Tennant thanked Dr. Hayes for his comments. I spoke with several residents that live in the Candlewood Subdivision and some of them had concerns regarding the traffic flow on 265. Some of those questions were answered when I received information from city staff on the way 265 is going to look. There were also questions of sound and if that would help or hurt. If I read it right they think it might improve the sound buffer between Candlewood and the street.

The bigger issue for me is the restriction on the landowner because you can't build houses there. I think this is the only thing for him to do and get the property value. I support the ordinance.

Upon roll call the motion passed 7-0. Alderman Lewis was absent.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third reading. Alderman Tennant seconded the motion. Upon roll call the motion passed 7-0. Alderman Lewis was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Lewis was absent.

Ordinance 5388 as Recorded in the office of the City Clerk

VAC 10-3735 (Firestone): An ordinance approving VAC 10-3735 submitted by H2 Engineering, Inc. for property located at 1965 Box Avenue to vacate a utility easement, a total of 240 square feet.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated Planning Commission voted 8-0 and staff recommends approval.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Lewis was absent.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third reading. Alderman Petty seconded the motion. Upon roll call the motion passed 7-0. Alderman Lewis was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Lewis was absent.

Ordinance 5389 as Recorded in the office of the City Clerk

Appeal Chapter 166.18 of the UDC: An appeal regarding staff interpretation of Chapter 166.18 of the UDC.

Jeremy Pate gave a brief description of the appeal. He stated staff recommends City Council pass a resolution denying the appeal but approve a Master Street Plan resolution reducing the amount of Master Street Plan right-of-way required for the piece of property.

Tracy Hoskins: We need a particular size sign and set back measured from the 40 foot right-of-way which is historic along North College Avenue. To be able to get the sign that we need an appeal was required. It doesn't make a difference to us if the appeal is granted as far as the sign goes. I appreciate staff supporting a measurement at 43½ feet from center line but it doesn't help us. I have talked to some of the Council members and we are okay if the City Council would rather deny the appeal but allow us to change the right-of-way along North College on our side of the road at 40 feet from center line. Then we could reapply for our permit and get what we need.

Alderman Petty: If we went with 43½ feet right-of-way have you considered options of extending the island?

Tracy Hoskins: Yes, it's possible to do something like that other than the City has a regulation to where we have to have 24 foot parking lots. The building and parking lot in 2006 was almost 100% pavement. We shrank the size of the parking lot and added more green space and landscape area out front on North College. At the south end of the lot it's measured at the historic right-of-way of 40 feet. The northern end of the lot we had more room because of the shape of the property so we set our parking spaces back further and installed a sidewalk and added green space. We closed the drive lane to 24 feet. If we extend the island then our drive lanes would not be in compliance with code.

Alderman Petty: Thank you.

Alderman Ferrell: Are you saying you're alright with the appeal not being granted and the 40 foot from right-of-way, if we can do a resolution to remove that parcel to 40 foot right-of-way to allow you a sign.

Tracy Hoskins: I would be okay with that as well. The end net result gets us what we need for the businesses that are located at the building. I understand the need for maintaining right-of-way as much as possible for future road improvements.

Alderman Ferrell: Jeremy, the Master Street Plan is our tool and guide for development. What would you recommend if I wanted to make an amendment to resolve this to go back to the 40 foot setback?

Jeremy Pate: Kit would probably write the resolution. I would make a motion to deny the appeal and in the same motion approve a resolution amending the Master Street Plan for property at 3155 North College Avenue reducing the Master Street Plan right-of-way to 40 feet.

City Attorney Kit Williams: If you were going to reduce the Master Street Plan from 47 ½ that is recommended down to 43 or 40 feet you will have to follow the code section which is 166.04 (B)(3)(a)(i) and find that there is an undo hardship or practical difficulties with the subject property that justifies reducing the Master Street Plan.

Jeremy, if Mr. Hoskins was going to place his sign so it would not be 10 feet back from the established setback but it would be 6 ½ feet back how much smaller would his sign have to be if he keep it within his island?

Jeremy Pate: A six foot tall sign the display surface area measured is 75 square feet. Every foot that it reduces you would have to make that calculation.

Tracy Hoskins: 23%.

City Attorney Kit Williams: How many square feet would your sign be?

Jeremy Pate: Roughly 52 square feet.

City Attorney Kit Williams: You all would be determining that having a sign 52 square feet instead of 75 square feet would be an undo hardship and a practical difficulty for his property.

Alderman Ferrell: Where the sign would be moved to seems like it would present an undo hardship.

City Attorney Kit Williams: If he could only have a 75 foot sign that would be correct because that would be in the drive isle. He does have the option in the sign ordinance to have it placed closer to the right of way but with a reduction in size down to approximately 50 square feet instead of 75 square feet.

Alderman Ferrell: I would like to go that way with a resolution except I would like to have it worded that if the Council agrees to the 40 foot right-of-way on the Master Street Plan exception then the appeal would be denied or withdrawn.

City Attorney Kit Williams: He is not withdrawing his appeal.

Alderman Ferrell: He said it didn't make a difference to him if he got the 40 feet. Didn't I understand you to say that?

Tracy Hoskins: Yes sir, but there is one statement Mr. Williams made that I would like to clarify. Regardless of the size of the sign it can't be moved closer to the right-of-way.

City Council Kit Williams: I guess I'm confused.

Tracy Hoskins: I am too because you made the statement that the smaller sign could be moved closer to the right-of-way.

Jeremy Pate: That is correct, 10 feet minimum is the closest you can be to the right-of-way line. It's the right-of-way line that would potentially move. I would offer that we would recommend 43½ and potentially even 40 as a unique hardship as this is a fully developed property. There are five lanes of traffic, sidewalk, and green space.

Mayor Jordan: You are okay with 40 feet?

Alderman Ferrell: It's not his first choice.

Jeremy Pate: That's correct.

Don Marr, Chief of Staff: The likelihood that you are going to have a road that's greater than a five lane road going through this section of town is probably not very likely. That is why we have some comfort in getting it closer to 40 feet.

City Attorney Kit Williams: I talked to David Jurgens about this issue and he stated the water line in that particular location is very old and they have had problems with it. Even if the highway department does not come back to approve it he would like to see the water main moved out of the road so that when it blows or needs to be replaced you don't have to dig up College Avenue.

The City has not gained any right-of-way from Mr. Hoskins. This would only keep development out of a place where if we needed to move the line and we were buying the right-of-way it would not have a sign on it that would be more expense to the City.

Alderman Ferrell: What is your take on that?

Tracy Hoskins: I talked to David Jurgens, the line is 65 years old and there have not been any problems along North College in our area. They have had problems with a line in front of Burger King. The cross section of the road is 55 feet. The City has 80 feet of right-of-way. The City has 11 feet on both sides to locate utilities.

Alderman Ferrell moved to change the Master Street Plan to 40 foot right-of-way and deny the appeal. Alderman Thiel seconded the motion.

Tracy Hoskins: I appreciate your patience.

Upon roll call the motion passed 7-0. Alderman Lewis was absent.

Resolution 34-11 as recorded in the office of the City Clerk.

Announcements:

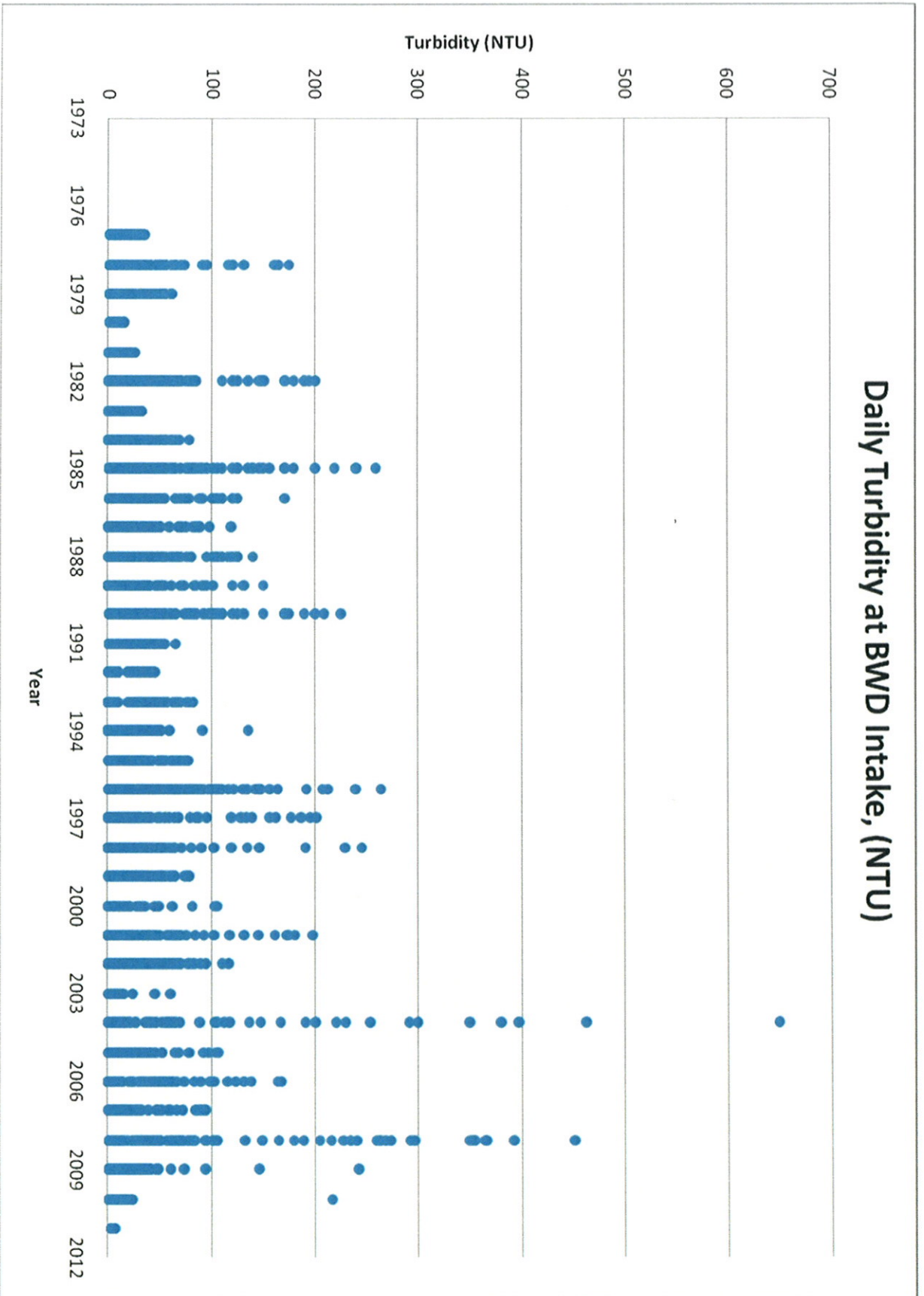
Meeting adjourned at 11:20 p.m.

Lioneld Jordan, Mayor

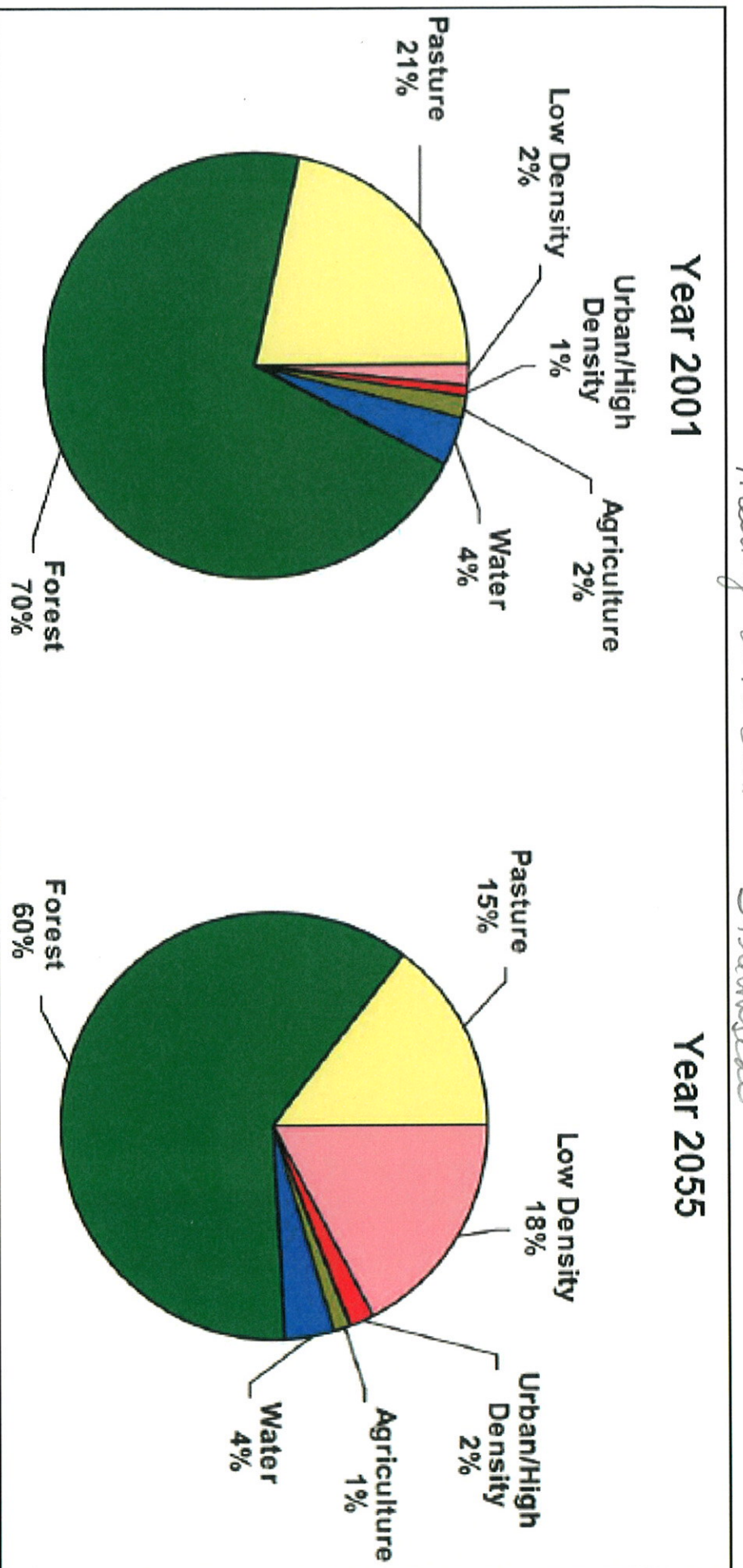
Sondra E. Smith, City Clerk/Treasurer

Handed Out at the City Council Meeting
2-15-2011 Stronachide

Daily Turbidity at BWD Intake, (NTU)



*Handed out at the City Council
Meeting 2-15-2011 Streamside*



Comparison of Year 2001 and Year 2055 Projected Land Uses in the Beaver Lake Watershed

From the Beaver Lake Watershed Protection Strategy Prepared for the Northwest Arkansas Council by Tetra Tech (Sept. 2009)

Streamside Ordinance
Handed out at the City Council
meeting 2/15/2011



Clear Creek



04.08.2004

Scul Creek



Gulley Park prior to stream restoration



Nishka



2007 Niokasha

Showing Fence & trees on Beam property



2010 Nicholas

also Beam property, note trees are gone
due to bank erosion & fence is threatened



Clear Creek



Gully park prior to stream restoration



Niaksha



Garbage pile near stream

Handed out at the
City Council 2/15/2011 Streamside

FSA5026

Riparian Buffers: Functions and Values

Kyle Cunningham
Forestry Instructor

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Professor of Forest
Ecology and Hydrology

Chris Stuhlinger
UA System Forest
Manager

Water quality is an ever-growing concern in Arkansas. This concern has been demonstrated by the designation of nutrient surplus areas within Arkansas by Legislative Act 1061 of 2003. Nutrient levels in these areas are such that continued application of fertilizer or nutrients could negatively impact waters in Arkansas. Storm-water runoff from agricultural fields and urban areas can deposit significant quantities of sediment and nutrients into drainages, streams and rivers. These pollutants can have significant impacts on aquatic organisms. A method for reducing pollutant deposition to these waterbodies is the implementation of riparian buffers. Riparian buffers can take on various forms, depending on the goals for the buffer. This fact sheet discusses the different functions and values of riparian buffers and their importance to water quality and beyond.

What Are Riparian Buffers?

A riparian area is the land adjacent to a stream, river or other waterbody (Figure 1). This land could be naturally vegetated, utilized for agriculture or developed for urban use. These land areas affect and are affected by the stream or waterbodies. In areas where vegetation has not been significantly disturbed, riparian areas help to maintain high water quality and healthy aquatic communities.

Riparian buffers are strips of vegetation established next to waterways in managed landscapes and are designed to capture runoff, nutrients and sediment and to restore a more natural aquatic environment. Riparian buffers typically range in width



Figure 1. A riparian buffer.

Photo by USDA NRCS

from 30 to 300 feet from stream banks. The vegetation utilized may include grasses, shrubs and/or a variety of trees. Each vegetation type performs unique functions in the system. These functions directly and indirectly generate different types of value.

Advantages of Riparian Buffers

- ✓ Reduced stormwater runoff
- ✓ Reduced sediment and nutrient runoff
- ✓ Improved water quality
- ✓ Ecological benefits
- ✓ Economic benefits
- ✓ Multiple-use benefits
 - Timber production
 - Wildlife habitat
 - Aesthetics
 - Recreation
 - Social value

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What Is the Purpose and Function of Riparian Buffers?

Riparian buffers provide several important ecosystem services. These services can be classified into two broad categories. The first category relates to their ability to limit or reduce the environmental impact of management practices in upland portions of the landscape on water quality and aquatic organisms. The term buffer can be defined as "something that serves to separate two items" or "to lessen the shock." Thus, riparian buffers separate aquatic ecosystems from managed lands and maintain water quality by acting as filters to lessen the amount of pollutants entering streams from the managed areas. The second category relates to a much wider array of riparian functions. In Arkansas the dominant vegetation in natural riparian areas is usually trees. Thus, forested buffers also provide wildlife habitat, stream temperature moderation, stream bank stabilization, and food and habitat for aquatic organisms. A more detailed explanation of these categories is below.

Buffering and Filtering

Sediment and Pollutant Removal. One of the primary purposes of riparian buffers is to reduce the amount of sediment, chemicals and other pollutants entering streams and waterbodies. Water draining from croplands, pastures, managed forests or even urban developments can contain sediment, fertilizer, pesticides and other pollutants (Figure 2). Riparian buffers intercept and filter these materials in several ways. Vegetation, such as grass or dead foliage and branches from trees on the soil surface, reduces the velocity of surface runoff as it enters the buffer. Sediment and particulates contained in runoff are deposited in the buffer rather than in a stream as this runoff velocity is reduced. The reduction of velocity also allows the surface water to better infiltrate the soil, carrying pollutants and chemicals below the soil surface. Roots of vegetation in the buffers absorb excessive nutrients and other chemicals contained in the subsurface water. Trees and grasses utilize the excess nutrients (nutrients which originate from fertilizer applications or livestock operations outside the buffer) to grow. These nutrients, especially in trees, can be stored in biomass for many decades. In addition, microbial organisms in the soil degrade chemicals and pesticides, reducing the potential for these materials to enter streams. Anaerobic soil microbes (organisms that live in wet soils) can convert excessive nitrogen from fertilizer to a gas which is dissipated to the atmosphere rather than entering streams. Where fertilizer or pesticides are applied by aircraft, buffer edges clearly delineate the boundaries of a field or managed forested stand from that of the stream or waterbody. Thus, direct application of agrochemicals to the stream can be

avoided. All of these attributes help to maintain or improve water quality within the landscape.



Figure 2. Unprotected waterways are vulnerable to degradation.

Riparian Ecosystem Services

Aquatic Habitat. Since riparian vegetation occurs at the edge of streams or waterbodies, it is a source of food and structural habitat for aquatic organisms. Foliage and branches that fall into the stream provide a source of food to benthic invertebrates (small organisms without backbones that live in streams and lakes). Many of these organisms have specialized features that allow them to shred the tissues of this vegetation for consumption. In small streams and headwaters, these invertebrates are at the bottom of the aquatic food chain. Restoration of this vegetation to stream banks ultimately increases the productivity of streams. Large woody debris (LWD) such as fallen trees and limbs provide structural habitat for aquatic communities in the waterbodies. LWD provides a location for benthic invertebrates to cling to, reduces stream velocity and thereby provides resting areas for fish. It helps to add diversity to streambed habitat.

Bank Stability and Erosion Protection. Vegetation and especially tree buffers stabilize the banks of streams and reduce the ability of streams to erode banks. Roots of trees and other vegetation bind the soil together. Vegetation is especially important in securing point bars that are typically formed by streams or rivers. Reduction of bank erosion maintains the stream's depth and width. Canopies of both grass and trees as well as the forest floor in forested buffers intercept precipitation and shield the soil surface from erosion. Raindrops that hit the ground without striking vegetation contain more energy than do those that drip off vegetation. These raindrops more frequently detach and erode soil particles. Buffers reduce erosion and ensure that soil located in riparian areas does not become a source of sediment in streams.

Alteration of Stream Climate. Trees in buffers help to reduce stream temperatures (Figure 3). Studies have indicated that clearing of trees around streams can increase maximum summer water temperatures by 7° to 21°F. Retention of forested strips along streams, even when trees outside this strip are removed, can limit these increases to less than 2°F. Reductions in temperatures are important for maintaining high levels of dissolved oxygen in water, since cooler water can hold higher concentrations of O₂ than warm water. This is important for survival and growth of fish species that require higher levels of dissolved oxygen. For example,



Figure 3. Trees can be very beneficial to the stream climate.

growth of juvenile smallmouth bass has been found to decrease with water temperatures above 86°F. Wind speed and humidity are also altered by riparian vegetation. Removal of forested riparian vegetation leads to an increase in wind speed and reduction of humidity which may have negative impact on aquatic and riparian communities. Therefore, it is recommended that managed forests include streamside management zones (SMZs) that reduce management activity in strips of existing forested areas adjacent to streams. Establishing forested riparian buffers in



Figure 4. Riparian buffers greatly improve wildlife habitat.

*Photo by
U.S. Fish and Wildlife Service*

agricultural or urban areas can have positive impacts on aquatic and riparian communities by moderating the water temperatures and climate.

Wildlife Habitat.

Riparian areas are important habitat for a number of wildlife species (Figure 4). Since these areas are transitional zones that can be flooded or extremely dry at other periods of the year, they frequently are home to a diverse community of mammals, amphibians, birds and reptiles. In managed forest

landscapes, riparian buffers are often a refuge for cavity-dwelling wildlife, such as flying squirrels, when upland forests are harvested. Riparian areas and buffers can also provide travel corridors for terrestrial wildlife, linking different habitats or portions of an animal's territory.

How Do Riparian Buffers Increase Property Value?

One might ask, "How can the removal of land from production increase the value of a property?" Fact is, there are many added values that are generated when riparian buffers are constructed on a property. These values may include timber, wildlife, recreation, aesthetics, social, economic, environmental and others. Depending on the goals for a buffer and the particular buffer type implemented, riparian buffers may achieve one or all of the aforementioned values.

Timber Value

Often there is a misconception that land put aside for riparian buffers is no longer productive and therefore does not generate an economic return. This notion could not be farther from the truth. Portions of riparian buffers that include a forested component may be managed for timber production and are often more productive than drier upland forests (Figure 5).



Figure 5. Riparian forest buffers can be managed for timber production.

Managing the timber in a buffer serves two purposes: (1) it allows the landowner to produce a commodity for economic gain, and (2) it aids in sustaining a vigorous, growing forest that optimizes nutrient uptake. Using a forested riparian buffer provides both economic and environmental benefits.

Non-Traditional Economic Values

Buffers may provide other economic benefits including potential biofuel feedstocks from grasses (such as switchgrass), carbon sequestration contracts, hunting leases, alternative agricultural products (fruits) and others.

Wildlife Value

Many landowners are very interested in increasing wildlife habitat on their property, often for the purposes of generating revenue. As stated earlier, riparian buffers can facilitate this role effectively. First, buffers can be designed to include vegetation structure and types that focus on providing food or other forms of habitat for a particular species (such as quail). Secondly, buffers can be designed to provide diversity in habitat structure that is critical for many game and non-game species (such as songbirds). Improving wildlife habitat increases recreational opportunities, revenue potential and property value.

Recreational Value

Riparian buffers greatly impact recreational opportunities for a property. The most obvious area of potential impact would be in urban areas where forested riparian buffers can be established to provide a park-like atmosphere for local residents to utilize. Often these "urban buffers" contain walking or biking trails to increase recreational opportunities. Other buffer types, on agricultural lands, could provide different types of recreational opportunities such as hunting or wildlife viewing.

Aesthetic Value

Riparian buffers of any type will increase the aesthetic value of a property. In agricultural areas, buffers can provide a break in the terrain. Alternately, in urban areas buffers can be used to create park-like areas or simply natural areas that separate urban structures. Also, different types of vegetation may be utilized that provide aesthetic quality, such as

planting flowering tree species including dogwood, redbud or others. The aesthetic potential of buffers should never be underrated. Increased real estate values are frequently associated with forest and trees in urban areas. In this case, aesthetic value can frequently translate into long-term increased property values.

Social Value

The social value of riparian buffers could potentially provide the greatest benefit of all buffer attributes. In urban areas, the values of riparian buffers are obvious in that they assist in increasing the livability of urban areas such as subdivisions or commercial zones. In agricultural areas – particularly in nutrient surplus areas – the mere act of implementing riparian buffers could ease conflicting views toward agricultural practices and impacts on water quality, which could provide the largest overall social benefit.

Riparian buffers provide an excellent opportunity to provide multiple environmental, ecological and social benefits while assisting landowners in creating multiple-use opportunities for their lands. Establishing riparian buffers is currently a voluntary practice that has the potential to reduce pressures for increased regulation on land management methods for Arkansans. Landowners should examine how establishing riparian buffers on their property could enhance value and improve the livability for their families and their respective communities.

For additional information, see fact sheet FSA5027, *Riparian Buffers: Types and Establishment Methods*.

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Kit Read at the City Council
Meeting 2/15/2011 - Streamside

PRESENTATION TO CITY COUNCIL AND PUBLIC

Several speakers at the last City Council meeting questioned the legality and constitutionality of the proposed Streamside Protection Ordinance. I believe this proposed ordinance is clearly within the statutory power of the City Council to enact.

For example, A.C.A. §14-54-702 states that "Municipal corporations shall have the power to ... prevent pollution of water or injury to waterworks." A "reservoir" (like Beaver Lake) is one type of "waterworks" that cities are authorized to protect. This ordinance attempts to protect our drinking water source, Beaver Lake, by reducing by 75% the amount of sediment (which carries phosphorous) into our streams that flow into Beaver Lake and the Illinois River. The Beaver Water District's spokesman spoke to the City Council in favor of the Streamside Protection Ordinance because it would protect Beaver Lake as our water source. Thus, A.C.A. §14-54-702 clearly supports our efforts to protect this reservoir.

This statute even gives the City Council the ability to go **five miles beyond our city limits to prevent pollution or injury to any stream or source of water.**

"(b) For the purpose of establishing and supplying waterworks, any municipal corporation may go beyond its territorial limits. Its jurisdiction to prevent or punish any pollution or injury to the stream or source of water, or to the waterworks, shall extend five (5) miles beyond the corporate limits." A.C.A. §14-54-702(b).

The Arkansas Supreme Court has interpreted this statute as providing a municipality with the power and duty to protect the comfort and well-being of its citizens by furnishing pure water. *Bourland v. City of Fort Smith*, 190 Ark. 289, 78 S.W. 2d 383, 385 (1935).

^{Also}
The City Council has considerable discretion under its "police power" to regulate activities within and near its city limits.

"This court long ago recognized that the varied uses and conflicts of city life required that much must be left to the discretion of city authorities." *City of Little Rock v. Linn*, 245 Ark. 260, 270, 432 S.W. 2d 455, 462 (1968)

“The legislative power includes discretion to determine the interests of the public as well as the means necessary to protect those interests. Within constitutional limits, the legislative branch is the sole judge of the laws that should be enacted for the protection and welfare of the people and when and how the police power of the State is to be exercised.” *City of Lowell v. M & N Mobile Home Park*, 323 Ark. 332, 335, 916 S.W. 2d 95, 97 (1996) (emphasis added).

The Arkansas Supreme Court has held that the **“mere possibility of a public harm is sufficient basis for the municipality to regulate under its police power.”** *Phillips v. Town of Oak Grove*, 333 Ark. 183, 191, 968 S.W. 2d 600, 604 (1998).

It is up to the good judgment of the City Council to determine whether protection of streams and drinking water requires some streamside protection zones which would restrict certain soil disturbing construction or other activities from occurring. After considering all the evidence and statements presented to them, if the City Council determines that public necessity requires such regulations, the City Council has statutory power to enact such reasonable regulations.

CONSTITUTIONAL ISSUES

Some speakers at the last City Council meeting also claimed that the proposed regulations would result in a constitutional “taking” of the property owners’ land such that an inverse condemnation had occurred requiring the City pay for the land within the streamside protection zones. I do not believe the proposed regulations would be deemed a constitutional taking.

We have been challenged before over regulations that a landowner alleged constituted an inverse condemnation of his property. Mr. Richard Berry, as owner of the Thunder Valley Raceway, sued the City for \$500,000.00 over this issue in 2003. Mr. Berry lost. The City paid nothing on this half million dollar inverse condemnation claim.

Justice Oliver Wendell Holmes stated in a 1922 Supreme Court case, *Pennsylvania Coal v. Mahon*:

“(T)he general rule at least is that while property may be regulated to a certain extent, if regulation goes too far, it will be recognized as a taking.” 260 U.S. 393 (1922)

This statement was reaffirmed in 1987 by Chief Justice Rehnquist in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 316 (1987). The Supreme Court also held in that case that if a property owner proves his property has been “taken” by land use regulation, the property owner may collect monetary damages to compensate for the “taking.”

The key issue is always **when a regulation has gone “too far”** so that a city would be exposed to liability. Prior to Fayetteville’s first zoning in 1951, property owners could use their property basically, as they chose. The 1951 zoning placed many new restrictions on how the property could be used, but no constitutional takings challenges were made to my knowledge. Again, in 1970, the Fayetteville City Government reconsidered the zoning throughout Fayetteville and made significant zoning changes without the express agreement of all affected property owners. Some “down zoned” property owners attempted to regain their previous zonings politically, but no constitutional takings challenges in Court were made to my knowledge. No suit was forthcoming when residential density in flood plains was reduced by city ordinance in the 90’s from four or more houses per acre to one house per acre.

In *Agins v. City of Tiburon*, 447 U.S. 255 (1980), a zoning ordinance limited development on a five acre parcel to five houses. The Supreme Court held:

“(t)he application of a general zoning law to particular property effects a taking if the ordinance does not substantially advance legitimate state interests or denies an owner economically viable use of his land.” *Id.* at 260.

The Supreme Court held that the open space policies of Tiburon was a legitimate state interest and did not deprive the owner of an economically viable use of his property. The property owner’s “takings” claim was denied.

In a regulatory takings case involving pollution control costs estimated by the owner to be \$500,000 to \$1,000,000, the Arkansas Supreme Court rejected a takings claim holding that “the company has not shown compliance with the regulation would be commensurate to a taking of its property.” *J.W. Black Lumber v. Arkansas Dept. of Pollution Control and Ecology*, 290 Ark. 170, 717 S.W. 2d 807, 811.

“The mere fact that a partial use of one’s property is burdened by regulation does not amount to a taking. In *Goldblatt v. Town of Hempstead*, N.W., 369 U.S. 590, (1962), the court said: There is no set formula to determine where regulation ends and taking begins. Although a comparison of values

before and after is relevant ... it is by no means conclusive, see *Hadacheck v. Sebastian*, 239 U.S. 394 where a diminution in value from \$800,000 to \$60,000 was upheld.” *Id.* at 810-811 (citations omitted)

The most recent holding by the United States Supreme Court in this area was the Lake Tahoe development moratorium case. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Commission*, 535 U.S. (2002).

The Supreme Court held that the years long moratorium on development of private land within the Lake Tahoe basin while the regional planning commission formulated development restrictions to protect Lake Tahoe from degradation did NOT constitute a constitutional taking requiring compensation.

The Supreme Court held that “a governmental regulation ... that bans certain private uses of a portion of an owner’s property ... does not constitute a categorical taking.” *Id.* Thus the *Penn Central* analysis would be necessary to determine the likelihood of a takings claim to be successful in the Streamside Protection Ordinance.

The first prong of a test is:

(1) Interference/reduction with the owner’s reasonable investment backed expectations of how the property could be used;

The Streamside Protection Ordinance does not affect any ongoing activity or any existing building on the property. Like all of our zoning ordinances and development ordinances, the Streamside Protection Ordinance could have some affect upon **new development** within the streamside protection zones. However, a landowner/investor whose property could be affected can obtain a building permit before this ordinance is effective and thus accomplish any “reasonable investment based expectations of how the property could be used in the near future.”

(2) Economic impact of the regulation upon the property’s value;

The variance procedures within this ordinance with appeal rights to the City Council should prevent the regulation from having enough adverse economic impact on any property owner’s parcel to constitute a taking. If and when a variance appeal reaches the City Council, you will need to closely analyze any proven economic hardship upon the landowner resulting from the Streamside Protection ordinance in your decision to grant or deny such variance. This should protect the City from a constitutional takings claim.

(3) Character/importance of the governmental interest in the regulation;

The *Lake Tahoe* case decided by the United States Supreme Court against landowners/developers related to the same water quality issues that the Streamside Protection Ordinance is designed to protect.

The Arkansas Supreme Court has interpreted state law to provide a power for a city council to protect the comfort and well-being of its citizens by furnishing them pure and clean water. *Bourland v. City of Fort Smith*, supra. The Beaver Water District has requested this Streamside Protection Ordinance from Fayetteville to help preserve the quality and purity of our Beaver Lake water supply. It would be hard to envision a stronger governmental interest than the preservation of a clean and pure water supply for our citizens, businesses, and industries.

CONCLUSION

The City Council has clear statutory authority to enact the Streamside Protection Ordinance. The reasonable regulations, exemptions, and variances within this ordinance should prevent it from constitutionally taking anyone's property.

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

Tentative Agenda City of Fayetteville Arkansas City Council Meeting February 15, 2011

A meeting of the Fayetteville City Council will be held on February 15, 2011 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

City Council Agenda Session Presentations:

- 1. Economic Development Contract Report – Chamber of Commerce**

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

- 1. Airport Board Annual Presentation – Ray Boudreaux**

Agenda Additions:

A. Consent:

- 1. Approval of the October 18, 2010 Joint Firemen's Pension and City Council and February 1, 2011 City Council meeting minutes.**

2. **Bid #11-15 Elk River Construction, Inc.:** A resolution awarding Bid #11-15 and authorizing a contract with Elk River Construction, Inc. in the amount of \$89,066.00 plus a five percent (5%) project contingency in the amount of \$4,241.00 for the construction of stream restoration at Niokaska Creek in Sweetbriar Park and approving a budget adjustment of \$9,066.00.
3. **Bid #11-17 ADS Environmental Services, LLC:** A resolution awarding Bid #11-17 and authorizing the purchase of seventeen (17) sewer flow monitors from ADS Environmental Services, LLC in the amount of \$136,528.63 for installation in the city sewer collection system.
4. **Police Recording System:** A resolution approving a budget adjustment in the amount of \$43,000.00 moving unused funds designated for the police recording system to the police building remodeling project.
5. **Ogden Insurance Agency Donation Revenue:** A resolution approving a budget adjustment in the amount of \$100.00 representing donation revenue received from Ogden Insurance Agency for the Fire Department's annual employee service awards event.
6. **Garver, LLC:** A resolution approving a contract with Garver, LLC in an amount not to exceed \$38,200.00 for the performance of an environmental assessment study for the Van Asche Boulevard extension project between Gregg Avenue and Garland Avenue.
7. **McClelland Consulting Engineers, Inc. Task Order #4:** A resolution approving task order #4 to the contract with McClelland Consulting Engineers, Inc. contingent upon receipt of grant funding, authorizing the application and acceptance of a grant from the Federal Aviation Administration and Arkansas Department of Aeronautics to fund the project, and approving a budget adjustment.
8. **Atlantic Machinery, Inc.:** A resolution authorizing the purchase of a Schwarze A9000 sweeper from Atlantic Machinery, Inc. of Silver Spring, Maryland, pursuant to a competitive bid through the National Joint Powers Alliance (NJPA) cooperative purchasing agreement, in the amount of \$190,100.00 for use by the Transportation Division, and approving a budget adjustment.

B. Unfinished Business:

1. **Amend Title XV: ADM 09-3480 (Streamside Protection):** An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapter 155: Appeals, Chapter 156: Variances, and Chapter 168: Flood Damage Prevention Code in order to establish Streamside Protection Zones and adopt a Protected Streams map and Best Management Practices Manual. *This ordinance was left on the First Reading at the February 3, 2011 City Council meeting.*

Left on the First Reading

2. **Huntingdon Heights Appeal:** An appeal of the City Engineer's determination regarding the driveway approach at 3172 Warwick Dr. *This item was tabled at the February 3, 2011 City Council meeting to the February 15, 2011 City Council meeting.*

C. New Business:

1. **Ozarks Electric Cooperative Corporation Cost-Share Agreement:** An ordinance to waive competitive bidding, to approve a cost-share agreement with Ozarks Electric Cooperative Corporation in the amount of \$38,250.48 for the extension of power to the Stone Mountain Water Pump Station, to approve a project contingency of \$7,500.00, and approve a budget adjustment of \$45,751.00.
2. **RZN 10-3732 (Brown, 2600 Crossover Rd.):** An ordinance rezoning that property described in rezoning petition RZN 10-3732, for approximately 1.64 acres, located at 2600 Crossover Road from R-A, Residential Agricultural, to R-O, Residential Office.
3. **VAC 10-3735 (Firestone):** An ordinance approving VAC 10-3735 submitted by H2 Engineering, Inc. for property located at 1965 Box Avenue to vacate a utility easement, a total of 240 square feet.
4. **Amend 2011 Adopted Budget:** A resolution amending the 2011 city budget by re-appropriating up to \$58,840,788.00 in bonded or ongoing capital projects, outstanding obligations and grant-funded items previously appropriated in the 2010 city budget but not completed or delivered in 2010.
5. **Appeal Chapter 166.18 of the UDC:** An appeal regarding staff interpretation of Chapter 166.18 of the UDC.

Announcements:

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

City of Fayetteville Staff Review Form

A. 2
 Bid #11-15 Elk River Construction, Inc.
 Page 1 of 38

**City Council Agenda Items
 and
 Contracts, Leases or Agreements**

2/15/2011

City Council Meeting Date
 Agenda Items Only

Carole Jones

Submitted By

Park Planning

Division

Parks and Recreation

Department

Action Required:

A resolution awarding Bid #11-15 and approval of a contract with Elk River Construction, Inc. in the amount of \$84,825 with a 5% project contingency of \$4,241 for a total project cost of \$89,066 for the Construction of Stream Restoration at Niokaska Creek in Sweetbriar Park.

\$	4,170.00
\$	4,896.00
\$	80,000.00

Cost of this request

\$	442,623.00
\$	69,955.54
\$	312,000.00

Category / Project Budget

Drainage Studies/Ph. II Storm Water
PLD NE Quadrant
Niokaska Creek Stream Restoration

Program Category / Project Name

4470.9470.5817.00
2250.9256.5806.00
4470.9470.5315.00

Account Number

\$	156,540.55
\$	-
\$	197,535.00

Funds Used to Date

Sales Tax Capital Improvements
PLD NE Quadrant
Niokaska Creek Stream Restoration

Program / Project Category Name

02097.1
09025.0901
09025.0901

Project Number

\$	286,082.45
\$	69,955.54
\$	114,465.00

Remaining Balance

Sales Tax
PLD NE Quadrant
Sales Tax/Grant

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☒

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Date

Finance and Internal Services Director

Date

Received in City
 Clerk's Office

Chief of Staff

Date

Received in
 Mayor's Office

Mayor

Date

Comments:

City Clerk - Agenda Item for Feb 15 meeting - Bid 11-15

From: Carole Jones
To: City Clerk; Johnson, Kimberly
Date: 1/28/2011 3:34 PM
Subject: Agenda Item for Feb 15 meeting - Bid 11-15
CC: Jumper, Alison
Attachments: Bid 11-15 City Council Agenda Packet.01-28-11.pdf

This bid is currently in the process of being negotiated; however the low bidder, Elk River Construction, Inc. is currently out of the country and unreachable. The final bid and project cost will be presented at the City Council Agenda session or provided prior to the February 15th City Council meeting. Additionally, we will provide a signed contract as soon as possible. Please contact us if you have any questions. Thanks,

Ms. Carole Jones, P.E.
Park Planner II
Fayetteville Parks & Recreation
113 West Mountain Street
Fayetteville, AR 72701
Phone (479) 444-3472
Fax (479) 521-7714
www.accessfayetteville.org

Join us for program announcements, updates, pictures and game cancellations at:
<http://twitter.com/fayparksandrec>

TDD (Telecommunications Device for the Deaf): (479) 521-1316



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council

Thru: Don Marr, Chief of Staff
Connie Edmonston, Parks and Recreation Director *CE*
Alison Jumper, Park Planning Superintendent *AJ*

From: Carole Jones, Park Planner *CJ*

Date: February 4, 2011

Subject: **Bid #11-15, Construction of Stream Restoration at Niokaska Creek in Sweetbriar Park
Agenda Request for February 15, 2011 Meeting**

PROPOSAL:

Sweetbriar Park contains 4.05 acres and is located at 2645 E. Sweetbriar Drive. The park is situated in the northeast quadrant of town east of Old Missouri Road and south of Joyce Boulevard.

Niokaska Creek, a tributary to Mud Creek, flows through Sweetbriar Park. The creek is located within the Illinois River Watershed. The creek sections are incised and have several banks eroding into the park land and surrounding residential yards which have resulted in vertical cut-banks. These banks contribute excessive sediment to the streams through lateral erosion. Bank erosion presents a safety concern and leads to a lack of riparian canopy. Restoration is necessary to stabilize the creek and prevent further erosion.

On September 1, 2009, the City Council passed Resolution Number 191-09 authorizing the Parks and Recreation Department and the Engineering Division to accept a Wetland Program Development Grant from EPA Region 6 in the amount of \$234,000 (see attached resolution). The Wetland Program Development Grant is used for projects that promote research, training, demonstrations, and surveys relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution.

The project includes construction of a natural stream channel with specified geomorphic features, five major rock vane structures, bankfull benches constructed out of rock and wood materials with soil mattresses, and associated site work.

The project was advertised on December 13, December 20 and January 13, and bids were opened on January 27, 2011. Three vendors including Elk River Construction, Inc., Goodwin and Goodwin, Inc. and ERS, Inc. submitted bids. Elk River Construction, Inc. was the low bid in the amount of \$84,825. (See attached bid tabulation sheet, bid form and certified cashier check.) If approved, the construction of the project is anticipated to begin in early March 2011 and be completed in May 2011.

RECOMMENDATION:

A resolution awarding Bid #11-15 and approval of a contract with Elk River Construction, Inc. in the amount of \$84,825 with a 5% project contingency of \$4,241 for a total project cost of \$89,066 for the Construction of Stream Restoration at Niokaska Creek in Sweetbriar Park.

BUDGET IMPACT:

The low bid was \$4,825 over the certified amount of \$80,000 for the project. Parks staff attempted to negotiate the contract with the low bidder, Elk River Construction, Inc. but was unsuccessful. This project is funded with Sales Tax/US EPA Region 6 Grant funds (\$80,000), Sales Tax/Capital Improvement funds (\$4,170) and Park Land Dedication Ordinance NE Quadrant funds (\$4,896). Total project cost including a 5% project contingency is \$89,066.

Attachments:

Staff Review Form
Resolution Number 191-09
Bid Tabulation Sheet
Bid Form and Submittal
Cashier's Check for Bid Bond
Contract Agreement Signed by Contractor
Purchase Requisition
Budget Adjustment

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #11-15 AND AUTHORIZING A CONTRACT WITH ELK RIVER CONSTRUCTION, INC. IN THE AMOUNT OF \$89,066.00 PLUS A FIVE PERCENT (5%) PROJECT CONTINGENCY IN THE AMOUNT OF \$4,241.00 FOR THE CONSTRUCTION OF STREAM RESTORATION AT NIOKASKA CREEK IN SWEETBRIAR PARK AND APPROVING A BUDGET ADJUSTMENT OF \$9,066.00.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #11-15 and authorizes the Mayor to sign the contract with Elk River Construction, Inc. (attached as Exhibit "A") in the amount of \$89,066.00 plus a five percent (5%) project contingency in the amount of \$4,241.00 for the construction of stream restoration at Niokaska Creek in Sweetbriar Park.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Budget Adjustment in the amount of \$9,066.00.

PASSED and APPROVED this 15th day of February, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

RESOLUTION NO. 191-09

A RESOLUTION AUTHORIZING ACCEPTANCE OF AN EPA REGION 6 WETLAND PROGRAM DEVELOPMENT GRANT IN THE AMOUNT OF \$234,000.00 FOR A STREAM RESTORATION DEMONSTRATION ON NIOKASKA CREEK THROUGH SWEETBRIAR PARK AND OTHER PROPERTIES; AND APPROVING A BUDGET ADJUSTMENT RECOGNIZING THE GRANT REVENUE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

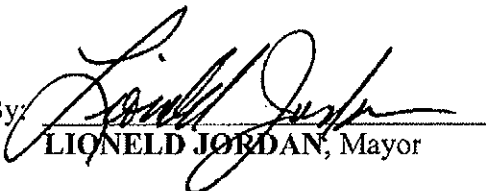
Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes acceptance of an EPA Region 6 Wetland Program Development Grant in the amount of \$234,000.00 for a stream restoration demonstration on Niokaska Creek through Sweetbriar Park and other properties.

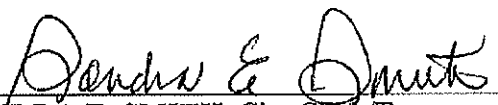
Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment recognizing the grant revenue.

PASSED and APPROVED this 1st day of September, 2009.

APPROVED:

ATTEST:

By: 
LIONELD JORDAN, Mayor

By: 
SONDRA E. SMITH, City Clerk/Treasurer

Bid 11-15. Construction of Stream Restoration at Nickaska Creek in Sweetbriar Park
 Detailed Bid Tab: 01/27/11 - 2:00 PM, Central Standard Time

ITEM#	DESCRIPTION	UNIT	EST. QTY.	Elk River Construction, Inc.		ERS, Inc.		Goodwin and Goodwin, Inc.	
				UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	Mobilization (not to exceed 5% of project bid)	L.S.	1.00	\$3,000.00	\$3,000.00	\$9,000.00	\$9,000.00	\$15,000.00	\$15,000.00
2	Bonds and Insurance	L.S.	1.00	\$4,275.00	\$4,275.00	\$4,000.00	\$4,000.00	\$5,000.00	\$5,000.00
3	Excavation Safety per 29 CFR 1926 Subpart P - Occupational Safety and Health Administration Standards - Excavations	L.S.	1.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$1,000.00	\$1,000.00
4	Site preparation - including clearing and grubbing	L.S.	1.00	\$3,500.00	\$3,500.00	\$45,000.00	\$45,000.00	\$4,000.00	\$4,000.00
5	Construction of J-Hook Rock Vane - complete in place per specifications and drawings	E.A.	5.00	\$3,000.00	\$15,000.00	\$6,000.00	\$30,000.00	\$2,000.00	\$10,000.00
6	Construction of Cross Vane - complete in place per specifications and drawings	E.A.	2.00	\$4,000.00	\$8,000.00	\$3,000.00	\$6,000.00	\$3,000.00	\$6,000.00
7	Construction of Short Rock Vane - complete in place per specifications and drawings	E.A.	2.00	\$2,075.00	\$4,150.00	\$2,000.00	\$4,000.00	\$3,000.00	\$6,000.00
8	Construction of Rock Toe Bench - complete in place per specifications and drawings	L.F.	400.00	\$37.50	\$15,000.00	\$25.00	\$10,000.00	\$60.00	\$24,000.00
9	Construction of Rock Toe Bench - complete in place per specifications and drawings	L.F.	270.00	\$16.67	\$4,500.00	\$15.00	\$4,050.00	\$65.00	\$17,550.00
10	Construction of Soil Mattress Layer - complete in place per specifications and drawings	L.F.	1700.00	\$2.06	\$3,500.00	\$6.00	\$10,200.00	\$5.00	\$8,500.00
11	Construction of Stacked Rock Bench - complete in place per specifications and drawings	L.F.	100.00	\$19.00	\$1,900.00	\$80.00	\$9,000.00	\$80.00	\$8,000.00
12	Electrical Utility Trenching, Conduit Bural, and Backfill - including dewatering, installation of 4-inch conduit, backfill and coordination with Ozarks Electric Cooperative	L.S.	1.00	\$2,500.00	\$2,500.00	\$7,000.00	\$7,000.00	\$6,000.00	\$6,000.00
13	Stream Channel Excavation, Shaping and Grading	E.A.	3.00	\$1,000.00	\$3,000.00	\$6,000.00	\$18,000.00	\$4,000.00	\$12,000.00
14	Placement of Coarse Fill	C.Y.	1,810.00	\$2.49	\$4,500.00	\$13.00	\$23,530.00	\$35.00	\$63,350.00
15	Construction of Cut-off Sills (not associated with J-Hook Rock Vane or Cross Vane) - complete in place per drawings	L.F.	282.00	\$6.87	\$2,500.00	\$15.00	\$4,230.00	\$48.00	\$13,536.00
16	Excavation and loading of excess gravel for off-site removal by Others	C.Y.	500.00	\$3.00	\$1,500.00	\$6.00	\$3,000.00	\$35.00	\$17,500.00
17	Site restoration - including placement of topsoil & rescue sod	S.F.	1000.00	\$2.50	\$2,500.00	\$6.00	\$6,000.00	\$1.00	\$1,000.00
18									
TOTAL BID AMOUNT					\$84,825.00		\$198,010.00		\$221,436.00

CERTIFIED:
 Peggy Vice, Purchasing Manager

WITNESS

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

DATE



Project Check List

Bid 11-15, Construction of Stream Restoration at Niokaska Creek in Sweetbriar Park

This checklist is for the Bidder's use in preparing & submitting a bid. It is not intended to include all details necessary to prepare a bid and shall not be used as a substitute for the requirements of the bid documents. Information is shown below only as a matter of convenience. Use of this checklist does not relieve the Bidder from the responsibility of meeting all requirements of the Specifications concerning the preparation of an acceptable bid. Bidders are welcome to use this form as a coversheet for a sealed envelope; however, using this form itself is NOT a requirement.



5% Bid Bond of the amount bid accompanied by required documentation (Power of Attorney, etc.)

- In lieu of a bid bond, the bidder may submit a cashier's check for at least five percent (5%) of the amount bid (inclusive of any deductive alternates). Cashiers checks shall be made payable to the City of Fayetteville, AR. *\$4241.25*



All addenda shall be signed, acknowledged, and submitted on the appropriate forms (submitting the actual addendums or marking acknowledgement on other bid pages).



All line items shall be appropriately filled out and extended to reveal the line item price as well as the total bid price. Total base bid should be calculated in the provided space.



All bidders shall submit a "Statement of Disclosure" on such form provided with the bid documents.



All bidders shall submit completed EPA Form 6100-3, EPA Form 6100-4 and the MBE/WBE/DBE Compliance Evaluation Form provided with the bid documents (see www.epa.gov/osbp/dbe_forms.htm). The forms shall be appropriately signed, dated accordingly, and included with submitted bid documents.



All pages provided with signature lines shall be appropriately signed, dated accordingly, and included with submitted bid documents.



All bid documents shall be delivered in a sealed envelope to the address listed below before the stated deadline on the coversheet of the bid. All bids should be delivered with the name of the bidder (contractor) on the sealed envelope as well as the bidders Arkansas Contractors License Number (if applicable).

City of Fayetteville, AR
Purchasing Division – Suite 306
113 W. Mountain
Fayetteville, AR 72702

CONTRACTOR NAME: *ELC INC dba ELK RIVER CONSTRUCTION*
DEANNA HOCKETT

Section 00 41 13

BID FORM

Item No.	Estimated Quantity	Unit	Description of Item	Unit Price	Total Amount
1	1	Lump Sum	Mobilization - (not to exceed 5% of total bid)		
THREE THOUSAND + NO/100			dollars	\$(in figures	/L.S. \$ 3000 ⁰⁰ in figures
2	1	Lump Sum	Bonds and insurance		
FOUR THOUSAND TWO HUNDRED SEVENTY FIVE + NO/100			dollars	\$(in figures	/L.S. \$ 4275 ⁰⁰ in figures
Excavation Safety per 29 CFR 1926 Subpart P - Occupational Safety and Health Administration Standards - Excavations					
3	1	Lump Sum			
TWO THOUSAND + NO/100			dollars	\$(in figures	/L.S. \$ 2000 ⁰⁰ in figures
4	1	Lump Sum	Site preparation - including clearing and grubbing		
THIRTY FIVE HUNDRED + NO/100			dollars	\$(in figures	/L.S. \$ 3500 ⁰⁰ in figures
Construction of J-Hook Rock Vane - complete in place per specifications and drawings					
5	5	Each			
FIFTEEN THOUSAND + NO/100			dollars	\$(in figures	/EA. \$ 15,000 ⁰⁰ in figures
Construction of Cross Vane - complete in place per specifications and drawings					
6	2	Each			
EIGHT THOUSAND + NO/100			dollars	\$(in figures	/EA. \$ 8,000 ⁰⁰ in figures
Construction of Short Rock Vane - complete in place per specifications and drawings					
7	2	Each			
FOURTY ONE HUNDRED FIFTY + NO/100			dollars	\$(in figures	/EA. \$ 4,150 ⁰⁰ in figures
Construction of Rock and Wood Toe Bench - complete in place per specifications and drawings					
8	400	Linear Feet			
FIFTEEN THOUSAND + NO/100			dollars	\$(in figures	/L.F. \$ 15,000 ⁰⁰ in figures

This bid form continues on the next page...

BID FORM Continued

Item No.	Estimated Quantity	Unit	Description of Item	Unit Price	Total Amount
9	270	Linear Feet	Construction of Rock Toe Bench - complete in place per specifications and drawings		
			<u>FOURTY FIVE HUNDRED + 00/100</u> dollars	\$ (in figures	Y/L.F. \$ <u>4500⁰⁰</u> in figures
10	1,700	Linear Feet	Construction of Soil Mattress Layer - complete in place per specifications and drawings		
			<u>THIRTY FIVE HUNDRED + 00/100</u> dollars	\$ (in figures	Y/L.F. \$ <u>3500⁰⁰</u> in figures
11	100	Linear Feet	Construction of Stacked Rock Bench - complete in place per specifications and drawings		
			<u>THIRTEEN HUNDRED + 00/100</u> dollars	\$ (in figures	Y/L.F. \$ <u>1900⁰⁰</u> in figures
12	1	Lump Sum	Electrical Utility Trenching, Conduit Burial, and Backfill - including dewatering, installation of 4-inch conduit, backfill and coordination with Ozarks Electric Cooperative		
			<u>TWENTY FIVE HUNDRED + 00/100</u> dollars	\$ (in figures	Y/L.S. \$ <u>2500⁰⁰</u> in figures
13	3	Each	Construction of Tributary Channel Drop Vane - complete in place per specifications and drawings		
			<u>THREE THOUSAND + 00/100</u> dollars	\$ (in figures	Y/E.A. \$ <u>3000⁰⁰</u> in figures
14	1810	Cubic Yards	Stream Channel Excavation, Shaping and Grading		
			<u>FOURTY FIVE HUNDRED + 00/100</u> dollars	\$ (in figures	Y/C.Y. \$ <u>4500⁰⁰</u> in figures
15	282	Cubic Yards	Placement of Coarse Fill		
			<u>TWENTY FIVE HUNDRED + 00/100</u> dollars	\$ (in figures	Y/C.Y. \$ <u>2500⁰⁰</u> in figures
16	150	Linear Feet	Construction of Cut-off Sills (not associated with J-Hook Rock Vanes or Cross Vanes) - complete in place per drawings		
			<u>THIRTY FIVE HUNDRED + 00/100</u> dollars	\$ (in figures	Y/L.F. \$ <u>3500⁰⁰</u> in figures

This bid form continues on the next page...

BID FORM Continued

Item No.	Estimated Quantity	Unit	Description of Item	Unit Price	Total Amount
17	500	Cubic Yards	Excavation and loading of excess gravel for off-site removal by Others		
	FIFTEEN HUNDRED & NO/100	dollars		\$ (in figures)	Y.C.Y. \$ 1500 ⁰⁰ in figures
18	1,000	Square Feet	Site restoration - including placement of topsoil & fescue sod		
	TWENTY FIVE HUNDRED & NO/100	dollars		\$ (in figures)	Y.S.F. \$ 2500 ⁰⁰ in figures
TOTAL BID					
	EIGHTY FOUR THOUSAND EIGHT HUNDRED	dollars		\$ 84,825 ⁰⁰	
	TWENTY FIVE & NO/100			in figures	

Acknowledge Addenda

Addenda #	Name	Date

BIDDER QUALIFICATIONS:

The City of Fayetteville is seeking a construction company with over ten years of experience building river restoration and streambank stabilization designs using a natural channel design approach that is specifically based on methods and techniques presented in Chapter 11 of the USDA Natural Resource Conservation Service National Engineering Handbook, Part 654, Chapter 11, (2007). Specifically, the primary track hoe operator who will be building the structures and serve as the site foreman shall have a minimum of 10 years' direct experience building structures and implementing natural channel designed river restoration and bank stabilization projects. The primary track hoe operator shall have experience in constructing J-hook vanes, J-hook/log combination vanes, cross vanes, W-weirs, step pools, toe wood, and habitat rock. Experience in training other operators in these types of construction techniques is preferred. Due to the unique terrain, experience in implementing stream restoration projects in Northwest Arkansas is also preferred.

EXPERIENCE OF BIDDER:

The Bidder states that he/she is an experienced Contractor and has completed a minimum of three (3) projects of similar size and scope within the past five (5) years. List similar projects with types, names of clients, construction costs and references with telephone numbers. Use additional sheets if necessary. **Failure to fully complete this section may result in rejection of the Bid.**

Muddy Creek - Trout Unlimited - Wyoming \$140,000⁰⁰ - Nick
 Weminuche River - Linder Ranches - Pagosa Springs, CO \$250,000⁰⁰ - MGR David Cook - (970) 946-6650
 Upper Blanco River - Rancho El Penasco - Pagosa Springs, CO \$300,000⁰⁰ - MGR David Cook - (970) 946-6650
 Wigwam River - Wigwam Club - Denver, CO \$225,000⁰⁰ - PART OWNER JACK FERGUSON -
 Ohio Creek - Castleton Ranch - Gunnison CO \$150,000⁰⁰ - MGR Lowell Inman - (970) 641-2190

This bid form continues on the next page...

BID FORM Continued

The Bidder shall complete and submit the following forms with the Bid: 1) EPA Form 6100-3 DBE Program Subcontractor Performance Form; 2) EPA Form 6100-4 DBE Program Subcontractor Utilization Form; and 3) MBE/WBE/DBE Compliance Evaluation Form. (The forms are located immediately after the Bid Form in the Project Manual or may be downloaded from the EPA's website at www.epa.gov/osbp/dbe_forms.htm) **Failure to fully complete and sign these forms may result in rejection of the Bid.**

The Bidder shall state the price bid in words and figures (written in ink or typed) for each pay item and the total bid. In case of conflict between words and figures, the words, unless obviously incorrect, shall govern. Bidder understands that the Owner reserves the right to award the total project or to reject any or all bids and to waive any informalities in the bidding. Bidder agrees that this Bid shall be good and will not be withdrawn for a period of 60 calendar days after the scheduled closing time for receiving bids.

All bids shall include all costs including but not limited to sales tax, use tax, permits, insurance, etc. The contractor on this project is defined by the Arkansas Revenue Laws as the user and is responsible for the appropriate taxes. There are NO provisions in this bid for a contractor to avoid taxes. The City of Fayetteville is not a tax exempt entity.

Respectfully submitted,

Firm Name:

ERC INC. (ELK RIVER CONSTRUCTION)

By:

DEANNA HOCKETT

Address:

P.O. Box 396

City:

PAGOSA SPRINGS

State:

COLORADO 81147

** Arkansas State Contractor's License Number:

APPLIED - TEST TAKEN 1/13/11

**** A State of Arkansas Contractor's License is not required to bid on the project; however, no contractor shall submit a bid prior to submitting application for licensure, and no construction contract shall be executed until the successful bidder has furnished an appropriate license issued by the State of Arkansas Contractor's Licensing Board. This project requires a five (5) percent bid bond at time of bid opening. After contract award, a one hundred (100) percent performance and payment bond is required along with proof of insurance before construction begins.**

End of Section 00 41 13

City of Fayetteville
Bid 11-15, Construction of Stream Restoration at Niokaska Creek in Sweetbriar Park

Statement of Disclosure (please submit with Bid)

ATTENTION: Please submit this form with your bid.

DISCLOSURE STATEMENT:

Bidder must disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Your response must disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official.

If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response.

This form must be completed and returned in order for your bid/proposal to be eligible for consideration.

PLEASE CHECK ONE OF THE FOLLOWING TWO OPTIONS, AS IT APPROPRIATELY APPLIES TO YOUR FIRM:

 X 1.) NO KNOWN RELATIONSHIP EXISTS

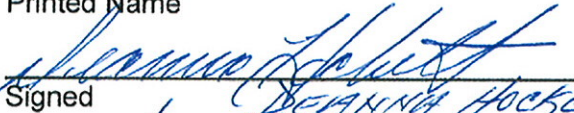
 N/A 2.) RELATIONSHIP EXISTS (Please explain)

 N/A

PLEASE FILL OUT THE SECTION BELOW AND SUBMIT THIS FORM WITH YOUR BID:

- 1.) I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein are accurate and true; and
- 2.) My organization shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.

ELK RIVER CONSTRUCTION ERC INC.
Printed Name


Signed DEANNA HOCKETT

1/10/11
Date

Bid 11-15, Addendum 1

**Bid 11-15, Construction – Stream Restoration at
Niokaska Creek in Sweetbriar Park**

City of Fayetteville – Purchasing Division
113 W. Mountain – Room 306
Fayetteville, AR 72701
Phone: 479.575.8220
E-Mail: aforen@ci.fayetteville.ar.us

Date: Thursday, December 30, 2010

To: All interested parties

From: Andrea Foren, CPPB, Purchasing Agent

Notice: This addendum is hereby made a part of the bid documents to the same extent as though it were originally included therein. Bidders should indicate their receipt of same in the appropriate blank listed herein. Failure to do so may subject vendor to disqualification. Addendum should be attached to the inside cover of the bidding documents, signed, and dated.

1. Attached are the minutes and sign-in sheet from the pre-bid meeting that was held on December 29, 2010.

Acknowledge Addendum #1:

Printed Name: DEANNA HOCKETT

Signature: Deanna Hockett

Title: Proc Sec Date: 1/4/11

Company: ERC INC (ELK RIVER CONSTRUCTION)



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS
PARKS AND RECREATION DEPARTMENT
113 West Mountain
Fayetteville, AR 72701
P (479) 444-3471 F (479) 521-7714

Pre-Bid Meeting
Bid #11-15, Construction of Stream Restoration at Niokaska Creek in Sweetbriar Park
December 29, 2010

Owner and Engineer

Owner - City of Fayetteville Project Manager	Carole Jones, P.E.	Ph: 444-3472
Owner - City of Fayetteville Storm Water Engineer	Sarah Wrede, E.I.	Ph: 575-8208
Engineer - Watershed Conservation Resource Center	Matt Van Eps, P.E.	Ph: 444-1916
Executive Director - Watershed Conservation Resource Center	Sandi Formica	Ph: 444-1916

Procedures

- Bonds (recorded at the Washington County courthouse by the Contractor) and insurance
- Necessary permits – 404, ADEQ and grading permits and SWPPP required; fees for city projects are waived and Project Manager or Engineer will prepare permit applications and SWPPP.
- Excavation safety measures, including materials and methods, required by 29 CFR 1926 Subpart P
- Location of underground facilities (1-800-482-8998, Arkansas One-Call System, Inc.)

Copies of documents

- Owner will provide Contractor with a minimum of two sets of drawings and specifications.

Contract Time

- 60 days total contract
- 45 days for substantial completion
- 15 additional days for final completion
- Work days are Monday through Friday unless approved by Park or Engineering Staff in advance.

Permits: Meet all state, local and federal requirements

- Contractor will be responsible for maintaining all erosion control and tree protection measures. Expect daily re-installation of some items especially in the park.
- Construction Site Notice for SWPPP must be posted on site at all times. Owner or Engineer will provide rain gauge and mail box to store SWPPP and inspection records. Engineer will be responsible for all SWPPP inspections and documentation.

Site-Visits and Project Milestones

- Site preparation, excavation, installation and construction of rock structures and site restoration shall be executed in sections to minimize disturbance to creek and surrounding properties.
- Tree protection fence and other erosion control measures must be in place prior to commencement of each section of work.
- Layout of structures
- Coordination of burial of existing electrical line with Ozarks Electric Cooperative

Project Specifics

- This project includes construction of a natural stream channel with specified geomorphic features, five major rock vane structures, bankfull benches constructed out of rock and wood materials with soil mattresses, and associated site work.
- Fayetteville is seeking a construction company with over ten years of experience building river restoration and streambank stabilization designs using a natural channel design approach that is specifically based on methods and techniques presented in Chapter 11 of the USDA Natural Resource Conservation Service National Engineering Handbook, Part 654, Chapter 11, (2007).



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS

A. 2
Bid #11-15 Elk River Construction, Inc.
Page 16 of 38

Bid 11-15, Addendum 2

**Bid 11-15, Construction – Stream Restoration at Niokaska Creek
In Sweetbriar Park**

City of Fayetteville – Purchasing Division
113 W. Mountain – Room 306
Fayetteville, AR 72701
Phone: 479.575.8220
E-Mail: aforen@ci.fayetteville.ar.us

Date: Tuesday, January 11, 2011

To: All interested parties

From: Andrea Foren, CPPB, Purchasing Agent

Notice: This addendum is hereby made a part of the bid documents to the same extent as though it were originally included therein. Bidders should indicate their receipt of same in the appropriate blank listed herein. Failure to do so may subject vendor to disqualification. Addendum should be attached to the inside cover of the bidding documents, signed, and dated.

1. The deadline to submit a bid has been revised to **Thursday, January 27, 2011**
before 2:00 PM, local time.

Acknowledge Addendum #2:

Printed Name: DEANNA HECKERT

Signature: [Signature]

Title: Pres. Sec.

Date: 1/11/11

Company: ERC INC. DBA Elk River

Construction

Fayetteville, AR: Time extension for Bid 11-15, Stream Restoration at Niokaska Creek in Sweetbriar Park
(Addendum 2)

From "Andrea Foren" <aforen@ci.fayetteville.ar.us>
To "Andrea Foren" <aforen@ci.fayetteville.ar.us>
Cc "Alison Jumper" <ajumper@ci.fayetteville.ar.us>, "Carole Jones" <cdjones@ci.fayetteville.ar.us>
Date Mon, 10 Jan 2011 17:14:35 -0600
Attachments Bid 11-15, Addendum 2.pdf [39.33 KB], Andrea Foren3.vcf [606 B]

Reference: Bid 11-15, Construction - Stream Restoration at Niokaska Creek in Sweetbriar Park
Deadline (revised per attached Addendum 2): Thursday, January 27, 2011 before 2:00 PM, local time

Attached is Addendum 2 in reference to Bid 11-15. This Addendum extends the deadline until Thursday, January 27, 2010. Please let me know if you have any questions.

Best,
Andrea

Andrea Foren, CPPB
City of Fayetteville, Purchasing Agent
113 W. Mountain
Fayetteville, AR 72701
Phone: (479) 575-8220
TDD (Telecommunications
Device for the Deaf): (479) 521-1316
aforen@ci.fayetteville.ar.us
www.accessfayetteville.org

 Please consider the environment before printing my e-mail.

OMB Control No: 2090-0030
 Approved: 05/01/2008
 Approval Expires: 01/31/2011



Environmental
 Protection Agency

Disadvantaged Business Enterprise Program
 DBE Subcontractor Performance Form

NAME OF SUBCONTRACTOR: <u>N/A</u>		PROJECT NAME <u>SWEETBRIAR PARK</u>
ADDRESS <u>N/A</u>		BID/PROPOSAL NO. <u>11-15</u>
TELEPHONE NO. <u>N/A</u>		E-MAIL ADDRESS <u>N/A</u>
PRIME CONTRACTOR NAME <u>ERC INC. / ELK RIVER CONSTRUCTION</u>		
CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME	PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR
<u>1</u>	<u>CONSTRUCTION - NOT ONE COMPANY WAS CLOSE ENOUGH TO BID OR DID NOT HAVE THE EQUIPMENT SIZE NEEDED</u>	<u>3 - 7,000</u>
Currently certified as an MBE or WBE under EPA's DBE Program? ☒ Yes ☐ No Signature of Subcontractor <u>DEANNA HOCKETT / PRES/Sec.</u> Date _____ Signature of Prime Contractor <u>N/A</u> Date _____		
Name Title <u>N/A</u>		

*Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



Environmental
 Protection Agency

OMB Control No: 2090-0030
 Approved: 05/01/2008
 Approval Expires: 01/31/2011

**Disadvantaged Business Enterprise Program
 DBE Subcontractor Utilization Form**

BID/PROPOSAL NO. <u>11-15</u>	PROJECT NAME <u>SWEETBRIAR PARK</u>
NAME OF PRIME BIDDER/PROPOSER <u>ERC INC / ELK RIVER CONSTRUCTION</u>	E-MAIL ADDRESS <u>ercinc@centurytel.net</u>
ADDRESS <u>P.O. Box 396 / DAGOSA SPGS, CO 81147</u>	
TELEPHONE NO. <u>(970) 731-2945</u>	FAX NO. <u>(970) 731-6265</u>

The following subcontractors ¹ will be used on this project:			
COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATE D DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?
<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).

<u>Deanna Hockett</u> Signature of Prime Contractor	<u>1/22/11</u> Date
<u>DEANNA HOCKETT</u> Print Name	<u>Pres / Sec.</u> Title

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

MBE/WBE/DBE COMPLIANCE EVALUATION FORM

(Bid Package Documentation)

Bidders are to complete this form and submit with the bid proposal. A condition for remaining in competition for award is the satisfactory completion of this form. The undersigned submits the following data with respect to the firm's efforts to meet the EPA's goal for MBE/WBE/DBE participation.

1. Name of Project: NOKASKA CREEK IN SWEETBRIAR PARK Project No: 11-15
2. Name of General Contractor: ERC INC. dba ELK RIVER CONSTRUCTION
3. MBE/WBE/DBE Firm: THERE WERE NONE POSITIVELY AVAILABLE
(Name) (Complete a separate form for each MBE/WBE/DBE to be used as a subcontractor)
N/A
(Address) (City, State, Zip Code)
N/A
(Phone Number) (Fax Number)
4. Describe Work to be performed by the MBE/WBE/DBE; provide dollar amount of the subcontract.
~~XXXX~~ N/A

DOCUMENTATION OF AFFIRMATIVE STEPS TAKEN TO OBTAIN MBE/WBE/DBE PARTICIPATION

5. Documentation that MBE/WBE/DBE quotes were solicited through direct mail and other advertising sources, documentation of follow-up action for firms not responding, and documentation of responses received (both positive and negative responses).
SOME COMPANIES WERE TOO FAR AWAY TO USE. OTHERS DID NOT HAVE THE EQUIPMENT NEEDED.
6. What sources were used to identify potential MBE/WBE/DBE firms. (Arkansas Highway and Transportation Department; Arkansas Economic Development Commission's Minority Business Development Division; U.S. Small Business Administration; other sources, please specify and provide documentation)
HTTP://WWW.EPA.GOV/OSBP/PDFS/570052a.pdf
7. Describe steps taken to divide work items into small tasks in an effort to maximize MBE/WBE/DBE participation.
TRIED TO USE MBE/WBE/DBE BUSINESS FOR MOBILIZATION - EQUIPMENT RENTALS - DUMP TRUCK WORK + SOME EXCAVATION.
8. List reasons for rejecting a MBE/WBE/DBE that indicated a desire to participate and/or submitted bids.
DID NOT REJECT, BASICALLY THEY HAD TO REJECT WORK DUE TO DISTANCE FROM BUSINESS OR NO AVAILABILITY OF EQUIPMENT

The undersigned hereby certified, having provided responses or documentation to the questions in the foregoing affirmative steps taken to obtain MBE/WBE/DBE participation, that they are true and correct to the best of his/her knowledge, information and belief.

Name of General Contractor: ERC INC. / ELK RIVER CONSTRUCTION

Signature: [Signature]

Title/Date: DRES / SEC. 11/19/11

A. 2
~~Bid #11-15 Elk River Construction, Inc.~~

A. 2
 Bid #11-15 Elk
 Page 21 of 38

1 = Construction

2 = Supplies

3 = Services

4 = Equipment

EPA FORM 5700-52A - (Approval Expires 01/31/11)

Carole Jones - RE: check for application

From: Gregory Crow <Gregory.Crow@arkansas.gov>
To: Andrea Foren <aforen@ci.fayetteville.ar.us>
Date: 1/27/2011 4:11 PM
Subject: RE: check for application

Yes. Elk River's application was received on January 20, 2011. It is an "application on file."

Greg Crow

Arkansas Contractors Licensing Board

From: Andrea Foren [mailto:aforen@ci.fayetteville.ar.us]
Sent: Thursday, January 27, 2011 4:07 PM
To: Gregory Crow
Cc: Andrea Foren; Carole Jones
Subject: check for application

Mr. Crowe,

Our project I spoke to you about bid today. The apparent low bidder is Elk River Construction (ERC, Inc.) out of Pagosa Springs, Colorado. Can you please confirm that they have applied for an Arkansas Contractor's License?

Thanks,
Andrea

Andrea Foren, CPPB
City of Fayetteville, Purchasing Agent
113 W. Mountain
Fayetteville, AR 72701
Phone: (479) 575-8220
TDD (Telecommunications
Device for the Deaf): (479) 521-1316
aforen@ci.fayetteville.ar.us
www.accessfayetteville.org

 Please consider the environment before printing my e-mail.

No virus found in this message.
Checked by AVG - www.avg.com
Version: 10.0.1204 / Virus Database: 1435/3406 - Release Date: 01/27/11

0004888

11-24

Office AU #

1210(8)

CASHIER'S CHECK

A. 2

BID # 15# 100806292

Page 23 of 38

ACCOUNT#: 4861-505758

ERC INC. *ELK RIVER CONSTRUCTION*
 Purchaser: DEANNA HOCKETT
 Purchaser Account: 5204528953
 Operator I.D.: uden2675 uden1946

January 22, 2011

PAY TO THE ORDER OF ***CITY OF FAYETTEVILLE, ARKANSAS***

Four thousand two hundred forty-one dollars and 25 cents

\$4,241.25

WELLS FARGO BANK, N.A.
 50 HARMAN PARK DR
 PAGOSA SPRINGS, CO 81147
 FOR INQUIRIES CALL (480) 394-3122

NOTICE TO PURCHASER--IF THIS INSTRUMENT IS LOST,
 STOLEN OR DESTROYED, YOU MAY REQUEST CANCELLATION
 AND REISSUANCE. AS A CONDITION TO CANCELLATION AND
 REISSUANCE, WELLS FARGO & COMPANY MAY IMPOSE A
 FEE AND REQUIRE AN INDEMNITY AGREEMENT AND BOND.

VOID IF OVER US \$ 4,241.25

NON-NEGOTIABLE

Purchaser Copy

F5004 10408090

PRINTED ON NEW WITH WATER MARK TO HIGH TO VIEW FOR ADDITIONAL SECURITY FEATURES SEE BACK

0004888

11-24

Office AU #

1210(8)

CASHIER'S CHECK

0488806292

Operator I.D.: uden2675 uden1946

ERC INC. *ELK RIVER CONSTRUCTION*

January 22, 2011

PAY TO THE ORDER OF ***CITY OF FAYETTEVILLE, ARKANSAS***

Four thousand two hundred forty-one dollars and 25 cents

\$4,241.25

WELLS FARGO BANK, N.A.
 50 HARMAN PARK DR
 PAGOSA SPRINGS, CO 81147
 FOR INQUIRIES CALL (480) 394-3122

VOID IF OVER US \$ 4,241.25

Richard Levy
 CONTROLLER

⑈0488806292⑈ ⑆121000248⑆4861 505758⑈

Security Features Included. Details on Back.

AGREEMENT

BETWEEN CITY OF FAYETTEVILLE AND CONTRACTOR

THIS AGREEMENT is dated as of the ____ day of _____ in the year 2011 by and between the City of Fayetteville, Arkansas (hereinafter called CITY OF FAYETTEVILLE) and Elk River Construction, Inc. (herein after called CONTRACTOR).

CITY OF FAYETTEVILLE and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents.

The work generally consists of the stream restoration at Niokaska Creek and associated site work in **Sweetbriar Park** and surrounding properties and all items indicated in the Drawings and Specifications. The work does not include procurement of materials for the project.

Article 2. ENGINEER.

The Project has been designed by the Watershed Conservation Resource Center under the direct supervision of:

City of Fayetteville Parks and Recreation Department
1455 South Happy Hollow Road
Fayetteville, Arkansas 72701

and will be hereinafter called ENGINEER and who is to act as CITY OF FAYETTEVILLE's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract documents. A representative from the Parks and Recreation Department will be hereinafter called PARKS AND RECREATION DEPARTMENT PROJECT MANAGER and who is to act as CITY OF FAYETTEVILLE's representative, assume all duties and responsibilities, and have the rights and authority assigned to PROJECT MANAGER in the Contract Documents in connection with completion of the Work in accordance with the Contract documents.

Article 3. CONTRACT TIME.

3.1. The Work for Construction of Stream Restoration at Niokaska Creek in Sweetbriar Park shall be substantially completed within 45 consecutive calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraphs 14.07.B & C of the General Conditions within 60 consecutive calendar days after the date when the Contract Time commences to run.

3.2. *Liquidated Damages.* CITY OF FAYETTEVILLE and CONTRACTOR recognize that time is of the essence of the Agreement and that CITY OF FAYETTEVILLE will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus and extensions thereof allowed in accordance with Article 12 of the General

Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by CITY OF FAYETTEVILLE if the Work is not completed on time. Accordingly, instead of requiring any such proof, City of Fayetteville and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay CITY OF FAYETTEVILLE Two hundred and fifty dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by CITY OF FAYETTEVILLE, CONTRACTOR shall pay CITY OF FAYETTEVILLE Two hundred and fifty dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

CITY OF FAYETTEVILLE shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined from the following Schedule of Values pursuant to paragraphs 4.1 and 4.2 below:

4.1. For all Work other than Unit Price Work, an amount equal to the sum of the established lump sums for each separately identified item of Lump Sum Work; and

4.2. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 4.2.

PAYMENT ITEMS

Elk River Construction, Inc.					
ITEM#	DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	TOTAL
1	Mobilization (not to exceed 5% of project bid)	L.S.	1.00	\$3,000.00	\$3,000.00
2	Bonds and insurance	L.S.	1.00	\$4,275.00	\$4,275.00
3	Excavation Safety per 29 CFR 1926 Subpart P - Occupational Safety and Health Administration Standards - Excavations	L.S.	1.00	\$2,000.00	\$2,000.00
4	Site preparation - including clearing and grubbing	L.S.	1.00	\$3,500.00	\$3,500.00
5	Construction of J-Hook Rock Vane - complete in place per specifications and drawings	E.A.	5.00	\$3,000.00	\$15,000.00
6	Construction of Cross Vane - complete in place per specifications and drawings	E.A.	2.00	\$4,000.00	\$8,000.00
7	Construction of Short Rock Vane - complete in place per specifications and drawings	E.A.	2.00	\$2,075.00	\$4,150.00
8	Construction of Rock and Wood Toe Bench - complete in place per specifications and drawings	L.F.	400.00	\$37.50	\$15,000.00
9	Construction of Rock Toe Bench - complete in place per specifications and drawings	L.F.	270.00	\$16.67	\$4,500.00
10	Construction of Soil Mattress Layer - complete in place per specifications and drawings	L.F.	1700.00	\$2.06	\$3,500.00
11	Construction of Stacked Rock Bench - complete in place per specifications and drawings	L.F.	100.00	\$19.00	\$1,900.00
12	Electrical Utility Trenching, Conduit Burial, and Backfill - including dewatering, installation of 4-inch conduit, backfill and coordination with Ozarks Electric Cooperative	L.S.	1.00	\$2,500.00	\$2,500.00
13	Construction of Temporary Channel Drop Vane - complete in place per specifications and drawings	E.A.	3.00	\$1,000.00	\$3,000.00
14	Stream Channel Excavation, Shaping and Grading	C.Y.	1,810.00	\$2.49	\$4,500.00
15	Placement of Coarse Fill	C.Y.	282.00	\$8.87	\$2,500.00
16	Construction of Cut-off Sills (not associated with J-Hook Rock Vanes or Cross Vanes) - complete in place per drawings	L.F.	150.00	\$23.33	\$3,500.00
17	Excavation and loading of excess gravel for off-site removal by Others	C.Y.	500.00	\$3.00	\$1,500.00
18	Site restoration - including placement of topsoil & fescue sod	S.F.	1000.00	\$2.50	\$2,500.00
TOTAL CONTRACT AMOUNT					\$84,825.00

As provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03.B of the General Conditions.

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions or as modified in the Supplementary Conditions. Applications for Payment will be processed by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER as provided in the General Conditions.

5.1. *Progress Payments.* CITY OF FAYETTEVILLE shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, on or about the 1st day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2 below and SC-14.02 . All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions and based on the number of units completed in the case of Unit Price Work or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in case, less the aggregate of payments previously made and less such amounts as PARKS AND RECREATION DEPARTMENT PROJECT MANAGER shall determine, or CITY OF FAYETTEVILLE may withhold, in accordance with paragraphs 14.02.B.5 & 14.02.D of the General Conditions.

90 percent of Work completed (with the balance of 10 percent being retainage), If Work has been 50 percent completed as determined by the PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, and if the character and progress of the Work have been satisfactory to CITY OF FAYETTEVILLE and PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, CITY OF FAYETTEVILLE, on recommendation of PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the Work completed.

100 percent of materials and equipment not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to CITY OF FAYETTEVILLE as provided in paragraphs 14.02.B.5 & 14.02.D of the General Conditions. That is, if any such items are setup for that type payment in the Specifications.

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 98 percent of the Contract Price (with the balance of 2 percent being retainage), less such amounts as PARKS AND RECREATION DEPARTMENT PROJECT MANAGER shall determine, or CITY OF FAYETTEVILLE may withhold, in accordance with paragraphs 14.02.B.5 & 14.02.D of the General Conditions.

5.3 *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraphs 14.07.B & C of the General Conditions, CITY OF FAYETTEVILLE shall pay the remainder of the Contract Price as recommended by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER as provided in said paragraphs 14.07.B & C.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce CITY OF FAYETTEVILLE to enter into this Agreement CONTRACTOR makes the following representations:

6.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 7) and the other related data identified in the Bidding Documents including "technical data."

6.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.

6.3. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

6.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site which have been identified in the Supplementary Conditions as provided in paragraph 4.02.A of

the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.02 of the General Conditions.

CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that CITY OF FAYETTEVILLE and PARKS AND RECREATION DEPARTMENT PROJECT MANAGER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

6.5. CONTRACTOR is aware of the general nature of work to be performed by CITY OF FAYETTEVILLE and others at the site that relates to the Work as indicated in the Contract Documents.

6.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.7. CONTRACTOR has given PARKS AND RECREATION DEPARTMENT PROJECT MANAGER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER is acceptable to CONTRACTOR and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between CITY OF FAYETTEVILLE and CONTRACTOR concerning the Work consist of the following:

- 7.1. This Agreement (pages 1 to 8, inclusive).
- 7.2. Performance and Payment Bonds, (Exhibits A and B respectively).
- 7.3. Certificates of Insurance, (Exhibit C).
- 7.4. Documentation submitted by CONTRACTOR prior to Notice of Selection (Exhibit D).
- 7.5. General Conditions (pages 1 to 42, inclusive).
- 7.6. Supplementary Conditions (pages 1 to 13 inclusive).
- 7.7. Specifications consisting of Divisions 1 through 31 as listed in table of contents thereof.
- 7.8. Addenda numbers 1 and 2, inclusive.
- 7.9. One set of drawings (not attached hereto) consisting of: a cover sheet and additional sheets numbered two through fourteen with each sheet bearing the following general title: **Construction of Stream Restoration at Niokaska Creek in Sweetbriar Park.**
- 7.10. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:
 - 7.10.1. Notice to Proceed
 - 7.10.2. All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

The documents listed in paragraphs 7.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

Article 8. MISCELLANEOUS.

- 8.1. Terms used in the Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.3. CITY OF FAYETTEVILLE and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

8.4. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon stricken provision or part thereof with a valid and enforceable provision that comes as close as possible expressing the intention of the stricken provision.

8.5. Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

8.6. Freedom of Information Act. City contract and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, CONTRACTOR will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. seq.) Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

8.7. MBE/WBE Requirements. The CONTRACTOR, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to CITY OF FAYETTEVILLE and PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, and one counterpart has been delivered to CONTRACTOR. All portions of the Contract Documents have been signed, initialed, or identified by CITY OF FAYETTEVILLE and CONTRACTOR or identified by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER on their behalf.

This Agreement will be effective on _____, 2011 (which is the Effective Date of The Agreement).

CITY OF FAYETTEVILLE:

CONTRACTOR

By: _____
Mayor

By: *Shannon Schmitt*

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

*Attest _____

* If a Corporation, attest by the Secretary.

Address for giving notices

Address for giving notices

P.O. Box 396
PAGOSA SPRINGS, CO 81147

(If CITY OF FAYETTEVILLE is a public body, attach License No. _____ evidence of authority to sign and resolution or other documents Agent for service of process: authorizing execution of Agreement.)

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)

MINUTES OF SHAREHOLDER MEETING FOR ERC INC.

The annual meeting of shareholders of ERC, Inc. was called to order at 7:00 a.m. on January 16th 1998. In attendance were Dale Hockett and Deanna Hockett who are the incorporators and directors of the corporation.

The decision was made to leave contributed inventory, equipment, and supplies in the following amounts and proportions, and accordingly stock left as follows:

Deanna Hockett	\$2000.00	66.6% of Stock
Dale Hockett	\$1,000.00	33.3% of Stock

The share holders stock certificates will be left as follows

Deanna Hockett	Stock Certificate No. 1	200 Shares
Dale Hockett	Stock Certificate No. 2	100 Shares

All other capital contribution to the corporation shall be reflected not in the form of stock, but in the form of a promissory note from the corporation back to the individuals.

Directors will remain the same, and are as follows:

Deanna Hockett
Dale Hockett

Officers were re-elected as follows:

Deanna Hockett	President / Secretary
Dale Hockett	Vice-President / Treasurer

All banking will remain the same unless the accumulated amounts become too great to remain in one bank, at that time a new account will be started at The Bank of the Southwest.

Insurances will remain the same.

There being no further business, the meeting was adjourned at approximately 8:35 a.m.

Dated this 16th day of January 1998.

Respectfully submitted,


Deanna Hockett


Dale Hockett

ARTICLES OF INCORPORATION
OF
ERC, INC.

FILED COPY

ARTICLE I.

NAME: The name of the corporation is ERC, Inc.

761002315 M \$50.00
SECRETARY OF STATE
01-05-96 13:31

ARTICLE II.

PURPOSE: The purpose for which this corporation is organized is for engaging in any lawful business for which corporations may be incorporated under the laws of the State of Colorado as they may be amended from time to time.

ARTICLE III.

INITIAL BUSINESS: The corporation initially intends to be involved in providing heavy equipment and construction services to S.W. Colorado.

ARTICLE IV.

AUTHORIZED CAPITAL: The corporation shall have the authority to issue 50,000 shares of no par value common stock.

ARTICLE V.

STATUTORY AGENT: The name and address of the initial registered agent is Deanna Hockett, and the initial registered office of the corporation is P.O. Box 396, 508 Deer Trail, Pagosa Springs, CO 81147.

ARTICLE VI.

KNOWN PLACE OF BUSINESS: The known place of business of the corporation is 508 Deer Trail, Pagosa Springs, CO 81147.

ARTICLE VII.

BOARD OF DIRECTORS: The initial board of directors shall consist of two directors. The persons who are to serve as directors until the first annual meeting of the shareholders or until their successors are elected and qualified:

Deanna Hockett
P.O. Box 396
508 Deer Trail
Pagosa Springs, CO 81147

Dale Hockett
P.O. Box 396
508 Deer Trail
Pagosa Springs, CO 81147

ARTICLE VIII.

INCORPORATORS: The names and addresses of the incorporators of the corporation are:

Deanna Hockett
P.O. Box 396
508 Deer Trail
Pagosa Springs, CO 81147

Dale Hockett
P.O. Box 396
508 Deer Trail
Pagosa Springs, CO 81147

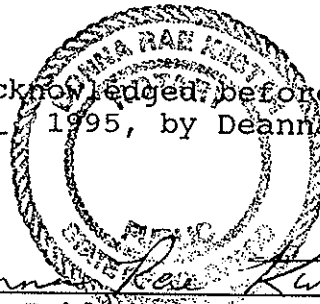
IN WITNESS WHEREOF, we have hereunto set our hands this 29th
_____ day of DECEMBER, 1995.

Deanna Hockett
Deanna Hockett

Dale Hockett
Dale Hockett

STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

29th The foregoing instrument was acknowledged before me this _____
day of December, 1995, by Deanna Hockett and
Dale Hockett.



Donna Rae Kust
Notary Public
My Commission expires: 12/29/97

The undersigned consents to the appointment as the initial registered agent of ERC, Inc..

Deanna Hockett
Deanna Hockett

12-29-95
Date

City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)
All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us

Vendor #: 20751		Elk River Construction		Fob Point:	
Address:		700 D. Honeybee Place			
City:	Pagosa Springs	State:	CO	Zip Code:	81147
Requester:	Carole Jones, Park Planner		Ship to code:		
			Requester's Employee #:	3003	
Requisition No.:		Date:	2/4/2011	Expected Delivery Date:	
P.O Number:		Mail Yes: ___	No: ___	Quoted Attached Yes: ___	No: ___
Division Head Approval:	<i>[Signature]</i>				
Extension:	472				
Project/Subproject #	09025.0901				
Inventory #					
Fixed Asset #					

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers
1	Construction of Stream Restoration at Niokaska Creek in Sweetbriar Park	1	1	LS	\$82,219.50	4470.9470.5315.00
2	Construction of Stream Restoration at Niokaska Creek in Sweetbriar Park	1	1	LS	\$2,605.50	2250.9256.5806.00
3					\$0.00	
4					\$0.00	
5					\$0.00	
6					\$0.00	
7					\$0.00	
8					\$0.00	
9					\$0.00	
10					\$0.00	
*	Shipping/Handling		Lot		\$0.00	

Subtotal:	\$84,825.00
Tax:	
Total:	\$84,825.00

Special Instructions:
Tax is included in the bid price.

Approvals: *[Signature]*

Department Director: _____
Budget Manager: _____
Utilities Manager: _____
Finance & Internal Services Director: _____
Dispatch Manager: _____
Purchasing Manager: _____
IT Manager: _____
Other: _____

**City of Fayetteville, Arkansas
Budget Adjustment Form**

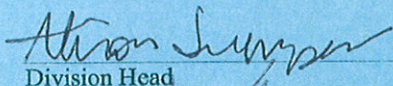
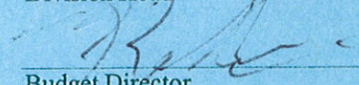
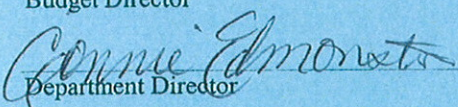
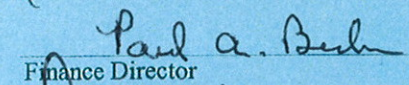
A. 2
Bid #11-15 Elk River Construction, Inc.
Page 37 of 38

Budget Year	Department: Citywide Division: Citywide Program: Sales Tax Capital Improvements	Date Requested 2/4/2011	Adjustment Number
-------------	---	--------------------------------	-------------------

Project or Item Added/Increased: To increase funding for the Construction of Stream Restoration at Niokaska Creek in Sweetbriar Park in the amount of \$9,066.	Project or Item Deleted/Reduced: Reduce funding in the Stormwater Quality Mgmt/Nutrient Reduction by \$4,170 and allocate funding from the NE Park Land Dedication Quadrant of \$4,896.
Justification of this Increase: This funding is to assist in the construction of the stream restoration.	Justification of this Decrease: This adjustment is administrative: There are adequate funds in these accounts.

Increase Budget								
Account Name	Account Number				Amount	Project Number		
Park Improvements	2250	9256	5806	00	4,896	09025	0901	
Contract Services	4470	9470	5315	00	4,170	09025	0901	

Decrease Budget								
Account Name	Account Number				Amount	Project Number		
Greenspace Fees - NE	2250	0925	4419	01	4,896	09025	0901	
Bridge & Drainage Improve	4470	9470	5817	00	4,170	02097	1	

	2/4/2011
Division Head	Date
	2-4-11
Budget Director	Date
	2/4/2011
Department Director	Date
	2-4-2011
Finance Director	Date
	2-4-11
Chief of Staff	Date
	2/4/11
Mayor	Date

V.090403

Budget & Research Use Only					
Type:	A	B	C	D	E
Requested By					
General Ledger Date					
Posted to General Ledger	Initial		Date		
Posted to Project Accounting	Initial		Date		

City of Fayetteville Staff Review Form

A. 3
 Bid #11-17 ADS
 Environmental Services LLC
 Page 1 of 8

**City Council Agenda Items
 and
 Contracts, Leases or Agreements**

15-Feb-11

City Council Meeting Date
 Agenda Items Only

David Jurgens

Submitted By

Utilities Capital Projects

Division

Utilities

Department

Action Required:

Approval of the purchase of seventeen sewer flow monitors for permanent installation in the sewer collection system from ADS LLC for \$124,969.00 plus \$11,559.63 tax, Bid 11-17.

\$ 136,528.63

Cost of this request

\$ 1,489,405.54

Category / Project Budget

Wastewater Sys Improv Project

Program Category / Project Name

4480.9480.5815.00

Account Number

\$ -

Funds Used to Date

Water and Wastewater

Program / Project Category Name

02133.0215

Project Number

\$ 1,489,405.54

Remaining Balance

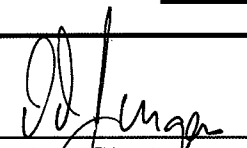
Water and Sewer

Fund Name

Budgeted Item

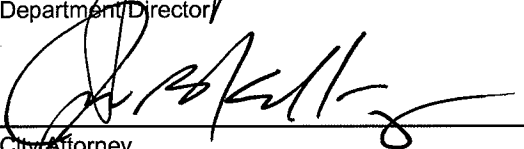
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Budget Adjustment Attached

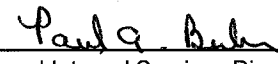
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 Department Director
28 Jan 11
Date

Previous Ordinance or Resolution #

Original Contract Date:


 City Attorney
1-31-11
Date

Original Contract Number:


 Finance and Internal Services Director
1-31-2011
DateReceived in City
Clerk's Office



 Chief of Staff
1-31-11
DateReceived in
Mayor's Office

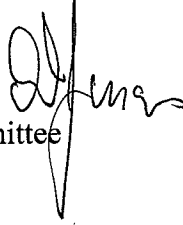

 Mayor
2/1/11
Date

Comments:

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director
Fayetteville Water and Sewer Committee



Date: January 28, 2011

Subject: Purchase of seventeen sewer flow monitors from ADS LLC for \$124,969.00 plus tax.

RECOMMENDATION

Staff recommends approval of the purchase of seventeen sewer flow monitors for permanent installation in the sewer collection system from ADS LLC for \$124,969.00 plus \$11,559.63 tax.

BACKGROUND

The information provided by a sewer flow monitoring system is vital to identifying numerous, otherwise invisible problems in the sewer collection system. Because over 95% of the sewer pipes are non-pressurized gravity flow pipes, they are subjected to numerous influences which can cause extraneous water to get in, sewage to get out, and blockages due to hundreds of sources. The need for this type of system has been validated in countless studies in the City and throughout the country.

DISCUSSION

The telemetered wastewater flow monitoring system will consist of seventeen permanently installed open channel sewer flow monitors. These monitors will be connected to the City's SCADA system through ethernet radios or existing telephone lines to a computer at the Noland Wastewater Treatment Facility. The information will be used to evaluate both dry weather flows during normal conditions as well as wet weather flows during storm events. The flow monitoring system will enable the City to maximize the wet weather storage capabilities at both the Noland and West Side Wastewater Treatment Facilities as an ongoing requirement to maintain compliance with the NPDES discharge permits.

Four bids were received on January 26, 2011.

ITT Analytics	\$ 30,341.85 (did not meet specification)
ADS LLC	\$124,969.00 (lowest responsive bid)
Hach Company	\$181,800.00
ISCO Teledyne	\$185,934.13

The ITT Analytics bid must be rejected for failure to meet specifications in multiple critical areas. Primarily, the proposed ultrasonic depth sensor is 4.0" high, maximum 0.88" specified. ADS LLC equipment meets the specified requirements.

BUDGET IMPACT

Funds are available within the Wastewater System Improvement Project budget.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #11-17 AND AUTHORIZING THE PURCHASE OF SEVENTEEN (17) SEWER FLOW MONITORS FROM ADS ENVIRONMENTAL SERVICES LLC IN THE AMOUNT OF \$136,528.63 FOR INSTALLATION IN THE CITY SEWER COLLECTION SYSTEM

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #11-17 and authorizes the purchase of seventeen (17) sewer flow monitors from ADS Environmental Services LLC in the amount of \$136,528.63 for installation in the city sewer collection system.

PASSED and APPROVED this 15th day of February, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer



BID: 11-17
1/26/2011
2:00 PM
CITY OF FAYETTEVILLE

Bid 11-17, Sewer Flow Monitors

BIDDER	Manufacturer	Model	Total Bid Price
1 ADS, LLC	ADS Environmental Services LLC	FlowShark Triton	\$124,969.00
2 Hach Company	Hach Company	930 or 930T	\$161,400.00 (Land Line) \$181,800.00 (Wireless)
3 ISCO Teledyne	ISCO	2150/2110	\$185,933.46 185,934.13
4 ITT Analytics - Global Water	Did Not Meet Specifications		

***NOTICE:** Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED: P Vice A Foren 1/26/11
P. VICE, PURCH MGR WITNESS DATE



A. 3
Bid #11-17 ADS
City of Fayetteville, Arkansas
Purchasing Division – Room 306
113 W. Mountain
Fayetteville, AR 72701
Phone: 479.575.8220
TDD (Telecommunication Device for the Deaf): 479.521.1316

INVITATION TO BID

INVITATION TO BID: BID 11-17, Sewer Flow Monitors

DEADLINE: Wednesday, January 26, 2011 at 2:00 PM, local time

DELIVERY LOCATION: Room 306 – 113 W. Mountain, Fayetteville, AR 72701

PURCHASING AGENT: Andrea Foren, CPPB, aforen@ci.fayetteville.ar.us, 479.575.8220

DATE OF ISSUE AND ADVERTISEMENT: Tuesday, January 11, 2011

INVITATION TO BID BID 11-17, Sewer Flow Monitors

No late bids will be accepted. Bids shall be submitted in sealed envelopes labeled "Bid 11-17, Sewer Flow Monitors" with the name and address of the bidder.

All bids shall be submitted in accordance with the attached City of Fayetteville specifications and bid documents attached hereto. Each bidder is required to fill in every blank and shall supply all information requested; failure to do so may be used as basis of rejection.

The undersigned hereby offers to furnish & deliver the articles or services as specified, at the prices & terms stated herein, and in strict accordance with the specifications and general conditions of bidding, all of which are made a part of this offer. This offer is not subject to withdrawal unless upon mutual written agreement by the Proposer/Bidder and City Purchasing Manager.

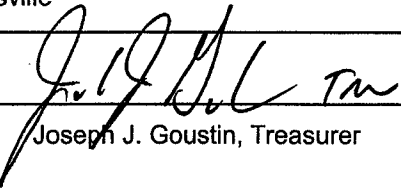
Name of Firm: ADS LLC

Contact Person: Kirk Jones Title: Business Development Manager

E-Mail: kjones@idexcorp.com Phone: 512-228-6001

Business Address: 4940 Research Drive

City: Huntsville State: Alabama Zip: 35805

Signature:  Date: 1/25/11

Joseph J. Goustin, Treasurer

City of Fayetteville
Bid 11-17, Sewer Flow Monitors
Bid Form (Page 1 of 2)

***GUARANTEED DELIVERY DATE:** 30 day from receipt of order.
F.O.B. Fayetteville West Side Wastewater Treatment Plant, 15 South Broyles Road, Fayetteville, AR 72701

Line Item	Location	Pipe Diameter(s) (Inches)	Channels	Bid Price
001	2000 Sunshine Rd	15	Single	\$ 6,300.00
002	2081 County Rd 877	24	Single	\$ 6,300.00
003	WL-4, Hamestring LS	48	Single	\$ 6,300.00
004	Quality Lane	36	Single	\$ 6,300.00
005	North Street	24	Single	\$ 6,300.00
006	3600 N Gregg Ave	15 & 16	Dual	\$ 10,767.25
007	3770 N Mall Ave	30	Single	\$ 6,300.00
008	2911 N Crossover Rd	12 & 18	Dual	\$ 10,767.25
009	3016 Summer Shade Dr	18	Single	\$ 6,300.00
010	Noland Gate	24 & 24	Dual	\$ 10,767.25
011	Noland 42	42	Single	\$ 6,300.00
012	Noland 36	36	Single	\$ 6,300.00
013	Mally Wagon LS, Include 50' of extra cable for each sensor	18	Single	\$ 6,300.00
014	Hannah's	30 & 42	Dual	\$ 10,767.25
015	LS-12, Farmington LS	21	Single	\$ 6,300.00
016	WL-3, Porter	24	Single	\$ 6,300.00
017	Hannah's #2	30	Single	\$ 6,300.00

City of Fayetteville
Bid 11-17, Sewer Flow Monitors
Bid Form (Page 2 of 2)

Please Specify for Units Bid:

***MANUFACTURER:** ADS Environmental Services LLC **MODEL:** FlowShark Triton

TOTAL BID PRICE: \$ 124,969.00
(Sum of Items 1-17)

EXECUTION OF BID -

Bidders are requested to indicate by check mark or "Yes/No" on each line of the Technical Specifications the compliance of the item bid. Actual specification of any deficient item must be noted on the bid sheet or separate attachment. If specifications of item bid differ from provided literature, deviation must be documented and certified by the manufacturer as a regular production option.

Upon signing this Bid, the bidder certifies that:

1. He/she has read and agrees to the requirements set forth in this proposal, including specifications, terms, standard conditions, and any pertinent information regarding the articles being bid on.
2. Unless otherwise noted and explained, the unit bid and listed meets or exceeds all of these requirements as specified by The City of Fayetteville.
3. The Bidder can and will comply with all specifications and requirements for delivery, documentation and support as specified herein.

Unsigned bids will be rejected. Items marked * are mandatory for consideration.

***NAME OF FIRM:** ADS LLC
Purchase Order/Payments shall be issued to this name

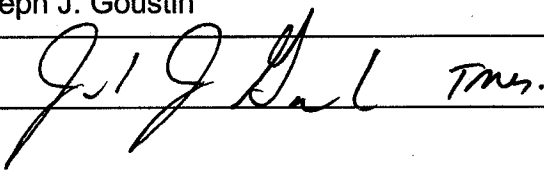
***BUSINESS ADDRESS:** 4940 Research Drive

***CITY:** Huntsville ***STATE:** Alabama ***ZIP:** 35805

***PHONE:** 512-228-6001 (Kirk Jones) **FAX:** 256-430-6580

***E-MAIL:** kjones@idexcorp.com

***BY: (PRINTED NAME)** Joseph J. Goustin

***AUTHORIZED SIGNATURE:** 

***TITLE:** Treasurer

City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)

All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us

Requisition No.:	Date: A. 3
P.O Number:	1/28/2011 Bid #11-17 ADS
	Expected Delivery Date: Environmental Services LLC
	ASAP Page 8 of 8

Vendor #:	Vendor Name: ADS LLC	Mail Yes: No: X
-----------	----------------------	-----------------

Address: 4940 Research Drive	Fob Point: 15 S. Broyles, Fayetteville, AR 72704	Taxable Yes: X No:	Quotes Attached Yes: No:
------------------------------	--	--------------------	--------------------------

City: Huntsville	State: AL	Zip Code: 35805	Ship to code:	Divison Head Approval:
------------------	-----------	-----------------	---------------	------------------------

Requester: David Jurgens	Requester's Employee #: 490	Extension: 330
--------------------------	-----------------------------	----------------

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Sewer Flow Monitors Bid 11-17	1	LS	124,969.00	124,969.00	4480.9480.5815.00	2133.0215		
2					\$0.00				
3					\$0.00				
4					\$0.00				
5					\$0.00				
6					\$0.00				
7					\$0.00				
8					\$0.00				
9					\$0.00				
10					\$0.00				
*	Shipping/Handling		Lot		\$0.00				

Special Instructions:

Bid 11-17

Subtotal: \$124,969.00
Tax: \$11,559.63
Total: \$136,528.63

Approvals:

Mayor: _____ Department Director: _____ Purchasing Manager: _____
Finance & Internal Services Director: _____ Budget Manager: _____ IT Manager: _____
Dispatch Manager: _____ Utilities Manager: _____ Other: _____

City of Fayetteville Staff Review Form

A. 4
Police Recording System
Page 1 of 4City Council Agenda Items
and
Contracts, Leases or Agreements

2/15/2011

City Council Meeting Date
Agenda Items OnlyGreg Tabor
Submitted ByPatrol
DivisionPolice
Department

Action Required:

Approval of a budget adjustment moving unused CIP project funds from the Police Recording System project to the Police Building Remodel project in the amount of \$43,000.

\$ 43,000.00
Cost of this request
4470.9470.5400.00
4470.9470.5804.00
Account Number
02046.1
02047.1101
Project Number

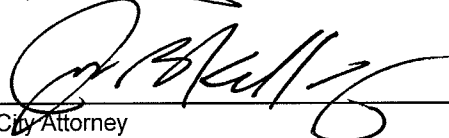
\$ 40,695.00
Category / Project Budget
\$ -
Funds Used to Date
\$ 40,695.00
Remaining Balance

Police Building Remodel
Program Category / Project Name
Capital
Program / Project Category Name
Sales Tax Cap Imp
Fund Name

Budgeted Item ☒Budget Adjustment Attached ☒

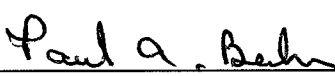
Department Director
1-28-11
Date

Previous Ordinance or Resolution #


City Attorney
1-28-11
Date

Original Contract Date:

Original Contract Number:


Finance and Internal Services Director
1-28-2011
Date

Received in City Clerk's Office 01-28-11A11:14 RCVD


Chief of Staff
1-31-11
DateReceived in
Mayor's Office

Mayor
1/31/11
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and Member of the City Council

From: Greg Tabor, Chief of Police 

Date: January 27, 2011

Subject: Budget Adjustment for Police Building Remodel in the amount of \$43,000

PROPOSAL:

Currently, Capital Improvements Program (CIP) funds are budgeted for the replacement of the Police Recording System in the amount of \$43,000. These funds will not be spent because the Washington County Department of Emergency Management purchased a new Recording System for use in our Central Dispatch Division. Staff proposes to move these unused funds to the Police Building Remodel project for the upstairs renovation/expansion of the briefing room, squad room, supervisor offices, and locker rooms.

RECOMMENDATION:

Staff recommends approval of a budget adjustment moving unused CIP project funds from the Police Recording System project to the Police Building Remodel project in the amount of \$43,000

BUDGET IMPACT:

None. Reallocates existing budgeted funds from one project to another.

RESOLUTION NO. _____

A RESOLUTION APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$43,000.00 MOVING UNUSED FUNDS DESIGNATED FOR THE POLICE RECORDING SYSTEM TO THE POLICE BUILDING REMODELING PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached as Exhibit "A", in the amount of \$43,000.00 moving unused funds designated for the police recording system to the police building remodeling project.

PASSED and APPROVED this 15th day of February, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

**City of Fayetteville, Arkansas
Budget Adjustment Form**

A. 4
Police Recording System
Page 4 of 4

Budget Year 2011	Department: Project Accounting Division: Citywide Program: Sales Tax Capital Improvements	Request Date 2/15/2011	Adjustment Number
--------------------------------	---	--------------------------------------	--------------------------

JUSTIFICATION TO INCREASE PROJECT / ITEM:

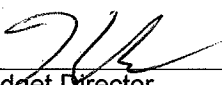
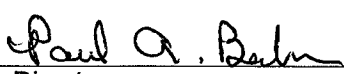
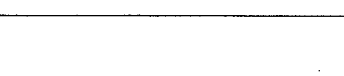
Increase expense budget for the Police Building Improvements Upstairs Remodel subproject.

JUSTIFICATION TO DECREASE PROJECT / ITEM (OR RECOGNIZING REVENUE):

Unused CIP project budget from the Police Recording System in the 2010 budget/cip. The Police Recording System was purchased for us by the Washington County Department of Emergency Management.



Account Name	Account Number	Increase Budget	Decrease Budget	Project.Sub Number
Building Costs	4470.9470.5804.00	43,000		02047 . 1101
Fixed Assets	4470.9470.5801.00		43,000	08014 . 1
TOTAL		<u>43,000</u>	<u>43,000</u>	

Division Head  Budget Director  Department Director  Finance Director  Chief of Staff  Mayor 	Date 1-28-11 Date 1-28-11 Date 1-28-2011 Date Date Date	Requested By  wnewman Budget & Research Use Only Type: A B C <u>D</u> E Description: _____ 0 General Ledger Date _____ Posted to General Ledger Initial _____ Date _____ Posted to Project Accounting Initial _____ Date _____
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City of Fayetteville Staff Review Form

A. 5
Ogden Insurance Agency
Donation Revenue
Page 1 of 4

**City Council Agenda Items
and
Contracts, Leases or Agreements**

February 15, 2011
City Council Meeting Date
Agenda Items Only

David Dayringer
Submitted By

Fire
Division

Fire
Department

Action Required:

A resolution approving a budget adjustment in the amount of \$100.00 to recognize donation revenue from Ogden Insurance Agency to be allocated for funding of the Fayetteville Fire Department's annual employee service awards event.

\$ -	\$ -	Donations - Fire
Cost of this request	Category / Project Budget	Program Category / Project Name
1010.3020.5329.00	\$ -	Donations
Account Number	Funds Used to Date	Program / Project Category Name
06029 / 1	\$ -	General
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐Budget Adjustment Attached ☒

[Signature]
Department Director

1/28/11
Date

Previous Ordinance or Resolution # _____

[Signature]
City Attorney

1-28-11
Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Behr
Finance and Internal Services Director

1-31-2011
Date

Received in City Clerk's Office 01-28-11 P01:37 RCVD

Kim G

[Signature]
Chief of Staff

1-31-11
Date

Received in
Mayor's Office



[Signature]
Mayor

2/1/11
Date

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

From: David Dayringer, Fire Chief

Date: February 15, 2011

Subject: Recognition and acceptance of a donation to the Fayetteville Fire Department

PROPOSAL:

Each year, the City of Fayetteville Fire Department receives donations from various businesses and private donors to support the department's employee recognition program. The funds are typically utilized to cover expenses associated with an employee service awards banquet, during which the firefighters are honored and recognized for achievements which took place throughout the year.

RECOMMENDATION:

Staff recommends a resolution approving the acceptance of a \$100.00 donation from Ogden Insurance Agency to the Fayetteville Fire Department and a budget adjustment to recognize the aforementioned donation revenue.

BUDGET IMPACT:

These funds have been deposited into revenue account number 1010.0001.4809.00 06029/1 – Donations and will be reallocated to expense account number 1010.3020.5329.00 06029/1 – Employee Recognition upon City Council approval to recognize and accept this donation.

RESOLUTION NO. _____

A RESOLUTION APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$100.00 REPRESENTING DONATION REVENUE RECEIVED FROM OGDEN INSURANCE AGENCY FOR THE FIRE DEPARTMENT'S ANNUAL EMPLOYEE SERVICE AWARDS EVENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached as Exhibit "A", in the amount of \$100.00 representing donation revenue received from Ogden Insurance Agency for the fire department's annual employee service awards event.

PASSED and APPROVED this 15th day of February, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

A. 5 ^{V10 819}
Ogden Insurance Agency
~~Donation Revenue~~

City of Fayetteville Staff Review Form

A. 6
Garver, LLC
Page 1 of 34City Council Agenda Items
and
Contracts, Leases or Agreements

2/15/2011

City Council Meeting Date
Agenda Items OnlyChris Brown *CB*

Submitted By

Engineering

Division

Development Services

Department

Action Required:

Resolution Approving a Contract with Garver, LLC for providing the environmental assessment study for the Van Asche Extension project between Gregg and Garland.

\$ 38,200.00

Cost of this request

\$ 296,682.00

Category / Project Budget

Van Asche (Garland to Gregg)

Program Category / Project Name

4520.9520.5314.00

Account Number

Street Improvements

Program / Project Category Name

06035.2500

Project Number

\$ 296,682.00

Remaining Balance

2006A Sales Tax Construction

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐*Kim C. Beck*
Department Director*01-28-2011*
Date

Previous Ordinance or Resolution #

John B. Kelly
City Attorney*1-28-11*
Date

Original Contract Date:

Original Contract Number:

Paul A. Beck
Finance and Internal Services Director*1-28-2010*
DateReceived in City
Clerk's Office

01-28-11A11:03 RCVD

Don Man
Chief of Staff*1-31-11*
DateReceived in
Mayor's Office*Lionel Jordan*
Mayor*1/31/11*
Date

Comments:

To: City Council Members

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director JP

From: Chris Brown, City Engineer CB

Date: January 27, 2011

Subject: A Resolution approving a contract with Garver, LLC for providing the Environmental Assessment Study for the Van Asche Blvd. Project between Gregg and Garland in the amount of \$38,200.00.

PROPOSAL:

This project consists of the widening and improvement of Van Asche Blvd. from Garland Avenue to Gregg Avenue including new location from Ball Street to McGuire Avenue. The roadway improvements will include widening the existing two lane portion of Van Asche from Garland Avenue to McGuire Avenue to a four lane section with a fifth lane for left turns at the intersection with Garland Avenue. From McGuire Avenue to Gregg Avenue, a full four lane boulevard section is planned.

The Fayetteville Expressway Economic Development Corridor (FEEDC) Project includes the Flyover and the Roundabout projects. Funding for these projects includes a federal earmark of approximately \$8 million. This Van Asche project is also eligible for funding under this earmark. It is expected that there will be funds remaining after the completion of the Flyover and the Roundabout that can be applied to Van Asche.

Due to the potential use of federal funding, development of an Environmental Assessment Study is required. The Consultant will perform social, economic, and environmental studies for inclusion in the environmental documentation. The goal is to provide the documentation necessary to obtain approval of a Tier Three Categorical Exclusion (CE) document. The work to be performed by the Consultant shall consist of preparing a CE document for the proposed project in accordance with AHTD and FHWA policies and procedures. The contract includes \$29,600 for the Environmental Assessment. It also includes \$8,600 for a Cultural Resource Survey if required during the approval process.

On November 16, 2010, a selection committee consisting of City staff and Alderman Ferrell selected Garver, LLC to provide these services.

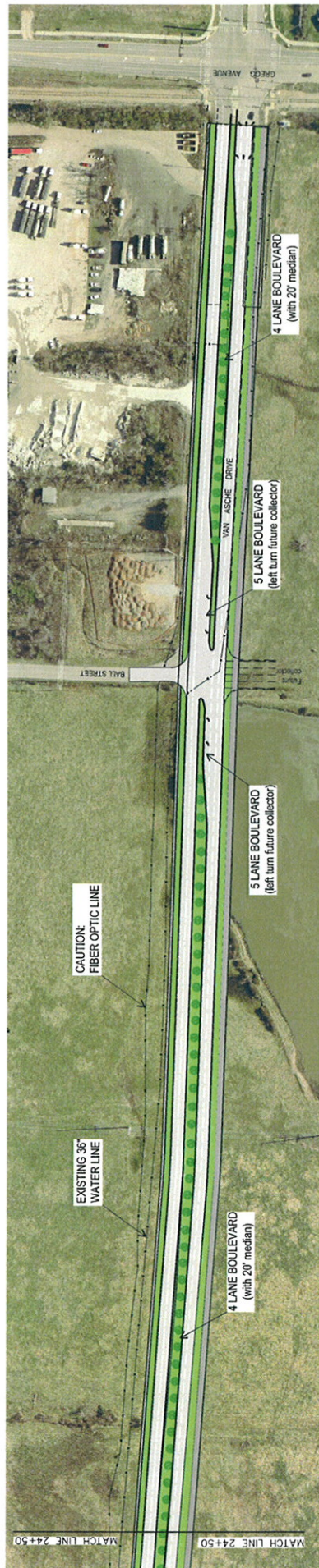
This item was presented to the Street Committee on January 27, 2011. The Street Committee voted to forward this item to the full City Council with a recommendation for approval.

RECOMMENDATION:

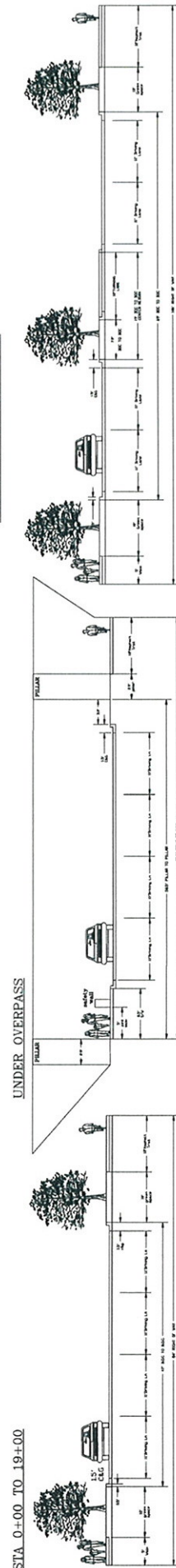
Staff recommends approval of the resolution approving a contract with Garver, LLC for providing the Environmental Assessment Study for the Van Asche Extension Project. In addition, this item was presented to the Street Committee on January 27, 2011, and the Committee voted to forward this item to the full City Council with a recommendation for approval.

BUDGET IMPACT:

These services will be funded by the Van Asche Blvd. (Gregg to Garland) project which is part of the Transportation Bond Program. The cost of these services will not exceed \$38,200.00.



STA. 19+00 TO STA. 49+61



PRINCIPAL ARTERIAL PARKWAY
McGuire to Gregg Street
VAN ASCHE DRIVE (HIGHWAY 112 TO GREGG) EXTENSION

4-LANE STREET
Under 1-540

4-LANE STREET
Garland Ave to I-540

RESOLUTION NO. _____

A RESOLUTION APPROVING A CONTRACT WITH GARVER, LLC IN AN AMOUNT NOT TO EXCEED \$38,200.00 FOR THE PERFORMANCE OF AN ENVIRONMENTAL ASSESSMENT STUDY FOR THE VAN ASCHE BOULEVARD EXTENSION PROJECT BETWEEN GREGG AVENUE AND GARLAND AVENUE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a contract, a copy of which is attached as Exhibit "A", in an amount not to exceed \$38,200.00 for the performance of an environmental assessment study for the Van Asche Boulevard extension project between Gregg Avenue and Garland Avenue.

PASSED and **APPROVED** this 15th day of February, 2011.

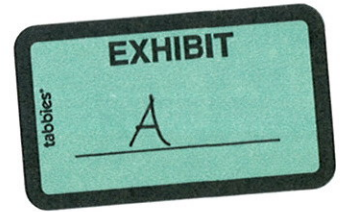
APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
GARVER, LLC



THIS AGREEMENT is made as of _____, 2011, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and Garver, LLC with offices located in Fayetteville (hereinafter called GARVER).

CITY OF FAYETTEVILLE from time to time requires professional engineering services in connection with the planning, design, permitting, and construction of projects within the City of Fayetteville, and in particular, environmental services related to proposed improvements to the **Van Asche Boulevard Extension**, or as further described in Appendix A. Therefore, CITY OF FAYETTEVILLE and GARVER in consideration of their mutual covenants agree as follows:

GARVER shall serve as CITY OF FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of GARVER's services. All services shall be performed under the direction of a professional engineer registered in the State of Arkansas and qualified in the particular field. If Construction Phase Services are to be provided by GARVER under this Agreement, the construction shall be executed under the observation of a professional engineer registered in the State of Arkansas in accordance with Arkansas Code Amended §22-9-101.

SECTION 1 - AUTHORIZATION OF SERVICES

- 1.1 Services on any assignment shall be undertaken only upon written Authorization of CITY OF FAYETTEVILLE and agreement of GARVER. Assignments may include services described hereafter as Basic Services or as Additional Services of GARVER.
- 1.2 Changes, modifications or amendments in scope, price or fees to this contract shall **not** be allowed without a formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, costs, fees, or delivery schedule.

SECTION 2 - BASIC SERVICES OF GARVER

2.1 General

2.1.1 Perform professional design services in connection with the Project as hereinafter stated, which shall include normal civil engineering services, surveying services, and support incidental thereto.

2.1.1.1 The Scope of Services to be furnished by GARVER during the Environmental Study Phase is included in Section 2.2 hereafter and in Appendix A attached hereto and made part of this Agreement.

2.1.2 Execution of this agreement will authorize the Engineer to proceed with the services as described herein.

2.2 Environmental Study

2.2.1 GARVER will perform engineering and related services in order to prepare drawings and related services as described in Appendix A.

2.2.1.1 Text documents shall be provided to CITY OF FAYETTEVILLE in Microsoft® Word version 2007 or later software. Contract drawings shall be prepared using Garver standard borders, sheet sizes, title blocks and CAD standards. GARVER may use their normal software for the preparation of drawings but the final product shall be provided to CITY OF FAYETTEVILLE in Autodesk® AutoCAD version 2004 or later.

2.2.1.2 Develop and include in Appendix A of this Agreement for approval by CITY OF FAYETTEVILLE, a project design schedule in which GARVER shall include, in an acceptable level of detail, the steps and milestone dates to be undertaken by GARVER in the completion of this design. This Schedule shall include reasonable allowances for review and approval times required by CITY OF FAYETTEVILLE, performance of services by CITY OF FAYETTEVILLE's consultants, and review and approval times required by public authorities having jurisdiction over the Project. This schedule shall be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the Project requested by CITY OF FAYETTEVILLE, or

for delays or other causes beyond GARVER's reasonable control. The progress design schedule shall consist of a tabular list of milestones and calendar days for each phase of services.

2.2.1.3 When requested by the CITY OF FAYETTEVILLE's City Engineer, prepare for and attend one Committee or City Council meeting to provide support for the project.

2.2.1.4 Fully disclose all subcontract agreements including the name and address of the subconsultant, the scope of services to be provided, and the value of the subcontract agreement.

2.2.1.5 Incorporate into all subcontract agreements for planning and design engineering services the applicable milestone dates from the performance schedule contained in Appendix A.

2.2.2 Study shall be reviewed by CITY OF FAYETTEVILLE, or such parties as CITY OF FAYETTEVILLE shall designate, at the applicable completion levels outlined in Appendix A.

2.3 Cultural Resource Survey

2.3.1 A sub-consultant to GARVER will perform a Cultural Resource Survey as described in Appendix A.

SECTION 3 - ADDITIONAL SERVICES OF GARVER

3.1 General

If authorized in writing by the CITY OF FAYETTEVILLE Mayor and the City Council and agreed to in writing by GARVER, GARVER shall furnish or obtain from others Additional Services of the following types that are not considered normal or customary Basic Services. The scope of Additional Services may include:

3.1.1 Financial Consultation

Consult with CITY OF FAYETTEVILLE's fiscal agents and bond attorneys and provide such engineering data as required for any bond prospectus or other financing requirements.

3.1.2 Administrative Assistance

Provide Contract and Project administration to the degree authorized by CITY OF FAYETTEVILLE.

3.1.3 Furnish renderings or models of the Project for CITY OF FAYETTEVILLE's use.

3.1.4 Miscellaneous Studies

Investigations involving detailed consideration of operations, maintenance, and overhead expenses, and the preparation of rate schedules, earnings, and expense statements; feasibility studies; appraisals and valuations; detailed quantity surveys of material, equipment, and labor; and audits or inventories required in connection with construction performed by CITY OF FAYETTEVILLE.

3.1.5 Preparing to serve or serving as a witness for CITY OF FAYETTEVILLE in any litigation or other proceeding involving the Project.

3.1.6 Extra Services

3.1.6.1 Services not specifically defined heretofore that may be authorized by CITY OF FAYETTEVILLE.

3.2 Contingent Additional Services

3.2.1 If services described under Contingent Additional Services in Paragraph 3.2 are required due to circumstances beyond GARVER's control, GARVER shall notify CITY OF FAYETTEVILLE and request a formal contract amendment approved by the Mayor and the City Council prior to commencing such services. If CITY OF FAYETTEVILLE deems that such services described in 3.2 are not required, CITY OF FAYETTEVILLE shall give prompt written notice to GARVER. If CITY OF FAYETTEVILLE indicates in writing that all or parts of such Contingent Additional Services are not required, GARVER shall have no obligation to provide those services.

3.2.2 Making revisions in Drawings, Specifications, or other documents when such revisions are:

3.2.2.1 Required because of inconsistent approvals or instructions previously given by CITY OF FAYETTEVILLE, including revisions made necessary by adjustments in CITY OF FAYETTEVILLE's program or Project Budget.

3.2.2.2 Required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents.

SECTION 4 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of GARVER:

- 4.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 4.2 Assist GARVER by placing at GARVER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 4.3 Guarantee access to and make all provisions for GARVER to enter upon public and private property as required for GARVER to perform his services under this Agreement.
- 4.4 Examine all studies, reports, sketches, cost opinions, drawings, proposals, and other documents presented by GARVER and render in writing decisions pertaining thereto.
- 4.5 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.
- 4.6 Designate in writing a person to act as CITY OF FAYETTEVILLE's representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 4.7 Give prompt written notice to GARVER whenever CITY OF FAYETTEVILLE observes or otherwise becomes aware of any defect in the Project.

- 4.8 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project. Pay directly to the governmental authorities the actual filing and permit fees. Unless otherwise described in the attached Scope of Work.
- 4.9 Pay for placement of legal notices and advertisements in newspapers or other publications.
- 4.10 Furnish, or direct GARVER to provide, necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.

CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to GARVER in a timely manner.

SECTION 5 - PERIOD OF SERVICE

- 5.1 This Agreement will become effective upon the first written notice by CITY OF FAYETTEVILLE authorizing services hereunder.
- 5.2 The provisions of this Agreement have been agreed to in anticipation of the orderly progress of the Project through completion of the services stated in the Agreement. GARVER will proceed with providing the authorized services immediately upon receipt of written authorization from CITY OF FAYETTEVILLE. Said authorization shall include the scope of the services authorized and the time in which the services are to be completed.

SECTION 6 - PAYMENTS TO GARVER

- 6.1 Compensation

CITY OF FAYETTEVILLE shall pay GARVER an amount **not to exceed \$29,600** for the Environmental Study and an amount **not to exceed \$8,600** for the Cultural Resource Survey in accordance with the provisions described in the following paragraphs. CITY OF FAYETTEVILLE shall pay GARVER for time spent on the project at the rates shown in attached Appendix A-2 for each classification of GARVER's personnel. In addition, reimbursable expenses, including but not limited to printing, courier service, reproduction, travel, and payment to a subconsultant for the Cultural Resource Survey will be paid to GARVER. For informational purposes, a breakdown of

GARVER's estimated costs is included in Appendix A-2. The rates shown in Appendix A-2 will be increased annually with the first increase effective on or about June 1, 2011. Statements

Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate consistent with GARVER's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by GARVER and approved by CITY OF FAYETTEVILLE.

6.2 Payments

All statements are payable upon receipt and due within thirty (30) days. If a portion of GARVER's statement is disputed by CITY OF FAYETTEVILLE, the undisputed portion shall be paid by CITY OF FAYETTEVILLE by the due date. CITY OF FAYETTEVILLE shall advise GARVER in writing of the basis for any disputed portion of any statement. CITY OF FAYETTEVILLE will make reasonable effort to pay invoices within 30 days of date the invoice is approved, however, payment within 30 days is not guaranteed.

6.3 Final Payment

Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, GARVER shall execute and deliver to CITY OF FAYETTEVILLE a release of all claims against CITY OF FAYETTEVILLE arising under or by virtue of this Agreement, except claims which are specifically exempted by GARVER to be set forth therein. Unless otherwise provided in this Agreement or by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of CITY OF FAYETTEVILLE's claims against GARVER or his sureties under this Agreement or applicable performance and payment bonds, if any. Final payment for each phase of services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of each phase for the Project.

6.4 Fee Changes

Subject to the City Council approval, adjustment of the NTE amounts may be made should GARVER establish and CITY OF FAYETTEVILLE agree that there has been or is to be a significant change in

scope, complexity or character of the services to be performed; or if CITY OF FAYETTEVILLE decides to shorten the duration of work from the time period specified in the Agreement for completion of work and such modification warrants such adjustment. Changes, modifications or amendments in scope, price or fees to this Contract, unless noted herein, shall **not** be allowed without formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost, fees, or delivery schedule.

SECTION 7 - GENERAL CONSIDERATIONS

7.1 Insurance

- 7.1.1 During the course of performance of these services, GARVER will maintain (in United States Dollars) the following minimum insurance coverages:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation Employers' Liability	Statutory \$500,000 Each Accident
Commercial General Liability Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Automobile Liability: Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Professional Liability Insurance	\$1,000,000 Each Claim

GARVER will provide to CITY OF FAYETTEVILLE certificates as evidence of the specified insurance within ten days of the date of this Agreement and upon each renewal of coverage.

- 7.1.2 Construction Contractors shall be required to provide (or CITY OF FAYETTEVILLE may provide) Owner's Protective Liability Insurance naming CITY OF FAYETTEVILLE as a Named Insured and GARVER as additional insureds, or, to endorse CITY OF FAYETTEVILLE and GARVER ENGINEERS as additional insureds on construction Contractor's liability insurance policies covering claims for personal injuries and property damage. Construction Contractors shall be required to provide certificates evidencing such insurance to CITY OF FAYETTEVILLE and GARVER. All contract insurance carriers shall be required to list GARVER and CITY

OF FAYETTEVILLE as certificate holders, furnishing copies of the contractor's insurance certificate to each party.

- 7.1.3 CITY OF FAYETTEVILLE and GARVER waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of GARVER's services. A provision similar to this shall be incorporated into all Construction Contracts entered into by CITY OF FAYETTEVILLE, and all construction Contractors shall be required to provide waivers of subrogation in favor of CITY OF FAYETTEVILLE and GARVER for damage or liability covered by any construction Contractor's policy of insurance.

7.2 Professional Responsibility

- 7.2.1 GARVER will exercise reasonable skill, care, and diligence in the performance of GARVER's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. CITY OF FAYETTEVILLE will promptly report to GARVER any defects or suspected defects in GARVER's services of which CITY OF FAYETTEVILLE becomes aware, so that GARVER can take measures to minimize the consequences of such a defect. CITY OF FAYETTEVILLE and GARVER further agree to impose a similar notification requirement on all construction contractors in the Bid Documents and shall require all subcontracts at any level to contain a like requirement. CITY OF FAYETTEVILLE retains all remedies to recover for its damages caused by any negligence of GARVER.

- 7.2.2 In addition GARVER will be responsible to CITY OF FAYETTEVILLE for damages caused by its negligent conduct during its activities at the Project Site to the extent covered by GARVER's Commercial General Liability and Automobile Liability Insurance policies as specified in Paragraph 7.1.1.

7.3 Cost Opinions and Projections

Cost opinions and projections prepared by GARVER relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on GARVER's experience, qualifications, and judgment as a design professional. Since GARVER has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction

Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, GARVER does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by GARVER.

7.4 Changes

CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of GARVER's services, with an appropriate change in compensation and schedule only after Fayetteville City Council approval of such proposed changes and, upon execution of a mutually acceptable amendment or change order signed by the Mayor of the CITY OF FAYETTEVILLE and the President or any Vice President of GARVER.

7.5 Termination

7.5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

7.5.1.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

7.5.1.2 An opportunity for consultation with the terminating party prior to termination.

7.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that GARVER is given:

7.5.2.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

7.5.2.2 An opportunity for consultation with the terminating party prior to termination.

7.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but

7.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,

- 7.5.3.2 Any payment due to GARVER at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of GARVER's default.
- 7.5.4 If termination for default is effected by GARVER, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to GARVER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by GARVER relating to commitments which had become firm prior to the termination.
- 7.5.5 Upon receipt of a termination action under Paragraphs 7.5.1 or 7.5.2 above, GARVER shall:
- 7.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
- 7.5.5.2 Deliver or otherwise make available to CITY OF FAYETTEVILLE all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by GARVER in performing this Agreement, whether completed or in process.
- 7.5.6 Upon termination under Paragraphs 7.5.1 or 7.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.
- 7.5.7 If, after termination for failure of GARVER to fulfill contractual obligations, it is determined that GARVER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 7.5.4 of this clause.

7.6 Delays

In the event the services of GARVER are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond GARVER's reasonable control, GARVER shall be entitled to additional compensation and time for reasonable costs incurred by GARVER in temporarily closing down or delaying the Project.

7.7 Rights and Benefits

GARVER's services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.

7.8 Dispute Resolution

7.8.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between CITY OF FAYETTEVILLE and GARVER which arise from, or in any way are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of CITY OF FAYETTEVILLE or GARVER in the performance of this Agreement, and disputes concerning payment.

7.8.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate. If timely Notice is given under Paragraph 7.8.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 7.8.3 and 7.8.4 have been complied with.

7.8.3 Notice of Dispute

7.8.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice;

7.8.3.2 For disputes arising within one year after the making of final payment, CITY OF FAYETTEVILLE shall give GARVER written Notice at the address listed in Paragraph 7.14 within thirty (30) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

7.8.4 Negotiation: Within seven days of receipt of the Notice, the Project Managers for CITY OF FAYETTEVILLE and GARVER shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President of GARVER and the Mayor of

CITY OF FAYETTEVILLE or his designee. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.

7.9 CITY OF FAYETTEVILLE represents that it has sufficient funds or the means of obtaining funds to remit payment to GARVER for services rendered by GARVER.

7.10 Publications

Recognizing the importance of professional development on the part of GARVER's employees and the importance of GARVER's public relations, GARVER may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to GARVER's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to GARVER. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of GARVER's activities pertaining to any such publication shall be for GARVER's account.

7.11 Indemnification

7.11.1 CITY OF FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless CITY OF FAYETTEVILLE and GARVER from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

7.12 Computer Models

GARVER may use or modify GARVER's proprietary computer models in service of CITY OF FAYETTEVILLE under this Agreement, or GARVER may develop computer models during GARVER's service to CITY OF FAYETTEVILLE under this Agreement. Such use, modification, or development by GARVER does not constitute a license to CITY OF FAYETTEVILLE to use or modify GARVER's computer models. Said proprietary computer models shall remain the sole property of the GARVER. CITY OF FAYETTEVILLE and GARVER will enter into a separate license agreement if CITY OF FAYETTEVILLE wishes to use GARVER's computer models.

7.13 Ownership of Documents

All documents provided by CITY OF FAYETTEVILLE including original drawings, disks of CADD drawings and cross sections, estimates, specification field notes, and data are and remain the property of CITY OF FAYETTEVILLE. GARVER may retain reproduced copies of drawings and copies of other documents.

Engineering documents, drawings, and specifications prepared by GARVER as part of the Services shall become the property of CITY OF FAYETTEVILLE when GARVER has been compensated for all services rendered, provided, however, that GARVER shall have the unrestricted right to their use. GARVER shall, however, retain its rights in its standard drawings details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of GARVER.

Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. GARVER makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

7.14 Notices

Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

CITY OF FAYETTEVILLE's address:

City of Fayetteville; Attn: Chris Brown, PE

113 West Mountain

Fayetteville, AR 72701

GARVER's address:

Garver, LLC; Attn: Brock Hoskins, PE

2049 East Joyce Boulevard, Suite 400

Fayetteville, AR 72703

7.15 Successor and Assigns

CITY OF FAYETTEVILLE and GARVER each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither CITY OF FAYETTEVILLE nor GARVER shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.

7.16 Controlling Law

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas without regard to any conflicts of law provisions.

7.17 Entire Agreement

This Agreement represents the entire Agreement between GARVER and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to GARVER a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by GARVER, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

SECTION 8 - SPECIAL CONDITIONS

8.1 Additional Responsibilities of GARVER:

8.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve GARVER of responsibility for the technical adequacy of the work. Neither CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

8.1.2 GARVER shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by GARVER's negligent performance of any of the services furnished under this Agreement except for errors, omissions or

other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.

- 8.1.3 GARVER's obligations under this clause are in addition to GARVER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against GARVER for faulty materials, equipment, or work.

8.2 Remedies

Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and GARVER arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

8.3 Audit: Access to Records

- 8.3.1 GARVER shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. GARVER shall also maintain the financial information and data used by GARVER in the preparation of support of the cost submission required for any negotiated agreement or change order and send to CITY OF FAYETTEVILLE a copy of the cost summary submitted. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, CITY OF FAYETTEVILLE, the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. GARVER will provide proper facilities for such access and inspection.
- 8.3.2 Records under Paragraph 8.3.1 above, shall be maintained and made available during performance on assisted work under this Agreement and until three years from the date of final payment for the project. In addition, those records which relate to any controversy arising out of such performance, or to costs or items to which an audit

exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

8.3.3 This right of access clause (with respect to financial records) applies to:

8.3.3.1 Negotiated prime agreements:

8.3.3.2 Negotiated change orders or agreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement:

8.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier subagreement or purchase order awarded after effective price competition, except:

8.3.3.3.1 With respect to record pertaining directly to subagreement performance, excluding any financial records of GARVER;

8.3.3.3.2 If there is any indication that fraud, gross abuse or corrupt practices may be involved;

8.3.3.3.3 If the subagreement is terminated for default or for convenience.

8.4 Covenant Against Contingent Fees

GARVER warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by GARVER for the purpose of securing business. For breach or violation of this warranty, CITY OF FAYETTEVILLE shall have the right to annul this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8.5 Gratuities

8.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that GARVER or any of GARVER's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF

FAYETTEVILLE in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to GARVER terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

- 8.5.2 In the event this Agreement is terminated as provided in Paragraph 8.5.1, CITY OF FAYETTEVILLE may pursue the same remedies against GARVER as it could pursue in the event of a breach of the Agreement by GARVER. As a penalty, in addition to any other damages to which it may be entitled by law, CITY OF FAYETTEVILLE may pursue exemplary damages in an amount (as determined by CITY OF FAYETTEVILLE) which shall be not less than three nor more than ten times the costs GARVER incurs in providing any such gratuities to any such officer or employee.

8.6 Arkansas Freedom of Information Act

City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, GARVER will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

8.7 Debarment And Suspension

I certify that to the best of my knowledge and belief that the company that I represent and its principals:

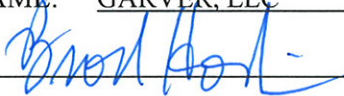
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with

obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification regarding debarment and suspension may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both. I further certify that I will obtain a similar certification for each subcontract awarded in excess of \$25,000.

**DEBARMENT CERTIFICATION
AUTHORIZED REPRESENTATIVE**

COMPANY NAME: GARVER, LLC
SIGNATURE:  DATE: _____
PRINTED NAME: Brock Hoskins TITLE: Sr. Vice President/Chief Engineer

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and GARVER, by its authorized officer have made and executed this Agreement as of the day and year first above written.

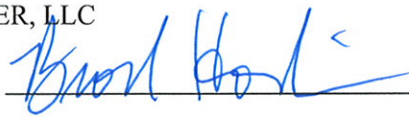
CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

GARVER, LLC

By:  _____

Title: Sr. Vice President/Chief Engineer

Changes, modifications or amendments in scope, price or fees to this Contract shall **not** be allowed without formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost, fees, or delivery schedule.

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

APPENDIX A – SCOPE OF SERVICES

2.1 General

Generally, the scope of services includes environmental services associated with the widening and extension of Van Asche Boulevard between Arkansas Highway 12 and Gregg Avenue. The Environmental services will consist primarily of preparing a document that meets the Tier Three Categorical Exclusion requirements as specified in the National Environmental Policy Act (NEPA).

2.2 Surveys

Design Surveys and Property Surveys are excluded from the scope of services.

2.3 Geotechnical Services

Geotechnical Services are excluded from the scope of services.

2.4 Environmental Services

Environmental services listed in this section are consistent with the development of a Categorical Exclusion (CE) in the 2009 Arkansas State Highway and Transportation Department (AHTD) format. No significant environmental impacts are anticipated. If the Federal Highway Administration (FHWA) or AHTD determines that the project will require an Environmental Assessment (EA), a supplemental agreement will be necessary in order to proceed with the work. The Engineer will perform the following environmental services as part of completing a Tier Three CE:

2.4.1 Environmental Coordination

A Solicitation of Views (SOV) informative packet will be prepared for submittal to federal, state and local agencies; tribes (by FHWA); and others requesting additional information. This SOV packet will be coordinated with the City for review prior to distribution. SOV's will be limited to initial consultation only. Additional agency coordination beyond the initial SOV letter can be performed as additional work. Agencies that will be consulted include, but not be limited to:

- US Army Corps of Engineers
- US Fish and Wildlife Service (USFWS)
- Natural Resources Conservation Service (NRCS)
- Arkansas Natural Resources Commission (ANRC)
- AHTD
- State Historic Preservation Officer (SHPO)
- Arkansas Department of Environmental Quality (ADEQ)
- Arkansas Department of Health (ADH)

The Engineer will provide property owner notifications to potentially affected property owners and attend one public meeting to be coordinated with the City.

The Engineer will work with the City to develop logical termini and develop the purpose and need statement. Reasonably available studies and other data will be reviewed to assist in

developing the purpose and need and other aspects of the environmental document.

The Engineer will review 2 conceptual layout alternatives including the "no-build" and the design alternative.

The project may require a Section 404 Permit obtained through the USACE. The Engineer will coordinate with the USACE to determine jurisdictional waters, complete permit application information and obtain a Section 404 Permit.

2.4.2 Environmental Studies

It is anticipated, due to the nature of the proposed project linking two existing alignments, that several environmental studies may be required to document that no significant impacts are anticipated to occur.

The Engineer will perform a Preliminary Jurisdictional Waters Determination and report, which will include field delineation of wetlands and other waters of the U.S. Wetlands, streams and other hydrology features will be field located with a GPS (3-meter accuracy or greater). This report will be prepared according to the 1987 Wetlands Delineation Manual for submittal to the USACE for an approved Jurisdictional Determination. The Engineer will work to obtain a Nationwide or Individual Section 404 Permit as administered by USACE. Required stream/wetland mitigation coordination and conceptual design will be coordinated with the City and USACE. Stream/Wetland mitigation construction plans and specifications, if required, will be considered additional work.

A noise impact analysis is included in the scope of services.

The Engineer will perform a farmland impact study that will be coordinated with NRCS and include completion of Form AD-1006 to evaluate potential impacts to prime or unique farmland of statewide importance.

2.4.3 Environmental Document

A CE will be prepared for submission to AHTD utilizing the 2009 AHTD Tier Three CE format. The Engineer will address the following potential impacts as identified in AHTD's Environmental Impacts Assessment Form by completing database reviews, agency coordination and required field studies.

Air Quality – Database Reviews
Construction Impacts – Estimated
Cultural Resources – Field Survey
Economic Impacts – Database Reviews
Endangered Species – Agency Coordination
Energy Resources – Database Reviews
Environmental Justice – Database Reviews
Fish and Wildlife – Field Study
Floodplains – Database Reviews
Forest Service Property – N/A
Hazardous Materials/Landfills – Field Study and Database Review

Noise Levels – Field Study/Analysis
Prime Farmland – Field Study/Form AD-1006
Protected Streams – Field Study
Public Recreation Lands – Field Study
Public Water Supply/WHPA – Database Reviews
Relocates – N/A
Section 4(f)/6(f) – Field Study
Social – Database Reviews
Underground Storage Tanks – Database Reviews
Visual Impacts – Field Study
Stream Relocation – Field Study
Water Quality – Database Reviews

Land Use Impacts – Field Survey
Migratory Birds – Field Survey
Navigation/Coast Guard – N/A

Wetlands – Field Survey
Wildlife Refuges – N/A

The NEPA document will incorporate agency coordination responses, field study results, database review results and other documentation required to complete a Tier Three CE.

2.5 Cultural Resources Survey

A Cultural Resources Survey (CRS) is anticipated to be required as a result of SHPO or AHTD coordination due to undisturbed land located within the project corridor. The Engineer will engage the services of a registered professional archeologist to perform this task. Specific tasks include the review of the records of the State Historic Preservation Officer; lists of the National Register of Historic Places; the records of the State Archeologist; records compiled by the General Land Office, as well as other relevant literature, conduct a Phase I survey of the project area, and provide a written report documenting the results of the records search and any necessary recommendations.

2.6 Bidding Services

Bidding services are excluded from the scope of services.

2.7 Construction Phase Services

Construction Phase Services are excluded from the scope of services.

2.8 Project Deliverables

The following will be submitted to the Owner, or others as indicated, by the Engineer:

1. Three copies of Tier Three Categorical Exclusion.
2. Solicitation of Views coordination letter to all review agencies.
3. Three copies of USACE 404 Permit Package.
4. Five copies of the Cultural Resources Survey report.
5. Five copies of the Noise Analysis Report.
6. Eight copies of the Tier Three Categorical Exclusion Draft Report.
7. Eight copies of the Tier Three Categorical Exclusion Final Report.
8. Electronic files as requested.

2.9 Extra Work

The following items are not included under this agreement but will be considered as extra work:

1. Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.
2. Submittals or deliverables in addition to those listed herein.
3. Preparation of an EA document.
4. Stream/Wetland Mitigation construction plans and specifications.

5. Preparation of a Storm Water Pollution Prevention Plan (SWPPP).
6. Coordination with FEMA and preparation/submittal of a CLOMR and/or LOMR.
7. Surveying Services.
8. Geotechnical Services.
9. Roadway Design Services.
10. Bidding Services.
11. Construction Phase Services.

Extra Work will be as directed by the Owner in writing for an additional fee as agreed upon by the Owner and the Engineer.

2.10 Schedule

The Engineer shall begin work under this Agreement within ten (10) days of a Notice to Proceed and shall complete the work in accordance with the schedule below:

<u>Phase Description</u>	<u>Calendar Days</u>
SOV's submitted to agencies	10 days from start date
Submittal of Field Study Reports	80 days from start date
Submittal of Draft Categorical Exclusion	45 days from receiving Field Study Report Review Comments from all agencies

APPENDIX A-2
Van Asche Environmental Study/10047190
Garver Hourly Rate Schedule

Classification	Rates
Engineers	
E-1	\$ 86.00
E-2	\$ 102.00
E-3	\$ 120.00
E-4	\$ 142.00
E-5	\$ 172.00
E-6	\$ 210.00
Architect / Landscape Architect	
A-3	\$ 120.00
A-4	\$ 132.00
Planners	
P-1	\$ 106.00
P-2	\$ 120.00
Designers	
D-1	\$ 83.00
D-2	\$ 107.00
Technicians	
T-1	\$ 68.00
T-2	\$ 92.00
Surveyors	
S-1	\$ 42.00
S-2	\$ 52.00
S-3	\$ 70.00
S-4	\$ 94.00
S-5	\$ 120.00
2-Man Crew (Survey)	\$ 154.00
3-Man Crew (Survey)	\$ 190.00
2-Man Crew (GPS Survey)	\$ 174.00
3-Man Crew (GPS Survey)	\$ 210.00
Construction Observation	
C-1	\$ 80.00
C-2	\$ 103.00
C-3	\$ 138.00
Administration	
X-1	\$ 48.00
X-2	\$ 64.00
X-3	\$ 105.00
I-1	\$ 104.00
Other	
Automation/Controls Specialist	\$ 160.00

APPENDIX A-2

CITY OF FAYETTEVILLE VAN ASCHE ENVIRONMENTAL STUDY

FEE SUMMARY

Garver Services	Estimated Fees
Environmental Study	\$29,600
Subcontracted Services	
Cultural Resources Survey (<i>Historic Preservation Associates, LLC</i>)	\$8,600
Total NTE Fee	\$38,200

APPENDIX A-2
CITY OF FAYETTEVILLE
VAN ASCHE ENVIRONMENTAL STUDY
ENVIRONMENTAL SERVICES

WORK TASK DESCRIPTION	MANHOURS SUBTOTALS											
	E-6	E-5	E-4	E-3	E-2	E-1	D-2	D-1	T-2	T-1	X-2	X-1
	\$210.00	\$172.00	\$142.00	\$120.00	\$102.00	\$86.00	\$107.00	\$83.00	\$92.00	\$68.00	\$64.00	\$48.00
	hr	hr	hr	hr	hr	hr	hr	hr	hr	hr	hr	hr
Environmental Coordination												
Develop Purpose and Need Statement					1	1		2				
Resources Review					1	1		4				
Develop Solicitation of Views (SOV) Letter					1			3			1	
Submittal of SOV Letter to Agencies								2			4	
Review of Agency Responses					1	1		4				
Develop Property Owner Notification Letter					1	1		2			1	
Review of 2 Conceptual Layout Alternatives		1			4	4		6				
USACE Coordination for Section 404 Permit (Including JD request)					1			15		4		
USACE Coordination for Mitigation & Conceptual Design					4	4		12		6		
Coordination with AHTD		1			4			4				
City of Fayetteville Coordination & Meetings		2			6			6				
Prepare Exhibits for Public Meeting					1			2		6		
Attendance of Public Meeting					4			4				
Subtotal - Environmental Coordination	0	4	0	0	29	0	0	66	0	16	6	0
Environmental Studies												
Preliminary Jurisdictional Waters Determination - Field Survey								4				
Preliminary Jurisdictional Waters Determination - Report					1			12		6		
Conceptual Wetland/Stream Mitigation Design					2			25		12		
Review of Cultural Resources Survey - Conducted by Subconsultant								1				
Perform Noise Analysis - Field Study					1			4				
Perform Noise Analysis - Report and Evaluation of Impacts					1			12		2		
Traffic Count - Vehicle Type at Peak Hours					1			6				
Farmland Impact Study - Form AD-1006 and Coord. with NRCS								2		1		
Aerial and GPS Mapping of Environmental Features								6		8		
Determination of Impacts					2			8				
Subtotal - Environmental Studies	0	0	0	0	8	0	0	80	0	29	0	0
Environmental Document												
Coordination with AHTD for CE Development		1			1			1				
Complete AHTD Environmental Impacts Assessment Form								1				
Air Quality - Database Review								1				
Construction Impacts - Estimated					0.5			1				
Cultural Resources - Field Survey								1				
Economic Impacts - Database Reviews								1				
Endangered Species - Agency Coordination								1				
Energy Resources - Database Reviews								1				
Environmental Justice - Database Reviews								1				
Fish and Wildlife - Field Study								1				
Floodplains - Database Reviews					1			1				
Forest Service Property - N/A								0				
Hazardous Materials/Landfills - Field Study and Database Review								1				
Land Use impacts - Field Survey					1			2				
Migratory Birds -- Field Survey								1				
Navigation/Coast Guard - N/A								0				
Noise Levels - Field Study/Analysis								1				
Prime Farmland - Field Study/Form AD-1006								1				

DIRECT NON-LABOR EXPENSES

DIRECT NON-LABOR EXPENSES
Document Printing/Reproduction/Assembly

Document Printing/Reproduction/Assembly	\$310.00
Postage/Freight/Courier	\$160.00
Office Supplies/Equipment	\$30.00
Survey Supplies	\$30.00
Noise Analysis Equipment	\$400.00
Travel Costs	\$60.00

SUBTOTAL - DIRECT NON-LABOR EXPENSES:

TOTAL GARVER FEE:

City of Fayetteville Staff Review Form

A. 7
McClelland Consulting Engineers,
Inc. Task Order #4
Page 1 of 24

City Council Agenda Items and Contracts, Leases or Agreements

2/15/2011

City Council Meeting Date
Agenda Items Only

Ray M. Boudreaux

Submitted By

Aviation

Division

Transportation

Department

Action Required:

Action Required:

a) Approve Task Order #4, McClelland Consulting Engineers, Inc., contingent upon receipt of grant from DOT/FAA. Contact: Wayne R. Jones, P.E., PO Box 1229, Fayetteville, AR, 72702-1229, 479-443-2377, Fax 479-443-9241, e-mail: wjones@mcclelland-engrs.com. b) Approve authority to submit Grant Applications to DOT/FAA & AR Dept Aeronautics for the total project cost, and accept said grants upon approval from the granting agencies. c) Approve a Budget Adjustment.

\$ 50,000.00

Cost of this request

\$ -

Category / Project Budget

Avigation Easements & Obstruct

Program Category / Project Name

5550.3960.7820.40

Account Number

\$ -

Funds Used to Date

Airport Capital Exp

Program / Project Category Name

11014 1

Project Number

\$ -

Remaining Balance

Airport

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☒

Don Man

Department Director

1/31/11

Date

Previous Ordinance or Resolution #

Joe Kelly

City Attorney

2-3-11

Date

Original Contract Date:

Original Contract Number:

Paul A. Babin

Finance and Internal Services Director

2-3-2011

Date

Received in City
Clerk's Office

01-31-11P03:53 RCVD

Don Man

Chief of Staff

2-4-11

Date

Received in
Mayor's Office



Donell Jordan

Mayor

2/4/11

Date

Comments: Project to be 100% funded with grants from the DOT/FAA and Arkansas Department of Aeronautics.



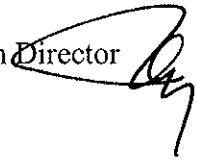
www.accessfayetteville.org

CITY COUNCIL MEMO

To: Mayor Jordan

Thru: Chief of Staff, Don Marr

Thru: Transportation Director, Terry Gulley

From: Ray M. Boudreaux, Aviation Director 

Date: January 28, 2011

Subject: **APPROVE APPLICATION TO THE FAA AND STATE AERONAUTICS COMMISSION FOR GRANT FUNDING TO COMPLETE AN AVIGATION EASEMENT PROJECT ON THE SOUTH END OF THE DRAKE FIELD RUNWAY AND TASK ORDER NO. 4 WITH MCCLELLAND CONSULTING ENGINEERS TO DESIGN THE PROJECT. APPROVE RECEIPT OF GRANT FUNDING**

PROPOSAL: Task Order #4 will design Avigation Easements for Runway 34 at Drake Field. The Avigation Easements are required to protect the approaches to the airport. It was determined that no avigation easements had been purchased when we were working to remove obstacles south of the airport identified by the FAA during a flight standards survey in 2008. There are approximately 50 parcels that must be surveyed and appraisals conducted and offers to purchase easements above the ground made and the purchases closed. The Task Order is for \$50,000.00 to do the surveys and prepare the easements. Tom Reed of Reed and Associates Appraisers estimated that the appraisals can be done for approximately \$1,000.00 per parcel average plus \$500.00 per parcel for review appraisals as required by the FAA. We estimate approximately \$1,000.00 per parcel to purchase the easements from the property owners average.

Request approval to apply for and receive the FAA and State Grants and once approved to award Task Order #4 to McClelland to get the project started. Paul Burns, FAA Program Manager, has stated that funds are in the budget for Drake Field and should be available when the Congress passes the budget. We will not accomplish any of the work until such time as grant funds are available.

RECOMMENDATION: Approve Runway 34 Avigation Easement Project for Drake Field

BUDGET IMPACT: Total Project cost estimated to be \$200,000.00. This project is funded by the FAA at 95% and by Arkansas Aeronautics at 5%.

Land Surveys and Project Design Task Order #4	\$50,000.00
Appraisals and Review Appraisals (estimate)	57,000.00
Easement Purchases	50,000.00
Obstacle Removal (estimate)	100,000.00
Administrative expenses	2,500.00
Total Project cost	\$259,500.00

Attachment: Coordination sheet
 Task Order No. 4 McClelland Consulting Engineers
 Runway 34 approach zone w/parcels
 FAA/AIP Grant Application

RESOLUTION NO. _____

A RESOLUTION APPROVING TASK ORDER #4 TO THE CONTRACT WITH MCCLELLAND CONSULTING ENGINEERS, INC. CONTINGENT UPON RECEIPT OF GRANT FUNDING, AUTHORIZING APPLICATION AND ACCEPTANCE OF A GRANT FROM THE FEDERAL AVIATION ADMINISTRATION AND ARKANSAS DEPARTMENT OF AERONAUTICS TO FUND THE PROJECT, AND APPROVING A BUDGET ADJUSTMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves task order #4 to the contract with McClelland Consulting Engineers, Inc. contingent upon receipt of grant funding, and further authorizes application and acceptance of a grant from the Federal Aviation Administration and Arkansas Department of Aeronautics to fund the project. A copy of task order #4 is attached to this Resolution as Exhibit "A".

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached as Exhibit "B".

PASSED and APPROVED this 15th day of February, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

**TASK ORDER NO. 4
RUNWAY 34
AVIGATION EASEMENT PREPARATION
For
FAYETTEVILLE EXECUTIVE AIRPORT, DRAKE FIELD
FAYETTEVILLE, ARKANSAS**

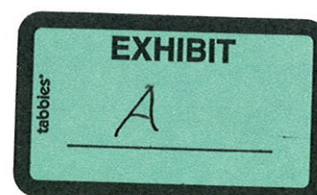
STATE OF ARKANSAS

COUNTY OF WASHINGTON

This Task Order is written pursuant to the basic agreement entitled CITY OF FAYETTEVILLE, AGREEMENT FOR ENGINEERING SERVICES, executed on May 5, 2009. The referenced basic agreement pertains to proposed improvements to Drake Field, Fayetteville's Municipal Airport. This Task Order entered into and executed on the date indicated below the signature block, by and between the City of Fayetteville and McClelland Consulting Engineers (MCE) sets forth the project description, project schedule, and engineering fees for the preparation of Avigation Easements for the 34:1 Approach Surface to Runway 34, Drake Field.

SECTION I - PROJECT DESCRIPTION

The Owner and Engineer have completed an Obstruction Study for the Approaches into Drake Field with acceptance by the FAA. The results of this study and recommendations from FAA indicate that numerous easements acquisitions are required in order to control the height of objects or to mark obstruction with obstruction lights within the 34:1 Approach Surface to Runway 34 at Fayetteville Executive Airport, Drake Field.



The Owner wishes to obtain easements within the Runway Protection Zones, the Part 77 Surfaces, and for the 34:1 Non-Precision Approach to Runway 34 (South end) under a FAA Grant.

SECTION II - PROJECT SCHEDULE

From the time the City of Fayetteville issues the Notice To Proceed (NTP), McClelland Consulting Engineers, Inc. will endeavor to execute the project within the following time periods:

<u>Task</u>	<u>Completion After NTP</u>
1. Updated record search and Property Map.	45 Calendar Days
2. Additional Field Surveys and Easement Preparation.	135 Calendar Days

SECTION III - SCOPE OF SERVICES

McClelland Consulting Engineers, Inc. shall, generally, provide those services listed in the basic agreement which are applicable to this specific Task Order. Specifically, the Engineer will provide the following services necessary to provide Property Deeds, Property Ownership, complete property surveys, plats of survey and easement, as required to acquire the easement to meet FAA Criteria.

Task 1: Record Search ; Perform an updated record search to determine present property boundary description, ownership, name and address. Develop a Property Map indicating parcels to acquire by avigation easement.

Task 2: Boundary Surveys; Perform any additional field surveys to determine the property boundary for the approximately 38 avigation easement acquisition tracts. Prepare plats of survey for easement acquisition and a profile of easement tracts indicating the height limitations. Field staking for the property boundary corners and easement boundary corners.

Task 3: Easement Preparation; Provide assistance to Appraisers, the Airport staff and City staff during the acquisition process.

Task 4: Project Management; Perform Project Management duties including meetings with Surveyors, Airport Appraisers, Airport Staff, City staff and FAA as required; provide letters to property owners; and overall project management for related ownership search, surveying and plat preparation activities

SECTION IV - FEES AND PAYMENTS

The compensation for services to be provided in Section III above shall be according to the following schedules:

Task 1: Record Search; For development of the updated current property ownership deeds, names, addresses and development of property map indicating parcels designated to be acquired by avigation easement: a fee per parcel to be determined from actual time spent, in accordance with the attached Appendix "A".

An estimated amount of \$ 4,000.00

Task 2: Boundary Surveys; For the field surveying and office computation required to locate and determine property boundary corners for easement acquisition parcels, a fee per parcel to be determined from actual time spent, in accordance with the attached Appendix "A". Several separate parcels under the same ownership will be combined for acquisition purposes there by reducing the number of total easements and the total fee.

An estimated amount of \$17,500.00

Task 3: Easement Preparation; For the preparation of easement description and easement plats (2 per parcel required by FAA), a fee per parcel to be determined from actual time spent in accordance with the attached Appendix "A".

An estimated amount of \$21,000.00

Task 4: Project Management; For Project Management and assistance to acquisition consultants and Airport and City staff, a fee per parcel to be determined from actual time spent, in accordance with the attached Appendix "A".

A estimated amount of \$ 6,500.00

Task 5: For Reimbursement Expenses An estimated amount of \$ 1,000.00

Total Not to Exceed \$50,000.

Appendix A presents hourly rates for personnel anticipated to be assigned to this project by McClelland Consulting Engineers, Inc.

SECTION V - BASIC AGREEMENT IN EFFECT:

Except as amended specifically herein, the basic AGREEMENT FOR ENGINEERING SERVICES shall remain in full force as originally approved and executed.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be duly executed as of the date and year first herein written.

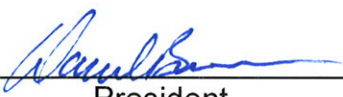
FOR THE CITY OF FAYETTEVILLE:

By: _____
Mayor

Attest: _____

Date: _____

FOR McCLELLAND CONSULTING ENGINEERS, INC.:

By:  _____
President

Attest:  _____
Vice President

Date: 1/13/10

**APPENDIX A
TASK ORDER NO. 4
Hourly Rates for Personnel
Fayetteville Executive Airport**

<u>CATEGORY</u>	<u>BILLABLE HOURLY RATE RANGE</u>
Project Director	\$145 to \$160
Project Manager	\$120 to \$150
Project Engineer	\$90 to \$130
Design Engineer II	\$85 to \$110
Design Engineer I	\$75 to \$90
Registered Surveyor	\$80 to \$105
Computer Technician	\$60 to \$85
Senior Engineering Technician/Observer	\$80 to \$95
Engineering Technician/Observer	\$55 to \$85
Junior Engineering Technician	\$45 to \$70
Survey Crew (2 man)	\$135 to \$150
Clerical Support	\$45 to \$55
CADD Technician III	\$65 to \$80
CADD Technician II	\$55 to \$70
CADD Technician I	\$45 to \$55
Soils Lab Supervisor	\$60 to \$70
Soils Technician II	\$45 to \$55
Soils Technician I	\$35 to \$45

A. 7
McClelland Consulting Engineers,
Inc. Task Order #419
Page 10 of 24

BUDGET ADJUSTMENT JUSTIFICATION

- tabbles®
- EXHIBIT
- B

TOTAL BUDGET ADJUSTMENT

J:\James\2010\Budget\Budget Adjustments\BAForm_2010_Task#4 and grant

DEPARTMENT OF TRANSPORTATION - FEDERAL AVIATION ADMINISTRATION

OMB NO. 2120-0569
11/30/2007

PART II
PROJECT APPROVAL INFORMATION
SECTION A

Item 1. Does this assistance request require State, local, regional, or other priority rating?	Name of Governing Body Priority
☐ Yes ☒ No	
Item 2. Does this assistance request require State, local advisory, educational or health clearances?	Name of Agency or Board (Attach Documentation)
☐ Yes ☒ No	
Item 3. Does this assistance request require clearinghouse review in accordance with OMB Circular A-95?	(Attach Comments)
☐ Yes ☒ No	
Item 4. Does this assistance request require State, local, regional, or other planning approval?	Name of Approving Agency Date / /
☐ Yes ☒ No	
Item 5. Is the proposed project covered by an approved comprehensive plan?	Check One: State ☐ Local ☐ Regional ☐ Location of plan
☐ Yes ☒ No	
Item 6. Will the assistance requested serve a Federal installation?	Name of Federal Installation Federal Population benefiting from Project
☐ Yes ☒ No	
Item 7. Will the assistance requested be on Federal land or installation?	Name of Federal Installation Location of Federal Land Percent of Project
☐ Yes ☒ No	
Item 8. Will the assistance requested have an impact or effect on the environment?	See instructions for additional information to be provided.
☒ Yes ☐ No	
Item 9. Will the assistance requested cause the displacement of individuals, families, businesses, or farms?	Number of: Individuals Families Businesses Farms
☐ Yes ☒ No	
Item 10. Is there other related Federal assistance on this project previous, pending, or anticipated?	See instructions for additional information to be provided.
☐ Yes ☒ No	

INSTRUCTIONS

PART II

SECTION A

Negative answers will not require an explanation unless the Federal agency requests more information at a later date. Provide supplementary data for all "Yes" answers in the space provided in accordance with the following instructions.

Item 1. – Provide the name of the governing body establishing the priority system and the priority rating assigned to this project.

Item 2. – Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval.

Item 3. – Attach the clearinghouse comments for the application in accordance with the instructions contained in Office of Management and Budget Circular No. A-95. If comments were submitted previously with a preapplication, do not submit them again but any additional comments received from the clearinghouse should be submitted with this application.

Item 4. – Furnish the name of the approving agency and the approval date.

Item 5. – Show whether the approved comprehensive plan is State, local or regional, or if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination and state whether this project is in conformance with the plan.

Item 6. – Show the Federal population residing or working on the federal installation who will benefit from this project.

Item 7. – Show the percentage of the project work that will be conducted on federally owned or leased land. Give the name of the Federal installation and its location.

Item 8. – Briefly describe the possible beneficial and/or harmful impact on the environment because of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact. Federal agencies will provide separate instructions if additional data is needed.

Item 9. – State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions if additional data is needed.

Item 10. – Show the Federal Domestic Assistance Catalog number, the program name, the type of assistance, the status and amount of each project where there is related previous, pending, or anticipated assistance. Use additional sheets, if needed.

Paperwork Reduction Act Statement: The information collected on this form allows sponsors of public use airports or public agencies to apply for one or more projects in a form prescribed by the Secretary of Transportation.

Title 49, United States Code (U.S.C.), Section 47105, identifies the information required to apply for this program. The forms prescribed to meet this requirement are developed to provide a comprehensive format that allows sponsors to provide the data needed to evaluate the request for funds. The burden for each response is estimated to be 28 hours. Approved applications benefit the sponsor by providing Federal funding to protect the Federal interest in safety, efficiency, and utility of the Nation's airport system. No assurance of confidentiality can be given since these become public records. If you wish to make any comments concerning the accuracy of this burden estimate or any suggestions for reducing this burden, send to Federal Aviation Administration, ARP-10, 800 Independence Ave, SW, Washington, DC 20591. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number, which is 2120-0569 for this collection. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, ABA-20

PART II – SECTION C

The Sponsor hereby represents and certifies as follows:

1. Compatible Land Use. – The Sponsor has taken the following actions to assure compatible usage of land adjacent to or in the vicinity of the airport:

The sponsor has adopted Drake Field Ordinance, 2607 which regulates and restricts all land use activities in the vicinity of Fayetteville Executive Airport, Drake Field. Adopted January 20, 1980 and as amended.

2. Defaults. – The Sponsor is not in default on any obligation to the United States or any agency of the United States Government relative to the development, operation, or maintenance of any airport, except as stated herewith:

None

3. Possible Disabilities. – There are no facts or circumstances (including the existence of effective or proposed leases, use agreements or other legal instruments affecting use of the Airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project or carry out the provisions of Part V of this Application, either by limiting its legal or financial ability or otherwise, except as follows:

None

4. Consistency with Local Plans. – The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport. Yes

5. Consideration of Local Interest. – It has given fair consideration to the interest of communities in or near where the project may be located. Not applicable

6. Consultation with Users. In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed. Not applicable

7. Public Hearings. – In projects involving the location of an airport, an airport runway or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project. Not applicable

8. Air and Water Quality Standards. – In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable and air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary. Not applicable

PART II – SECTION C (CONTINUED)

9. Exclusive Rights. – There is no grant of an exclusive right for the conduct of any aeronautical activity at any airport owned or controlled by the Sponsor except as follows:

None

10. Land. – (a) The sponsor holds the following property interest in the following areas of land* which are to be developed or used as part of or in connection with the Airport subject to the following exceptions, encumbrances, and adverse interests, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

No. The project includes the surveying and appraisal for the purpose of acquiring avigation easements over privately-owned properties. See Exhibit "A" map of the vicinity of the proposed avigation easement acquisitions.

The Sponsor further certifies that the above is based on a title examination by a qualified attorney or title company and that such attorney or title company has determined that the Sponsor holds the above property interests.

(b) The Sponsor will acquire within a reasonable time, but in any event prior to the start of any construction work under the Project, the following property interest in the following areas of land* on which such construction work is to be performed, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

Not applicable

(c) The Sponsor will acquire within a reasonable time, and if feasible prior to the completion of all construction work under the Project, the following property interest in the following areas of land* which are to be developed or used as part of or in connection with the Airport as it will be upon completion of the Project, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

Not applicable

**State character of property interest in each area and list and identify for each all exceptions, encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map.*

PART II

PROJECT APPROVAL INFORMATION
SECTION AItem 1.

Does this assistance request require State, local, regional, or other priority rating?

☐ Yes ☒ No

Name of Governing Body:

Priority:

Item 2.

Does this assistance request require State, or local advisory, educational or health clearances?

☐ Yes ☒ NoName of Agency or Board:
(Attach Documentation)Item 3.

Does this assistance request require clearinghouse review in accordance with OMB Circular A-95?

☐ Yes ☒ No

(Attach Comments)

Item 4.

Does this assistance request require State, local, regional or other planning approval?

☐ Yes ☒ No

Name of Approving Agency:

Date: / /

Item 5.

Is the proposal project covered by an approved comprehensive plan?

☐ Yes ☒ No

Check one:

State

Local

Regional

☐
☐
☐

Location of Plan:

Item 6.

Will the assistance requested serve a Federal installation?

☐ Yes ☒ No

Name of Federal Installation:

Federal Population benefiting from Project:

Item 7.

Will the assistance requested be on Federal land or installation?

☐ Yes ☒ No

Name of Federal Installation:

Location of Federal Land:

Percent of Project:

Item 8.

Will the assistance requested have an impact or effect on the environment?

☐ Yes ☒ No

See instruction for additional information to be provided

Item 9.

Will the assistance requested cause the displacement of individuals, families, businesses, or farms?

☐ Yes ☒ No

Number of:

Individuals:

Families:

Businesses:

Farms:

Item 10.

Is there other related Federal assistance on this project previous, pending, or anticipated?

☐ Yes ☒ No

See instructions for additional information to be provided.

PART II - SECTION C

The Sponsor hereby represents and certifies as follows:

1. Compatible Land Use. - The Sponsor has taken the following actions to assure compatible usage of land adjacent to or in the vicinity of the airport:

The Sponsor has adopted Drake Field Ordinance 2607, which regulates and restricts all land use activities in the vicinity of Fayetteville Executive Airport, Drake Field. Adopted January 20, 1980 and as amended.

2. Defaults. - The Sponsor is not in default on any obligation to the United States or any agency of the United States Government relative to the development, operation, or maintenance of any airport, except as stated herewith:

None

3. Possible Disabilities. - There are no facts or circumstances (including the existence of effective or proposed leases, use agreements or other legal instruments affecting use of the Airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project or carry out the provisions of Part V of this Application, either by limiting its legal or financial ability or otherwise, except as follows:

None

4. Consistency with Local Plans. - The project is reasonably consistent with plans existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

Yes

5. Consideration of Local Interest - It has given fair consideration to the interest of communities in or near where the project may be located.

Not applicable

6. Consultation with Users. In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport which project is proposed.

Not applicable

7. Public Hearings. - In projects involving the location of an airport, an airport runway or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

Not applicable

8. Air and Water Quality Standards. - In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable and air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

Not applicable

PART II - SECTION C (Continued)

9. Exclusive Rights – There is no grant of an exclusive right for the conduct of any aeronautical activity at any airport owned or controlled by the Sponsor except as follows:

None

10. Land. – (a) The sponsor holds the following property interest in the following areas of land* which are to be developed or used as part of or in connection with the Airport subject to the following exceptions, encumbrances, and adverse interests, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

None. The project includes surveying and appraisal for the purpose of acquiring avigation easements over privately-owned properties. See Exhibit "A" map of the vicinity of the proposed avigation easement acquisitions.

The Sponsor further certifies that the above is based on a title examination by a qualified attorney or title company and that such attorney or title company has determined that the Sponsor holds the above property interests.

(b) The Sponsor will acquire within a reasonable time, but in any event prior to the start of any construction work under the Project, the following property interest in the following areas of land* on which such construction work is to be performed, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

Avigation easements

(c) The Sponsor will acquire within a reasonable time, and if feasible prior to the completion of all construction work under the Project, the following property interest in the following areas of land* which are to be developed or used as part of or in connection with the Airport as it will be upon completion of the Project, all of which areas are identified on the aforementioned property map designated as Exhibit "A"

**State character of property interest in each area and list and identify for each all exceptions, encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map.*

PART III - BUDGET INFORMATION - CONSTRUCTION**SECTION A - GENERAL**

1. Federal Domestic Assistance Catalog No..... 20-106

2. Functional or Other Breakout Airport Improvement Program

SECTION B -CALCULATION OF FEDERAL GRANT

Cost Classification	Use only for revisions		Total Amount Required
	Latest Approved Amount	Adjustment + or (-)	
1. Administration expense	\$	\$	\$ 2,500
2. Preliminary expense			
3. Land, structures, right-of-way Appraisals & easement acquisition			\$ 107,000
4. Architectural engineering basic fees			
5. Other Architectural engineering fees – Property surveys			\$ 50,000
6. Project inspection fees			
7. Land development			
8. Relocation Expenses			
9. Relocation payments to Individuals and Businesses			
10. Demolition and removal - Obstruction removal			\$ 100,000
11. Construction and project improvement			
12. Equipment			
13. Miscellaneous			
14. Total (Lines 1 through 13)			
15. Estimated Income (if applicable)			
16. Net Project Amount (Line 14 minus 15)			
17. Less: Ineligible Exclusions			
18. Add: Contingencies			
19. Total Project Amt. (Excluding Rehabilitation Grants)			
20. Federal Share requested of Line 19			
21. Add Rehabilitation Grants Requested (100 Percent)			
22. Total Federal grant requested (lines 20 & 21)			
23. Grantee share			
24. Other shares			
25. Total Project (Lines 22, 23 & 24)	\$	\$	\$ 259,500

SECTION C - EXCLUSIONS

Classification	Ineligible for Participation (1)	Excluded From Contingency Provision (2)
a.	\$	\$
b.		
c.		
d.		
e.		
f.		
g. Totals	\$	\$

SECTION D - PROPOSED METHOD OF FINANCING NON-FEDERAL SHARE

27. Grantee Share	\$
a. Securities	
b. Mortgages	
c. Appropriations (By Applicant)	
d. Bonds	
e. Tax Levies	
f. Non Cash	
g. Other (Explain)	
h. TOTAL - Grantee share	
28. Other Shares	
a. State Arkansas Department of Aeronautics	\$ 12,975
b. Other	
c. Total Other Shares	
29. TOTAL	\$ 12,975

SECTION E - REMARKS**PART IV PROGRAM NARRATIVE (Attach - See Instructions)**

PART IV
PROGRAM NARRATIVE
(Suggested Format)

A. 7
McClelland Consulting Engineers,
Inc. Task Order #4
Page 20 of 24

DEPARTMENT OF TRANSPORTATION - FEDERAL AVIATION ADMINISTRATION

OMB NO. 2120-0569

PROJECT : RW 34 Approach, Acquire Avigation Easements and Remove Obstructions

AIRPORT : Drake Field, FYV

1. Objective:

To acquire Avigation Easements in the approach to RW 34 in order to facilitate management of obstructions, mostly trees located on steep forested, privately-owned land.

Remove or mitigate existing obstructions.

2. Benefits Anticipated:

The acquisition of easements will permit the necessary authorization for management, now and in the future, of tree growth in the approach zone south of the airfield.

3. Approach : *(See approved Scope of Work in Final Application)*

d. Professional Services contracts to perform surveys and appraisals of approximately 50 parcels. Negotiation with land owners and acquisition of Avigation Easements. Determine and mark elevations of obstructions to be removed or lighted. Procure tree cutting contractor to perform trimming and removal.

4. Geographic Location:

South of the airfield. Area bounded by the dimensions of the 50/1 vertical surface. See attached vicinity map, Exhibit "A"

5. If Applicable, Provide Additional Information:

6. Sponsor's Representative: *(include address & telephone number)*

Ray M. Boudreaux, Director Aviation Division

4500 S School Ave, Ste F

Fayetteville, AR, 72701

Phone: 479-718-7642, Fax: 479-718-7646, e-mail: rboudreaux@ci.fayetteville.ar.us

January 13, 2011

Mr. Ray Boudreaux
Airport Director,
Fayetteville Executive Airport
4500 S. School Suite F
Fayetteville, AR 72701

Re: Task Order No 4
Runway 34 Avigation Easements
Fayetteville Executive Airport

Dear Mr. Boudreaux:

In response to your request, please find three (3) copies of Task Order No 4 for the Runway 34 Avigation Easements.

Please advise if you need further information regarding this Task Order.

Sincerely,

McCLELLAND CONSULTING ENGINEERS, INC.



R. Wayne Jones, P.E.
Vice President

Enclosure: Task Order No 4 (3 copies)

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier McClelland Consulting Engineers, Inc. Task Order #4 FY082153
3. DATE RECEIVED BY STATE	State Application Identifier Page 22 of 24
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier 3-05-0020-040-2011

1. TYPE OF SUBMISSION:	Preapplication
☐ Construction ☒ Non-Construction	☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION	
Legal Name: City of Fayetteville	Organizational Unit: Department: Transportation
Organizational DUNS: 13439803	Division: Aviation
Address: Street: 4500 S School St, Ste F	Name and telephone number of person to be contacted on matters involving this application (give area code)
City: Fayetteville	Prefix: Mr First Name: Ray
County: Washington	Middle Name:
State: Arkansas Zip Code: 72701	Last Name: Boudreaux
Country: United States	Suffix: Director of Aviation
	Email: rboudreaux@ci.fayetteville.ar.us

6. EMPLOYER IDENTIFICATION NUMBER E/I/N:	Phone number (give area code):	FAX number (give area code):
7 1 - 6 0 1 8 4 6 2	479-718-7642	479-718-7646

8. TYPE OF APPLICATION:	7. TYPE OF APPLICANT: (See back of form for Application Types)
☒ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): (See back of form for description of letters)	C
Other (specify)	

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER	9. NAME OF FEDERAL AGENCY
2 0 - 1 0 6	DOT/FAA SW Region
TITLE: Airport Improvement Program (AIP)	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
	Acquire Avigation Easements and Remove Obstructions to RW 34 Approach

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):
Washington County, Arkansas

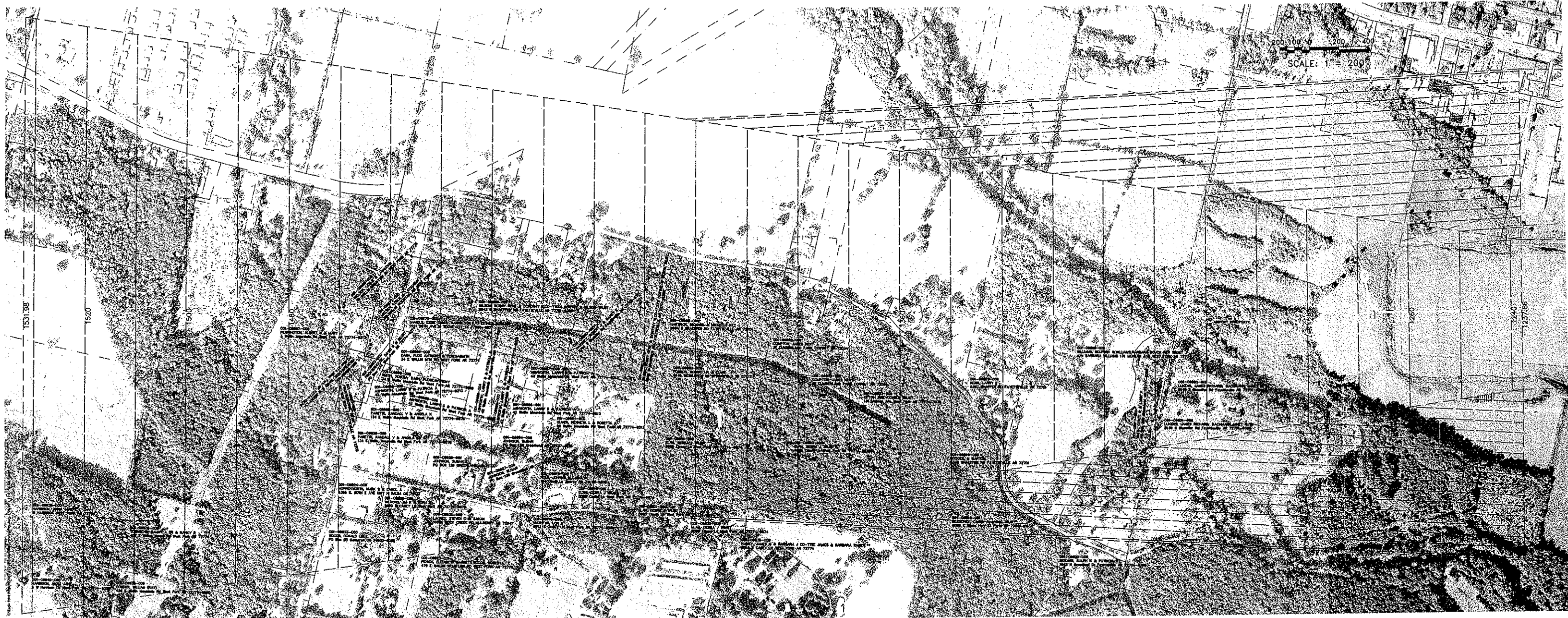
13. PROPOSED PROJECT	14. CONGRESSIONAL DISTRICTS OF
Start Date: 3/1/11 Ending Date: 2/28/12	a. Applicant: Third b. Project: Third

15. ESTIMATED FUNDING	16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS
a. Federal \$ 246,525 .00 b. Applicant \$.00 c. State \$ 12,975 .00 d. Local \$.00 e. Other \$.00 f. Program income \$.00 g. TOTAL \$ 259,500 .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE: b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
	☐ Yes If "Yes" attach an explanation ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative		
Prefix Mr.	First Name Lioneld	Middle Name
Last Name Jordan		Suffix
b. Title Mayor		c. Telephone number (give area code) 479-575-8330
d. Signature of Authorized Representative		e. Date Signed

Exhibit "A"



City of Fayetteville Staff Review Form

A. 8
Atlantic Machinery, Inc.
Page 1 of 6

City Council Agenda Items
and
Contracts, Leases or Agreements

2/15/2011

City Council Meeting Date
Agenda Items Only

Dennis Pratt / Barbara Olsen

Submitted By

Fleet Operations

Division

Transportation

Department

Action Required:

A resolution to purchase a Schwarze A9000 Sweeper from Atlantic Machinery, Inc of Silver Spring, MD off their bid through NJPA (warranty dealer Henard Utility Products of Searcy, AR) in the amount of \$190,100 for use by Transportation Division and approval of a budget adjustment to move capital funds to the Fleet Expense account.

\$ 190,100.00

Cost of this request

\$ 190,000.00

Category / Project Budget

Other Vehicles and Equipment

Program Category / Project Name

9700.1920.5802.00

Account Number

\$ -

Funds Used to Date

Vehicles and Equipment

Program / Project Category Name

02080.2011

Project Number

\$ 190,000.00

Remaining Balance

Shop Fund

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☒

King 2 Bully
Department Director

1-28-11

Date

Previous Ordinance or Resolution #

[Signature]
City Attorney

1-28-11

Date

Original Contract Date:

Original Contract Number:

Paul A. Benth
Finance and Internal Services Director

1-28-2011

Date

Received in City 01-28-11 P01:12 RCVD
Clerk's Office

Kim J.

[Signature]
Chief of Staff

1-31-11

Date

Received in
Mayor's Office

ENTERED
1/28/11
[Signature]

[Signature]
Mayor

1/31/11

Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor/City Council

Thru: Terry Gulley, Director of Transportation *12/21*

From: Dennis Pratt, Fleet Operations Supt.

Date: January 27, 2011

Subject: Purchase of one Schwarz Sweeper for Transportation

PROPOSAL: That Council approve the purchase of a Schwarze A9000 Sweeper from Atlantic Machinery, Inc for use by Transportation division in the amount of \$190,100 and approve a budget adjustment to move capital funds to the Fleet expense account.

RECOMMENDATION: The NJPA (National Joint Powers Alliance) of which the City of Fayetteville is a member, awarded the bid for a Schwarze A9000 Sweeper to Atlantic Machinery, Inc on contract 03271-AMI. This bid is for a specific Schwarze sweeper that is a demo unit. Total price is \$190,100. Transportation demo'd this unit as well as another unit and this unit meets the specifications that Transportation requires. This sweeper was demo'd by and will be warrantied by Henard Utility Products of Searcy, AR who is the dealer for repair parts.

I recommend acceptance of the bid from Atlantic Machinery, Inc in the amount of \$190,100. A bid tab sheet is attached.

This unit will replace #9059, a 2004 Schwarze A8000 sweeper with a rear motor that seized up last November and is not economically feasible to repair.

This purchase was approved by the Equipment Committee on Jan. 25, 2011.

BUDGET IMPACT: This replacement was budgeted for on both the capital and operating sides. The purchase price was underestimated on the capital side so funds are being moved into Fleet's expense account to cover the shortfall.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE PURCHASE OF A SCHWARZE A9000 SWEEPER FROM ATLANTIC MACHINERY, INC. OF SILVER SPRING, MARYLAND, PURSUANT TO A COMPETITIVE BID THROUGH THE NATIONAL JOINT POWERS ALLIANCE (NJPA) COOPERATIVE PURCHASING AGREEMENT, IN THE AMOUNT OF \$190,100.00 FOR USE BY THE TRANSPORTATION DIVISION, AND APPROVING A BUDGET ADJUSTMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes purchase of a Schwarze A9000 sweeper from Atlantic Machinery, Inc. of Silver Spring, Maryland, pursuant to a competitive bid through the National Joint Powers Alliance (NJPA) cooperative purchasing agreement, in the amount of \$190,100.00 for use by the Transportation Division.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached as Exhibit "A".

PASSED and APPROVED this 28th day of February, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

**City of Fayetteville, Arkansas
Budget Adjustment Form**

A. 8
Atlantic Machinery, Inc.
Page 4 of 6

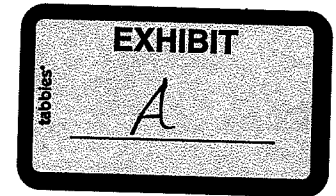
Budget Year 2011	Department: Transportation Services Division: Fleet Operations Program: Capital Expense	Request Date 2/15/2011	Adjustment Number
--------------------------------	--	--------------------------------------	--------------------------

JUSTIFICATION TO INCREASE PROJECT / ITEM:

Unit #9059 was budgeted to be replaced in 2011. The estimated purchase price was \$170,000. Actual bid came in at \$190,100. \$20,500 is requested in project 02080.2011 to cover the difference between estimated price and actual price.

JUSTIFICATION TO DECREASE PROJECT / ITEM (OR RECOGNIZING REVENUE):

It is too early in the year for Fleet to know if prices were overestimated in other projects which would leave excess funds. Sufficient funds are available to meet City objectives.



Account Name	Account Number	Increase Budget	Decrease Budget	Project.Sub Number
Vehicles And Equipment	9700.1920.5802.00	20,500		02080 . 2011
Use of Fund Balance	9700.0970.4999.99		20,500	.
				.
				.
				.
				.
TOTAL		<u>20,500</u>	<u>20,500</u>	

James E. Perry 1-25-11
Division Head Date

[Signature] 1-27-11
Budget Director Date

Tom G. Hulley 1-27-11
Department Director Date

Paul A. Baker 1-27-2011
Finance Director Date

Chief of Staff Date

Mayor Date

Requested By *Barbara Olsen*
bolsen

Budget & Research Use Only

Type: A B C D E

Description: _____ 0

General Ledger Date _____

Posted to General Ledger _____

Posted to Project Accounting _____

Initial Date

Initial Date

BID TAB SHEET - NJPA BIDS ON SWEEPERS

1	Atlantic Machinery Inc	Schwarze	Model A9000	\$190,100.00
2	Allianz Sweeper	Allianze	Model VT650	\$199,330.00
3	Frontier Equipment	Schwarze	Model A9000	\$220,265.10

City Of Fayetteville

(Not a Purchase Order)

Requisition No. _____ Date: A. 8
1/27/2011 Machinery Inc.

P.O Number _____ Expected Delivery Date: _____

Vendor # _____ Vendor Name: **ATLANTIC MACHINERY INC** Mail Yes: ☐ No: ☒ XX

Address: _____ Fob Point: _____ Taxable Yes: ☐ No: ☒ X

City: _____ State: _____ Zip Code _____ Ship to code: **050** Divison Head Approval: Barbara Olsen Quotes Attached No: _____

Requester **Barbara Olsen** Requester's Employee # **1940** Extension: **485**

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	SCHWARZE A9000 SWEEPER PER	1	EA	\$190,100.00	\$190,100.00	9700.1920.5802.00	02080.2011		709146
2	NJPA BID SPECIFICATIONS,		EA		\$0.00				
3	CONTRACT 032710-AMI. TO BE		EA		\$0.00				
4	UNIT 9146, FIXED ASSET #709146		EA		\$0.00				
5			EA		\$0.00				
6			EA		\$0.00				
7			EA		\$0.00				
8			EA		\$0.00				
9			EA		\$0.00				
10			EA		\$0.00				
	Shipping/Handling		Lot		\$0.00				

Special Instructions: _____

Subtotal: 190,100.00

Tax: EXEMPT

Total: 190,100.00

Approvals:

Mayor: _____

Department Director: _____

Purchasing Manager: _____

Finance & Internal Services Director: _____

Budget Manager: _____

IT Manager: _____

Dispatch Manager: _____

Utilities Manager: _____

City of Fayetteville Staff Review Form

B. 1
Amend Title XV: ADM 09-3480
(Streamside Protection)
Page 1 of 60

City Council Agenda Items
and
Contracts, Leases or Agreements

2/1/2011

City Council Meeting Date
Agenda Items Only

Karen Minkel

Submitted By

Division

Strat. Planning and Int. Consulting

Department

Action Required:

ADM 09-3480 (Streamside Protection): Submitted by Strategic Planning staff for approval of an ordinance to establish streamside protection zones, amending Chapters 155: Appeals, 156: Variances, and 168: Flood Damage Prevention Code of the Unified Development Code and adopt a Protected Streams map and Best Management Practices Manual.

n/a

Cost of this request

\$

-

Category / Project Budget

Program Category / Project Name

\$

-

Account Number

Funds Used to Date

Program / Project Category Name

\$

-

Project Number

Remaining Balance

Fund Name

Budgeted Item ☐Budget Adjustment Attached ☐

Karen Minkel
Department Director

1/13/11
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

K. Minkel
City Attorney

Jan 14, 2011
Date

Paul A. Beiber
Finance and Internal Services Director

1-14-2011
Date

Received in City
Clerk's Office

01-13-11P04:31 RCVD

Alan Mann
Chief of Staff

1-18-11
Date

Received in
Mayor's Office

Frederick Jordan
Mayor

1/18/11
Date

Comments:

Revised January 15, 2009

Left on the first reading at the Sep 3rd 2011 CC mtg.

CITY COUNCIL AGENDA MEMO

To: City Council

Thru: Don Marr, Chief of Staff

From: Karen Minkel, Director of Strategic Planning and Internal Consulting *K.M.*

Date: January 12, 2011

Subject: ADM 09-3480 (Streamside Protection): Submitted by Strategic Planning staff for approval of an ordinance to establish streamside protection zones, amending Chapters 155 (Appeals), 156 (Variances) and 168 (Flood Damage Prevention Code) of the Unified Development Code and adoption of a Protected Streams map and a Best Management Practices Manual.

PROPOSAL:

The Nutrient Reduction Plan, completed in April 2009 by Geosyntec Consultants as part of an Agreement between Beaver Water District and the City of Fayetteville, recommends the development and implementation of a riparian buffer ordinance. This ordinance is part of a series of recommendations designed to reduce non-point source loadings of total phosphorus in the Beaver Lake Watershed and would ultimately reduce the non-point source loadings of total phosphorus in all the City's waterways. This recommendation aligns with a grant administered by the Washington County Extension Office to develop riparian buffers for the Clear Creek Watershed and is consistent with a recommended action step in the Fayette Junction Master Plan. Both Mayor Jordan and Council member Sarah Lewis requested that staff pursue the development of a streamside protection ordinance based on these recommendations.

A riparian buffer or streamside protection ordinance is one of the most cost-effective tools for reducing the nutrient load in the City's waterways and preventing erosion. Streambank restoration costs approximately \$250 per linear foot, and engineering a solution to remove nutrients from the water can cost tens of millions of dollars. Reducing the non-point source loadings of nutrients in the City's waterways will help to reduce increases in the cost of treating drinking water, which has a direct impact on user fees. The City of Fayetteville is also working with the Arkansas Department of Environmental Quality (ADEQ) and the Environmental Protection Agency (EPA) to demonstrate watershed based efforts the City is taking to reduce nutrients in Fayetteville's waterways so that the City can potentially avoid being issued even more stringent and expensive National Pollutant Discharge Elimination System (NPDES) wastewater treatment discharge permit limits.

Strategic Planning formed a project team that included staff from Planning, Engineering, Water and Wastewater, Sustainability, Parks and Recreation and GIS. The team worked to identify model ordinances used in other municipalities and conducted research on best practices, with assistance from members of the Environmental Action Committee. Two public input sessions were held in March 2010, which included a presentation and hands-on field trip to College Branch. Invitations to the meeting targeted the Washington

County Farm Bureau membership, the Illinois River Watershed Partnership, the Fayetteville Forward Green Infrastructure group, Fayetteville Natural Heritage Association and the Planning Division's Developer and Engineer contact list. The City also hosted an online survey for a period of one month to solicit additional public input before crafting the ordinance.

All property owners whose property was likely to be affected by the proposed buffer area were sent a letter about the ordinance before the Planning Commission formally reviewed the proposal. Approximately 300 property owners who have existing principal structures within the buffer area were invited to a question and answer session on October 12, 2010.

The Environmental Action Committee unanimously endorsed the ordinance on September 16, 2010, and the Planning Commission forwarded the streamside protection ordinance to the City Council on November 8, 2010 by a vote of 7-2-0. Commissioners Hoskins and Honchell voted against the ordinance. Staff has made some changes to the ordinance based on recommendations made by the City Attorney and staff for clarification purposes. A copy of the ordinance reviewed by the Planning Commission is included in the packet.

Ordinance Regulations

Best Management Practices Manual: A BMP Manual will work in tandem with the ordinance to explain specific objectives and principles. This manual may be administratively changed by the City Engineer in order to give staff and the public the ability to utilize emerging technologies.

Applicability: The ordinance shall apply to all the land within a streamside protection zone with the following exceptions:

- Undeveloped lots created by a lot split, concurrent, or final plat application, which was submitted or approved prior to the effective date of this ordinance for a period of 12 to 24 months depending on the lot size;
- A preliminary plat that was submitted or approved prior to the effective date of this ordinance; and
- A use and/or activity permitted by an unexpired building permit approved prior to the effective date of this ordinance.

Establishment of Streamside Protection Zones: All surface waters identified on the Protected Streams map, including any pond, lake or reservoir located within the natural drainage way of said surface water or any surface where a floodway has been established by the Federal Emergency Management Agency shall have a streamside protection buffer.

Zone 1, the Waterside Zone, shall extend a minimum of 25 feet from the top of bank on either side of the waterway and include the surface water. Slopes greater than 15 percent will require Zone 1 to extend an additional 20 feet. Zone 2, the Management Zone, shall extend an additional 25; if the floodway extends beyond the edge of the Zone 2 boundary, the boundary shall be adjusted to include the floodway.

Piped Streams and Daylighting: The City Engineer may determine that normal streamside protection regulations shall not be applicable to portions of a stream that have been piped, and streams that are daylighted following the effective date of this ordinance will only require a five-foot setback measured from the top of bank.

Regulated Uses

Zone 1: Waterside Zone

Uses allowed if the Best Management Practices Manual is followed and provided they are designed and constructed to minimize the impact upon streamside areas:

- Open spaces that are primarily passive in character including natural trails, fishing areas, preserves and parkland
- Streambank restoration or stabilization
- Water quality monitoring, education and scientific studies
- Dam maintenance
- Revegetation and reforestation
- Paved trails or other impervious surfaces not exceeding 12 feet in width when the City Engineer determines there is no practical and feasible alternative
- Stream crossings including driveways, roadways, trails or railroads
- Maintenance and upgrades of existing utility facilities
- New utility facilities when the City Engineer determines there is no practical and feasible alternative
- Management of lawns and gardens
- Removal of dead vegetation, pruning for reasons of public safety and removal of invasive species
- Application of fertilizer, herbicides, pesticides and insecticides
- Maintenance of drainage capacity in the channel, including tree and sediment removal
- New stormwater conveyances when the City Engineer determines there is no practical and feasible alternative

Zone 2: Management Zone

Uses allowed:

- New stormwater conveyances when the City Engineer determines there is no practical and feasible alternative
- All uses within Zone 1; the BMP Manual principles are encouraged but not required
- Accessory structures with a footprint no larger than 150 square feet
- Active recreational uses

Prohibited Uses Within the Streamside Protection Zones

- Grading, dredging, dumping, or filling
- Landfills, junkyards, salvage yards
- Clearing of non-invasive woody vegetation
- Storing hazardous materials or chemicals unless they are within waterproof containers and within a structure
- Parking lots
- Buildings and accessory structures with a building footprint larger than 150 square feet
- Septic systems and/or lateral lines
- Parking and storage of motor vehicles
- In-ground pools
- Animal feedlots or kennels
- Housing, grazing or other maintenance of livestock
- Cultivation

- Land application of biosolids

Existing Land Use Exemptions

- Existing uses shall be permitted to continue in their present state. The ordinance shall apply when the use is converted to another use. Agricultural and animal husbandry activities shall cease to exist when they have lain idle for more than 18 consecutive months.
- Existing principal structures as of the effective date of this ordinance may be redeveloped or reconstructed on the same footprint
- Minor alterations or additions to an existing structure, provided the modifications do not extend more than 10 feet toward the surface water than the original foundation
- Any actions taken under emergency conditions

Development Application Procedures: All persons required to submit an application pursuant to Chapter 166 of the City's Unified Development Code shall show the location and type of surface water, the top of bank, Zone 1 and Zone 2 boundaries and slope. Applicants may request that the City's Floodplain Administrator perform a site visit to view conditions on site and make a determination of top of bank location and zone widths.

Streamside Protection Measures and Construction: Streamside Protection Zone boundaries shall be clearly delineated on site by the applicant prior to any land clearing or soil disturbance. A site visit will be conducted by the City Engineer or designated representative to ensure compliance.

Further, the streamside protection zone shall be protected from construction activity except where necessary to allow activities permitted elsewhere in the ordinance. Storage of construction vehicles, materials debris, spoils or equipment is prohibited within the buffer area. The applicant shall install silt fencing on the site at the outer edge of the Management Zone or as directed by the City Engineer.

Other Ordinance Amendments

Variances: The Planning Commission shall hear and decide requests for variances from the dimensional requirements of this ordinance. The Planning Commission may consider the following:

- 1) the provisions of the Streamside Protection Ordinance are shown by the owner or developer to cause undue hardship as strictly applied to the owner or developer's property
- 2) a rezoning or variance by the Board of Adjustment will not sufficiently alleviate the claimed hardship; and
- 3) the Planning Commission may prescribe appropriate conditions and safeguards to substantially secure the objectives and purpose for the regulations so varied and to mitigate any detrimental effects the variance may cause.

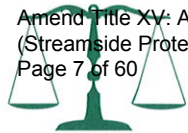
Staff recommends including subsection 155.06(A)(2)(d) to state that interpretations of the streamside protection zones shall be made by the City Engineer, adding purpose statements to subsection 168.01(A) and definitions for daylighting, streamside protection zones, Protected Streams Map, and Top of bank to subsection 168.02.

RECOMMENDATION:

Staff recommends approval of an ordinance to establish streamside protection zones, amending Chapters 155: Appeals, 156: Variances and 168:Flood Damage Prevention Code of the Unified Development Code and adoption of a Protected Streams map and a Best Management Practices Manual.

BUDGET IMPACT:

None.



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

FROM: Kit Williams, City Attorney

DATE: January 14, 2011

RE: Streamside Protection Ordinance

With help from Councilmember Sarah Lewis, Director of Strategic Planning Karen Minkel worked with Engineering, Transportation, Water and Wastewater and Planning to formulate the Streamside Protection Ordinance. Even after presentation to and acceptance by the Planning Commission, Karen continued to work with all affected city departments and with my office to fine tune this important ordinance.

You should first know what this ordinance **does not do**. It has no effect upon existing structures within the Streamside Protection Zones (within 50 feet of the stream bank). **It grandfathers in all such structures and even allows minor additions** that could extend up to ten feet further into the Streamside Protection Zones. It allows a homeowner to construct a berm to protect a house from flooding. **It allows current use of the property to continue**, even agricultural uses that are not desirable for streamside preservation.

This ordinance primarily affects **new** construction and prohibits **new** uses and activities close to protected streams that would unnecessarily degrade them and cause water pollution and siltation problems. The ordinance places much discretionary power with the City Engineer when it comes to allowing new paved trails, driveways, stream crossings, stormwater conveyances, etc. within the Streamside Protection Zones. This

provides the Engineering Division with the power to examine the practicality and feasibility of alternatives as they relate to the particular site being developed. Appeals from the City Engineer's decision would be decided by the City Council.

This ordinance places new restrictions on property and limits to some extent what a property owner can do with the land. All land in Fayetteville already has some restrictions ... zoning certainly restricts its use and what can be constructed. Setback requirements from right-of-ways and neighboring lots are similar to the streamside protection zones which provide something like a setback from a protected stream, but with more flexibility than normal setbacks. As long as the City does not make an existing lot unbuildable or unusable, this ordinance which grandfathers in virtually all structures and existing uses should not be a constitutional taking.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT CODE OF THE CITY OF FAYETTEVILLE, TO AMEND CHAPTER 155: APPEALS, CHAPTER 156: VARIANCES, AND CHAPTER 168: FLOOD DAMAGE PREVENTION CODE IN ORDER TO ESTABLISH STREAMSIDE PROTECTION ZONES AND ADOPT A PROTECTED STREAMS MAP AND BEST MANAGEMENT PRACTICES MANUAL.

WHEREAS, a riparian buffer will reduce nutrients and sediment loads in waterways, prevent erosion and increase flooding capacity; and

WHEREAS, sediment is listed as the most common pollutant in rivers and streams by the Environmental Protection Agency;

WHEREAS, a riparian buffer is one of the most cost-effective measures for reducing pollutants in waterways; and

WHEREAS, the establishment of a riparian buffer was one of the recommendations provided by Geosyntec Consultants as part of the City's Agreement with Beaver Water District to reduce nonpoint source loadings of total phosphorus in Beaver Lake, the source of Fayetteville's drinking water; and

WHEREAS, the City partnered with the Washington County Cooperative Extension Services Office to develop riparian buffers in the Clear Creek Watershed; and

WHEREAS, the City Council unanimously adopted the Fayetteville Junction Master Plan in 2009, which recommended that the City develop a riparian buffer ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby adds §155.06(A)(2)(d) by inserting the following subsection:

“(d) Streamside Protection Zones. An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.”

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby adds §156.03(C)(9) by inserting the following subsections:

(9) Streamside Protection Zones

- (a) ***Undue hardship.*** If the provisions of the Streamside Protection Ordinance are shown by the owner or developer to cause undue hardship as strictly applied to the owner or developer's property because of its unique characteristics, the Planning Commission may grant a variance on a permanent or temporary basis from such provision so that substantial justice may be done and the public interest protected, provided that the variance will not have the effect of nullifying the intent and purpose of the Streamside Protection regulations.
- (b) ***Consideration of alternative measures.*** The applicant for the variance shall establish that a reasonable rezoning by the City Council or variance request from the Board of Adjustment will not sufficiently alleviate the claimed undue hardship caused by the Streamside Protection regulations.
- (c) ***Conditions and safeguards.*** In granting any variance, the Planning Commission may prescribe appropriate conditions and safeguards to substantially secure the objectives and purpose for the regulations so varied and to mitigate any detrimental effects the variance may cause. The Planning Commission should consider the Streamside Protection Best Management Practices Manual and any mitigation recommendations from the City Engineer."

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby amends §168.01(A) by inserting the following subsections and renumbering subsections 4-10:

- "(4)Protect, restore and maintain the chemical, physical, and biological integrity of the water resources;**
- (5) Reduce pollutants in surface waters by filtering, settling, and transforming pollutants in runoff;**
- (6) Stabilize the banks of streams to reduce erosion and the downstream transport of sediment and nutrients;**
- (7) Maintain tree canopy to shade streams, reduce water temperatures, promote desirable aquatic organisms resulting in ecological integrity with improved fishing, greater scenic value and recreational opportunity;"**

Section 4. That the City Council of the City of Fayetteville, Arkansas hereby amends §168.02 by adding the following definitions:

"Daylighting" is to remove a stream, creek or natural drainage way or other waterway from an underground pipe and restore the waterway to open air.

"Streamside Protection Zones" are areas of trees, usually accompanied by shrubs and other vegetation along a stream, river or shoreline that is managed to maintain the integrity of the waterway and to reduce pollution.

“Protected Streams Map” is the official map adopted by the Fayetteville City Council indicating the point where at least 100 acres drains into a waterway and the requirements of the Streamside Protection Zone apply downstream.

“Top of bank” is the point along a streambank where an abrupt change in slope is evident, and where the stream is generally able to overflow the banks and enter the adjacent floodplain during flows at or exceeding the average annual high water stage.

Section 4. That the City Council of the City of Fayetteville, Arkansas hereby adds §168.12 Streamside Protection Zones, a copy of which is marked “Exhibit A” is attached hereto and made a part hereof and rennumbers “Enforcement” to 168.13.

Section 5. That the City Council of the City of Fayetteville, Arkansas hereby adopts the Protected Streams map, a copy of which is marked “Exhibit B” is attached hereto and made a part hereof.

Section 6. That the City Council of the City of Fayetteville, Arkansas hereby adopts the Best Management Practices Manual, a copy of which is marked “Exhibit C” is attached hereto and made a part hereof.

PASSED and APPROVED this ____ day of _____, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk

168.12 Streamside Protection Zones

Emergency Management Agency
(FEMA).

(A) *Streamside Best Management Practices Manual.* The City of Fayetteville's Streamside Best Management Practices Manual, which may be administratively changed by the City Engineer, shall be used in support of this chapter to explain specific objectives and principles.

(B) *Applicability.* This ordinance shall apply to all land within the Streamside Protection Zones, except for as provided below:

(1) Undeveloped lots created by a lot split, concurrent, or final plat application, which was submitted or approved prior to the effective date of this ordinance, are exempt from the requirements of this section for the following time periods:

(a) 24 months from the effective date of this ordinance for lots one half (½) acre or less;

(b) 18 months from the effective date of this ordinance for lots greater than one half (1/2) acre but less than 1 acre; or

(c) 12 months from the effective date of this ordinance for lots one (1) acre or greater.

(2) A preliminary plat which was submitted or approved prior to the effective date of this ordinance shall be exempt from the requirements of this section, provided the time periods listed herein shall be in force from the date of final plat approval.

(3) A use and/or activity permitted by an unexpired building permit, which was approved prior to the effective date of this ordinance, is exempt from this ordinance.

(C) *Establishment of Designated Surface Waters.* The Streamside Protection Zones shall apply to all surface waters meeting any one of the following criteria:

(1) All surface waters identified on the adopted Protected Streams map, including any pond, lake or reservoir located within the natural drainage way of said surface water; or

(2) Any surface water where a floodway has been established by the Federal

(D) *Streamside Protection Requirements.* The Streamside Protection Zones shall be established as follows:

(1) *Zone 1: Waterside Zone.* The Waterside Zone shall extend a minimum of 25 feet landward from the top of bank in each direction, measured horizontally on a line perpendicular to the top of bank and includes the surface water.

(a) *Steep slope.* Slope shall be calculated at the upstream and downstream property lines for every property. Properties with more than 100 feet of stream frontage shall require additional slope calculations at 100 foot increments, beginning at the upstream property line and ending at the downstream property line. When slope calculations are equal to or greater than 15%, the width of the Waterside Zone shall be extended by an additional 20 feet at that point. The boundary width determined at each designated slope measurement point shall be connected by a continuous line to form the boundary of the Waterside Zone (illustrations available in the Best Management Practices Manual).

(2) *Zone 2: Management Zone.* The Management Zone shall begin at the outer edge of the Waterside Zone and extend landward 25 feet as measured horizontally on a line perpendicular to Zone 1. The combined width of Zones 1 and 2 shall be no less than 50 feet from the top of bank on all sides of the surface water.

(a) *Floodway.* Where the floodway extends beyond the edge of the Management Zone boundary, said boundary shall be adjusted so that the zone consists of the extent of the floodway as designated by the most recently adopted FEMA Flood Insurance Rate Map (FIRM).

(3) *Piped streams.* When reviewing any development, grading or building permit application, the City Engineer may determine that normal streamside protection regulations shall not be applicable to that portion of a stream that has been piped or enclosed

“EXHIBIT A”

within a culvert or similar conduit prior to the adoption of this ordinance.

- (4) *Daylighting.* Streams enclosed prior to the effective date of this ordinance and subsequently daylighted shall only require a 5-foot setback measured from the established top of bank. Daylighted streams shall be maintained in a natural state by the property owner, who shall also be responsible for monitoring and controlling trash, litter and pollutants.
- (E) *Regulated uses, structures and activities within the Streamside Protection Zones.*
- (1) The following are permitted within the designated streamside zone, subject to the requirements of this section, the Flood Damage Prevention Code, and all applicable requirements of the City of Fayetteville. Where a use is not listed, but is similar to a permitted use and is in keeping with the purpose of the Streamside Protection Zones, the City Engineer may determine the use to be allowed. All other uses shall be prohibited.
- (a) Zone 1: Waterside Zone. The following may be permitted in the Waterside Zone, provided the standards of the *Streamside Best Management Practices Manual* shall be followed where applicable and that these uses and any necessary construction is designed and built to minimize the impact upon streamside areas and minimize any excavation or filling that will only be allowed by express authorization of the City Engineer. All construction, grading, excavation or filling must also fully comply with all necessary local, state and federal permits.
- (i) Open space uses that are primarily passive in character including: preserves, fishing areas and docks, parkland, and natural trails.
- (ii) Streambank restoration or stabilization.
- (iii) Water quality monitoring, education and scientific studies.
- (iv) Revegetation and reforestation.
- (v) Dam maintenance.
- (vi) Paved trails or other impervious surfaces not exceeding 12 feet in width when the City Engineer determines that there is no practical and feasible alternative. Such area may not be used to park vehicles.
- (vii) Stream crossings, including driveways, roadways, trails, or railroads when the City Engineer determines there is no practical and feasible alternative.
- (viii) Maintenance and upgrades of existing utility facilities.
- (ix) New utility facilities when the City Engineer determines there is no practical and feasible alternative.
- (x) Management of lawns and gardens but no mechanized cultivation is allowed.
- (xi) Removal of dead vegetation, pruning for reasons of public safety, removal of invasive species.
- (xii) Application of any fertilizer, herbicide, pesticide, or insecticide shall be allowed only if their harmful effect on water quality is prevented by ensuring no over-application or misapplication occurs.
- (xiii) Maintenance of drainage capacity in the channel including tree and sediment removal.
- (xiv) New stormwater conveyances when the City Engineer determines that there is no practical and feasible alternative.
- (b) Zone 2: Management Zone.
- (i) New stormwater conveyances when the City Engineer determines that there is no practical and feasible alternative and provided the

“EXHIBIT A”

standards of the Streamside Best Management Practices Manual shall be followed.

- (ii) All uses within the Waterside Zone with the exception of stormwater conveyances, provided that compliance with the standards of the *Streamside Best Management Practices Manual* are not required but encouraged.
 - (iii) Accessory structures without a foundation and no larger than 150 square feet, including storage sheds, playground equipment, gazebos, decks, etc.
 - (iv) Active recreational uses.
- (2) Establishment of the following uses/activities after the effective date of this ordinance shall be prohibited in both Streamside Protection Zones, except where necessary to allow an activity permitted by Section (E)(1).
- (a) Grading, dredging, dumping, filling, or similar construction activities.
 - (b) Landfills, junkyards, salvage yards.
 - (c) Clearing of non-invasive woody vegetation.
 - (d) Storage of hazardous materials or chemicals unless within waterproof containers and within a structure.
 - (e) Parking lots.
 - (f) Buildings and accessory structures with a building footprint larger than 150 square feet.
 - (g) Parking or storage of motor vehicles.
 - (h) Septic systems and/or lateral lines.
 - (i) In-ground pools.
 - (j) Animal feedlots or kennels.
 - (k) Housing, grazing or other maintenance of livestock.
 - (l) Cultivation.
 - (m) Land application of biosolids.
- (F) *Existing land use exemptions.* The following activities and structures are allowed to continue within the Streamside Protection Zones, provided that the provisions of the Flood Damage Prevention Code and all other applicable regulations shall be enforced.
- (1) *Existing uses.* Existing uses shall be permitted to continue in their present state, but may not be enlarged, extended, or moved within the streamside protection zones. A use or activity shall be existing if it is present and ongoing within the Streamside Protection Zones as of the effective date of this ordinance. Uses and activities cease to be existing under the following conditions:
- (a) *Agricultural and animal husbandry activities.* The activities cease to be existing when the area on which they were conducted has been converted to a nonagricultural use or has lain idle for more than eighteen (18) consecutive months.
 - (b) *All other uses.* This ordinance shall apply when an existing use is converted to another use.
- (2) *Existing principal structures.*
- (a) *Reconstruction within existing footprint.* Existing principal structures as of the effective date of this ordinance may be redeveloped or reconstructed within the same footprint.
 - (b) *Minor alterations.* Minor alterations or additions to an existing structure, such as an awning or deck, shall also be permitted, provided the modifications do not extend more than ten (10) feet further toward the surface water than the original foundation of the principal structure, and do not extend into the Waterside Zone.
 - (c) *Berm to prevent flooding.* If a principal structure has suffered flooding from a stream, the owner may construct a berm to protect the principal structure if approved by the City Engineer as to the berm's location, size and composition. Revegetation of the disturbed area

and berm shall be in accordance with the Best Management Practices Manual.

- (3) *Emergencies.* Actions taken under emergency conditions, either to prevent imminent harm or danger to persons, or to protect property from imminent danger of fire, violent storms, or other hazards.

(G) *Development Application Procedures.*

- (1) All persons required to submit an application pursuant to Chapter 166 of the City's Unified Development Code shall also show the location and type of surface water, the top of bank, Zone 1: Waterside Zone and Zone 2: Management Zone boundaries, and slope, when any portion of the property being developed falls within the Streamside Protection Zones. The same shall also be identified for building, moving, demolition and grading permits.
- (2) An applicant may request that the City's Floodplain Administrator perform a site visit to view conditions on site with the applicant to assist in making a determination of top of bank location and widths of the Waterside Zone and Management Zone.
- (3) A final determination of any boundary shall be made by the City Engineer or designated representative, where there is question as to its location or width.

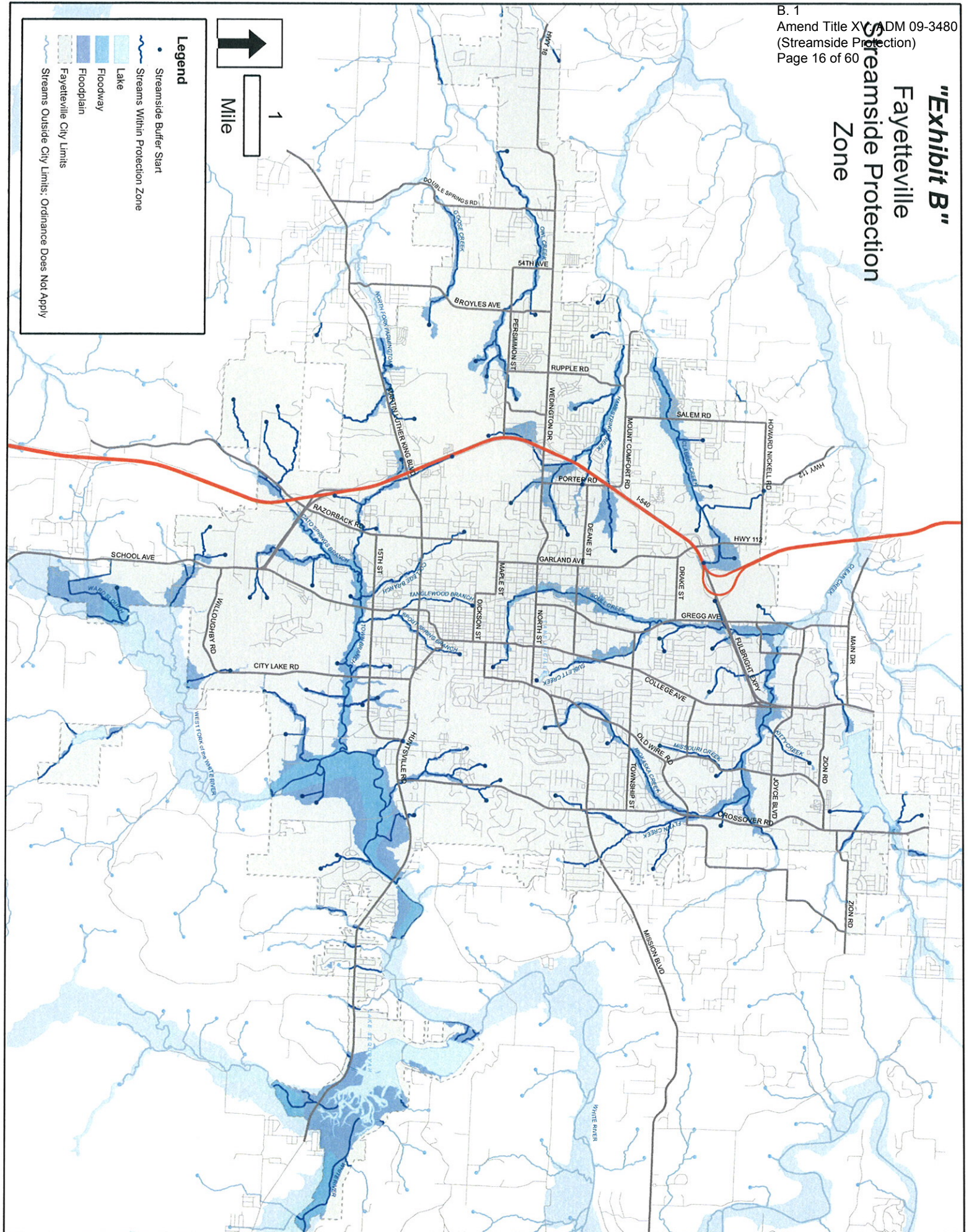
(H) *Streamside protection measures and construction.*

- (1) Prior to any land clearing or soil disturbing activity, the Streamside Protection Zone boundaries shall be clearly delineated on site by the applicant, and such delineation shall be maintained throughout construction activities.
- (2) A site inspection followed by periodic inspections during construction will be conducted by the City Engineer or designated representative to ensure compliance with the Streamside Protection Zone ordinance.
- (3) Streamside protection zones shall be protected from construction activity except where necessary to allow an activity permitted by Section (E)(1). To prevent impacts, construction vehicle

access is prohibited in the Streamside Protection Zones except at permitted crossings. Storage of construction vehicles, materials, debris, spoils or equipment is prohibited in the Streamside Protection Zones. Before commencing any construction activity, the applicant shall install silt fencing on the site at the outer edge of the Management Zone or as directed by the City Engineer. The City Engineer may require other protective measures based upon the individual characteristics of the site and the proposed construction methods. If the required barriers surrounding the Streamside Protection Zones are not adequately maintained during construction, the City Engineer shall prescribe remedial measures, and may issue a stop work order in accordance with §153.07. All remedial measures shall be completed within the specified amount of time and shall be considered prior to granting final plat approval or issuing a certificate of occupancy.

"Exhibit B"

Fayetteville Streamside Protection Zone



Streamside Protection Best Management Practices Manual



The citizen's guide to preserving and protecting our streams

Fayetteville
ARKANSAS

Adopted on _____ by Ordinance No. _____

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Introduction

The City of Fayetteville adopted a Streamside Protection Ordinance to accomplish several goals:

- 1) Reduce Pollutants in the Waterways: Pollutants damage fragile ecosystems in our city's waterways and increase the costs of treating drinking water, which has a direct effect on water rates.
- 2) Preserve Flood Capacity: Healthy streambanks result in less flooding by providing greater infiltration capacity and slowing down stormwater that runs into the streams.
- 3) Protect the Integrity of a Natural Resource: Protecting the streambanks ensures greater recreational and nature enjoyment for current residents as well as future generations.

The ordinance establishes streamside protection zones along many of our City's streams and establishes protective requirements within those streamside buffers. This Best Management Practices (BMP) manual provides guidance for complying with the requirements adopted in the Streamside Protection Ordinance. A streamside buffer may also be called a riparian or forested buffer. It is the area along a stream that acts as a buffer between the waterway and activities that have a negative impact on the aquatic environment. These buffers protect natural habitats, reduce the potential for flooding and filter pollutants such as sediment, nutrients, bacteria, trash, emerging contaminants and vehicle pollutants.

Fayetteville is home to countless numbers of streams. The adopted ordinance affects streams that have at least 100 acres draining into that stream, which means it's typically a stream that runs year-round. However, this BMP manual can be used to protect smaller streams. Approximately 25 percent of the area affected by the ordinance is public property, often located in city parks and near trails. The rest of the area is owned by private property owners, which means that the entire community has a responsibility to ensure the protection of Fayetteville's waterways.

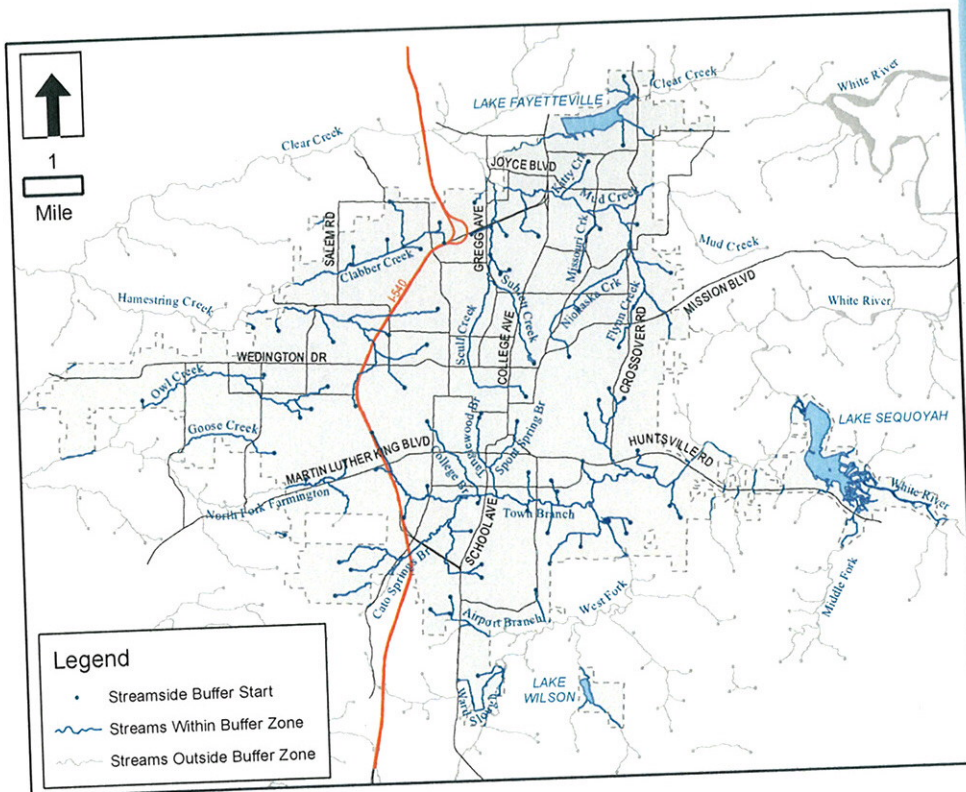
Benefits of a streamside buffer

- Stabilize streambanks
- Filter sediment and the nutrients, pesticides, and pathogens bound to the sediment
- Protect groundwater and drinking water supplies
- Improve aquatic habitat
- Improve wildlife habitat
- Provide visual interest
- Protect against flooding
- Provide shade

Streams identified on the Streamside Protection Map will have at least a 50-foot buffer applied from the top of bank. Visit www.accessfayetteville.org or the Development Services office to view the Streamside Protection Map. If your property contains or borders a buffer zone, the extent of the buffer should be measured from the stream's top of bank, as follows: Waterside Zone – 25 feet from top of bank, and an additional 20 feet if the slope exceeds 15%*. Management Zone – 25 feet from edge of Waterside Zone or to the edge of the FEMA floodway, whichever is greater.

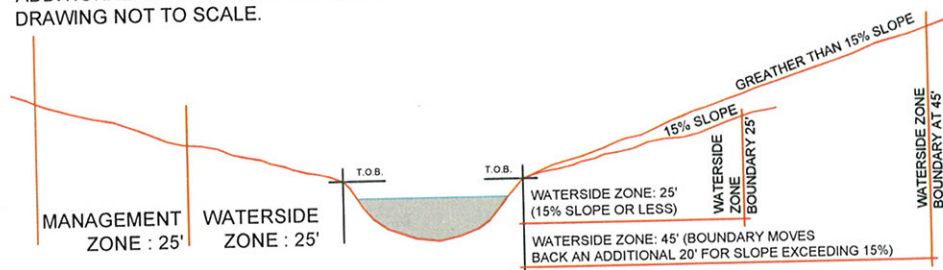
*[Slope shall be calculated at the upstream and downstream property lines for every property. Properties that exceed 100 feet in width shall require additional slope calculations at 100 foot increments.]

Protected Streams



Streamside Zones: Cross section

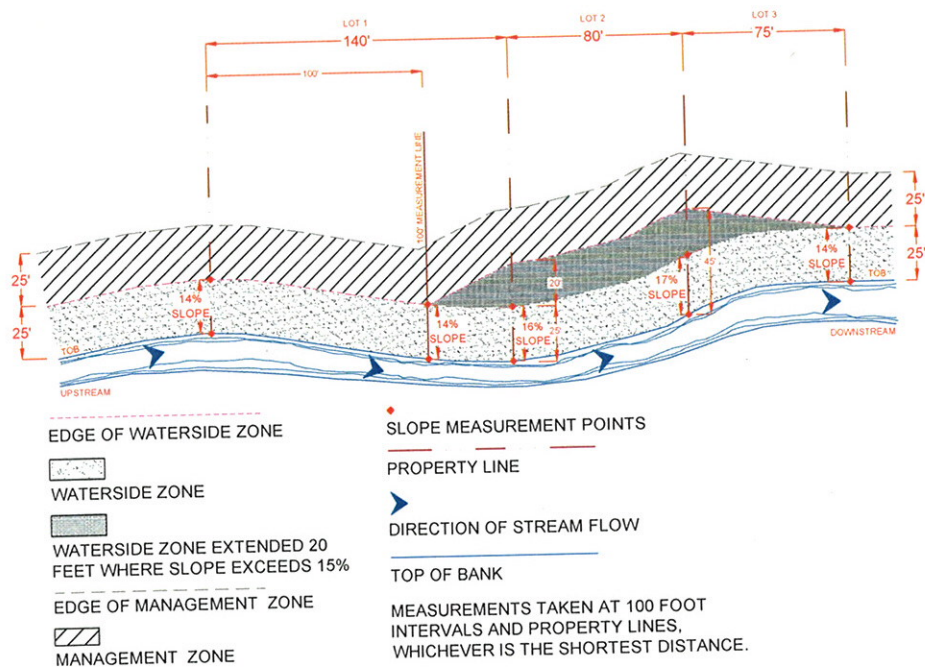
THE WATERSIDE ZONE EXTENDS 25 FEET FROM TOP OF BANK (T.O.B.) WHEN THE SLOPE IS LESS THAN 15%. THE BOUNDARY MOVES BACK AN ADDITIONAL 20 FEET FROM THE T.O.B. FOR SLOPE THAT EXCEEDS 15%. DRAWING NOT TO SCALE.



STREAMSIDE ZONE BOUNDARIES
WITH 15% SLOPE OR LESS

WATERSIDE ZONE BOUNDARIES WITH
SLOPE GREATER THAN 15%

Streamside Zones: Slope Diagram (Aerial View)



Ordinance Requirements for Property Maintenance

The goal of buffer management is to develop a self-sustainable, variable-aged stand of mixed trees, shrubs and groundcover with a floor of either leaf litter and debris, or mulch. Dense, vigorous vegetation protects the soil from raindrop impact, a major force in dislodging soil particles and moving them down slope. The shielding effect of a plant canopy is augmented by roots that hold the soil, improve its physical condition, and increase the rate of infiltration. Plants also reduce the moisture content of soil through their uptake of water and transpiration, the process by which moisture escapes through their leaves and stems, thus increasing the soil's capacity to absorb water. Large trees and carefully designed buffers may dramatically increase property value. Once established, vegetated buffers do not require maintenance beyond the routine procedures and periodic inspections.

LAWN AND GARDEN CARE

Ordinance requirements:

- Managing your lawn, and garden, is permitted within the streamside protection zones; however, the best care of a buffer area is a hands-off approach. In the Waterside Zone, the best management practices are required; in the Management Zone, the best management practices are encouraged.
- New lawns and gardens may only be created within the buffer area if the lawn would not replace wood vegetation. Many properties have existing lawns and gardens that already extended into the buffer prior to the establishment of the streamside buffer and are grandfathered in under this ordinance.
- Some City parks are included in the properties that have existing lawns within the buffer area. Some of these lawns have playgrounds or other recreational uses, which will continue to require that the lawns be mowed more frequently than several times a year for reasons of public safety.

◆ Mowing twice during the season is usually enough. Mow just before annual weeds produce seeds to keep the seed from maturing.

◆ Soil testing is available free of charge. Contact the Washington County Extension Office at (479) 444-1755.



vegetated stream

◆ Maintained lawns, while better than bare soil, do not provide all of the required buffer functions and may actually contribute to nonpoint source pollution through the application of fertilizers and pesticides associated with maintaining a lawn.

Why are lawns and gardens discouraged in the streamside protection zone?

Manicured lawns do not perform important buffer functions like preventing erosion and slowing water run-off. The root systems of manicured lawns are not deep enough or strong enough to prevent stream banks from eroding, which can lead to loss of property. In addition, lawns typically are not tall enough to adequately slow down water as it runs into the creek, preventing filtration and causing water surges during storm events. Additionally, manicured lawns and gardens will often require the application of fertilizers, herbicides and pesticides, which increases the likelihood that these pollutants will enter the water system.

Leaves and grass clippings naturally contain nutrients such as phosphorus and nitrogen, which means that these pollutants can enter the waterways when leaves and grass clippings are swept into the buffer areas. Leaves and grass can also clog storm sewers and drainage swales and contribute to localized flooding.

The nutrients that create fertile soil for gardening also foster algae growth in waterways. When possible, property owners should locate gardens and compost piles outside of the streamside protection zones.

What do I do?

Property owners can help protect streams by employing the following best practices:

Lawn and Garden Management Practices:

- ▶ Limit treatment with herbicides, pesticides or fertilizers.
- ▶ Mow on the highest setting on your lawn mower.
- ▶ Reduce the frequency with which you mow to only several times a year within the buffer area, provided the property does not become unsightly or unsanitary as outlined in Chapter 95 of the Fayetteville City Code.
- ▶ Dispose of leaves and grass clippings outside of the



grass clippings and leaf debris

- ▶ Lawn care consumes more herbicides per acre than most farmers broadcast to grow crops.

- UA Community Design
Center Low Impact
Development Design
Manual

streamside protection zones.

- ▶ Make sure leaves and grass clippings are not raked to or disposed of in the street or other water flow routes where the nutrients they contain can be washed into streams.
- ▶ Sweep clippings and leaves off paved surfaces and onto lawns.
- ▶ When possible, property owners should locate gardens and compost piles outside of the streamside protection zones.
- ▶ Position garden rows parallel to the stream to reduce potential sediment and nutrient run-off.
- ▶ Establish a small buffer around the garden to reduce potential sediment and nutrient run-off.

Other Alternatives:

- ▶ Convert such lawn areas to woody vegetation or native grasses that are not mowed.
- ▶ If you would like to have access or a view of the stream, then you could create a small area of low growing vegetation that will preserve the buffer and the wildlife corridor.

- ▶ Fayetteville offers a weekly curbside Yard Waste Service to city residents as an environmentally conscious means for disposing of yard waste. The City collects yard waste in the form of grass, leaves and brush. The City encourages participation in some form of yard waste reuse, whether it is the Yard Waste Service, backyard composting, or the use of a mulching lawn mower.

PESTICIDE AND FERTILIZER APPLICATION

Ordinance requirements:

- Fertilizers and pesticides may be permitted when applied in conformance with the following standards.
- Storage of hazardous materials or chemicals in the streamside protection zone is prohibited unless stored in waterproof containers in a garage or shed protected from precipitation.

In the Waterside Zone, the best management practices are required; in the Management Zone, the best management practices are encouraged.

Why is the use of chemicals on the lawn discouraged?

Chemicals contaminate the water supply. Chemical treatment may be required to counter the tenacity of invasive species or insects, but because of dangers of unintended damage to the underlying native vegetation or “good” insects, chemical use should be the choice of last or extreme resort.

What do I do?

- ▶ Use in the streamside protection zones should be limited and approved for use adjacent to a water body.
- ▶ Pesticides should be applied directly to the roots, bark, leaves and/or stumps using devices such as a hand sprayer, foam brush, wand or hypo-hatchet.
- ▶ Applications should occur at least two days prior to a rain event.
- ▶ Consult with a knowledgeable source such as a county extension agent to assure use of the appropriate chemical at the correct rate.
- ▶ Adhere to the manufacturer’s recommendations to ensure the safety of nearby surface waters.
- ▶ Complete a soils analysis to identify the property type and quantity of fertilizer needed. Soil test kits can be obtained through the Washington County Extension Office.



chemicals



the application of lawn fertilizer

- ▶ Store all chemicals in waterproof containers in a garage or shed protected from precipitation.
- ▶ Buy only what you need to reduce the need to store leftovers.

REMOVING VEGETATION

Ordinance requirements:

- The removal of living trees and woody plants is prohibited in the streamside protection zone, unless the removal is needed to maintain drainage capacity in the stream channel. In addition, removing dead vegetation, invasive species, and pruning is allowed. In the Waterside Zone, the best management practices are required; in the Management Zone, the best management practices are encouraged.

When should I remove vegetation?

In a natural setting, dead and dying trees are a natural part of forest succession. Dead standing trees and logs on the ground provide food and shelter to many organisms and provide nutrients to the young forest vegetation as it grows and should not be removed unless they threaten to undermine the integrity of the stream bank or create flooding hazards. Naturally occurring leaf litter, twigs, and branches are an essential part of the buffer, functioning to retard run-off and return nutrients to the soil. Snags, or dead standing trees, offer nesting and perching sites for many wildlife and bird species. However, trees that are diseased or infested may have to be removed if the disease or insects threaten other trees and other control methods, such as chemical application, are likely to damage the adjacent waterway.

Minimal pruning should be required because trees will self-prune as lower branches get shaded out. Trees grow most efficiently when there is enough canopy to provide plenty of food for the tree. Overzealous pruning can result in the loss of food production so that trees become stunted and may take time to regain optimum growth rates.

Removal of vegetation should also be considered when invasive species threaten to over-run or out-compete native trees and shrubs.



streamside clearing



bird nesting in a snag

Control of non-native, exotic species, or even invasive native species, may be justified when this happens.

What do I do?

- ▶ Leave stumps and roots in place to help bind the soil, if they are not a danger to life or property. Leaving an otherwise healthy stump can encourage new growth and regeneration.
- ▶ Contact a certified arborist if a tree is diseased or infested and threatens other trees in the vicinity. A list of tree pruners/ tree services certified by the City of Fayetteville is available at accessfayetteville.org.
- ▶ Prune trees during late fall, winter, or early spring while the plants are dormant. Pruning while the tree is dormant helps reduce problems with losing food production while actively growing and decreases the risk of infection.
- ▶ When pruning trees and shrubs:
 - Correct multiple leaders as soon as possible.
 - Leave side branches until they are 1 inch in diameter, but remove before they become 3 inches in diameter.
 - Never cut out more than 25% of the crown of a tree.
 - Retain at least 2/3 of the tree height in live branches to protect tree health.

IN-STREAM MAINTENANCE ACTIVITIES

Ordinance Requirements

- Maintenance of drainage capacity in the channel may be permitted including tree and sediment removal. The best management practices are required because the channel is in the waterside zone.

Why should caution be exercised when removing sediment?

Streams are complex natural systems. Gravel bars are natural components of some stream types and some locations are naturally subject to sediment deposition.

When sediment is removed from a stream channel, further deepening of the channel as well as bank erosion often occurs. This could lead to property damage or loss during high flow events. Sediment removal at one stream location can also lead to bank failure and property loss at upstream locations as well. Downstream of where the sediment has been removed, all the newly eroded sediment collects. This restricts the channel flow, often causing extreme widening of the channel. This sediment deposition can result in property damage or loss during flood events for downstream neighbors.

Why should caution be exercised when removing trees within the channel?

Many healthy trees lean over to catch sunlight and remain that way for many years. Determination of tree removal should consider a variety of factors, including the tree's overall condition, its potential for falling, and the amount of undercutting it may be causing.

What Do I Do?

- Restore the channel to a width and depth consistent with the width and depth observed at a more stable channel location in cases where there has been a significant change in the flow



widened channel and property loss resulting from improper sediment removal

- ◆ Sediment in the stream and banks may range in size from silt and sand to gravel, cobbles and boulders.



tree over channel

area of the channel.

- ▶ Remove blockages such as large trees or debris that are underneath or against a bridge or culvert to maintain or protect approaches to stream crossing structures.
- ▶ Leave stumps unless the stump is obstructing flow in a harmful way. If possible cut the stump flush with the existing ground. If stump is removed back fill the hole with soil or rock to stabilize and revegetate the disturbed area.
- ▶ Do not remove large rock and boulders from a stream. Gravel bars, rocks and boulders all help reduce flood power, keep a stream stable and provide valuable aquatic habitat.
- ▶ Do not place loose gravel and material on stream banks or build up artificial barriers, debris piles or levees. This will prevent the stream from spreading out on the floodplain and will increase water velocities and associated flooding downstream.
- ▶ Contact state or federal resource agencies about obtaining the required permits for in-stream activities.
- ▶ The Corps of Engineers can provide guidelines for responsible methods of sediment removal including how heavy equipment may be used. Heavy equipment in the stream such as bulldozers should not be used in the creek without proper permits and approvals.
- ▶ A Corps of Engineers permit is required when more than 25 cubic yards of fill material will be used below the “ordinary high water mark” (the approximate yearly flood level). US Army Corps of Engineers, Beaver Lake Project Office, (479) 636-1210 or ceswl-by@usace.army.mil
- ▶ Arkansas Department of Environmental Quality may require a permit called a Short Term Activity Authorization for stream activity with the potential to create a water quality standards violation such as turbidity.
Arkansas Department of Environmental Quality,
(501) 682-0645 or <http://www.adeq.state.ar.us/>



rocks provide stream stabilization and natural aquatic habitat

- ◆ Don't remove gravel where deepening of the channel is the primary cause of the instability, as gravel extraction will only accelerate the problem.



dredging of stream channel

ADDITIONAL RESOURCES

- ▶ Washington County Cooperative Extension Office and U of A plants database
<http://www.arhomeandgarden.org/landscaping.htm>
479-444-1755
- ▶ USDA Plant Database
<http://plants.usda.gov/>
- ▶ “Go Native When You Go Green!”
<http://www.fayettevillenatural.org/userfiles/file/Northwest%20Ark%20Trees%20and%20Shrubs.pdf>
- ▶ City of Fayetteville Tree and Landscape Manual
Listed on the City Parks and Recreation website under “Urban Forestry”
http://www.accessfayetteville.org/government/parks_and_recreation/documents/
- ▶ University of Florida & USFS Northern Tree Database
<http://lyra.ifas.ufl.edu/NorthernTrees/>
- ▶ University of Florida Landscape Plants Database
<http://hort.ifas.ufl.edu/woody/>
- ▶ National Invasive Species Information Center
<http://www.invasivespeciesinfo.gov/unitedstates/ar.shtml>

Helpful Information for Property Maintenance

SOIL EROSION

What's wrong with bare soil?

The Environmental Protection Agency lists sediment as the most common pollutant in rivers, streams, lakes and reservoirs, causing \$16 billion in environmental damage annually. Area waterways, such as the West Fork of the White River, are listed as impaired for sediment. Sediment entering waterways degrades the quality of drinking water, wildlife and the land surrounding streams in several ways:

- Sediment fills up storm drains and catch basins that carry water away from roads and homes, which increases the potential for flooding.
- Sediment in stream beds destroys habitats for the smallest organisms and causes massive declines in fish populations.
- Sediment increases the cost of treating drinking water and can result in odor and taste problems.
- Sediment particles carry other pollutants such as phosphorus, pathogens and heavy metals.

What do I do?

- ▶ Inspect areas for bare soil after heavy rainfall. Focus on gully erosion, the density of the vegetation, evidence of concentrated water flow through the areas, and any damage from foot or vehicular traffic.
- ▶ Plant ground cover vegetation or use wood-chip mulch or landscape fabric.
- ▶ On steep slopes, plant a vigorous ground cover and avoid turf grass that requires mowing.



flood waters and streambank erosion



eroded streambank



streambank restoration using landscape fabric

REVEGETATION: WHAT TO PLANT

Why are plants, and native plants in particular, important in the streamside protection zone?

The vegetation planted in the streamside protection zone greatly influences the effectiveness of the buffer. The vegetation's root systems and density will significantly affect how well the streambank is protected. Property owners should be aware of the distinction between noxious weeds or invasive species and native plants. For the purpose of this manual, "noxious weed" encompasses any invasive species that has gotten out of control and has become harmful to the health and survival of the woody vegetation in the buffer. Invasive plants disrupt natural habitats by choking out native plants, altering the local ecology and potentially threatening local animal species.

If an invasive species is performing a desirable function such as preventing erosion on a bank, it should not be removed without replacing it with vegetation of at least equal value for erosion control and water quality functions. Some common noxious species are Japanese honeysuckle, kudzu, mile-a-minute, multi-flora rose, English ivy, all privets, and winged euonymus.

What do I do?

- ▶ Plant native plants, which are already adapted to the area and generally withstand local weather and soil conditions. They often require less ongoing maintenance, including watering. Native plants are naturally resistant to insect pests and diseases and by planting them not only are you helping prevent the establishment and spread of invasive non-native plants, but also protecting the local ecology.
- ▶ Replant in such a way that minimizes disturbance to the root systems of existing vegetation.
- ▶ Avoid planting invasive species.

◆ Invasive Species tend to spread uncontrollably, overwhelming other, especially native, species; some native species may qualify as an invasive.



japanese honeysuckle



kudzu



mile-a-minute vine

◆ Common invasive species: Japanese honeysuckle, kudzu, mile-a-minute, multi-flora rose, English ivy, all privets, and winged euonymus

Examples of species suitable for planting in riparian buffers.

Flood Tolerant Trees	
Bald Cypress <i>Taxodium distichum</i>	Black Willow <i>Salix nigra</i>
Overcup Oak <i>Quercus lyrata</i>	Water Tupelo <i>Nyssa aquatica</i>
Swamp Tupelo <i>Nyssa sylvatica</i> var. <i>biflora</i>	
Moderately Flood Tolerant Trees	
Sycamore <i>Platanus occidentalis</i>	Sugarberry <i>Celtis laevigata</i>
Eastern Cottonwood <i>Populus deltoides</i>	American Elm <i>Ulmus americana</i>
Green Ash <i>Fraxinus pennsylvanica</i>	Water Oak <i>Quercus nigra</i>
River Birch <i>Betula nigra</i>	Willow Oak <i>Quercus phellos</i>
Swamp Chestnut Oak <i>Quercus michauxii</i>	Nuttall Oak <i>Quercus nuttallii</i>
Flood Intolerant Trees	
Black Walnut <i>Juglans nigra</i>	Shortleaf Pine <i>Pinus echinata</i>
Persimmon <i>Diospyros virginiana</i>	White Ash <i>Fraxinus americana</i>
White Oak <i>Quercus alba</i>	Sweet Pecan <i>Carya illinoensis</i>
Blackgum <i>Nyssa sylvatica</i>	Cherrybark Oak <i>Quercus pagoda</i>
Small Trees	
Redbud <i>Cercis canadensis</i>	Fragrant Sumac <i>Styrax obassia</i>
American Plum <i>Prunus americana</i>	Crabapple <i>Malus</i> spp.
Serviceberry <i>Amelanchier canadensis</i>	Flowering Dogwood <i>Cornus florida</i>
Shrubs	
Roughleaf Dogwood <i>Cornus drummondii</i>	Shrub Willow <i>Salix</i> spp.
Elderberry <i>Sambucus nigra</i>	Beautyberry <i>Callicarpa americana</i>
Grasses	
Indiangrass <i>Sorghastrum nutans</i>	Big Bluestem <i>Andropogon gerardii</i>
Little Bluestem <i>Schizachyrium scoparium</i>	Switchgrass <i>Panicum virgatum</i>



sycamore



black willow



eastern redbud



indiagrass

PETS AND PET WASTE

Does pet waste really affect our streams?

The EPA has placed pet waste in the same category of nonpoint source pollution as oil and toxic chemicals. It is considered a major pollutant and contaminant of water supplies and is one of the most common sources of nutrient load in waterways. Pet waste in lakes and streams can use up and lower oxygen levels, killing fish. Nutrients from the waste can encourage weed and algae growth, which is harmful to a healthy balance in an aquatic system.

What do I do?

- ▶ Kennels are prohibited within the streamside protection zone and should be located away from any drainage paths leading to the stream. Kennels as defined in the Unified Development Code are structures or facilities used for the purpose of breeding two or more litters within a 12-month period or a facility that keeps animals commercially and has open dog runs.
- ▶ Pet waste should be picked up regularly and disposed of in the trash.



pet waste bag dispenser

Ordinance Requirements for Development and Construction

STREAMSIDE PROTECTION MEASURES AND CONSTRUCTION

Ordinance Requirements

- Prior to any land clearing or soil disturbing activity, the Streamside Protection Zones (SPZ) boundaries shall be clearly delineated on site by the applicant, and such delineation shall be maintained throughout construction activities.
- A site inspection followed by periodic inspections during construction will be conducted by the City Engineer or designated representative to ensure compliance with the Streamside Protection Zones ordinance.
- Streamside protection zones shall be protected from construction activity. To prevent negative impacts, construction vehicle access is prohibited in the SPZ except at permitted crossings.
- Storage of construction vehicles, materials, debris, spoils or equipment is prohibited in the SPZ.
- Before commencing any construction activity, the applicant shall install silt fencing on the site at the outer edge of the SPZ, or as directed by the City Engineer. The City Engineer may require other protective measures based upon the individual characteristics of the site and the proposed construction methods.
- If the required barriers surrounding the SPZ are not adequately maintained during construction, the City Engineer shall prescribe remedial measures, and may issue a stop work order in accordance with §153.07.
- All remedial measures shall be completed within the specified amount of time and shall be considered prior to granting future inspections from any other city division, final plat approval or issuing a certificate of occupancy.
- The City Engineer may require other protective measures based upon the individual characteristics of the site and the proposed construction methods.

Construction activities can be particularly damaging to the streamside zone. Some results of construction disturbances in the streamside zone are permanent loss of vegetation, permanent loss of water infiltration due to soil compaction, alteration of natural water runoff patterns, and an avenue for noxious weeds to establish themselves.



silt fence along construction zone



soil compaction during construction

Soil compaction by heavy equipment can reduce water intake of soils to 5 percent or less of the original rate.

STREAM CROSSINGS FOR TRANSPORTATION

Ordinance requirements:

- Stream crossings, including driveways, roadways, trails, or railroads, provided they are designed and constructed to minimize the impact upon streamside areas, and result in minimal amounts of excavation and filling and are in accordance with required local, state, and federal permits.

Minimizing Stream Crossing Impacts

Consideration of the following elements will aid in reducing the impact of stream crossings:

- ▶ Minimize or reduce stream crossings through proper planning.
- ▶ Minimize the amount of excavation and filling.
- ▶ Maintain the dimension, pattern, and profile of the stream.
- ▶ Minimize scour, erosion, and flooding.

Methods to minimize stream crossing impacts:

- ▶ Construct stream crossings during periods of low flow.
- ▶ Locate crossings where streambed and banks are composed of firm, cohesive soils to minimize erosion.
- ▶ Design crossings to reduce the possibility of obstructions such as debris and silt blockages through the minimization of channel obstructions.
- ▶ Bridges and bottomless arches, wide enough to span the stream and allow for some dry ground or an artificial ledge beneath the bridge on one or both sides are preferred and should be used whenever possible.
- ▶ Bridge soffits should be a minimum of one foot above the height of adjacent banks--high enough to allow wildlife passage.
- ▶ Exceptionally wide stream crossings may be allowed to utilize piers in the channel under the discretion of the City Engineer.



streamside low impact bridge



clear span trail bridge

- ▶ Maintain a natural substrate underneath the bridge.
If concrete is necessary to prevent scour, then it is recommended to cover the concrete with a natural substrate.
- ▶ All disturbed areas shall be revegetated immediately upon completion of the work
- ▶ **The use of culverts should be avoided.** If culverts must be used, the following installation guidelines should be followed:
 - Provide water depths and velocities (at low flows) matching natural areas upstream and downstream of the crossing.
 - Create no drop-offs or plunge pools and no constriction of the channel.



drainage riprap along streamside

The practices listed may be subject to additional regulation per UDC Chapter 168 Flood Damage Prevention Code, Chapter 169 Physical Alteration of Land, and Chapter 170 Stormwater Management, Drainage and Erosion Control.

UTILITIES

Ordinance requirements:

- Maintenance and upgrades of existing utility facilities are allowed in the Waterside Zone if BMPs are followed. BMPs are encouraged in the Management Zone.
- Installation of new utility facilities are allowed in the Management Zone, and may be allowed in the Waterside Zone if they are designed and constructed to minimize the impact upon streamside areas and in accordance with required local, state and federal permits. This requirement also applies to the installation of facilities in the waterway itself.

Establishment of Easements:

- ▶ New utility easements shall be specifically labeled for the type of utility intended.
- ▶ The width of the easement shall be limited to the minimum width necessary for the utility's installation and maintenance.

Maintenance, Upgrades and Installation of New Utilities:

- ▶ Once started, carry out and complete construction without delay. Leaving construction work incomplete increases risk of erosion and sediment transport.
- ▶ Where clearing is required, limit or delay grubbing until grading and construction is ready to proceed; the root masses and associated organic matter provide substantial erosion control.
 - Clearing ahead of the point of construction may not exceed 500 feet.
 - Except for clearing, the maximum length of disturbed work area, including grubbing, shall not exceed 300 feet before temporary stabilization is made with, at a minimum, seed and mulch.
 - Permanent soil stabilization with perennial vegetation or other permanently stable, non-eroding surface shall be initiated within 14 days after final site grading.



clearly labeled utility



minimized utility easement
work width



sediment filter used during
construction



native plants used for final
stabilization

- Implement erosion and sediment controls that meet or exceed the requirements set forth in UDC Chapter 169 and 179 and the Arkansas Department of Environmental Quality.
- ▶ Access maintenance routes shall be limited to 20 feet in width and, where possible, shall approach manholes, risers, valves, or other appurtenances perpendicular to the stream rather than running the length of the utility line to minimize post installation clearing in the buffer.
- ▶ Leave stumps and roots in place when trees are cleared to help bind the soil, if they are not a danger to life or property.
- ▶ Prepare and maintain on site a Stormwater Pollution Prevention Plan (SWPPP) for construction sites over one acre. (Required by the Arkansas Department of Environmental Quality)
- ▶ File a Notice of Intent with the Arkansas Department of Environmental Quality for construction sites over five acres. (Required by the Arkansas Department of Environmental Quality)
- ▶ Sediment and erosion controls shall be installed prior to any surface disturbance activity, such as clearing or grubbing.



above grade piers outside of stream

Installation of Utility Stream Crossings:

- ▶ Crossings shall be contained within the footprint of an existing road or utility crossing where possible.
- ▶ Stream bank stabilization to protect new structures from future channel migration shall be accomplished through vegetative or flexible linings. The utility installation shall not increase or decrease the natural rate of channel migration.
- ▶ For above grade utility crossings, pier locations shall be planned to minimize or avoid placement in the stream.
- ▶ Below grade utility crossings:
 - The installation shall be accomplished by directional boring or jacking beneath the scour depth of the water body and channel migration zone, where feasible.
 - Where directional boring or jacking are not feasible, detailed plans showing how flow will be diverted away from the area during construction (use of coffer dams,

temporary culverts, etc.) and how the channel will be rehabilitated to its pre-alteration state following installation of the utility are required

- Utilities shall cross at an angle perpendicular to the channel centerline, or as near to perpendicular as possible, whenever boring under the channel is not feasible.
- Below grade utilities shall be encased in steel, to minimize maintenance needs, and buried to a depth sufficient so as not to alter the flow of the stream, catch debris, or cause erosion or deposition.

PAVED TRAILS AND IMPERVIOUS SURFACES

Ordinance requirements:

- Paved trails or other impervious surfaces not exceeding 12 feet in width are permitted in the Waterside Zone.

Trails, like any impervious surface, prevent infiltration and require the removal of vegetation, which can compromise the bank's stability. However, the trails system also offers multiple benefits to riparian areas:

- By creating a place for public enjoyment along the stream, the trail brings people in contact with the stream to appreciate the natural beauty and report dumping or other detrimental activities.
- The Adopt-A-Trail program has been very successful at attracting volunteers to pick up litter along the trails and stream corridors.
- The trail provides educational opportunities along the stream by providing easy access to the unique and diverse riparian corridor. Children can come in direct contact with the streams and grow a stronger appreciation for the natural systems.
- The trail provides access for equipment to remove large debris or trash and repair impaired areas of the stream to prevent future stream bank erosion through naturalized repair methods.

The following best management practices are required in the Waterside Zone and encouraged in the Management Zone:

- ▶ Locate trail as far from the "top of bank" as practicable.
- ▶ The existing vegetated buffer between trail and "top of bank" shall be maintained to the extent practical to protect significant trees and sensitive areas such as stream edges or springs.
- ▶ Once started, carry out and complete construction without delay. Leaving construction works incomplete increases risk of erosion and sediment transport.



stream cleanup volunteers



illegal streamside dumping

- ▶ Where clearing is required, limit or delay grubbing until grading and construction is ready to proceed; the root masses and associated organic matter provide substantial erosion control.
 - Clearing ahead of the point of construction may not exceed 500 feet.
 - Except for clearing, the maximum length of disturbed work area, including grubbing, shall not exceed 300 feet before temporary stabilization is made with, at a minimum, seed and mulch.
- ▶ Final stabilization shall be done using native plants to match or exceed the quality of vegetation existing prior to trail.
- ▶ Implement erosion and sediment controls that meet or exceed the requirements set forth in UDC Chapter 169 and 179 and the Arkansas Department of Environmental Quality.
- ▶ If a utility easement is established, and has been previously cleared and disturbed, the impervious surface shall be located on the utility easement to minimize the overall amount of disturbance.
- ▶ Concrete shall be required, in flood prone areas, because it has a greater resistance to flooding conditions than asphalt, requiring less repair and overall land disturbance.
- ▶ If there is an exposed cut bank or highly eroded stream bank on the same property as the impervious surface being constructed, the bank shall be stabilized using natural channel design methods at the time of trail construction. All bank stabilization shall receive approval from the City Engineer, prior to land disturbance activities.
- ▶ Sheet flow drainage conditions from the impervious surface and its appurtenances are required. Where flow is concentrated, the methods in the flow diffusion section of this manual shall be used.
- ▶ Turf grass is allowed 5 feet from the edge of the impervious surface to allow for periodic mowing. Beyond 5 feet from the edge of the impervious surface, native plants shall be used where revegetation is necessary.



minimalized trail construction footprint



existing utility easement and site of future trail



5' turf grass buffer along trail

STORMWATER OUTFALLS

Existing stormwater conveyances on site or accessible to the site are the preferred location to direct stormwater runoff from the site. Existing conveyances utilized for additional stormwater flows shall be modified in conformance with best management practices for new facilities.

Ordinance requirements:

- New stormwater conveyances where no conveyances exist or are accessible to the site may be permitted in the SPZ provided the standards of the Streamside Best Management Practices Manual are followed.

Minimizing Stormwater Outfall Impacts:

All of the following Best Management Practices shall apply to new stormwater conveyances through the SPZ:

- ▶ Minimize sediment loads and trash prior to entrance into the SPZ through practices such as:
 - Stilling Basin
 - Outlet Sediment Traps
 - Grass Swales
 - Check Dams
 - Bioretention Cells
 - Enhanced Detention Pond (See image below)
 - * Prevent Short Flow Paths
 - * Extended Dry Detention
 - * Retention Ponds/Wet Ponds
 - * Sediment Forebays
 - * Meandering Low Flow Channels
 - * Micropools
 - * Marshes
 - * Plunge Pools
 - * Pond Buffers (25 feet minimum)
 - * Rip-rap pilot channels
- ▶ Design for a minimum number of discharge locations to the stream and choose an alignment through the SPZ which will

result in minimal clearing of existing vegetation.

- ▶ Design for minimal amounts excavation and no filling in the SPZ.
- ▶ Convert flow to a velocity that is non-erosive at the 10-year design storm before the flow enters the stream. Possible practices to achieve velocity reduction include:
 - RipRap Aprons
 - Level Spreaders
 - Check Dams
 - Outlet Sediment Traps
- ▶ Angle the discharge into the direction of flow of the receiving water to provide a more natural confluence if possible.
- ▶ Design to minimize the long-term impact in the SPZ and the receiving stream.
- ▶ Implement erosion and sediment controls that meet or exceed the requirements set forth in UDC Chapter 169 and 170 and the Arkansas Department of Environmental Quality.
- ▶ Discharges must be managed during construction as well and may use an approved temporary method different from the permanent post-construction method used.
- ▶ Once construction is started, carry out and complete project without delay.
- ▶ Design in accordance with and obtain all required local, state, and federal permits.
- ▶ Design in accordance with the City's *Drainage Criteria Manual*.
- ▶ Periodic corrective action to restore a non-erosive velocity of flow or to restore stability of the conveyance shall be taken as necessary to impede the formation of erosion gullies.



level spreader

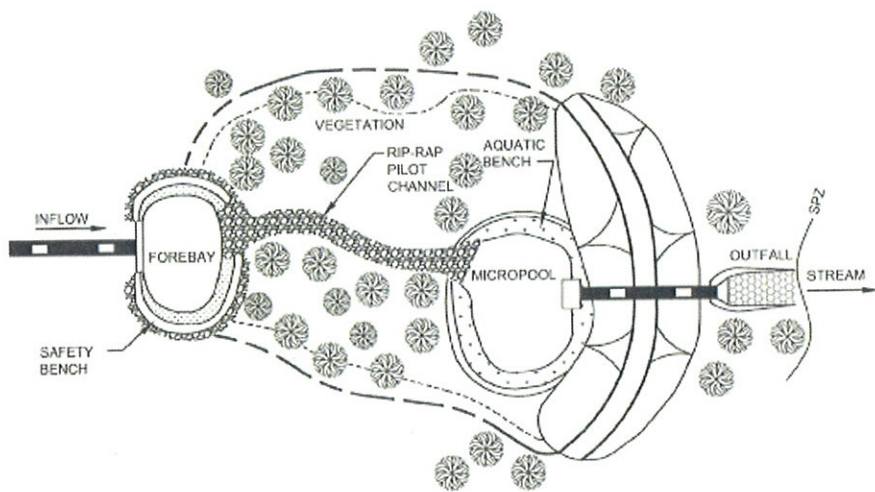


meandering low-flow channel

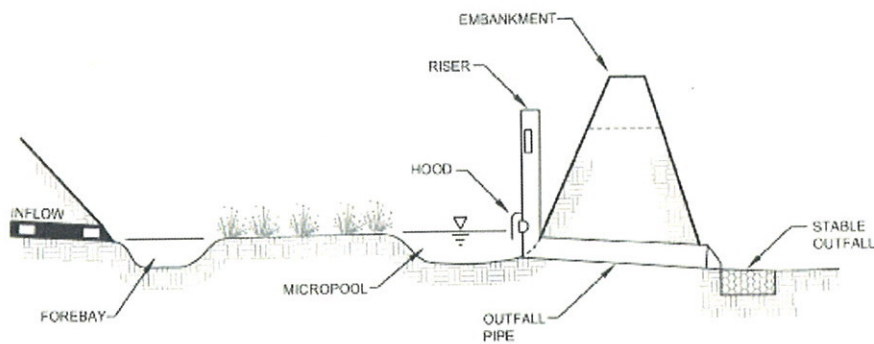


check dams slow water flow in swale

Example of Enhanced Dry Detention Pond



PLAN VIEW



PROFILE



enhanced dry detention in
residential neighborhood

BMPs for Sediment Removal and Velocity Reduction prior to discharge to the Streamside Buffer

BMP	Function	Applicability	Limitations
Grassed Swales	Sediment Removal	Used after velocity reduction is achieved.	Small drainage areas, less than 5 acres.
Sediment Forebay	Sediment Removal	Used for pretreatment rather than as a standalone BMP.	No minimum or maximum drainage area. Depths may require removal of bedrock.
Meandering Low Flow Channel	Sediment and other pollutant removal	Used after velocity reduction is achieved.	Requires a wider space than a linear channel.
Riprap Apron	Sediment Removal; Velocity Reduction	Used at the end of an outlet pipe or channel.	Can be used at most outlets where the flow speed is high. Not aesthetic.
Check Dam	Sediment Removal; Velocity Reduction	Used within a drainage ditch, swale, or channel. May use with steep slopes.	Should only be used in channels with a drainage area of 10 acres or less.
Outlet sediment traps	Sediment Removal; Velocity Reduction	Used at the end of an outlet pipe or channel	No minimum or maximum drainage area. Depths may require removal of bedrock.
Level Spreader	Velocity Reduction	Used at the end of an outlet pipe or channel to disperse flow uniformly across a slope.	Maximum flow of 30 cfs and maximum slope of 10%.

Notes:

- (1) BMPs shall be selected and designed following approved technical design guidelines.
- (2) For technical and design guidelines contact the City of Fayetteville Engineering Division at (479) 575-8206.
- (3) Additional methods of achieving the above criteria may be approved by the City Engineer.
- (4) BMPs may be used in combination to achieve flow velocity reduction and sediment removal.
- (5) Plantings downstream of the flow diffusion device must be adequate to prevent erosion and shall be specified in the design plan.
- (6) Reestablishment of disturbed vegetation must be accomplished as soon as practicable, but in no case longer than 14 days.

- Vegetative cover is extremely important in controlling erosion. It performs these functions:
- Shields the soil surface from the impact of falling rain
 - Holds soil particles in place
 - Helps to maintain the soil's capacity to absorb water
 - Slows the velocity of runoff



stormwater diffusion with plant materials

MITIGATION PRACTICES FOR APPROVED VARIANCES

Ordinance requirements:

- If the Planning Commission has granted a variance for a reduction in the width of the Streamside Protection Zones, it may require mitigation through installation of structural BMPs. Removal efficiencies sited on the Environmental Protection Agency National Menu of Stormwater Best Management Practices may be used to select suitable structural BMPs or combinations of structural BMPs. Examples of possible BMPs for consideration include wet ponds, wetlands, infiltration trenches, and bioretention. Structural BMPs selected for mitigation shall be approved by the City Engineer.

LOW IMPACT DEVELOPMENT

The use of Low Impact Development principles throughout the development is encouraged to reduce the total volume of runoff contributed by the development. Reference the UDC Chapter 179 Low Impact Development Code.

Ordinance Forwarded by the Planning Commission to City Council November 8, 2010

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Amend Title XV: ADM 09-3480
(Streamside Protection)
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168.12 Streamside Protection Zones

Emergency Management Agency
(FEMA).

(A) *Streamside Best Management Practices Manual.* The City of Fayetteville's Streamside Best Management Practices Manual, which may be administratively changed by the City Engineer, shall be used in support of this chapter to explain specific objectives and principles.

(B) *Applicability.* This ordinance shall apply to all land within a Streamside Protection Zone as defined by this section, except for as provided below:

(1) Undeveloped lots created by a lot split, concurrent, or final plat application, which was submitted or approved prior to the effective date of this ordinance, are exempt from the requirements of this section for the following time periods:

(a) 24 months from the effective date of this ordinance for lots less than one half (1/2) acre;

(b) 18 months from the effective date of this ordinance for lots greater than one half (1/2) acre but less than 1 acre; or

(c) 12 months from the effective date of this ordinance for lots greater than one (1) acre.

(2) A preliminary plat which was submitted or approved prior to the effective date of this ordinance shall be exempt from the requirements of this section, provided the time periods listed herein shall be in force from the date of final plat approval.

(3) A use and/or activity permitted by an unexpired building permit, which was approved prior to the effective date of this ordinance, is exempt from this ordinance.

(C) *Establishment of Designated Surface Waters.* The Streamside Protection Zone shall apply to all surface waters meeting any one of the following criteria:

(1) All surface waters identified on the adopted Streamside Protection Zone map, including any pond, lake or reservoir located within the natural drainage way of said surface water; or

(2) Any surface water where a floodway has been established by the Federal

(D) *Streamside Protection Zone Requirements.* The Streamside Protection Zones shall be established as follows:

(1) *Zone 1: Waterside Zone.* The Waterside Zone shall extend a minimum of 25 feet landward from the top of bank in each direction, measured horizontally on a line perpendicular to the top of bank and includes the surface water.

(a) *Steep slope.* Slope shall be calculated at the upstream and downstream property lines for every property. Properties with more than 100 feet of stream frontage shall require additional slope calculations at 100 foot increments, beginning at the upstream property line and ending at the downstream property line. When slope calculations are equal to or greater than 15%, the width of the Waterside Zone shall be extended by an additional 20 feet at that point. The boundary width determined at each designated slope measurement point shall be connected by a continuous line to form the boundary of the Waterside Zone (illustrations available in Best Management Practices Manual).

(2) *Zone 2: Management Zone.* The Management Zone shall begin at the outer edge of the Waterside Zone and extend landward 25 feet as measured horizontally on a line perpendicular to Zone 1. The combined width of Zones 1 and 2 shall be no less than 50 feet from the top of bank on all sides of the surface water.

(a) *Floodway.* Where the floodway extends beyond the edge of the Management Zone boundary, said boundary shall be adjusted so that the zone consists of the extent of the floodway as designated by the most recently adopted FEMA Flood Insurance Rate Map (FIRM).

(3) *Piped streams.* A streamside protection zone may not be required where the surface water has been previously enclosed in a pipe, culvert, or similarly enclosed conduit.

Ordinance Forwarded by the Planning Commission to City Council November 8, 2010

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- (4) *Daylighting.* Streams enclosed prior to the effective date of this ordinance and subsequently daylighted shall only require a 5-foot setback measured from the top of the established top of bank. Daylighted streams shall be maintained in a natural state by the property owner, who shall also be responsible for monitoring and controlling trash, litter and pollutants.
- (E) *Regulated uses, structures and activities within the Streamside Protection Zone.*
- (1) The following are permitted by right within the designated streamside zone, subject to the requirements of this section, the Flood Damage Prevention Code, and all applicable requirements of the City of Fayetteville. Where a use is not listed, but is similar to a permitted use and is in keeping with the purpose of the Streamside Protection Zones, the City Engineer may determine the use to be allowed. All other uses shall be prohibited.
- (a) Zone 1: Waterside Zone.
- (i) Open space uses that are primarily passive in character including: preserves, fishing areas and docks, parkland, and natural trails.
 - (ii) Streambank restoration or stabilization.
 - (iii) Water quality monitoring, education and scientific studies.
 - (iv) Revegetation and reforestation.
- (b) The following may also be permitted in the Waterside Zone, provided the standards of the *Streamside Best Management Practices Manual* shall be followed.
- (i) Paved trails or other impervious surfaces not exceeding 12 feet in width when there is no practical alternative.
 - (ii) Stream crossings, including driveways, roadways, trails, or railroads, provided they are designed and constructed to minimize the impact upon streamside areas, and result in minimal amounts of excavation and filling in accordance with required local, state, and federal permits.
- (iii) Maintenance and upgrades of existing utility facilities
- (iv)
- (v) New utility facilities or easements when there is no practical alternative.
- (v) Management of lawns
- (vi) Removal of dead vegetation, pruning for reasons of public safety, removal of invasive species.
- (vii) Application of any fertilizer, herbicide, pesticide, or insecticide shall be allowed only if their harmful effect on water quality is prevented by ensuring no over-application or misapplication occurs.
- (c) Zone 2: Management Zone.
- (i) All uses within the Waterside Zone, provided that compliance with the standards of the *Streamside Best Management Practices Manual* are not required but encouraged.
 - (ii) Accessory structures without a foundation and no larger than 150 square feet, including storage sheds, playground equipment, gazebos, decks, etc.
 - (iii) Active recreational uses.
- (2) Establishment of the following uses/activities after the effective date of this ordinance shall be prohibited in both Streamside Protection Zones, except where necessary to allow an activity permitted by Section (E)(1).
- (a) Grading, dredging, dumping, filling, or similar construction activities.
 - (b) Landfills, junkyards, salvage yards.
 - (c) Clearing of existing woody vegetation.

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B. 1
Amend Title XV: ADM 09-3480
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- (d) Storage of hazardous materials or chemicals unless within waterproof containers and within a structure.
 - (e) Parking lots.
 - (f) Buildings and accessory structures with a building footprint larger than 150 square feet.
 - (g) Parking or storage of motor vehicles.
 - (h) Septic systems and/or lateral lines.
 - (i) New drainage ditches, roadside ditches, and stormwater conveyances.
 - (j) In-ground pools.
 - (k) Confined animal feedlots or kennels.
 - (l) Housing, grazing or other maintenance of livestock.
 - (m) Cultivation.
 - (n) Land application of biosolids.
- (F) *Existing land use exemptions.* The following activities and structures are allowed to continue within the Streamside Protection Zone, provided that the provisions of the Flood Damage Prevention Code and all other applicable regulations shall be enforced.
- (1) *Existing uses.* Existing uses shall be permitted to continue in their present state, but may not be enlarged, extended, or moved. A use or activity shall be existing if it is present and ongoing within the Streamside Protection Zone as of the effective date of this ordinance. Uses and activities cease to be existing under the following conditions:
 - (a) *Agricultural and animal husbandry activities.* The activities cease to be existing when the area on which they were conducted has been converted to a nonagricultural use or has lain idle for more than eighteen (18) consecutive months.
 - (b) *All other uses.* This ordinance shall apply when an existing use is converted to another use.
- (2) *Existing principal structures.*
- (a) *Reconstruction within existing footprint.* Existing principal structures may be redeveloped or reconstructed within the footprint of any principal structure existing on January 1, 2011.
 - (b) *Minor alterations.* Minor alterations or additions to an existing structure, such as an awning or deck, shall also be permitted, provided the modifications do not extend more than ten (10) feet further toward the surface water than the original foundation of the principal structure, and do not extend into the Waterside Zone.
 - (c) *Berm to prevent flooding.* If a principal structure has suffered flooding from a stream, the owner may construct a berm to protect the principal structure if approved by the City Engineer as to the berm's location, size and composition. Revegetation of the disturbed area and berm shall be in accordance with the Best Management Practices Manual.
- (3) *Emergencies.* Actions taken under emergency conditions, either to prevent imminent harm or danger to persons, or to protect property from imminent danger of fire, violent storms, or other hazards.
- (G) *Determination of No Practical Alternative.* An applicant desiring to establish an allowable use that requires a "no practical alternative" determination shall submit a written request for such determination to the City Engineer. The City Engineer shall make a finding of fact as to whether the following requirements have been met in support of a "no practical alternative" determination within ten (10) business days of receiving the request.
- (1) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - (2) The use cannot practically be reduced in size or density, reconfigured, relocated, or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.

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(H) *Development Application Procedures.*

- (1) All persons required to submit a development application, pursuant to any section of the City's Unified Development Code, shall also show the location and type of surface water, the top of bank, Zone 1: Waterside Zone and Zone 2: Management Zone boundaries, and slope, when any portion of the property being developed falls within the Streamside Protection Zone.
- (2) An applicant may request that the City's Floodplain Administrator perform a site visit to view conditions on site with the applicant to assist in making a determination of top of bank location and widths of the Waterside Zone and Management Zone.
- (3) A final determination of any boundary shall be made by the City Engineer or designated representative, where there is question as to its location or width.

(I) *Streamside protection measures and construction.*

- (1) Prior to any land clearing or soil disturbing activity, the Streamside Protection Zone boundaries shall be clearly delineated on site by the applicant, and such delineation shall be maintained throughout construction activities.
- (2) A site inspection followed by periodic inspections during construction will be conducted by the City Engineer or designated representative to ensure compliance with the Streamside Protection Zone ordinance.
- (3) Streamside protection zones shall be protected from construction activity. To prevent impacts, construction vehicular access is prohibited in the Streamside Protection Zone except at permitted crossings. Storage of construction vehicles, materials, debris, spoils or equipment is prohibited in the Streamside Protection Zone. Before commencing any construction activity, the applicant shall install silt fencing on the site at the outer edge of the Streamside Protection Zone. The City Engineer may require other protective measures based upon the individual characteristics of the site and the

proposed construction methods. If the required barriers surrounding the Streamside Protection Zone are not adequately maintained during construction, the City Engineer shall prescribe remedial measures, and may issue a stop work order in accordance with §153.07. All remedial measures shall be completed within the specified amount of time and shall be considered prior to granting final plat approval or issuing a certificate of occupancy.

(J) *Diffuse flow requirements.* Diffuse flow of runoff shall be maintained in the Streamside Protection Zone by dispersing concentrated flow prior to its entry into the Streamside Protection Zone as follows:

- (1) Concentrated runoff from new ditches or man-made conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters the Streamside Protection Zone; and
- (2) Annual corrective action to restore diffuse flow shall be taken as necessary and shall be designed to impede the formation of erosion gullies.
- (2) Annual corrective action to restore diffuse flow shall be taken as necessary and shall be designed to impede the formation of

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ADM 09-3480: Administrative Item (STREAMSIDE PROTECTION ORDINANCE): Submitted by the CITY OF FAYETTEVILLE STRATEGIC PLANNING AND INTERNAL CONSULTING DEPARTMENT. The request is to amend the Unified Development Code to adopt a Streamside Protection Ordinance with an associated map and a Best Management Practices Manual.

Karen Minkel, Director Strategic Planning, gave the staff report.

Public Comment:

Dave Kingston was a representative of an undeveloped commercial subdivision at the I-540/Wedington intersection. He discussed that he feels like this ordinance would constitute a legal taking of the property.

Don Nibert discussed that he was in favor of the concept. His property would be affected. He discussed that he thinks existing properties should have more flexibility.

Kenneth Harvey, 8521 Goose Creek Road, discussed that there are 12 homes on Goose Creek. He discussed that the 50 feet of property is his property and that he doesn't want anyone taking his land. It is his property and he will continue to use it as he has in the past.

Bob Caulk, president of Fayetteville Natural Heritage, discussed green infrastructure and that the FNHA supports the ordinance. He discussed some potential changes or issues with the ordinance including that the ordinance won't function for wildlife habitat or flood attenuation. He discussed that the biggest problem is that the buffer needs to be continuous. He discussed issues with existing commercial parking lots discharging directly into creeks. He discussed introducing a third buffer zone that would be voluntary. This is a zone would be up to 300 feet wide and credits would be provided to property owners for participating which would reduce stormwater fees for following BMPs, if and when a stormwater utility is established in Fayetteville.

Leif Kimburton discussed that he lives along Town Branch. He discussed increased flooding at his home. He will have to build some type of flood barrier and that this ordinance would present problems with that.

Julia Sampson, 210 W. South Street, discussed that this was short notice for property owners to respond. She discussed gardening on her property.

Kevin Nelm, 1207 E. Elm, also mentioned that this was short notice for property owners and requested that the open forum be provided again. He discussed street run-off and that this ordinance penalizes property owners for street run-off. He also discussed that a 12-foot concrete path is permitted for city trails but not a patio. He believes the 50-foot zone is arbitrary, and also that he thinks this should apply only to new development.

Fran Alexander discussed that revegetation with native species is better than non-native species. She discussed that water and sediment travels across property lines.

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Justin Jackson, 1283 Elm Street feels that this is a little rushed. This would control over two-thirds of his property. This is better on a case-by-case basis.

Brenda English, discussed that she wants to keep her land. She discussed that the city can pay her what its worth. She doesn't want to have to sell her home.

Ryan Mayhen discussed that this would take 50 feet of his land. He doesn't think this will be fair. Will this re-zone his property?

Aubrey Shepherd discussed that the worst damage to the stream is the City. He discussed issues with Town Branch and he is trying to protect people down stream. He discussed flooding and public education.

Tisha Yarbrough discussed that she purchased a commercial housing 10 years ago. She is concerned with things they need to do to fix their property.

No more public comment was presented.

Commissioner Lack asked about the location of the top of bank.

Minkel discussed the method for identifying the top of bank.

Commissioner Lack asked about disagreements between property owner and the City in determining the ordinance.

Minkel discussed that appeals may be made to City Council.

Kit Williams, City Attorney, discussed concerns regarding this ordinance being a taking. There will be many more public hearings and the City is interested in working with the public. We will look at all the issues to make sure we're not making unbuildable lots. He discussed the definition of taking and other regulations such as zoning and grading ordinances

Commissioner Lack asked about correcting current conditions.

Sarah Wrede, Floodplain Administrator, discussed that any improvements to correct current conditions will need to be verified that they won't exacerbate current conditions.

Williams discussed that we need to allow people to protect their homes from flooding.

Commissioner Lack asked about gardening.

Minkel discussed the allowances and requirements for gardening in both zones, and that they probably need to clarify that topic.

Commissioner Lack asked about a paved path versus a patio.

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Fulcher discussed that a property owner could install a 12-foot wide patio.

Commissioner Chesser discussed that the City may be giving ourselves the ability to build trails.

Minkel discussed the effects of water flowing over a trail.

Williams discussed that the issue with a 12-foot trail versus a patio is a concern.

Commissioner Chesser asked about variances.

Fulcher responded that bulk and area variances still go to the Board of Adjustment and that variance of the actual streamside ordinance.

Commissioner Chesser asked about fences.

Fulcher discussed that fences can be replaced.

Commissioner Cabe asked about the BMP manual.

Minkel discussed the BMP manual and the trails and utilities are listed in the manual.

Commissioner Cabe discussed that there are no other towns in Arkansas with this type of ordinance and that water quality is a huge issue. He discussed that this ordinance is needed.

Commissioner Earnest discussed that the primary purpose is pollutant reduction. He stated a quote from the Beaver Water Authority that, "I'll treat whatever you put in Beaver Lake, but that I'm not sure you can pay for it..."

Commissioner Chesser asked about rain gardens being in the BMP manual.

Commissioner Lack discussed that there will be many more meetings. We feel like we need to administer to protect the watershed.

Motion:

Commissioner Chesser made a motion to table the item. **Commissioner Cabe** seconded the motion. Upon roll call the motion to table passed with a vote of 8-0-0

There being no further business, the meeting was adjourned at 8:00 PM.

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Old Business:

ADM 09-3480: Administrative Item (STREAMSIDE PROTECTION ORDINANCE): Submitted by the CITY OF FAYETTEVILLE STRATEGIC PLANNING AND INTERNAL CONSULTING DEPARTMENT. The request is to amend the Unified Development Code to adopt a Streamside Protection Ordinance with an associated map and a Best Management Practices Manual.

Karen Minkel, Strategic Planning Director, gave the staff report.

Public Comment:

Halley Hoggatt asked how the 1,300 affected properties would make a difference when there are thousands of properties contributing pollution. He also stated that the trail exemption was unfair and wanted to know how this was different than an easement that would be purchased. He also wanted the other cities to get on board too.

Margaret Henderson asked if the ordinance was a restriction on her property or a taking of the property.

No more public comment was presented.

Commissioner Lack responded that the ordinance was adding restrictions.

Kit Williams, City Attorney, gave background on the 100 acre standard and stated that existing uses and structures are grandfathered in and can be rebuilt. He stated that easements are purchased because we get rights to access and construct on someone's property. However, the streamside regulations are similar to a setback that is restricted, but is private property.

Commissioner Chess asked for clarification between gardening and cultivation.

Jesse Fulcher, Current Planner, stated that cultivation is associated with crops and commercial operations.

Commissioner Chess asked for clarification on the 12' wide impervious area.

Fulcher stated clarified that there are two sections in the ordinance where a private property owner could construct small impervious areas.

Chris Brown, City Engineer, stated that sheet flow velocity will increase as the impervious width increases, potentially resulting in erosion.

Commissioner Winston asked how staff tracks a cease of use.

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Fulcher stated that there is a policy already in place for reviewing such cases.

Commissioner Honchell asked if staff had approached the affected property owners about a voluntary buffer; about how much of a difference Fayetteville is going to make in improving water quality; about parks maintenance; and if there had been any complains from Beaver Water District about water quality.

Minkel gave a brief history of the agreement between the City of Fayetteville and Beaver Water District, the Geosyntech study and the nutrient reduction plan. She also stated that prevention is much less expensive than water treatment on the back-end, and that the City will have to abide by the same rules as private property owners.

Commissioner Hoskins asked about how much water went into each watershed.

Minkel stated that approximately 40% of the water went into Beaver Lake, but that the water was going to end up being someone's drinking water, regardless of the watershed.

Dave Jurgens, Director of Utilities, stated that a streamside buffer is one of the best ways to protect water quality and is much more cost effective than water treatment.

Commissioner Earnest stated that this ordinance is important and that the variance section will help.

Commissioner Chesser stated that he supports the ordinance and that someone needs to go first.

Commissioner Bunch asked if the ordinance would apply to undeveloped lots and if it would show up on the title.

Minkel stated that the ordinance will apply to undeveloped lots.

Williams stated that the buffer restriction will not show up on a title.

Commissioner Hoskins stated that he agreed with the intent of the ordinance, but was not comfortable with the way it is written.

Commissioner Honchell asked what the leading pollutant was in the Illinois River.

Jurgens stated that was unsure of the leading pollutant.

Motion:

Commissioner Earnest made a motion to forward the item to City Council. **Commissioner Cabe** seconded the motion. **Upon roll call the motion passed with a vote of 7-2-0 with Commissioners Hoskins and Honchell voting 'no'.**

New Business:

South School St. in January 2004 Adjacent to Tanglewood Branch
Protected Stream Under the Proposed Streamside Protection Ordinance

B. 1
Amend Title XV: ADM 09-3480
(Streamside Protection)
Ordinance



Land was Cleared Right Up To and Into Tanglewood Branch



Added at the Feb. 3rd, 2011 CC mtg.

City Clerk - STREAMSIDE ORDINANCE

From: City Clerk
To: Aldermen
Date: 2/3/2011 1:15 PM
Subject: STREAMSIDE ORDINANCE
CC: greg@tecelectric.com

Just a note to encourage the council members to give a serious look at the new Streamside Ordinance Proposal. We all need to do everything we can within our communities to limit pollution and sediment from runoff.

I look forward to seeing what the city of Fayetteville decides with regard to this issue and am proud that you are considering being proactive in protecting our rivers and streams.

Sincerely

Greg Watts – President, Arkansas Rivers Association.
greg@arkansasrivers.org
870-275-5332

From: Jo Ann Kvamme <jkvamme@uark.edu>
To: <city_clerk@ci.fayetteville.ar.us>
Date: 2/4/2011 1:05 PM
Subject: Stream protection Please sent to City Council Members

Dear Mayor Jordan and Fayetteville City Council,

As you make decisions regarding Streamside protection please remember your choices will impact not only people today but into the future.

Clean streams

are an natural resource that is owned not by individuals but by the community as a whole. I would hope that our responsibility to our community, neighbors, and children would demand our protection of this resource.

When people speak of property rights this should be replaced with property owner responsibility. For Fayetteville to remain the vibrant, eco-friendly, community we have become we must all step up to the role of stewards of our resources.

I would like to applaud the efforts thus far in laying out a plan to protect our natural resource and the Best Practices manual to give concrete direction.

While no one wants to be told what they must do, I hope through education and community spirit we can work to provide what is best for the community, resources and the individual land owners. It has been stated repeatedly to keep our streams clean is less expensive than having to deal with pollutants after the fact. Please stay proactive! Thus, protecting our streams for our children and our community in the future.

Jo Ann Kvamme

Greetings Sir or Madam Councilmember,

I would like to write in support of Fayetteville's Streamside Protection Ordinance. I am strongly in support of this ordinance for the following reasons:

1. In terms of sediment loading to a waterbody, there is no more efficient way to keep sediment out of a river than preserving the streamside buffer. Building stormwater infrastructure to address sediment only transfers problems downstream. Restoring a damaged streambank is costly, resource-intensive, and may still result in more sedimentation to the stream than if the bank was preserved in the first place.
2. In terms of cost to the city, this is one of the least expensive alternatives to address sedimentation, flooding, and loading of many other pollutants to local rivers. There is no retrofitting or upgrading of stormwater infrastructure. Streambank and buffer restoration can cost up to \$250 per linear foot.
3. This ordinance may address impairment issues to both the Illinois and White Rivers. The West Fork and Upper White are both designated as impaired by ADEQ and Illinois River also has sedimentation issues. As the largest municipality in both watersheds with the highest population density, the city of Fayetteville can potentially reduce its overall sedimentation impact and subsequently improve water quality.
4. I would strongly encourage you to investigate if the citizen's against the ordinance will actually be affected by it's passage. Have you received comment from constituents who will actually be impacted by the ordinance? With every public comment, please check the residence, ward, and the location of the residence on the protected streams map. In full disclosure, my residence will not be affected.

Thank you very much for your time and attention,
Nicole Hardiman
Ward 1
2163 East Revere Place
Fayetteville, AR 72701

Fayetteville City Council
113 W. Mountain Street
Fayetteville, AR 72701

January 6, 2011

RECEIVED

JAN 06 2011

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Re: Huntingdon Heights

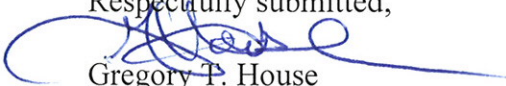
Dear Members of the Fayetteville City Council,

I am writing on behalf of Huntingdon Heights, LLC, which is the owner of a development project called Huntingdon Heights located off Warwick Drive on Barnsbury Terrace and Knightsbridge Avenue in Fayetteville. The purpose of this letter is to formally appeal a decision of the Zoning and Development Administrator pursuant to Title XV of the Unified Development Code, Chapter 155.06, section A(1).

The basis of this appeal derives from the following facts. On May 3, 2010 in a letter to Brian Teague, the Huntingdon Heights project engineer, Andrew Garner clarified where we stood with respect to the items that needed to be addressed and the deadlines for each as part in order to complete this project. In reliance on that letter we moved forward and have completed all the physical work required therein. We have approached the Zoning and Development department (hereafter Development) informing them of the project's completion and have asked for TCO's for the last 6 units pending issuance of final Certificates of Occupancy. Our request was denied today.

Development has required that an apron be replaced in the city right of way for the driveway at 3172 Warwick basically because it "doesn't look good", and without this being remedied, final approval for completion of the project will not be granted nor will TCO's be issued. This is despite the fact that there are no Health and Safety issues remaining. In addressing the issue of the approach patch for 3172 Warwick, all that was required in Mr. Garners letter of May 3, 2010 was that "the thickness of the concrete ...be verified", it was determined that exposing the edge by digging was sufficient, which we did and this was observed by engineering's inspector. To be asked to remove this patch for a third time, when this was not in the scope of work detailed in the May understanding, and considering the fact that the "patch" has been in place for over a year and a half with no signs of failure, and that we have posted a maintenance bond for public improvements to cover costs in the event of failure seems patently unreasonable.

Respectfully submitted,



Gregory T. House
For Huntingdon Heights, LLC
217 N. East Ave.
Fayetteville, AR 72701
479-521-9155

Tabled to the Feb 3rd 2011 CC mtg.

MEMO

To: Mayor and City Council

Thru: Jeremy Pate, Development Services Director

From: Chris Brown, City Engineer *CB*

Date: January 14, 2011

Subject: Huntingdon Heights Development
Appeal of City Engineer's Determination Regarding the Driveway Approach at 3172 Warwick Dr.

This memo provides additional information regarding the appeal by Gregory T. House on behalf of Huntingdon Heights, LLC with regard to a driveway repair required as part of the Huntingdon Heights Development. The Engineering Division is requiring removal and replacement of the patch due to unacceptability of the concrete surface, removal and replacement limits that do not meet standard practices, and a failure of the contractor to contact the City for an inspection prior to concrete placement.

First, in response to Mr. House's statement regarding requirements in the attached May 3, 2010 letter by Andrew Garner, the full text of the item discussing the driveway repair is as follows:

"1. An inspection was not requested for the approach patch for the private drive prior to concrete placement. The thickness of the concrete must be verified at 3172 Warwick Drive. **Remove and replace to proper width and thickness as required.**"

This statement was repeated at least 5 times in letters to Mr. House and/or his representatives, along with other similar verbal and written communications. Each time this requirement was communicated to Mr. House, as part of an inspection prior to an occupancy permit, he requested that the requirement be put off and be made part of another building on the project that was not yet ready for occupancy. This was granted each time, but the development is now to the point that the last building is ready for occupancy, and this issue must be addressed at this time.

Secondly, in his appeal letter, Mr. House states that it was determined that digging next to the patch to verify the thickness was sufficient. Mr. House's representative did in fact ask if that was sufficient, and an area next to the patch was excavated and made available for inspection. However, staff has never indicated that this was an acceptable verification method. This method is not an acceptable substitute for an inspection prior to installation of concrete.

On December 6, 2010 a letter with accompanying sketch clarifying the requirements for the driveway repair was sent to Mr. House, so that there was no confusion as to the repair specifications. A copy of this letter is attached, and remains the recommendation of staff. Therefore, staff recommends denial of this appeal.



www.accessfayetteville.org

May 3, 2010

Mr. Brian Teague
Community by Design
311 West Spring Street
Fayetteville, AR 72701

Via Email: brian@communitybydesignllc.com

Re: *Huntingdon Heights Inspection Status: AP#'s 37698, 37103, and 33957*

Dear Mr. Teague:

As we have discussed with you on several occasions, the permits at 3164 and 3153 Barnsbury Terrace (AP#'s 37698 and 34103, also known as Buildings A1 and A2 on the site plan) are in violation of City ordinance for exceeding the 90-day temporary certificate of occupancy. Staff has been working with you and the owner/developer for many months to try and finalize these two buildings. A letter to you dated April 13, 2010 was a final attempt to set deadlines to complete the project in a timely fashion prior to us sending this project to the City Prosecutor. An initial deadline for several items was set for May 1, 2010. An inspection by the City on April 30, 2010 and your letter dated April 30, 2010, along with a check provided to the City on April 30, 2010 indicated adequate progress towards the May 1st checklist we have given you.

In order to continue progress towards finalizing the subject permits, the following items need to be completed within the timeframe outlined below. Failure to meet the deadlines noted below will require the Development Services Division to send this project to the City Prosecutor:

Engineering Division (Glenn Newman 444-3424):

By **June 1, 2010** the following item must be completed:

1. Provide a 2 year maintenance bond or letter of credit in the amount of 25% of the actual construction cost of all public improvements (water and sanitary sewer) for the project. A check covering the required amount was submitted on April 30, 2010, with the request by the bank to not cash the check for a period of 30 days, to allow adequate time to process a letter of credit.

If the above items are completed on schedule by June 1, 2010, the Engineering Division will recommend extending the Temporary Certificate of Occupancy for buildings A1 and A2 for an additional 14 days (until **June 15, 2010**) to complete the following tasks:

1. All exposed soil, specifically to the north of A3 be temporary seeded as required in the grading ordinance where construction activities have ceased for more than 15 days, in accordance with UDC 169.06(F)(4).
2. Staff has concerns with the functionality of the rip rap provided between buildings A2 and A3. This should be reevaluated with staff by the deadline.

3. The workmanship of the concrete flume exiting on Warwick in front of building A1 is not acceptable and does not match the approved detail. Reconstruct to match detail and request inspection.
4. Grading beyond the project limits not shown on grading plan was not authorized. The disturbed area must be graded to a maximum of a 3:1 slope, utilities adjusted, and re-vegetated per 169.06(F)(4) *Revegetation* of the Unified Development Code. Written permission of adjacent property owner is not required, since this is the same owner.
5. The sidewalk and approach has settled and cracked on the east side of Warwick Drive where the new sanitary sewer main was installed in front of 3154 Warwick Drive. The back filling of the trench was not inspected nor was the placement of concrete for the sidewalk. The deficient areas shall be removed, subgrade should be inspected for firmness before placement of concrete for sidewalk.
6. The sidewalk that has cracked at the existing sanitary sewer man-hole on the north side of the driveway at 3172 Warwick Drive must be repaired and add a joint at this location to prevent future cracking. Remove and replace to the nearest joint in each direction. Grading and sod should be replaced in this area also to meet predevelopment conditions.

If the above items are completed on schedule by June 15, 2010 Engineering will recommend extending the TCO for buildings A1 and A2 for an additional 45 days (until **July 30, 2010**) to complete the following tasks:

1. An inspection was not requested for the approach patch for the private drive prior to the concrete placement. The thickness of the concrete must be verified at 3172 Warwick Drive. Remove and replace to proper width and thickness as required.
2. An inspection was not requested for the two street crossing for sanitary sewer extensions for this project that required a "Concrete/Asphalt Tee Patch". The material and thickness of the repair must be verified. Remove and replace to proper width and thickness as required.
3. An inspection was not requested for the asphalt patch for the private drive connection to the public street. The material and thickness of the repair must be verified.
4. Final removal all silt from the storm drainage system and vault.
5. Clean up of all debris and excess construction material related to the project, including material placed on adjacent property.
6. The temporary electrical service (no longer being used) behind building A2 shall be removed as a safety concern.

All above items must be completed and accepted by the city prior to July 30, 2010 which will allow the applicant to obtain a Final Certificate of Occupancy for buildings A1 and A2. There will be no additional extensions to the Temporary Certificate of Occupancy for buildings A1 and A2. Written documentation is required by the Owner/Engineer for each milestone date confirming the required items are complete and have been inspected and accepted by the city Engineering Division.

Prior to obtaining a Temporary Certificate of Occupancy of Building A3 (The Last Building), the following items must be performed or provided to the satisfaction of the Engineering Division:

1. The work shown on the civil site package must be complete and the items on the final punch list completed.
2. One (1) set of as-built drawings (excluding details) of the complete project including drainage patterns as a hard copy and in Tiff or PDF format;

3. Certification that the streets, storm sewer, water and sewer lines, etc., were installed per approved plans and City of Fayetteville requirements;
4. Cross Sections, Volume Calculations, and Certification Retention/Detention Ponds are in accordance with the approved Drainage Report.
5. Surveyor's Certification of Compliance.
6. The As- Built Final Drainage Report as a hard copy and in PDF format.

Please note, site inspections, at the time Building A3 is complete, may identify additional requirements not included in this transmittal.

The engineer of record shall provide construction inspection for this project including the final inspection in the presence of city staff and generate the official punchlist.

The public works inspector (PWI) shall be notified no less than 48 hours prior to the installation of public utilities, infrastructure, roadway, etc. Testing shall be coordinated and scheduled with the PWI as well.

Please call to schedule the site inspection when the site work is being performed.

If you have any questions, please call Glenn Newman at 575-8206.

Solid Waste Division (Brian Pugh 718-7685):

- Prior to temporary CO for building A3 the dumpster enclosure with dumpster needs to be installed.

Tree and Landscape (Greg Howe 444-3470):

Prior to final CO for any of the buildings:

- Permanent erosion control and soil stabilization throughout the site needs to be installed and inspected.
- The tree preservation area needs to be inspected and approved. Contact Greg Howe for a final inspection and review of the post-construction tree preservation plan.
- Landscape requirements must be completed including installation of two large species shade trees along the project's Warwick Street frontage. The existing trees and crepe myrtle recently planted do not meet code.

Fire Department (Mark Stevens 444-3448):

Prior to final CO the following items need to be completed:

- Buildings A1 and A2. Fire lane no parking area painted with red strips in front of Building A3.
- Buildings A1 and A2. All drive areas with 20-26 feet distance from curb face to curb face require NO PARKING FIRE LANE identification (Arkansas Fire Code D103.6.1) this is required because it is not a public street and is a fire access road (Arkansas Fire Code 502).
- Building A3.

- Fire extinguishers provided and inspection tagged by a certified/licensed company located within 75 feet maximum travel distance from any location inside the residence (Arkansas Fire Code 906 and NFPA 10). Extinguishers may be installed in weather protected (plastic or metal) cabinets on the exterior of the building in locations that comply with the 75 feet travel distance requirement.
- Proper building address numbers to be provided.

Building Safety (Vel Moses 575-8224):

- Building A1 items to be completed: 101-Seal blocking under upper deck and seal all exterior holes i.e. HVAC, gas lines, cables, T&P; extend drain line below cable boxes within 6 inches of the ground; secure dryer vents; fix or remove temp power; vapor barrier incomplete in the crawl; remove trash and construction debris under the dwelling; grippable handrail (102) entry; light for the attic (103) move to access.
- Building A2. Has been completed
- Building A3. A final inspection has not been requested or conducted. Call to schedule a final inspection.

Planning (Andrew Garner 575-8262):

- Prior to final CO for Buildings A1, A2, or A3 the site work must be completed with parking spaces and drive aisles striped.
- Prior to final CO for Buildings A1 or A2, the non-conforming light fixtures throughout the development need to be removed or retro-fitted to meet City lighting ordinance, site erosion and clean-up issues need to be addressed, and two street trees installed.
- Prior to temporary CO for Building A3 the dumpster enclosure with dumpster shall be installed.

If you have any questions, please call me at 575-8262.

Sincerely,



Andrew Garner
Senior Planner

Cc: Greg House (ghouse@housesinc.com); Glenn Newman (gnewman@ci.fayetteville.ar.us); Brian Pugh (bpugh@ci.fayetteville.ar.us); Mark Stevens (mstevens@ci.fayetteville.ar.us); Terry Lawson (tlawson@ci.fayetteville.ar.us); Vel Moses (vmoses@ci.fayetteville.ar.us); Greg Howe (ghowe@ci.fayetteville.ar.us); Jeremy Pate (jpate@ci.fayetteville.ar.us)



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THE CITY OF FAYETTEVILLE, ARKANSAS
ENGINEERING DIVISION
125 West Mountain
Fayetteville, AR 72701
Phone (479) 444-3443

Greg House
House Inc.
217 N East Ave
Fayetteville, AR 72701

December 6, 2010
Eng # 7968

Re: Huntingdon Heights Lot 28
Temporary Certificate of Occupancy for Building A3
Engineering Requirements

Dear Mr. House:

In response to your request to obtain a Temporary Certificate of Occupancy (TCO) for Building A3 made to Building Safety December 2, 2010, we have prepared a list of outstanding items that will need to be completed to the satisfaction of the Engineering Division as identified below, before Engineering approval will be given:

1. The existing concrete patch in the driveway at 3172 Warwick Drive is not acceptable and must be corrected as specified below and as detailed in the attached sketch. As you are aware, the existing patch was constructed without supervision or inspection by the Engineering Division, and does not meet standards of acceptability with regard to the limits of the patch or the concrete finish.
 - a. Remove the existing concrete patch and continue the saw cut south, the width of the driveway, saw cut along the edge of pavement, remove the existing concrete, place new 6" thick concrete the width of the driveway for a total of approximately 100 sf, finish to match existing surface.
 - b. Coordinate with the property owner to minimize disruption, multiple repair phases may be required.
 - c. Contact Chuck Rutherford to schedule inspection before placement of new concrete.
2. Final removal all silt from the storm drainage system and vault is required.
3. Remove the chlorination piping used to test the water main and backfill the area.

After these items are completed, please contact the Engineering Division for a final inspection.

In addition to the construction related items listed above, the following items must be performed or provided to the satisfaction of the Engineering Division prior to Engineering approval of a TCO:

1. The work shown on the civil site package must be complete and the items on the final punch list completed.
2. One (1) set of as-built drawings (excluding details) of the complete project including drainage patterns as a hard copy and in Tiff or PDF format;
3. Certification that the streets, storm sewer, water and sewer lines, etc., were installed per approved plans and City of Fayetteville requirements;
4. Cross Sections, Volume Calculations, and Certification Retention/Detention Ponds are in accordance with the approved Drainage Report.
5. Surveyor's Certification of Compliance.
6. The As- Built Final Drainage Report as a hard copy and in PDF format.

If you have any questions, please call me at 575-8206.

Sincerely,

Chris Brown, P.E.,
City Engineer



TITLE XV UNIFIED DEVELOPMENT CODE CHAPTER 155: APPEALS

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TITLE XV UNIFIED DEVELOPMENT CODE

CHAPTER 155 APPEALS

155.01 Circuit Court

Unless set forth otherwise below, all appeals from final actions taken by the City Council, Planning Commission, Board of Adjustment, Construction Board of Adjustment and Appeals, and the Zoning and Development Administrator shall be taken to the Circuit Court of Washington County.

(Code 1965, App. A., Art. 9(6); Ord. No. 1747, 6-29-70; Ord. No. 2323, 4-5-77; Ord. No. 2538, 7-3-79; Code 1991, §160.175; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04)

State law reference(s)--Appeals to circuit court, A.C.A. §14-56-425.

155.02 Form/Time/Place

Unless an appeal is filed with the court, the following requirements shall be met:

(A) *Form.* All appeals shall be submitted in writing referencing the applicable UDC section(s) and setting out the reasons the applicant contends the decision was in error.

(B) *Time.*

(1) *Appeals.* Appeals shall be submitted within 10 working days from the date of the final action taken.

(2) *Hearings.* The entity hearing the appeal shall fix a reasonable time for hearing an appeal.

(C) *Place.* Appeals shall be filed with the following:

(1) *City Clerk.* Appeals made to the City Council shall be filed with the City Clerk.

(2) *Zoning and Development Administrator.* Appeals made to the Planning Commission or Board of Adjustment shall be filed with the Zoning and Development Administrator.

(3) *Building Safety Division Director.* Appeals made to the Board of Adjustment, [for inspecting purposes] shall be filed with the Building Safety Division Director.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 4652, 12-07-04)

155.03 Stay

An appeal shall stay all proceedings in furtherance of the action appealed from unless the person in charge of administration of the chapter certified that a stay would, in their opinion cause imminent peril to life or property.

(Code 1965, App. A., Art. 13(3); Ord. No. 1747, 6-29-70; Code 1991, §160.173; Ord. No. 4100, §2 (Ex. A), 6-16-98)

155.04 Alderman Appeal On Behalf Of Resident

An alderman may bring an appeal on behalf of any resident of the city a decision by the Planning Commission to approve or deny the requests as set forth below.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 5296, 12-15-09)

155.05 Appeals From Planning Commission Decisions

(A) *Appeals to City Council.*

(1) Owners of record of the property being considered may appeal a decision by the Planning Commission to deny the following requests, in accordance with the procedures set forth in §155.02.

- (a) Annexation
- (b) Rezoning
- (c) Planned Zoning District
- (d) Subdivision (Preliminary Plat, Final Plat, Concurrent Plat, Lot split)
- (e) Large Scale Development
- (f) Vacation of utility easement, access easement, public right-of-way
- (g) Commercial Design Standards
- (h) Tree Preservation Plan
- (i) Variances and waivers of the UDC

(2) *Conditions of Approval.* An owner of record may appeal the conditions of approval determined by the Planning Commission for any of the requests listed in (A)(1).

(3) *Conditional Use Request.* Three aldermen, two of whom must reside in the effected ward, may in unison appeal a decision by the Planning Commission approving or denying a conditional use request.

(B) All other decisions by the Planning Commission must be appealed to Circuit Court.

(Code 1965, §13A-40, App. C., Art. II, Art. V., §B; Ord. No. 1509, 8-8-66; Ord. No. 1750, 7-6-70; Code 1991, §§156.017, 159.12, 159.54(F)(1), (2), 159.66; Ord. No. 3781, §1, 4-19-94; Ord. No. 3925, §6, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 4334, 9-4-01; Ord. No. 4340, 10-2-01)

155.06 Appeals From Staff Interpretations/Actions

(A) *Appeals to City Council.* The following staff interpretations/actions may be appealed to the

Fayetteville Code of Ordinances

City Council by an owner of record of the property in question or an alderman on behalf of a resident of the city:

(1) *Zoning and Development Administrator.*

(a) *Design Overlay District requirements.* The decision of the Zoning and Development Administrator not to exempt property from the Design Overlay District requirements as allowed in §161.28(G).

(b) *Development Matters.* An interpretation or decision of the Zoning and Development Administrator regarding development matters, including subdivisions, large scale developments, parking and loading, and outdoor lighting may appeal.

(2) *City Engineer.*

(a) *Stormwater, Drainage, and Erosion Control requirements.* The decision of the City Engineer to issue a violation notice related to these requirements.

(b) *Development Matters.* An interpretation or decision of the City Engineer regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems may appeal.

(c) *Floodplain regulations.* The decision of the Floodplain Administrator, provided that the City Council shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of Chapter 168.

(3) *Urban Forester – Landscape and Tree Preservation and Protection requirements.* Decisions of the Urban Forester related to landscape and tree preservation and protection requirements.

(4) *Impact Fee Administrator.* Any person aggrieved by any decision of the Impact Fee Administrator made in the enforcement or administration of Chapter 159 Fees.

(B) *Appeals to the Board of Adjustment.* The following interpretations and decisions may be appealed by an owner of record of the property in question or an alderman on behalf of a resident of the city to the Board of Adjustment:

(1) *Zoning and Development Administrator – Zoning.* An interpretation or decision of the Zoning and Development Administrator regarding zoning matters may appeal.

(2) *Building Safety Division Director - Airport Zone.* Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Division Director, made in the administration of Airport Zone, Chapter 165, may appeal.

(C) *Appeals to the Planning Commission.*

(1) Required dedications and improvements.

(a) An owner or developer who is aggrieved by the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement, which are in excess of the "rough proportionality" of the impact of the development upon the city's infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, subdivision, building permit, lot split, development permit, or otherwise within 10 days of notification of such development requirements. The appeal must be presented to the Planning Division in writing and state the grounds, or reasons for the appeal.

(b) The Planning Commission shall determine after public hearing whether the required dedications and improvements meet the "rough proportionality" of the impact of the development on city infrastructure and services. If the requirements are in excess of the "rough proportionality," the Planning Commission is empowered to modify or reduce such requirements to achieve "rough proportionality."

(2) Administrative Approvals.

(a) A resident of the city or an owner/developer who is aggrieved by a decision of the Zoning and Development Administrator regarding development matters that are approved administratively, as required by Chapter 166.02 (C) may appeal the decision to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within 10 days of the final decision. The appeal shall be

TITLE XV UNIFIED DEVELOPMENT CODE

limited to the applicable approval or denial criteria as follows:

- (i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with UDC Ch. 166 pertaining to required on-site and off-site improvements.
- (b) The appellant must include in the letter of appeal the specific code section with which the development application does not comply.
- (c) The Planning Commission shall determine after public hearing whether the interpretation or discretionary decision should be upheld or modified in part or in whole.

- (D) *Appeals to the Construction Board of Adjustment and Appeals.* When the administrative authority under Chapter 173 shall disapprove an application, or the applicant is aggrieved by the interpretation of the administrative authority, the

applicant may appeal the decision to the Construction Board of Adjustment and Appeals.

(Code 1965, §17B-11.2(d), (e), App. A., Art. 10(6), 19(2), App. B, §III, App. C., Art. 10(6), 19(2), App. B, §III, App. C., Art. V, §A; Ord. No. 1747, 6-29-70; Ord. No. 1750, 7-6-70; Ord. No. 2109, 6-375; Ord. No. 2252, 7-6-76; Ord. No. 2538, 7-3-79; Ord. No. 2585, 12-4-79; Ord. No. 2697, 1-20-81; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-14-88; Code 1991, §§150.03, 158.67(B), 158.68(A), (B), 159.65, 160.048, 160.172, 160.176(A), (B), 161.11, 162.03(B), (C), 163.10(D); Ord. No. 3551, 6-4-91; Ord. No. 3587, §1, 1-7-92; Ord. No. 3699, §3, 4-20-93; Ord. No. 3716, §2, 6-15-93; Ord. No. 3806, §1, 6-28-94; Ord. No. 3895, §1, 6-20-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3925, §7, 10-3-95; Ord. No. 3963, §9, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4368, §2, 2-5-02; Ord. No. 4377, §§1, 2, 3-5-02; Ord. 4652, 12-07-04; Ord. 5206, 12-16-08; Ord. 5296, 12-15-09)

155.07 Appeals To The Housing Board – Mobile Homes And Mobile Home Parks

- (A) *Permit denied.* Any person whose application for a permit under Chapter 175 has been denied may request and shall be granted a hearing on the matter before the Housing Board.
- (B) *Permit suspended.* Any person whose permit has been suspended, or who has received notice from the enforcement officer that his permit will be suspended unless certain conditions or practices at the mobile home park are corrected, may request and be granted a hearing on the matter before the Housing Board.
- (C) *Petition deadline.* When no petition for hearing shall have been filed within 10 days following the day on which notice of suspension was served, such permit shall be deemed to have been automatically revoked at the expiration of such 10 days.

(Code 1965, §17B11.2(e); Ord. No. 2109, 6-3-75; Ord. No. 2583, 12-4-79; Ord. No. 3152, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-15-88; Code 1991, §158.67; Ord. No. 4100, §2 (Ex. A), 6-16-98)

(Code 1965, §§13A-40, 13A-43; Ord. No. 1509, 8-8-66; Code 1991, §§156.017, 156.029; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04).

155.08 Appeals From The Construction Board of Adjustments And Appeals

If the Construction Board of Adjustments and Appeals refuses to extend a building permit pursuant to §173.02 (B)(8) or to issue a new building permit for property for which a building permit has expired pursuant to §173.02 (B)(8), the owner may appeal to the City Council.

(Ord. 5019, 5-15-07)

Fayetteville Code of Ordinances

155.09-155.99 Reserved

January 18, 2011

Dear Members of the Fayetteville City Council,

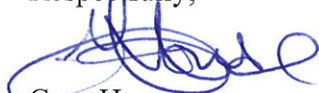
I apologize for the informal nature of this communication but I wanted to get this to the city clerk by your agenda deadline.

Attached please find copies of only a sample of the chain of communication between City officials and our company regarding the Huntingdon Heights project. In the fall of 2009, due to changes in the nature of code enforcement, we asked that the City be clearer as to its expectations for work approvals. As can be seen by the sheer volume of information that was provided, City officials complied with our request. And, therefore, the various departments had ample opportunity to point out deficiencies in the project. Without further belaboring the issues as to why so much documentation became necessary, please note the passages marked with an asterisk in the letters of November 19, 2009; April 13, 2010; and May 3, 2010. Each of these comments only refer to "verifying the thickness of the patch" for the drive at 3172 Warwick, none discuss a complete tear out and replacement as stated in the letter of December 6, 2010.

When I had the work that was required by engineering that related to Warwick Drive completed, I asked Bob Coker, the site inspector, if we had finally met all of the City requests before I paid and released the contractor. He stated that we had. To now rebid, remobilize, and do work that was never required, and cannot be supported by ordinance except to say that this is the way it's been done in the past is unreasonable.

I appreciate your consideration in this matter and hope you will find that it is reasonable to leave the perfectly functioning patch of the driveway at 3172 Warwick as it is.

Respectfully,



Greg House
For Huntingdon Heights, LLC

THE CITY OF FAYETTEVILLE, ARKANSAS

ENGINEERING DIVISION
125 West Mountain
Fayetteville, AR 72701
Phone (479) 444-3443



www.accessfayetteville.org

November 17, 2009
Eng # 7968

Brian Teague, P.E.
Community By Design
311 West Spring Street
Fayetteville, AR 72701

Re: Huntingdon Heights Lot 28 – Site Visit

Dear Mr. Teague:

To expedite the Certificate of Occupancy of the remaining structures for the referenced project as it pertains to the civil sitework, Engineering Division representatives (Chris Brown, Chuck Rutherford, Bob Coker, and Glenn Newman) performed a site visit on Friday November 13, 2009, and created the following list of outstanding items. This list should not be considered a final punch list, rather a list of items that require completion and/or correction as of this date.

Items required before Temporary Certificate of Occupancy for Building A2:

1. Water line depth at meter appears shallow at building A2. Fill around meter or adjust meter lid to grade. If grades are lowered, service lines may need to be lowered as well. Verify the final depth with the Meter Operation Division (Don Osburn 575-8384)
2. Erosion between building A2 and A3 needs to be corrected. Grading plan indicates sheet flow in this location with a constant 3:1 slope to the property line. This area must be stabilized as required by section 169.06(F)(4) *Revegetation* of the Unified Development Code. Staked sod on Hydroseeding with landscape fabric will be required. (typical for these slopes)
3. Grading needs to be completed at the transformer at the back or west side of building A2. Refer to the original grading plan which shows a swale and then a 3:1 backslope to tie to existing grade. The revised grading plan did not change grading in this location. Additional trees will need to be removed to meet the plans. Tree preservation fencing should be re-established before work proceeds in this area.
4. The drainage on the south side of building A2 needs to be corrected to flow around the building and not on the adjacent lot. Refer to the original grading plan. Additional trees will need to be removed to meet the plans and drainage report. The flow is also shown to continue down the back of the retaining wall.
5. Safety railing should be installed on the retaining wall as shown on the original plans.
6. Silt fence should be properly installed in front of building A2 until vegetation has been established. This areas must be stabilized as required by section 169.06(F)(4) *Revegetation* of the Unified Development Code.
7. Remove the inlet protection for detention vault and use this volume as a sediment trap during construction, the bypass currently flowing into Warwick from the blocked inlets is not acceptable.
8. The painting of the fire hydrant is not acceptable. The chains should not be painted and stuck to the hydrant. The paint should be mixed thoroughly and applied with a paint brush. Moving parts should be protected so that when the nuts are turned for flow, the paint should not peel off at the pivot points.
9. Clean up of all debris and excess construction material related to building A2, including material placed on adjacent property.



www.accessfayetteville.org

November 19, 2009

Mr. Greg House
Houses, Inc.

Via Email: ghouse@housesinc.com

Re: Huntingdon Heights Inspection Status: AP#'s 33957, 37103, and 37698

Dear Mr. House:

The following is a list of items that needs to be completed prior to certificate of occupancy (CO) for the subject development:

Engineering Division (Glenn Newman 444-3424):

Please refer to the letter dated *November 17, 2009* from Glenn Newman to Brian Teague. For convenience, these requirements are also listed below:

To expedite the Certificate of Occupancy of the remaining structures for the referenced project as it pertains to the civil site work, Engineering Division representatives (Chris Brown, Chuck Rutherford, Bob Coker, and Glenn Newman) performed a site visit on Friday November 13, 2009, and created the following list of outstanding items. This list should not be considered a final punch list, rather a list of items that require completion and/or correction as of this date.

Items required before Temporary Certificate of Occupancy for Building A2:

1. Water line depth at meter appears shallow at building A2. Fill around meter or adjust meter lid to grade. If grades are lowered, service lines may need to be lowered as well. Verify the final depth with the Meter Operation Division (Don Osburn 575-8384)
2. Erosion between building A2 and A3 needs to be corrected. Grading plan indicates sheet flow in this location with a constant 3:1 slope to the property line. This area must be stabilized as required by section 169.06(F)(4) *Revegetation* of the Unified Development Code. Staked sod on Hydroseeding with landscape fabric will be required. (typical for these slopes)
3. Grading needs to be completed at the transformer at the back or west side of building A2. Refer to the original grading plan which shows a swale and then a 3:1 backslope to tie to existing grade. The revised grading plan did not change grading in this location. Additional trees will need to be removed to meet the plans. Tree preservation fencing should be re-established before work proceeds in this area.
4. The drainage on the south side of building A2 needs to be corrected to flow around the building and not on the adjacent lot. Refer to the original grading plan. Additional trees will need to be removed to meet the plans and drainage report. The flow is also shown to continue down the back of the retaining wall.
5. Safety railing should be installed on the retaining wall as shown on the original plans.

6. Silt fence should be properly installed in front of building A2 until vegetation has been established. This areas must be stabilized as required by section 169.06(F)(4) *Revegetation* of the Unified Development Code.
7. Remove the inlet protection for detention vault and use this volume as a sediment trap during construction, the bypass currently flowing into Warwick from the blocked inlets is not acceptable.
8. The painting of the fire hydrant is not acceptable. The chains should not be painted and stuck to the hydrant. The paint should be mixed thoroughly and applied with a paint brush. Moving parts should be protected so that when the nuts are turned for flow, the paint should not peel off at the pivot points.
9. Clean up of all debris and excess construction material related to building A2, including material placed on adjacent property.

Items required before the Final C of O for the buildings A1 and A2 and/or Temporary C of O for building A3:

1. Silt fence should be properly installed in front of building A3 until vegetation has been established. This areas must be stabilized as required by section 169.06(F)(4) *Revegetation* of the Unified Development Code
2. Remove all silt from the storm drainage system and vault.
3. A follow up certification from the GTS is required since it appears the retaining wall is bulging which may be an indicator that the structural integrity of the wall has been compromised. Confirm with the design engineer that the lack of 2 degree batter and the constructed height does not affect the structural integrity as GTS has indicated in their certification.
4. The workmanship of the concrete flume exiting on Warwick is not acceptable and does not match the detail.
5. Grading beyond the project limits not shown on grading plan is not authorized and shall be re-established to original contours and revegetated. The Urban Forester should be notified to verify no trees have been removed in this are, specifically the area north of the private drive.
6. The sidewalk and approach has settled and cracked on the east side of Warwick Drive where the new sanitary sewer main was installed in front of 3154 Warwick Drive. The back filling of the trench was not inspected nor was the placement of concrete for the sidewalk. The deficient areas shall be removed, subgrade should be inspected for firmness before placement of concrete for sidewalk.
7. An inspection was not requested for the sidewalk repair prior to the concrete placement. The sidewalk that has cracked at the existing sanitary sewer man-hole on the north side of the driveway at 3172 Warwick Drive must be repaired and add a joint at this location to prevent future cracking. Remove and replace to the nearest joint in each direction. Grading and sod should be replaced in this area also to meet predevelopment conditions.
8. An inspection was not requested for the approach patch for the private drive prior to the concrete placement. The thickness of the concrete must be verified at 3172 Warwick Drive. Remove and replace to proper width and thickness as required.
9. An inspection was not requested for the two street crossing for sanitary sewer extensions for this project that required a "Concrete/Asphalt Tee Patch". The material and thickness of the repair must be verified. Remove and replace to proper width and thickness as required.
10. An inspection was not requested for the asphalt patch for the private drive connection to the public street. The material and thickness of the repair must be verified.
11. Clean up of all debris and excess construction material related to the project, including material placed on adjacent property.



THE CITY OF FAYETTEVILLE, ARKANSAS
CITY PLANNING DIVISION
125 West Mountain
Fayetteville, AR 72701
Phone (479) 444-3443

www.accessfayetteville.org

April 13, 2010

Mr. Brian Teague
Community by Design
311 West Spring Street
Fayetteville, AR 72701

Via Email: brian@communitybydesignllc.com

Re: *Huntingdon Heights Inspection Status: AP#'s 37698, 37103, and 33957*

Dear Mr. Teague:

The permits at 3164 and 3153 Barnsbury Terrace (AP#'s 37698 and 34103, also known as Buildings A1 and A2 on the site plan) are in violation of City ordinance for exceeding the 90-day temporary certificate of occupancy. Staff has been working with you and the owner/developer for many months to try and finalize these two buildings and there has been no visible work completed on the property since approximately November 2009. The initial 30-day temporary certificates of occupancy were issued on December 15, 2009 and have been extended two times. The temporary certificates of occupancy expired on March 15, 2010. This letter is a final attempt to set deadlines to complete the project in a timely fashion prior to us sending this project to the City Prosecutor. Final certificates of occupancy are required to be obtained as soon as possible.

To follow up the meetings you and Mr. House have had with City staff regarding the final inspections, and as you committed to completing these items in your letter dated March 17, 2010, the following items need to be completed within the timeframe outlined below. Failure to meet the deadlines noted below will require the Development Services Division to send this project to the City Prosecutor:

Engineering Division (Glenn Newman 444-3424):

By **May 1, 2010** (since this is a Saturday, the City will conduct a final walk-through on April 30, 2010) the following items must be completed:

1. Provide a 2 year maintenance bond in the amount of 25% of the actual construction cost of all public improvements (water and sanitary sewer) for the project. Submit documentation of unit price breakdown of construction cost for approval.
2. A follow up certification from the GTS is required since it appears the retaining wall is bulging which may be an indicator that the structural integrity of the wall has been compromised. Confirm with the design engineer that the lack of 2 degree batter and the constructed height does not affect the structural integrity as GTS has indicated in their certification.
3. Safety railing must be installed on the retaining wall as shown on the original plans.
4. Safety railing must be installed adjacent to the entry way of building A2 due to the drop off and steep slope.
5. Grading must be completed at the electric transformer at the back/ west side of building A2.

THE CITY OF FAYETTEVILLE, ARKANSAS

6. Erosion between building A2 and A3 must be corrected and stabilized. Based on previous conversations, the city will accept rip-rap stabilization in this area.
7. Silt fence should be properly installed as required to contain sediment on site until vegetation has been established. This area must be stabilized as required by section 169.06(F)(4) *Revegetation* of the Unified Development Code since last earthwork disturbance has been in excess of 14 days.
8. Remove the inlet protection for detention vault and use this volume as a sediment trap during construction, the bypass currently flowing into Warwick from the blocked inlets is not acceptable.
9. Remove all silt from the storm drainage system and vault.

If the above items are completed on schedule by May 1, 2010, the Engineering Division will recommend extending the Temporary Certificate of Occupancy for buildings A1 and A2 for an additional 45 days (until June 15, 2010) to complete the following tasks:

1. The workmanship of the concrete flume exiting on Warwick in front of building A1 is not acceptable and does not match the approved detail. Reconstruct to match detail and request inspection.
2. Grading beyond the project limits not shown on grading plan was not authorized. The disturbed area must be graded to a maximum of a 3:1 slope, utilities adjusted, and re-vegetated per 169.06(F)(4) *Revegetation* of the Unified Development Code. Written permission of adjacent property owner is not required, since this is the same owner.
3. The sidewalk and approach has settled and cracked on the east side of Warwick Drive where the new sanitary sewer main was installed in front of 3154 Warwick Drive. The back filling of the trench was not inspected nor was the placement of concrete for the sidewalk. The deficient areas shall be removed, subgrade should be inspected for firmness before placement of concrete for sidewalk.
4. The sidewalk that has cracked at the existing sanitary sewer man-hole on the north side of the driveway at 3172 Warwick Drive must be repaired and add a joint at this location to prevent future cracking. Remove and replace to the nearest joint in each direction. Grading and sod should be replaced in this area also to meet predevelopment conditions.

If the above items are completed on schedule by June 15, 2010 Engineering will recommend extending the TCO for buildings A1 and A2 for an additional 45 days (until July 30, 2010) to complete the following tasks:

1. An inspection was not requested for the approach patch for the private drive prior to the concrete placement. The thickness of the concrete must be verified at 3172 Warwick Drive. Remove and replace to proper width and thickness as required.
2. An inspection was not requested for the two street crossing for sanitary sewer extensions for this project that required a "Concrete/Asphalt Tee Patch". The material and thickness of the repair must be verified. Remove and replace to proper width and thickness as required.
3. An inspection was not requested for the asphalt patch for the private drive connection to the public street. The material and thickness of the repair must be verified.
4. Final removal all silt from the storm drainage system and vault.
5. Clean up of all debris and excess construction material related to the project, including material placed on adjacent property.

All above items must be completed and accepted by the city prior to July 30, 2010 which will allow the applicant to obtain a Final Certificate of Occupancy for buildings A1 and A2. There will be no additional extensions to the Temporary Certificate of Occupancy for buildings A1 and A2. Written documentation is

required by the Owner/Engineer for each milestone date confirming the required items are complete and have been inspected and accepted by the city Engineering Division.

Prior to obtaining a Temporary Certificate of Occupancy of Building A3 (The Last Building), the following items must be performed or provided to the satisfaction of the Engineering Division:

1. The work shown on the civil site package must be complete and the items on the final punch list completed.
2. One (1) set of as-built drawings (excluding details) of the complete project including drainage patterns as a hard copy and in Tiff or PDF format;
3. Certification that the streets, storm sewer, water and sewer lines, etc., were installed per approved plans and City of Fayetteville requirements;
4. Cross Sections, Volume Calculations, and Certification Retention/Detention Ponds are in accordance with the approved Drainage Report.
5. Surveyor's Certification of Compliance.
6. The As- Built Final Drainage Report as a hard copy and in PDF format.

Please note, site inspections, at the time Building A3 is complete, may identify additional requirements not included in this transmittal.

The engineer of record shall provide construction inspection for this project including the final inspection in the presence of city staff and generate the official punchlist.

The public works inspector (PWI) shall be notified no less than 48 hours prior to the installation of public utilities, infrastructure, roadway, etc. Testing shall be coordinated and scheduled with the PWI as well.

Please call to schedule the site inspection when the site work is being performed.

If you have any questions, please call Glenn Newman at 575-8206.

Solid Waste Division (Brian Pugh 718-7685):

- Prior to temporary CO for building A3 the dumpster enclosure with dumpster needs to be installed.

Tree and Landscape (Greg Howe 444-3470):

By May 1, 2010 numerous erosion issues listed above by the Engineering Division, and also noted below, need to be addressed:

- Erosion control fence and soil stabilization is lacking throughout the site, and soil is washing down the site into storm drainage. There is no erosion control at all on the south side of the driveway.

Prior to final CO for any of the buildings:

- The tree preservation area needs to be inspected and approved. Contact Greg Howe for a final inspection and review of the post-construction tree preservation plan.

- Landscape requirements must be completed including installation of two large species shade trees along the project's Warwick Street frontage. The existing trees and crepe myrtle recently planted do not meet code.

Fire Department (Mark Stevens 444-3448):

Prior to final CO the following items need to be completed:

- Buildings A1 and A2. Fire lane no parking area painted with red strips in front of Building A3.
- Buildings A1 and A2. All drive areas with 20-26 feet distance from curb face to curb face require NO PARKING FIRE LANE identification (Arkansas Fire Code D103.6.1) this is required because it is not a public street and is a fire access road (Arkansas Fire Code 502).
- Building A3.
 - Fire extinguishers provided and inspection tagged by a certified/licensed company located within 75 feet maximum travel distance from any location inside the residence (Arkansas Fire Code 906 and NFPA 10). Extinguishers may be installed in weather protected (plastic or metal) cabinets on the exterior of the building in locations that comply with the 75 feet travel distance requirement.
 - Proper building address numbers to be provided.

Building Safety (Vel Moses 575-8224):

- Building A1 items to be completed: 101-Seal blocking under upper deck and seal all exterior holes i.e. HVAC, gas lines, cables, T&P; extend drain line below cable boxes within 6 inches of the ground; secure dryer vents; fix or remove temp power; vapor barrier incomplete in the crawl; remove trash and construction debris under the dwelling; grippable handrail (102) entry; light for the attic (103) move to access.
- Building A2. Has been completed
- Building A3. A final inspection has not been requested or conducted. Call to schedule a final inspection.

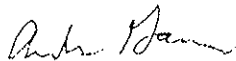
Planning (Andrew Garner 575-8262):

- Prior to final CO for Buildings A1, A2, or A3 the site work must be completed with parking spaces and drive aisles striped.
- Prior to final CO for Buildings A1 or A2, the non-conforming light fixtures throughout the development need to be removed or retro-fitted to meet City lighting ordinance, site erosion and clean-up issues need to be addressed, and two street trees installed.
- Prior to temporary CO for Building A3 the dumpster enclosure with dumpster shall be installed.

THE CITY OF FAYETTEVILLE, ARKANSAS

If you have any questions, please call me at 575-8262.

Sincerely,



Andrew Garner
Senior Planner

Cc: Greg House (ghouse@housesinc.com); Glenn Newman (gnewman@ci.fayetteville.ar.us); Brian Pugh (bpugh@ci.fayetteville.ar.us); Mark Stevens (mstevens@ci.fayetteville.ar.us); Terry Lawson (tlawson@ci.fayetteville.ar.us); Vel Moses (vmoses@ci.fayetteville.ar.us); Greg Howe (ghowe@ci.fayetteville.ar.us); Jeremy Pate (jpate@ci.fayetteville.ar.us)



THE CITY OF FAYETTEVILLE, ARKANSAS

www.accessfayetteville.org

March 25, 2010

Mr. Brian Teague
VIA EMAIL brian@communitybydesignllc.com

Re: Huntingdon Heights Response Letter Dated March 17, 2010

Dear Mr. Teague:

This letter is City staff's response to your letter dated March 17, 2010.

Staff agrees with your proposal that the dumpster enclosure be a requirement for temporary CO of building A3.

The City Engineering Division response is as follows:

- Staff agrees that items #1, #2, and #3 be performed now.
- Staff agrees with allowing the documentation items #1a, #1b, #1d-#1g be postponed until building A3 is ready for a TCO.
- Staff disagrees with allowing items #4-#11 to be required for TCO of building A3. Many of these items are specifically tied to building A1 & A2, specifically items #4, #6, #9, #10, #11 and should be completed with buildings A1 and A2.
- In addition to the above items, the safety railing is required above the retaining wall, hand railing is required on building A2 or eliminate drop off and make the slope no steeper than 3:1, and the erosion between building A2 and A3 must be stabilized, all of which have been discussed previously.

Please contact me if you have any questions.

Sincerely,

Andrew Garner
Senior Planner

cc: Greg House, Owner/Developer
Jeremy Pate, Development Services Director
Greg Howe, Urban Forester
Vel Moses, Building Safety Division
Brian Pugh, Solid Waste Division
Mark Stevens, Fire Department
Glenn Newman, Engineering Division
Chris Brown, Engineering Division



www.accessfayetteville.org

May 3, 2010

Mr. Brian Teague
Community by Design
311 West Spring Street
Fayetteville, AR 72701

Via Email: brian@communitybydesignllc.com

Re: *Huntingdon Heights Inspection Status: AP#'s 37698, 37103, and 33957*

Dear Mr. Teague:

As we have discussed with you on several occasions, the permits at 3164 and 3153 Barnsbury Terrace (AP#'s 37698 and 34103, also known as Buildings A1 and A2 on the site plan) are in violation of City ordinance for exceeding the 90-day temporary certificate of occupancy. Staff has been working with you and the owner/developer for many months to try and finalize these two buildings. A letter to you dated April 13, 2010 was a final attempt to set deadlines to complete the project in a timely fashion prior to us sending this project to the City Prosecutor. An initial deadline for several items was set for May 1, 2010. An inspection by the City on April 30, 2010 and your letter dated April 30, 2010, along with a check provided to the City on April 30, 2010 indicated adequate progress towards the May 1st checklist we have given you.

In order to continue progress towards finalizing the subject permits, the following items need to be completed within the timeframe outlined below. Failure to meet the deadlines noted below will require the Development Services Division to send this project to the City Prosecutor:

Engineering Division (Glenn Newman 444-3424):

By **June 1, 2010** the following item must be completed:

1. Provide a 2 year maintenance bond or letter of credit in the amount of 25% of the actual construction cost of all public improvements (water and sanitary sewer) for the project. A check covering the required amount was submitted on April 30, 2010, with the request by the bank to not cash the check for a period of 30 days, to allow adequate time to process a letter of credit.

If the above items are completed on schedule by June 1, 2010, the Engineering Division will recommend extending the Temporary Certificate of Occupancy for buildings A1 and A2 for an additional 14 days (until **June 15, 2010**) to complete the following tasks:

1. All exposed soil, specifically to the north of A3 be temporary seeded as required in the grading ordinance where construction activities have ceased for more than 15 days, in accordance with UDC 169.06(F)(4).
2. Staff has concerns with the functionality of the rip rap provided between buildings A2 and A3. This should be reevaluated with staff by the deadline.

3. The workmanship of the concrete flume exiting on Warwick in front of building A1 is not acceptable and does not match the approved detail. Reconstruct to match detail and request inspection.
4. Grading beyond the project limits not shown on grading plan was not authorized. The disturbed area must be graded to a maximum of a 3:1 slope, utilities adjusted, and re-vegetated per 169.06(F)(4) *Revegetation* of the Unified Development Code. Written permission of adjacent property owner is not required, since this is the same owner.
5. The sidewalk and approach has settled and cracked on the east side of Warwick Drive where the new sanitary sewer main was installed in front of 3154 Warwick Drive. The back filling of the trench was not inspected nor was the placement of concrete for the sidewalk. The deficient areas shall be removed, subgrade should be inspected for firmness before placement of concrete for sidewalk.
6. The sidewalk that has cracked at the existing sanitary sewer man-hole on the north side of the driveway at 3172 Warwick Drive must be repaired and add a joint at this location to prevent future cracking. Remove and replace to the nearest joint in each direction. Grading and sod should be replaced in this area also to meet predevelopment conditions.

If the above items are completed on schedule by June 15, 2010 Engineering will recommend extending the TCO for buildings A1 and A2 for an additional 45 days (until **July 30, 2010**) to complete the following tasks:

1. An inspection was not requested for the approach patch for the private drive prior to the concrete placement. The thickness of the concrete must be verified at 3172 Warwick Drive. Remove and replace to proper width and thickness as required.
2. An inspection was not requested for the two street crossing for sanitary sewer extensions for this project that required a "Concrete/Asphalt Tee Patch". The material and thickness of the repair must be verified. Remove and replace to proper width and thickness as required.
3. An inspection was not requested for the asphalt patch for the private drive connection to the public street. The material and thickness of the repair must be verified.
4. Final removal all silt from the storm drainage system and vault.
5. Clean up of all debris and excess construction material related to the project, including material placed on adjacent property.
6. The temporary electrical service (no longer being used) behind building A2 shall be removed as a safety concern.

All above items must be completed and accepted by the city prior to July 30, 2010 which will allow the applicant to obtain a Final Certificate of Occupancy for buildings A1 and A2. There will be no additional extensions to the Temporary Certificate of Occupancy for buildings A1 and A2. Written documentation is required by the Owner/Engineer for each milestone date confirming the required items are complete and have been inspected and accepted by the city Engineering Division.

Prior to obtaining a Temporary Certificate of Occupancy of Building A3 (The Last Building), the following items must be performed or provided to the satisfaction of the Engineering Division:

1. The work shown on the civil site package must be complete and the items on the final punch list completed.
2. One (1) set of as-built drawings (excluding details) of the complete project including drainage patterns as a hard copy and in Tiff or PDF format;

3. Certification that the streets, storm sewer, water and sewer lines, etc., were installed per approved plans and City of Fayetteville requirements;
4. Cross Sections, Volume Calculations, and Certification Retention/Detention Ponds are in accordance with the approved Drainage Report.
5. Surveyor's Certification of Compliance.
6. The As- Built Final Drainage Report as a hard copy and in PDF format.

Please note, site inspections, at the time Building A3 is complete, may identify additional requirements not included in this transmittal.

The engineer of record shall provide construction inspection for this project including the final inspection in the presence of city staff and generate the official punchlist.

The public works inspector (PWI) shall be notified no less than 48 hours prior to the installation of public utilities, infrastructure, roadway, etc. Testing shall be coordinated and scheduled with the PWI as well.

Please call to schedule the site inspection when the site work is being performed.

If you have any questions, please call Glenn Newman at 575-8206.

Solid Waste Division (Brian Pugh 718-7685):

- Prior to temporary CO for building A3 the dumpster enclosure with dumpster needs to be installed.

Tree and Landscape (Greg Howe 444-3470):

Prior to final CO for any of the buildings:

- Permanent erosion control and soil stabilization throughout the site needs to be installed and inspected.
- The tree preservation area needs to be inspected and approved. Contact Greg Howe for a final inspection and review of the post-construction tree preservation plan.
- Landscape requirements must be completed including installation of two large species shade trees along the project's Warwick Street frontage. The existing trees and crepe myrtle recently planted do not meet code.

Fire Department (Mark Stevens 444-3448):

Prior to final CO the following items need to be completed:

- Buildings A1 and A2. Fire lane no parking area painted with red strips in front of Building A3.
- Buildings A1 and A2. All drive areas with 20-26 feet distance from curb face to curb face require NO PARKING FIRE LANE identification (Arkansas Fire Code D103.6.1) this is required because it is not a public street and is a fire access road (Arkansas Fire Code 502).
- Building A3.

- Fire extinguishers provided and inspection tagged by a certified/licensed company located within 75 feet maximum travel distance from any location inside the residence (Arkansas Fire Code 906 and NFPA 10). Extinguishers may be installed in weather protected (plastic or metal) cabinets on the exterior of the building in locations that comply with the 75 feet travel distance requirement.
- Proper building address numbers to be provided.

Building Safety (Vel Moses 575-8224):

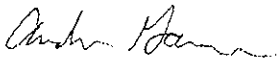
- Building A1 items to be completed: 101-Seal blocking under upper deck and seal all exterior holes i.e. HVAC, gas lines, cables, T&P; extend drain line below cable boxes within 6 inches of the ground; secure dryer vents; fix or remove temp power; vapor barrier incomplete in the crawl; remove trash and construction debris under the dwelling; grippable handrail (102) entry; light for the attic (103) move to access.
- Building A2. Has been completed
- Building A3. A final inspection has not been requested or conducted. Call to schedule a final inspection.

Planning (Andrew Garner 575-8262):

- Prior to final CO for Buildings A1, A2, or A3 the site work must be completed with parking spaces and drive aisles striped.
- Prior to final CO for Buildings A1 or A2, the non-conforming light fixtures throughout the development need to be removed or retro-fitted to meet City lighting ordinance, site erosion and clean-up issues need to be addressed, and two street trees installed.
- Prior to temporary CO for Building A3 the dumpster enclosure with dumpster shall be installed.

If you have any questions, please call me at 575-8262.

Sincerely,



Andrew Garner
Senior Planner

Cc: Greg House (ghouse@housesinc.com); Glenn Newman (gnewman@ci.fayetteville.ar.us); Brian Pugh (bpugh@ci.fayetteville.ar.us); Mark Stevens (mstevens@ci.fayetteville.ar.us); Terry Lawson (tlawson@ci.fayetteville.ar.us); Vel Moses (vmoses@ci.fayetteville.ar.us); Greg Howe (ghowe@ci.fayetteville.ar.us); Jeremy Pate (jpate@ci.fayetteville.ar.us)



THE CITY OF FAYETTEVILLE, ARKANSAS
ENGINEERING DIVISION
125 West Mountain
Fayetteville, AR 72701
Phone (479) 444-3443

www.accessfayetteville.org

Greg House
House Inc.
217 N East Ave
Fayetteville, AR 72701

December 6, 2010
Eng # 7968

Re: Huntingdon Heights Lot 28
Temporary Certificate of Occupancy for Building A3
Engineering Requirements

Dear Mr. House:

In response to your request to obtain a Temporary Certificate of Occupancy (TCO) for Building A3 made to Building Safety December 2, 2010, we have prepared a list of outstanding items that will need to be completed to the satisfaction of the Engineering Division as identified below, before Engineering approval will be given:

1. The existing concrete patch in the driveway at 3172 Warwick Drive is not acceptable and must be corrected as specified below and as detailed in the attached sketch. As you are aware, the existing patch was constructed without supervision or inspection by the Engineering Division, and does not meet standards of acceptability with regard to the limits of the patch or the concrete finish.
 - a. Remove the existing concrete patch and continue the saw cut south, the width of the driveway, saw cut along the edge of pavement, remove the existing concrete, place new 6" thick concrete the width of the driveway for a total of approximately 100 sf, finish to match existing surface.
 - b. Coordinate with the property owner to minimize disruption, multiple repair phases may be required.
 - c. Contact Chuck Rutherford to schedule inspection before placement of new concrete.
2. Final removal all silt from the storm drainage system and vault is required.
3. Remove the chlorination piping used to test the water main and backfill the area.

After these items are completed, please contact the Engineering Division for a final inspection.

In addition to the construction related items listed above, the following items must be performed or provided to the satisfaction of the Engineering Division prior to Engineering approval of a TCO:

1. The work shown on the civil site package must be complete and the items on the final punch list completed.
2. One (1) set of as-built drawings (excluding details) of the complete project including drainage patterns as a hard copy and in Tiff or PDF format;
3. Certification that the streets, storm sewer, water and sewer lines, etc., were installed per approved plans and City of Fayetteville requirements;
4. Cross Sections, Volume Calculations, and Certification Retention/Detention Ponds are in accordance with the approved Drainage Report.
5. Surveyor's Certification of Compliance.
6. The As- Built Final Drainage Report as a hard copy and in PDF format.

If you have any questions, please call me at 575-8206.

Sincerely,

Chris Brown, P.E.,
City Engineer



Greg House

From: Greg House [ghouse@housesinc.com]
Sent: Tuesday, December 07, 2010 4:46 PM
To: 'Andrew Garner'; 'jpate@ci.fayetteville.ar.us'
Cc: 'Brian Teague'
Subject: FW: Huntingdon Heights Lot 28
Attachments: Conditions for A3.pdf

Gentlemen – On May 3, 2010 in a letter to Brian, Andrew clarified where we stood with respect to the items that needed to be addressed and the deadlines for each as part. In reliance on that letter we moved forward and have completed all the physical work required therein. In addressing the issue of the approach patch for 3172 Warwick, I specifically asked the inspection department how they suggested that "the thickness of the concrete ... be verified", as stated in Andrew's letter. I asked if we should do a core drill or just expose the pour by digging adjacent to the patch, it was determined that exposing the edge by digging was sufficient, which we did and this was observed by Bob. To be asked to remove this patch for a third time, when this was not in the scope of work detailed in the May understanding and considering the fact that the "patch" has been in place for over a year and a half with no signs of failure, and that we have posted a maintenance bond for public improvements seems patently unreasonable. Please advise – Greg House

From: Glenn Newman [mailto:gnewman@ci.fayetteville.ar.us]
Sent: Tuesday, December 07, 2010 9:10 AM
To: 'Greg House'
Cc: Chris Brown
Subject: Huntingdon Heights Lot 28

Mr. House,

Please see the attached letter identifying the necessary items to obtain the TCO for the referenced project as it relates to the Engineering Division.

Glenn E. Newman, Jr., P.E.
Staff Engineer
City of Fayetteville Engineering Department
113 W. Mountain, Fayetteville, AR 72701
p. 479-575-8206 f. 479-575-8202
<http://www.accessfayetteville.org>
Telecommunication Device for the Deaf
TDD 479-521-1316

Greg House

From: Jeremy Pate [jpate@ci.fayetteville.ar.us]
Sent: Wednesday, December 22, 2010 3:06 PM
To: ghouse@housesinc.com
Subject: Huntingdon Heights Follow-up

Greg,
I did some research into other projects that we have inspected in the past, along with projects where the city has made water/sewer taps that affected existing driveways. In those cases, we have required a full driveway approach be replaced, so what I am seeing Chris detail for you is common practice. I guess I'm not sure where the misunderstanding is, if this is the same policy we have used for years for both public and private projects. You are welcome to sit down with Chris specifically so that everyone is clear where a sawcut is needed and to what extent concrete would need to be replaced in the driveway repair; however, I would highly recommend that you make sure the area for construction is inspected and signed off on before proceeding with another patch. The engineering division has had this same discussion for a number of months now, with what I feel is the same message being conveyed. I have not heard another message being communicated other than the existing patch is not acceptable; my recommendation is to follow through with this punch list item in order to move forward with Huntingdon Heights.

thanks,
Jeremy

Jeremy C. Pate
Development Services Director
City of Fayetteville, Arkansas

Greg House

From: Greg House [ghouse@housesinc.com]

Sent: Thursday, January 06, 2011 2:34 PM

To: 'jpate@ci.fayetteville.ar.us'

Cc: 'kwilliams@ci.fayetteville.ar.us'

Subject: Huntingdon Heights

Jeremy – I am in receipt of Andrew Garner's communication of this morning stating that it is your decision that you will deny our request for TCO's for the building we have been calling A3 in Huntingdon Heights until we finish the apron at 3172 Warwick in the manner specified in your last communication with me. As you know I disagree with your position with respect to the necessity of this work and that it is our position that all that was required was verification of the patch's thickness as per Andrew's letter of May 3, 2010.

After a discussion with Kit this morning per his suggestion, I would propose the following; Huntingdon Heights (hereafter HH) will lodge an appeal of your decision with the City Council this afternoon. In the interim, assuming all the other requirements have been met per the May 3, 2010 letter, HH be granted TCO's for building A3. If HH's appeal is not successful, within 45 days of the council's decision HH will redo the apron according to the specifications outlined in your email of Dec. 22nd, 2010. In the meantime the City is protected by the bond that has already been posted.

HH has tenants ready to move in at a moments notice if permitted and HH has obligations to its lender as well as other expenses that accrue on a daily basis, therefore, if TCO's for these units are not granted, HH will be irreparably harmed and will be forced to seek other remedies if we cannot reach an agreement as to the best way to move forward. I will need a response by noon tomorrow in order to best protect HH's interests.

Respectfully,

Greg House
for Huntingdon Heights, LLC
217 N. East Ave.
Fayetteville, AR 72701
Phone: (479) 521-9155
Fax: (479) 521-6199
ghouse@housesinc.com
www.housesinc.com

City of Fayetteville Staff Review Form

C. 1
Ozarks Electric Cooperative
Corporation Cost-Share Agreement
Page 1 of 8

**City Council Agenda Items
and
Contracts, Leases or Agreements**

15-Feb-11

City Council Meeting Date
Agenda Items Only

David Jurgens

Submitted By

Utilities Capital Projects

Division

Utilities

Department

Action Required:

Approval of a cost share agreement with Ozarks Electric Cooperative Corporation to extend 3-phase, 460-volt power to the Stone Mountain Water Pump Station for \$38,250.48, approval of a \$7,500 contingency, and approval of a budget adjustment of \$45,751.

\$ 45,751.00

Cost of this request

\$ 529,253.92

Mt Sequoyah Pressure Plane Imprvm

Program Category / Project Name

5400.5600.5315.00

Account Number

\$ 487,769.75

Funds Used to Date

Water Impact Fee Improvements

Program / Project Category Name

04036.1

Project Number

\$ 41,484.17

Remaining Balance

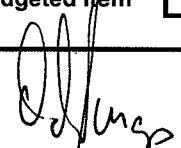
Water Impact Fees

Fund Name

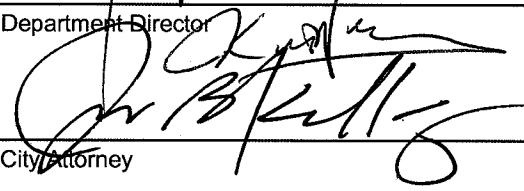
Budgeted Item

Budget Adjustment Attached

XX


Department Director
2/28/11
Date

Previous Ordinance or Resolution #


City Attorney
Feb 4, 2011
Date

Original Contract Date:

1-31-11
Date

Original Contract Number:


Finance and Internal Services Director
1-31-2011
DateReceived in City
Clerk's Office

King


Chief of Staff
1-31-11
DateReceived in
Mayor's Office

Mayor
2/1/11
Date

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director
Fayetteville Water and Sewer Committee

Date: January 28, 2011

Subject: Approval of a cost share agreement with Ozarks Electric Cooperative Corporation to extend 3-phase, 460-volt power to the Stone Mountain Water Pump Station for \$38,250.48

RECOMMENDATION

Staff recommends approval of a cost share agreement with Ozarks Electric Cooperative Corporation to extend 3-phase, 460-volt power to the Stone Mountain Water Pump Station for \$38,250.48, approval of a \$7,500 contingency, and approval of a budget adjustment of \$45,751.

BACKGROUND

A contract with CB&I to build the Canterbury water storage tank was awarded April 6, 2010. There is some additional water line work and a pump station that will be constructed to work in conjunction with the new tank.

DISCUSSION

This agreement pays the costs for Ozarks Electric Cooperative Corporation to extend 3-phase, 460-volt power to the new Stone Mountain Water Pump Station site. 3-phase power is not currently available at the site, and is necessary to provide the City with the most cost effective electric service for the new pump station.

BUDGET IMPACT

Funds are available in the impact fee water project budget. The budget amendment for \$45,750.48 is attached to transfer funds from the impact fee fund to the water/sewer fund.

ORDINANCE NO. _____

AN ORDINANCE TO WAIVE COMPETITIVE BIDDING, TO APPROVE A COST-SHARE AGREEMENT WITH OZARKS ELECTRIC COOPERATIVE CORPORATION IN THE AMOUNT OF \$38,250.48 FOR THE EXTENSION OF POWER TO THE STONE MOUNTAIN WATER PUMP STATION, TO APPROVE A PROJECT CONTINGENCY OF \$7,500.00, AND TO APPROVE A BUDGET ADJUSTMENT OF \$45,751.00

WHEREAS, the City of Fayetteville is constructing a new water pump station, Stone Mountain Water Pump Station, which will be more economically powered by a new 3-phase, 460 volt power line; and

WHEREAS, Ozark Electric Cooperative Corporation owns and operates the electric utility that will serve the Stone Mountain Water Pump Station and has agreed to share the cost of the construction of the 3-phase, 460 volt power line to serve the pump station.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby determines the facts above constitute an exceptional situation in which competitive bidding is not deemed practical or feasible and therefore, waives formal competitive bidding and approves a cost-share agreement with Ozarks Electric Cooperative Corporation in the amount of \$38,250.48 for the extension of power to the Stone Mountain Water Pump Station, and approves a project contingency of \$7,500.00. A copy of the agreement is attached as Exhibit "A".

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached as Exhibit "B", in the amount of \$45,751.00.

PASSED and APPROVED this 15th day of February, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

**COST-SHARE AGREEMENT BETWEEN
CITY OF FAYETTEVILLE AND OZARKS ELECTRIC COOPERATIVE CORPORATION**

This Agreement, made and entered into this _____ day of _____, 2011 by and between the City of Fayetteville, Arkansas and Ozarks Electric Cooperative Corporation, Witnesseth:

WHEREAS, the City of Fayetteville is constructing a new water pump station identified as Stone Mountain Water Pump Station; and

WHEREAS, the City of Fayetteville is in need of 3-phase, 460-volt power to serve the new water pump station; and

WHEREAS, Ozarks Electric Cooperative Corporation owns and operates the electric utility that serves the newer water pump station.

NOW, THEREFORE, the City of Fayetteville and Ozarks Electric Cooperative Corporation agree as follows:

1. Upon the City Council approving the Cost-Share, Ozarks Electric Cooperative Corporation agrees to:
 - A. Provide the necessary and normal project construction, management, inspection, and testing as necessary for a complete and acceptable 3-phase power extension.
 - B. The estimated total cost of construction for the 3-phase power extension is \$54,848.48 as shown in the attached estimate of probable cost.
2. The City of Fayetteville agrees to:
 - A. Pay a lump sum cost of \$38,250.48 for the aforementioned 3-phase power extension upon execution of this agreement.
3. It is further understood that the contract includes material, labor and normal trenching. In the event that excessive rock is encountered during construction that cannot be excavated by normal trenching methods, the City of Fayetteville agrees to pay for the additional costs, not to exceed \$7,500.00.
4. Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.
5. **Freedom of Information Act.** City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, Ozarks Electric Cooperative Corporation will do everything possible to

provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

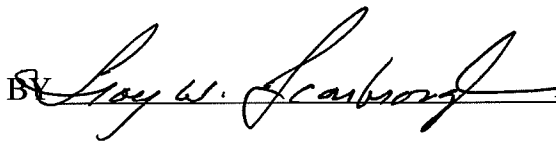
6. This contract must be interpreted under Arkansas Law.

**IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE SIGN
BELOW:**

CITY OF FAYETTEVILLE

OZARKS ELECTRIC COOPERATIVE CORPORATION

BY _____
Mayor Lioneld Jordan

BY  _____
VP Engineering & Operations

New Units	Unit Description	Quantity	LaborCost	MaterialCost With Tax
300 KVA 7.2-480 PD	300 KVA 7.2-480 3 PH PAD MT TRANS.	1	\$0.00	\$13,458.45
BOR1	BORING-1 PH UG	100	\$1,649.94	\$0.00
C1/0U	CONDUCTOR, 1/O, 25KV JACKETED	4,845	\$1,990.71	\$12,086.94
CONTR 2"	2" 'RED' CONTINUOUS CONDUIT - CABLECON	4,715	\$7,071.14	\$2,929.45
CONTR UM33	THREE PHASE PRIMARY VAULT CONTRACTOR INSTALLED	2	\$400.00	\$1,137.32
UG17	THREE PHASE PAD MT TRANS. ACCESSORIES	1	\$51.36	\$632.65
UM48-2	GROUNDING ASSEMBLY FOR THREE PHASE PAD MT. TRANSFORMERS	3	\$115.56	\$176.40
UM6-1	LOAD BREAK ELBOW	26	\$500.76	\$885.57
UM6-10	PROTECTIVE CAP (DUMMY)	8	\$6.16	\$214.56
UM6-22	FOUR PT. JCT-200 A	12	\$231.12	\$1,906.49
UR2-1	DITCHING UNIT	2,075	\$9,335.71	\$0.00
			\$21,352.47	\$33,427.83

NEW CONSTRUCTION	\$54,780.30
RETIREMENT LABOR	\$68.18
TOTAL COST	\$54,848.48
LESS ALLOWANCE	-\$16,598.00
POLICY 30 CHARGE	\$38,250.48

Retired Units	Unit Description	Quantity	LaborCost	MaterialCost With Tax
C1/0U	CONDUCTOR, 1/O, 25KV JACKETED	130	\$0.00	\$302.68
UM6-1	LOAD BREAK ELBOW	2	\$19.26	\$68.83
UM6-10	PROTECTIVE CAP (DUMMY)	1	\$0.77	\$27.39
UM6-21	THREE PT. JCT-200 A	4	\$38.52	\$530.30
UM6-5	FEED THROUGH LOAD BREAK INSERT	1	\$9.63	\$182.31
			\$68.18	

**City of Fayetteville, Arkansas
Budget Adjustment Form**

C. 1
Ozarks Electric Cooperative
Corporation Cost Share Agreement
Page 7 of 8

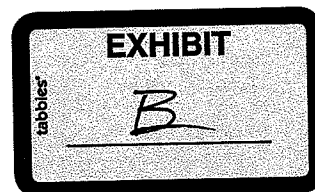
Budget Year 2011	Department: Utilities Division: Water & Sewer Maintenance Program: Capital Water Mains	Request Date 1/28/2011	Adjustment Number
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JUSTIFICATION TO INCREASE PROJECT / ITEM:

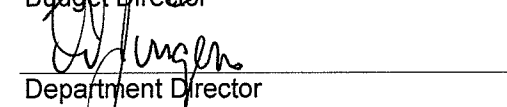
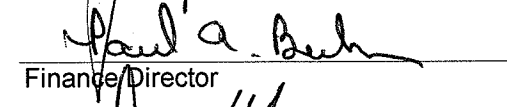
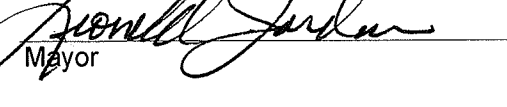
\$45,750.48 in the Mount Sequoyah Pressure Plane Improvements Project. Increase project for the extension of 3-phase, 460-volt power to the Stone Mountain Pump Station site.

JUSTIFICATION TO DECREASE PROJECT / ITEM (OR RECOGNIZING REVENUE):

To recognize \$45,750.48 impact fee funds to extend 3-phase, 460-volt pwr to the Stone Mountain Pump Station Site. The extension of the power is needed to power the new pump station.



Account Name	Account Number	Increase Budget	Decrease Budget	Project.Sub Number
Contract Services	5400.5600.5315.00	45,750.48		04036 . 1
Transfer from Impact Fee	5400.0940.6602.30		45,750.48	04036 . 1
				.
				.
				.
				.
				.
TOTAL		45,750.48	45,750.48	

Division Head  Budget Director  Department Director  Finance Director  Chief of Staff  Mayor 	Date 1/28/11 Date 28 JAN 11 Date 2/3/11 Date 2/1/11	Requested By _____ kspringer Budget & Research Use Only Type: A B C <u>D</u> E Description: _____ 0 General Ledger Date _____ Posted to General Ledger Initial _____ Date _____ Posted to Project Accounting Initial _____ Date _____
---	---	---

CHECK REQUEST

C. 1
Ozarks Electric Cooperative
Corporation Cost-Share Agreement
Page 8 of 8

Date: 28-Jan-11

Vendor Number: 9120

Payable to: Ozarks Electric Cooperative
P.O. Box 848
Fayetteville, AR 72702-0848

Manual Check

Mail Yes ☐ No ☒

Return Check to: Shannon Jones

Send Copy to: _____

For: Water/Sewer---Stone Mountain Water Pump Station 3-phase power extention

Separate Check Code A

Bank Number _____

Payable From: Fund Name Water/Sewer

Amount of Check \$ 38250.48

Charged as follows:

Account Name	Amount							
		Fund	Dept	Sub Dept	Base	Detail	Project	Sub Project
Contract Services	38,250.48	5400	5600		5315	00	04036	1
TOTAL	\$38,250.48							

Additional
Approval:

☐ Does Not
Meet
Purchasing
Policy

☐ Contract
Payment

☐ Other

Approved:

Prepared by: Cheryl Partain

Approved by: [Signature]

Entered: [Signature]

Accounting Use - Receipting

G/L Account Number

Key Code

City of Fayetteville Staff Review Form

C. 2
RZN 10-3732 (Brown,
2600 Crossover Rd.)
Page 1 of 26

City Council Agenda Items
and
Contracts, Leases or Agreements

2/15/2011

City Council Meeting Date
Agenda Items Only

Andrew Garner

Submitted By

Planning

Division

Development Services

Department

Action Required:

RZN 10-3732: (Brown, 2600 Crossover Rd, 372): Submitted by BEN ISRAEL for property located at 2600 CROSSOVER ROAD. The property is zoned R-A, RESIDENTIAL AGRICULTURAL and contains approximately 1.64 acres. The request is to rezone the subject property to R-O, Residential Office.

Cost of this request

\$

-

Category / Project Budget

Program Category / Project Name

Account Number

\$

-

Funds Used to Date

Program / Project Category Name

Project Number

\$

-

Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

Department Director

01-27-2011

Date

Previous Ordinance or Resolution #

City Attorney

1-28-11

Date

Original Contract Date:

Original Contract Number:

Finance and Internal Services Director

1-28-2011

Date

Received in City 01-28-11 A11:08 RCVD
Clerk's Office

Chief of Staff

1-31-11

Date

Received in
Mayor's Office

Mayor

1/31/11

Date



Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director 

From: Andrew Garner, Senior Planner

Date: January 27, 2011

Subject: RZN10-3732 John Brown/Ben Israel (2600 Crossover Road)

RECOMMENDATION

Planning Commission and staff recommend approval of an ordinance to rezone the subject property from R-A, Residential Agricultural to R-O, Residential Office (RZN 10-3732).

BACKGROUND

The subject property is located at 2600 Crossover Road and contains approximately 1.64 acres and is developed with two single-family dwellings that were constructed in 1965 and 1980. The property is an odd-shaped out-lot adjacent to the west of the Candlewood Subdivision, and across Crossover Road from the First Freewill Baptist Church. Crossover Road is planned to be improved in the immediate future by the Arkansas Highway and Transportation Department to a four-lane boulevard section, with a solid median directly adjacent to this property. The improvements to Crossover Road require a large acquisition of right-of-way and utility easement along the front of this property as indicated in the drawings included in this packet.

DISCUSSION

On January 24, 2011 the Planning Commission forwarded this item to the City Council with a recommendation for approval with a vote of 7-1-0 (Commissioner Honchell voted "no"). At the Planning Commission meeting four members of the public spoke about this item, three stating that they were opposed, and one in favor of the rezoning. The staff report and draft meeting minutes are included in this packet.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 10-3732, FOR APPROXIMATELY 1.64 ACRES, LOCATED AT 2600 CROSSOVER ROAD FROM R-A, RESIDENTIAL AGRICULTURAL, TO R-O, RESIDENTIAL OFFICE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the zone classification of the following described property is hereby changed as follows:

From R-A, Residential Agricultural to R-O, Residential Office, as shown on Exhibits "A" and "B" attached hereto and made a part hereof.

Section 2: That the official zoning map of the City of Fayetteville, Arkansas is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and APPROVED this day of , 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

EXHIBIT "A"

C. 2
RZN 10-3732 (Brown,
2600 Crossover Rd.)
Page 4 of 26

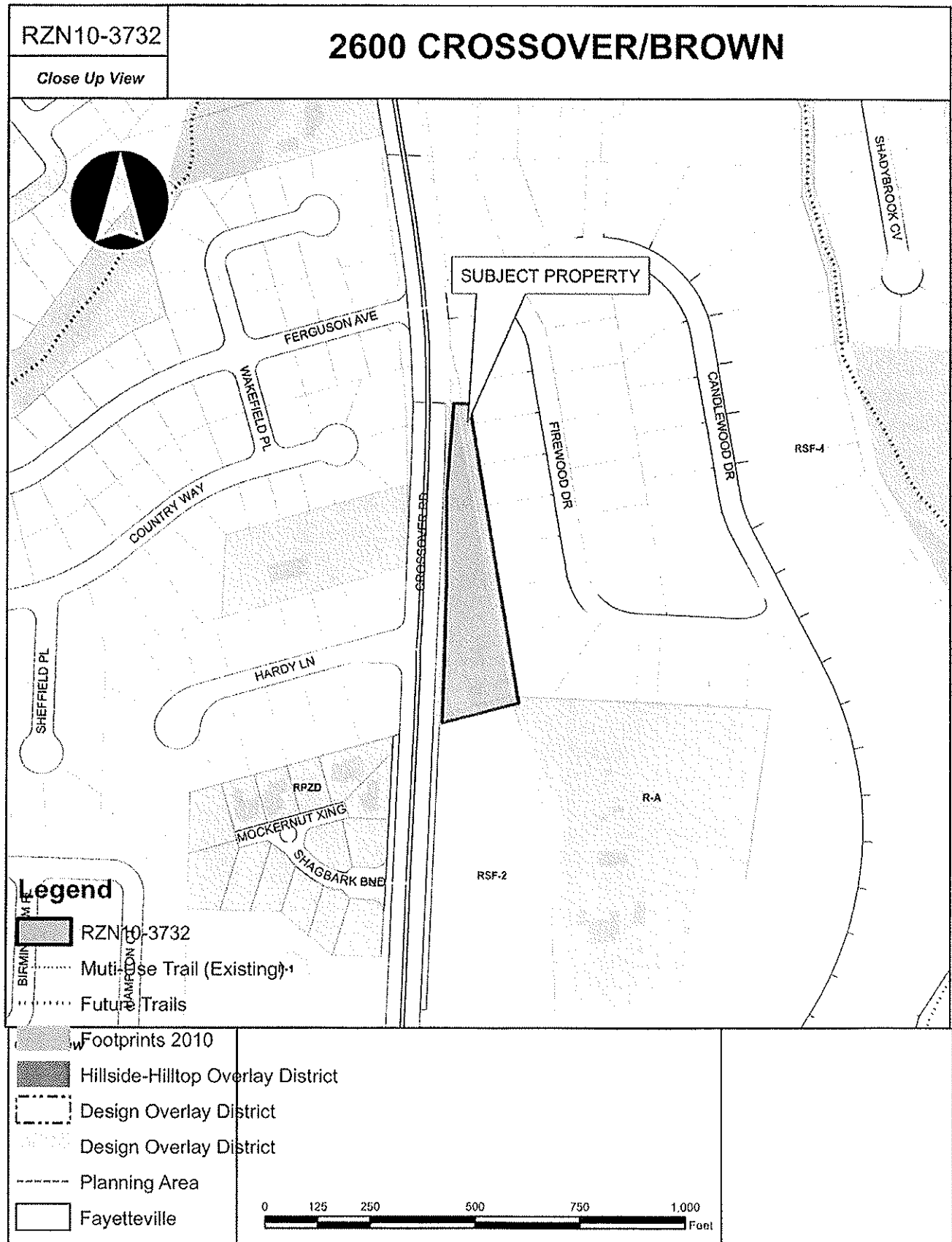


EXHIBIT "B"
RZN 10-3732

A PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION THIRTY ONE (31) IN TOWNSHIP SEVENTEEN (17) NORTH OF RANGE TWENTY NINE (29) WEST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A STONE WHICH IS LOCATED SEVEN HUNDRED FIFTY SEVEN AND FIFTY EIGHT (757.58) FEET EAST AND TEN HUNDRED SIXTEEN AND FOUR-TENTHS (1016.4) FEET NORTH OF THE SOUTH WEST CORNER OF SAID EIGHTY ACRE TRACT, AND RUNNING, THENCE NORTH 12* WEST SEVEN HUNDRED TWENTY-SIX AND SEVEN-TENTHS (726.7) FEET, THENCE WEST THIRTY FIVE (35) FEET TO THE RIGHT OF WAY OF CROSSOVER ROAD AND CONTINUING WEST TO CENTER-LINE OF SAID ROAD FORTY ONE (41) FEET ADDITIONAL, THENCE SOUTHERLY WITH CENTER-LINE OF SAID ROAD TO A POINT SOUTH 73* WEST TWO HUNDRED THIRTY EIGHT (238) FEET FROM THE POINT OF BEGINNING, THENCE NORTH 73* EAST TWO HUNDRED THIRTY EIGHT (238) FEET TO THE POINT OF BEGINNING, CONTAINING TWO AND THREE-TENTHS (2.3) ACRES, MORE OR LESS. SUBJECT TO EASEMENT FOR CROSSOVER ROAD.

LESS AND ACCEPT A PART OF THE FRACTIONAL WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 17 NORTH, RANGE 29 WEST, WASHINGTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT BEING USED AS THE SOUTHWEST SIXTEENTH CORNER OF SECTION 31; THENCE NORTH 87* 33' 22" WEST ALONG THE NORTH LINE OF THE FRACTIONAL SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31 A DISTANCE OF 724.70 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF ARKANSAS STATE HIGHWAY 265 AS ESTABLISHED BY AHTD JOB 040517 TO THE POINT OF BEGINNING; THENCE SOUTH 01* 23' 07" WEST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 332.35 FEET TO A POINT ON THE NORTH LINE OF LOT 6, LYNNWOOD ESTATES; THENCE SOUTH 73* 38' 29" WEST ALONG SAID NORTH LINE A DISTANCE OF 31.74 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF ARKANSAS STATE HIGHWAY 265 AS ESTABLISHED BY AHTD JOB 4704; THENCE CONTINUING SOUTH 73* 38' 29" WEST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 15.88 TO A POINT; THENCE NORTH 02* 21' 13" EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 648.71 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG SAID RIGHT OF WAY LINE ON A CURVE TO THE LEFT HAVING A RADIUS OF 2,904.79 FEET A DISTANCE OF 121.78 FEET HAVING A CHORD BEARING NORTH 01* 09' 10" EAST A DISTANCE OF 121.77 FEET TO A POINT; THENCE SOUTH 87* 09' 43" EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 13.59 FEET TO A POINT ON THE SOUTH LINE OF LOT 20 OF CANDLEWOOD SUBDIVISION; THENCE CONTINUING SOUTH 87* 09' 43" EAST ALONG SAID SOUTH LINE A DISTANCE OF 25.25 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF ARKANSAS STATE HIGHWAY 265 AS ESTABLISHED BY AHTD JOB 040517; THENCE SOUTH 04* 16' 44" WEST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 211.97 FEET TO A POINT; THENCE

SOUTH 00° 26' 59" EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 210.95 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.66 ACRES OR 28,672 SQUARE FEET MORE OR LESS AS SHOWN ON PLANS PREPARED BY THE AHTD REFERENCED AS JOB 040517.



PC Meeting of January 24, 2011

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
Matt Casey, Assistant City Engineer
THRU: Jeremy Pate, Development Services Director
DATE: ~~January 19, 2011~~ *Updated January 27, 2011*

RZN 10-3732: Rezoning (2600 CROSSOVER RD./BROWN, 326): Submitted by BEN ISRAEL for property located at 2600 CROSSOVER ROAD. The property is zoned R-A, RESIDENTIAL AGRICULTURAL and contains approximately 1.64 acres. The request is to rezone the subject property to R-O, Residential Office. Planner: Andrew Garner

BACKGROUND:

The subject property is located at 2600 Crossover Road and contains approximately 1.64 acres and is developed with two single-family dwellings that were constructed in 1965 and 1980. Surrounding land uses are shown in Table 1.

Table 1: Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North and East	Single family residential	RSF-4, Residential Single Family Four Units Per Acre
South	Undeveloped	RSF-2, Residential Single Family Two Units Per Acre
West	Church; single family residential	RSF-4, Residential Single Family Four Units Per Acre; R-A, Residential Agricultural

Proposal: The applicant has submitted an application to rezone the property from R-A, Residential Agricultural to R-O, Residential Office.

Public Comment: Staff has received three or four phone calls asking about the proposed rezoning. One of the callers specifically objected to the rezoning, the other callers did not object or were simply asking for information about the proposal.

RECOMMENDATION:

Staff recommends forwarding **RZN 10-3732** to the City Council with a recommendation of approval based on findings stated herein.

PLANNING COMMISSION ACTION:				Required	<u>YES</u>
Date:	01-24-11	☐ Tabled	☒ Forwarded	☐ Denied	
Motion:	<u>Chesser</u>	Second:	<u>Winston</u>	Vote: <u>7-1-0 (Honchell voted 'No')</u>	
CITY COUNCIL ACTION:				Required	<u>YES</u>
				☐ Approved	☐ Denied
Date:					

INFRASTRUCTURE:

Streets: The site has access to Crossover Rd. Crossover Rd. is a 3 lane state highway in this location. The AHTD will be improving this highway to a 4 lane boulevard section.

Water: Public water is available to the property. There is a 12" public main located along the east side of Crossover Rd. adjacent to this property. Public water main improvements may need to be extended through the property to provide domestic and fire flow for any proposed development.

Sewer: Sanitary sewer is available to the site. There is an 8" public main located along the east side of Crossover Rd. adjacent to this property. Public mains may need to be extended through the property to serve any proposed development. The capacity of the existing mains may need to be evaluated with any proposed development.

Drainage: Standard improvements and requirements for drainage will be required for any development. This property is not affected by the 100-year floodplain.

Police: The Fayetteville Police Department has not objected to this request.

Fire: This property would be protected by Fire Engine 5 which is one mile from the station with an anticipated response time of two minutes. The Fire Department does not feel this rezoning will affect calls for service or response times.

CITY PLAN 2025 FUTURE LAND USE PLAN: *City Plan 2025 Future Land Use Plan designates this site as **Residential Neighborhood Area**, which is almost exclusively residential in nature, but incorporates low-intensity non-residential uses.*

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed rezoning is consistent with current land use planning objectives

and policies. The property is designated Residential Neighborhood Area on the Future Land Use Plan and is currently zoned R-A. Although the current zoning designation is compatible with the Future Land Use plan, a Residential Office zoning is also compatible with the Future Land Use plan and will permit development of uses compatible with the surrounding area. The 1.64-acre tract is located adjacent to a major arterial roadway and is an odd-shaped out-lot that is not a part of a subdivision. This parcel is non-conforming as it does not meet the two-acre minimum or building setbacks required in the R-A zoning. This parcel is not feasible for large scale agricultural use or estate residential use permitted under the R-A zone due to the narrow shape and configuration of this property. The applicant's proposal to rezone the site to R-O would permit small scale, low-intensity non-residential uses as proposed by the applicant. The R-O zoning would also permit single-family and two-family dwellings. Staff finds that the uses permitted under the R-O zoning would be compatible with the surrounding properties. The small size and narrow shape of the parcel substantially limit the amount of developable area and height of any proposed buildings that could be developed on this site. The small non-residential building and uses that would be permitted would be compatible with the surrounding single family and church uses. The proposed rezoning would provide a feasible development option on the subject property that would be compatible and provide a transition from the busy and noisy arterial roadway and the adjacent residences to the east.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The requested rezoning to R-O will allow for development of residential and office uses. The property could continue as a non-conforming lot with two single family residences. However, with the pending widening of State Highway 265 (Crossover Road) directly adjacent to this property, this busy high-speed state highway will be less than 50 feet from the front of these homes. The existing single family uses have been and will be further impacted by noise and traffic from Crossover Road. The R-O zoning would permit the property to develop for non-residential use which may be more viable than retaining the existing residences.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: It is expected that a rezoning from R-A to R-O could create an increase in traffic compared with that allowed under the existing zoning. The property is adjacent to a Principal Arterial street, State Highway 265/Crossover Road. This road carries high volume and high speed traffic. Development of the property for an office or other nonresidential use permitted under R-O will result in an

increase in traffic to this site. Access to and from this site shall be reviewed at the time of development in compliance with the City's Access Management Ordinance to ensure that it will not create or compound a dangerous traffic condition. Access would likely be restricted to one access point in compliance with City ordinance. The improvements to Crossover Road would place a median directly in front of this property which would limit this property to right-in, right-out only turning movements. This would reduce potentially dangerous left turning movements into or out of the property.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed zoning would not substantially alter the population density in the area. At this time the property is developed for two single family residences. Rezoning the property R-O will allow the development of a single family or two-family dwelling by right, or multi-family dwellings by conditional use. The applicant anticipates development of an office use, which would increase the traffic to this property but not increase the population density. Increased load on public services were taken into consideration and recommendations from Engineering, Fire, and Police Departments are included in this report.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
 - a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: Not applicable. Staff is recommending approval.

161.03 District R-A, Residential-Agricultural

(A) *Purposes.* The regulations of the agricultural district are designed to protect agricultural land until an orderly transition to urban development has been accomplished; prevent wasteful scattering of development in rural areas; obtain economy of public funds in the providing of public improvements and services of orderly growth; conserve the tax base; provide opportunity for affordable housing, increase scenic attractiveness; and conserve open space.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 3	Public protection and utility facilities
Unit 6	Agriculture
Unit 7	Animal husbandry
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 37	Manufactured homes
Unit 41	Accessory dwellings
Unit 43	Animal boarding and training

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 20	Commercial recreation, large sites
Unit 24	Home occupations
Unit 36	Wireless communications facilities
Unit 42	Clean technologies

(C) *Density.*

Units per acre	One-half
----------------	----------

(D) *Bulk and area regulations.*

Lot width minimum	200 ft.
Lot Area Minimum:	
Residential:	2 acres
Nonresidential:	2 acres
Lot area per dwelling unit	2 acres

E) *Setback requirements.*

Front	Side	Rear
35 ft.	20 ft.	35 ft.

(F) *Height requirements.* There shall be no maximum height limits in the A-1 District, provided, however, that any building which exceeds the height of 15 feet shall be setback from any boundary line of any residential district a distance of 1.0 foot for each foot of height in excess of 15 feet. Such setbacks shall be measured from the required setback lines.

(G) *Building area.* None.

(Code 1965, App. A., Art. 5(1); Ord. No. 1747, 6-29-70; Code 1991, §160.030; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 5028, 6-19-07; Ord. 5128, 4-15-08; Ord. 5195, 11-6-08; Ord. 5238, 5-5-09)

161.17 District R-O, Residential Office

(A) *Purpose.* The Residential-Office District is designed primarily to provide area for offices without limitation to the nature or size of the office, together with community facilities, restaurants and compatible residential uses.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 12	Limited business
Unit 25	Offices, studios, and related services

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 11	Manufactured home park*
Unit 13	Eating places
Unit 15	Neighborhood shopping goods
Unit 24	Home occupations
Unit 26	Multi-family dwellings
Unit 36	Wireless communications facilities*
Unit 42	Clean technologies

(C) *Density.*

Units per acre	24 or less
----------------	------------

(D) *Bulk and area regulations.*
(Per dwelling unit for residential structures)

(1) *Lot width minimum.*

Manufactured home park	100 ft.
Lot within a manufactured home park	50 ft.
Single-family	60 ft.
Two-family	60 ft.
Three or more	90 ft.

(2) *Lot area minimum.*

Manufactured home park	3 acres
Lot within a manufactured home park	4,200 sq. ft.
Townhouses:	
Development	10,000 sq. ft.
Individual lot	2,500 sq. ft.
Single-family	6,000 sq. ft.
Two-family	6,500 sq. ft.
Three or more	8,000 sq. ft.

Fraternity or Sorority	1 acre
------------------------	--------

(3) *Land area per dwelling unit.*

Manufactured home	3,000 sq. ft.
Townhouses & apartments:	
No bedroom	1,000 sq. ft.
One bedroom	1,000 sq. ft.
Two or more bedrooms	1,200 sq. ft.
Fraternity or Sorority	500 sq. ft. per resident

(E) *Setback regulations.*

Front	15 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Front, in the Hillside Overlay District	15 ft.
Side	10 ft.
Side, when contiguous to a residential district	15 ft.
Side, in the Hillside Overlay District	8 ft.
Rear, without easement or alley	25 ft.
Rear, from center line of public alley	10 ft.
Rear, in the Hillside Overlay District	15 ft.

(F) *Building height regulations.*

Building Height Maximum	60 ft.
-------------------------	--------

Height regulations. Any building which exceeds the height of 20 feet shall be set back from any side boundary line of an adjacent single family district an additional distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot.

(Code No. 1965, App. A., Art. 5(x); Ord. No. 2414, 2-7-78; Ord. No. 2603, 2-19-80; Ord. No. 2621, 4-1-80; Ord. No. 1747, 6-29-70; Code 1991, §160.041; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 4726, 7-19-05; Ord. 4943, 11-07-06; Ord. 5079, 11-20-07; Ord. 5195, 11-6-08; Ord. 5224, 3-3-09; Ord. 5312, 4-20-10)



The City of Fayetteville Fire Department
303 W. Center St. Fayetteville, AR. 72701

Phone (479) 575-8365

Fax (479) 575-0471

C. 2

RZN 10-3732 (Brown,
2600 Crossover Rd.)
Page 14 of 26

Zoning Review

To: Amy Sloan
From: Terry Lawson, Fire Marshal
Date: January 19, 2011
Re: 2600 Crossover

This development will be protected by Engine 5 located at **2600 Crossover Rd.**

It is **1** mile from the station with an anticipated response time of 2 minutes to the beginning of the development.

The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.

If you have any questions please feel free to contact me.

Fayetteville Fire Department

Honor, Commitment, Courage;
Our people make the difference!

December 6, 2010

Ben Israel
3061 Market Ave
Suite # 7
Fayetteville, AR 72703

City Planning Office
125 W. Mountain
Fayetteville, AR 72701

To Whom It May Concern:

I have been engaged by property owner John Brown who resides at 2600 N. Crossover Rd, Fayetteville, AR to secure an R-O zoning on property that will remain following the condemnation and taking of portions of his land by the State of Arkansas Highway Commission and the City of Fayetteville.

As early as 2004 it was anticipated that the highest and best use of the entire tract was for 10,500 square feet of office space. Dixie Development, Inc had engineering design a layout for an office building of the size indicated above. However, this project was delayed and eventually taken off the table due to changes in the real estate market in NW Arkansas.

It is the desire of the owners and new Developer to rezone the portion that will remain to R-O which will allow the building of approximately 3,000 to 3,500 square feet of office space.

This property is currently the residence of the John Brown and Mr. Brown's father lives in the adjacent house which is also located on this parcel.

The property directly behind (east of) this parcel is Residential and protected by a fence of sufficient height to limit any issues from the residents. North of the parcel is the same subdivision also protected by fence. Directly south of this property are some residential lots that have not sold. Across Highway 265 there is a church and other residential units.

Highway 265 (Crossover Rd) is both a commercial and residential street with commercial being very prevalent at intersections such as Joyce, Zion, Highway 45, Highway 16 and various spots both in Fayetteville and in Springdale along the roadway.

There are lots dedicated to offices north of Zion Rd, an assisted living business, a funeral home, and the Fayetteville Athletic Club and Elks Lodge. South of Zion are medical and psychological offices.

At Joyce and Crossover there is a Convenience Store, major medical complex, various office spaces, a bank, restaurant, clothing store and car wash.

At Highway 45 and Highway 265 there are numerous banks, strip shopping mall, restaurants, convenience stores, storage buildings, car wash, drive through restaurants, and a multitude of other businesses.

There will be no increase or decrease in traffic count as a result of this re-zoning. Since we are requesting R-O there will not be any problem with the esthetic value of the office complex being considered. Residential Office Zoning is the correct zoning for this location since it is to be a transition between residential and commercial.

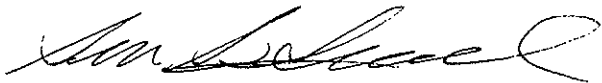
Water and sewer are readily available at this site.

I cannot imagine a better use of the remaining land than to build a small office complex. And it is justified because of the tremendous amount of purely commercial within a few hundred yards south of the proposed complex.

The size of the parcel will dictate the amount of square footage that can be utilized. Therefore, there would be no increase in traffic, congestion, or undesirable load on public utilities. Of course the population density would not be affected by this zoning change.

Property is currently zoned A-R and therefore cannot realize its highest and best use for the owner.

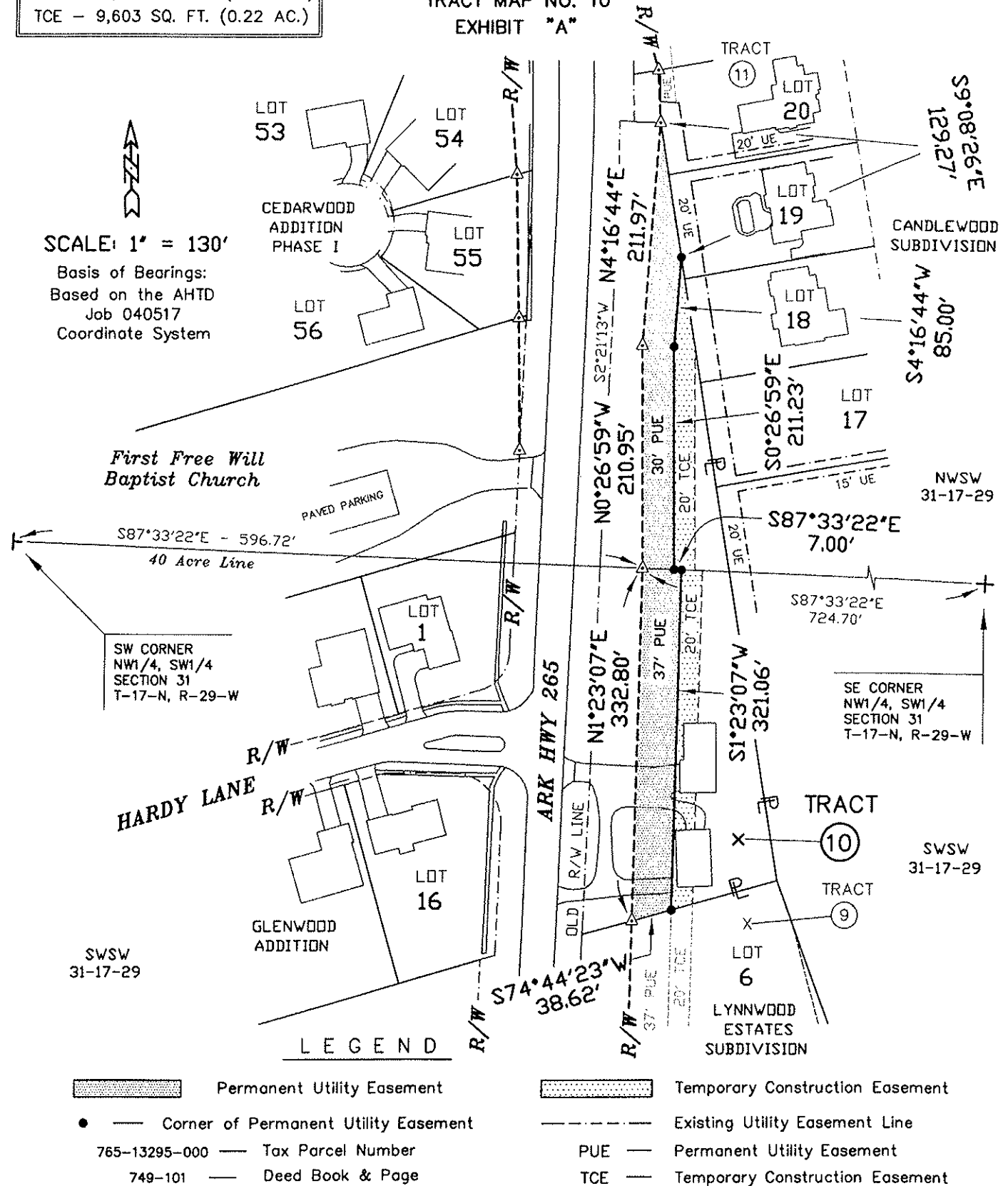
In compliance with the rezoning checklist I am respectfully submitting this information.

A handwritten signature in black ink, appearing to read "Ben Israel", written in a cursive style.

Ben Israel

PUE - 22,883 SQ. FT. (0.53 AC.)
TCE - 9,603 SQ. FT. (0.22 AC.)

UTILITY EASEMENT PLAT
TRACT MAP NO. 10
EXHIBIT "A"



**CITY OF
FAYETTEVILLE**
Water & Sewer Department

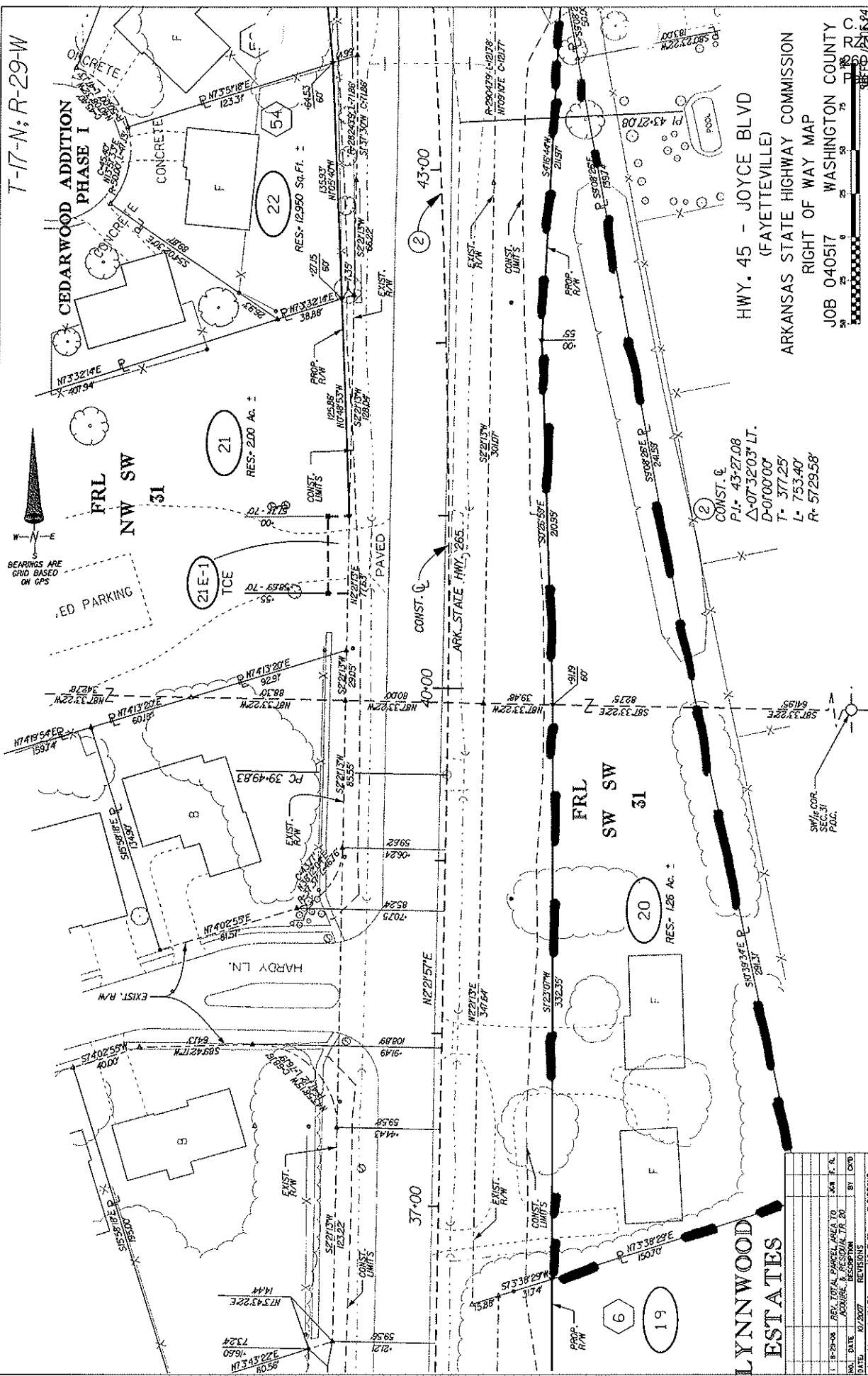
Property Owner : John David Brown
Drawn by : McClelland Consulting Engineers
Date: Feb. 2010 Scale : 1" = 130'
Project No. 082146 Tract No. 10

Project Name :
Ar Hwy 265 W/S Line Relocation

No.	Revisions	Date

AHTD Tract No. 20

T-17-N; R-29-W



HWY. 45 - JOYCE BLVD
(FAYETTEVILLE)

ARKANSAS STATE HIGHWAY COMMISSION
RIGHT OF WAY MAP

JOB 040517 WASHINGTON COUNTY

REVISIONS

10-3732 (Brown,
Crossover Rd.)
18 of 26

LYNNWOOD
ESTATES

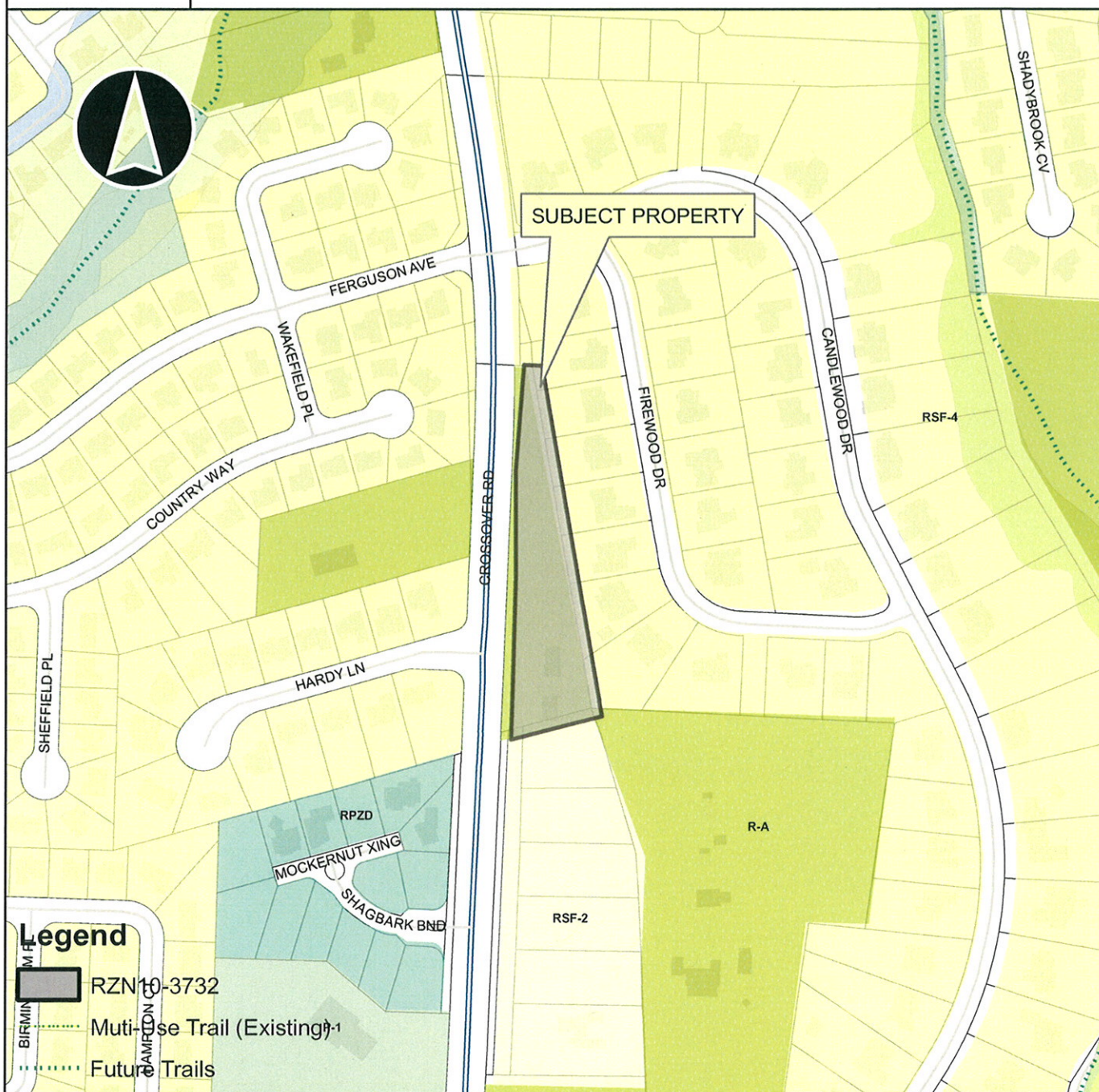
NO.	DATE	REVISIONS	BY	CHKD
1	8-29-08	REV. TO A. 10/20/08	AM	F. R.
2	10/20/08	ADDED REVISION	AM	F. R.
3	10/20/08	REVISION	AM	F. R.
4	10/20/08	REVISION	AM	F. R.
5	10/20/08	REVISION	AM	F. R.
6	10/20/08	REVISION	AM	F. R.
7	10/20/08	REVISION	AM	F. R.
8	10/20/08	REVISION	AM	F. R.
9	10/20/08	REVISION	AM	F. R.
10	10/20/08	REVISION	AM	F. R.

DESIGNED: J. WILES REVIEWED: F. RAPPAPORT

RZN10-3732

2600 CROSSOVER/BROWN

Close Up View



Legend

- RZN10-3732
- Multi-Use Trail (Existing)
- Future Trails

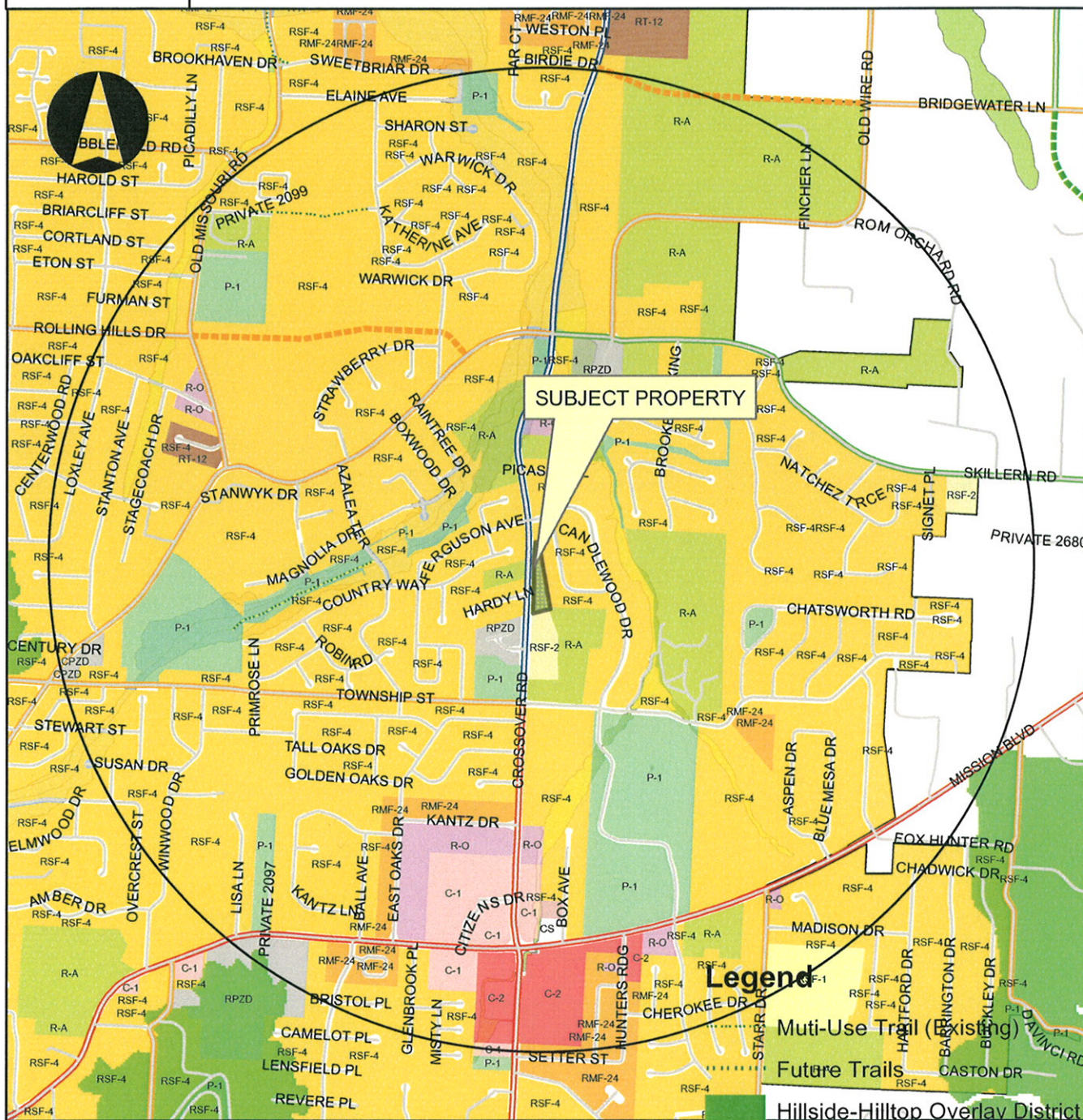
- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Design Overlay District
- Planning Area
- Fayetteville



RZN10-3732

2600 CROSSOVER/BROWN

One Mile View



Overview



Legend

Subject Property
 RZN10-3732

Boundary

0 0.25 0.5



RZN10-3732



Design Overlay District



Planning Area



Fayetteville

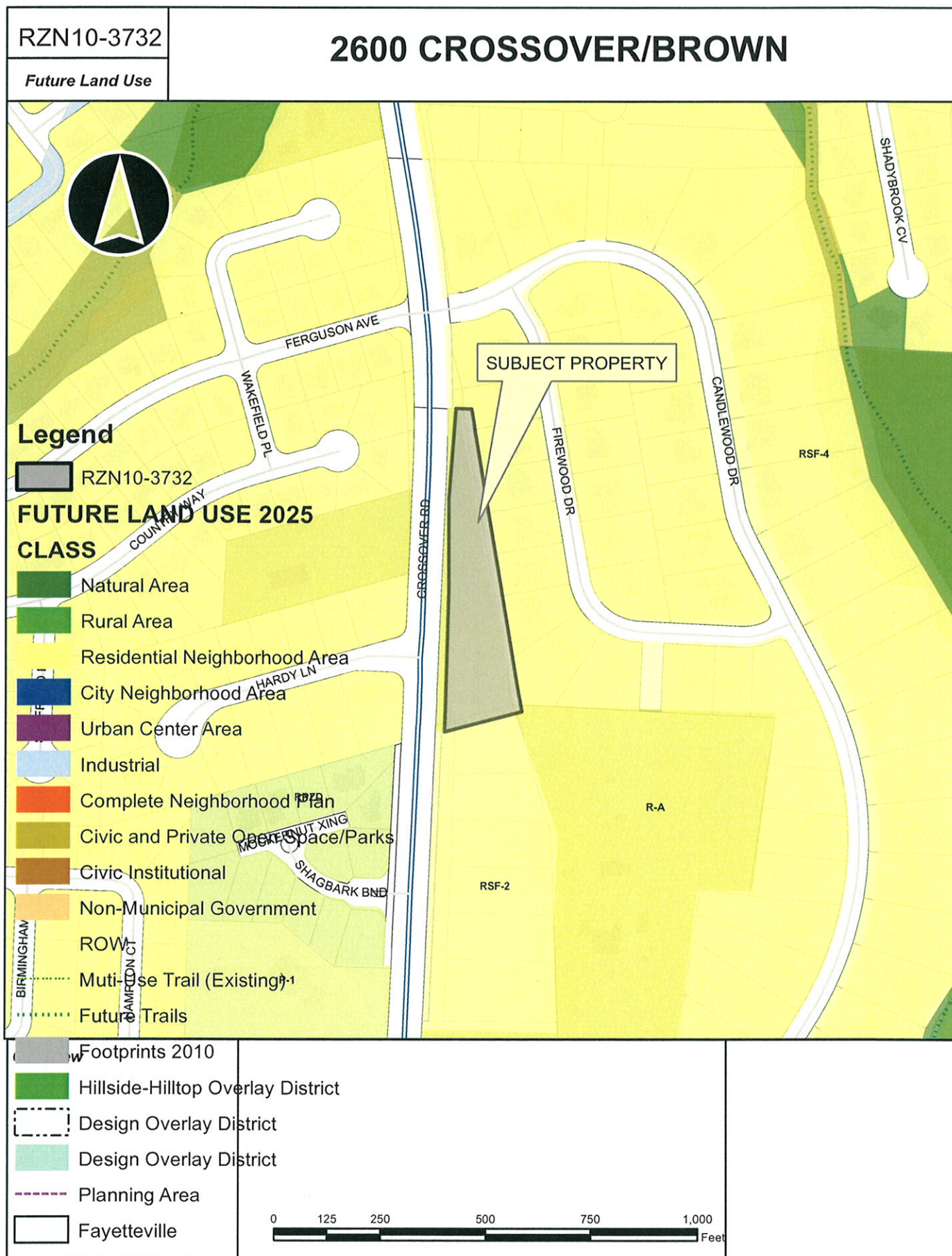
1 Miles

Legend

Muti-Use Trail (Existing)

Future Trails

Hillside-Hilltop Overlay District





RZN 10-3732: Rezoning (2600 CROSSOVER RD./BROWN, 326): Submitted by BEN ISRAEL for property located at 2600 CROSSOVER ROAD. The property is zoned R-A, RESIDENTIAL AGRICULTURAL and contains approximately 0.66 acre. The request is to rezone the subject property to R-O, Residential Office.

Andrew Garner, Senior Planner, gave the staff report.

Ben Israel, applicant, described the taking of some of this property required for the Crossover Road project and for his original intention to build some office on this property.

Public Comment:

Bob Sigafos, 2689 East Hardy Lane, takes exception to the recommendation by City staff and Mr. Israel and is opposed to this rezoning. He made some personal comments about the commissioners. He discussed access along Crossover. This is a negative property for commercial because of the access. A portion of this property is currently used for grazing horses. He discussed that Highway 265 has a chance to remain a nice rural road.

Dennis Bailey, 2748 East Mockernut Crossing (Hickory Park Subdivision), stated that he was grateful to the commissioner's volunteer time. He discussed that he is troubled by this request. He discussed previous plans to keep commercial uses to certain location around intersections on Crossover Road. He discussed issues with land use and zoning policy in the City of Fayetteville over the years and bad decisions over the decades.

Patrick Brown, 2716 North Candlewood Drive, is directly adjacent to this property and is in support of the rezoning. This would not be detrimental to the Candlewood Subdivision. He requested that evergreen trees be planted along the property line bordering this property from Candlewood.

Daphna Chandler, 2796 East Hardy Lane, lives directly across the street. She is concerned with office use in this location and would like it to stay residential.

No more public comment was presented.

Kit Williams, City Attorney, discussed that conditions such as requiring tree planting, cannot be required with a rezoning.

Garner discussed the buffer requirement when a non-residential development occurs adjacent to a residential development.

Commissioner Honchell discussed that he cannot support this, stating agreement with some of the public comments. He explained that until Crossover Road is improved he could not support this type of zoning.

Commissioner Winston asked about the Neighborhood Services zoning district.

Garner explained that the Neighborhood Service zoning district is a form-based zoning which requires a build-to zone. With the long narrow configuration of this parcel it would not be possible to development this site under the Neighborhood Service zoning district because the build-to

requirement could not be met and because parking would not be allowed in the build-to zone which would extend the full length of this parcel's street frontage. He discussed the rationale for why staff felt the R-A zoning was not appropriate and why the R-O zoning would be appropriate. He discussed that due to the shape and constraints on this parcel any development would be small scale and compatible with the surrounding neighbors, in staff's opinion.

Winston pointed out that the median island in front of this parcel would limit traffic in and out of this parcel.

Commissioner Hoskins pointed out that there are other non-residential uses along Crossover Road including a church and a gymnastics center in the immediate in this area.

Commissioner Chesser asked about Use Unit 12, Limited Business.

Garner read the description and some of the uses in Use Unit 12.

Commissioner Chesser responded to one of the neighbor's comments that we are now trying to have more of a mix of uses that in the past. He discussed the undesirable area along North College Avenue mentioned by the neighbor was caused because uses were separated, forcing all of the automobile commercial uses in one area. He discussed that he felt the R-O zoning would be an transitional zoning between a busy road and a neighborhood.

Kit Williams, City Attorney, pointed out that Use Unit 12, Limited Business, is a conditional use permit within the residential single family zonings and could be an option for this property. This would permit small offices as use as a conditional use, where the R-O zoning permits offices as-of-right.

Motion:

Commissioner Chesser made a motion to forward the item to the City Council with a recommendation for approval. **Commissioner Winston** seconded the motion. **Upon roll call the motion passed with a vote of 7-1-0, Commissioner Honchell** voting 'No'.

City of Fayetteville Staff Review Form

C. 3
VAC 10-3735 (Firestone)
Page 1 of 22City Council Agenda Items
and
Contracts, Leases or Agreements

2/15/2011

City Council Meeting Date
Agenda Items OnlyDara Sanders
Submitted ByPlanning
DivisionDevelopment Services
Department

Action Required:

VAC 10-3735: (Firestone, 372): Submitted by H2 Engineering, Inc. for property located at 1965 Box Avenue. The property is zoned CS, Community Services and contains approximately 1.23 acres. The request is to vacate approximately 240 square feet of an existing utility easement.

_____	\$ _____	_____
Cost of this request	Category / Project Budget	Program Category / Project Name
_____	\$ _____	_____
Account Number	Funds Used to Date	Program / Project Category Name
_____	\$ _____	_____
Project Number	Remaining Balance	Fund Name
Budgeted Item ☐	Budget Adjustment Attached ☐	

Kim C. Pace 1-27-2011 Previous Ordinance or Resolution # _____
 Department Director Date
John A. Kelly 1-28-11 Original Contract Date: _____
 City Attorney Date Original Contract Number: _____

Paul a. Beck 1-29-2011
 Finance and Internal Services Director Date

Don Man 1-31-11
 Chief of Staff Date

Frederick Jordan 1/31/11
 Mayor Date

Received in City 01-27-11A10:16 RCVD
Clerk's Office

Kim J.

Received in
Mayor's Office



Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director 

From: Dara Sanders, Current Planner

Date: January 27, 2011

Subject: VAC 10-3735 (Firestone)

RECOMMENDATION

Staff and Planning Commission recommend approval of an ordinance vacating a portion of an existing utility easement on the subject property (VAC 10-3735).

BACKGROUND

The subject property contains approximately 1.20 acres and is located north of Highway 45 (Mission Boulevard/) and east of Highway 265 (Crossover Road) at the northwest corner of the intersection of Box Avenue and Mission Boulevard. The underlying CS, Community Services, zoning district requires that the building be constructed in a build-to zone located between 10 and 25 feet from the right-of-way line (15 feet) and is subject to design standards that require "pedestrian oriented elements", such as a covered area adjacent to the building, planters, benches, etc.

There is an existing 20-foot wide general utility easement along the property frontage onto Mission Avenue and Box Avenue, which has reduced the developable area within the build-to zone to 20 and 25 feet from the right-of-way line (5 feet). The applicant's request is to vacate approximately 240 square feet of the utility easement at the southeast corner of the subject property in order to allow for the addition of the required covered area to the building.

DISCUSSION

On January 24, 2011 the Planning Commission forwarded this request to the City Council with a recommendation for approval with a vote of 8-0-0.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE APPROVING VAC 10-3735 SUBMITTED BY H2 ENGINEERING, INC FOR PROPERTY LOCATED AT 1965 BOX AVENUE TO VACATE A UTILITY EASEMENT, A TOTAL OF 240 SQUARE FEET.

WHEREAS, the City Council has the authority under A.C.A. § 14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes; and

WHEREAS, the City Council has determined that the following described portion of the platted utility easement is not required for corporate purposes;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby vacates and abandons the following utility easement as described in Exhibit B (attached).

Section 2: That a copy of this Ordinance duly certified by the City Clerk along with the map attached and labeled Exhibit A shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 3: That this vacation approval is subject to the Conditions of Approval as follows, and shall not be in effect until such conditions are met:

1. Any damage to or relocation of existing utility lines will be at the property owners expense.
2. The easement vacation shall not be accepted until the existing fire hydrant located in the southeast corner is relocated by the applicant.

PASSED and APPROVED this 15th day of February, 2011.

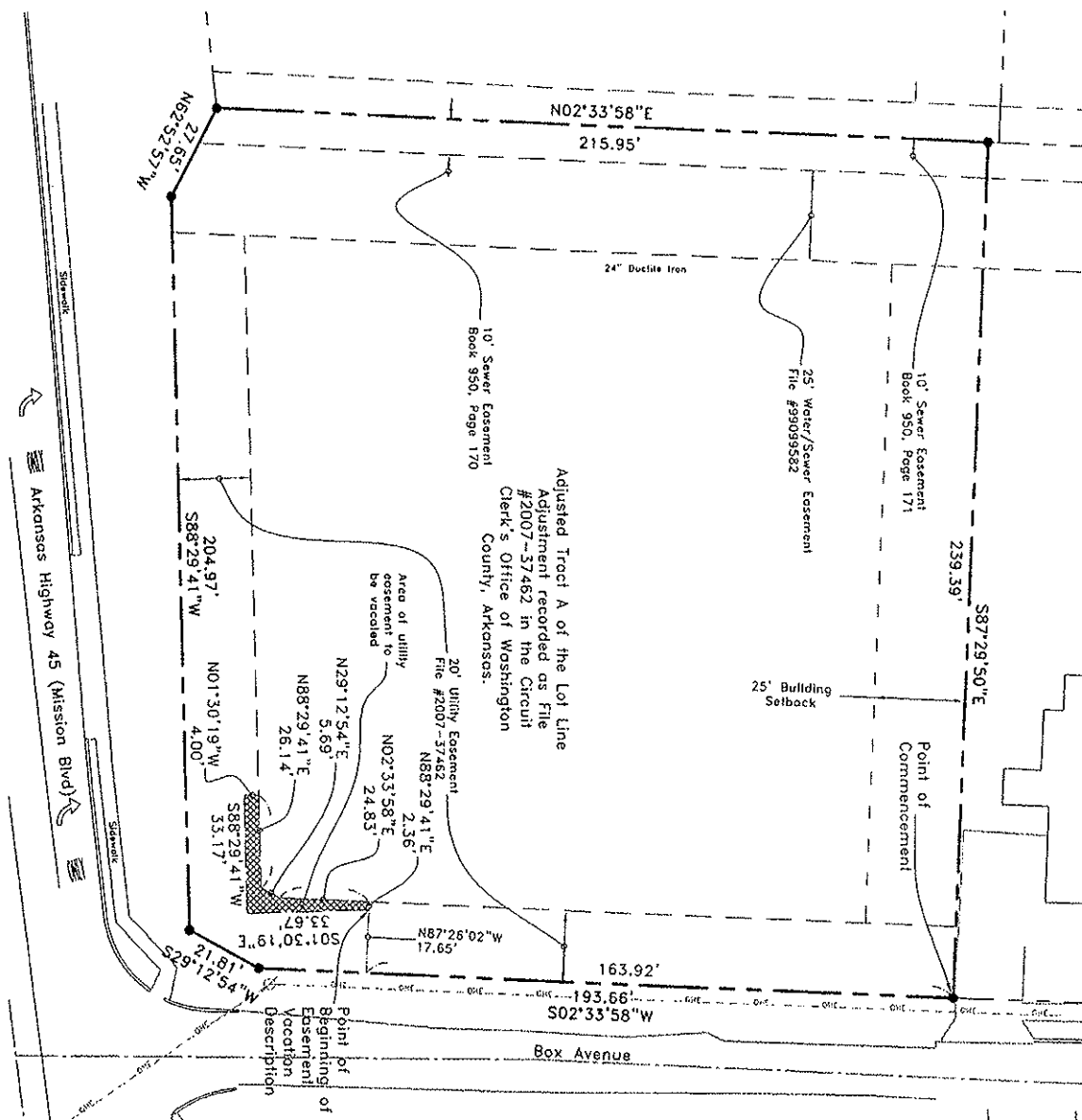
APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

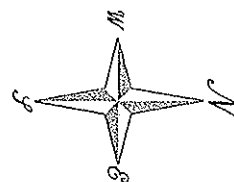
EXHIBIT "A"



Utility Easement Vacation Description

Part of the Utility Easement described in File #2007-37462 being part of Adjusted Tract A of the Lot Line Adjustment recorded as File #2007-37462 in the Circuit Clerk's Office of Washington County, Arkansas being more particularly described as follows:

Commencing at the Northeast corner of the above said Adjusted Tract A; thence S02°33'58"W, along The East line of the above said Adjusted Tract A, a distance of 183.92 feet; thence N8°26'02"W, leaving the above said East line, a distance of 17.65 feet to the True Point of Beginning; thence S01°50'19"E, a distance of 33.67 feet; thence S88°29'41"W, a distance of 33.17 feet; thence N01°50'19"W, a distance of 4.00 feet; thence N88°29'41"E, a distance of 4.00 feet; thence N29°12'54"E, a distance of 5.69 feet; thence N02°33'58"E, a distance of 24.83 feet; thence N88°29'41"E, a distance of 2.35 feet to the Point of Beginning and containing 240 square feet.



GRAPHIC SCALE



(IN FEET)
1 inch = 30 ft

		EASEMENT VACATION EXHIBIT	
PLAT NO. _____ BOOK & PAGE _____ DATE _____	1 1	1 1	1 1

EXHIBIT "B"
VAC 10-3735

UTILITY EASEMENT VACATION DESCRIPTION

PART OF THE UTILITY EASEMENT DESCRIBED IN FILE #2007-37462 BEING PART OF ADJUSTED TRACT A OF THE LOT LINE ADJUSTMENT RECORDED AS FILE #2007-37462 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE ABOVE SAID ADJUSTED TRACT A; THENCE S02°33'58"W, ALONG THE EAST LINE OF THE ABOVE SAID ADJUSTED TRACT A, A DISTANCE OF 163.92 FEET; THENCE N87°26'02"W, LEAVING THE ABOVE SAID EAST LINE, A DISTANCE OF 17.65 FEET TO THE TRUE POINT OF BEGINNING; THENCE S01°30'19"E, A DISTANCE OF 33.67 FEET; THENCE S88°29'41"W, A DISTANCE OF 33.17 FEET; THENCE N01°30'19"W, A DISTANCE OF 4.00 FEET; THENCE N88°29'41"E, A DISTANCE OF 26.14 FEET; THENCE N29°12'54"E, A DISTANCE OF 5.69 FEET; THENCE N02°33'58"E, A DISTANCE OF 24.83 FEET; THENCE N88°29'41"E, A DISTANCE OF 2.36 FEET TO THE POINT OF BEGINNING AND CONTAINING 240 SQUARE FEET.



PC Meeting of January 24, 2011

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Dara Sanders, Current Planner
THRU: Jeremy Pate, Development Services Director
DATE: ~~January 19, 2011~~ Updated January 27, 2011

VAC 10-3735: Vacation (1965 BOX AVE./FIRESTONE, 372): Submitted by H2 ENGINEERING, INC. for property located at 1965 BOX AVENUE. The property is zoned CS, COMMUNITY SERVICES and contains approximately 1.23 acres. The request is to vacate approximately 240 square feet of an existing utility easement. Planner: Dara Sanders

Findings:

Property Description: The subject property contains approximately 1.20 acres and is located north of Highway 45 (Mission Boulevard/) and east of Highway 265 (Crossover Road) at the northwest corner of the intersection of Box Avenue and Mission Boulevard. In November 2010, the Planning Commission approved the applicant's conditional use permit request (CUP 10-3684) to allow for a tire and auto repair store (Use Unit 17, Transportation Trade and Services) on the subject property.

The underlying CS, Community Services, zoning district requires that the building be constructed in a build-to zone located between 10 and 25 feet from the right-of-way line (15 feet) and is subject to design standards that require "pedestrian oriented elements", such as a covered area adjacent to the building, planters, benches, etc.

Request: There is an existing 20-foot wide general utility easement along the property frontage onto Mission Avenue and Box Avenue, which has reduced the developable area within the build-to zone to 20 and 25 feet from the right-of-way line (5 feet). The applicant's request is to vacate approximately 240 square feet of the utility easement at the southeast corner of the subject property in order to allow for the addition of the required covered area to the building, as shown in the attached building elevations and site plan.

The applicant has submitted the required notification forms to the utility companies with the result summarized below.

UTILITIES

RESPONSE

Ozarks Electric

No Objections

Cox Communications

No Objections

Southwestern Electric Power Company No Objections

Arkansas Western Gas No Objections

AT&T No Objections

CITY OF FAYETTEVILLE: **RESPONSE**

Water/Sewer No Objections

Transportation No Objections

Solid Waste No Objections

Engineering No Objections

Public Comment: No public comment has been received.

Recommendation: Finding that the remaining easement is adequate to serve the subject property and all adjacent properties, staff recommends forwarding **VAC 10-3735** to the City Council with a recommendation of approval with the following conditions:

Condition of Approval:

1. Any damage to or relocation of existing utility lines will be at the property owners expense.
2. The easement vacation shall not be accepted until the existing fire hydrant located in the southeast corner is relocated by the applicant.

CITY COUNCIL ACTION: Required

PLANNING COMMISSION ACTION: Required

Planning Commission Action: ☒ Forwarded ☐ Denied ☐ Tabled

Date: January 24, 2011

Motion: Winston

Second: Hoskins

Vote: 8-0-0

Note:



November 23, 2010

City of Fayetteville
Planning Commission
113 West Mountain St.
Fayetteville, AR 72701

**RE: COMMERCIAL LOT - HWY 45 & BOX AVE
UTILITY EASEMENT VACATION**

To Whom It May Concern:

Please accept this letter as our official request for a partial Utility Easement Vacation in the southeast corner of the commercial lot located at the intersection of Hwy 45 and Box Ave. The property is zoned Community Services with a 10 ft - 25 ft build-to zone. The result of this easement vacation will allow the southeast corner of the building to be placed at the 10 ft build-to line. Because of the orientation with Hwy 45, this will allow for the building to be located in the build-to zone, which will minimize the non-compliance of the minimum buildable street frontage requirement.

The proposed building will encroach approximately 4 feet along Hwy 45 and along Box Ave encompassing 240 sf of existing utility easement.

All utility agencies have granted their approval for the release of this easement area.

Thank you for your consideration in this regard.

Respectfully,

A handwritten signature in black ink, appearing to read 'Kipp Hearne', written over a horizontal line.

Kipp Hearne, P.E.

PETITION TO VACATE

**PETITION TO VACATE A UTILITY EASEMENT LOCATED AT THE NW CORNER
OF HWY 45 & BOX AVENUE, CITY OF FAYETTEVILLE, ARKANSAS**

TO: The Fayetteville City Planning Commission and
The Fayetteville City Council

We, the undersigned, being all the owners of the real estate abutting the easement hereinafter sought to be abandoned and vacated, lying at the NW corner of Hwy 45 and Box Ave, City of Fayetteville, Arkansas, a municipal corporation, petition to vacate an easement, which is described as follows:

Part of the Utility Easement described in File #2007-37462 being part of Adjusted Tract A of the Lot Line Adjustment recorded as File #2007-37462 in the Circuit Clerk's Office of Washington County, Arkansas being more particularly described as follows:

Commencing at the Northeast corner of the above said Adjusted Tract A; thence S02°33'58"W, along the East line of the above said Adjusted Tract A, a distance of 163.92 feet; thence N87°26'02"W, leaving the above said East line, a distance of 17.65 feet to the True Point of Beginning; thence S01°30'19"E, a distance of 33.67 feet; thence S88°29'41"W, a distance of 33.17 feet; thence N01°30'19"W, a distance of 4.00 feet; thence N88°29'41"E, a distance of 26.14 feet; thence N29°12'54"E, a distance of 5.69 feet; thence N02°33'58"E, a distance of 24.83 feet; thence N88°29'41"E, a distance of 2.36 feet to the Point of Beginning and containing 240 square feet, more or less.

That the abutting real estate affected by said abandonment of the Utility Easement is the NW corner of Hwy 45 and Box Ave, City of Fayetteville, used by the public for a period of many years, and that the public interest and welfare would not be adversely affected by the abandonment of the portion of the above described easement.

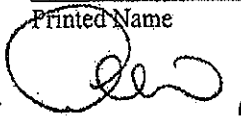
The petitioners pray that the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, and that the above described real estate be used for their respective benefit and purpose as now approved by law.

The petitioners further pray that the above described real estate be vested in the abutting property owners as provided by law.

WHEREFORE, the undersigned petitioners respectfully pray that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, and as to that particular land the owners be free from the easements of the public for the use of said easement.

Dated this 23rd day of November, 2010.

MATHIAS SHOPPING CENTERS, INC.
Printed Name

By:  PRESIDENT
Signature ARTHUR THURMAN

Monday, December 13, 2010
12:04 PM

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: November 22, 2010

UTILITY COMPANY: Arkansas Western Gas

APPLICANT NAME: Mathias Shopping Centers, Inc. APPLICANT PHONE: 479-750-9100

REQUESTED VACATION (*applicant must check all that apply*):

- ☒ Utility Easement
- ☒ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ☒ Alley
- ☒ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

** Northwest corner of intersection of Hwy 45 and Box Ave

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:

Any damage or relocation will be at the
owner's expense.

Signature of Utility Company Representative

Director of Assets Operations, Arkansas

Title

UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: November 22, 2010

UTILITY COMPANY: AT&T

APPLICANT NAME: Mathias Shopping Centers, Inc.

APPLICANT PHONE: 479-750-9100

REQUESTED VACATION (applicant must check all that apply):

- Utility Easement
- Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.
- Alley
- Street right-of-way

I have been notified of the petition to vacate the following (alley, easement, right-of-way), described as follows:

General location / Address (referring to attached document- must be completed)**

**Northwest corner of intersection of Hwy 45 and Box Ave

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above
- No objections to the vacation(s) described above, provided following described easements are retained (State the location, dimensions, and purpose below)

☒ No objections provided the following conditions are met

DAMAGE TO OR DISRUPTION OF ANY EXISTING UTILITY FACILITIES
WITHIN VACATED PORTIONS WILL BE IN THE OWNER/DEVELOPER'S
EXPENSE

Signature of Utility Company Representative

CSP DESIGN, L.L.C.
Title

UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: November 22, 2010

UTILITY COMPANY: City of Fayetteville - Transportation Division

APPLICANT NAME: Mathias Shopping Centers, Inc. APPLICANT PHONE: 479-750-9100

REQUESTED VACATION (*applicant must check all that apply*):

- ~ ☐ Utility Easement
- ~ ☐ Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.
- ~ ☐ Alley
- ~ ☐ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

****** Northwest corner of intersection of Hwy 45 and Box Ave

(*ATTACH legal description and graphic representation of what is being vacated-SURVEY*)

UTILITY COMPANY COMMENTS:

- ☒ No objections to the vacation(s) described above.
- ☐ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- ☐ No objections provided the following conditions are met:

Therrell J. Hulley
Signature of Utility Company Representative

Transportation Services Dir.
Title

UTILITY APPROVAL FORM

FOR RIGHT-OF-WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: November 22, 2010

UTILITY COMPANY: City of Fayetteville - Water & Sewer Division

APPLICANT NAME: Mathias Shopping Centers, Inc. APPLICANT PHONE: 479-750-9100

REQUESTED VACATION (*applicant must check all that apply*):

- ☒ Utility Easement
- ☐ Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.
- ☐ Alley
- ☐ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed)**

**Northwest corner of intersection of Hwy 45 and Box Ave

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

☒ No objections provided the following conditions are met:

Min 10 feet from East Side of Structure New Water main
to be installed and relocate existing fire hydrant on South Side

[Signature]
Signature of Utility Company Representative

Project & Contracts Engineer
Title

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: November 22, 2010

UTILITY COMPANY: Ozarks Electric

APPLICANT NAME: Mathias Shopping Centers, Inc.

APPLICANT PHONE: 479-750-9100

REQUESTED VACATION (*applicant must check all that apply*):

- ~ Utility Easement
- ~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ~ Alley
- ~ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

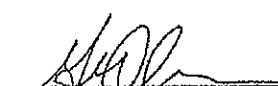
** Northwest corner of intersection of Hwy 45 and Box Ave

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- ☒ No objections to the vacation(s) described above.
- ☐ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- ☐ No objections provided the following conditions are met:


Signature of Utility Company Representative

Lead Staking Tech
Title

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: November 22, 2010

UTILITY COMPANY: AEP / SWEPCO

APPLICANT NAME: Mathias Shopping Centers, Inc. APPLICANT PHONE: 479-750-9100
REQUESTED VACATION (*applicant must check all that apply*):

- ~ Utility Easement
- ~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ~ Alley
- ~ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

**Northwest corner of intersection of Hwy 45 and Box Ave

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:

John Bay
Signature of Utility Company Representative

Engineer III - SWEPCO
Title

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: November 22, 2010

UTILITY COMPANY: City of Fayetteville - Solid Waste Division

APPLICANT NAME: Mathias Shopping Centers, Inc. APPLICANT PHONE: 479-750-9100

REQUESTED VACATION (*applicant must check all that apply*):

- ~ Utility Easement
- ~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ~ Alley
- ~ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

**Northwest corner of intersection of Hwy 45 and Box Ave

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- ☒ No objections to the vacation(s) described above.
- ☐ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- ☐ No objections provided the following conditions are met:

Brian Pugh
Signature of Utility Company Representative

Waste Reduction Coordinator
Title

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: November 22, 2010

UTILITY COMPANY: Cox Communications

APPLICANT NAME: Mathias Shopping Centers, Inc. APPLICANT PHONE: 479-750-9100

REQUESTED VACATION (*applicant must check all that apply*):

- ~ Utility Easement
- ~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ~ Alley
- ~ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

**Northwest corner of intersection of Hwy 45 and Box Ave

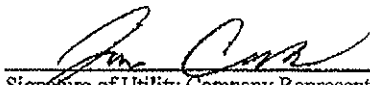
(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

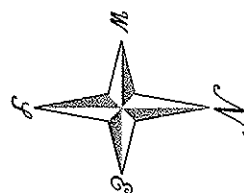
- No objections provided the following conditions are met:

Any damage or relocation of existing Cox facilities will be at the developer's cost.



Signature of Utility Company Representative

FIELD ENGINEER
Title



GRAPHIC SCALE



(IN FEET)
1 inch = 30 ft.

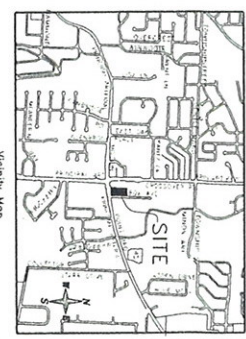
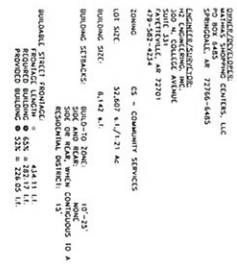
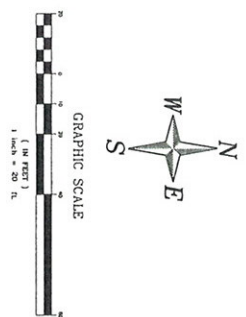
Utility Easement Vacation Description

Part of the Utility Easement described in File #2007-37462 being part of Adjusted Tract A of the Lot Line Adjustment recorded as File #2007-37462 in the Circuit Clerk's Office of Washington County, Arkansas being more particularly described as follows:

Commenting on the Northeast corner of the above said Adjusted Treat A, thence S02°33'58"W, along the East line of the above said Adjusted Treat A, o distance of 163.92 feet; thence N87°26'02"W, leaving the above said East line, a distance of 117.65 feet to the true Point of Beginning; thence S01°30'19"E, a distance of 33.67 feet; thence S88°29'41"W, a distance of 53.17 feet; thence N01°30'19"W, a distance of 4.00 feet; thence N88°29'41"E, a distance of 26.14 feet; thence N29°12'44"E, a distance of 5.69 feet; thence N02°33'58"E, a distance of 24.83 feet; thence N88°29'41"E, a distance of 2.36 feet to the Point of Beginning and containing 240 square feet.

EASEMENT VACATION
EXHIBIT

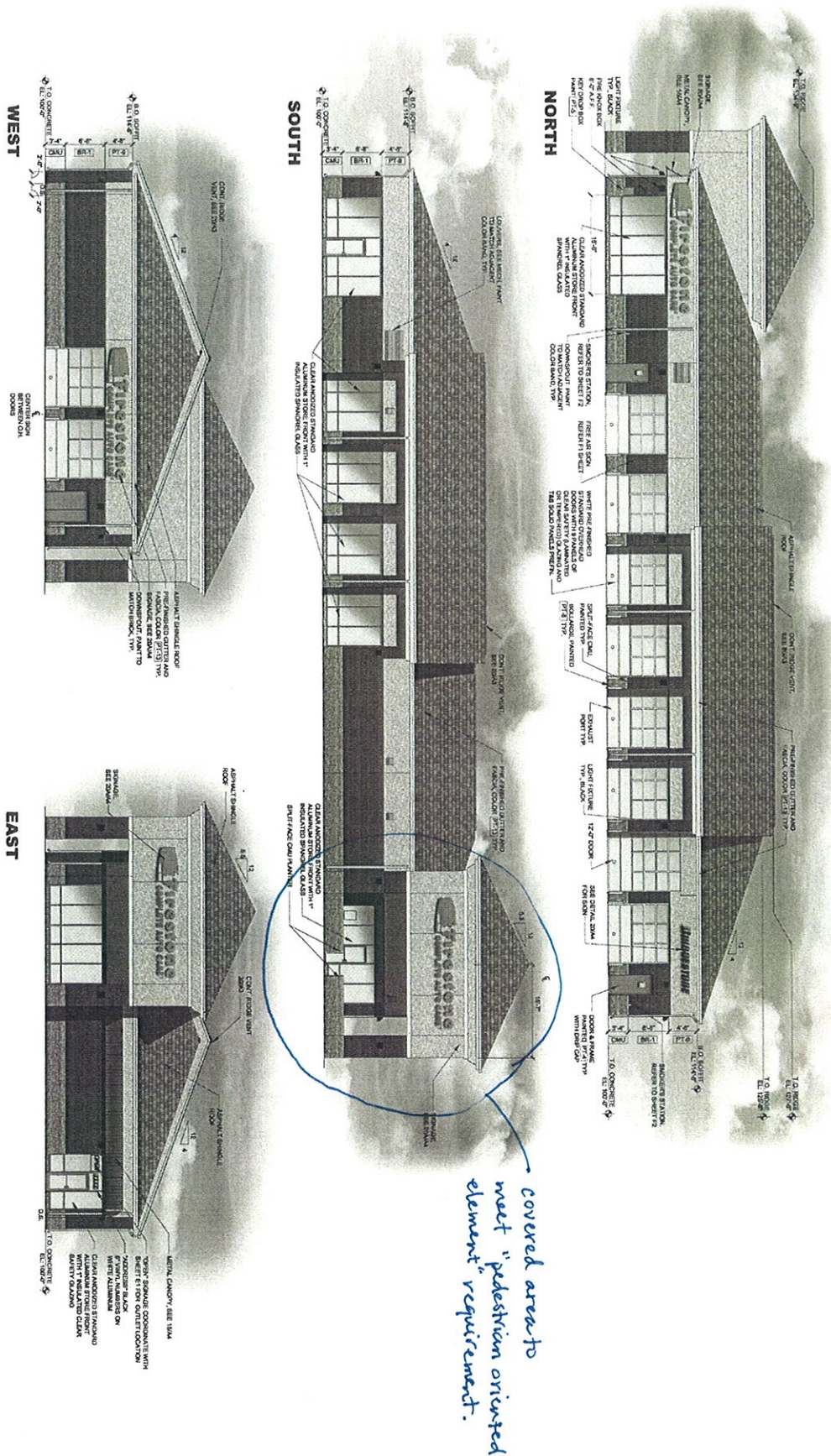
[illegible]

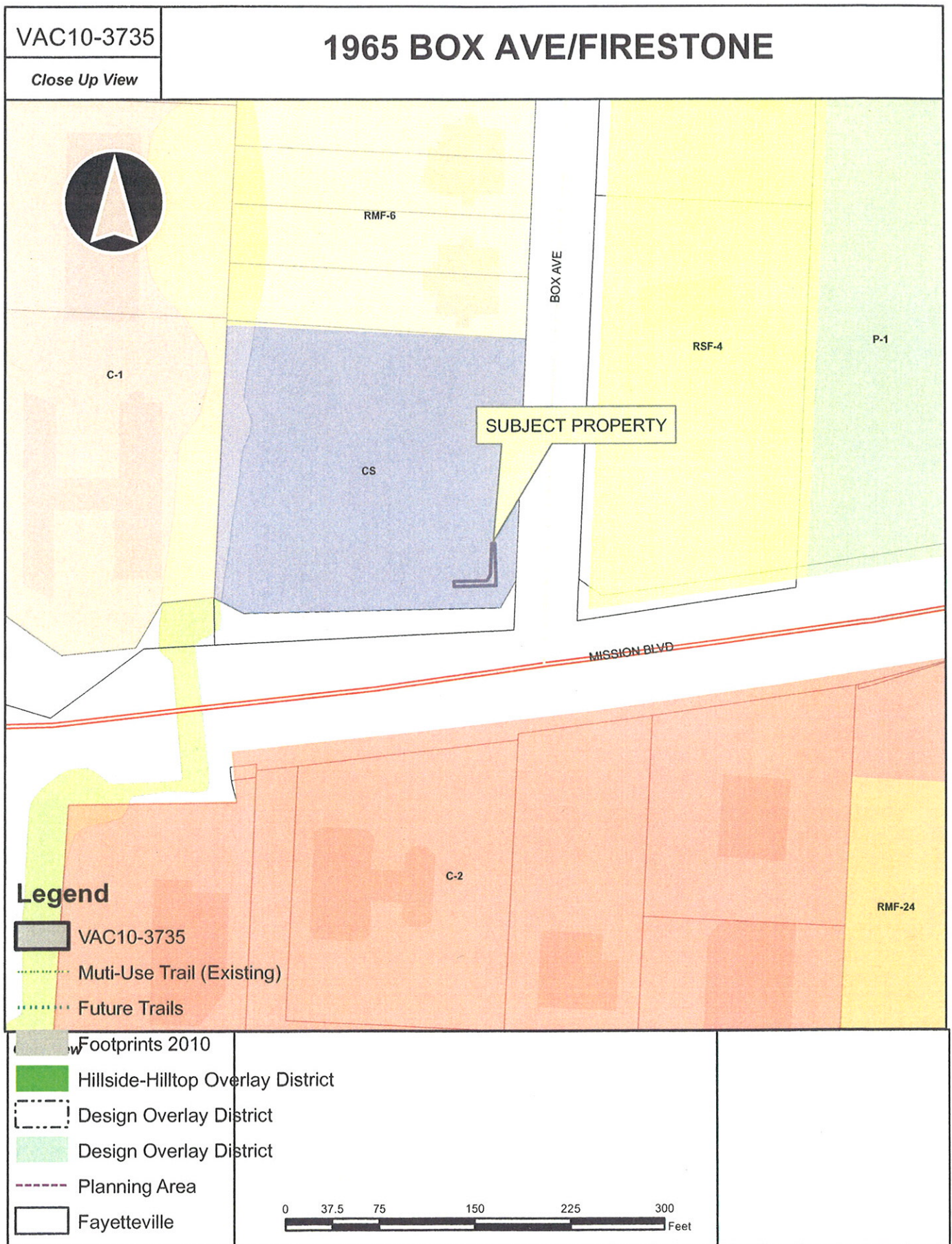
[illegible]

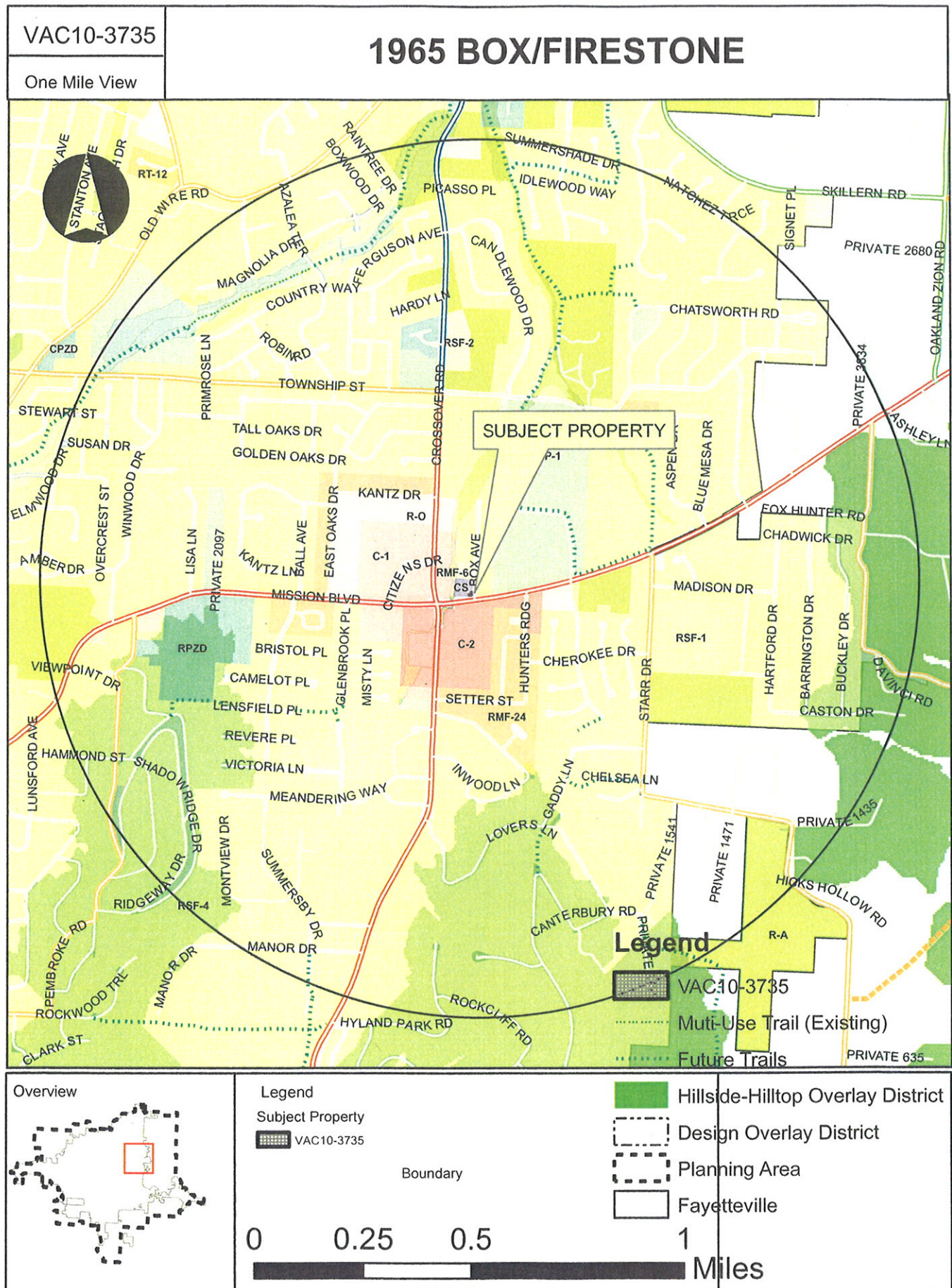
L E G E N D	
	SOLID BLACK
	WIRE WITH
	WIRE JOINT (CRIMPING / PRESSING)
	CUTTER POLE
	UNDERGROUND CABLE
	TELEPHONE CABLE
	OVERHEAD ELECTRICAL
	CABLE WITHIN
	CRIMPED PIGTAIL
	WIRE JOINT (CRIMPING/PRESSING)
	CRIMPED BIDDINGS (TIE)
	CONDUIT/TUBE
	SOLID/STEEL SHEET
	CEMENTAL TILE
	WALLS, BRICKWORK JOINT
	WALLS, BRICKWORK JOINT
	STEEL REINFORCING
	REINFORCED CONCRETE / CONCRETE
	REINFORCED CONCRETE WALL
	REINFORCED CONCRETE STRUCTURE
	CONCRETE BLOCKS
	REINFORCED STEEL JOINT
	WALLS, BRICKWORK JOINT
	WALLS, BRICKWORK JOINT
	WALLS, BRICKWORK JOINT
	WALLS, BRICKWORK JOINT
	WALLS, BRICKWORK JOINT
	WALLS, BRICKWORK JOINT
	WALLS, BRICKWORK JOINT
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	WALLS, BRICKWORK JOINT
	WALLS, BRICKWORK JOINT
	WALLS, BRICKWORK JOINT
	WALLS, BRICKWORK JOINT

FAYETTEVILLE, AR

PAINT COLOR SCHEDULE			
NOTE: ALL COLOR NAMES ARE APPROXIMATE. VARIATIONS MAY OCCUR. SEE SWATCHES FOR EXACT COLOR MATCHING.			
DESIGNATION: ALL "STANDARD" WALLCOVERING MATCHING WITH "CO-ORDINATION" COLORS			
KEY:	COLOR:	S.W. #	
P-1	MAISON BLANC	SW1001	
P-2	MAISON BLAU	CS-001	
P-3	TEINT NOIR	SW1002	
P-4	TEINT ROUGE	SW1003	
P-5	TEINT NOIR	SW1004	
P-6	TEINT NOIR	SW1005	
P-7	TEINT NOIR	SW1006	
P-8	TEINT NOIR	SW1007	
P-9	TEINT NOIR	SW1008	
P-10	TEINT NOIR	SW1009	
P-11	TEINT NOIR	SW1010	
P-12	TEINT NOIR	SW1011	
P-13	TEINT NOIR	SW1012	
P-14	TEINT NOIR	SW1013	
P-15	TEINT NOIR	SW1014	
P-16	TEINT NOIR	SW1015	
P-17	TEINT NOIR	SW1016	
P-18	TEINT NOIR	SW1017	
P-19	TEINT NOIR	SW1018	
P-20	TEINT NOIR	SW1019	
P-21	TEINT NOIR	SW1020	
P-22	TEINT NOIR	SW1021	
P-23	TEINT NOIR	SW1022	
P-24	TEINT NOIR	SW1023	
P-25	TEINT NOIR	SW1024	
P-26	TEINT NOIR	SW1025	
P-27	TEINT NOIR	SW1026	
P-28	TEINT NOIR	SW1027	
P-29	TEINT NOIR	SW1028	
P-30	TEINT NOIR	SW1029	
P-31	TEINT NOIR	SW1030	
P-32	TEINT NOIR	SW1031	
P-33	TEINT NOIR	SW1032	
P-34	TEINT NOIR	SW1033	
P-35	TEINT NOIR	SW1034	
P-36	TEINT NOIR	SW1035	
P-37	TEINT NOIR	SW1036	
P-38	TEINT NOIR	SW1037	
P-39	TEINT NOIR	SW1038	
P-40	TEINT NOIR	SW1039	
P-41	TEINT NOIR	SW1040	
P-42	TEINT NOIR	SW1041	
P-43	TEINT NOIR	SW1042	
P-44	TEINT NOIR	SW1043	
P-45	TEINT NOIR	SW1044	
P-46	TEINT NOIR	SW1045	
P-47	TEINT NOIR	SW1046	
P-48	TEINT NOIR	SW1047	
P-49	TEINT NOIR	SW1048	
P-50	TEINT NOIR	SW1049	
P-51	TEINT NOIR	SW1050	
P-52	TEINT NOIR	SW1051	
P-53	TEINT NOIR	SW1052	
P-54	TEINT NOIR	SW1053	
P-55	TEINT NOIR	SW1054	
P-56	TEINT NOIR	SW1055	
P-57	TEINT NOIR	SW1056	
P-58	TEINT NOIR	SW1057	
P-59	TEINT NOIR	SW1058	
P-60	TEINT NOIR	SW1059	
P-61	TEINT NOIR	SW1060	
P-62	TEINT NOIR	SW1061	
P-63	TEINT NOIR	SW1062	
P-64	TEINT NOIR	SW1063	
P-65	TEINT NOIR	SW1064	
P-66	TEINT NOIR	SW1065	
P-67	TEINT NOIR	SW1066	
P-68	TEINT NOIR	SW1067	
P-69	TEINT NOIR	SW1068	
P-70	TEINT NOIR	SW1069	
P-71	TEINT NOIR	SW1070	
P-72	TEINT NOIR	SW1071	
P-73	TEINT NOIR	SW1072	
P-74	TEINT NOIR	SW1073	
P-75	TEINT NOIR	SW1074	
P-76	TEINT NOIR	SW1075	
P-77	TEINT NOIR	SW1076	
P-78	TEINT NOIR	SW1077	
P-79	TEINT NOIR	SW1078	
P-80	TEINT NOIR	SW1079	
P-81	TEINT NOIR	SW1080	
P-82	TEINT NOIR	SW1081	
P-83	TEINT NOIR	SW1082	
P-84	TEINT NOIR	SW1083	
P-85	TEINT NOIR	SW1084	
P-86	TEINT NOIR	SW1085	
P-87	TEINT NOIR	SW1086	
P-88	TEINT NOIR	SW1087	
P-89	TEINT NOIR	SW1088	
P-90	TEINT NOIR	SW1089	
P-91	TEINT NOIR	SW1090	
P-92	TEINT NOIR	SW1091	
P-93	TEINT NOIR	SW1092	
P-94	TEINT NOIR	SW1093	
P-95	TEINT NOIR	SW1094	
P-96	TEINT NOIR	SW1095	
P-97	TEINT NOIR	SW1096	
P-98	TEINT NOIR	SW1097	
P-99	TEINT NOIR	SW1098	
P-100	TEINT NOIR	SW1099	
P-101	TEINT NOIR	SW1100	
P-102	TEINT NOIR	SW1101	
P-103	TEINT NOIR	SW1102	
P-104	TEINT NOIR	SW1103	
P-105	TEINT NOIR	SW1104	
P-106	TEINT NOIR	SW1105	
P-107	TEINT NOIR	SW1106	
P-108	TEINT NOIR	SW1107	
P-109	TEINT NOIR	SW1108	
P-110	TEINT NOIR	SW1109	
P-111	TEINT NOIR	SW1110	
P-112	TEINT NOIR	SW1111	
P-113	TEINT NOIR	SW1112	
P-114	TEINT NOIR	SW1113	
P-115	TEINT NOIR	SW1114	
P-116	TEINT NOIR	SW1115	
P-117	TEINT NOIR	SW1116	
P-118	TEINT NOIR	SW1117	
P-119	TEINT NOIR	SW1118	
P-120	TEINT NOIR	SW1119	
P-121	TEINT NOIR	SW1120	
P-122	TEINT NOIR	SW1121	
P-123	TEINT NOIR	SW1122	
P-124	TEINT NOIR	SW1123	
P-125	TEINT NOIR	SW1124	
P-126	TEINT NOIR	SW1125	
P-127	TEINT NOIR	SW1126	
P-128	TEINT NOIR	SW1127	
P-129	TEINT NOIR	SW1128	
P-130	TEINT NOIR	SW1129	
P-131	TEINT NOIR	SW1130	
P-132	TEINT NOIR	SW1131	
P-133	TEINT NOIR	SW1132	
P-134	TEINT NOIR	SW1133	
P-135	TEINT NOIR	SW1134	
P-136	TEINT NOIR	SW1135	
P-137	TEINT NOIR	SW1136	
P-138	TEINT NOIR	SW1137	
P-139	TEINT NOIR	SW1138	
P-140	TEINT NOIR	SW1139	
P-141	TEINT NOIR	SW1140	
P-142	TEINT NOIR	SW1141	
P-143	TEINT NOIR	SW1142	
P-144	TEINT NOIR	SW1143	
P-145	TEINT NOIR	SW1144	
P-146	TEINT NOIR	SW1145	
P-147	TEINT NOIR	SW1146	
P-148	TEINT NOIR	SW1147	
P-149	TEINT NOIR	SW1148	
P-150	TEINT NOIR	SW1149	
P-151	TEINT NOIR	SW1150	
P-152	TEINT NOIR	SW1151	
P-153	TEINT NOIR	SW1152	
P-154	TEINT NOIR	SW1153	
P-155	TEINT NOIR	SW1154	
P-156	TEINT NOIR	SW1155	
P-157	TEINT NOIR	SW1156	
P-158	TEINT NOIR	SW1157	
P-159	TEINT NOIR	SW1158	
P-160	TEINT NOIR	SW1159	
P-161	TEINT NOIR	SW1160	
P-162	TEINT NOIR	SW1161	
P-163	TEINT NOIR	SW1162	
P-164	TEINT NOIR	SW1163	
P-165	TEINT NOIR	SW1164	
P-166	TEINT NOIR	SW1165	
P-167	TEINT NOIR	SW1166	
P-168	TEINT NOIR	SW1167	
P-169	TEINT NOIR	SW1168	
P-170	TEINT NOIR	SW1169	
P-171	TEINT NOIR	SW1170	
P-172	TEINT NOIR	SW1171	
P-173	TEINT NOIR	SW1172	
P-174	TEINT NOIR	SW1173	
P-175	TEINT NOIR	SW1174	
P-176	TEINT NOIR	SW1175	
P-177	TEINT NOIR	SW1176	
P-178	TEINT NOIR	SW1177	
P-179	TEINT NOIR	SW1178	
P-180	TEINT NOIR	SW1179	
P-181	TEINT NOIR	SW1180	
P-182	TEINT NOIR	SW1181	
P-183	TEINT NOIR	SW1182	
P-184	TEINT NOIR	SW1183	
P-185	TEINT NOIR	SW1184	
P-186	TEINT NOIR	SW1185	
P-187	TEINT NOIR	SW1186	
P-188	TEINT NOIR	SW1187	
P-189	TEINT NOIR	SW1188	
P-190	TEINT NOIR	SW1189	
P-191	TEINT NOIR	SW1190	
P-192	TEINT NOIR	SW1191	
P-193	TEINT NOIR	SW1192	
P-194	TEINT NOIR	SW1193	
P-195	TEINT NOIR	SW1194	
P-196	TEINT NOIR	SW1195	
P-197	TEINT NOIR	SW1196	
P-198	TEINT NOIR	SW1197	
P-199	TEINT NOIR	SW1198	
P-200	TEINT NOIR	SW1199	







City of Fayetteville Staff Review Form

C. 4
Amend 2011 Adopted Budget
Page 1 of 16

City Council Agenda Items
and
Contracts, Leases or Agreements

2-15-11

2/18/2011

City Council Meeting Date
Agenda Items Only

Kevin Springer
Submitted By

Budget & Research
Division

Finance & Internal Services
Department

Action Required:

A resolution to amend the 2011 Adopted Budget by reappropriating \$58,840,788 in bonded or on-going capital projects and outstanding obligations and grant funded items.

_____	\$ _____	_____
Cost of this request	Category / Project Budget	Program Category / Project Name
_____	\$ _____	_____
Account Number	Funds Used to Date	Program / Project Category Name
_____	\$ _____	_____
Project Number	Remaining Balance	Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☒

Paul A. Beck 1-31-2011 Previous Ordinance or Resolution # _____
Department Director Date

[Signature] 2-3-11 Original Contract Date: _____
City Attorney Date

Paul A. Beck 1-31-2011 Date
Finance and Internal Services Director

[Signature] 2-4-11 Date
Chief of Staff

[Signature] 2/7/11 Date
Mayor

Received in City Clerk's Office
ENTERED 1/31/11 Kim G.

Received in Mayor's Office
ENTERED 2/3/11

Comments:



CITY OF FAYETTEVILLE, ARKANSAS
BUDGET & RESEARCH DIVISION
113 West Mountain • Fayetteville, AR 72701
P (479) 575-8347

www.accessfayetteville.org

TO: Mayor Jordan and City Council

THRU: Don Marr, Chief of Staff
Paul A. Becker, Director of Finance

FROM: Kevin Springer, Budget Director

DATE: January 28, 2011

SUBJECT: 2010 Budget Reappropriation Request

PROPOSAL:

A resolution to amend the 2011 Adopted Budget by reappropriating \$58,840,788 in bonded or on-going capital projects and outstanding obligations and grant funded items.

BACKGROUND / RECOMMENDATION:

Budget appropriations for 2010 expired December 31, 2010. Equipment and supplies or services must have been received by December 31 in order to be charged to the 2010 Budget. Some departments have items or services that were budgeted in 2010 but were not delivered or complete by year-end. In these cases, unspent amounts for those projects and items need to be re appropriated, since they were not included in the 2011 Budget. In the case of capital improvement projects, unspent funds are added to any amounts appropriated in the 2011 Budget.

Because of the need for project continuation, staff recommends approval of the attached reappropriation budget request at the February 18, 2010 City Council meeting. In addition, staff is recommending approval of any changes to this request that may arise due to finalizing the 2010 year end which would result in a decrease in the total authorized budget. City Council is requested to amend the 2011 Adopted Budget by re-authorizing up to \$58,840,788 for purchase commitments and capital improvements as follows:

	Obligated	Non-Obligated	Total
Bonded Capital Projects	\$ 3,641,229	\$ 17,268,075	\$ 20,909,304
Grant/Donations/Reimbursements	287,798	2,177,069	2,464,867
Outstanding Operational Obligations	147,163	-	147,163
Capital Projects	10,282,088	25,037,366	35,319,454
	<u>\$ 14,358,278</u>	<u>\$ 44,482,510</u>	<u>\$ 58,840,788</u>

A finalized listing of the capital project reappropriations will be submitted to City Council as an informational item during the First Quarter of 2011.

Please find attached a schedule of capital projects by Improvement Type which were included in the 2010 Budget but did not incur a financial obligation during the 2010 fiscal year. The 2010 estimated unreserved fund balance/retained earnings for the respective funds reflected the cost of the requested reappropriation. These re-budgeted items, therefore, do not impact the estimated fund balance amounts which were forecasted in the 2011 budget.

The re-authorization of prior year's appropriated projects and items are normal budget operating procedures and are generally for one-time expenses. Approval of this request will allow the 2011 Budget to be increased to reflect the attached information. Several of the requested re-authorizations include revenue offset in the form of grant revenues.

Total requested re-budgets for all funds are in the attached worksheet. These amounts will require City Council action. For your information, a summary by Funding Source and Improvement Type is included following this memo. The reappropriation amounts are broken out into two separate categories:

- Obligated: These items have Contracts/Purchase Orders already issued on them during 2010 and the City will not receive the item and/or service until 2011.
- Unobligated: These items did not have any Contracts/Purchase Orders issued on them as of 2010.

BUDGET IMPACT:

The estimated fund balance for the 2011 budget was based on the assumption that these 2010 funds would be reappropriated. The funds do not increase the use of operating reserves and this request simply retains project funding for identified and scheduled capital improvements for the current fiscal year.

If you have any questions concerning the attachment or the procedure, please feel free to contact either Paul A. Becker (575-8330) or Kevin Springer (575-8226). Thank you for your attention to this request.

RESOLUTION NO. _____

A RESOLUTION AMENDING THE 2011 CITY BUDGET BY REAPPROPRIATING UP TO \$58,840,788.00 IN BONDED OR ONGOING CAPITAL PROJECTS, OUTSTANDING OBLIGATIONS AND GRANT-FUNDED ITEMS PREVIOUSLY APPROPRIATED IN THE 2010 CITY BUDGET BUT NOT COMPLETED OR DELIVERED IN 2010

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby amends the 2011 city budget by re-appropriating up to \$58,840,788.00 in bonded or ongoing capital projects, outstanding obligations and grant-funded items previously appropriated in the 2010 city budget but not completed or delivered by the end of 2010. A copy of these items is attached to this Resolution as Exhibit "A", and incorporated herein.

PASSED and **APPROVED** this 15th day of February, 2011.

APPROVED:

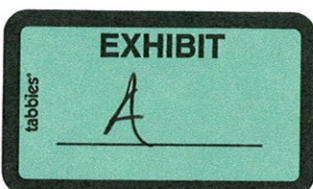
ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

2010 Appropriations

	Obligated	Non Obligated	Total
BONDED			
4520 Sales Tax Bond			
Street Improvements			
06035 Transportation Bond Street Improvements	952,474	11,068,287	12,020,761
Trail Improvements			
06036 Transportation Bond Trail Improvements	-	939,485	939,485
Wastewater System Improvements Project			
02133 Wastewater System Improvements Project	2,509,039	34,701	2,543,740
5400 Water/Sewer			
Water & Sewer Improvements			
09018 W&S Relocations - 2009 Bond Proceeds	179,716	5,225,602	5,405,318
BONDED Total	3,641,229	17,268,075	20,909,304



2010 Appropriations

		Obligated	Non Obligated	Total
GRANTS				
1010 General				
<i>Donations</i>				
03044 Police Department Donations	-	14,566	14,566	
03045 PD Law Enforcement State Forfeitures	-	76,263	76,263	
03046 PD Law Enforcement Federal Forfeitures	-	46,950	46,950	
03047 Fire Department Act 833/46/Misc Revenue	-	100,000	100,000	
03048 Animal Services Miscellaneous Donations	10,947	15,423	26,370	
03049 Animal Low Cost Spay/Neuter Donations	-	2,834	2,834	
03051 Parks & Recreation Donations	-	7,843	7,843	
06029 Donations - Fire	10,391	2,101	12,492	
09012 District Court Automation	-	3,946	3,946	
09020 Police - US Marshal Service	-	20,219	20,219	
09024 Police IRS/Treasury Forfeitures	-	36,536	36,536	
09033 AR ETS Dispatch Training Reimbursement	-	6,719	6,719	
<i>Grants</i>				
06024 Historic Preservation Travel & Training	-	4,185	4,185	
06033 Internet Crimes Against Children Grant	-	18,466	18,466	
07036 Police Underage Drinking Prevention Conf	-	7,194	7,194	
08067 Police STEP Grant	-	81,041	81,041	
08068 Police Underage Drinking Prevention Grt	-	14,293	14,293	
08070 High Intensity Drug Trafficking Area	-	4,414	4,414	
08077 Police - JTTF Reimbursement	-	19,112	19,112	
08078 Police - DEA Reimbursement	-	15,647	15,647	
09017 Police JAG - Recovery Solicitation 2009	-	53,857	53,857	
09022 Police JAG - Local Solicitation 2009	-	107,033	107,033	
10026 Animal Services Commercial Grant Project	-	300	300	
10031 Police - ASP Grants 2010-2011	-	57,906	57,906	
2100 Street				
<i>In-House Sidewalk Improvements</i>				
09030 ORT Sidewalks/Pads Grant	-	387,234	387,234	

2010 Appropriations

GRANTS		Non		Total
		Obligated	Obligated	
2180	Community Development Block Grant			
	<i>Community Development Improvements</i>			
09029	CDBG-R - Recovery Act Grant	-	2,956	2,956
	<i>Tracking Items</i>			
	Community Development Block Grant Fund	49,397	560,546	609,943
2230	Special State Grants			
	<i>Grants</i>			
10025	GIF/NWACC Training Equipment	43,260	12,139	55,399
2240	Energy Block Grant			
	<i>Tracking Items</i>			
09011	Energy Stimulus Money	90,078	370,635	460,713
2930	Drug Grant			
	<i>Grants</i>			
08047	Police ASP Grant for DTF	-	8,816	8,816
08070	High Intensity Drug Trafficking Area	-	6,570	6,570
4470	Sales Tax Capital Improvements			
	<i>Bridge & Drainage Improvements</i>			
09025	Niokaska Creek Stream Restoration Demo	83,725	111,325	195,050
GRANTS Total		287,798	2,177,069	2,464,867

2010 Appropriations

		Obligated	Non Obligated	Total
OBLIGATED OPERATIONAL ITEMS				
1010 General				
<i>Tracking Items</i>				
10030 Fire Station #3 Clean-Up		21,413	-	21,413
10000 Police Equipment		11,874	-	11,874
10000 Fire - Bunker Gear, Uniforms, Vest		38,393	-	38,393
10000 Police - Jackets, Uniforms		14,454	-	14,454
10000 Fire Equipment - Hoses		17,749	-	17,749
2100 Street				
<i>Tracking Items</i>				
10000 Transportation - Lighting Improvements		5,164	-	5,164
5400 Water/Sewer				
<i>Tracking Items</i>				
10000 Water & Sewer - Wetland Mitigation		28,013	-	28,013
5500 Solid Waste				
<i>Tracking Items</i>				
10000 Solid Waste - Container Maintenance		10,103	-	10,103
OBLIGATED OPERATIONAL ITEMS Total		147,163	-	147,163

2010 Appropriations

PROJECTS	Obligated	Non Obligated	Total
1010 General			
<i>Community Development Improvements</i>			
10033 Raze and Removals	-	4,149	4,149
<i>Operational Items</i>			
08056 Complete Neighborhood Plan	-	392	392
09027 Economic Development Services	94,375	-	94,375
2100 Street			
<i>In-House Pavement Improvements</i>			
02052 In-House Pavement Improvements	-	37,317	37,317
<i>Police Improvements</i>			
08076 Radio Simulcast System (Citywide)	154,616	15,062	169,678
2130 Parking			
<i>Police Improvements</i>			
08076 Radio Simulcast System (Citywide)	16,563	1,612	18,175
<i>Transportation Improvements</i>			
10024 Parking Entertainment District Program	-	42,937	42,937
2250 Parks Development			
<i>Parks & Recreation Improvements</i>			
00006 Skate Park	-	4,030	4,030
02002 Regional Park Development	-	3,390,274	3,390,274
02013 Neighborhood Park Development	67,422	89,723	157,145
02014 Other Park & Safety Improvements	-	28,397	28,397
02015 Gordon Long/Red Oak Improvements	-	35,990	35,990
02027 Playground & Picnic Improvements	-	3,039	3,039
02043 Lake Improvements	1,003	134,759	135,762
02045 Forestry, Safety, & ADA Compliance	1,600	23,836	25,436
05001 Gulley Park Improvements	-	47,726	47,726
08002 Wilson Park Improvements	138,502	52,354	190,856
10009 Walker Park Improvements	-	9,921	9,921
<i>Police Improvements</i>			
08076 Radio Simulcast System (Citywide)	248,447	24,204	272,651
<i>Trail Improvements</i>			
03022 Lake Fayetteville Trails	-	36,996	36,996

2010 Appropriations

PROJECTS	2300 Impact Fees	Non		
		Obligated	Obligated	Total
Fire Improvements				
07003 Fire Impact Fee Improvements		16,641	23,325	39,966
08046 Fire Traffic Preemption Signals		23,160	3,336	26,496
08076 Radio Simulcast System (Citywide)		675,361	65,797	741,158
Police Improvements				
07001 Police Impact Fee Improvements		-	51,610	51,610
08076 Radio Simulcast System (Citywide)		1,452,447	141,506	1,593,953
Wastewater Treatment Improvements				
07004 Wastewater Impact Fee Improvements		-	317,324	317,324
Water & Sewer Improvements				
02067 Water and Sewer Cost Sharing		-	737,000	737,000
07002 Water Impact Fee Improvements		-	1,224,149	1,224,149
10010 Sewer Replace - Elkins Outfall Line		-	1,680,000	1,680,000
4270 Replacement				
Other Capital Improvements				
04030 Flood Damage Repair - 2004		-	7,310	7,310
04038 Replacement Copier Funds		-	76,168	76,168
Vehicles & Equipment Improvements				
05042 Fleet - Vehicles/Equipment Under \$10,000		-	53,319	53,319

2010 Appropriations

PROJECTS	4470 Sales Tax Capital Improvements	Obligated	Non Obligated	Total
<i>Bridge & Drainage Improvements</i>				
02097 Stormwater Quality Mgmt/Nutrient Reduct	281,249	180,635	461,884	
02108 Other Drainage Improvements	-	376,304	376,304	
03005 State Bridge Cost Sharing Program	-	475,906	475,906	
10014 Lake Wilson Spillway Repair	58,689	35,509	94,198	
<i>Debt Service Payments</i>				
05002 Fire Station #3/#5 - Lease Payment	-	190,530	190,530	
<i>District Court & Prosecutor Facility</i>				
04008 District Court/Prosecutor Facility Exp	-	173,108	173,108	
<i>Fire Improvements</i>				
02006 Fire Facility Maintenance	5,039	6,275	11,314	
03019 Fire Apparatus Purchases	4,120	48,503	52,623	
10015 Fire Mobile Radios	-	17,500	17,500	
10016 Firefighting Equipment Replacements	10,391	1,006	11,397	
10017 Fire Information Technology Updates	-	2,060	2,060	
10019 Fire Station #1 Generator	56,822	-	56,822	
<i>Information Technology Improvements</i>				
02055 Geographic Information System (GIS)	-	8,597	8,597	
02056 Local Area Network (LAN) Upgrades	-	18,554	18,554	
02057 Microcomputer Replacements	-	796	796	
02060 Printer Replacements	-	39,197	39,197	
02094 Document Management	-	63,277	63,277	
04027 AS/400 Computer Upgrades	-	95,392	95,392	
04047 Accessfayetteville Technical Improvement	-	14,361	14,361	
05055 Software Upgrades - City Wide	-	16,751	16,751	
08025 Time and Attendance	30,299	32,588	62,887	
08027 Fiber Connectivity Btwn City Buildings	-	205,000	205,000	
09031 Storage Area Network (SAN)	-	6,177	6,177	
10013 IT Assessment and Project Management	-	813	813	
99021 Municipal Management System	-	19,630	19,630	
<i>In-House Pavement Improvements</i>				
02052 In-House Pavement Improvements	-	354,941	354,941	
<i>In-House Sidewalk Improvements</i>				
02053 Sidewalk Improvements	600	623,994	624,594	

2010 Appropriations

PROJECTS	4470 S Other Capital Improvements	Non		Total
		Obligated	Obligated	
Other Capital Improvements				
02046 Building Improvements	-	312,307	312,307	
02050 Economic Development Matches	-	16,269	16,269	
02061 P.E.G. Television Center - Equipment	-	11,185	11,185	
04001 Telecommunication Systems Upgrades	-	106,363	106,363	
07010 Budgeting & Planning Software System	-	43,250	43,250	
09001 Animal Services Improvements	-	3,252	3,252	
09002 Resurface Kennel Runs	-	12,902	12,902	
Parks & Recreation Improvements				
02001 Lights of the Ozarks	-	5,147	5,147	
02014 Other Park & Safety Improvements	-	3,162	3,162	
02045 Forestry, Safety, & ADA Compliance	4,904	35,650	40,554	
08001 Tree Escrow	31,817	131,401	163,218	
09032 Ice Storm Recovery Grant - AR Forestry	14,292	207	14,499	
Police Improvements				
02047 Police Building Improvements	-	22,944	22,944	
02062 Police Specialized Equipment	-	43,025	43,025	
06002 Police Technology Improvements	5,000	26,775	31,775	
06003 Police Unmarked Vehicles	-	3,447	3,447	
08013 Police Tandburg Video Arrangement System	-	18,000	18,000	
08014 Police Recording System	-	43,000	43,000	
08076 Radio Simulcast System (Citywide)	1,432,932	139,614	1,572,546	
Street Improvements				
02116 Street ROW / Intersection / Cost Sharing	-	273,366	273,366	
04017 Township Widening - Gregg to N College	1,373	276,224	277,597	
06005 Duncan/California/Harmon Intersections	-	67,785	67,785	
06008 Ruppel Road - Wedington to Mt. Comfort	-	298,213	298,213	
06035 Transportation Bond Street Improvements	458,028	672,426	1,130,454	
10011 Old Wire Road-Mission to Crossover	-	290,096	290,096	
Trail Improvements				
02016 Trail Development	-	232,727	232,727	
Transportation Improvements				
02063 Traffic Signal Improvements	-	321,588	321,588	
Water & Sewer Improvements				
02128 Water System Master Plan Study	31,494	5,347	36,841	

2010 Appropriations

PROJECTS	Obligated	Non Obligated	Total
4480 Wastewater System Improvements Project			
<i>Wastewater System Improvements Project</i>			
02133 Wastewater System Improvements Project	1,646,018	1,400,204	3,046,222
5400 Water/Sewer			
<i>Police Improvements</i>			
08076 Radio Simulcast System (Citywide)	671,633	65,434	737,067
<i>Solid Waste Improvements</i>			
09028 Fiber Optic Cable	-	57,000	57,000
<i>Wastewater Treatment Improvements</i>			
02068 Upgrade/Replace Lift Stations - W.W.T.P.	-	18,953	18,953
02069 Plant Pumps and Equipment - W.W.T.P.	-	182,143	182,143
10008 UV Disinfection System Replacement	-	159,000	159,000
10027 Phosphorus Standards Management	-	30,000	30,000
10029 White River Restoration Project	-	77,000	77,000
<i>Water & Sewer Improvements</i>			
01023 Mount Sequoyah W&S System Upgrade	-	407,613	407,613
02017 Sanitary Sewer Rehabilitation	364,934	2,928,447	3,293,381
02067 Water and Sewer Cost Sharing	-	223,472	223,472
02128 Water System Master Plan Study	50,000	-	50,000
03018 36" Waterline Replacement & Protection	34,243	19,488	53,731
04020 Water Line Projects As Needed	-	319,352	319,352
04036 Mount Sequoyah Pressure Plane Impvys	492,217	37,038	529,255
04039 Water Impact Fee Cost Sharing Projects	-	45,594	45,594
08072 Hwy 265 Water/Swr Relocate & 36" Wtr Lin	5,500	47,107	52,607
10005 South Min Pump Station Repair & Replace	-	200,000	200,000
10006 Benson Mountain Pressure Plane Upgrade	-	325,000	325,000
10007 W/S Improvements Defined by Study	-	1,100,000	1,100,000
10020 Broyles Road Gravity Lines & Force Main	44,627	109,874	154,501
<i>Water & Sewer Services Improvements</i>			
02064 Water & Sewer Rate/Operations Study	-	150,000	150,000
02065 Water Meters	13,500	42,204	55,704
02066 Backflow Prevention Assemblies	-	29,190	29,190
03038 Business Office Improvements	-	12,024	12,024

2010 Appropriations

PROJECTS		Non		Total
		Obligated	Obligated	
5500 Solid Waste				
	<i>Police Improvements</i>			
	08076 Radio Simulcast System (Citywide)	480,910	46,855	527,765
	<i>Solid Waste Improvements</i>			
	02038 Composting Site Improvements	-	1,747	1,747
	03016 Recycling Improvements	-	22,620	22,620
	07012 Materials Recovery Facility Improvements	-	270,992	270,992
	09013 Transfer Station Improvements	-	20,770	20,770
	09019 Recycling Containers ADEQ Grant Purchase	-	2,725	2,725
	09028 Fiber Optic Cable	-	116,128	116,128
	10001 Solid Waste Compactors	-	87,452	87,452
	10002 Compost Site Slab Expansion	-	157,289	157,289
	10003 Westside Recycling Drop Off Facility	-	421,230	421,230
	10004 Solid Waste Commercial Rate Study	-	110,000	110,000
5550 Airport				
	<i>Aviation Improvements</i>			
	05046 Airport Expansion Equipment (AIP#21 REV)	-	40,018	40,018
	07039 Correct Runway 16 RSA	340,069	79,188	419,257
	09021 Hangar Fire - Airport	-	337,661	337,661
	10022 Wildlife Hazard Assessment	33,205	-	33,205

2010 Appropriations

	Obligated	Non Obligated	Total
PROJECTS 9700 Shop			
<i>Other Capital Improvements</i>			
07032 Transfers to Shop Fund (9700)	-	11,198	11,198
<i>Police Improvements</i>			
08076 Radio Simulcast System (Citywide)	99,379	9,682	109,061
<i>Vehicles & Equipment Improvements</i>			
02076 Fleet - Backhoe/Loaders	79,465	535	80,000
02078 Fleet - Light/Medium Utility Vehicles	-	129,000	129,000
02080 Fleet - Other Vehicles/Equipment	72,784	200	72,984
02081 Fleet - Police/Passenger Vehicles	-	360,680	360,680
02082 Fleet - Solid Waste Vehicles/Equipment	536,418	500	536,918
02083 Fleet - Tractor/Mower	-	3,791	3,791
06012 Fleet - Automatic Vehicle Wash System	-	34,330	34,330
PROJECTS Total	10,282,088	25,037,366	35,319,454
Grand Total	\$ 14,358,278	\$ 44,482,510	\$ 58,840,788

2010 Appropriations

Funding Source	Obligated	Non Obligated	Total
1010 General	219,596	721,389	940,985
2100 Street	159,780	439,613	599,393
2130 Parking	16,563	44,549	61,112
2180 Community Development Block Grant	49,397	563,502	612,899
2230 Special State Grants	43,260	12,139	55,399
2240 Energy Block Grant	90,078	370,635	460,713
2250 Parks Development	456,974	3,881,249	4,338,223
2300 Impact Fees	2,167,609	4,244,047	6,411,656
2930 Drug Grant	-	15,386	15,386
4270 Replacement	-	136,797	136,797
4470 Sales Tax Capital Improvements	2,510,774	6,534,401	9,045,175
4480 Wastewater System Improvements Project	1,646,018	1,400,204	3,046,222
4520 Sales Tax Bond	3,461,513	12,042,473	15,503,986
5400 Water/Sewer	1,884,383	11,811,535	13,695,918
5500 Solid Waste	491,013	1,257,808	1,748,821
5550 Airport	373,274	456,867	830,141
9700 Shop	788,046	549,916	1,337,962
Grand Total	\$ 14,358,278	\$ 44,482,510	\$ 58,840,788

JAN 24 2011

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Paradigm Building, LLC – Tracy K. Hoskins, Manager
3155N. College, Ave, Suite 201
Fayetteville, AR 72703

January 21, 2011

City Clerk
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

Re: Appeal Staff interpretation of Chapter 166.18 of the UDC

Dear Sondra Smith,

I recently made application for a sign permit (attached) for a Monument Sign to be located at 3155 N. College Avenue here in Fayetteville. On 1/19/2011, my application, as proposed, was denied by the City Planning Department and the Sign Administrator, Jesse Fulcher. The reason given for denial was that the sign did not meet the setback requirements of ten feet from the right-of-way from North College Avenue as required per 174.10(H) which states, "A monument sign shall be set back a minimum of 10 feet from the street right-of-way, 10 feet from adjoining non-residential property and 25 feet from adjoining residential property...".

As reflected on the submitted application, the proposed location of the sign is to be 10 feet from the existing right-of-way of North College and 95 feet from the nearest adjacent property line, well within the setback requirements for monument signs. However, Staff states that to conform to current code, specifically the Master Street Plan, the sign must be setback an additional 8.5 feet, or 18.5 feet from the existing right-of-way. They maintain this is due to the current Master Street Plan which designates North College to potentially become a 97 foot wide right-of-way in the future (or 48.5 feet from centerline), as opposed to the currently established 80 foot wide right-of-way, (or 40 feet from centerline). Staff sights Chapter 166.18 as the code which requires the additional setback which states,

166.18 Master Street Plan Setbacks - The city shall require the applicant/developer to establish a right-of-way setback line based on the right-of-way requirements for streets and highways designated by the Master Street Plan. Such setback line shall be considered the property line for such purpose of satisfying the requirements of the UDO. All building setbacks, required landscaping, parking lots, display areas, storage areas and other improvements and uses shall be located outside of such established setback area. The required width of setbacks, landscaped areas, buffers, and all other setback requirements shall be dimensioned from the established right-of-way setback line. The establishment of any new structure or other improvements within the right-of-way setback is prohibited.

As I read Chapter 166.18, I must read it in its literal language which states setbacks for improvements "...shall be dimensioned from the *ESTABLISHED* right-of-way setback

line. The establishment of any new structure or other improvements within the right-of-way setback line is prohibited". In my case, the "established right-of-way setback line" is 40 feet from centerline of North College. The unlikely widening of North College would require an additional 8.5ft of right-of-way, which the city (or State) would be required to purchase from affected landowners along the highway. Until such time as the land is purchased from me, it should be within my rights to utilize my property for any lawful purpose I may choose. Granting approval of my permit in no way jeopardizes any potential (and again unlikely) widening of North College. Under the sign regulations, the monument sign must be set back 10 feet from the established right-of-way, which would not encroach on the additional 8.5 feet of additional right-of-way which would be required for future widening.

Further, I am not convinced that Chapter 166.18 is even applicable to this situation. The chapter is located under the under Chapter 166: "Development". "Development" or "redevelopment" of a site is a process in which a change in a property's use, density, intensity, etc. would likely impact to the surrounding infrastructure in some fashion. The installation of a monument sign would not change the impact the property places on the surrounding infrastructure, and therefore does not fall under the category of "development".

We review and revise our Master Street Plan every five years. The title "Master Street Plan" is self explanatory. It is nothing more than a tool utilized in planning the future of the city. It is **not** city *code* that when modified automatically changes the property lines of citizen's properties or vacates the rights of a how a citizen may lawfully use their property. I mentioned to Staff my concern that a governmental body may arbitrarily change the width of a right-of-way for any given street at any time. If a right-of-way is lessened in width, the landowner adjoining said right-of-way could possibly benefit. To the contrary, if a right-of-way is arbitrarily widened, a landowner adjoining said right-of-way could possibly be significantly and negatively affected. It seems this could be measured as a "taking" by government, as the landowner no longer has the use of their property – their investment. Unless the government is prepared to purchase additional right-of-way when changing the Master Street Plan or when denying a landowner lawful use of their property as has occurred here, this seems like a very slippery slope to me.

Not granting approval of my permit, as submitted, would create an undue hardship for the businesses located at the address as we would not be able to utilize a monument sign at the size and setback we are allowed by code. Due to site conditions, we are unable to move the sign back an additional 8.5 feet, as the sign would end up located within traffic drive lanes of the parking lot. To keep the sign out of the parking lot, we would have to shrink the size by more than 50 percent from the proposed 75sf display area, AND set the sign back an additional 8.5 feet, which Staff agrees would likely make the sign ineffective.

With the above, **Chapter 155.06 Appeals From Staff Interpretations/Actions** and specifically 155.06(A)(1)(b) states,

Development Matters. An interpretation or decision of the Zoning and Development Administrator regarding development matters, including subdivisions, large scale developments, parking and loading and outdoor lighting may appeal.

Per Chapter 155.06, I wish to appeal the denial of my sign application to the City Council as I believe Staff's interpretation of the code, specifically Chapter 166.18, is incorrect; if not completely invalid.

Thank you for your time and attention to this matter. And please let me know the earliest date on which my appeal may be heard by the City Council.

Sincerely,

A handwritten signature in black ink, appearing to read 'THOSKINS', followed by a long horizontal line.

Tracy K. Hoskins
Manager, Paradigm Building, LLC

Enclosure

cc: Kutak Rock - Russell Atchley, esq

Agenda Session 02/08/2011

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
February 15, 2011**

A meeting of the Fayetteville City Council will be held on February 15, 2011 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

City Council Agenda Session Presentations:

1. **Economic Development Contract Report – Chamber of Commerce**

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

1. **Airport Board Annual Presentation – Ray Boudreaux**

Agenda Additions:

A. Consent:

1. ☒ Approval of the October 18, 2010 Joint Firemen's Pension and City Council and February 1, 2011 City Council meeting minutes.

2. **Bid #11-15 Elk River Construction, Inc.:** A resolution awarding Bid #11-15 and authorizing a contract with Elk River Construction, Inc. in the amount of \$89,066.00 plus a five percent (5%) project contingency in the amount of \$4,241.00 for the construction of stream restoration at Niokaska Creek in Sweetbriar Park and approving a budget adjustment of \$9,066.00.
3. **Bid #11-17 ADS Environmental Services, LLC:** A resolution awarding Bid #11-17 and authorizing the purchase of seventeen (17) sewer flow monitors from ADS Environmental Services, LLC in the amount of \$136,528.63 for installation in the city sewer collection system.
4. **Police Recording System:** A resolution approving a budget adjustment in the amount of \$43,000.00 moving unused funds designated for the police recording system to the police building remodeling project.
5. **Ogden Insurance Agency Donation Revenue:** A resolution approving a budget adjustment in the amount of \$100.00 representing donation revenue received from Ogden Insurance Agency for the Fire Department's annual employee service awards event.
6. **Garver, LLC:** A resolution approving a contract with Garver, LLC in an amount not to exceed \$38,200.00 for the performance of an environmental assessment study for the Van Asche Boulevard extension project between Gregg Avenue and Garland Avenue.
7. **McClelland Consulting Engineers, Inc. Task Order #4:** A resolution approving task order #4 to the contract with McClelland Consulting Engineers, Inc. contingent upon receipt of grant funding, authorizing the application and acceptance of a grant from the Federal Aviation Administration and Arkansas Department of Aeronautics to fund the project, and approving a budget adjustment.
8. **Atlantic Machinery, Inc.:** A resolution authorizing the purchase of a Schwarze A9000 sweeper from Atlantic Machinery, Inc. of Silver Spring, Maryland, pursuant to a competitive bid through the National Joint Powers Alliance (NJPA) cooperative purchasing agreement, in the amount of \$190,100.00 for use by the Transportation Division, and approving a budget adjustment.

B. Unfinished Business:

1. **Amend Title XV: ADM 09-3480 (Streamside Protection):** An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapter 155: Appeals, Chapter 156: Variances, and Chapter 168: Flood Damage Prevention Code in order to establish Streamside Protection Zones and adopt a Protected Streams map and Best Management Practices Manual. *This ordinance was left on the First Reading at the February 3, 2011 City Council meeting.*

Left on the First Reading

2. **Huntingdon Heights Appeal:** An appeal of the City Engineer's determination regarding the driveway approach at 3172 Warwick Dr. *This item was tabled at the February 3, 2011 City Council meeting to the February 15, 2011 City Council meeting.*

C. New Business:

- 1. Ozarks Electric Cooperative Corporation Cost-Share Agreement:** An ordinance to waive competitive bidding, to approve a cost-share agreement with Ozarks Electric Cooperative Corporation in the amount of \$38,250.48 for the extension of power to the Stone Mountain Water Pump Station, to approve a project contingency of \$7,500.00, and approve a budget adjustment of \$45,751.00.
- 2. RZN 10-3732 (Brown, 2600 Crossover Rd.):** An ordinance rezoning that property described in rezoning petition RZN 10-3732, for approximately 1.64 acres, located at 2600 Crossover Road from R-A, Residential Agricultural, to R-O, Residential Office.
- 3. VAC 10-3735 (Firestone):** An ordinance approving VAC 10-3735 submitted by H2 Engineering, Inc. for property located at 1965 Box Avenue to vacate a utility easement, a total of 240 square feet.
- 4. Amend 2011 Adopted Budget:** A resolution amending the 2011 city budget by re-appropriating up to \$58,840,788.00 in bonded or ongoing capital projects, outstanding obligations and grant-funded items previously appropriated in the 2010 city budget but not completed or delivered in 2010.
- 5. Appeal Chapter 166.18 of the UDC:** An appeal regarding staff interpretation of Chapter 166.18 of the UDC.

City Council Tour : Monday 4:30 - Appeal Chapter 166.18
Announcements: *February 14, 2011*

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

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A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
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- Okay per Don* 1. Economic Development Contract Report – Chamber of Commerce ~~Remove~~

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A. Consent:

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Need to
review
again

Bid #11-15 Elk River Construction, Inc.: A resolution awarding Bid #11-15 and authorizing a contract with Elk River Construction, Inc. in the amount of \$XX,XXX.XX plus a five percent (5%) project contingency for the construction of stream restoration at Niokaska Creek in Sweetbriar Park.

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NB #1
Should
be an
Ordinance

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*Remove
Space*

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*Tracy Hicks
Agenda (Add)*

Announcements:

Adjournment:

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5th Quarterly Report (October – December, 2010)

1. Economic Development Website

Performance Measure A: Active website, updated content, and easy-to-find content as provided by other cities.

- 1) Worked with CGI and produced scripts for 3 videos pertaining to Economic Development and Fayetteville. CGI will be publishing these videos on the Economic Development web pages.
- 2) Hosted CGI videographer for a 2-day shoot of Fayetteville. Proofs expected to be completed in February 2011.
- 3) Developed avatars to be placed on website, whereby questions can be asked/answered by viewing public.
- 4) Continue to update and add current information to web pages, including new business openings, grants/federal funding awarded, and news pertaining to local companies.

Performance Measure B: Number of monthly unique visitors to the website(Economic Development pages)

Number of unique visitors: 5,173 (Oct. 2, 2010 to Jan. 9, 2011)

2. Support Services for Existing Businesses

Performance Measure A: Development of business community data; retention rate for existing businesses, existing employee headcount.

- 1) Baldwin & Shell Contractors broke ground on a 16,300 SF building in west Fayetteville. Building valuation is \$2.74 million. Building will be home to non-profit, Life Styles Inc. Employee headcount expected to be 20 full-time; completion date of April 2011.
- 2) Five local companies were awarded Green Technology Grants for a total of \$1.09 million. They were LGW Inc. (\$290,496), Phigenics (\$300,000), NextGen Illuminations (\$337,500), Cooper Power System (\$60,000), and Bekaert (\$100,000).
- 3) Compiled a list of all available retail, commercial, and industrial spaces. In the process of uploading the list to Economic Development web pages. In all, 68 spaces will be listed.
- 4) Contacted more than 30 major employers in the city to determine their outlook for 2011 and to find out if they plan to add new hires and/or replacements. In general, employers are forecasting either doing replacements and/or add new hires. No mention of layoffs.
- 5) Continue to compile and keep current a list of available commercial, retail, and industrial spaces in Fayetteville.
- 6) A local pharmaceutical company has completed its interior renovations that include putting in a new automated packaging line.
- 7) Haas Hall Academy now has over 300 students enrolled. They have leased the remaining available space in the Paradigm building. They have also hired new employees.

- 8) Attended the ribbon cutting for a new Subway store on College Ave.
- 9) Contacted newly established businesses welcoming them to Fayetteville and informing them of services available from the Economic Development team.
- 10) Energy Corps in partnership with NCAT have created 6 part-time positions, 3 FTES, which are green jobs.
- 11) As a result of the grant that the state/UAMS received to improved internet accessibility throughout the state, a local internet provider sales office is looking at the possibility of doubling its number of employees from the teens to the thirties in 2011.

Performance Measure B: Provide support services to existing businesses to assist them to retain jobs and/or expand.

- 1) Met with Flying Investments, LLC to learn about the services they provide and to also tour a building available for lease.
- 2) Met with Mae Farms at its ribbon cutting to understand its business concepts and to offer to assist it to promote its programs.
- 3) Met with the owner of Northwest Photography Works who recently opened for business for business consultation.
- 4) Arranged visits with real estate agents for a local church looking to move to Fayetteville. Resulted in 2 site visits for the church.
- 5) Assisting site selection agents to relocate/expand a local charter school. Requiring building with 45,000SF or green space with 10-15 acres. Provided 6 green sites.
- 6) Arranged a visit for a local green technology company and its potential foreign investor from Korea.
- 7) Met with the regional manager for a national pizza chain to assist him to relocate one of the current stores and also maybe expanding to new locations in the city.
- 8) Consulting with a newly formed company providing support services to the forces on various operational and resource issues.
- 9) Helped to celebrate Meek's Building Centers' 90 years of business in the Ozarks.
- 10) Met with the owner of a new exercise studio with questions about marketing and promotion.
- 11) Visited with a consultant on local incentives for an existing retail business in north Fayetteville.
- 12) Met with a local tractor and equipment company to discuss the city's bid process.
- 13) Arranged for City Director of Strategic Planning to meet with local companies from the construction and developers, small business, and transportation industries to understand the City Plan 2030. City Director also requested input from the companies.
- 14) Met with owner of an environmental engineering solutions firm. Helped her connect with local environmental entities such as UA Applied Sustainability Center, Natural Building Solutions, FFEAC green economy group, NWACC Center of Excellence.
- 15) Contacted 7 new businesses to introduce the economic development team and the services provided, and to find out more about the companies such as employee headcount.

- 16) Visited Terra Studios to familiarize with its recent developments. The company changed owner.
- 17) Visited local companies at their locations to understand their products and services.
- 18) Tried to assist a local theatre to find space for two weeks to practice.
- 19) Assisted local employers that were interviewing candidates for jobs by supplying them with relocation packets.
- 20) Invited the Fayetteville School District leadership to a meeting with major local employers to discuss the development of career ready high school graduates who are entering the workforce. Contacted/visited with several HR directors/managers to invite them to the meeting as well.
- 21) Provided resources to a local chain store on recruiting a store manager.
- 22) Met with the new plant manager of Delta Electronics and will be assisting the company to recruit engineering interns from UA.
- 23) Started conversation on helping a local nonprofit that is currently leasing to find a building to buy.
- 24) Visited with a real estate agent on a property in Fayetteville that has been recently foreclosed by the bank.

Performance Measure C: Support "Buy Fay/Find It In Fayetteville" Campaign.

- 1) Continue to pass out "Find It In Fayetteville" logo stickers to area businesses.
- 2) Arranged to meet with A&P Commission, and representatives of Downtown and Uptown Fayetteville for the next step of the "Buy Fay/Find It In Fayetteville" campaign.
- 3) Met and now working with the City, Fayetteville Visitors Bureau, Sells Agency, and Habitotes to discuss the logistics of producing the "Find It In Fayetteville" tote bag.
- 4) Working on reaching out to local businesses to encourage them to become sponsors for the "Find It In Fayetteville" tote bags.

3. Prospective Company Recruitment

Performance Measure A: Develop site selector visits to the City

- 1) Began work to identify site selector consultant companies.
- 2) Invited site selection agent for a Charter School to visit the city.
- 3) Started contacting potential site selectors to discuss visits to the city.

Performance Measure B: Number of home grown businesses locating in Fayetteville.

Number:	23	BFIT, LLC (personal trainer)
		Billy's (restaurant)
		Boingo Bounce
		Catalyst Strength
		Crossfit Fayetteville
		Face It (spa)

Fiddlehead Fern Therapeutics
 GlitterBox
 J.K. Connell Consulting & Marketing
 Madame Wu's
 Michael Mauldin, CPA
 NWA Gold & Silver
 Parker Psychology & Counseling Associates
 Red Hill Gallery & Home Wares
 ReDress, LLC
 Silver Joes Cafe
 Sims & Renner Insurance
 Syndicate Boards & Apparel LLC
 TLC Yoga Spa
 Trulydivine 2
 Twang & Twig
 Uptown Eyes
 US Pawn

Performance Measure C: Number of new businesses in Fayetteville

Number: 38 (including 23 homegrown)
 15 Arkansas Gold/Silver Exchange
 Belle Boutique
 Best Buy Mobile
 Best Nails
 Domingo's
 Furnish123
 Hair Salon/Solar Nails
 HuHot Mongolian Grill
 IMWell Health
 Millennium Life Center
 Northwest Photography Works
 PPW Productions
 Riggins Construction & Development Inc.
 Sebag Clinic
 Trade Shop

Performance Measure D: Employee headcount attributed to new business

Number: 95

*Note: Majority of businesses chose not to share the number of employees.

Performance Measure E: Assistance in the coordination and development of a regional economic development council

- 1). Continue to collaborate with NWA Council and regional chambers to work on the recommendations of the Economic Development Strategic Plan for Northwest Arkansas.

Performance Measure F: Listing of contacts or potential businesses obtained through serving as the lead contact

- 1) Assisted a company in Lincoln that is interested to purchase a building and surrounding land (total 63 acres) located on Armstrong. Assistance included meeting with Washington County Assessor and answering questions posed by the company.
Success—Lincoln company confirmed to sign lease-to-buy agreement for the site.
- 2) Arranged visits with real estate agents for a church looking to move to Fayetteville.
- 3) Assisting site selection agents to relocate/expand a local charter school. Requiring building with 45,000SF or green space with 10-15 acres. Provided 6 green sites.
- 4) Assisted a manufacturing company (Project LSP) looking to expand. Required 10,000SF and rail spur on property. Unable to offer any site due to zoning regulations and a lack of properties with spurs (Identified 2 sites but zoning does not allow such manufacturing use).
- 5) Assisted an inquiry from Italy to get in touch with AEDC for tax information and incentives for the future expansion of a production plant in Arkansas.
- 6) Assisted an inquiry to find an 8,000SF building and a 3,000 SF building to relocate 2 of their subsidiary companies. Submitted multiple sites.
- 7) Assisted an AARP district coordinator to find office space to be written off by owner as a tax credit. Coordinator confirmed 2 available sites.
- 8) Met with State of Arkansas Finance & Administration Department employee now located in NWA who is available to assist new businesses with tax information.
- 9) Met with the regional manager for Five Guy Burgers and Fries. She was looking for suitable sites to place a store in Fayetteville. The franchisee is from North Little Rock and she has plans to open 4 stores in northwest Arkansas.
- 10) Assisted a site selection consultant with questions about Nelson's Crossing and north Fayetteville. His client is a yoghurt store.
- 11) Met with a perspective entrepreneur interested to set up an automotive repair shop in Fayetteville.
- 12) Met with a real estate agent from Fort Smith interested to move to Fayetteville to be closer to her child.
- 13) Assisted a perspective entrepreneur with questions about the restaurant industry in Fayetteville. He is from Missouri and is interested to relocate here.
- 14) Working on Project Sweetness. The client is a food manufacturer looking for 150 acres, with rail and highway, and the site must not be in a flood plain. Potential investment is between \$360 - \$580 million within 5 years, and 450 jobs with average pay of \$22/hr. Submitted one site north of the city.
- 15) Assisted one inquiry starting a tea/birthday party business to obtain zoning compliance. Company expected to open February of 2011.
- 16) Received an inquiry for a 16,811 SF building with 113 parking spaces. The customer is a government agency. Submitted 4 buildings.
- 17) Communicated with Rural Sourcing of Jonesboro that is thinking of expanding to northwest Arkansas next year. No decision on the move yet.

- 18) Submitted an RFI for Project Shrink Wrap. This project is looking to lease a 150,000 SF building for manufacturing packaging for the food industry. One of Hanna's buildings was recommended.
- 19) Assisted one inquiry to obtain zoning compliance. Company is a Residential & Commercial Development Agency expected to open on January 11, 2011. Expected 12 new, FTE hires.
- 20) Assisted inquiry looking for demographic and labor statistics. Inquirer has leased a building on 550 Dickson (formerly Wow Sushi Restaurant) and will open a Mexican restaurant chain restaurant. Expected opening is in April 2011 with hires of 25-40 people, with a mix of full/part time employees.
- 21) Assisted an inquiry looking to purchase a 5,000SF warehouse/building, requesting I-1 zone with 1+ acres of land. Submitted one site on S. School and one on Gregg St.
- 22) Worked on finding if there were any distressed multifamily projects in Fayetteville for sale. This was in response to an inquiry.
- 23) Continuing discussion with a prospect interested to start a commercial airline at Drakefield. Mr. Raymond Van Hook of Springdale made presentation to the Drakefield Airport Board on Dec. 9th.
- 24) Assisted an inquiry on starting a business in Fayetteville. Inquirer is from Farmington and has arranged to put a carousel ride in the mall.
- 25) Assisted with a general inquiry from Orlando, FL.

Performance Measure G: Implementation of a Business Registry

- 1) Assisted to disseminate information on FAQs developed by the City. FAQs are available on the Economic Development web pages as well as on the city's website.
- 2) In the process of creating an avatar with explanation of who needs/how to obtain a business license and will be placed in the Economic Development web pages.
- 3) Worked with city management to include opt-in check box to receive bids on the application form. Intent is to inform opt-in Fayetteville companies about city bids and through the process, keep public funds in the city.
- 4) Continue to inform prospective entrepreneurs of the upcoming business registry requirement effective November 1, 2011.

4. Strengthened Relationship with the AEDC and Regional Economic Development Organizations

Performance Measure A: Regular meetings with AEDC staff & commissioners, Green Valley Corporation staff, ARTP staff & other relevant organizations

AEP/SWEPCO

ARE-ON

Arkansas Economic Development Commission

Arkansas State Highway & Transportation Department

City of Fayetteville—Strategic Planning & Consulting

Entergy Arkansas

Fayetteville Advertising & Promotion Commission
Fayetteville City Planning
U of A Arkansas High Performance Computing Center
Arkansas & Missouri Railroad
Arkansas Attorney General
Arkansas Department of Finance & Administration
Arkansas Economic Development Commission
Arkansas Research & Technology Park
Arkansas State Chamber
Arkansas World Trade Center
City of Fayetteville—Planning
Entergy Arkansas
Fayetteville Executive Airport – Drake Field
Fayetteville Public School District
Fayetteville Town Center
Northwest Technical Institute
NWA Council
UA Arkansas High Performance Computing Center
UA College of Engineering
UA Department of Political Science
UA Division of Agriculture, Community and Economic Development
UA National Center for Reliable Electric Power Transmission
UA Research and Economic Development
UA Technology Development Foundation
UALR Institute of Economic Advancement
Washington County Assessor
Washington County Office

Performance Measure B: Documented efforts and participating in regional partnership

- 1) Continue to attend NWA Council meetings to work on the strategic plan.
- 2) Assisted Rogers-Lowell Chamber to contact University of Arkansas SIFE program coordinators, to learn more about adopting the GreenNWAY Initiative program by using SIFE students from NWACC.
- 3) Working to develop a national Chamber alliance for promoting clean and sustainable energy initiatives.
- 4) Held a Construction and Developers Banquet that was “Regional” in theme. The speaker was Don Bacigalupi, Director of Crystal Bridges Museum of American Art. Eleven awards were given to recognize various projects in NWA that were completed in 2009/2010.
- 5) Initiated discussion with Arkansas World Trade Center to participate in its regional programs to benefit local companies. Initial collaboration included publicizing classes that WTC is initiating in the area of international business.

- 6) Working with Bentonville Chamber to share real estate quarterly reports issued by Xceligent.
- 7) Fayetteville took the lead in conducting the Cost of Living Index while Bentonville took the lead on providing real estate reports on commercial, industrial, and retail.
- 8) Continue with monthly chamber executive meetings.

Performance Measure C: Positive relationship with AEDC & appropriate communicated vision for Fayetteville

- 1) Continue to assist and refer companies to AEDC to investigate the availability of incentives for relocation and expansion.
- 2) Arranging for another visit from AEDC site selection staff to measure available industrial spaces.
- 3) Continue to work with business development staff from AEDC to respond to inquiries.

Performance Measure D: AEDC understanding of firm's primary contact responsibility

- 1) AEDC staff and Economic Development team regularly contacted each other on company and site selection items.
- 2) Successfully worked together to obtain tax resolutions for Delta Electronics. Received resolution approvals from both City Council and County Quorum Court.
- 3) Met with Jessica Breaux, AEDC regional staff, to go over economic development activities.
- 4) AEDC staff contacted Economic Development team, and vice versa for updates on site selection inquiries, available spaces, and potential business prospects.

5. Marketing Material Directed Toward Target Industries

Performance Measure A: Creation and distribution of industry packets

- 1) Completed 5 industry targeted brochures/handouts. Targets are Clean/High Tech, National or Regional Headquarters for Non-Profits, Experience Economy, Manufacturing, and Healthcare/Medical.
- 2) Completed "Why Invest in Fayetteville" and "Major Employers" inserts. Working on the community information.
- 3) Developing a list of 40 reasons on setting up a business in Fayetteville.

Performance Measure B: Creation of additional promotional materials such as DVDs, etc.

- 1) Completed scripts for 3 videos. CGI came to Fayetteville and filmed videos on Oct. 26 & 27, 2010. Videos will be placed on Economic Development web pages.
- 2) Working on a partnership with the City to produce a video to promote the city. The *Today in America* is the vendor. Filming took place on November 4th. Videos will be produced in DVDs to be included in packets sent to perspective new businesses.
- 3) The filming crew of the *Today in America* segment came to the city to do the shooting.

Performance Measure C: Creation of city approved "incentive booklet" containing highlights on why companies should locate in Fayetteville

(begin reporting in 6th quarter)

6. Market Statistics and Demographics

Performance Measure A: Utilize & provide updated market, trend and demographic analyses through current studies

- 1) Added statistical data to web pages. Also continued to list new business openings and grants/federal funding awarded to local companies.
- 2) Continue to upload new businesses that have registered with the state to open in Fayetteville.
- 3) Continue to format the list of available commercial, retail and industrial spaces (68 total).

7. Economic/Business Development Activities

A. Business Attraction

- 1) Attended the Washington County Finance Committee meeting on Oct. 11 and the Fayetteville City Council on behalf of Delta Electronics. Tax resolutions from both the city and county were approved.
- 2) Promoted a breakfast meeting hosted by the Arkansas State Chamber to out-reach and inform local businesses about Issues 2 & 3 that would be on the November ballot.
- 3) Responded to an inquiry for a list of manufacturers in Fayetteville.
- 4) Provided marketing materials to promote Fayetteville as an investment center to attendees (from out of town) of a meeting in UA National Center for Reliable Electric Power Transmission.
- 5) Provided resources to HuHot Mongolian Grill to find new workers for the restaurant and to promote its grand opening on January 17th.
- 6) Assisted a new company to connect with resources for new job hires. Directed them to the Job Guide, Nation Jobs, and AR Dept. of Workforce Services. Expected to hire 3-9 FTEs.
- 7) Assisted one inquiry to find demographics and statistics for the area; directed them to the Economic Development pages, AR Site Selection pages, and the Bureau of Labor Statistics.
- 8) Assisted an inquiry opening a Mexican restaurant to find demographic and labor statistics about Fayetteville. Restaurant expected to open April 2011 in the former *Wow Sushi* location on Dickson St. Expecting to hire 25-40 part/full time employees. Mailed relocation packets to the four managers that have already been hired for this new location.
- 9) Fielded a request for a prospect looking to purchase a 5,000SF warehouse, I-1 zoned, 1+ acre. Submitted two available sites.
- 10) Attended presentation by Acticut, a Swedish based company that had its technology demonstration set up at Bargo Engineering.

B. Business Retention and Expansion

- 11) Organized a visit to the Fayetteville Executive Airport-Drakefield for local chief executives.
- 12) Assisted an inquiry from local real estate company to find residential demographic information.
- 13) GreenWAY certified two more companies: Ozark Natural Foods and UAMS. Currently auditing 4 additional. Current total of certified businesses stands at 20.
- 14) Gave interview to Northwest Arkansas Business Journal on the Construction & Developers Banquet. Banquet was to recognize area architects and developers for their completed projects in Northwest Arkansas. Article would be published on Nov. 1.
- 15) Promoted the "Rockin with the Razorbacks" event to the community to bring traffic to the Northwest Arkansas Mall to shop, eat, and participate in the event.
- 16) Promoted and supported the Bikes, Blues, and BBQ to encourage visitors to the event.
- 17) Disseminated information about the City Plan 2030. Encourage businesses to participate in the town hall meetings.
- 18) Organized four chamber committees to meet with city staff to discuss the City Plan 2030.
- 19) Participated in the 120th year celebration of Northwest Arkansas Times in the Town Center.
- 20) Attended a meeting with Camp Alliance, a pilot program focused to aid with transitioning soldiers and families in and out of deployment. If funded, project will be located in Springdale.

C. Infrastructure

- 21) Collected updated specs for 8 buildings listed on state site selection web pages.
- 22) Added 3 newly available buildings onto state site selection pages.
- 23) Toured an available building in Drakefield.
- 24) Met with City of Fayetteville Planning Commission about adapting language changes to zoning regulations for I-1 and I-2 zones.
- 25) Attended Workforce Advisory meeting at Northwest Technical Institute to discuss the future of operations of Ozark Regional Transit.
- 26) Met with Pepper Bottle Technologies to discuss the new layout and accessibility of the Economic Development web pages.
- 27) Met with Bartlett & West, a company that was interested in the GIS software capabilities used by the Economic Development team and how it relates to the state site selection software.
- 28) Attended League of United Latin American Citizens (LULAC) monthly meeting.
- 29) Attended the quarterly Economic Issues Breakfast given by Center for Business and Economic Research.
- 30) Attended USGBC meeting over why companies should or shouldn't attain a LEED certification.
- 31) Attended the dedication ceremony for the Enterprise Center at the Arkansas Research and Technology Park.
- 32) Participated in the public forum for City Plan 2030.

- 33) Handled 2 comments and answered requests from residents with regards to economic development in general.
- 34) Continued to search for grant sources and to develop grant projects.
- 35) Met with the university to discuss new possible collaborative work for economic development.
- 36) Met with the Superintendent of the Fayetteville School District to discuss the potential of a private-public partnership between the District and local major employers to develop a workforce program that will benefit high school students who are entering the workforce after graduation and help local employers to find quality high school workers.
- 37) Attended City Council meetings.
- 38) Attended UA Health Fair to visit with exhibitors and introduce economic development team as point of contact for the city.
- 39) Attended *Innovate AR* meeting to get to know three start-up companies.
- 40) Met with the President of SIFE to discuss possible projects that SIFE students can undertake in partnership with local employers. Possible area of collaborative work is in the area of Career Readiness Certification.
- 41) Met with the President and Marketing Manager of Arkansas-Missouri Railroad to discuss the possibility of putting a spur to the Industrial Park.
- 42) Working with the UA Division of Agriculture Community and Economic Development section and UALR Institute of Economic Advancement on being one of the session's speakers for Breakthrough Solutions Conference in North Little Rock on December 2, 2010.
- 43) Arranged to meet with UA's Arkansas High Performance Computing Center to be familiar with the ARE-ON program and to determine if it can be promoted in our business attraction efforts.
- 44) City of Fayetteville successfully won the Home Depot grant. One of only two cities in the nation to win the grant. Economic Development team was part of the overall city group that worked to get this grant.
- 45) Attended a Grant Workshop in Fort Smith on December 8th. The workshop talked about grant opportunities from 4 state agencies. Many of them are for rural and/or small communities.
- 46) Working with the UA Department of Political Science that has just started a Non-Profit certification program. On discussion is the marketing and promotion of the program to local non-profit organizations.
- 47) Worked with the city leadership on the announcement of the Walton Arts Center expansion plans.
- 48) Participated as a panel speaker for the "Breakthrough Solutions Conference" in North Little Rock on Dec. 1-2.
- 49) Was contacted by the university for assistance to place two interns in businesses.
- 50) Met with executives of local non-profits to discuss the feasibility of having some of them be part of the Economic Development Ambassador team.
- 51) Assisted an inquiry to find employee totals for the 10 largest companies in Fayetteville.

- 52) Participated in Arkansas Site Selection Consultants survey to get feedback for ways to restructure the data collection for available buildings and green spaces.
- 53) Gave testimony to a University reporter about the economic stability of Fayetteville.
- 54) Attended a meeting with the University of Arkansas Economic Development team, UA High Performance Center and ARE-ON, to better understand their infrastructure, available services and possible partnerships.
- 55) Assisted the city with getting the current number of employees for major local employers.
- 56) Economic Developer, Curtis Northcutt, completed and passed the LEED Green Associate exam to become the first LEED GA for a Chamber staff in the state of Arkansas.
- 57) Worked on compiling "40 Reasons to Set Up a Business in Fayetteville". This is a promotional piece to be put on print, on the website and in the marketing packet.
- 58) Gathered information on business related training and seminars and placed them on the website.
- 59) Wrote economic development related articles for the Chamber monthly insert.

a) FFEAC

- 60) Participated in the FFEAC Working Session to determine strategic directions to take in the future.
- 61) Attended the FFEAC monthly meetings.
- 62) Attended the FFEAC Transportation Sub-Committee presentation to the city and public.
- 63) Met with some chairs of the FFEAC committees to discuss the logistics of how to celebrate the successes/achievements of FFEAC that took place in 2010 by the various committees.

b) GreenNWay

- 64) The GreenNWay program received mention in the category of "Excellence in Environmental Stewardship" at the E3 Sustainability Conference in Neosho, MO.
- 65) Gave interview to the Northwest Arkansas Business Journal on the GreenNWay Initiative, article was published mid-October.
- 66) Attended the Industrial Awareness Seminar at the Waste Water Treatment Plant. Gave a speech about the GreenNWay Initiative to all in attendance.
- 67) Participated in Chambers for Innovation in Clean Energy conference call, to begin working for the launch date for this initiative.
- 68) Gave an interview to UAMS in Little Rock on the recent GreenNWay certification earned by UAMS-Northwest. Article was published on UAMS website in December 2010.
- 69) Held 4th quarter GreenNWay trainings on "Green Culture in the Workplace".
- 70) Spoke to the FFEAC Green Economy Group on 2010 results for GreenNWay and the progress of Chambers for Innovation and Clean Energy (CICE).
- 71) The GreenNWay Initiative will have an additional part time position, 20 hours per week, to work on the program. Opening is done in partnership with Energy Corps where the pay for employee is a 1-1 match. Energy Corps also opened 5 other positions in Fayetteville.

- 72) Conducted a GreenWAY consultation with Haas Hall Academy. Haas Hall is expanding into the available space formerly occupied by World Gym (Paradigm building). Total footprint will be nearly 45,000SF. Expected completion for expansion is August 2011.
- 73) Created and distributed the second edition of *The GreenWAY Press*. Newsletter was sent to GreenWAY businesses, committee members, and FFEAC Green Economy Group.

Non-Profit – Fayetteville

Applied Sustainability Center – University of Arkansas
Arkansas Artist's Laboratory Theatre
Arkansas High Performance Computing Center – University of Arkansas
Arkansas Job Corp
Boys and Girls Club
Center for Business & Economic Research
Fayetteville Public Library
Grove Church
National Center for Appropriate Technology
Northwest Arkansas Free Health Clinic
Ozark Guidance
Razorback Transit

Businesses – Fayetteville

Arvest Bank
BancorpSouth
Bargo Engineering
Bekaert
Bio-Tech Pharma
Camp Alliance, Inc.
CaseStack
Coldwell Banker Faucette Real Estate
Coldwell Banker—Matt Lawrence
Cooper Power System
Coover-Clark & Associates
Corazon LLC
Cromwell Architects Engineers
Cross fit Fayetteville
Curves
Delta Electronics
DOXA
EMTEC
Fayetteville Town Center
Flying Investments, LLC
Freedom 5:One Inc.
Friday, Ederidge, and Clark
Garver Engineers
Generations Chiropractic Wellness Center
Greenwood Gearhart Inc.
Haas Hall Academy
Herzog Financial Network

Holiday Inn Express Hotel & Suites
HuHot Mongolian Grill
Jo Ann Fabric and Craft Stores
Kenton Ross DMD
LGW Inc.
Lindsey & Associates
Mae Farms
Maestri Counseling
Meek's Building Centers
Million Air Fayetteville
Mynet
Natural Building Solutions
NextGen Illumination, Inc.
Noland Waste Water Treatment/CH2M HILL
Northwest Arkansas Mall
Northwest Arkansas Times
Northwest Photography Works
Northwestern Mutual Financial Network
NWA Times
Ozark Natural Foods
Phigenics
Pinnacle Foods Corporation
Pizza Hut
Polk Stanley Wilcox Architects
Sage Partners
Serrabellum Digital Design
Steak N Shake
Stephens, Inc.
Subway
TEC Staffing Services
Terra Studios
The Errand Girl
Tire Tracks Tire & Brake Center
Treadwell Institute
Tree Climbers
Tysons
UAMS-Northwest
Virtual Incubation Company, LLC
Walton Arts Center
Whittenberg, Delony & Davidson
William's Tractor

Businesses & Non-Profits – Outside Fayetteville

AT & T	Little Rock
66 Federal Credit Union	Springdale
AARP	Garfield
ACE Glass	Lowell
Acticut	Sweden
AEP/SWEPCO	Shreveport, LA
Bartlett & West Engineers	Hiawatha, KS
BedRock Commercial Partners, LLC	Irving, TX
Bright Technologies, LLC	Lincoln
CGI	Rochester, NY
Chipotle Mexican Grill	Pflugerville, TX
Codes Co., Ltd.	Korea
Connect-Arkansas	Little Rock
Cromwell Architects Engineers	Little Rock
Crystal Bridges Museum of American Art	Bentonville
Delta Group Electronics	Prairie Grove
Diversified Construction Material and Services, LLC	Little Rock
Dogwood Literacy Council	Siloam Springs
Eco-Potential	Springdale
Fine Technix	Korea
Five Guys Burgers and Fries	North Little Rock
Flake and Kelley Commercial	Springdale
Flintco Inc	Springdale
Harrison French & Associates	Bentonville
Holiday Inn	Springdale
Irwin Partners	Little Rock
Mi Casa Real Estate	Springdale
Milestone Construction	Springdale
Morrison Wanger Real Estate, Inc.	Rogers
Northwest Arkansas Business Journal	Springdale
Northwest Technical Institute	Springdale
Opera in the Ozarks	Rogers
Ozark Folk Ways	Winslow
Ozarks Water Watch	Missouri
Pepper Bottle Technologies	Temecula, CA
Rausch Coleman Homes	Farmington
Rural Sourcing Inc.	Jonesboro
SSI, Inc.	Tontitown
State of Arkansas Dept. of Finance & Admin.	Little Rock
Stitt Energy Systems	Rogers
TabCo.	Oklahoma

TownePlace Suites Fayetteville
UAMS
US Green Building Council
USA Consulting Engineers
Weichert Realtors
Xceligent

Johnson
Little Rock
Springdale
Springdale
Springdale
Independence, MO

From: Greg House <ghouse@housesinc.com>
To: "city_clerk@ci.fayetteville.ar.us" <city_clerk@ci.fayetteville.ar.us>
Date: 2/1/2011 3:02 PM
Subject: Huntingdon Heights appeal

This is to request that the appeal of a planning decision filed by Huntingdon Heights LLC that was scheduled to be heard this evening by the City Counsel be tabled until the next regularly scheduled meeting, which I believe will be Feb. 15.

Respectfully,
Greg House
For Huntingdon Heights, LLC

5th Quarterly Report (October – December, 2010)

1. Economic Development Website

Performance Measure A: Active website, updated content, and easy-to-find content as provided by other cities.

- 1) Worked with CGI and produced scripts for 3 videos pertaining to Economic Development and Fayetteville. CGI will be publishing these videos on the Economic Development web pages.
- 2) Hosted CGI videographer for a 2-day shoot of Fayetteville. Proofs expected to be completed in February 2011.
- 3) Developed avatars to be placed on website, whereby questions can be asked/answered by viewing public.
- 4) Continue to update and add current information to web pages, including new business openings, grants/federal funding awarded, and news pertaining to local companies.

Performance Measure B: Number of monthly unique visitors to the website(Economic Development pages)

Number of unique visitors: 5,173 (Oct. 2, 2010 to Jan. 9, 2011)

2. Support Services for Existing Businesses

Performance Measure A: Development of business community data; retention rate for existing businesses, existing employee headcount.

- 1) Baldwin & Shell Contractors broke ground on a 16,300 SF building in west Fayetteville. Building valuation is \$2.74 million. Building will be home to non-profit, Life Styles Inc. Employee headcount expected to be 20 full-time; completion date of April 2011.
- 2) Five local companies were awarded Green Technology Grants for a total of \$1.09 million. They were LGW Inc. (\$290,496), Phigenics (\$300,000), NextGen Illuminations (\$337,500), Cooper Power System (\$60,000), and Bekaert (\$100,000).
- 3) Compiled a list of all available retail, commercial, and industrial spaces. In the process of uploading the list to Economic Development web pages. In all, 68 spaces will be listed.
- 4) Contacted more than 30 major employers in the city to determine their outlook for 2011 and to find out if they plan to add new hires and/or replacements. In general, employers are forecasting either doing replacements and/or add new hires. No mention of layoffs.
- 5) Continue to compile and keep current a list of available commercial, retail, and industrial spaces in Fayetteville.

- 6) A local pharmaceutical company has completed its interior renovations that include putting in a new automated packaging line.
- 7) Haas Hall Academy now has over 300 students enrolled. They have leased the remaining available space in the Paradigm building. They have also hired new employees.
- 8) Attended the ribbon cutting for a new Subway store on College Ave.
- 9) Contacted newly established businesses welcoming them to Fayetteville and informing them of services available from the Economic Development team.
- 10) Energy Corps in partnership with NCAT have created 6 part-time positions, 3 FTES, which are green jobs.
- 11) As a result of the grant that the state/UAMS received to improved internet accessibility throughout the state, a local internet provider sales office is looking at the possibility of doubling its number of employees from the teens to the thirties in 2011.

Performance Measure B: Provide support services to existing businesses to assist them to retain jobs and/or expand.

- 1) Met with Flying Investments, LLC to learn about the services they provide and to also tour a building available for lease.
- 2) Met with Mae Farms at its ribbon cutting to understand its business concepts and to offer to assist it to promote its programs.
- 3) Met with the owner of Northwest Photography Works who recently opened for business for business consultation.
- 4) Arranged visits with real estate agents for a local church looking to move to Fayetteville. Resulted in 2 site visits for the church.
- 5) Assisting site selection agents to relocate/expand a local charter school. Requiring building with 45,000SF or green space with 10-15 acres. Provided 6 green sites.
- 6) Arranged a visit for a local green technology company and its potential foreign investor from Korea.
- 7) Met with the regional manager for a national pizza chain to assist him to relocate one of the current stores and also maybe expanding to new locations in the city.
- 8) Consulting with a newly formed company providing support services to the forces on various operational and resource issues.
- 9) Helped to celebrate Meek's Building Centers' 90 years of business in the Ozarks.

- 10) Met with the owner of a new exercise studio with questions about marketing and promotion.
- 11) Visited with a consultant on local incentives for an existing retail business in north Fayetteville.
- 12) Met with a local tractor and equipment company to discuss the city's bid process.
- 13) Arranged for City Director of Strategic Planning to meet with local companies from the construction and developers, small business, and transportation industries to understand the City Plan 2030. City Director also requested input from the companies.
- 14) Met with owner of an environmental engineering solutions firm. Helped her connect with local environmental entities such as UA Applied Sustainability Center, Natural Building Solutions, FFEAC green economy group, NWACC Center of Excellence.
- 15) Contacted 7 new businesses to introduce the economic development team and the services provided, and to find out more about the companies such as employee headcount.
- 16) Visited Terra Studios to familiarize with its recent developments. The company changed owner.
- 17) Visited local companies at their locations to understand their products and services.
- 18) Tried to assist a local theatre to find space for two weeks to practice.
- 19) Assisted local employers that were interviewing candidates for jobs by supplying them with relocation packets.
- 20) Invited the Fayetteville School District leadership to a meeting with major local employers to discuss the development of career ready high school graduates who are entering the workforce. Contacted/visited with several HR directors/managers to invite them to the meeting as well.
- 21) Provided resources to a local chain store on recruiting a store manager.
- 22) Met with the new plant manager of Delta Electronics and will be assisting the company to recruit engineering interns from UA.
- 23) Started conversation on helping a local nonprofit that is currently leasing to find a building to buy.
- 24) Visited with a real estate agent on a property in Fayetteville that has been recently foreclosed by the bank.

Performance Measure C: Support "Buy Fay/Find It In Fayetteville" Campaign.

- 1) Continue to pass out “Find It In Fayetteville” logo stickers to area businesses.
- 2) Arranged to meet with A&P Commission, and representatives of Downtown and Uptown Fayetteville for the next step of the “Buy Fay/Find It In Fayetteville” campaign.
- 3) Met and now working with the City, Fayetteville Visitors Bureau, Sells Agency, and Habitotes to discuss the logistics of producing the “Find It In Fayetteville” tote bag.
- 4) Working on reaching out to local businesses to encourage them to become sponsors for the “Find It In Fayetteville” tote bags.

3. Prospective Company Recruitment

Performance Measure A: Develop site selector visits to the City

- 1) Began work to identify site selector consultant companies.
- 2) Invited site selection agent for a Charter School to visit the city.
- 3) Started contacting potential site selectors to discuss visits to the city.

Performance Measure B: Number of home grown businesses locating in Fayetteville.

Number:	23	BFIT, LLC (personal trainer) Billy's (restaurant) Boingo Bounce Catalyst Strength Crossfit Fayetteville Face It (spa) Fiddlehead Fern Therapeutics GlitterBox J.K. Connell Consulting & Marketing Madame Wu's Michael Mauldin, CPA NWA Gold & Silver Parker Psychology & Counseling Associates Red Hill Gallery & Home Wares ReDress, LLC Silver Joes Cafe Sims & Renner Insurance Syndicate Boards & Apparel LLC TLC Yoga Spa Trulydivine 2 Twang & Twig Uptown Eyes US Pawn
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Performance Measure C: Number of new businesses in Fayetteville

Number: 38 (including 23 homegrown)
15 Arkansas Gold/Silver Exchange
Belle Boutique
Best Buy Mobile
Best Nails
Domingo's
Furnish123
Hair Salon/Solar Nails
HuHot Mongolian Grill
IMWell Health
Millennium Life Center
Northwest Photography Works
PPW Productions
Riggins Construction & Development Inc.
Sebag Clinic
Trade Shop

Performance Measure D: Employee headcount attributed to new business

Number: 95

*Note: Majority of businesses chose not to share the number of employees.

Performance Measure E: Assistance in the coordination and development of a regional economic development council

- 1) Continue to collaborate with NWA Council and regional chambers to work on the recommendations of the Economic Development Strategic Plan for Northwest Arkansas.

Performance Measure F: Listing of contacts or potential businesses obtained through serving as the lead contact

- 1) Assisted a company in Lincoln that is interested to purchase a building and surrounding land (total 63 acres) located on Armstrong. Assistance included meeting with Washington County Assessor and answering questions posed by the company.

Success—Lincoln company confirmed to sign lease-to-buy agreement for the site.

- 2) Arranged visits with real estate agents for a church looking to move to Fayetteville.
- 3) Assisting site selection agents to relocate/expand a local charter school. Requiring building with 45,000SF or green space with 10-15 acres. Provided 6 green sites.

- 4) Assisted a manufacturing company (Project LSP) looking to expand. Required 10,000SF and rail spur on property. Unable to offer any site due to zoning regulations and a lack of properties with spurs (Identified 2 sites but zoning does not allow such manufacturing use).
- 5) Assisted an inquiry from Italy to get in touch with AEDC for tax information and incentives for the future expansion of a production plant in Arkansas.
- 6) Assisted an inquiry to find an 8,000SF building and a 3,000 SF building to relocate 2 of their subsidiary companies. Submitted multiple sites.
- 7) Assisted an AARP district coordinator to find office space to be written off by owner as a tax credit. Coordinator confirmed 2 available sites.
- 8) Met with State of Arkansas Finance & Administration Department employee now located in NWA who is available to assist new businesses with tax information.
- 9) Met with the regional manager for Five Guy Burgers and Fries. She was looking for suitable sites to place a store in Fayetteville. The franchisee is from North Little Rock and she has plans to open 4 stores in northwest Arkansas.
- 10) Assisted a site selection consultant with questions about Nelson's Crossing and north Fayetteville. His client is a yoghurt store.
- 11) Met with a perspective entrepreneur interested to set up an automotive repair shop in Fayetteville.
- 12) Met with a real estate agent from Fort Smith interested to move to Fayetteville to be closer to her child.
- 13) Assisted a perspective entrepreneur with questions about the restaurant industry in Fayetteville. He is from Missouri and is interested to relocate here.
- 14) Working on Project Sweetness. The client is a food manufacturer looking for 150 acres, with rail and highway, and the site must not be in a flood plain. Potential investment is between \$360 - \$580 million within 5 years, and 450 jobs with average pay of \$22/hr. Submitted one site north of the city.
- 15) Assisted one inquiry starting a tea/birthday party business to obtain zoning compliance. Company expected to open February of 2011.
- 16) Received an inquiry for a 16,811 SF building with 113 parking spaces. The customer is a government agency. Submitted 4 buildings.
- 17) Communicated with Rural Sourcing of Jonesboro that is thinking of expanding to northwest Arkansas next year. No decision on the move yet.

- 18) Submitted an RFI for Project Shrink Wrap. This project is looking to lease a 150,000 SF building for manufacturing packaging for the food industry. One of Hanna's buildings was recommended.
- 19) Assisted one inquiry to obtain zoning compliance. Company is a Residential & Commercial Development Agency expected to open on January 11, 2011. Expected 12 new, FTE hires.
- 20) Assisted inquiry looking for demographic and labor statistics. Inquirer has leased a building on 550 Dickson (formerly Wow Sushi Restaurant) and will open a Mexican restaurant chain restaurant. Expected opening is in April 2011 with hires of 25-40 people, with a mix of full/part time employees.
- 21) Assisted an inquiry looking to purchase a 5,000SF warehouse/building, requesting I-1 zone with 1+ acres of land. Submitted one site on S. School and one on Gregg St.
- 22) Worked on finding if there were any distressed multifamily projects in Fayetteville for sale. This was in response to an inquiry.
- 23) Continuing discussion with a prospect interested to start a commercial airline at Drakefield. Mr. Raymond Van Hook of Springdale made presentation to the Drakefield Airport Board on Dec. 9th.
- 24) Assisted an inquiry on starting a business in Fayetteville. Inquirer is from Farmington and has arranged to put a carousel ride in the mall.
- 25) Assisted with a general inquiry from Orlando, FL.

Performance Measure G: Implementation of a Business Registry

- 1) Assisted to disseminate information on FAQs developed by the City. FAQs are available on the Economic Development web pages as well as on the city's website.
- 2) In the process of creating an avatar with explanation of who needs/how to obtain a business license and will be placed in the Economic Development web pages.
- 3) Worked with city management to include opt-in check box to receive bids on the application form. Intent is to inform opt-in Fayetteville companies about city bids and through the process, keep public funds in the city.
- 4) Continue to inform prospective entrepreneurs of the upcoming business registry requirement effective November 1, 2011.

4. Strengthened Relationship with the AEDC and Regional Economic Development Organizations

Performance Measure A: Regular meetings with AEDC staff & commissioners, Green Valley Corporation staff, ARTP staff & other relevant organizations

AEP/SWEPCO

ARE-ON

Arkansas Economic Development Commission

Arkansas State Highway & Transportation Department

City of Fayetteville—Strategic Planning & Consulting

Entergy Arkansas

Fayetteville Advertising & Promotion Commission

Fayetteville City Planning

U of A Arkansas High Performance Computing Center

Arkansas & Missouri Railroad

Arkansas Attorney General

Arkansas Department of Finance & Administration

Arkansas Economic Development Commission

Arkansas Research & Technology Park

Arkansas State Chamber

Arkansas World Trade Center

City of Fayetteville—Planning

Entergy Arkansas

Fayetteville Executive Airport – Drake Field

Fayetteville Public School District

Fayetteville Town Center

Northwest Technical Institute

NWA Council

UA Arkansas High Performance Computing Center

UA College of Engineering

UA Department of Political Science

UA Division of Agriculture, Community and Economic Development

UA National Center for Reliable Electric Power Transmission

UA Research and Economic Development

UA Technology Development Foundation

UALR Institute of Economic Advancement

Washington County Assessor

Washington County Office

Performance Measure B: Documented efforts and participating in regional partnership

- 1) Continue to attend NWA Council meetings to work on the strategic plan.
- 2) Assisted Rogers-Lowell Chamber to contact University of Arkansas SIFE program coordinators, to learn more about adopting the GreeNWay Initiative program by using SIFE students from NWACC.
- 3) Working to develop a national Chamber alliance for promoting clean and sustainable energy initiatives.
- 4) Held a Construction and Developers Banquet that was "Regional" in theme. The speaker was Don Bacigalupi, Director of Crystal Bridges Museum of American Art. Eleven awards were given to recognize various projects in NWA that were completed in 2009/2010.
- 5) Initiated discussion with Arkansas World Trade Center to participate in its regional programs to benefit local companies. Initial collaboration included publicizing classes that WTC is initiating in the area of international business.
- 6) Working with Bentonville Chamber to share real estate quarterly reports issued by Xceligent.
- 7) Fayetteville took the lead in conducting the Cost of Living Index while Bentonville took the lead on providing real estate reports on commercial, industrial, and retail.
- 8) Continue with monthly chamber executive meetings.

Performance Measure C: Positive relationship with AEDC & appropriate communicated vision for Fayetteville

- 1) Continue to assist and refer companies to AEDC to investigate the availability of incentives for relocation and expansion.

- 2) Arranging for another visit from AEDC site selection staff to measure available industrial spaces.
- 3) Continue to work with business development staff from AEDC to respond to inquiries.

Performance Measure D: AEDC understanding of firm's primary contact responsibility

- 1) AEDC staff and Economic Development team regularly contacted each other on company and site selection items.
- 2) Successfully worked together to obtain tax resolutions for Delta Electronics. Received resolution approvals from both City Council and County Quorum Court.
- 3) Met with Jessica Breau, AEDC regional staff, to go over economic development activities.
- 4) AEDC staff contacted Economic Development team, and vice versa for updates on site selection inquiries, available spaces, and potential business prospects.

5. Marketing Material Directed Toward Target Industries

Performance Measure A: Creation and distribution of industry packets

- 1) Completed 5 industry targeted brochures/handouts. Targets are Clean/High Tech, National or Regional Headquarters for Non-Profits, Experience Economy, Manufacturing, and Healthcare/Medical.
- 2) Completed "Why Invest in Fayetteville" and "Major Employers" inserts. Working on the community information.
- 3) Developing a list of 40 reasons on setting up a business in Fayetteville.

Performance Measure B: Creation of additional promotional materials such as DVDs, etc.

- 1) Completed scripts for 3 videos. CGI came to Fayetteville and filmed videos on Oct. 26 & 27, 2010. Videos will be placed on Economic Development web pages.
- 2) Working on a partnership with the City to produce a video to promote the city. The *Today in America* is the vendor. Filming took place on November 4th. Videos will be produced in DVDs to be included in packets sent to perspective new businesses.
- 3) The filming crew of the Today in America segment came to the city to do the shooting.

Performance Measure C: Creation of city approved "incentive booklet" containing highlights on why companies should locate in Fayetteville

(begin reporting in 6th quarter)

6. Market Statistics and Demographics

Performance Measure A: Utilize & provide updated market, trend and demographic analyses through current studies

- 1) Added statistical data to web pages. Also continued to list new business openings and grants/federal funding awarded to local companies.
- 2) Continue to upload new businesses that have registered with the state to open in Fayetteville.
- 3) Continue to format the list of available commercial, retail and industrial spaces (68 total).

7. Economic/Business Development Activities

A. Business Attraction

- 1) Attended the Washington County Finance Committee meeting on Oct. 11 and the Fayetteville City Council on behalf of Delta Electronics. Tax resolutions from both the city and county were approved.
- 2) Promoted a breakfast meeting hosted by the Arkansas State Chamber to out-reach and inform local businesses about Issues 2 & 3 that would be on the November ballot.
- 3) Responded to an inquiry for a list of manufacturers in Fayetteville.
- 4) Provided marketing materials to promote Fayetteville as an investment center to attendees (from out of town) of a meeting in UA National Center for Reliable Electric Power Transmission.
- 5) Provided resources to HuHot Mongolian Grill to find new workers for the restaurant and to promote its grand opening on January 17th.
- 6) Assisted a new company to connect with resources for new job hires. Directed them to the Job Guide, Nation Jobs, and AR Dept. of Workforce Services. Expected to hire 3-9 FTEs.
- 7) Assisted one inquiry to find demographics and statistics for the area; directed them to the Economic Development pages, AR Site Selection pages, and the Bureau of Labor Statistics.
- 8) Assisted an inquiry opening a Mexican restaurant to find demographic and labor statistics about Fayetteville. Restaurant expected to open April 2011 in the former *Wow Sushi* location on Dickson St. Expecting to hire 25-40 part/full time employees. Mailed relocation packets to the four managers that have already been hired for this new location.
- 9) Fielded a request for a prospect looking to purchase a 5,000SF warehouse, I-1 zoned, 1+ acre. Submitted two available sites.
- 10) Attended presentation by Acticut, a Swedish based company that had its technology demonstration set up at Bargo Engineering.

B. Business Retention and Expansion

- 11) Organized a visit to the Fayetteville Executive Airport-Drakefield for local chief executives.
- 12) Assisted an inquiry from local real estate company to find residential demographic information.
- 13) GreenWAY certified two more companies: Ozark Natural Foods and UAMS. Currently auditing 4 additional. Current total of certified businesses stands at 20.
- 14) Gave interview to Northwest Arkansas Business Journal on the Construction & Developers Banquet. Banquet was to recognize area architects and developers for their completed projects in Northwest Arkansas. Article would be published on Nov. 1.
- 15) Promoted the "Rockin with the Razorbacks" event to the community to bring traffic to the Northwest Arkansas Mall to shop, eat, and participate in the event.
- 16) Promoted and supported the Bikes, Blues, and BBQ to encourage visitors to the event.
- 17) Disseminated information about the City Plan 2030. Encourage businesses to participate in the town hall meetings.
- 18) Organized four chamber committees to meet with city staff to discuss the City Plan 2030.
- 19) Participated in the 120th year celebration of Northwest Arkansas Times in the Town Center.
- 20) Attended a meeting with Camp Alliance, a pilot program focused to aid with transitioning soldiers and families in and out of deployment. If funded, project will be located in Springdale.

C. Infrastructure

- 21) Collected updated specs for 8 buildings listed on state site selection web pages.
- 22) Added 3 newly available buildings onto state site selection pages.
- 23) Toured an available building in Drakefield.
- 24) Met with City of Fayetteville Planning Commission about adapting language changes to zoning regulations for I-1 and I-2 zones.
- 25) Attended Workforce Advisory meeting at Northwest Technical Institute to discuss the future of operations of Ozark Regional Transit.
- 26) Met with Pepper Bottle Technologies to discuss the new layout and accessibility of the Economic Development web pages.

- 27) Met with Bartlett & West, a company that was interested in the GIS software capabilities used by the Economic Development team and how it relates to the state site selection software.
- 28) Attended League of United Latin American Citizens (LULAC) monthly meeting.
- 29) Attended the quarterly Economic Issues Breakfast given by Center for Business and Economic Research.
- 30) Attended USGBC meeting over why companies should or shouldn't attain a LEED certification.
- 31) Attended the dedication ceremony for the Enterprise Center at the Arkansas Research and Technology Park.
- 32) Participated in the public forum for City Plan 2030.
- 33) Handled 2 comments and answered requests from residents with regards to economic development in general.
- 34) Continued to search for grant sources and to develop grant projects.
- 35) Met with the university to discuss new possible collaborative work for economic development.
- 36) Met with the Superintendent of the Fayetteville School District to discuss the potential of a private-public partnership between the District and local major employers to develop a workforce program that will benefit high school students who are entering the workforce after graduation and help local employers to find quality high school workers.
- 37) Attended City Council meetings.
- 38) Attended UA Health Fair to visit with exhibitors and introduce economic development team as point of contact for the city.
- 39) Attended *Innovate AR* meeting to get to know three start-up companies.
- 40) Met with the President of SIFE to discuss possible projects that SIFE students can undertake in partnership with local employers. Possible area of collaborative work is in the area of Career Readiness Certification.
- 41) Met with the President and Marketing Manager of Arkansas-Missouri Railroad to discuss the possibility of putting a spur to the Industrial Park.
- 42) Working with the UA Division of Agriculture Community and Economic Development section and UALR Institute of Economic Advancement on being one of the session's speakers for Breakthrough Solutions Conference in North Little Rock on December 2, 2010.

- 43) Arranged to meet with UA's Arkansas High Performance Computing Center to be familiar with the ARE-ON program and to determine if it can be promoted in our business attraction efforts.
- 44) City of Fayetteville successfully won the Home Depot grant. One of only two cities in the nation to win the grant. Economic Development team was part of the overall city group that worked to get this grant.
- 45) Attended a Grant Workshop in Fort Smith on December 8th. The workshop talked about grant opportunities from 4 state agencies. Many of them are for rural and/or small communities.
- 46) Working with the UA Department of Political Science that has just started a Non-Profit certification program. On discussion is the marketing and promotion of the program to local non-profit organizations.
- 47) Worked with the city leadership on the announcement of the Walton Arts Center expansion plans.
- 48) Participated as a panel speaker for the "Breakthrough Solutions Conference" in North Little Rock on Dec. 1-2.
- 49) Was contacted by the university for assistance to place two interns in businesses.
- 50) Met with executives of local non-profits to discuss the feasibility of having some of them be part of the Economic Development Ambassador team.
- 51) Assisted an inquiry to find employee totals for the 10 largest companies in Fayetteville.
- 52) Participated in Arkansas Site Selection Consultants survey to get feedback for ways to restructure the data collection for available buildings and green spaces.
- 53) Gave testimony to a University reporter about the economic stability of Fayetteville.
- 54) Attended a meeting with the University of Arkansas Economic Development team, UA High Performance Center and ARE-ON, to better understand their infrastructure, available services and possible partnerships.
- 55) Assisted the city with getting the current number of employees for major local employers.
- 56) Economic Developer, Curtis Northcutt, completed and passed the LEED Green Associate exam to become the first LEED GA for a Chamber staff in the state of Arkansas.
- 57) Worked on compiling "40 Reasons to Set Up a Business in Fayetteville". This is a promotional piece to be put on print, on the website and in the marketing packet.

58) Gathered information on business related training and seminars and placed them on the website.

59) Wrote economic development related articles for the Chamber monthly insert.

a) FFEAC

60) Participated in the FFEAC Working Session to determine strategic directions to take in the future.

61) Attended the FFEAC monthly meetings.

62) Attended the FFEAC Transportation Sub-Committee presentation to the city and public.

63) Met with some chairs of the FFEAC committees to discuss the logistics of how to celebrate the successes/achievements of FFEAC that took place in 2010 by the various committees.

b) GreenWAY

64) The GreenWAY program received mention in the category of "Excellence in Environmental Stewardship" at the E3 Sustainability Conference in Neosho, MO.

65) Gave interview to the Northwest Arkansas Business Journal on the GreenWAY Initiative, article was published mid-October.

66) Attended the Industrial Awareness Seminar at the Waste Water Treatment Plant. Gave a speech about the GreenWAY Initiative to all in attendance.

67) Participated in Chambers for Innovation in Clean Energy conference call, to begin working for the launch date for this initiative.

68) Gave an interview to UAMS in Little Rock on the recent GreenWAY certification earned by UAMS-Northwest. Article was published on UAMS website in December 2010.

69) Held 4th quarter GreenWAY trainings on "Green Culture in the Workplace".

70) Spoke to the FFEAC Green Economy Group on 2010 results for GreenWAY and the progress of Chambers for Innovation and Clean Energy (CICE).

71) The GreenWAY Initiative will have an additional part time position, 20 hours per week, to work on the program. Opening is done in partnership with Energy Corps where the pay for employee is a 1-1 match. Energy Corps also opened 5 other positions in Fayetteville.

72) Conducted a GreenWAY consultation with Haas Hall Academy. Haas Hall is expanding into the available space formerly occupied by World Gym (Paradigm building). Total footprint will be nearly 45,000SF. Expected completion for expansion is August 2011.

73) Created and distributed the second edition of *The GreeNWAY Press*. Newsletter was sent to GreeNWAY businesses, committee members, and FFEAC Green Economy Group.

Non-Profit – Fayetteville

Applied Sustainability Center – University of Arkansas
Arkansas Artist's Laboratory Theatre

Arkansas High Performance Computing Center – University of Arkansas
Arkansas Job Corp
Boys and Girls Club
Center for Business & Economic Research
Fayetteville Public Library
Grove Church
National Center for Appropriate Technology
Northwest Arkansas Free Health Clinic
Ozark Guidance
Razorback Transit

Businesses – Fayetteville

Arvest Bank
BancorpSouth
Bargo Engineering
Bekaert
Bio-Tech Pharma
Camp Alliance, Inc.
CaseStack
Coldwell Banker Faucette Real Estate
Coldwell Banker—Matt Lawrence
Cooper Power System
Coover-Clark & Associates
Corazon LLC
Cromwell Architects Engineers
Cross fit Fayetteville
Curves
Delta Electronics
DOXA
EMTEC
Fayetteville Town Center
Flying Investments, LLC
Freedom 5:One Inc.
Friday, Ederidge, and Clark
Garver Engineers
Generations Chiropractic Wellness Center
Greenwood Gearhart Inc.
Haas Hall Academy
Herzog Financial Network
Holiday Inn Express Hotel & Suites
HuHot Mongolian Grill
Jo Ann Fabric and Craft Stores

Kenton Ross DMD
LGW Inc.
Lindsey & Associates
Mae Farms
Maestri Counseling
Meek's Building Centers
Million Air Fayetteville
Mynet
Natural Building Solutions
NextGen Illumination, Inc.
Noland Waste Water Treatment/CH2M HILL
Northwest Arkansas Mall
Northwest Arkansas Times
Northwest Photography Works
Northwestern Mutual Financial Network
NWA Times
Ozark Natural Foods
Phigenics
Pinnacle Foods Corporation
Pizza Hut
Polk Stanley Wilcox Architects
Sage Partners
Serrabellum Digital Design
Steak N Shake
Stephens, Inc.
Subway
TEC Staffing Services
Terra Studios
The Errand Girl
Tire Tracks Tire & Brake Center
Treadwell Institute
Tree Climbers
Tysons
UAMS-Northwest
Virtual Incubation Company, LLC
Walton Arts Center
Whittenberg, Delony & Davidson
William's Tractor

Businesses & Non-Profits – Outside Fayetteville

AT & T

66 Federal Credit Union

Little Rock

Springdale

AARP	Garfield
ACE Glass	Lowell
Acticut	Sweden
AEP/SWEPCO	Shreveport, LA
Bartlett & West Engineers	Hiawatha, KS
BedRock Commercial Partners, LLC	Irving, TX
Bright Technologies, LLC	Lincoln
CGI	Rochester, NY
Chipotle Mexican Grill	Pflugerville, TX
Codes Co., Ltd.	Korea
Connect-Arkansas	Little Rock
Cromwell Architects Engineers	Little Rock
Crystal Bridges Museum of American Art	Bentonville
Delta Group Electronics	Prairie Grove
Diversified Construction Material and Services, LLC	Little Rock
Dogwood Literacy Council	Siloam Springs
Eco-Potential	Springdale
Fine Technix	Korea
Five Guys Burgers and Fries	North Little Rock
Flake and Kelley Commercial	Springdale
Flintco Inc	Springdale
Harrison French & Associates	Bentonville
Holiday Inn	Springdale
Irwin Partners	Little Rock
Mi Casa Real Estate	Springdale
Milestone Construction	Springdale
Morrison Wanger Real Estate, Inc.	Rogers
Northwest Arkansas Business Journal	Springdale
Northwest Technical Institute	Springdale
Opera in the Ozarks	Rogers
Ozark Folk Ways	Winslow
Ozarks Water Watch	Missouri
Pepper Bottle Technologies	Temecula, CA
Rausch Coleman Homes	Farmington
Rural Sourcing Inc.	Jonesboro
SSI, Inc.	Tontitown
State of Arkansas Dept. of Finance & Admin.	Little Rock
Stitt Energy Systems	Rogers
TabCo.	Oklahoma
TownePlace Suites Fayetteville	Johnson
UAMS	Little Rock
US Green Building Council	Springdale

USA Consulting Engineers
Weichert Realtors
Xceligent

Springdale
Springdale
Independence, MO