

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Boudreaux
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
July 03, 2012**

A meeting of the Fayetteville City Council will be held on July 03, 2012 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:

Agenda Additions:

1. **Advertising & Promotion Commission Replacement:** Mayor Jordan asked that he be replaced on the A&P Commission. He nominated Alderman Bobby Ferrell to replace him.

ALDERMAN BOBBY FERRELL WAS APPOINTED.

2. **Amend §94.05 Use of Fireworks:** An ordinance to amend §94.05 **Use of Fireworks** of the Fayetteville Code to allow consumer fireworks to be discharged on Labor Day if a burn ban has prohibited the discharge of any consumer fireworks during the normal July 1st, 2nd, 3rd, and 4th period

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5509

113 West Mountain Fayetteville, AR 72701 (479) 575-8323 accessfayetteville.org
Telecommunications Device for the Deaf TDD/TTY (479) 521-1316

A. Consent:

1. Approval of the June 19, 2012 City Council meeting minutes. **Minutes Removed**
2. **Bid #12-53 Mid-America Pool Renovation, Inc.:** A resolution awarding Bid #12-53 and authorizing a contract with Mid-America Pool Renovation, Inc. in the amount of \$256,490.00 for the construction of Wilson Park pool renovations, approving a ten percent (10%) project contingency and approving a budget adjustment.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 137-12

3. **2012 Assistance to Firefighters Grant:** A resolution authorizing an application for a 80/20 matching 2012 Assistance to Firefighters Grant, through the Federal Emergency Management Agency (FEMA), in the amount of \$179,410.00 for the purchase of wildland firefighting personal protective equipment by the Fire Department.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 138-12

4. **Federal Emergency Management Agency Reimbursement:** A resolution approving a budget adjustment in the amount of \$129,391.00 to reimburse the Transportation Division for expenditures incurred as a result of Spring 2011 flooding which have been reimbursed by the Federal Emergency Management Agency and/or the State of Arkansas.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 139-12

5. **Steele Boulevard/Malco Theatre Entry Traffic Signal:** A resolution approving a budget adjustment in the amount of \$85,300.00 representing revenue for the installation of a traffic signal on Steele Boulevard at the entrance to the Malco Theatre.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 140-12

B. Unfinished Business:

1. **RZN 12-4108 (4847 W. Wedington Dr./Bank of Wynne):** An ordinance revoking R-PZD 07-2576 (Woodstock) and rezoning that property described in rezoning petition RZN 12-4108, for approximately 31.68 acres, located at 4847 West Wedington Drive from R-PZD, Residential Planned Zoning District 07-2576, to CS, Community Services; R-O Residential Office; NC, Neighborhood Conservation; and RSF-4 Residential Single Family Four Units Per Acre. ***This ordinance was left on the First Reading at the June 05, 2012 City Council meeting. This ordinance was left on the Second Reading at the June 19, 2012 City Council meeting.***

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5510

C. Public Hearing:

- 1. Water and Sewer Relocation Project Condemnation and Possession:** A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by Richard E. & Dorothy Brown, Bill R. & Doris A. Kisor, Wolfredrick & Serena McMichael, SM-WLJ FAC Owner, Inc., PCC Properties, LLC, Presbytery of Arkansas, and Dunnerstock Development, Inc. needed for water and sewer relocations along Arkansas State Highway 265 between Joyce Boulevard and the northern city limits.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 141-12

D. New Business:

- 1. Town and Gown Advisory Committee:** An ordinance enacting Article XXIV Town and Gown Advisory Committee (§33.360 through §33.365) of Chapter 33: Departments, Boards, Commissions, and Authorities of the Code of Fayetteville to provide for the creation of a Town and Gown Advisory Committee, and defining its composition, authority and duties.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5511

- 2. ADM 12-4144 3078 N. College Ave. Siebert Appeal:** A resolution to reverse the Planning Commission's decision to grant and thereby to deny the variance to Eric Siebert to operate his Shave the Planet business longer than 90 days as an outdoor mobile vendor.

TABLED TO THE SEPTEMBER 4, 2012 CITY COUNCIL MEETING.

City Council Tour: None

Announcements:

Adjournment: 8:30 p.m.

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Consent Agenda. Consent Agenda items shall be read by the Mayor and voted upon as a group without discussion by the City Council. If an Alderman wishes to comment upon or discuss a Consent Agenda item, that item shall be removed and considered immediately after the Consent Agenda has been voted upon.

Old business and new business.

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Public comments. Public comment shall be allowed for all members of the audience on all items of old and new business and subjects of public hearings. No electronic visual aid presentations shall be allowed, but the public may submit photos, petitions, etc. to be distributed to the City Council. If a member of the public wishes for the City Clerk to distribute materials to the City Council before this meeting, such materials should be supplied to the City Clerk office no later than 9:00 a.m. on the day of the City Council meeting. Any member of the public shall first state his or her name and address, followed by a concise statement of the person's position on the question under discussion. Repetitive comments should be avoided; this applies to comments made previously either to the City Council or to the Planning Commission when those Planning Commission minutes have been provided to the Aldermen. All remarks shall be addressed to the Mayor or the City Council as a whole and not to any particular member of the City Council. No person other than the Aldermen and the person having the floor shall be permitted to enter into any discussions without permission of the Mayor. No questions shall be directed to an Alderman or city staff member except through the Mayor.

Courtesy and respect. All members of the public, all city staff and elected officials shall accord the utmost courtesy and respect to each other at all times. All shall refrain from rude or derogatory remarks, reflections as to integrity, abusive comments and statements about motives or personalities. Any member of the public who violates these standards shall be ruled out of order by the Mayor, must immediately cease speaking and shall leave the podium.

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City Council Meeting:

July 3, 2012

Adjourn: 8:30 p.m.

Subject:	Roll				
Alderman Gray Was Absent	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	Absent			
	Boudreaux	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Mayor Jordan	✓			

8-0

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

Subject:	A E P Commission Appointment - Bobby Ferrell				
Motion To:		Appoint Bobby Ferrell			
Motion By:		Boudreaux			
Seconded:		Tennant			
Added to the Agenda	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	Absent			
	Boudreaux	✓			
Approved Bobby Ferrell	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Mayor Jordan				

7-0

Subject:	Fireworks Ordinance				
Motion To:		Add to the Agenda	Amend to Labor Day	2nd Read	3rd Read
Motion By:		Boudreaux	Boudreaux	Boudreaux	Boudreaux
Seconded:		Ferrell	Ferrell	Petty	Lewis
Added to the Agenda	Ferrell	✓	✓	✓	✓
	Adams	✓	✓	✓	✓
	Lewis	✓	✓	✓	✓
	Gray	Absent	Absent	Absent	Absent
	Boudreaux	✓	✓	✓	✓
	Kinion	✓	✓	✓	✓
	Petty	✓	✓	✓	✓
	Tennant	✓	✓	✓	✓
Next Page	Mayor Jordan				

7-0

7-0

7-0

7-0

Subject:	Fireworks Ordinance				
Motion To:		Pass			
Motion By:					
Seconded:					
Added to <u>the agenda</u> Approved as Amended 5509	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	Absent			
	Boudreaux	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Mayor Jordan				

7-0

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

Subject:	Consent				
Motion To:		Remove Minutes	Approve		
Motion By:		Adams	Tennant		
Seconded:		Lewis	Lewis		
Minutes were removed <u> </u> approved <u> </u> 137-12 thru 140-12	Ferrell	Absent during the vote.	✓		
	Adams	✓	✓		
	Lewis	✓	✓		
	Gray	Absent	Absent		
	Boudreaux	✓	Absent during the vote.		
	Kinion	✓	✓		
	Petty	✓	✓		
	Tennant	✓	✓		
	Mayor Jordan				

6-0

6-0

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

Subject:	RZN 12-4108 (4847 W. Wedington Dr./Bank of Wynne)				
Motion To:		3rd Read	Pass		
Motion By:		Petty			
Seconded:		Tennant			
B. 1 Unfinished Business <u>Passed</u> 5510	Ferrell	✓	✓		
	Adams	✓	✓		
	Lewis	✓	✓		
	Gray	absent	absent		
	Boudreaux	✓	✓		
	Kinion	✓	✓		
	Petty	✓	✓		
	Tennant	✓	✓		
	Mayor Jordan				

7-0

7-0

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

Subject:	Water and Sewer Relocation Project Condemnation and Possession				
Motion To:					
Motion By:		<i>Approve</i> <i>Adams</i>			
Seconded:		<i>Tennant</i>			
C. 1 Public Hearing <i>Passed</i> 141-12	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	<i>absent</i>			
	Boudreaux	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Mayor Jordan				

7-0

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

Subject:		Town and Gown Advisory Committee			
Motion To:		Amend appointee or spouse shall not be employee of City or U of A	2nd Read	3rd Read	Pass
Motion By:		Ferrell	Boudreaux	Boudreaux	
Seconded:		Kinion	Tennant	Tennant	
D. 1 New Business <u>Passed</u> 5511	Ferrell	✓	✓	N	N
	Adams	N	✓	✓	✓
	Lewis	N	✓	✓	✓
	Gray	Absent	Absent	absent	absent
	Boudreaux	N	✓	✓	✓
	Kinion	N	✓	✓	✓
	Petty	N	✓	✓	✓
	Tennant	N	✓	✓	✓
	Mayor Jordan				
		1-6	7-0	6-1	6-1

Subject:		ADM 12-4144 3078 N. College Ave. Siebert Appeal			
Motion To:		Table to the first meeting in September			
Motion By:		Ferrell			
Seconded:		Boudreaux			
D. 2 New Business Tabled to the Sept. 4 th cc mtg.	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	Absent			
	Boudreaux	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Mayor Jordan				
		7-0			



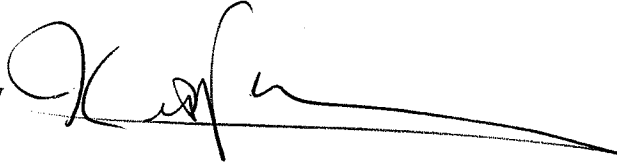
Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan

THRU: Sondra Smith, City Clerk

FROM: Kit Williams, City Attorney



DATE: July 5, 2012

RE: Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of July 3, 2012

1. **Fireworks Amendment:** An ordinance to amend §94.05 **Use of Fireworks** of the Fayetteville Code to allow consumer fireworks to be discharged on Labor Day if a burn ban has prohibited the discharge of any consumer fireworks during the normal July 1st, 2nd, 3rd and 4th period.
2. **Bid #12-53:** A resolution awarding Bid #12-53 and authorizing a contract with Mid-America Pool renovation, Inc. in the amount of \$256,490.00 for the construction of Wilson Park Pool Renovations, approving a 10% project contingency and approving a budget adjustment.
3. **2012 Assistance to Firefighters Grant:** A resolution authorizing an application for a 80/20 matching 2012 Assistance to Firefighters Grant, through the Federal Emergency Management Agency, in the amount of \$179,410.00 for the purchase of wildland firefighting personal protective equipment by the Fire Department.
4. **FEMA Reimbursement:** A resolution approving a budget adjustment in the amount of \$129,391.00 to reimburse the Transportation Division for expenditures incurred as a result of the Spring 2011 flooding which have been reimbursed by the Federal Emergency Management Agency and/or the State of Arkansas.

5. Steele Boulevard/Malco Theatre Entry Traffic Signal: A resolution approving a budget adjustment in the amount of \$85,300.00 representing revenue for the installation of a traffic signal on Steele Boulevard at the entrance to the Malco Theatre.

6. Water & Sewer Relocation Project Condemnation and Possession: A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by Richard E. & Dorothy Brown, Bill R. & Doris A Kisor, Woldfredrick & Serena McMichael, SM-WLJ FAC Owner Inc., PCC Properties, LLC., Presbytery of Arkansas, and Dunnerstock Development, Inc. needed for water and sewer relocations along Arkansas State Highway 265 between Joyce Boulevard and the northern city limits.

7. Town & Gown Advisory Committee: An ordinance enacting **Article XXIV Town and Gown Advisory Committee (§33.360 through §33.365) of Chapter 33: Departments, Boards, Commissions and Authorities** of the Code of Fayetteville to provide for the creation of a Town and Gown Advisory Committee, and defining its composition, authority and duties.

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Agenda Additions:

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1. **RZN 12-4108 (4847 W. Wedington Dr./Bank of Wynne):** An ordinance revoking R-PZD 07-2576 (Woodstock) and rezoning that property described in rezoning petition RZN 12-4108, for approximately 31.68 acres, located at 4847 West Wedington Drive from R-PZD, Residential Planned Zoning District 07-2576, to CS, Community Services; R-O Residential Office; NC, Neighborhood Conservation; and RSF-4 Residential Single Family Four Units Per Acre. ***This ordinance was left on the First Reading at the June 05, 2012 City Council meeting. This ordinance was left on the Second Reading at the June 19, 2012 City Council meeting.***

Left on the Second Reading

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Adjournment:

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DOCUMENT 00500 – AGREEMENT

BETWEEN OWNER AND CONTRACTOR

Contract Name/Title: CONSTRUCTION OF WILSON PARK POOL RENOVATIONS

Contract No.: _____

THIS AGREEMENT is dated as of the _____ day of _____ in the year 20__ by and between The City of Fayetteville, Arkansas and Mid-America Pool Renovation, Inc. (hereinafter called Contractor).

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The work under this Contract includes, but is not limited to:

Project includes repair of cracks within the pool structure and surrounding deck, removal of pool plaster interior and deck surface material, and replacement of pool and deck surface at Wilson Park pool located at 675 N. Park Avenue.

ARTICLE 2 - ENGINEER

2.01 The Contract Documents have been prepared by GARVER who is here in after called Engineer. GARVER assumes all duties and responsibilities, and has the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIME

3.01 TIME OF THE ESSENCE:

A. All time limits for milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 DATES FOR SUBSTANTIAL COMPLETION AND FINAL PAYMENT:

A. The Work will be Substantially Completed within 60 calendar days after the date when the Contract Times commence to run as provided in the

DOCUMENT 00500 – AGREEMENT (continued)

GENERAL CONDITIONS, and completed and ready for final payment in accordance with the GENERAL CONDITIONS within 70 calendar days after the date when the Contract Times commence to run.

3.03 **LIQUIDATED DAMAGES:**

- A. Owner and Contractor recognize that time is of the essence of this Agreement and that The City of Fayetteville will suffer financial loss if the Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the GENERAL CONDITIONS. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by The City of Fayetteville if the Work is not Substantially Completed on time. Accordingly, instead of requiring any such proof, The City of Fayetteville and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay The City of Fayetteville ~~Seven~~ ^{TWO} Hundred Fifty Dollars (\$250.00) for each calendar day that expires after the time specified above in Paragraph 3.02 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 3.02 for completion and readiness for final payment or any proper extension thereof granted by The City of Fayetteville, Contractor shall pay The City of Fayetteville ~~Seven~~ ^{Two} Hundred Fifty Dollars (\$250.00) for each calendar day that expires after the time specified for completion and readiness for final payment.

ARTICLE 4 - CONTRACT PRICE

- 4.01 The CITY OF FAYETTEVILLE agrees to pay, and the CONTRACTOR agrees to accept, as full and final compensation for all work done under this agreement, the amount based on the prices bid in the Proposal (BID FORM) which is hereto attached, for the actual amount accomplished under each pay item, said payments to be made in lawful money of the United States at the time and in the manner set forth in the Specifications.

AN

DOCUMENT 00500 – AGREEMENT (continued)

- 4.02 As provided in the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in the General Conditions. Unit prices have been computed as provided in the General Conditions.
- 4.03 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.

ARTICLE 5 - PAYMENT PROCEDURES

5.01 SUBMITTAL AND PROCESSING OF PAYMENTS:

- A. Contractor shall submit Applications for Payment in accordance with the GENERAL CONDITIONS. Applications for Payment will be processed by Engineer as provided in the GENERAL CONDITIONS.

5.02 PROGRESS PAYMENTS, RETAINAGE:

- A. The 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 Engineer, on or about the 15th day of each month during construction. All such payments will be measured by the schedule of values established in the GENERAL CONDITIONS (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or The City of Fayetteville may withhold, in accordance with the GENERAL CONDITIONS.
- a. 95% of Work Completed (with the balance being retainage).



DOCUMENT 00500 – AGREEMENT (continued)

b. 100% of Equipment and Materials not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to The City of Fayetteville as provided in the GENERAL CONDITIONS.

2. Upon Substantial Completion, The City of Fayetteville shall pay an amount sufficient to increase total payments to Contractor to 95% of the Contract Price (with the balance being retainage), less such amounts as Engineer shall determine, or The City of Fayetteville may withhold, in accordance with the GENERAL CONDITIONS.

5.03 FINAL PAYMENT:

A. Upon final completion and acceptance of the Work in accordance with the GENERAL CONDITIONS, The City of Fayetteville shall pay the remainder of the Contract Price as recommended by Engineer and as provided in the GENERAL CONDITIONS.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

6.01 In order to induce The City of Fayetteville to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents including the Addenda and other related data identified in the Bid Documents.
- B. 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, and furnishing of the Work.
- C. 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.



DOCUMENT 00500 – AGREEMENT (continued)

- D. Contractor has carefully studied all:
- (1) 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; and
 - (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site. Contractor acknowledges that The City of Fayetteville and Engineer 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.
- E. Contractor has obtained and carefully studied (or assumes responsibility of 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, and 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.
- F. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performing 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.
- G. Contractor is aware of the general nature of work to be performed by The City of Fayetteville and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings



DOCUMENT 00500 – AGREEMENT (continued)

identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
- J. 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

7.01 CONTENTS:

- A. The Contract Documents which comprise the entire Agreement between The City of Fayetteville and Contractor concerning the Work consist of the following and may only be amended, modified, or supplemented as provided in the GENERAL CONDITIONS:
 - 1. This Agreement.
 - 2. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed.
 - b. Contractor's Bid.
 - c. Documentation submitted by Contractor prior to Notice of Award.
 - 3. Performance, Payment, and other Bonds.
 - 4. General Conditions.



DOCUMENT 00500 – AGREEMENT (continued)

5. Supplementary Conditions.
6. Specifications consisting of divisions and sections as listed in table of contents of Project Manual.
7. Addenda numbers one (1) to two (2), inclusive.
8. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the GENERAL CONDITIONS.

ARTICLE 8 - MISCELLANEOUS

8.01 TERMS:

- A. Terms used in this Agreement which are defined in the GENERAL CONDITIONS shall have the meanings stated in the GENERAL CONDITIONS.

8.02 ASSIGNMENT OF CONTRACT:

- A. 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.



DOCUMENT 00500 – AGREEMENT (continued)

8.03 SUCCESSORS AND ASSIGNS:

- A. The City of Fayetteville and Contractor each binds himself, his 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.

8.04 SEVERABILITY:

- A. 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 The City of Fayetteville and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 FREEDOM OF INFORMATION ACT:

- A. City 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, the 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.



DOCUMENT 00500 – AGREEMENT (continued)

8.06 MATERIALMEN’S LIENS

- A. **No liens against this construction project are allowed.** Arkansas law (A.C.A. §§ 18-44-501 through 508) prohibits the filing of any mechanics’ or materialmen’s liens in relation to this public construction project. Arkansas law requires and the Contractor promises to provide and file with the Circuit Clerk of Washington County a bond in a sum equal to the amount of this contract. Any subcontractor or materials supplier may bring an action for non-payment of labor or materials on the bond. The Contractor promises to notify every subcontractor and materials supplier for this project of this paragraph and obtain their written acknowledgement of such notice prior to commencement of the work of the subcontractor or materials supplier.

OTHER PROVISIONS: Not Applicable.

IN WITNESS WHEREOF, The City of Fayetteville and Contractor have signed this Agreement in quadruplicate. One counterpart each has been delivered to Contractor and Engineer. Two counterparts each has been delivered to The City of Fayetteville. All portions of the Contract Documents have been signed, initialed, or identified by The City of Fayetteville and Contractor or identified by Engineer on their behalf.



DOCUMENT 00500 – AGREEMENT (continued)

This Agreement will be effective on _____, 20__, which is the
Effective Date of the Agreement.

CONTRACTOR Mid-America CITY OF FAYETTEVILLE _____
Pool Renovation, Inc. _____
By: [Signature] By: _____
Title: President Title: _____

(SEAL) (SEAL)
Attest [Signature] Attest _____
Address for giving notices Address for giving notices

5929 E 154th Terrace _____
Grandview MO, 64030 _____

License No. 0238700512 (attach evidence of authority to
sign and resolution or other documents
authorizing execution of Agreement)

Agent for Service of process

Business Filings, Inc.
124 Capitol Ave. West
5th. 1900
Little Rock, AR 72201

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

Approved As to Form:

By: _____

Attorney For: _____

END OF DOCUMENT 00500

[Signature]



File Number: 2003254244052

Charter # X00540361

Date Filed: 08/25/2003 08:47 AM

Matt Blunt

Secretary of State

Corporations Division
P.O. Box 778 / 600 W. Main Street, Rm 322
Jefferson City, MO 65102

Registration of Fictitious Name

(Submit in duplicate with filing fee of \$7)

(Must be typed or printed)

This information is for the use of the public and gives no protection to the name being registered. There is no provision in this Chapter to keep another person or business entity from adopting and using the same name. (Chapter 417, RSMo)

The undersigned is doing business under the following name, and at the following address:

Business name to be registered:

MID-AMERICA POOL RENOVATION, INC

Business Address:

6604 East 224th Terrace

(P.O. Box alone not acceptable)

City, State and Zip Code:

Peculiar, MO 64078

The parties having an interest in the business, and the percentage they own are (if a business entity is owner, indicate business name and percentage owned. If all parties are jointly and severally liable, percentage of ownership need not be listed):

Name of Owners,

Individual or

Business Entity

Street and Number

City and State

Zip Code

If listed,
Percentage
of ownership
must equal
100%

Mid America Pool Renovations, Inc. 6604 E 224th Terrace 100
Peculiar, MO 64078

In Affirmation thereof, the facts stated above are true:

(The undersigned understands that false statements made in this filing are subject to the penalties of a false declaration under Section 575.060 RSMo 1986.)

(Authorized Signature)

ALUSYN KATEUSZ, Pres 8-15-03

(Printed Name)

(Date)

(Authorized Signature)

(Printed Name)

(Date)

(Authorized Signature)

(Printed Name)

(Date)

State of Missouri
Fictitious Creation 1 Page(s)



T0325116593

FOR OFFICIAL USE ONLY

Check # _____

Amount: _____

Filer's Initials: _____

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO SEEK CONDEMNATION AND POSSESSION OF CERTAIN LANDS OWNED BY RICHARD E. & DOROTHY BROWN, BILL R. & DORIS A. KISOR, WOLFREDRICK & SERENA MCMICHAEL, SM-WLJ FAC OWNER INC., PCC PROPERTIES LLC, PRESBYTERY OF ARKANSAS, AND DUNNERSTOCK DEVELOPMENT, INC. NEEDED FOR WATER AND SEWER RELOCATIONS ALONG ARKANSAS STATE HIGHWAY 265 BETWEEN JOYCE BOULEVARD AND THE NORTHERN CITY LIMITS

WHEREAS, the City of Fayetteville and certain property owners have been unable to agree on a fair price for the portions of property owned by each of them which is needed for easements to facilitate water and sewer relocations, and

WHEREAS, the City of Fayetteville needs to gain possession of these property promptly to begin work on water and sewer relocations along Arkansas State Highway 265 between Joyce Boulevard and the northern city limits.

NOW, THEREFORE, 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 the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by Richard E. & Dorothy Brown that is needed for a utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by Bill R. & Doris A. Kisor that is needed for a utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by Wolfredrick & Serena McMichael that is needed for a utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

Section 4. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by SM-WLJ FAC Owner, Inc. that is needed for a

utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

Section 5. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by PCC Properties LLC that is needed for a utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

Section 6. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by Presbytery of Arkansas that is needed for a utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

Section 7. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by Dunnerstock Development, Inc. that is needed for a utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

PASSED and APPROVED this 3rd day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

ARTICLE XXIV TOWN AND GOWN ADVISORY COMMITTEE

33.360 Purpose and Establishment

There is hereby established the Town and Gown Advisory Committee. This Committee shall be a forum for collaboration between the City of Fayetteville and the University of Arkansas on mutually relevant issues including, but not limited to, campus expansions, the need for student housing both on and off campus, and parking and noise in areas adjacent to or nearby the campus. The Committee is empowered only to advise and make recommendations on a periodic basis to both the City Council and the University of Arkansas on such issues, and to adopt rules for the conduct of its own business.

33.361 Composition

The Town and Gown Advisory Committee shall be comprised of twenty-one (21) voting members, consisting of the following:

- (A) One (1) member of the Committee shall be a member of the City Council appointed by the Mayor;
- (B) One (1) member shall be a resident of Ward 1 appointed by the City Council;
- (C) One (1) member shall be a resident of Ward 2 appointed by the City Council;
- (D) One (1) member shall be a resident of Ward 3 appointed by the City Council;
- (E) One (1) member shall be a resident of Ward 4 appointed by the City Council;
- (F) One (1) member shall be a business owner in the City or a representative of the City development community appointed by the City Council;
- (G) One (1) member shall be a University of Arkansas student living in the City appointed by the City Council;
- (H) Seven (7) members shall be City staff appointed by the Mayor, and shall include one (1) representative of the Mayor's office, one (1) representative of Development Services-Current Planning, one (1) representative of Development Services-Community Services, one (1) representative of Police, one (1) representative of Fire, one (1) representative of Parking, and one (1) representative from either Transportation or Utilities.

- (I) Seven (7) members shall be representatives from the University of Arkansas, to be selected by the Chancellor or the Chancellor's designee, and shall include one (1) representative of the Chancellor's Office, one (1) representative of Government Relations, one (1) representative from the Division of Student Affairs, one (1) representative of Parking and Transit, one (1) representative of Athletics, one (1) representative of Facilities Management, and the current Associated Student Government President.

33.362 Terms Of Office

Members appointed by the City Council shall serve a two (2) year term. Members appointed by the Mayor, with the exception of the City Council member appointed by the Mayor, shall serve at the pleasure of the Mayor. Members appointed from the University of Arkansas shall serve for such period as to be determined by the University.

33.363 Officers and Quorum

At the first regularly scheduled Committee meeting of each calendar year, the members of the Committee shall elect from among themselves a Chairperson and a Secretary, who shall operate as Vice-Chair. A majority of the whole number of members shall constitute a quorum to conduct business, and a majority vote of those present shall be sufficient to approve or deny any matter before the Committee.

33.364 Meetings

The Town and Gown Advisory Committee shall meet at least once per quarter to conduct regular business, at a time and place that is mutually convenient to the membership. The Town and Gown Advisory Committee may meet more frequently if needed.

RESOLUTION NO. _____

**A RESOLUTION TO REVERSE THE PLANNING COMMISSION'S
DECISION TO GRANT AND THEREBY TO DENY THE VARIANCE TO
ERIC SIEBERT TO OPERATE HIS SHAVE THE PLANET BUSINESS
LONGER THAN 90 DAYS AS AN OUTDOOR MOBILE VENDOR**

WHEREAS, the Planning Commission by a 6 yes, 1 no and one abstain granted the variance to Eric Siebert to continue operating his Shave the Planet business as an outdoor mobile vendor at 3078 North College for a longer period than 90 days.

**NOW, THEREFORE 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 reverses the Planning Commission's decision to grant and thereby denies the variance to Eric Siebert to operate his Shave the Planet business longer than 90 days as an outdoor mobile vendor.

PASSED and APPROVED this 3rd day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Handed out at the City Council meeting 7-3-12



THE CITY OF FAYETTEVILLE, ARKANSAS
ADMINISTRATION
113 West Mountain
Fayetteville, AR 72701
P (479) 575-8330 F (479) 575-8257

www.accessfayetteville.org

TO: Fayetteville City Council
FROM: Mayor Lioneld Jordan
DATE: June 28, 2012
RE: Advertising and Promotion Commission Appointment

As Mayor, my first priority is attention to City business and the sound management of our resources and public services. There will be many projects coming up in addition to the day-to-day public services that the City provides upon which I will be devoting my full attention, and, therefore, I have decided to nominate a replacement for the position I now hold on the Fayetteville Advertising and Promotion Commission.

This is to inform you that I wish to nominate Alderman Bobby Ferrell for appointment to serve on the Fayetteville Advertising and Promotion Commission for the remainder of this year to replace me in the position that I currently hold. Alderman Ferrell has served well and honorably for 8 years on the City Council and is Vice Mayor of the City Council, and I have complete confidence in his ability to serve in this position. I hope that you will act upon this at the next City Council meeting on July 2, 2012. I will be bringing this item to the Council for your consideration and approval at that time.

A handwritten signature in black ink, which appears to read "Lioneld Jordan", written in a cursive style.

Advertising And Promotion Commission

DESCRIPTION: The Advertising and Promotion Commission was created on March 1, 1977 with Ordinance No. 2310 pursuant to the provisions of A.C.A § 26-75-605, by the City Board to administer the Advertising and Promotion Fund. The A&P Fund can be used for the advertisement and promotion of the City and its environs, and/or construction, reconstruction, repair, maintenance, improvement, equipping, and operation of public recreation facilities. The Commission may contract with agencies and incur such administrative costs that it deems necessary to conduct its business.

One percent of all revenues generated by the local Hotel, Motel, and Restaurant (HMR) Tax shall be credited to the A&P Fund and made available for purposes determined by the A&P Commission. The funds shall be used for the promotion and encouragement of tourism and conventions, while not allowing such special revenues to be utilized for expenditures that are normally paid from general revenues of the City.

TERMS: Staggered four-year terms, ending March 31st

MEMBERS: The Commission shall be composed of **seven** members as follows:

- **Four** members shall be owners or managers of businesses in the **tourism industry** (at least three must be owners or managers of hotels, motels, restaurants, or other establishments engaged in the business of selling food for consumption on premises).
- **Two** members shall be members of the **governing body of the City** and selected by the governing body and shall serve at the will of the governing body.
- **One** member shall be from the public at large.

APPOINTMENT: Vacancies on the Commission, whether resulting from expiration of a regular term or otherwise, in any of the four tourism industry positions or the at-large position shall be filled by appointment made by the remaining members of the Commission, with the approval of the governing body of the City.

CONTACT: Marilyn Heifner, Fayetteville Town Center, 521-5776, mheifner@twncenter.com.

PUBLIC NOTIFICATION: A weekly meetings list is prepared by the City Clerk's office which is distributed to the press and posted on the City's web site: www.accessfayetteville.org

MEETING TIMES: Regular meetings are held the second Monday of each month at 2:00 p.m. in the Fayetteville Town Center.

Handed out at the
7-3-12 City Council mtg.

AGENDA REQUEST

FOR: COUNCIL MEETING OF JULY 3, 2012

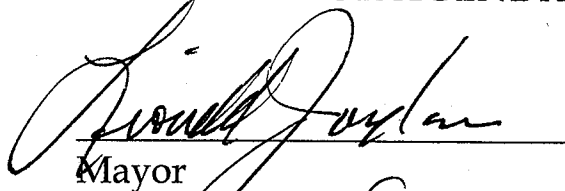
FROM:

LIONELD JORDAN, MAYOR

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Amend §94.05 Use Of Fireworks Of The Fayetteville Code To Allow Consumer Fireworks To Be Discharged On The First Saturday After A Burn Ban That Has Prohibited The Discharge Of Any Consumer Fireworks During The Normal July 1st, 2nd, 3rd, And 4th Period

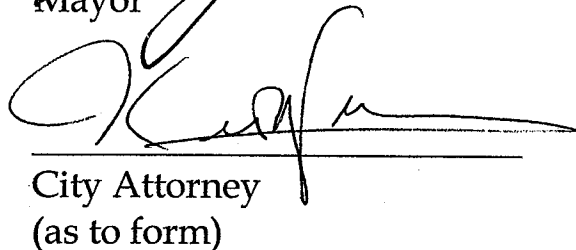
APPROVED FOR AGENDA:



Mayor

6/29/12

Date



City Attorney
(as to form)

June 29, 2012

Date

07-02-12 A10:08 RCVD

Kim G.

PASSED and APPROVED this 3rd day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §94.05 **USE OF FIREWORKS** OF THE FAYETTEVILLE CODE TO ALLOW CONSUMER FIREWORKS TO BE DISCHARGED ON THE FIRST SATURDAY AFTER A BURN BAN THAT HAS PROHIBITED THE DISCHARGE OF ANY CONSUMER FIREWORKS DURING THE NORMAL JULY 1ST, 2ND, 3RD, AND 4TH PERIOD AND TO ENACT AN EMERGENCY CLAUSE

WHEREAS, Washington County and the City of Fayetteville have had to issue Burn Ban Orders because the severe drought conditions have made discharging fireworks during July first through fourth, 2012 too dangerous; and

WHEREAS, Fayetteville citizens should be able to enjoy the fireworks they purchased as soon as it is safe to discharge them.

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 amends 94.05 (A) *Consumer fireworks* by enacting a new subsection (4) as shown below:

“(4) If the Mayor has issued a Burn Ban Order such that no citizen can legally discharge consumer fireworks during the entire July 1st through July 4th normally permitted period, then the citizens may discharge their consumer fireworks from 10:00 a.m. until 11:30 p.m. on the first Saturday after the Mayor has dissolved or lifted the Burn Ban Order.

Section 2: Emergency Clause. In order to ensure the peace, health and safety of Fayetteville Citizens, this ordinance needs to go into effect immediately to ensure there is no confusion when our citizens are permitted to discharge fireworks after the Burn Ban Order is lifted. Therefore, the City Council of the City of Fayetteville, Arkansas hereby finds these conditions, constitute an emergency situation and determines that to preserve the peace, health and safety of our citizens, this Ordinance will go into immediate effect upon its approval.

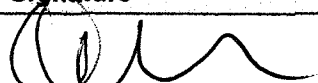
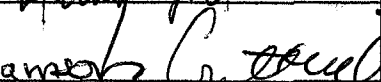
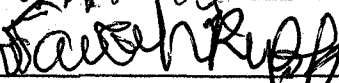
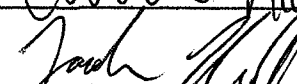
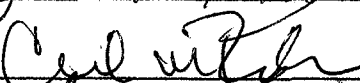
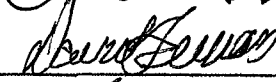
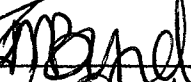
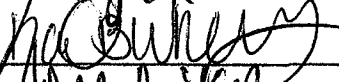
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Shave the Planet
ADM 12-4144 3078 N. College Ave.
Shelbert Appeal.

Petition to keep this location open through the end of summer!

Petition summary and background	The Planning Commission's decision on June 11 th , 2012 to allow Shave the Planet to remain open for the duration of summer has been appealed. If the City Council overrides the Planning Commission's decision, we will have to leave on July 4 th , 2012.
Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to vote to allow Shave the Planet to stay on their extended permit they were granted on June 11 th , 2012.

Printed Name	Signature	Address	Comment	Date
Nisha Pruitt		1841 W. Sycamore Fayetteville	Save Shave the Planet!	6/25/12
Matt Garmett		1803 N. Shelby Fayetteville AR 72704	Save the Shave! It's competition, other business got	6/25/12
Hannah Garmett		3234 E. Idlewood 72703	↓ Up or shut up	6/25/12
Marcy Stanberry		2350 S. E. Edwards Rd. Fayetteville AR 72701	" "	6/25/12
Leslie Bailey		3601 N. Salem Hwy Fayetteville	please stay!! our favorite	6/25/12
Rebekah Moss		820 N. Garland, Fayetteville	BEST SNOWCONES!!!	6-25-12
Thomas D. Moss		901. W. Grace Ward Dr.	-1-	-1-
Ann Light		1540 W. Nettleship St. #8 Fayetteville AR	Alderman's wives shouldn't be able to close other businesses	6/25/12
Kent Samiyasak		328 Hunter Allen Dr Bethel Heights, AR 72764		6/25/12
JOHN SCROGGINS		3138 WEST JAWOZ 6 FAYETTEVILLE AR	DONT PUNISH HONEST SUCCESSFUL PEOPLE	6/25/12
Beck Johnson		2011 Sycamore Ave Springdale, AR 72764	Shave the planet ROCKS!! No one can touch this!	6/25/12
Kathleen Petty		808 E Peel St Fayetteville	Free. Leave them alone, not even same products.	6/25/12
Rob Tomlinson		211 Tuscany Ave Springdale	with love!	6/26/12

Printed Name	Signature	Address	Comment	Date
Diana Monu		1419 N. Addington 72703	Let them stay	7/1/12
LISA Ezell	L Ezell	2538 Country way	Please let them stay!	7-1-12
Danny Ezell	Danny Ezell	" " "	" " " "	7-1-12
Crissy Williams		128 Rosemoade Dr 72730	Love this Place	7-1-12
Tina Nadre		4792 N. Maple Grove Dr		7/1/12
Sarah Ruff		4770 Maple Grove Dr		7/1/12
Carrie Nichols	Carrie Nichols	4562 Caddo Lane		7/1/12
Joshua Nawel		2310 South School Ave 72701	Sno cones rule, Maggie Moss drinks	7/1/12
Hannah Weber	Hannah Weber	2049 Tallgrass Dr. 72701		7/1/12
Dillon Yelding	Dillon Yelding	1885 Solon Dr 72803		7-1-12
Carol Rushing		1852 Harold St 72703		7-1-12
DAN BROWN		2670 N CANDLER	SHANE'S 11615 DA BOMB	7/1/12
THOMAS COLE		5916 DANCING Rabbit	MORE LIKE NAGGIE BOO'S!	
Meegan Byrd		2730 N. Arroyo Ave Fayetteville AR	Love this place	7/1/12
Kori Wheatley		4359 W New Bridge Fayetteville 72704	Best place ☺	7/1/12
Debbie Power		3212 N. Old Wire Rd. Fayetteville 72703	Let them stay!	7-1-12

Sam Borgstadt

Sam B

Kellen Summers

Kellen Summers

Phillip Price

Edwardo Chaw

Phillip Price

3102 Summershade
Dr.

7-1-12

1876 Buckley Dr

7-1-12

2759 Westminster Dr

7-1-12

1629 Shetland Ave

7-1-12

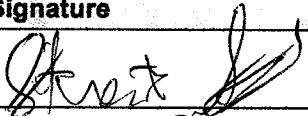
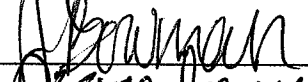
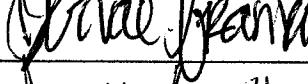
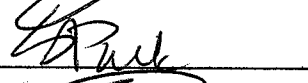
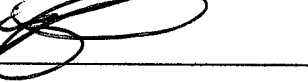
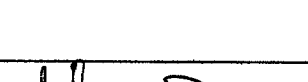
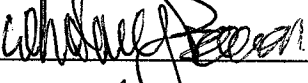
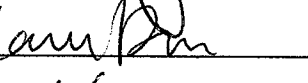
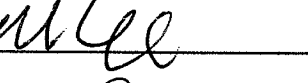
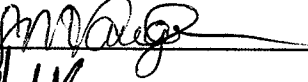
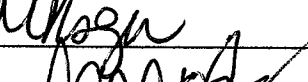
Printed Name	Signature	Address	Comment	Date
Camille Wheeler	Camille Wheeler	573 Fox Meadows Ln. Fg.	♡ STP!	7/3/12
Stephanie Stoter	Stephanie Stoter	426 Taliesin Way	Absolutely the best	7/3/12
Tyler Rainwater	Tyler Rainwater	311 N. Center St. Ellens	Good Stuff!!	7/3
Emily G. Long	Emily G. Long	1771 Rosewood Dr. Edin	Don't leave!	7/3
Joseph Armendariz	Joseph Armendariz	255 E. Cleburn St.	Keep Sharing!	7/3
Sadie Prosser	Sadie Prosser	5132 Wedington	I LOVE Y'ALL!	7/3/12
Jamie Brown	Jamie Brown	2070 N. Valencia	♡ ya'!!	7/3/12
Mel	Mel	2670 N. Valencia	meow 	7-3-12
Valarie Shepherd	Valarie Shepherd	10811 Hwy. 110	YUM!	7-3-12
Ashley Molesso	Ashley Molesso	1400 Clear Creek Dr.	Maggie Moos sucks.	7/3/12
Derek Bannier	Derek Bannier	1001 east oaks Manor		7/3/12
Bray Cook	Bray Cook			7/3/12

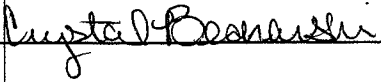
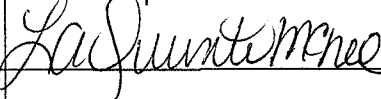
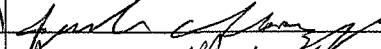
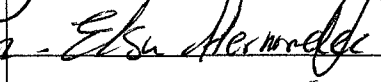
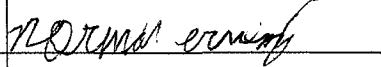
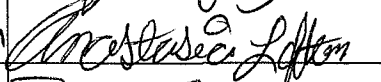
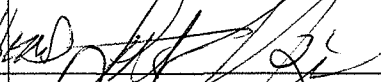
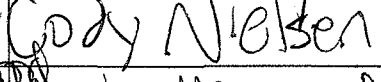
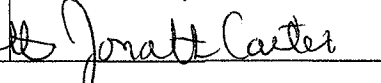
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Carolyn Tansler		748 Rooder St	Mummy	7/1
Jessie Ryan		1863 Brookman		7/1
Laura Chambers		2756 Rutherford Lane		7/1
Heather Toombs		554 S. Buchanan Ave		7/01
Jacobs Dennis		2257 N MacFingbird Ln		7/1
Sharon Headley		4359 W New Bridge Rd		7/1
Miriam Ortega		3166 W. Nottingham Dr.		7/1
Jennifer Lopez		835 W. Piedmont		7/1
Nate Lopez		835 W. Piedmont 8th Ave		7/1
Cathy N		54 Sweetwater Way		7/1
Lisa Orgain		3215 Summer shade		
Marin Ins		1500 Everett Ave		7/1
Katie Beckner		1453 Windsor Pl.	CAN'T EAT DAIRY	7-1
Lisa Beasley		2910 Cesterwood		7-1
Taryn Becker		1626 W. Live Oak Dr.		
Hannah Jones		3447 Nottingham Pl. Fayetteville, AR 72703		7-1

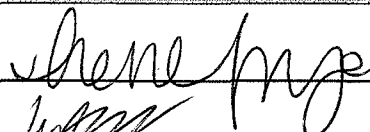
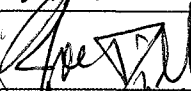
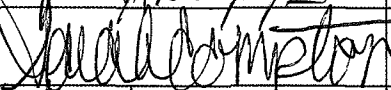
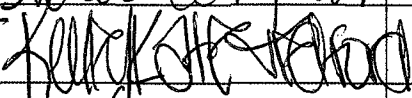
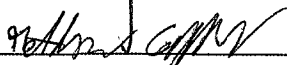
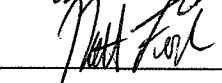
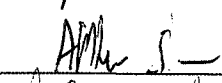
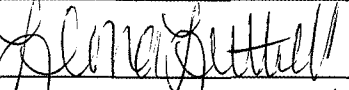
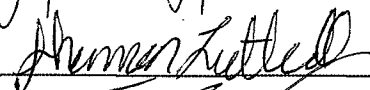
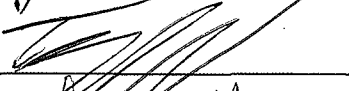
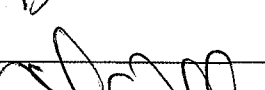
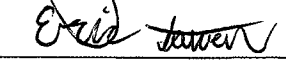
Rachel Jones	Rachel Jones	3447 Nottingham Pl.	7/1
Susan Blevins	Susan Blevins	256 W. Sycamore St	7/1
Quanaa Pivett		1560 N. Heritage Ave.	7/1
Cameron Doughty		115 West Doughts street	7/1
Krisma Smith	Krisma Smith	2009 Kammington Rd	7/1
Ashley Karsanasy	Ashley Karsanasy	Park Place Apartments on Joyce	7/1
Jessica Pournirica	Jessica Pournirica	3041 W. Marigold Dr.	7/1
Jeff Rackers	Jeff Rackers	4216 W. Milken Blvd	7/1
Tom Romero	Tom Romero	1233 N. 4th St	7/1
Christina Serrett	Christina Serrett	1250 E Shepherd. Apt. 206	72703
Amelia Prather		4109 sunflower cir	7/1
Bill Lute		FAY AR 72701	
Ashleigh Starkes		1343 N. Leverett #14 Fay, AR	72703
Erika Kieklak		" " (roomies)	
Phoebe Chaffin-Busby		2156 N. Tull Ave #7 Fay, AR	72709
Tan E Saker		1546 BURROAK #3 FAY AR	72704

Printed Name	Signature	Address	Comment	Date
KEVIN SEAMANT		3073 E. FOSSIL DR	LOVE IT: KEEP IT!	7/2/12
Christina Brocke		1586 Evening Shade	I Love Shaved Ice	7/2/12
Katie Braboy	Katie E. Braboy	2955 Hay Meadows Ave.	I Shave the Planet	7/2/12
Paul Nguyen		619 W Adams	NOT the Same	7/2/12
Sarah Able		1220 W. Cleveland St.	see above!	7/2/12
Keira Peak		3005 Dorothy Jeanne St	Shaved Ice tastes magnificent, especially you guys	7/2/12
Jordan Ramsey		15074 E. Black Oak Rd.	Shaved Ice is my Junk!	7/2/12
Jordan Edelman		18008 Creek Ct. ^{Fair} Ht	I Shave my planet	7/2/12
Brock Harvey		1465 E Windsor Pl Fair	it's the best Bomb!	7/2/12
Arant Alvarez		3116 Highland Park		7/2/12
Sydney Foster		3740 N. Chassy Ave.	Keep it u	7/2/12
Sydney Foster		3498 E Chasworth	BEST ENA!	7/2/12
Harrison Martin		3991 Aca Chasworth	Yum	7/2/12
Pam Jones		14 Madison St	Love it	7/2/12
Emma Fuggin		2800 N. Loxley Ave.	soooooo good	7/2/12
Anna Ford		483 W August Dr. #8	AMAZING	7/3/12

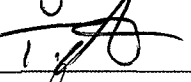
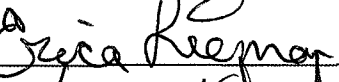
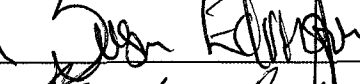
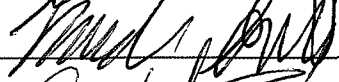
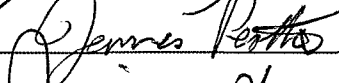
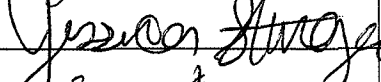
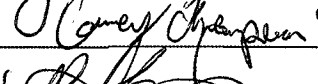
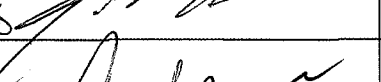
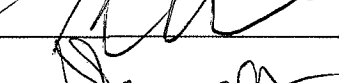
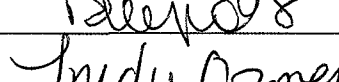
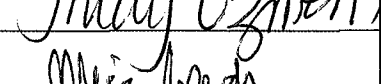
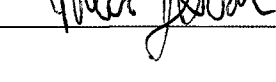
Printed Name	Signature	Address	Comment	Date
DAVID BURTON	David Burton	1899 N. LATON DR		8/2
Greg Lunn	Greg Lunn	3398 E. Canterbury CR		7/2
Hillary Bell	Hillary Bell	5809A Sara St		7/2
Taylor Stroud	Taylor Stroud	2355 Berry Street		7/2
Chris Reinlein	Chris Reinlein	920 W. Greenwood Dr.	Best frozen water ever ♡	7/2
Tammy Shorter	Tammy Shorter	300 Evergreen Dr		7/2
PAUL HUFF	PAUL HUFF	4944 W Patrick		7/2
MARGARET REESE	MARGARET REESE	521 W. Spruce		7/2
Shelby Culver	Shelby Culver	302 Willow Ave		7/2
SUSAN GARDNER	Susan Gardner	909 N HALL Ave		7/2
Ken Gardner	Kenneth Gardner	909 N HALL		7/2
SARAH ANN	SARAH ANN	900 N. LEVERETT		7/2
Luke Laird	Luke Laird	900 N. Leverett		7/2
Waylon Abernathy	Waylon Abernathy	2412 W. Moorhead		7/2
Jessica McCoy	Jessica McCoy	4916 SE Miami Loop		7/2
Michelle Crowl	Michelle Crowl	2816 N Rainforest Dr		7/2

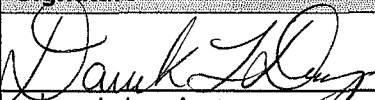
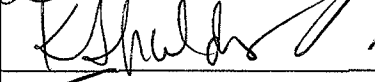
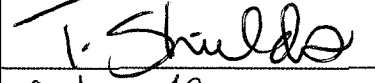
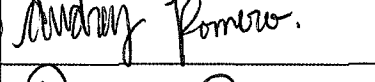
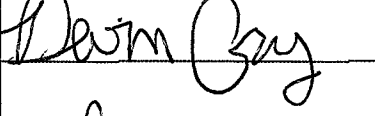
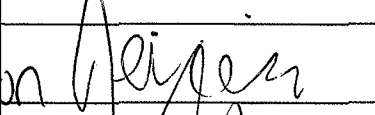
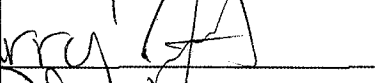
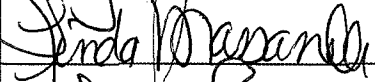
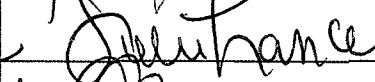
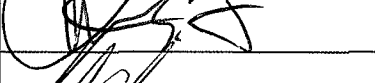
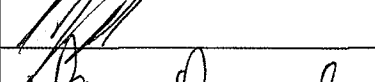
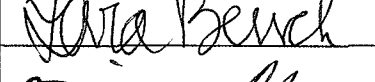
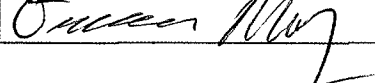
Printed Name	Signature	Address	Comment	Date
Stuart Sheppard		2011 NW Desert Dr	I love this place ♥	7-2-12
Ben Canade		1840 N. Leverette	✓ It. of the staff best place ever	7-2-12
REBECCA LARA		1840 N. Leverette #100		7/2/12
Jay Bowman		543 Prospect St		7/2/12
Jessal Franklin		2510 N. Prater Ter.	its da best.	7/2
Samantha Finch		3049 N. Elizabeth Ave	Love it	7/2
John Finch		3049 N. Elizabeth Ave		7/2
Stacey Park		11036 W. Maple St.		7-2
BET Park		11036 W MAPLE ST.		7-2
WHITNEY BROWN				
Whitney Brown		3173 Boon Boon Ter.		
Lauren DeClue		1500 N. Leverett		7-2
Emily Gatty		1500 N. Leverett		7-2
Shani Miller - Vaughn		1500 N. Leverett		7-2
Nichelle Roger		3015 N. Elizabeth		7/2
Joel Morales		3015 N. Elizabeth		7/2

Printed Name	Signature	Address	Comment	Date
Crystal Bednarski		828 E. 1st St Fair 03	This place makes my day always! There's no one like them. Don't shut them down	6/25/12
US Mayor	US Mayor	321 E Douglas P.G		6-25-12
LACUNA		887 moan st. - Tay Ar 1203	Love this place!!	6-25-12
Justin Messing		195 N. McElroy Ave	Yum!	6-25-12
Brianna Montgomery		1166 W Maple Street	This place should stay!	6-25-12
Robin Messing		318 Stearn Dr.	It's hot in here! Somewhat chill	6-25-12
Elsa Hernandez		2402 N. College.	Yum -	6-25-12
Norman		2217 Sweetbriar	GW SOMP	6/25/12
Steven Shelton		2466 candlewood Dr		6/25/12
Anastasia		2217 Sweetbriar Dr	I like it	6/25/2012
Bob Estes		668 N. Colligan Fayetteville	Good Product!	6-25-12
PETER		10811 167170 N	GREAT PLACE	6-25-12
Isabelle		1824 Green Valley Ave		6-25
Gina		1280 Columbus Blvd	I come here after playing sports sometimes. Love it!	6-25
Sydney		2728 E Kantz Dr #2		6-25-12
Jonathan Carter		3878 Park Oaks	Best Snowcones Ever	

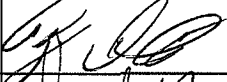
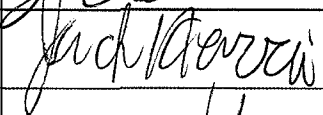
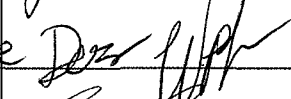
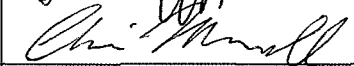
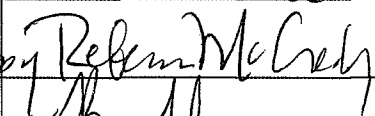
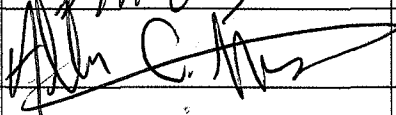
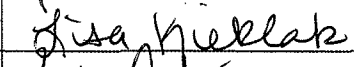
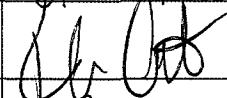
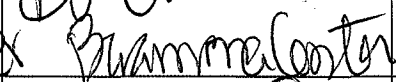
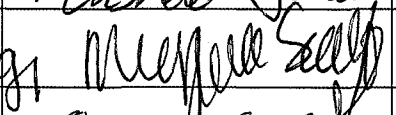
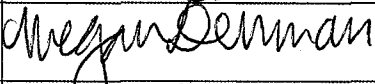
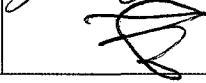
Printed Name	Signature	Address	Comment	Date
Irene Treje		3878 parkcorksdrive #1	Great Customer Service	6-25-12
Jackson Williams		2511 N. Stanton Ave	Love it	6/25
Joe DiMaggio		1718 Cortland		6/25/12
Sarah Compton		301 Allison Ln	Best place around	6-25-12
KIRUKATE T.		817 HAYDON ST.	LOVE IT!	6-25-12
		3901 Allison Ln	Best place ever	6/25/12
Nate Furtin		1602 Per lane	Awesome	6-25
Amber Shuckel		2105 Kingst St	Good stuff	6-25
Honor Luttell		161 Lapis Ln #744	Great	6-25
Shannon Luttell		161 Lapis Ln #744	Love it	6-25
Tony Henry		2307 Sw 10th St Baton	Great	6-25
Leah Henry		" "	awesome!	6-25
Bonnie Scott		1731 Olympic blvd #255		
Joel Scott		Springdale, AR 72756	yummmmm	6/25
Nicole Labelle		2024 Stoneridge Ln #105	Amazing!!	6/25
Eric Totten		22206 butterfly rd Springdale	amazing	6/25

Printed Name	Signature	Address	Comment	Date
Isa Navarro				6/25
Jody Bolain	Jody Bolain	Fayetteville		6/25
Bronwyn Davis	Bronwyn Davis	1759 Tallgrass Dr. ^{Fay.} Ark		6/25
Devin Krueger	Devin Krueger	Fayetteville		6/25
Latasha Gray	Latasha Gray	2550 W. Arthur Hart		6/25
Michelle Dallas	Michelle Dallas	3203 Piper Glen	ARE U SERIOUS! grow up Maggie Miss	6/25
Jordan Carlisle	Jordan Carlisle	00000 Fayetteville		6/25
John Carlisle	John Carlisle	Fayetteville		6/25
Heather Overa	Heather Overa	Fayetteville		6/25
Ethan Latimer	Ethan Latimer	Fayetteville		6/25
Paige Evans	Paige Evans	Fayetteville		6/25
Denise Cartwright	Denise Cartwright	Fayetteville		6/25
Jon McKel	Jon McKel	"		"
Misty McCord	Misty McCord	Fayetteville		6/25
Rachel Gilbert	Rachel Gilbert	Fayetteville		6/25
Francisco Delacruz	Francisco Delacruz	Fayetteville		6/25

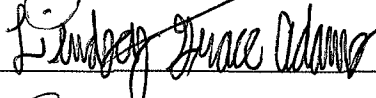
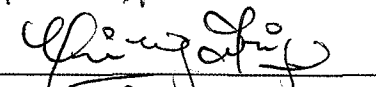
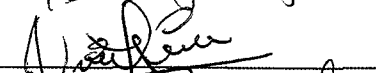
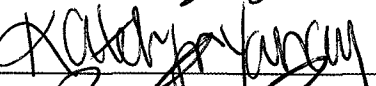
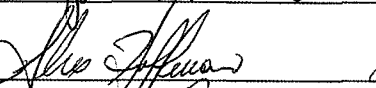
Printed Name	Signature	Address	Comment	Date
Augusto Larrain		733 W. Cleveland St #1		JUN 25/12
TRAVIS Anderson		1063 S. Emily	Keep Em Open	6/25/12
MATTHEW King		4822 PASCO 4808 SPRINGDALE		6/25/12
Erica Leeman		1764 N. Leverett Ave.		6/25/12
Susan Edinger		2510 E. Sweetbriar	Keep Opened!	6/25/12
Michelle Gertz		1235 W Mount Comfort Rd		6-27-12
Jon White		1235 W. Mt. Comfort Rd		6-11-12
James Porter		1764 N. Leverett Ave.		6-27-12
Jessica Sturges		1764 N. Leverett Ave		6-27-12
Corey Thompson		1631 S. Brooks Ave	keep it open!!	6-27-12
Bethany Bryant		108 W Trukman St ^{PG} 72703	PLEASE keep open!!	6/25/12
Skylar Hammers				
Ruth Jones		4114 Sunflower Cir	72703 Please keep open	6/25/12
Denise Leopold		1540 Cooper Cove	72701 Need to stay open	6/25/12
Trudy Ozment		1961 Overcrest St	72703	6/25/12
Mick Jordan		4754 Clear Creek	72704	6/25/12

Printed Name	Signature	Address	Comment	Date
Dani Dingman		3250 N. Loxley Ave	My family eats @ STP every Sunday. We ♥ it!	6/25/12
Karen Shields		2473 Fennchurch		6/25/12
Todd Shields		2473 Fennchurch		6/25/12
Audrey Romero		2017 Peach Blossom Ave.	Our family comes here at least twice a week. We ♥ STP! LIKED on Facebook.	6/25/12
Davin Cruz		11038 Wedington Blvd		
Alfonso Cruz				
Jessica Wilson		1500 N Levee He		6/25/12
Jacob Parry		Fayetteville AR 72703		6/25/12
Linda Massanelli		1735 Charlee Ave		6/25/12
Julie Lance		530 Grascom Ave	THE. BEST.	6/25/12
Alison Hendricks		2136 Wilson Ln.		6/25/12
Jamie Fraib		717 W Van Gogh	Let the free market work	6/25/12
Chris Fraib		717 W Van Gogh		6/25/12
B.J. Berch		2652 E. Randel Pl.		6/25/12
Lara Berch		2652 E. Randel Pl.		6/25/12
Oriana May		1330 Masonic Dr		6/25/12

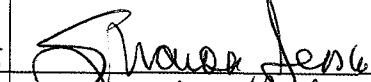
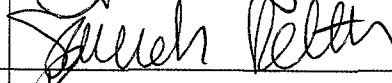
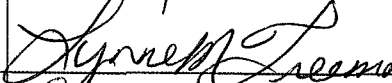
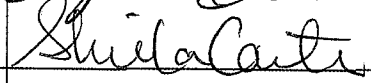
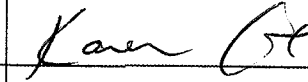
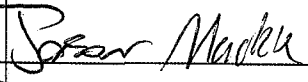
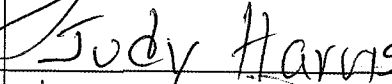
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Kristi Jackson	Kristi Jackson	5930 Blake Lane 17067	STAY OPEN LONGER	6/15/12
Angelica Boyd	Angelica Boyd	1103 Dodson rd		
Ashley Harrington	Ashley Harrington	6026 Stonew Brook Rd		
Grant Cash	Grant Cash	248 N. Platinum Dr. Apt. 10		
Daton Denz	Daton Denz	33 East 29th Cir		
Dylan Hattabaugh	Dylan Hattabaugh	2 of 5th 170 Apt 4		
Erin Schaffer	Erin Schaffer	1101 E. Elm St. Fayetteville, AR		6/25/12
Russell Reins	Russell Reins	4267 Lerdy Ln 72704		6/25/12
Sarah Knyzel	Sarah Knyzel	1723 Noelle Ave		
Supriya	Supriya	2756 N SHADY BROOK	we love you	6/25/12
Hope Wetherington	Hope Wetherington	480 N. Starr Dr.		6/25/12
LUCI BROOKS	LUCI BROOKS	FAYETTEVILLE		6/25/12
Emily Kitzmiller	Emily Kitzmiller	Newport Beach, CA		6/25/12
Brooke	Garrett	300 evergreen Avenue		6/25/12
Teresa Jordan	Teresa Jordan	Salt Lake Utah 1 3480 Haywood		6/25/12

Printed Name	Signature	Address	Comment	Date
FORREST ACUFF		2368 CREEKWOOD FAYETTEVILLE	SHOCK THE WORLD!!! KEEP THEM OPEN	6/25
Jack Harris		2711 W. L'Ac St.	Soaked! I love STP	6/25
Derick Wolfe		4754 Clear Creek BLVD	DRENCHED	6/25
Chris Marshall		2115 Cambridge	"	6/25
REBECCA McCRAE		3146 N. OLD WIRE RD		6/25
Kristen Ward		1735 Tally Ho Dr	Lane share the planet	6/25
Allen Ward		" "		6/25
Lisa Kiehlak		1658 Live Oak Dr. Apt 2	Keep it!	6/25
Kendra Carter		378 N. Fichard Rd. Fayette	KEEP IT!!	6/25
Brianna Carter		" "		6/25
Michaela Larabee		254 Pine Meadow Dr.		6/25
Megan Scarborough		3191 High Meadows	Keep	6/25
Connor Cockell				6/25
Megan Delman		2470 N. Southwick Dr.		6/25
Brian Dorman		" "		6/25
CODY BUNTON		2086 N. BRIDGETON 72701		6/25

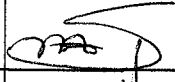
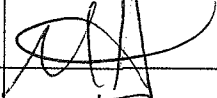
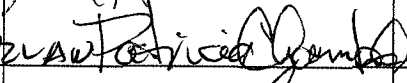
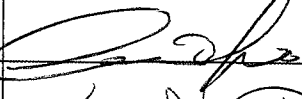
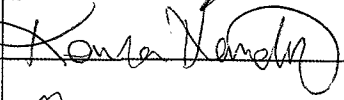
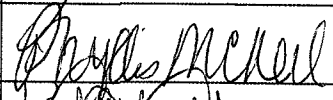
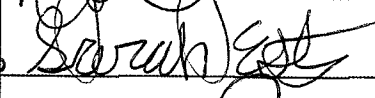
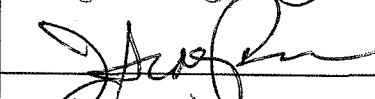
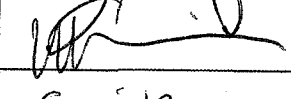
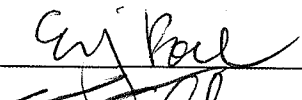
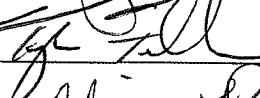
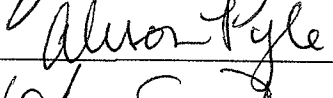
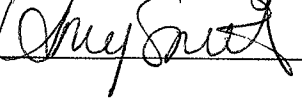
Printed Name	Signature	Address	Comment	Date
Alisha Marshall	Alisha Marshall	2665 Golden Oaks Dr		6-25-12
Lauren Scarbrogh	Lauren R Scarbrogh	3191 High Meadows Dr.		6-25-12
Andrew Whitmore	Andrew Whitmore	1235 W. McCombs		6-25-12
Kaitly Miller	Kaitly Miller	389 Oxford Bend Rd		6/25/12
Lindsey Shettle	Lindsey Shettle	4680 Shnell Drive		6/25/12
Katie Michalks	Katie Michalks	Fayetteville		6/25/12
Elise Martin	Elise Martin	Fayetteville		6/25/12
Adrienne Scott	Adrienne Scott	1400 Eastwood		6/25/12
Erin Mangum	Erin Mangum	1648 E Mission		6/25/12
Eric Gilliam	Eric Gilliam	1691 Red Tip Dr		6-25-12
MARKEYLES mrs	MARKEYLES mrs	2936 Sonny Ln		6/25/12
Evan Ocker	Evan Ocker			6/25/12
Lawrence King	Lawrence King	Fayetteville		6/25
Caroline McIntyre	Caroline McIntyre	4415 N 2nd		6/25
Kathryn Graves	Kathryn Graves	4415 N 2nd		6/25
Kathryn Davis	Kathryn Davis	105 S. Church St.		01

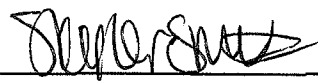
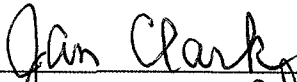
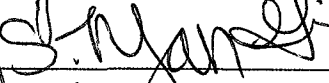
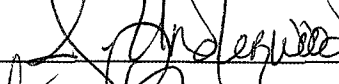
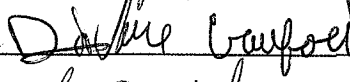
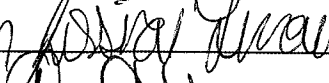
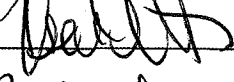
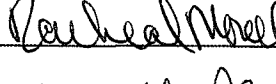
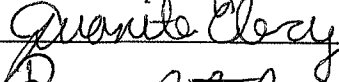
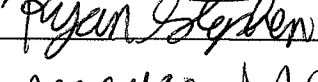
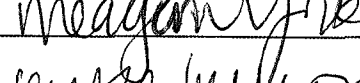
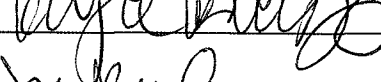
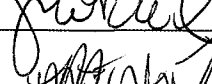
Printed Name	Signature	Address	Comment	Date
Kelsey Ray				6/25/12
Lindsey Grace Adams		135 E Madrid St. Fayetteville, AR	72703 We NEED ^{Share the} Shave the ^{planet!!!}	6-25-12
RONNIE SMITH		2517 GOLDEN OAKS	SNOWCONES → ICE CREAM	
Jason Williams		4044 OLD MAJOR RD		6/25/12
Taylor Roberts		420 North St.		6-25-12
Kara Kaiser		2455 W Orlando Dr.		6-25-12
Carolina Quiraga		2455 W Orlando Dr.		6-25-12
Valeria Quiraga		2455 W Orlando Dr.		6-25-12
MSPRINTZ RICHARDS		2235 E Stannwyk Dr	It's my husband's ^{fav} date ^{spot}	6-25-12
Cody Yancey		3050 Magnolia Pl ^{Spring} AR		6-25-12
Katelyn Yancey		" "		6-25-12
Paul Koscheski		1571 N. Levere ^{tt} #4 Fayetteville		6/25/12
Lyssie Koscheski		1571 N Levere ^{tt} #4 FAYETTEVILLE		6/25/12
Alex Assman		2978 Sprate dr. Fayetteville		6-25-12
Emily Goff		2678 Magnolia Fayetteville		6-25-12
Ryan Todd		600 W. North St.		6-26-12

Printed Name	Signature	Address	Comment	Date
Stephanie Boaz	[Signature]	12787 Curlee Rd Elkins, AR 72727	Stay Open	6/26/12
Amy Bates	[Signature]	4857 Laverdon Pl	Open	6/26/12
Wendy Lewis	[Signature]	1811 N. DeStoe Wy	STAY OPEN!	6/26/12
CASEY MORAN	[Signature]	2273 N ASPEN	STAY OPEN! WE CHOOSE STP OVER ICE CREAM ANY DAY!	6/26/12
Anne Minton	[Signature]	7933 N Mayberry	Stay Open	6/26/12
Heather Freeman	[Signature]	2946 N Platinum Dr. Fayetteville	stay open	6-26-12
Arion Crutch	[Signature]	3115 N. Old Missouri Road 72703	stay open	6/26/12
Josh Molcan	[Signature]	825 N Lemult	Stay open	6/26/12
Fred Beasley	[Signature]	922 W Hughes	Stay open	6/26/12
Don Moore	[Signature]	3191 Katherine Ave.	"	6/26/12
Courtney Johnson	[Signature]	2999 S. City Lake Rd.	stay open	6/26/12
Michelle Cartrell	[Signature]	554 Mount Place	Stay open	6/26/12
Rebecca Hippoly	[Signature]	4288 E. Fast Ln.	The longer the better!	6/26/12
Travis Purnes	[Signature]	293 Madison 6765	STAY open	6/26/12
Tom Blair	[Signature]	21231 N. Hwy 71	Stay open	6/26/12

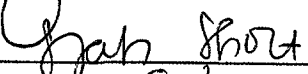
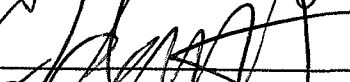
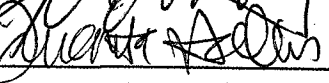
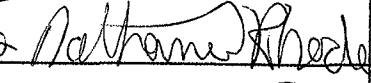
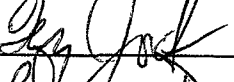
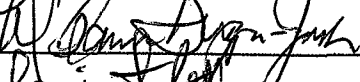
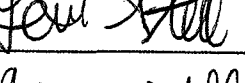
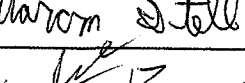
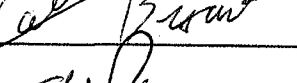
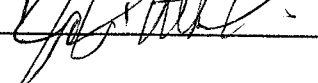
Printed Name	Signature	Address	Comment	Date
Chaukover III		2222 S SMOKEHOUSE TR FAY, AR, 72701	FREE MARKET ECONOMY	6.26.12
Sharon Jenkins		1610 ETerry Dr. Fay AR 72703	Stay!	6/26/12
Sarah Belton		2374 E Kantz North Fay AR 72703		6/26/12
Katie Gibbs		108 E Grandz Fay, AR 72703		6/26/12
Colton Brann		"		6/26/12
Talisha Lyons	Talisha Lyons	10394 W. Jesse Fayetteville 72701	Stay!	6/26/12
Lynne Freeman		2670 Candlwood Dr	Love it!	6/26/12
Sheila Carter		16089 Hazel Valley Rd.	Love it!	6/26/12
Karen Cox		"	Love it!	6/26/12
John Mark		458 N, Lancelot Ave	great	6/26/12
John Mark				
Johnny Lovett		1297 Deerfield Way 72701	Keep it here! Love it	6-26-12
Judy Harris		1940 Pratt 01	Keep it open	6-26
Ruth Ziegler		3456 Township Fay	Good for Community	6-26
Georgia Trimble		1527 Meridian Dr.	Get it!	6-26
Stacey White		1815 Candleshoe Dr		6/26/12

Printed Name	Signature	Address	Comment	Date
Joe Pulli	Joe Pulli	Fayetteville, AR	Good stuff!	6/26
Lindsey Manley	Lindsey Manley	Fayetteville, AR	Yummy stuff!	6/26
E. Lee Shultz	E. Lee Shultz	Fayetteville, AR	Awesome!	6/26
Megan Bolivar	2013 N. College	Fayetteville AR		6/26
Lindsey Manley	Lindsey Manley	FAYETTEVILLE, AR	Yummy!	6/26
Alexander Hall	Alexander Hall	Fayetteville, AR	Good!!	6/26
Karen Miller	Karen Miller	Spandale AR		
Susan Street	Susan Street	Fayetteville AR	We love this place!	6/26
Hyler Williams	Hyler Williams	Fay, AR	Delishious!	6/26
Kristy Ray	Kristy Ray	Fay, AR		6-26
Sandra Ware	Sandra Ware	2320 N. Hidden Creek, Fayetteville		6-26
Hilary Bouton	Hilary Bouton	Fayetteville, AR	Amazing!	6/26
Laura Enzer	Laura Enzer	Fayetteville, AR	Good Stuff	6/26/12
Andrea Oden	Andrea Oden	Fayetteville, AR	LOVE Eco Planet!	6-26-12
Jessica Sabatini	Jessica Sabatini	Fay, AR	Love this place!	6/26/12
Carlin Murphy	Carlin Murphy	1728 Rolling Hills Dr.	best place ever!! ♥	6/26/12

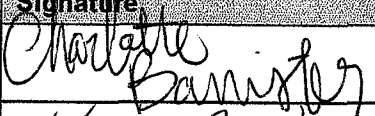
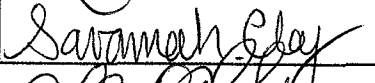
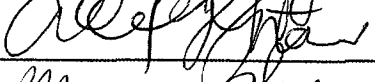
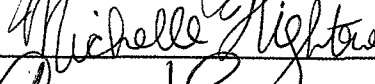
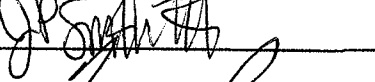
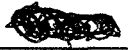
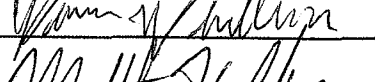
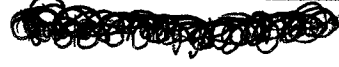
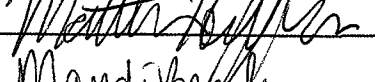
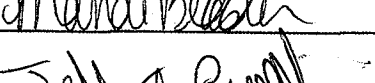
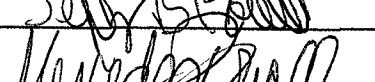
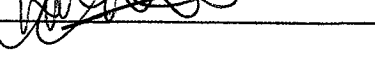
Printed Name	Signature	Address	Comment	Date
Miguel Solis		1728 Rolling Hills DR.	Just when we make ends meet, they move the ends. - Herbert Hoover	6/25/12
Monique Harris		605 Bayhead Ave ^{SPRINGDALE} RETRACT		6/25/12
Patricia Campbell		3004 N. Dorchester		6/25/2012
Pick Firo		400 Wayland St		6/26/12
Karla Hemann		2003 Spemore pl.		6/26/12
Aaron Jasso	Aaron Jasso	2003B Spemore pl.		6/26/12
Tess R. Cox	Jessie R Cox	3221 N Wroton		6/26/12
Phyllis McNeel		1807 N Porter Ln		6/26/12
Kayla Mayes		758 W. Wynston Dr.		6/26/12
Sarah Estes		1602 n merion way	We're the best around	6/26/12
Scott Bull		11406 Mountain Spring		6/26/12
Mary Tucker		3741 N Whipperwill Ct.		6/26/12
Emily Poble		10 w Prospect		6/26/12
Tyler Fuller		10 W. Prospect	SUPPORT LOCAL	6/26/12
Alison Pyle		1721 E Baird Cliff St.		6/26/12
Amy Smith		292 Honeydew Rd	Great Business!	6/26/12

Printed Name	Signature	Address	Comment	Date
Skylar Smith		285 N. Bryoles St Farmington, AR 72730		6/26/12
Jan Clark		1205 Reed Valley Fay AR 72704		6/26/12
Sara Gramling		3418 Raleigh Cir Fay AR 72703		6/26/12
Alex Miller				
Jennifer Underwood		3331 Picadilly Ln. Fay. AR. 72703		6/26/12
Elony Porter		1650 North Sang Apt 104 72703	LOVE STAFF	6/26/12
Dalvone Crawford		1630 Carlsbad Trce	This place is awesome	6/26/12
Jessica Freeman		709 E UNION DR 3582 E Township St. Fayetteville AR 72703	Best place in the planet !!	6/26/12
OSCAR MENDOZA				6-26-12
Racheal Morell		Fayetteville, Ar	Aweosome	6-26-12
Juanita Clergy		Fay. AR	freakin Awesome	6-26-12
Ryan Stephen		Springdale, AR	SSS Quality	6-26-12
Meagan York		3209 ESSEX DR FAYETTEVILLE AR		6-26-12
Kyle Billingsley		3209 ESSEX DR FAYETTEVILLE		6-26-12
Sen Reed		46m4 Clear Creek Pkwa.		6/26/12
Misty Morin		3100 N. College Fay AR 72703	everyone loves this place!	6/26/12

Printed Name	Signature	Address	Comment	Date
Luke Hill	Luke Hill	827 W. Cleavelands		6-26
Larry Bowley	Larry Bowley	Fayetteville, AR		6-26
Kim Skiller	Kim Skiller	1460 Windsor Pl.		6/26/12
Heather Hanes	Heather Hanes	2499 Fennchurch Way		6/26/12
Kathleen Parker	Kathleen Parker	2236 Briarwood Ln		6/26/12
Maggie Bates	Maggie Bates	Fayetteville, AR		6/26/12
John Blew	John Blew	Farmington		6/26/12
Max Johnson	Max Johnson	31 S. Greeng Fayetteville		6/26/12
Patti Scott	Patti Scott	155A Levertt		6.26.12
Alphina Jones	Alphina Jones	155A Lev.		6.26.12
Mehnie Rose	Mehnie Rose	930 S. Huddle		6/26/12
Scott Davis	Scott Davis			6/26/12
ERIK DULANEY	ERIK DULANEY	2134 CAMCOT PL.		6/26/12
Elizabeth Vollmer	Elizabeth Vollmer	1659 N. Arthurs Ct.		6/26/12
Max Sanderlen	Max Sanderlen	Fayetteville		6/26/12
Crystal Lewis	Crystal Lewis	216 N. Sierra Ave Fayetteville AR 72703		6.26.12

Printed Name	Signature	Address	Comment	Date
Jeannie Moore		2172 Kantz Lane ⁷²⁷⁰³ Fayette	Please stay!	6/26/12
Grah Short		3300 E CHEROKEE DR	love this place!	6/26/12
Caleb Snowden		1872 N Choctaw Ct	Please stay!	6/26/12
Uphay Summers		1381 S. HIGHBUSH ⁷²⁷⁰¹ Fayetteville		6/26/12
Adam		Fayetteville	Stay!	6/26/12
Quanita Hollins		2234 Honeywell LN	stay! (11)	6/26
Nathanael Rheda		1984 East Oaks ⁷²⁷⁰¹ Fayetteville		
Douglas Bore		581 Vinson Ave		6/26/12
Les Jock		1527 Tallgrass Dr ⁷²⁷⁰¹ Fayetteville	Stay Stay	6/26/12
William Duff-John		1527 Tallgrass Dr ⁷²⁷⁰¹ Fayetteville	Stay	6/26/12
Levi Stell		1035 N Betty Jo #5	Don't Go!!!	6/26/12
Aaron Stell		1035 N Betty Jo #5		
Caleb Bryant		889 Daisy LN		6/26/12
Adam Peters				6/26/12
Teenan Uffam		P.O. Box 3372	Please Stay	6-26-12
Sashie Uffam		349 E Baxter way.	Please Stay	6/26/12

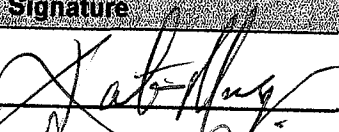
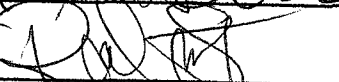
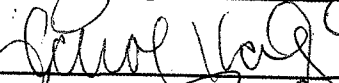
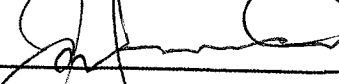
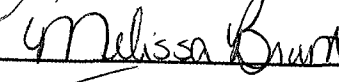
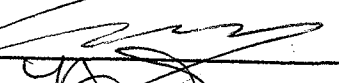
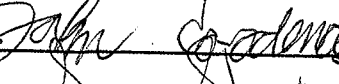
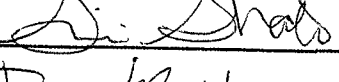
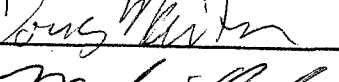
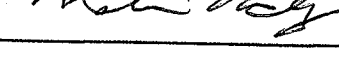
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Anna Fagan	Anna Fagan	3163 montrail Pl.		6/26
Temprance Alexander	Temprance Alexander	337 Joy Carol Sdale		6/26
Seemhel Adams		1325 Latic Lane		6/26
Elaine Lee	Elaine Lee	580 Longfellow Ln.		6/26
John P.	John P.	757 S EASTERN AVE		6/26
Tiffany Ohio	Tiffany Ohio	914 Biltmore Dr.		6/26
Hannah Edosky	Hannah Edosky	8000 main drive	me have done the photo	6/26
Cody Bennett	Cody Bennett	981 W. Clinton	I love this place!	6/26
Glean James	Glean James	9653 Nations Dr	This Place Rocks!	6/26
Karla Palmer	Karla Palmer	607 Razorback Rd		6/26
Clay Morris	Clay Morris	845 N. Gregg		6/26
MICHAEL B. TATE	Michael B. Tate	1648 SUNSHINE RD		6/26
Mary Bassett	Mary Bassett	589 Rockcliff		6/26
Kayla Loper	Kayla Loper	1270 N. Futraill Apt. 5		6/26
D.J. Walch	D.J. Walch	140 S. Hill Ave.		6/26
Arms Douglas	Arms Douglas	650 W. Poplar St Apt B-13		6/26

Printed Name	Signature	Address	Comment	Date
Charlotte Banister		4814 Rustic Lane 72703	-	6/26/12
Karen Baker		3475 Hearthstone 72764		6/26/12
Savannah Clay		1556 E Clark St.		6/26/12
Alex Hightower		1645 Charlee Ave 72703		6/26/12
Michelle Hightower		1645 Charlee Ave 72703		6/26/12
Andy Hightower		1645 Charlee Ave 72703		6/26/12
Jesse Smith		2725 N. Wakefield 72703		6/26/12
Tony Jones		2917 Quail Creek 72703		6/26/12
Lucian B.		634 Clinton Circle		6/26/12
Hyde M.		6411 Tall Oaks		6/26/12
Payne Phillips		4120 N Bentwood Ln		7-1-12
Matt Hoffman		2005 Harrington		6/26/12
Mandi Boester		21660 Lovley Ave	Do not shut down	6/26/12
Jeffrey Powell		501 E. 15th St		6/27/12
Mercedes Powell		1135 E. 15th St		6/27/12
DUSTIN MORTON		529 S. Black Ave, 72701		6-27-12

Printed Name	Signature	Address	Comment	Date
Shawna Moore	S Moore	Francian Trail Fay		6-27-12
Robin Hagner	Robin Hagner	1330 Fieldstone, Fayetteville	Its closest to work	6-27-12
Ashley Kenbee	Ashley Kenbee	Boxley Fayetteville, AR	Its closest to work ^(I can't have ice cream)	6-27-12
Erin Foster	Erin Foster	12056 W. Drake Fayetteville	Kids love it	6-27-12
Cody Norton	Cody Norton	2886 N. Pk. Dr. Fayetteville	Grab hood on Grab product, kids love it	6/27/12
MALE PATT	MALE PATT	140 N. T. W. Ave. Fayetteville	MY KIDS LOVE SUMMER BEANS OF THIS.	6/27/2012
Dillon Yelding	Dillon Yelding	385 Gregg		6-27-12
Brook Parker	Brook Parker	2105 Azalea	LOVE IT!!	6-27-12
Alicia Hall	Alicia Hall	1916 91st St. Fayetteville	LOVE IT!!	6/27/12
Judith Cate	Judith Cate	2876 Rom Orchard, Fayetteville	love it	6/27/12
Shari Mains	Shari Mains	3818 Leewood Way Fayetteville	"	6-27-12
JOE MAINS	Joe Mains	3818 Leewood Way Fayetteville	"	6-27-12
Boss Ratcliff	Boss Ratcliff	1591 Winfield Drive Fayetteville	love it!!	6-27-12
Anthony Byrd	Anthony Byrd	2955 N Oak Park Rd Fayetteville		6-27-12
Laura Tronano	Laura Tronano	1400 E. Twin Oaks Fayetteville	please stay!	6-27-12
Debra Anderson	Debra Anderson	195 Craig St West Fork AR		6-27-12

Printed Name	Signature	Address	Comment	Date
Larry Caudle	Larry Caudle	508 E School St Lincoln	Love it	6-27-12
Travis Branch	Travis Branch	14985 Kelly Mtn	Keep it open late	6-27-12
Chesley Amy	Chesley Amy	1746 N. Leverett Ave.	STAY!	6-27-12
Erin Murphy	Erin Murphy	1308 Shadowridge dr		6-27-12
JERRY JAMES	Jerry James	3028 Oak Bailey	PLEASE stay	6-27-12
Anna Stone	Anna Stone	2823 Stanton Ave	STAY ***	6-27-12
Shantae Wat	Shantae Wat	910 melmar Fair, Ar 76133	Stay!	6-27-12
Ellie Cottrich	Ellie Cottrich	4745 Constitution Dr.	STAY.	6-27-12
Gunnar Rothman	Gunnar Rothman	21844 Leebord Rd Elkins AR 72727	what she said	6-27-12
Buddy Allbritton	Buddy Allbritton	1926 Buckley Fay		6-27-12
Judy Allbritton	Judy Allbritton	1926 Buckley Fay Ave	of Luau ice cream - I would go if I had 6-27-12	6-27-12
Cinda Motes	Cinda Motes	626 E Ash	Let it stay	6-27-12
Kristen Roughton	Kristen Roughton	1642 Boxley Ave Fayetteville	Stay	6-27-12
Ashelee Cross	Ashelee Cross	4334 Shady Hollow Fay	stay!	6-27-12
Keith Brown	Keith Brown	4850 Mission Blvd	Stay home!	6-27-12
Stacy Parks	Stacy Parks	523 W. Wilson St 72701	Stay here !!	6-27-12

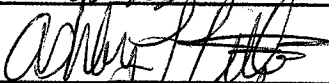
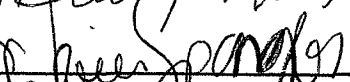
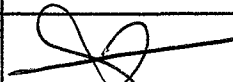
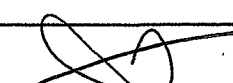
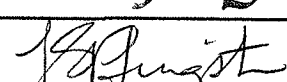
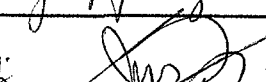
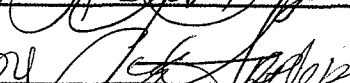
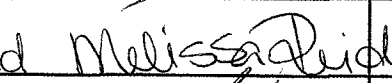
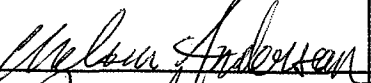
Printed Name	Signature	Address	Comment	Date
Kathy Wetzel	Kathy Wetzel	284 Polo Dr. Fay.		6/27
Rebecca Cantu	Rebecca Cantu	377 E. Easton Drive		6/27
Lauren Clemons	Lauren	1655 E. Cypress		6/27
Lydia Fitzgerald	Lydia F	1753 Zion #85		6/27
Helen Detken	Helen Detken	1900 Garland		6/27
Islaya Osiris	Islaya Osiris	1390 W. Wedington Dr.		
Collin Woody	Collin Woody	2055 W. Juneway Ter.	YOU GUYS ROCK	6/27
Caleb Kinsley	Caleb Kinsley	3304 N. Northwood Ave	Best shaved ice ever!	6-27
Robyn Spencer	Robyn Spencer	1911 N. East Oaks Dr FA/AR		6/27
Ruby Kempf	Ruby Kempf	3013 N. Starline Dr		6/27
Swati Sharma	Swati Sharma	3300 Chatsworth		6/27
Darrel Druman	Darrel Druman	2157 N. Lisa Ln		6/27
Michael Dullani	Michael Dullani	1096 E. Broadview		6/27
Tracie Wallace	Tracie Wallace	15210 Draper Rd. Fayetteville, AR 72704		6/27
Jaree Solomon	Jaree Solomon	514 Sonoma Cir. Fayetteville	please stay open longer!	6/27
Delaney Schachner	Delaney Schachner	1106 P. Birch Cir Springdale		6/27

Printed Name	Signature	Address	Comment	Date
Katie Murphy		1672 Boxway Fayetteville		6-27
Dirk Thibodaux		1303 Geneva Ave.		6-27
Maabluwe Soloff		720 S. Hill Ave		
Rachel Story		Mt. Comfort Rd		10-27
Uly Sanders		1404 Buick DR		6-27
Carol Koenig		1591 E. Cortland St.		6-27
Cellie Breden		523 N. Crest Dr.		6-27
Jon Simmons		2590 Jane Cir		6-27
Tim Brents		51 Fletcher Rd		6-27
Melissa Brunton		4703 Garden Grove Ct		6-27
Larry Deck		1589 W. Cambridge Rd		6-27
Brian Turner		701 W. Commerce St		6-27
John Cardenas		P.O. box 9505		6-27
Simi Shau		PO Box 9565		6-27
Tony Maitin		1627 Cambridge St		6-27
mel bag		1600 e sk510 field		

Printed Name	Signature	Address	Comment	Date
Jaime Whitmore	Jaime Whitmore	672 Lake Sequoyia Dr. 12707		6/27/12
TYLER PRIEST	Tyler Priest	177 N. Garland Ave.		6/27/12
Rachel Conley	Rachel Conley	1101 CURTIS ave apt. D52		6/27/12
Andrew Lea	Andrew Lea	2135 N Jonsey Terrace		6/27/12
Jonathon Mainhart	Jonathon Mainhart	900 N Levere # Apt 420		6/27/12
Danarriggins	Danarriggins	1000 Rose St Farmington		10/27/12
Jessica Chaney	Jessica Chaney	Old WIRE RD		6/27/12
Maha Shrestha	Maha Shrestha	900 N. Levere		6/27/12
Cassie Lohr	Cassie Lohr	1584 Javello Road		6/27/12
Jeff Lohr	Jeff Lohr	1584 Javello Rd.		6/27/12
CASSIE PIERSON	Cassie Pierson	3805 SUSAN PLACE		6/27
Jennifer Wood	Jennifer Wood	14755 Fisher Rd FAY		6/27-12
Amanda Flores	Amanda Flores	17239 Shavano Ranch Apt 1304		6/27/12
Hunter Newman	Hunter Newman	1828 Hendrix Pk FAY 72701		6/27/12
Ashley Garcia	Ashley Garcia	1013 Applebury Dr. FAY, 01		6/27/12
Karen Laman	Karen Laman	2879 Setter FAY 72701		6/27/12

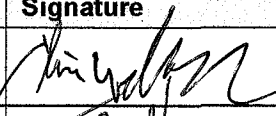
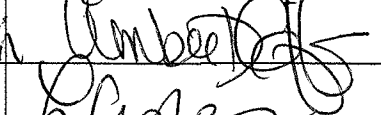
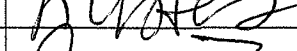
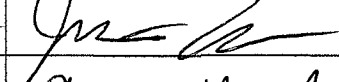
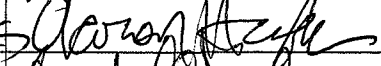
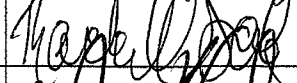
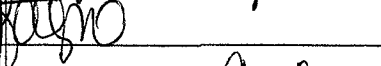
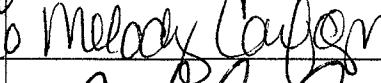
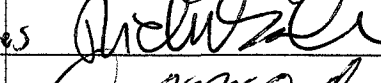
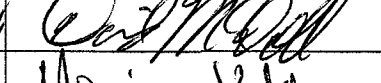
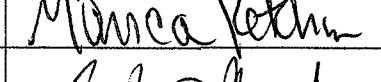
Printed Name	Signature	Address	Comment	Date
Sarah Burrell	Sarah Burrell	86 W Village Creek Dr.		6/27/12
Jessica Winbery	Jessica Winbery	411 W. North St.		6/27/12
Thomas Smith	Thomas Smith	862 N Shrevebury		6/27/12
Keith Mittl	Keith Mittl	118 N Duncan Ave.		6/27/12
Jimmy Lynn	Jimmy Lynn	1627 S. Spring Lake		6/27/12
Jeb Huckabee	Jeb Huckabee	3464 BAYHUR PL.		6/27/12
Ami Huckabee	Ami Huckabee	3464 BAYHUR PL.		6/27/12
Julie Ramsey	Julie Ramsey	2042 E. Stanwyk Dr		6/27/12
Mae Snyder	Mae Snyder	3852 PARK OAKS DR #2		6/27/12
Scott Ramsey	Scott Ramsey	2042 E Stanwyk Dr		6/27/12
Rob Keys	Rob Keys	2792 N. RAINTREE DR.		6/27/12
Andrew Sanders	Andrew Sanders	400 E Maple St.		6/27
Melanie Chambers	Melanie Chambers	846 CALVIN, Jay		6/27
Huong Deversen	Huong Deversen	2555 S College Dr		6/27
Micha Schutte	Micha Schutte	1297 E. Ash		6/27
Greg Buratowski	Greg Buratowski	2404 N Brophy Ave		6/27/12

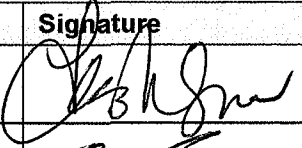
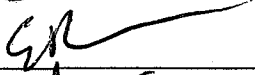
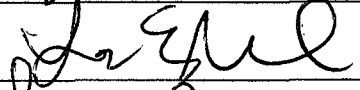
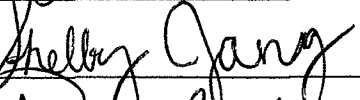
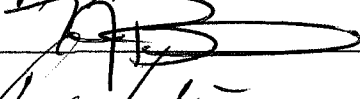
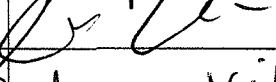
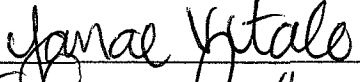
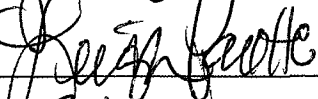
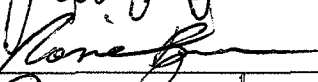
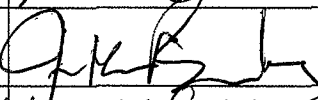
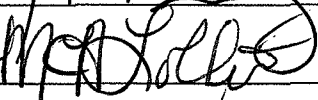
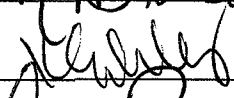
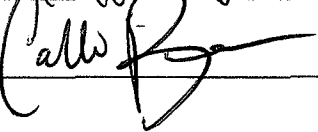
Printed Name	Signature	Address	Comment	Date
Jessica Hackett	Jessica Hackett	2940 Scottswood Pl.		6/27/12
Christina Clear	Christina Clear			
TJ Williams	TJ Williams	187 E. Cydnee		6/27
Christina Williams	Christina Williams	187 E. Cydnee St.		6/27
Mandi Haver	Mandi Haver	2329 N. Dorothy Lane St		6/27
Alex Baldwin	Alex Baldwin	688 S. 15 Ave		6/27
Deanna Rudasill	Deanna Rudasill	1780 N. Woolsey Ave.		6/27/12
DREW RUDASILL	Drew Rudasill	1780 N. Woolsey Ave.		6/27/12
Beverly Morgan	Beverly Morgan	2731 Chalkboard Cir. SE Fay AR 72703		6/27/12
Eric Kern	Eric Kern	424 Poplar St.		6-28-12
Kirby Henderson	Kirby Henderson	3513 Acorn Falls		6-27-12
Sarah McNeal	Sarah McNeal	1998 East Oaks Drive #10 Fayetteville, AR	ESTABLISHED, NOT transient. ☺	6/28
Becky Cook	Becky Cook	2308 Golden Oaks		6/28
John Jeffers	John Jeffers	2191 W. Jewel Rd	WOOD SNOW CONES	6/28
Dustin Hill	Dustin Hill	3215 W. Jewell		6/28
Cathy Cooper	Cathy Cooper	1537 Sandy Drive	±	6/28

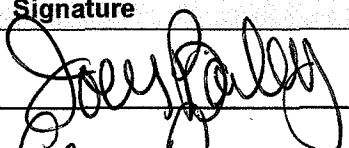
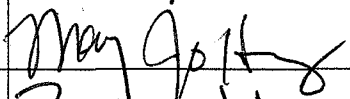
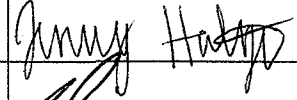
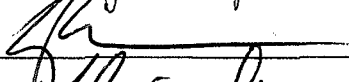
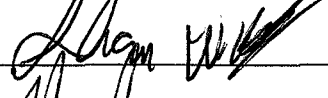
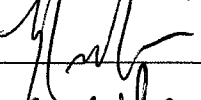
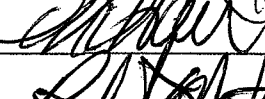
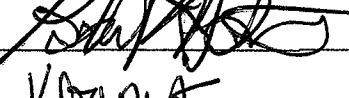
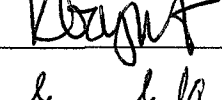
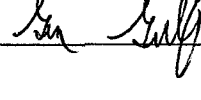
Printed Name	Signature	Address	Comment	Date
Gustavo Reyes		Fayetteville, AR 72701 617 N Scottsdale Dr #49	You need to start open	6-28-12
Ashley Tittle		1115 N. Leverett Ave Apt. 203 Fayetteville AR 72701	YOU GUYS ROCK!	6-28-12
Deven Phillips		1416 Mt Comfort Rd Fayetteville AR 72703		6-28-12
Devin Springer		21005 Ravenswood Dr Johnson 72703		6-28-12
Shayla Deeringwater		2805 Ravenswood Dr Johnson AR 72703		6-28-12
Andy Hume		The Keenels		6-28-12
Jasmine Pfingsten		2100 N Leverett Ave #49 Fayetteville AR 72703	Stay open! Ice cream & shaved ice are diff things	6/28/12
Stephanie Dalrymple		3440 N Hineswood Fayetteville, AR 72703	Stay open!	6/28/12
Chantelle Curington		813 S. ECKA AVE Fayetteville, AR 72701	Excellent place	6/28/12
USA Blyson		898 Curtis Ave Fayetteville 72701	Nice place	6/28/12
Trekia Anderson		5562 HURTSVILLE RD 72701	Friendly staff	6/28/12
MATT PERROW		378 Pittman Fayetteville, AR		6/28/12
Acan Davis		FAYETTEVILLE AR	Don't Go	6/28/12
Melissa Reid		3263 N Katherine Fayetteville, AR	Love love love!	6/28/12
Chelsea Anderson		2803 W. RIVERIDGE DRIVE Fayetteville, AR		6/28/12
Jimmy Anderson		2803 W. RIVERIDGE DR. Fayetteville, AR	Stay!	6/28/12

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Printed Name	Signature	Address	Comment	Date
Eleanor Townsend	Eleanor Townsend	2187 Wolf Creek Fayetteville	Shared Planet keep in current location	6/28/12
Rebecca Thompson	Rebecca Thompson	635 W. Taylor Fayetteville AR	BEST SNO CONES	6/28/12
Polly Gantt	Polly Gantt	859 WEST 72701	stay open	6/28/12
Travis Gantt	Travis Gantt	859 WEST 72701	stay open	6/28/12
Elizabeth Moody	Elizabeth Moody	1650 E Carolyn Dr.	stay open	6/28/2012
Kyle Davis	Kyle Davis	1872 N. Pine Valley Dr.	Better than Maggie Mae's	6/28/12
Melissa Finsard	Melissa Finsard	1872 N. Pine Valley Dr.	Star open!	6/28/12
GANNALYN MORRIS	GANNALYN MORRIS	875 E. Elm		6/28/12
Kevin Geng	Kevin Geng	1801 N. Woodland Ave.	stay open!	6/28/2012
Robin Rues	Robin Rues	1717 Wheeler		6/28/12
Amy Wender	Amy Wender	1001 Greenwood	Stay open	6/28/12
Brent Symphon	Brent Symphon	2925 26th St. Fayetteville	Stay open / don't mess it	6/28/12
Lonnice O'Boyle	Lonnice O'Boyle	4324 W. Chapman 4055 N. College	stay open	6/28/12
Rick Blough	Rick Blough	432 E. Dickson	stay open	6-28-12
Travis Hulshizer	Travis Hulshizer	3247 Warwick Dr.	stay open!	6-28-12
Katie Goodwin	Katie Goodwin	1617 N Maxwell Dr.	Ice Cream is totally different loved shaved ice	6-28-12

Printed Name	Signature	Address	Comment	Date
Chris Williams		1125 S. Liberty Dr. Fayetteville	SSTP	6/28
Carolyn Dux		219 W. Adams St. Fayetteville, AR		6/28
Wendy Sisco		2402 N. Stanton Dr Fayetteville, AR		6/28/12
Amber Griffin		2958 N. Gilead Fayetteville 72703		6/28
Lindsey Fikes		27774 Meadevine Way Fayetteville 72701		6/28
Justin Loflar		11229 Campbell Court Bldg. West Fork AR 72774		6/28
Aaron Hughes		1338 W. Cleveland St 72701		
Rachelle Sale		3785 E. Township Fayetteville 72703		6/28
Mike Casanova		463 N. Canine Rd		6/28
Melody Cartfagno				
Melody Cartfagno	Melody Cartfagno	463 N. Canine Rd. Fay		6/28
Richard Earles		930 S. Washington Fayetteville, AR		6/28
David McDowell		3949 N. Parkside #3 Fayetteville, AR		6/28
Monica	Monica Fether	2951 N. Main Ln Fayetteville 72703		6/28
Autumn Tolbert		219 S. Happy Hollow Fay AR 72701		6/28
Traci Jordan		379 W. Skelton Fayetteville		6/28

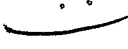
Printed Name	Signature	Address	Comment	Date
Tasha Sykes		2394 North Carey Dr Fayetteville AR 72704	Love y'all!! :))	6/29/12
Sean Smith		1668 N. Stardust Fayetteville, AR 72701	City council, fair market capitalism ???	6/29/12
Ethan Robison		1114 N. Futral	love this ->	6/29/12
Lauren Nelson		1723 Noelle Ave	Snow Cones!	6/29/12
Shelby Janz		43. W Augusta Drive #8		6/29/12
Phaedra Caldwell		18233 Purnaway Rd Fay, AR 72701	love this place	6/28/12
Aaron Adams		3075 N Market Ave Ste 1	Keep open! Great!	6-28-12
TJ BARNES		3011 N. Dorchester	GROW UP, OFFER BETTER products	6/28/12
Kirby Vitale		2952 N. Cassius	Stay Open	6/28/12
Janae Vitale		2952 N. Cassius	Love it!	6/28/12
Lugh Parotte		1729 E. Brandt St.	Good Luck!	6/28/12
Ronnie Brewer		2518 Candlewood St	Best Snow Cones	6/28/12
Jon Bensley		5931 Drexel Cove	Love the Cones	6/28/12
Marqueeba Hollis		1320 N. Garland Ave	I love this place!! Best Snow Cones Ever!	6/28/2012
Kristine Edwards		2111 Charleston / Ing Rd FAY, AR	!!)	6/28/12
Calli Berra		2301 E Meandering Way	We love Share the planet!	6/28/12

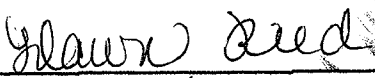
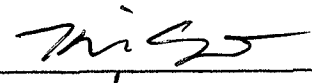
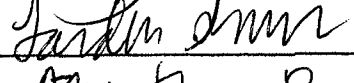
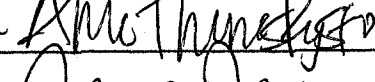
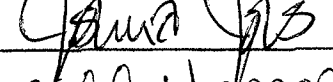
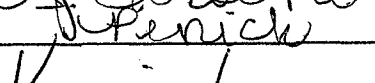
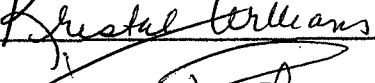
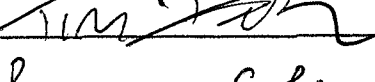
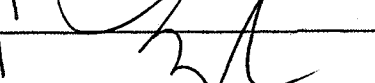
Printed Name	Signature	Address	Comment	Date
Joey Bailey		670 Sycamore St		6/28/12
Cass Runnels		17803 Campbell Ln		6/28/12
Mary Jo Henry		2885 E. Township		6/28/12
Brittany Holm		1917 E Overcrest		6/28/12
Jenny Holten		1350 Sunny Hill Dr.		6/28/12
Tash Heese		2131 N. Cassover #62		6/28/12
Heather Nunn		2793 Timberline Ln.		6/28/12
Kelly Stewart		3306 S. Zion Rd		6/28/12
Shawn Wilkins		3165 N. Oldm. 55001.		6/28/12
Moises Mungers		474 N Corn Canyon Way Kaysville UT 84041		6/28/12
Jake Hankin		159 South Hill Ave.		6/28/12
Susan Kilpatrick		1861 N. Trillium Ln.		6/28/12
Nick Harris		540 E Hawksville		6/28/12
Robert A		716 Rockcreek		6/28/12
Kelly Gangluff		2071 N. Austin 72703		6/28/12
Gene Gangluff		2071 N Austin 72703		6/28/12

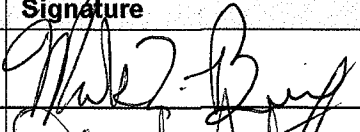
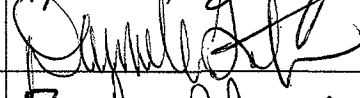
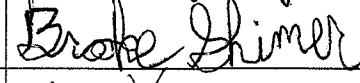
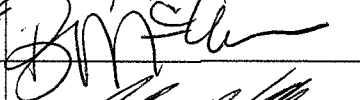
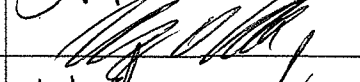
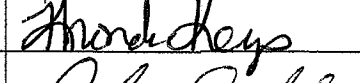
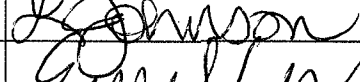
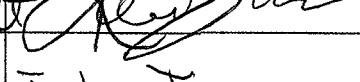
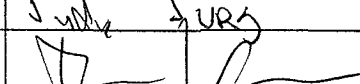
Printed Name	Signature	Address	Comment	Date
Deanna H	Deanna Horeel	19153 Howard Rd.	Shave the Planet ROCKS!!	6/28/12
Jessica G.	[Signature]	5047 Arkanshire	don't be ridiculous!	6/28/12
Janie J.	Janie Jordan	4754 Clear Creek	Keep it here!!!	6-28-12
Misty Simpson	Misty Simp-	2425 E Sharon St.	Let the little man! be. Keep STP here!	6-28-12
Kristy Harter	[Signature]	1543 W. Crown Pr. Art. 20	DONT GO	6-28-12
Kimmy Beasley	Kimmy Beasley	445 SW Mini Loop 6		6-28-12
Susan Young	Susan M Young	2086 N. Buckley Dr.		6-28-12
CJT, 1430n	[Signature]	41434 cheyenne dr		6-28-12
Ammanin	Lauren Sapon	498 E. Mimosa Fay	Yum!	6/28/12
TADD Sapon	Tadd Sapon	498 E. Mimosa Fay,		6/28/12
Amanda Barker	Amanda Barker	2422 Pierre Xing Fay		6/28/12
Stephanie Fox	Stephanie Fox	253 Nida Lindsay	DONT	6/28/12
Lindsay Gots	Lindsay Gots	"	GO!	10/28/12
Gratt Cutrell	Gratt Cutrell	5283 W Wheeler Rd	—	6/28/12
Katie E	Katie E	1500 W Levesett	♡	
James Johnson	James Johnson	2140 E Stearns St		

Printed Name	Signature	Address	Comment	Date
Marye Scantlin	Marye Scantlin	1688 Ramsey Ave.		6/28/12
Michael C. Scott	M.C. Scott	1688 Ramsey Ave - 72703	Leave Snowcones Alone!	6/28/12.
Kelsey Carone	Kelsey Carone	3165 W. Rockford Dr 72701		6/29/12
Audrey Thorn	Audrey Thorn	2519 N. Litchfield Lane		6/28/12
Garland Thorn	G. Thorn	2523 E. Huntsville Rd	I want my snowcones!	6/28/12
Michael Meland	M. Meland	2711 Valencia Ave	Don't tread on me!	6/28/12
Bobby Yates	B. Yates	2047 East Oaks	Don't tread on me!	6-28-12
Emily Kate Davis	Emily Kate Davis	7343 W. Gun Club Rd	Snowcones forever!	6.28
Debbie Harp	Debbie Harp	484 E. Melinda Dr.	Love it	6.28.12
Jimmy Jester	Jimmy Jester	3755 Le Mars St.	Love it!	6-28-12
Jasmine Frazer	Jasmine Frazer	6808 Dove Rd	best in town	6/28
Jenni Howard	J. Howard	6808 Dove	i love it	6/28
Sandra Carson	Sandra Carson	3934 Spyglass Hill Dr.	Private enterprise	6/28
John Griesse	John Griesse	3751 Edgewater		6/29
Lindsay Griesse	Lindsay Griesse	3751 Edgewater		6/28
Samal Kangas	S. Kangas	363 N. Rock Rd		6/28

Printed Name	Signature	Address	Comment	Date
Kelli Howell	Kelli Howell	1855 Candleshoe Dr.	I ♥ snow cones	
Duane Howell	Duane Howell	1855 Candleshoe Dr.	Yum!	
Alex Howell	Alex Howell	1855 Candleshoe Dr.	Yum!	
Dina Howell	Dina Howell	1855 Candleshoe Dr.	Yum!	
Caryl Culbertson	Caryl Culbertson	1855 Candleshoe Dr.		
T. Ghahremani	T. Ghahremani	920 Gracewood Dr	DON'T CLOSE	6/28
Lindsay Turner	Lindsay Turner	920 Gracewood Dr.		6/28
Desirae Burks	Desirae Burks	201 W. Thurman Apt. 4	Best snow cones Evah!	6/28
Bethany Foster	Bethany Foster	PO BOX 735 PG, AR	Heaven in a cup ♡	6/28
David Flynn	David Flynn	3053 N. Quantan Ct. FA		6/28/12
Liz Flynn	Liz Flynn	3053 Quantan Ct. Fay		" "
Ben Flynn	Ben Flynn	" " " "		" "
Sara Prisen	Sara Prisen	3133 Butternut Dr.	SNOW CONES!	6-28
Jill Carroll	Jill Carroll	517 Hawthorn St.	Best snow cones!	6/28
Trudy Smith	Trudy Smith	579 Polo Dr.	Best of the best	6/29
SCRECH	SCRECH	Liz Carroll		6/29

Printed Name	Signature	Address	Comment	Date
Brandy Braswell	Brandy Braswell	3255 Leo Ammons Rd. ^{PAY. AL 72701}		6/29/2012
David Marshall	David Marshall	14887 Cedar Tree R		6/29/2012
David Long	David Long	2227 N. Ashbrook Dr.		6/29/2012
Angie Scheidewer	Angie Scheidewer	1897 Caton Dr		6/29
Scott Davis	Scott Davis	2355 N. W. Elm St. Dr		6/29/2012
Stella Green	Stella Green	905 S. Wood Ave. ^{PAY. AL}		6/29/2012
Pat Buck	Pat Buck	1314 Kings Dr		6-29-12
MADISON JONES	MADISON JONES	2005 N. Kingsport Drive		6/29/12
LORA Kelley	LORA Kelley	28 S. College Ave		6/29/12
DERIC YOKLEY	DERIC YOKLEY	1045 OAKS MANOR		6/29/12
Lori Yokley	Lori Yokley	2039 E. Magnolia Dr.		6/29/12
Amy Gethrie	Amy Gethrie	3344 N. Southridge Dr		6/29/12
Jay Gethrie	Jay Gethrie	3344 N. Southridge Dr		6/29/12
Eric Cohen	Eric Cohen	2215 W. Wood Dr		6-29-12
Bryan Stickland	Bryan Stickland	2746 N. Ashbrook Dr.		6-29
Jennifer Stickland	Jennifer Stickland	2746 N. Ashbrook Dr.		6-29

Printed Name	Signature	Address	Comment	Date
Dawn Reed		1415 W. Mt. Comfort Rd Fayette 72703	nope! Maggie Moos is ice cream + high	6/29/12
Alisa Corke		1685 Fairlane Fay	shaved ice NOT ice cream go both places	6/29/12
Kevin Smith		915 N. Skyline Dr	Please keep it here!	6/29
John Coger		825 N. Rush Drive	Please keep it open	6/29
AKOTA SCRIVENER		3001 Waddigan Dr	Keep it here!	6/29
Holly Grook		3559 Crow U	keep here C it	6/29
SHARON FERNBERY		6262 Abilene Rd Fayette 72704	keep it	6/29
London Summers		1876 Buckley Dr.	STAY	6/29
Ellery Rystrom		104 Watson	stay	6/29
Josh Johns		1990 E Peridot #10	Shut down Maggie Moos	6/29
Jill Hassell		230 Timber Lane West Fork AR 72774	stay	6/29
Sarah C. Fenick		87 W. Forsythia Dr. #12 Fayetteville 72703	stay!	6/29
Kristal Williams		3061 Market St	stay!!	6-29-12
Tim Dahms		1223 Viewpoint DR		6-29-12
BRENNA COLLINS		1625 N. GILES RD	FAYETTEVILLE C.C. < SNOW CONES	6-29-12
Laura May		2971 E. Selk St	Should stay open!	6-29-12

Printed Name	Signature	Address	Comment	Date
Mark Baulay		2864 Rte Circle Rogers		6/29/12
Danville Encher		1433 N. Crestwood Dr.		6-29-12
Brooke Shimer		2380 Berkleigh Dr.		6-29-12
Alexandrea Kim		4128 W Mossy Rock Dr.		6/29/12
Beth McFeyer		3218 Idlenwood Way		6/29/12
Greg Emmel		1900 E. Overbrook Sh		6/29/12
Nat Williams		25907 E. Estater view		6/29/12
Rhonda Keys		Farmington, Ar 72730		6/29/12
Adam Doubek		1764 N. Lavett #160 Fayetteville, AR 72703		6/29/12
Sharon Dyle		3079 N. Hughmound Pkwy. AR		6-29-12
LEANNE JOHNSON		504 GREENY Ave		6-29-12
EMILY COLFORD		950 N. Lavett #113		6/29/12
Carrie Bell		2703B Dividend Drive		6/29/12
Kristi Street		65 S. Duncan Apt 1		6/29
Tracy Varnier		2649 N Valencia	APT #11	6-29-12

Printed Name	Signature	Address	Comment	Date
Katie Mills	Katie Mills	107 E. Madrid		6/29/12
Christie Hanak	Christie Hanak	4661 Copper Creek		6/29/12
Ben Patrick	Ben Patrick	1620 N. Whistling Stars	I love it!	6/29/12
Jay Kensing	Jay Kensing	402 Ash St, Lowell	"	6/29/12
Megan McWethy	Megan McWethy	432 E. Dickson, Fay AR	delicious & cheap!	6/29/12
Chris Haas	Chris Haas	1350 E. Amber Dr.	VOTE - YES!	6/29/12
Tiffany Haas	Tiffany Haas	1350 E. Amber Dr.	yes! love STR!	6-29-12
Sheryl Moss	Sheryl Moss	1753 E. 210th Rd 25-D	Vote - yes	6-29-12
Emanuel Jones	Emanuel Jones	436 E. Dickson	Sure.	6-29-12
Annie Bubb	Annie Bubb	13600 Sq. Mtn.	KS?	6-29-12
Krista Smith	Krista Smith	308 E. Sutton St	Yes	6/29/12
Jay W. Smith	Jay W. Smith	308 E. Sutton St	Yes too!	6/29/12
Collins Andreas	Collins Andreas	2880 E. Birdie Dr.	Yes!	6/29/12
Alissa Littleton	Alissa Littleton	2362 Kankz Ln.	SO DELICIOUS!	6/29/12
Grant Fitzgerald	Grant Fitzgerald	2362 Kankz Ln.	It should ICE ^{Not} cream	6/29/12
Nichole Warren	Nichole Warren	231 E. REBECCA ST		6/29/12

Printed Name	Signature	Address	Comment	Date
Melissa Guthrie	Melissa Guthrie	520 Rebecca St Fay		6/29/12
Vince Phillips	Vince Phillips	520 Rebecca St Fay		6/29/12
Carleigh Phillips	Carleigh Phillips	2537 Vanike Dr Fay		6/29/12
Jonathan Phillips	Jonathan Phillips	2		6/29/12
Barbara Sewell	Barbara Sewell	2797 N Saratoga Tr		6/29/12
Faige Hennessey	Faige Hennessey	460 Riverlyn Dr		6/29/12
Sarah Smith	Sarah Smith	1159 St Andrews		6/29/12
Jordan Rose	Jordan Rose	930 S. Huddle		6/29/12
Vicki Franklin	Vicki Franklin	PO Box 196 Kelley Place West Fork		6/29/12
Lauren Morita	Lauren Morita	1627 Cambridge		6/29/12
Jeff Mullins	Jeff Mullins	1557 N. Forest Hts.		6/29/12
Brittany Mason	Brittany Mason	1791 Ed Edwards		6/29/12
Ali Gutierrez	Ali Gutierrez	2212 Harrington		6/29/12
Jan Harr	Jan Harr	1653 N SHETLAND		6/29/12
Eli Harr	Eli Harr	1653 N. Shetland		6/29/12
Danny Bewick	Danny Bewick	2254 E. Cinnamon Way		6/29/12

Printed Name	Signature	Address	Comment	Date
ANZI SKIPTON	Anzi Skipton	2507 Everest Ave Rogers, 72758		6/29/12
Amy Morrow	Amy Morrow	1233 S. Paradise Ln Fayetteville 72701		6-29-12
Kara Richardson	Kara Richardson	20321 Sherry Rd 72764		6-29-12
Emily McWilliams	Emily McWilliams	4171 Sunflower Cr Fay 72703		6/29/12
Sarah Langham	Sarah Langham	2494 Robin Rd Fayetteville 72703		6/29/12
John Langham	John Langham	2494 Robin Rd FAYETTEVILLE 72703		6/29/12
Taylor Ham	Taylor Ham	11806 Greasy Valley Rd 72753 Prairie Grove AR		6/29/12
Jeremy Furstenberg	Jeremy Furstenberg	1610 Cannockale Fayetteville 72703		6-29-12
Emily Morrison	Emily Morrison	930 E. Lakeside		4/14-2501
Megan Furstenberg	Megan Furstenberg	6588 Melbourne Ave Fayetteville 72701		6-29-12
Kikko Taylor	Kikko Taylor	1631 Stewart St. 72703		6/29/12
Taylor Cochran	Taylor Cochran	2273 Berkley Dr - 72704		6/29/12
Jeff Mitchell	Jeff Mitchell	3448 Breckenridge 72703	Yes!	6/29/12
Vale Oxford	Vale Oxford	1481 N. Heritage Ave. 72704	Stay Open!	6/29/12
Peter Oxford	Peter Oxford	1482 N. Heritage Ave 72704		6-29-12
Tyler McCartney	Tyler McCartney	13476 Bill Sellers Rd 72704	Please stay open!	6-29-12

Printed Name	Signature	Address	Comment	Date
Carli Waters	Carli Waters	13476 Bill Sellers Rd 72704	Yall are the best!	6-29-12
Norman Acuff	Norman Acuff	7848 John Garrison 72704	Yall are great!!	6-29-12
Tanisha Thompson	Tanisha Thompson	3113 Warwick dr.	Awesome	6-29-12
Zoe Naylor	Zoe Naylor	1540 W. Nettleship St 72701	Don't leave!	6-29-12
Haaron Nugent	Haaron Nugent	1540 W. Nettleship St 72701	Ice cream is NOT Snow cone	6-29-12
Melanie Dels	Melanie Dels	4425 W. Flanck Dr. 72704		6-29-12
Tripp Cashion	Tripp Cashion	189 E Madrid St 72703	I love shaved ice!! Maggie Moo's Sucks!!	6-29-12
KARA CORNETT	KARA CORNETT	304 Malinda Dr 72703		6/29/12
Monica Aboun	Monica Aboun	2476 Sicks Ct 72701	Don't Leave Please	6/29/12
Martha Swearingen	Martha Swearingen	2484 W. Orlando Dr., apt. 1	Don't leave!	6/29
Desiree Martin	Desiree Martin	P.O. Box 1004 Farmington AR 72701	SNO CONES > Ice cream	6/29
Morgan Seltz	Morgan Seltz	430 Monterey St. Farmington	So good!	6/29
Elizabeth Gorman	Elizabeth Gorman	2515 N Toy Dr.	favorite!	6/29/12
Chris Tompkins	Chris Tompkins	8711 N. Charles Ave	Best in town	6/29/12
Lisa Parkayastha	Lisa Parkayastha	P.O. Box 1210 72702	—	6/29
Amy Francis	Amy Francis	125 E. Elm St. 72703	We love you	6/29

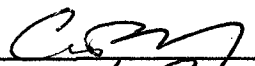
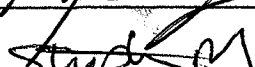
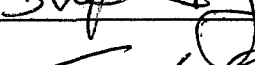
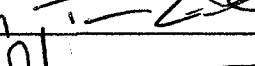
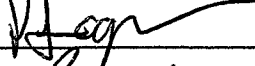
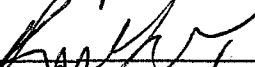
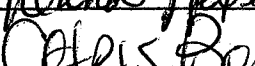
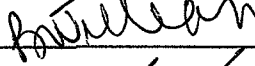
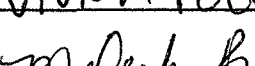
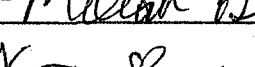
Petition for Shave the Planet!

Petition summary and background	The Planning Commission's decision on June 11 th , 2012 to allow Shave the Planet to remain open for the duration of summer has been appealed. If the City Council overrides the Planning Commission's decision, we will have to leave on July 4 th , 2012.
Action petitioned for	We, the undersigned, are concerned business owners and managers who urge our leaders to vote to allow Shave the Planet to stay on their extended permit they were granted on June 11 th , 2012.

Printed Name	Signature	Address	Comment	Date
Breanna Salomino	Breanna Salomino	3523 E. Natchez Trce		6/25/12
Julia Allen	Julia Allen	11663N Cambridge Rd		6/25/12
Lorelei Barker	Lorelei Barker	1915 coopers cove	favorite place to get snow cones been here for years	6/25/12
Julia Pickett	Julia Pickett	382 Tanner DR Fayetteville AR 72701	Best Place ever!	6/25/12
Ashley Hipps	Ashley Hipps	580 Becca Ln. Prairie Grove		6/25/12
Gina Broyles	Gina Broyles	3524 West Thames Fay, 72704	Awesome!	6-25-12
Austin Etzeli	Austin Etzeli	3331 S. Barrington	Awesome!	6-25-12
Nancy Buckart	Nancy Buckart	16901 Lake Squigah Rd.	Great!	6-25-12
Chris Buckart	Chris Buckart	16901 Lake Squigah Rd.		6-25-12
Erika Kiehlak	Erika Kiehlak	1343 N. Leverett	please stay open!	6-25-12
Katherine Anne Gibson	Katherine Gibson	1764 N. Leverett Ave	I ♥ this place	6-25-12
Nicole Johnston	Nicole Johnston	1305 N. Menon way	Save lactose intolerant people	6-25-12

Printed Name	Signature	Address	Comment	Date
KRISTINE GAFFNEY	Kristine Gaffney	4400 N GILDED AVE	KEEP STAVE THE PLANET ON COURSE	6/29/12
CODY JACKSON	Cody Jackson	4400 N. GILDED AVE	"	"
Marie Paschall	Marie Paschall	382 Sonoma Cir	"	6/29/12
Matt Holiman	Matt Holiman	1893 N. Porter Rd	"	6/29/12
June Ekensear	June Ekensear	4771 E. Bridgewater Lane	Please Keep Stave the Planet on edge	6-29-12
Kesh Ekensear	Kesh Ekensear	4771 E Bridgewater	" " " "	6-29-12
Chris Smith	Chris Smith	579 Polo Drive		6-30-12
Elizabeth Fox	Elizabeth Fox	700 E Jackson Way 72701	" "	6/30/12
Anna Webb	Anna Webb	1901 EDVERCROFT ST 72703	Same as above	6/30/12
Brooklyn Wiley	Brooklyn Wiley	930 W. Cherrywood	" "	6/30/12
Alex Shanon	Alex Shanon	9434 Highland Knolls Rd	"	"
Kaci Burgess	Kaci Burgess	1862 N. SCULL CREEK DR. Fayetteville 72703	Yum! Keep it!	6/30/12
EVAN Burgess	Evan Burgess	1862 N SCULL CREEK DR Fayetteville 72703	YCP	6-30-12
Jane Urquiza	Jane Urquiza	2512 N Middleton way		6-30-12
John To Her	John To Her	2675 U Club Drive	KEEP STAVE THE PLANET ON COURSE	6-30-12
LARRY WALKER	Larry Walker	2809 N CROSSOVER		6/30/12

Printed Name	Signature	Address	Comment	Date
ANDREA WALKER	Andrea Walker	2809 N Crosswain 72703	cup C Competition !!	5/30/12
Angie Baker	Angie Baker	2131 Loren Circle 72701	Keep Show the Planet Open!	6/30/12
Anna Nottmeyer	Anna Nottmeyer	PO Box 66 72702		6/30/12
TAMARA BURNETT	JM Burnett	3747 Caetan 72701		6/30/12
Monica Campbell	MONICA CAMPBELL	1338 Myrmone Dr 72703	Keep open - stuff	6/30/12
Anna Kruger	AKruger	2834 E. Birdie Dr. 72703	Keep Open!! ☺	6/30/12
Keara Coya	Keara Coya	1964 Ball 72703		6/30/12
Debra Lyon	Debra Lyon	1964 Ballate 72703		6/30/12
Kelli Strachan	Kelli Strachan	311 W North St 72713		6/30/12
Kimba Farzan	Kimba Farzan	1250 East Ash St	Only Showed ice 1 bag	6/30/12
Amber Adams	Amber Adams	401 W. 24th apt 21	Stay Open!	6/3/12
Emily Money	Emily Money	1450 N. Lexington Hill Dr #205		6/30/12
Shelley Steele	Shelley Steele	940 Lakeside	We ♥ Show the Planet	6/30/12
Dixie Dalrymple	Dixie Dalrymple	3962 N. Hwy 112		6/30/12
Carissa Dyer	Carissa Dyer	902 S Wood Ave	don't leave !!	6/30/12
Trisha Smith	Trisha Smith	2116 Clover Dr 72701		6/30/12

Printed Name	Signature	Address	Comment	Date
Cassey Bailer		1825 N. Colony Way		6/30/12
Michael Carey		4187 Zion Valley		6/30/12
STEPHEN MORGAN		4498 W SERVICE BERRY DR		6/30/12
Timothy Graham		5047 Arkanshire		6/30/12
Peggy Logan		2310 Eiffel Xing		6/30/12
Rache J. N.		5125 N Barcelona Ave 7707 Fayetteville AR Tammington		6/30/12
Dana Williams		11000 Lost Creek 7070		6/30/12
CHRIS BOYD		93 W. Village Lake #9 72109		6-30-12
Justin Williams		4021 Callie Ave		6-30-12
Bernard Williams		" "		6-30-12
Mark Smith		10800 Thunder Rd Fayetteville AR		
Vivian Poulott		" "		
Meliah Brack		201 W. Village Lake		6-30-12
Kate Beebe		1607 E Terry Dr		6-30
Clem/ton Salazar		1607 E Terry Dr		6-30
Nash		1279 E W went central		6-30

Handed out at the City Council meeting 7-3-12

06/29/2012

**City of Fayetteville
Mayor Lionel Jordan
City Council Members**

RE: Appeal – ADM 12-4144 Siebert

Dear Council Members –

Please find the attached information we intend to present at the upcoming City Council meeting on the Appeal of ADM 12-4144 Siebert (Shave the Planet). As you are aware, we are requesting the Council to reverse the decision made by the City of Fayetteville Planning Commission on June 11th, 2012 to allow Shave the Planet to remain in their current location for longer than 90 days as is provided by the UDC.

I had originally intended to distribute an abbreviated list of the topics we intended to cover at the meeting. After further consideration, I decided to include a more comprehensive package of information so that I may do my best to keep my presentation at the meeting as brief as possible. I respectfully request that you please review the attached information contained herein as it is the information we intend to offer at the public meeting.

Thank you,
Tracy K Hoskins

Presentation -

Per 178.04(c)(3)(b) of the UDC -

“...the mobile vendors’ presence for an extended period of time at one location will not create an unfair advantage over similar and nearby permanent businesses.”

The question to be answered is whether or not Shave the Planet (STP) is a similar (not “identical”) business to MaggieMoos Ice Cream and Treatery.

First, STP is not a “**snow cone stand**” as the business has been labeled on several occasions and within Staff’s reports. STP is a **shaved ice shop**. **There is a difference in the two products**. Snow Cones are more of a gritty, icy product typically served in a paper cone. Shaved ice is a snow-like, smoother (much like ice cream or sorbet) product served in cups and offered in various sizes; much like a fountain beverage, smoothie, shake, etc.

Shaved Ice and those products sold and MaggieMoos are both categorized as “frozen desserts” which are seasonal products for the most part.

MaggieMoos sells -

Ice Cream, Sherbet, Sorbet (very similar to shaved ice) and Milk Shakes, offered with mix-ins and/or toppings; along with Smoothies and Novelty Items.

In addition to Shaved Ice Desserts, STP advertises –

Ice Cream, Sherbet, and Milk Shakes as both primary menu items and as mix-ins and/or toppings.

With the above, one could easily determine (notwithstanding the facilities from which each does business), that STP is not only “similar” to MaggieMoos but in many way IDENTICAL to MaggieMoos. In Staff’s report, you will find that Staff agrees the two businesses are very “similar” as defined by the code. There will be images provided later in this document which illustrate the products and the nature of the STP business.

Per 178.04(b)(2)(b) of the UDC, when applying for Outdoor Mobile Vendor on Private Property Permit, the Applicant IS REQUIRED TO DISCLOSE the “type of items sold or services rendered.” Had the Applicant properly disclosed their menu items included Ice Cream, Sherbet, and Milk Shakes on their original permit as required, it is likely the Planning Commission would have had this information to consider prior to granting a variance. Further, the omitted information is very pertinent for the Commission to determine if the two businesses are “similar”.

Had the Applicant properly disclosed their menu items included Ice Cream, Sherbet, and Milk Shakes on their original permit as required per 178.04(b)(6)(b) of the UDC which states, “...the outdoor mobile vendor...will not adversely affect nearby businesses...”; one could determine the original 90 day permit may not should have been granted to begin with.

4863



CITY OF FAYETTEVILLE, ARKANSAS

OUTDOOR MOBILE VENDOR

FOR STAFF USE ONLY	FER: \$50.00
Date Application Submitted:	S-T-R:
Date Accepted as Complete:	PPH:
Case / Appeal Number:	Zone:
Public Hearing Date:	

Please fill out this form completely, supplying all necessary information and documentation to support your request. Your application will not be considered complete for review until all necessary information is furnished.

Application:

Indicate one contact person for this request: ☒ Applicant ☐ Representative

Applicant (person making request):

Representative (engineer, surveyor, realtor, etc.):

Name: Eric Siebert

Name:

E-mail: wheel power cycle sports Dept. 1000

Page 1 on STP's Outdoor Mobile Vendor Permit Application.

Address: 2146 Clover Dr
Fayetteville, AR 72701

Address:

Phone: (479) 871-8201

STP does not disclose they also sell Ice Cream, Sherbet, Milk Shakes, etc. as required.

Fax:

Fax:

Vending Location/Address: 3078 N College, 72701

Product for Sale or Service Offered (Describe):

- ☒ 1. Food/ Beverage: Shaved Ice
☐ 2. Product: _____
☐ 3. Service: _____

Business/Vendor Name: Shave the Planet Square Feet of Building/Structure: 128

Number of Parking Spaces Required for Use: 1 Zoning District: C-2

Arkansas Sales and Use Tax ID Number: 00324966 Use Unit: 13

Description of Mobile Device or other Structure to be utilized for conducting business: Shaved Ice stand & portable



Small (12 oz)
\$2.00

Medium (16 oz)
\$2.50

Really Big
(24 oz)
\$3.50



Bahama Mama
Banana
Black Cherry
Blueberry
Blue Bubblegum
Blue Coconut
Blue Eagle
Blue Raspberry
Butterscotch
Cake Batter
Cherry
Chocolate
Cinnamon
Coconut

Coffee
Cookie Dough
Cotton Candy
Cream Cheese
Cream Soda
Daiquiri
Dill Pickle
Golden Apple
Grape
Grapefruit
Green Apple
Guava
Hawaiian

Hurricane
Invisible Bubblegum
Invisible Cherry
Invisible Raspberry
Invisible Strawberry
Kiwi
Lemon
Lime
Mai Tai
Mango
Margarita
Mojito
Orange
Passion Fruit

Peach
Pina Colada
Pineapple
Pink Bubblegum
Pink Lemonade
Polar Punch
Red Raspberry
Root Beer
Silver Fox
Spearmint
Strawberry
Tamarind
Tidal Wave
Tiger's Blood

Tiramisu
Tutti Frutti
Vanilla
Vanilla Malt
Watermelon
Wedding Cake
Wild Strawberry

SUGAR-FREE:

*Coconut

*Peach

*Strawberry

*Tiger's Blood
(Add 50¢)

*Sherbet Ice
Cream (75¢ Extra)

*Hershey's
Chocolate Syrup

TOPPINGS:
(50¢ Extra)

*Hershey's
Caramel Syrup

*Sour
*Cream Topping

The Ultimate Addition: Vanilla Ice Cream (75¢ Extra)

Specialty Mixes

Afternoon Delight

Orange, strawberry, and blue raspberry

Andes™ Mint Chocolate

Chocolate and a hint of spearmint

Cheesecake

Any flavor and cream cheese

Cherry Bomb

Vanilla custard, cherry sauce

Colada

Any fruit, passion, and coconut

Dr. Sno

Hard berry and cherry

Funky Monkey

Banana and chocolate

Shirley Temple

Lime and cherry

Homemade Ice Cream, Sherbet
Ice Cream, Milkshakes

Fabulous Concoctions!

Made with additional toppings (Extra charge)

Acid Rain

Wild strawberry, pink lemonade
& sherbet

Banana Cream Pie

Banana, coconut & cream

Banana Split

Strawberry, banana & ice cream

Bio-fuel

Cookie dough and cream

Caramel Apple

Apple, splash of cinnamon, and
caramel topping

Creamsicle

Orange, vanilla & cream

Coconut Cream Pie

Coconut, vanilla & cream

Earth Day

Butterscotch & caramel topping

Green House

Coconut fruit, blueberry & mint

Ha

Wedding cake, strawberry,
& cream

Homemade Ice Cream

Vanilla malt with ice cream

Milkshake

Chocolate, vanilla malt &
Hershey's chocolate

Ozone Layer

Lemon lime, cherry, sherbet

Strawberry Shortcake

Cake batter, strawberry, cream

Below, you will find evidence that the public and STP themselves see STP as a permanent perennial business. Through the Siebert's own admissions, they want to be permanent (but only during the high season) at the same location year after year. Further, if we were discussing ONLY shaved ice and ice cream, then one might feel there is enough difference in the two products. However, you will find proof that STP not only sells shaved ice frozen desserts, but markets and equally sells and regularly advertises other frozen dessert products IDENTICAL to MaggieMoos.

6/27/2012 – NWA Online (Online NWA Times)

Katy Siebert (STP Co-Owner) -

"Shaved ice and ice cream are completely different products and completely different customer bases," Siebert said Tuesday.

Here are some photographs of STP's products alongside MaggieMoos products –



The following entries are taken from comments made by the STP Owners and the Public at the Planning Commission Meeting of June 11th, 2012. A Copy of the Minutes from the meeting is attached.

Eric Siebert –

STP has seen less of an increase in sales this year after Andy's closing. When Andy's closed – it didn't benefit them.

STP and MaggieMoos are very different

Willing to do whatever to make it **more permanent**.

Eric Siebert obviously would like have a bricks and mortar business, but is unwilling to set up a permanent shop and expend the costs associated with a "more permanent" business.

Katy Siebert -

Customers drive from Bentonville, West Fork Decatur, Stillwell, Siloam Springs...

If this is the case, if their product and customer following is as the Sieberts and their employees describe, their customers won't mind driving to find them a half mile up or down the road.

Commissioner Chesser asked Katy Siebert –

Chesser - "If you were not in business for more than 90 days, would you have to close up shop?"

Katy Siebert – "We'd have some very unhappy customers."

Chesser – "If we said no, would you be open?"

Katy Siebert – "We would have to find a new place to move and therefore we would lose a lot of our customer base because, I mean, they know where the spot is."

Chesser – "They know where the location is."

Eric Siebert – "There's going to be a shaved ice vendor there regardless whether it's us or somebody else."

Chesser – "It sounds like you'd be there either way, right... if it's for 90 days or 120 days, you want to be there during that time (summer), because it's a good location."

Katy Siebert - "Yes year after year. We'd like to be there as many years as possible."

Katy Siebert obviously would like have a bricks and mortar business, but is unwilling to set up a permanent shop and expend the costs associated with a "more permanent" business. Katy has established STP's customers also view STP as a business expected to be in that particular location year after year.

Andrea Lister - customer

Can't afford it (MaggieMoos)

The mobile/semi-permanent businesses are not required to suffer the initial and ongoing expenses and overhead as required for the bricks and mortar businesses. These expenses include but aren't limited to water, sewer, sanitation, provision and maintenance of ADA facilities, public restrooms, property taxes, landscape installation and maintenance, payroll taxes, etc. A business with minimal overhead which operates only during the season when sales are high and close up shop the remainder of the year can easily cut prices below their competition while maintaining a very acceptable profit margin.

Sarah McNeil – employee

Totally different product vs a dairy product.

It's (STP) not a transient vendor. I was offended by that.

The site has always been used for an **ice cream stand** and is not a transient vendor.

Woman coming from Centerton three or four times a week.

And I need the job.

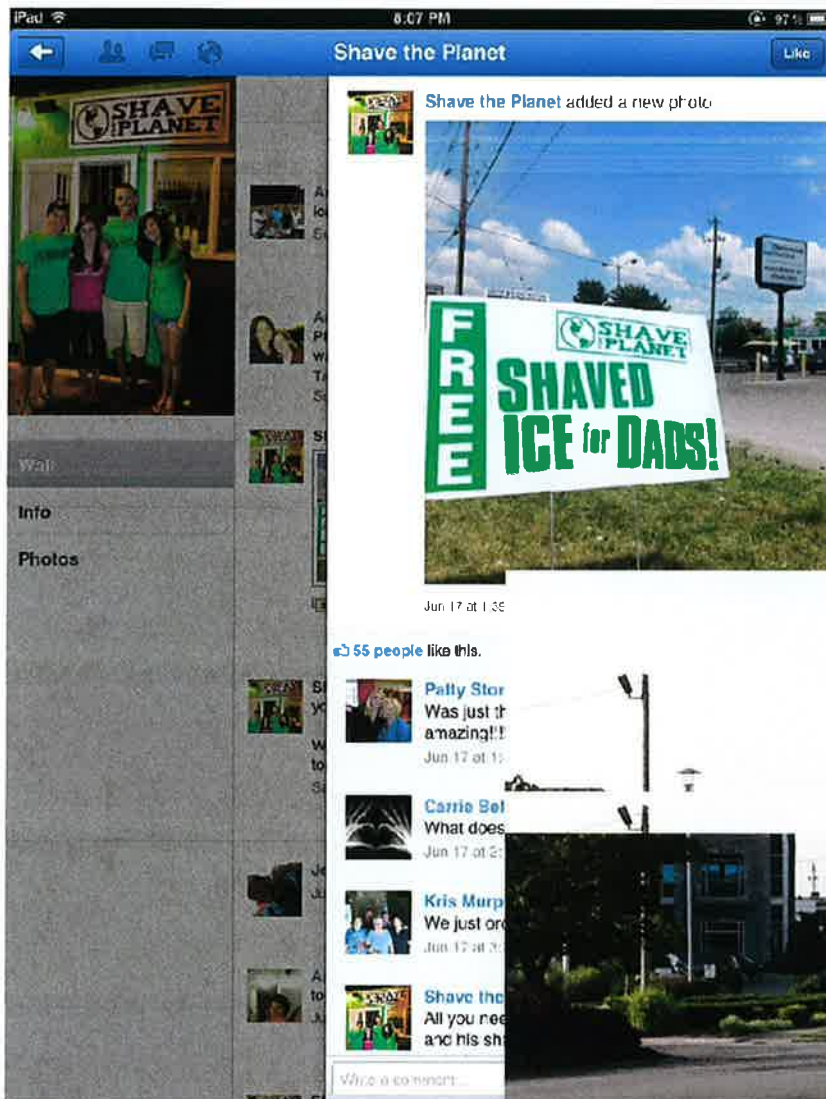
Even STP employees consider STP to be a semi-permanent business and even refer to it as an "ice cream stand" and "it's not a transient vendor". We are not suggesting STP should close up shop. Per 178.04 of the UDC, we are asserting that the two businesses are without doubt "similar". Therefore, STP should be required to relocate ½ away. Katie Siebert stated, "We would have to find a new place to move..." So, moving might not be what STP WANTS do, but it is something STP CAN do; and Sarah and others can all keep her jobs.

Jaqueline Buntin – friend

Known the Siebert for 8 years.

STP is committed to following city guidelines, obeying city law

Bricks and Mortar businesses have strict regulations which must be adhered to. Of those regulations, the sign ordinances are very deliberate. MaggieMoos recently appropriately permitted and invested over \$15,000 on an internally lit monument sign which is the City's preferred commercial sign. Staff was diligent in making sure the proper setbacks, height, square footage of display, etc was strictly adhered to. Below are picture of two signs posted by STP AFTER the Planning Commission meeting where their variance was granted. Staff will confirm that neither of these signs meet the regulations of the city's sign ordinances, are illegal signs which were never properly permitted by the City.



**Unpermitted Signs located
The right-of-way of N. College
Avenue.**



Of course, policing mobile vendors is much more difficult than policing bricks and mortar businesses. However, if STP is "Willing to do whatever to make it more permanent", and "STP is committed to following city guidelines, obeying city law", they should be willing to abide by the law as opposed to posting illegal signage.

STP has 25 employees, 15 at college location.
People need to keep their jobs during summer months.

Again, no one is suggesting STP close up shop. Like Sarah (above,) no one loses their job.

Cody Buntin – Friend/Realtor

The best place to open a restaurant is between two other restaurants.

To Mr. Buntin's argument, If STP decides to open up a permanent business within the very building where the parking lot is they inhabit year after year and be subject to the regulations other bricks and mortar businesses are subject to, then the city will never hear a single complaint out of MaggieMoos. We have no problem if STP decides to "open a restaurant" right across the street from MaggieMoos restaurant. This is not a case of one restaurant opening up across the street from another.

Ben Israel – Relative and property owner

I don't pay any less taxes whether or not STP is there or not.

**Commissioner Chesser addressed Property Taxes, questioning if property taxes would be the same.*

Mr. Israel refers to Real Estate taxes and has referred to the same on previous occasions. When we have made reference that mobile vendors often do not expend "property taxes" as bricks and mortar businesses are subject to, we are referring to "property taxes", not "real estate taxes". Property taxes are those ad valorem taxes assessed on business's personal property such as furniture, fixtures and equipment. It is very difficult for authorities to monitor a transient vendor to ensure they have properly assessed business property, while it is very easy for them to monitor permanent businesses. The following document was provided by a local title and abstract company whose profession is to research governmental records and provides accurate information pertaining to those records. Though STP has several locations throughout Washington County and its Principles resides in Washington County, they were unable to find records of any business property (portable buildings, shaved ice machines, freezers, etc.), having ever been assessed by Siebert, his LLC, any DBAs, or Shave the Planet. The only assessment found was for personal vehicles, a 10ft box trailer and a 6ft flat bed trailer. See below.

BRONSON ABSTRACT COMPANY, INC.



Closings

Title Insurance

Abstracts

3810 Front Street
Suite 5
Fayetteville, AR 72703
479 442-2700
Telecopier
479 442-8475

June 14, 2012

Tracy K. Hoskins
3155 N. College Ave.
Fayetteville, AR 72703

Re: search

As requested we researched the Washington County, Arkansas Assessor's personal property rolls for the following names:

Eric J. Siebert
Shave the Planet
Wheel Power Cycle Sports, LLC

We found no assessments for Shave the Planet and Wheel Power Cycle Sports, LLC. However, we found assessments for Eric J. Siebert which is attached.

Sincerely,

A handwritten signature in cursive script that reads "Scott Bronson".

Scott Bronson

Assessment Number: **9102453** Assessment Year: **2012**
 Assessment Date: **4/20/2012** Last Modified: **4/20/2012**
 Name: **SIEBERT, ERIC J**
 Mailing Address: **2148 S CLOVER DR FAYETTEVILLE AR 72701**

Tax District	Total Assessed Value	Total Late Value
011	6,560	0

Assessed Personal Property	Assessed Value
2012 CARGO 10'	670
PUR 03/14/2012 \$3507 NBW	
2009 CHEV 1600 15 CREW 4X4 1LT 8G 4.8 143.5	4,890
PUR 03/23/2012 \$21000 NBW	
2002 HYUN SANTA FE 4DR GLS 6G 2.7 103.1	930
GIFTED 8/30/2011 CAZ	
HMDE UTILITY FLATBED, LIGHT DUTY 6' STD	70
PUR 4/20/10 \$359 CAZ	

[Next Item](#) | [Previous Item](#) | [Return to Search Results](#) | [Modify Search](#) | [New Search](#)

178.04(c)(3)(b) of the UDC does not include support, how well people like the product, or how many friends or employees speak on a mobile vendor's behalf - as a consideration for granting a variance to allow said vendor an extended stay. However, those speaking on behalf of STP, including the STP owners themselves, clearly assert that it is their opinions that STP and MaggieMoos are NOT "similar" businesses. We have asserted the two businesses are not only "similar", but in many ways identical. The following illustrations should prove beyond doubt that the products sold by both businesses are well beyond "similar".

Most of the following images are taken from STP's own FaceBook pages and posts.



Shave the Planet

June 10

Dear Shave the Planet Customers,

In 2011, we applied to stay for 6 months at our College Ave location and were approved with an 8-1 vote. This year, we applied to stay the same amount and were only approved for 3 months. This basis for this decision was because MaggieMoos ice cream shop across the street complained that we were taking their customers.

We have repealed this action stating that shaved ice and ice cream are very different products, and that our customers come to us specifically because they want shaved ice. If we are not approved, our permit will expire at the end of June.

We would love for our customers who share our opinion and love shaved ice to be at the city meeting to help us prove that we should be able to stay the entire summer! Let's fill the courthouse!

The meeting is schedule for this Monday, June 11th at 5:30PM at City Hall (113 Mountain St, just off the square). Just go up the grand staircase and it's the big room at the top!

We want to continue serving you some STP goodness as long as we can! You can speak if you'd like, but even your presence would help!

Thanks,
Eric and Katy Siebert

Like · Comment · Share

13

STP Menu Board -

 Small (12 oz) \$2.00 Medium (16 oz) \$2.50 Really Big (24 oz) \$3.50 				
Bahama Mama	Coffee	Hurricane	Peach	Tiramisu
Banana	Cookie Dough	Invisible Bubblegum	Pina Colada	Tutti Frutti
Black Cherry	Cotton Candy	Invisible Cherry	Pineapple	Vanilla
Blueberry	Cream Cheese	Invisible Raspberry	Pink Bubblegum	Vanilla Malt
Blue Bubblegum	Cream Soda	Invisible Strawberry	Pink Lemonade	Watermelon
Blue Coconut	Daiquiri	Kiwi	Polar Punch	Wedding Cake
Blue Eagle	Dill Pickle	Lemon	Red Raspberry	Wild Strawberry
Blue Raspberry	Golden Apple	Lime	Root Beer	
Butterscotch	Grape	Mai tai	Silver Fox	SUGAR-FREE:
Cake Batter	Grapefruit	Mango	Spearmint	*Coconut
Cherry	Green Apple	Margarita	Strawberry	*Peach
Chocolate	Guava	Mojito	Tamarind	*Strawberry
Cinnamon	Hawaiian	Orange	Tidal Wave	*Tiger's Blood (Add 50¢)
Coconut		Passion Fruit	Tiger's Blood	
*Sherbet Ice Cream (75¢ Extra) *Hershey's Chocolate Syrup TOPPINGS: (50¢ Extra) *Hershey's Caramel Syrup *Sour Cream Topping				
The Ultimate Addition: Vanilla Ice Cream (75¢ Extra)				
Specialty Mixes Afternoon Delight Orange, strawberry, and blue raspberry Andes™ Mint Chocolate Chocolate and a hint of spearmint Cheesecake Any flavor and cream cheese Cherry Bomb Vanilla soft-serve, cherry sauce Colada Any fruit, cream, and coconut Dr. SNO Raspberry and cherry Funky Monkey Banana and chocolate Homemade Ice Cream, Sherbet Ice Cream, Milkshakes Shirley Temple Lime and cherry Strawberry Shortcake Strawberry, vanilla, and cream Vanilla Malt Vanilla malt and Hershey's chocolate Watermelon Watermelon and cream Wild Strawberry Wild strawberry and cream				
Fabulous Concoctions! Made with additional toppings (extra charge) Acid Rain Wild strawberry, pink lemonade & sherbet Banana Cream Pie Banana, coconut & cream Banana Split Strawberry, banana & ice cream Bio-fuel Cookie dough and cream Caramel Apple Apple, caramel, chocolate, and caramel topping Creamsicle Orange, vanilla & cream Coconut Cream Pie Coconut, vanilla & cream Earth Day Butterscotch & caramel topping Green House Lemon-lime, blueberry & cream Homemade Ice Cream Vanilla soft-serve with ice cream Milkshake Chocolate, vanilla malt & Hershey's chocolate Ozone Layer Lemon-lime, cherry, sherbet Strawberry Shortcake Cake batter, strawberry, cream				

Shave the Planet
Like

Wall
 Info
 Photos

Twice Born Design ▸ **Shave the Planet**

I've been craving some Saved Ice! -What are some popular flavors that are not your typical flavors??

Jun 12

Shave the Planet

Acid Rain is great! It's got wild strawberry, pink lemonade, and sherbet in the middle! Another great one is California Dream (peach, pineapple, mango)! Thanks for asking!

Jun 13 · Like · 1

June 12

Sherbet

Shave the Planet
Like

Wall
 Info

Shave the Planet

Starting today, our location at 3078 N College will open at 11am daily (except Sunday)! FOTD is Hawaiian with Sherbet! Come by and see us!

Jun 18 at 11:17am

8 people like this.

Diana Zumwalt

Yes! I need to open a shave the planet in Minnesota!!!

Jun 18 at 2:05pm · Like · 1

June 18 (after variance approval / before appeal)

Sherbet

Shave the Planet
Like

Wall
Info
Photos

Brian Christopher-john Evans ▸ **Shave the Planet**

Is there a certain size your allowed when you go to get your free one?

Tuesday at 10:26pm near Springdale · ·

Shave the Planet

Your free shaved ice can be any size with any amount of toppings! I personally recommend a "really big" strawberry shortcake with ice cream. That's a \$4.75 value, and its delicious! You earned it, so make the most out of it!

Yesterday at 9:21am · ·

Brian Christopher-john Evans

Thank you..

Yesterday at 9:26am ·

Ice Cream

Shave the Planet
Like

Wall

Jeremy Jackson ▸ **Shave the Planet**

Flavor of the day Is.....?

Jun 16 at 7:00pm ·

Shave the Planet

banana split!....strawberry, banana, and ice cream :)

Jun 16 at 7:45pm ·

"Banana Split"
A famous Ice Cream Dish
Ice Cream



Posted on 6-29-2012 -

14 hours ago via mobile · Like

Write a comment...



Beth Dyar Emmanuel

I read in the newspaper yesterday that Maggie Moo's is appealing the city council's decision.....Here's my argument. If college closed, if your traffic hasn't increased then it's a problem with your product!!!! Sorry that Shave the Planet is superior. And not to mention a different product! Get over it, MM's. in them..."

Like · Comment · 22 hours ago

Alyssa Vivlemore likes this.



Shave the Planet Amen to that haha! You make some awesome points that will definitely be brought up at the meeting!

15 hours ago via mobile · Like



Jamie Vivlemore and no one wants ice cream when it's 100 degrees outside!

15 hours ago · Like



Zala Wala I love the snow cones u sell with ice cream in them no matter how hot it is?! U get the ice and the ice cream best of both! I love u guys !

10 hours ago via mobile · Like

Write a comment...

Summary -

Per 178.04(c)(3)(b) of the UDC, STP should not be granted a variance to remain at their current location. The business is very similar to the nearby permanent business, MaggieMoos and in many respects identical. As STP has become a perennial business at their current location, they have become a semi-permanent business model which has figured out how to avoid the ongoing overhead, costs and regulations which bricks-and-mortar businesses are subject to for the entire year. By allowing mobile vendors to set up year after year, in the same location, and now add to that for extended periods; the mobile vendor is metamorphosized into a seasonal, semi-permanent business - a business which can avoid the aforementioned expenses thereby allowing them to easily lower prices below their neighboring competition while maintaining viable profit margins. They are allowed to move in long enough to pick the low-hanging fruit and when that fruit is gone – so are they. While this might be a great business model, was this really the intent of the Council when crafting the Mobile Vendor ordinances?

Several cities are struggling with this same issue. See the attached article next page. How do we fairly regulate Mobile Vendors while being equally fair to permanent businesses? We support the idea of mobile vendors, assuming those vendors are truly “mobile vendors”. A taco truck pulls up to a particular site (often construction sites, factories, etc.), does business, and then moves on to the next site. The taco truck is truly a “mobile vendor”. We hear the ice cream truck driving through the west side of town with *Turkey in the Straw* blaring through its bullhorn speakers every single day. We enjoy hearing him as he drives his route and we often purchase treats for our girls when he rolls through the neighborhood. We believe that portable buildings/vendor stands that are permitted to remain in a single location are not an example of a “mobile vendor”. They are “mobile on two occasions – when they move in and when they move out. The current code provides for these vendors to stay in one location for 90 days by right. As a bricks and mortar business, we may not agree with or like the ordinance, but we live with it without complaint. But when the vendor requests a variance to stay longer than the provided 90 days - and now year after year - we feel the ordinance is being manipulated and consideration should be given to those nearby similar bricks and mortar businesses.

178.04(c)(3)(a) and 178.04(c)(3)(b) are the only two questions to be considered when granting a variance which would permit a mobile vendor an extension beyond 90 days at the same location. We will not offer opinion on 178.04(c)(3)(a) as we concur with Staff on their findings. We also concur with Staff on their findings relative to 178.04(c)(3)(b); that the two businesses are very “similar” as demonstrated throughout this submittal. By permitting any mobile vendor to perennially locate in the same precise location, across the street from a “similar and nearby permanent business”, for extended periods, year after year, and only during the season when sales are high, thereby allowing the business to avoid the ongoing costs, overhead, regulations and requirements born by permanent bricks and mortar businesses year-round does indeed “...create an unfair advantage over similar and nearby permanent businesses”. And per 178.04(c)(3)(b) of the UDC, we respectfully request the City Council to grant our Appeal by reversing the variance granted to Shave the Planet by the Planning Commission.

Respectfully,
Tracy K Hoskins

Food Truck Friday takes bite out of business: UPDATE

Posted by [Leslie Newell Peacock](#) on Thu, Apr 19, 2012 at 5:53 PM



-
- Last Friday's food truck service winds down.

At least two restaurant owners downtown are ticked off at the **Downtown Little Rock Partnership** for its sponsorship of **Food Truck Fridays**, which they say will hurt their business on what are normally their busiest days.

Eric Tinner, who owns **Sufficient Grounds** locations along Capitol Avenue, and **Matt Lile**, owner of **Lulav**, are blaming the partnership for a big dip in business last Friday, the first Food Truck Friday at Capitol and Main. Lile said his business was down 31 percent from the previous Friday, and "I really believe [the food trucks] are directly responsible." Tinner said his business declined from the previous Friday at both his Sufficient Grounds locations (one at Union Plaza, close by the food trucks, and the other in the Metropolitan Bank building at 5th and Broadway) and that a survey he made of nearby restaurants showed a big drop in customers — U.S. Pizza by 30 percent and a Subway three blocks away down 23 percent.

"It's disappointing to see a group like the partnership ... support direct competition," Tinner said. "It's hard for me to stomach the fact that my dues are going to this [project] that hurts my business."

Tinner said the food trucks "come in, cherry pick our business at the peak time of day and week and they leave ... what do they leave besides trash?" Unlike the mobile trucks, Lulav's Lile noted that he'd invested time and money in fixing up a dilapidated building on Sixth Street for his business, a move that has helped downtown.

Both business owners were irked that food trucks aren't regulated as strictly as restaurants, whose kitchens must submit to several inspections yearly by the state Health Department.

DLRP head Sharon Priest believes things will even out in the next two months as overflow customers, people who do not regularly dine out downtown, head to the brick and mortar restaurants. She said the DLRP has offered to print for restaurants fliers that tout discounts at the restaurants for distribution at the food truck site. But Lile said offering discounts to lure business away from the food trucks "frankly hurts us too."

Priest noted that there are "roughly" 10,000 people who work within a few blocks of the food truck area "who are looking for lunch at the same time." She said she considers the food truck project — which she said was designed to bring new people to Main Street — a trial. The DLRP has contracted with the Metropolitan Housing Alliance (Little Rock's Housing Authority) Fridays through June for use of the block where the three food trucks set up. Tomorrow's trucks include **Royal Kabob**, **The Food Truck** and an as-yet-undetermined third vendor; hours are 11:30 a.m. to 1:30 p.m.

Tinner, who met with the DLRP before the first Food Truck Friday to express his opposition to the idea, has suggested that the food truck site move around to lessen the impact on any one area downtown, an idea Priest said she'd take into consideration after June. "I can't help but think things will level out, myself. People were in line for an hour" last Friday, she said. One restaurant owner, whom she declined to name, told a volunteer the food truck overflow had helped business.

Priest said she's also told restaurants they can sell prepared food from carts if they like, an idea that Tinner scoffed at. "I don't mind a little competition but in the end result, what is the message?" Tinner asked, that downtown restaurants aren't interesting?

UPDATE: Tinner has provided a list of the restaurants he queried and their sales:

- Lulav -31 percent
- Subway on Main -30 percent
- Subway in Metropolitan Tower -25 percent
- Sufficient Grounds Express -23 percent
- Subway on 2nd -20 percent
- Slicks -12 percent
- Sufficient Grounds Cafe -12 percent
- Cotija's -10 percent
- Sports Page +25 percent (which Tinner attributes to the fact that the previous Friday was Good Friday, a non-meat-eating day)
- U.S. Pizza closed early

He also included a note he has sent to the Downtown Partnership:

As you can see, the effects of the additional competition were far reaching. All restaurants reported that business was dead until 12:30 when back-ups occurred at the food trucks. There was spillover from the trucks due to their inability to keep up with demand, so the numbers could have been much worse. Also, to my surprise, Metro store experienced a 28% decrease in sales over the day before, and this is not even a restaurant!

All owners are eager to speak with you and find a compromise to the situation which has driven a wedge between the small business owners in downtown and the Partnership. Please don't assume they have been appeased though. In fact, they have now had their fears proven true in Friday's losses and are more determined than ever to stop this clear threat to their business. Mr. Patel who owns the Subway on Main St. told me that he was going to speak to the mayor and wanted to circulate a petition to end the practice completely. I find this interesting because the theory of the Main Street Revitalization is to help Main Street business grow, but he has suffered the greatest loss at 30%. There was also discussion from one owner that with the Partnership financially supporting this, that they felt powerless to compete and they are now considering a move away from downtown. Are we now not causing more harm than good?

There needs to be a change before this has catastrophic effects on the local restaurants.

Sincerely,
Eric Tinner

Minutes - June 11, 2012 Planning Commission

New Business:

ADM 12-4144: Administrative Item (3078 N. COLLEGE AVE./SIEBERT, 252): Submitted by ERIC SIEBERT for property located at 3078 NORTH COLLEGE AVENUE. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 1.88 acre. The request is a variance to allow for an outdoor mobile vendor (Shave the Planet snow cones) for longer than 90 days.

Andrew Garner, Senior Planner, gave the staff report.

Jason Kelley, Assistant City Attorney, asked Commissioner Hoskins if he would be recusing from the item.

Commissioner Hoskins indicated that he would be recusing.

Commissioner Winston indicated that if Commissioner Hoskins was recusing he would need to leave the room.

Commissioners Hoskins indicated he did not think he would need to leave the room as he was not directly involved in the application.

Garner discussed that it was a general practice for commissioners to leave the room when recusing.

Kelley confirmed that it was a general practice but not a legal requirement.

Commissioner Hoskins left the room.

Eric Siebert, applicant, discussed that ice cream and shaved are different. He discussed that Andy's Frozen Custard closed this year and they did not see an increase in business. They are not getting the same customers.

Katie Siebert, applicant, discussed that people come for the experience and product. She discussed that people come from long distances for their product (Bentonville, West Fork, Siloam Springs and further as far as Stillwell, Oklahoma). They come for our experience and our produce. It is a destination.

Eric Siebert, applicant, discussed that they would be willing to plant a tree or anything we could do to make it a little more permanent.

Katie Siebert, applicant, discussed that they are willing to work with the City.

Public Comment:

Andrea Lister, discussed that the prices at Maggie Moo's are exorbitant. Shave the Planet is a place in town where I can take all my kids to get something for \$2. Ice cream and shave ice are totally different markets and two different experiences. Shave the Planet is a homegrown business.

Sarah McNeil, I work at Shave the Planet. She discussed that shaved ice and ice cream are very

different products. This site has always been used for an ice cream stand and is not a transient vendor. I was offended by that. I have lived in Fayetteville all my life and there has always been shaved ice in this location. We have people coming all the way from Centerton three times a week to get this product. Shutting down a homegrown business might be frowned upon. Shave the Planet is a locally owned business.

Jacqueline Buntin, is thankful for the existing 90-day permit. I trust the City will make a fair decision. I have known Eric and Katie for eight years. They are really interested in obeying the guidelines and doing this right. Shave the Planet has 25 total employees. Fifteen of them work at this College Avenue location. This keeps people with a job during the summer months. When I decide I want ice cream I have 10 locations in Fayetteville, that is not counting the fast food restaurants. There is plenty of competition for ice cream in Fayetteville. Their business is successful and they should be rewarded.

Cody Buntin, a resident of Fayetteville my entire life, commercial realtor. This business creates another reason to drive and spend money in this area of Fayetteville. Fiesta Square is not what it used to be. It seems out of place to deny extending this permit to a successful business. They are just bringing more traffic to this side of town.

Ben Israel, I own the property that Shave the Planet is on. I don't pay any less tax because they are only there for six months. They pay sales tax. I'm a little confused why a brick-and-mortar is preferred over this kind of business. I would encourage you to give them this variance.

Justin Leflar, school teacher at Holt Middle School. He spoke about a donation from Shave the Planet to their school to reward kids for their hard work. If this is denied where will the kids use their voucher.

Cody Yancey, discussed that it is an unfair advantage that he has to go through all this to be in business. He has to apply for a different variance every year. He has to carry the same insurance for his employees. Snow cones and ice cream are two separate things. There is no proof that it is detrimental to their sales.

Mena Shombod (sp?), Shave the Planet employee. We really rely on this job. There are not a lot of places where you can find a summer job so you can focus on academics during the other time of the year. This is a great opportunity for high school and college students to gain experience and grow their character. This stand on College has established itself as a great environment for customers. There have not been issues with traffic or any other detrimental effects. I hope that you guys consider that.

Celeste Hoskins, Maggie Moo's. I like Shave the Planet and eat there with my kids. What I was asking for is that they take into consideration that there are ordinances. We have no issue with the 90-day permit. What I am asking for is that when they are asking for that extension that an ordinance be established so that we are all on the same playing field. I think it's great to support the community. I like the couple and Shave the Planet. It is just the ordinance. I think we need to establish some playing rules here. I think this is a great business model. What stops someone like me or other businesses from doing it. I don't think this is about competition or a customer base. I'm just wanting to see some guidelines on where we're going with mobile or transient vendors. If this is something you want to set precedence for that's great.

No more public comment was presented.

Commissioner Chesser asked about the mobile vendor ordinance.

Garner discussed that this ordinance was under examination at the request of council members.

Commissioner Chesser discussed that this body doesn't write ordinance we just interpret the ordinance. There is a very specific part of the ordinance we are considering regarding whether this is a similar business. You said you had proof this was not a similar business?

Katie Siebert, applicant, discussed the HMR tax records for March, April, May, and June of last year for Shake's, Andy's, Maggie Moo's, and us. Last year Andy's was the highest grossing and they are now out of business. Last year we saw a 113% increase in our sales and most of that was due to the weather. This year you would expect since an ice cream shop went out of business we would see an increase. However, we only saw a 101% increase in our sales, this is 12% less than last year. It kind of shows that an ice cream business going out of business didn't help us.

Commissioner Chesser asked staff how an extension would hurt when the first three months of the busy season have been utilized. That seems like something we should take into consideration. The bulk of the problem is already occurring.

Garner discussed that the commission is just looking at the variance findings and he read the variance findings.

Commissioner Chesser asked staff why staff felt it was a similar business.

Garner discussed that we did not do a market study. In our drafting the findings and for the commission to consider, the rationale was what would a reasonable person think. I thought yes they are similar because it is a desert, you eat it mainly during the summer, and it is similar. Would it create an unfair advantage? I thought it could because you could have some of the same types of customers.

Commissioner Chesser asked if it would be worth it for them to only be there for 90 days.

Katie Siebert indicated that they would open in this location even if it is only for 90 days.

Commissioner Chesser asked about property tax on a brick-and-mortar versus a mobile vendor.

Jason Kelley, Assistant City Attorney, discussed that more improvements create more value and more property tax.

Commissioner Chesser discussed that lower property taxes could potentially be an unfair advantage.

Commissioner Cook agreed with Commissioner Chesser that it is not our responsibility to legislate. In this case the City Council has established the factors and it is up to our judgment. I think it is compatible and it does not create an unfair advantage.

Commissioner Cook made a motion to approve CUP 12-4144 **Commissioner Cabe** seconded the

Planning Commission

June 11, 2012

Page 4 of 4

motion.

Garner requested Commissioner Cook clarify condition of approval #3.

Commissioner Cook clarified that condition #3 be modified to require the Urban Forester to approval the type and size of tree that is planted. Commissioner Cabe agreed with this modification to the motion.

Commissioner Cabe asked when this applicant's previous application came before the commission.

Katie Siebert confirmed that it was March 26th.

Commissioner Cabe discussed that the new ordinance was revised and came through May 1 of this year. He also asked about the City Attorney's memo that was in their packet and direction for the commission on several of the terms in the ordinance such as 'similar', 'compatible', 'not detrimental'.

Jason Kelley, Assistant City Attorney, stated that it is completely up to your judgment based on the facts that have been presented. The best thing I can equate it to is if you are on a jury and you hear all this testimony and you have to decide. That is the job.

Commissioner Cabe stated that the ordinance did change and it requires judgment. The ordinance was first written and first became an opportunity for businesses to get their legs under them and do something that is atypical. I fully feel like a seasonal business is exactly that sort of opportunity. Like the applicant said there are very few brick-and-mortar businesses of this type around the country and as a seasonal business model like pool cleaning or window washing. I will be able to support this without a problem.

Commissioner Winston discussed that he has become convinced that there is a substantial amount of difference between shaved ice and ice cream and I will support this.

Upon roll call the motion passed with a vote of 6-1-1. **Commissioner Honchell** voted 'no' and **Commissioner Hoskins** recused.



Departmental Correspondence



LEGAL
DEPARTMENT

www.accessfayetteville.org

TO: Mayor Jordan
City Council

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

FROM: Kit Williams, City Attorney

A handwritten signature in black ink, appearing to be "Kit Williams", written over a horizontal line.

DATE: July 3, 2012

RE: Variance Test for Outdoor Mobile Vendors

§178.04(C) *Variances* of the Fayetteville Code

“(3) A variance may be granted ... when the following findings have been met:

“(a) The applicant has established that the operation of the outdoor mobile vendor will be

(I) **compatible with and not detrimental to nearby properties,**

(II) **will not adversely affect nearby businesses”**

“(b) That the outdoor mobile vendor’s presence for an extended period of time at one location

(III) **will not create an unfair advantage over similar and nearby businesses.”**

TITLE XV UNIFIED DEVELOPMENT CODE

**178.04 Outdoor Mobile Vendors
Located On Private Property**

(A) *Purpose.* This section's purpose is to facilitate and control the ability of outdoor vendors to temporarily operate on private property while ensuring such use is compatible with and not detrimental to nearby properties, does not adversely affect nearby businesses, fosters an aesthetically appealing streetscape, and does not create or worsen a dangerous traffic condition.

(B) *Requirements.* Outdoor Mobile Vendors located on private property shall meet the following requirements and submittals prior to approval:

(1) *Permit Application.* Each application for a permit to conduct an Outdoor Mobile Vendor business shall be accompanied by a \$50 permit review and processing fee.

(2) Application for a permit to conduct an Outdoor Mobile Vendor business shall include the following items in a format acceptable to the Zoning and Development Administrator:

(a) Name, address and contact information.

(b) Type of items sold or services rendered. A change in product or service will require a new permit to be issued.

(c) A valid copy of all necessary permits required by State and County health authorities.

(d) Proof of application for remittance of HMR tax to the City of Fayetteville.

(e) Means to be used in conducting business including but not limited to a description of any mobile device to be used for transport or to display approved items or services.

(f) A detailed site plan and written description illustrating the type, location, and dimensions of the mobile vendor business including parking.

(g) Written authorization, signed by the property owner or legal representative of record, stating

that the transient merchant business is permitted to operate on the subject property.

(3) The permit issued shall not be transferable in any manner.

(4) The permit is valid for one mobile vendor location only.

(5) The proposed use must be a permitted use-by-right within the underlying zoning district in order to be permitted.

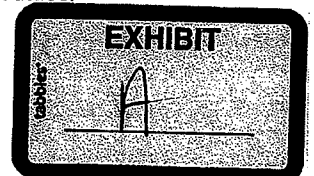
(6) An Outdoor Mobile Vendor business may be approved by the Planning Division after making the following determinations:

(a) All of the requirements of 178.04(B)(2) have been met.

(b) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.

(7) Outdoor mobile vendors are allowed on a temporary basis (90 days), by nature of their temporary occupancy, in one location over a one-year (twelve month) timeframe. Outdoor mobile vendors may move to a different location at least one half mile from the original location after this 90-day period has expired. However, a new Outdoor Mobile Vendor Application will have to be reviewed and approved by the Planning Division for a new location.

(8) Outdoor mobile vendors shall be in compliance with parking lot requirements for any existing and the proposed business. The number of required parking spaces is determined by the use and size of the proposed transient merchant business, and by the use and size of the existing business. Parking spaces on the property where the outdoor mobile vendor is located shall be paved and striped in order to be utilized. The use of parking for an outdoor mobile vendor may not reduce the number of spaces necessary for other uses occurring on the property. An adequate number of parking spaces for the existing businesses and the outdoor



TITLE XV UNIFIED DEVELOPMENT CODE

mobile vendor must be provided onsite. The location of the outdoor mobile vendor shall not impede traffic flow or create a dangerous traffic condition, as determined by Planning Division upon review of the site plan.

(C) *Variances.* Outdoor Vendors may request a variance from the Planning Commission to operate for an extended period of time, not to exceed twelve consecutive months, in the same location subject to the following standards:

- (1) A vendor may request a variance from the 90 day location requirement to operate for an extended period of time. The maximum time period that the Planning Commission may grant this variance is limited to no more than twelve consecutive months.
- (2) The applicant shall comply with the notification requirements of section 157.05 of the Unified Development Code.

(3) A variance may be granted by the Planning Commission when the following findings have been met:

- (a) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.
 - (b) That the outdoor mobile vendors' presence for an extended period of time at one location will not create an unfair advantage over similar and nearby permanent businesses.
- (4) In granting the variance, the Planning Commission may require appropriate conditions and safeguards, including semi-permanent or permanent improvements to the property to secure the substantial objectives of the ordinance.

Test



(Ord. 5185, 10-7-08; Ord. 5425, 8-2-11)

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Boudreaux
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
July 03, 2012**

A meeting of the Fayetteville City Council will be held on July 03, 2012 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:

Agenda Additions:

A. Consent:

1. Approval of the June 19, 2012 City Council meeting minutes.
2. **Bid #12-53 Mid-America Pool Renovation, Inc.:** A resolution awarding Bid #12-53 and authorizing a contract with Mid-America Pool Renovation, Inc. in the amount of \$256,490.00 for the construction of Wilson Park pool renovations, approving a ten percent (10%) project contingency and approving a budget adjustment.

3. **2012 Assistance to Firefighters Grant:** A resolution authorizing an application for a 80/20 matching 2012 Assistance to Firefighters Grant, through the Federal Emergency Management Agency (FEMA), in the amount of \$179,410.00 for the purchase of wildland firefighting personal protective equipment by the Fire Department.
4. **Federal Emergency Management Agency Reimbursement:** A resolution approving a budget adjustment in the amount of \$129,391.00 to reimburse the Transportation Division for expenditures incurred as a result of Spring 2011 flooding which have been reimbursed by the Federal Emergency Management Agency and/or the State of Arkansas.
5. **Steele Boulevard/Malco Theatre Entry Traffic Signal:** A resolution approving a budget adjustment in the amount of \$85,300.00 representing revenue for the installation of a traffic signal on Steele Boulevard at the entrance to the Malco Theatre.

B. Unfinished Business:

1. **RZN 12-4108 (4847 W. Wedington Dr./Bank of Wynne):** An ordinance revoking R-PZD 07-2576 (Woodstock) and rezoning that property described in rezoning petition RZN 12-4108, for approximately 31.68 acres, located at 4847 West Wedington Drive from R-PZD, Residential Planned Zoning District 07-2576, to R-A, Residential Agricultural. *This ordinance was left on the First Reading at the June 05, 2012 City Council meeting. This ordinance was left on the Second Reading at the June 19, 2012 City Council meeting.*

Left on the Second Reading

C. Public Hearing:

1. **Water and Sewer Relocation Project Condemnation and Possession:** A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by Richard E. & Dorothy Brown, Bill R. & Doris A. Kisor, Wolfredrick & Serena McMichael, Benevolent Building Corporation, SM-WLJ FAC Owner, Inc., PCC Properties, LLC, Presbytery of Arkansas, and Dunnerstock Development, Inc. needed for water and sewer relocations along Arkansas State Highway 265 between Joyce Boulevard and the northern city limits.

D. New Business:

1. **Town and Gown Advisory Committee:** An ordinance enacting Article XXIV Town and Gown Advisory Committee (§33.360 through §33.365) of Chapter 33: Departments, Boards, Commissions, and Authorities of the Code of Fayetteville to provide for the creation of a Town and Gown Advisory Committee, and defining its composition, authority and duties.
2. **ADM 12-4144 3078 N. College Ave. Siebert Appeal:** A resolution to reverse the Planning Commission's decision to grant and thereby to deny the variance to Eric Siebert to operate his Shave the Planet snow cone business longer than 90 days as an outdoor mobile vendor.

E. City Council Agenda Session Presentations:

City Council Tour:

Announcements:

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested persons may address the City Council on agenda items of New and Old Business. Please wait for the Mayor to request public comment and then come to the podium, give your name, address, and comments about the agenda item. Please address only the Mayor. Questions are usually answered by the Mayor, Aldermen or Staff after the public comment period is over. Please keep your comments brief and respectful. Each person is only allowed one turn at the microphone for discussion of an agenda item.

All cell phones must be silenced and may not be used within the City Council Chambers.

Below is a portion of the **Rules of Order and Procedure of the Fayetteville City Council** pertaining to City Council meetings:

Agenda additions. A new item which is requested to be added to the agenda at a City Council meeting should only be considered if it requires immediate City Council consideration and if the normal agenda setting process is not practical. The City Council may only place such new item on the City Council meeting's agenda by suspending the rules by two-thirds vote. Such agenda addition shall be heard prior to the Consent Agenda.

Consent Agenda. Consent Agenda items shall be read by the Mayor and voted upon as a group without discussion by the City Council. If an Alderman wishes to comment upon or discuss a Consent Agenda item, that item shall be removed and considered immediately after the Consent Agenda has been voted upon.

Old business and new business.

Presentations by staff and applicants. Agenda items shall be introduced by the Mayor and, if an ordinance, read by the City Attorney. City staff shall then present a report. An agenda applicant (city contractor, rezoning or development applicant, etc.) may present its proposal only during this presentation period, but may be recalled by an alderman later to answer questions. Staff and applicants may use electronic visual aides in a City Council meeting as part of their presentation.

Public comments. Public comment shall be allowed for all members of the audience on all items of old and new business and subjects of public hearings. No electronic visual aid presentations shall be allowed, but the public may submit photos, petitions, etc. to be distributed to the City Council. If a member of the public wishes for the City Clerk to distribute materials to the City Council before its meeting, such materials should be supplied to the City Clerk office no later than 9:00 a.m. on the day of the City Council meeting. Any member of the public shall first state his or her name and address, followed by a concise statement of the person's position on the question under discussion. Repetitive comments should be avoided; this applies to comments made previously either to the City Council or to the Planning Commission when those Planning Commission minutes have been provided to the Aldermen. All remarks shall be addressed to the Mayor or the City Council as a whole and not to any particular member of the City Council. No person other than the Aldermen and the person having the floor shall be permitted to enter into any discussions without permission of the Mayor. No questions shall be directed to an Alderman or city staff member except through the Mayor.

Courtesy and respect. All members of the public, all city staff and elected officials shall accord the utmost courtesy and respect to each other at all times. All shall refrain from rude or derogatory remarks, reflections as to integrity, abusive comments and statements about motives or personalities. Any member of the public

who violates these standards shall be ruled out of order by the Mayor, must immediately cease speaking and shall leave the podium.

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.

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

City of Fayetteville Staff Review Form

City Council Agenda Items
 and
 Contracts, Leases or Agreements

7/3/2012

City Council Meeting Date
 Agenda Items Only

Carole Jones

Submitted By

Park Planning

Division

Parks

Department

Action Required:

Staff recommends a resolution approving Bid #12-53 between the City of Fayetteville and Mid-America Pool Renovation, Inc. in an amount of \$256,490 with a 10% project contingency of \$25,649 for a total project cost of \$282,139 and approving a budget adjustment of \$69,074 for the Construction of Wilson Park Pool Renovations.

\$282,139.00

Cost of this request

\$

253,065.00

Category / Project Budget

Wilson Park Improvements

Program Category / Project Name

2250.9255.5315.00

Account Number

\$

40,000.00

Funds Used to Date

Wilson Park Improvements

Program / Project Category Name

08002.1101

Project Number

\$

213,065.00

Remaining Balance

Parks Development/PLDO SW Quad

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 06-15-12 P12:43 RCVD
 Clerk's Office

Chief of Staff

Date

Received in
 Mayor's Office

ENTERED

6-15-12 Bep

Mayor

Date

Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

www.accessfayetteville.org

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 II *CJ*

Date: June 15, 2012

Subject: Bid #12-53, Construction of Wilson Park Pool Renovations
Agenda Request for July 3, 2012 Meeting

PROPOSAL:

The Wilson Park Swimming Pool is the only municipal pool within the City of Fayetteville and had over 22,000 visitors in 2011 during the eight week summer season. The original Wilson Park Pool was built in the 1930s and has become a well recognized structure within the city over the last 80 years. The pool has undergone renovations at different times throughout its history with the most recent renovation occurring in 1997.

The pool deck and interior pool surface are in visible need of repair and renovation. In the fall of 2010, Parks and Recreation contracted Garver Engineering to provide a structural analysis of the pool to determine a proper course of action for the aging structure. Based on the results of the analysis, Parks Staff, after consultation with the Parks and Recreation Advisory Board, determined that renovations and repairs to the structurally sound facility were the most cost effective way to continue to provide this popular amenity to the citizens of Fayetteville. The 2010 structural analysis recommended a complete resurfacing of both the pool deck surface and the pool surface along with repairs and renovations to the necessary areas.

The project includes repair of cracks within the pool structure and surrounding deck, removal of the pool plaster interior and deck surface material, and replacement of the pool and deck surface. This project was approved as part of the 2012 CIP.

Original construction cost estimates were based on a cement based plaster pool lining system similar to the existing pool surface. After further research, Garver (the design consultants) recommended a polymeric composite pool resurfacing system. Because of the existing structural and stress cracks throughout the pool structure and the fact that the pool is drained the majority of the year, the polymeric system is better suited. Cement based plaster systems are designed to be submerged during their life spans. Additionally, the polymeric system has a 15-year warranty while typical plaster systems have a 5-year warranty.

The project was advertised on May 24 and 31, and bids were opened on June 13, 2012. Two vendors including Mid-America Pool Renovation, Inc. and USA Pools Construction, Inc. submitted bids. Mid-America Pool Renovation, Inc. was the low bid in the amount of \$256,490. (See attached bid tabulation sheet.) If approved, the construction of the project is anticipated to begin in August and be completed in November 2012.

RECOMMENDATION:

Staff recommends a resolution approving Bid #12-53 between the City of Fayetteville and Mid-America Pool Renovation, Inc. in an amount of \$256,490 with a 10% project contingency of \$25,649 for a total project cost of \$282,139 and approving a budget adjustment of \$69,074 for the Construction of Wilson Park Pool Renovations.

BUDGET IMPACT:

This project is funded with Parks Development Funds and Park Land Dedication (SW Quadrant) Funds. The cost of \$213,065 is accounted for in project number 08002.1101- Wilson Park Improvements. The balance of \$69,074 is included in the Budget Adjustment.

Attachments:

Staff Review Form
Bid Submittal – Mid-America Pool Renovation, Inc.
Certified Bid Tabulation
Agreement Signed by Contractor
Budget Adjustment
Purchase Requisition

RESOLUTION NO. _____

A RESOLUTION AWARDED BID #12-53 AND AUTHORIZING A CONTRACT WITH MID-AMERICA POOL RENOVATION, INC. IN THE AMOUNT OF \$256,490.00 FOR THE CONSTRUCTION OF WILSON PARK POOL RENOVATIONS, APPROVING A TEN PERCENT (10%) PROJECT CONTINGENCY 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 awards Bid #12-53 and authorizes a contract with Mid-America Pool Renovations, Inc. in the amount of \$256,490.00 for the construction of Wilson Park pool renovations.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a ten percent (10%) project contingency.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached to this Resolution as Exhibit "A".

PASSED and APPROVED this 3rd day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

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

A. 2
Bid #12-03-000-America
Pool Renovation, Inc.
Page 5 of 46

Budget Year 2012	Division: Parks & Recreation Department: Parks & Recreation	Request Date 7/3/2012	Adjustment Number
----------------------------	--	---------------------------------	--------------------------

BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION

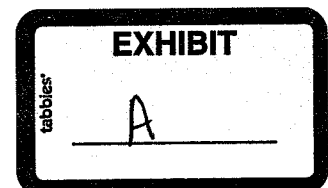
\$69,074 is requested in the Wilson Park Pool Renovations project submitted for City Council approval on July 3rd.

REQUIRED

1. <u>Alison Sumner</u> Division Head 6/14/12 Date	Prepared By: _____
2. <u>[Signature]</u> Budget Director 6-14-12 Date	Reference: _____
3. <u>Cornie Enenston</u> Department Director 6-14-12 Date	Budget & Research Use Only Type: A B C <u>D</u> E P
4. <u>Paul A. Behn</u> Finance Director 6-18-2012 Date	General Ledger Date _____
5. <u>Don Man</u> Chief of Staff 6-18-12 Date	Posted to General Ledger Initial _____ Date _____
6. <u>[Signature]</u> Mayor 6/18/12 Date	Checked / Verified Initial _____ Date _____

TOTAL BUDGET ADJUSTMENT

Account Name	Account Number	Increase / (Decrease)		Project.Sub Number
		Expense	Revenue	
Contract services	2250.9255.5315.00	69,074		08002 . 1101
Minor equipment	2250.9255.5210.00	(1,173)		00006 . 1
Park improvements	2250.9255.5806.00	(14,908)		02013 . 1
Park improvements	2250.9255.5806.00	(42)		05001 . 3
Park improvements	2250.9255.5806.00	(699)		02014 . 2
Professional services	2250.9255.5314.00	(3,039)		02027 . 2
Park improvements	2250.9255.5806.00	(49,213)		02043 . 1001
		-		.
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		-		.
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		-		.



City Of Fayetteville - Purchase Order (PO) Request (Not a Purchase Order) <i>All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)</i> <i>All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us</i>						Requisition No.:	Date:		
Vendor #: _____ Vendor Name: Mid-America Pool Renovation, Inc.						P.O. Number:	Expected Delivery Date:		
Address: 5929 East 154th Terrace City: Grandview State: MO Zip Code: 64030 Ship to code: _____						Mail Yes: _____ No: _____ Taxable Yes: <u>x</u> No: _____	Quotes Attached Yes: _____ No: _____		
Requester: Carole Jones <i>CJ</i> Requester's Employee #: 3003						Division Head Approval: <i>Alison Jumper</i> Extension: 472			
Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Construction of Wilson Park Pool Renovations Per Bid # 12-53	1	Lot	\$256,490.00	\$256,490.00	2250.9255.5315.00	08002.1101		
2									
3									
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
*	Shipping/Handling		Lot		\$0.00				
Special Instructions: Tax is included in the contract price.						Subtotal: \$256,490.00 Tax: _____ Total: \$256,490.00			
Approvals: Mayor: _____ Department Director: _____ Purchasing Manager: _____ Finance & Internal Services Director: <i>M. Hebert</i> Budget Manager: _____ IT Manager: _____ Dispatch Manager: _____ Utilities Manager: _____ Other: _____									

DOCUMENT 00400 –BID FORM

Contract Name: Wilson Park Pool Renovations

Bid Number 12-53

BID TO:

Owner: The City of Fayetteville, Arkansas
113 West Mountain Street
Fayetteville, Arkansas 72701

BID FROM:

Bidder: Mid-America Pool Renovation, Inc.
5929 E. 154th Terrace
Grandview, MO 64030
816 994 3300 (800) 253 7349

ARTICLE 1 - INTENT

- 1.01 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid price and within the Bid time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

ARTICLE 2 - TERMS AND CONDITIONS

- 2.01 Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 90 days after the day of Bid opening. Bidder will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within 15 days after the date of Owner's Notice of Award.

DOCUMENT 00300 – DISCLOSURE STATEMENT

**City of Fayetteville
Bid 12-53, Construction of Wilson Park Pool Renovations
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:

- ☒ 1.) NO KNOWN RELATIONSHIP EXISTS
☐ 2.) RELATIONSHIP EXISTS (Please explain)

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.

David E. Katusz
Printed Name

David E. Katusz
Signed

DOCUMENT 00400 – BID FORM (continued)

ARTICLE 3 - QUALIFICATIONS AND RESPONSIBILITY OF BIDDERS

- 3.01 To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days after bid opening, upon City of Fayetteville's or Project Manager's request, detailed written evidence such as financial data, present commitments, and other such data as may be called for. Each Bid must contain evidence of Bidder's qualification to do business in the State of Arkansas.

ARTICLE 4 - BIDDER'S REPRESENTATIONS

- 4.01 In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:

- A. Bidder has examined and carefully studied the Bid Documents, and the following Addenda, receipt of all which is hereby acknowledged:

<u>Number</u>	<u>Date</u>
<u>1</u>	<u>June 4, 2012</u>
<u>2</u>	<u>June 5, 2012</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

- B. Bidder 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, and furnishing of the Work.
- C. Bidder 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.
- D. Bidder has carefully studied all: (1) 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

DOCUMENT 00400 – BID FORM (continued)

at or contiguous to the Site; and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site. Bidder acknowledges that such reports and drawings are not Contract Documents and may not be complete for Bidder's purposes. Bidder acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bid Documents with respect to Underground Facilities at or contiguous to the Site.

- E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all such additional or 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 Bidder and safety precautions and programs incident thereto.
- F. Bidder does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performing and furnishing of the Work in accordance with the times, price, and other terms and conditions of the Contract Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
- H. Bidder has correlated the information known to Bidder, 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.
- I. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Bidder.

DOCUMENT 00400 –BID FORM (continued)

- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
- K. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham bid; Bidder has not solicited or induced any person, firm, or a corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for himself any advantage over any other Bidder or over Owner.
- L. Bidder will perform the Work in compliance with all applicable trench safety standards set forth in Occupational Safety and Health Administration (OSHA) Part 1926 – Subpart P – Excavations.

ARTICLE 5 - BID PRICE

Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

IN NO CASE SHALL THE AMOUNT BID FOR THE ITEM OF
“MOBILIZATION” EXCEED 5% OF THE TOTAL CONTRACT
AMOUNT FOR ALL OTHER ITEMS LISTED IN THE BID FORM.

DOCUMENT 00400 - BID FORM (continued)

ITEM NO.	SPEC. REFERENCE	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	TOTAL
1	SP1	Pool Liner	LS	1	<u>\$13⁵⁰</u>	<u>\$164,700⁰⁰</u>
2	SP2	Deck Surface	LS	1	<u>\$6⁵⁰</u>	<u>\$52,500⁰⁰</u>
3	SP3	Concrete Deck Repairs	SF	1000	<u>\$13⁸⁰</u>	<u>\$13,800⁰⁰</u>
4	SP4	Insurance and Bonding	LS	1	<u>3%</u>	<u>\$7,390⁰⁰</u>
5	SP5	Mobilization (Shall not exceed 5% of total bid)	LS	1	<u>\$3,220⁰⁰</u>	<u>\$3,220⁰⁰</u>
6	SP6	Pool Ladder	EA	9 ^{pic attached}	<u>\$920⁰⁰</u>	<u>\$8,280⁰⁰</u>
7	SP7	Fence	LF	93	<u>\$71</u>	<u>\$6,600⁰⁰</u>

TOTAL AMOUNT BID \$ ~~\$~~256,490⁰⁰

ARTICLE 6 - CONTRACT TIMES

- 6.01 Bidder agrees that the Work will be substantially completed and completed and ready for final payment within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.

EXPERIENCE OF BIDDER:

The Bidder states that he/she is an experienced Contractor and has completed a minimum of five (5) 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.**

DOCUMENT 00400 - BID FORM (continued)

(Project Histories Attached)

Add: Cornerstone High School, 2011, Hartford, CT
Kelly Walsh High School, 2011, Casper WY

ARTICLE 7 - BID CONTENT

7.01 The following documents are attached to and made a condition of this Bid:

- A. Required Bid security in the form of a certified or bank cashier's check or a Bid Bond and in the amount of 5% Dollars (\$).
- B. A tabulation of Subcontractors and other persons and organizations required to be identified in this Bid.

ARTICLE 8 - COMMUNICATIONS

8.01 Communications concerning this Bid shall be addressed to the Bidder as follows:

David E. Kateusz
Mid-America Pool Renovation, Inc.
5929 E. 154 Tee. Grandview, MO 64030
Phone No. 816 994 3300 (800) 253 7349
FAX No. 816 994 3301

ARTICLE 9 - TERMINOLOGY

9.01 The terms used in this Bid which are defined in the GENERAL CONDITIONS or Instructions to Bidders will have the meanings assigned to them.

SUBMITTED on 11 June, 2012

Arkansas State Contractor License No. 0238700512

DOCUMENT 00400 – BID FORM (continued)

If Bidder is:

An Individual

Name (type or printed): _____

By: _____ (SEAL)

(Individual's Signature)

Doing business as: _____

Business address: _____

Phone No.: _____ FAX No.: _____

A Partnership

Partnership Name: _____ (SEAL)

By: _____

(Signature of general partner – attach evidence of authority to sign)

Name (type or printed): _____

Business address: _____

Phone No.: _____ FAX No.: _____

DOCUMENT 00410 – BID BOND (continued)

Signed and sealed this 11th day of June 2012

PRINCIPAL

(CORPORATE SEAL)

Mid-America Pool Renovation, Inc.

By [Signature]
President

SURETY

By _____

ATTORNEY-IN-FACT

(CORPORATE SEAL)

(Attached)

(This Bond shall be accompanied with
Attorney-in-Fact's authority from Surety)

END OF DOCUMENT 00410

Evidence
of Pres.
Signature



File Number: 200325424405
Charter # X00540361
Date Filed: 08/25/2003 08:47 AM
Matt Blunt
Secretary of State

Corporations Division
P.O. Box 198 / 600 W. Main Street, Rm 322
Jefferson City, MO 65102

Registration of Fictitious Name

(Submit in duplicate with filing fee of \$7)

(Must be typed or printed)

This information is for the use of the public and gives no protection to the name being registered. There is no provision in this Chapter to keep another person or business entity from adopting and using the same name. (Chapter 417, RSMo)

The undersigned is doing business under the following name, and at the following address:

Business name to be registered: MID-AMERICA POOL RENOVATION, INC
Business Address: 6604 East 224th Terrace
(P.O. Box alone not acceptable)
City, State and Zip Code: Peculiar, MO 64078

The parties having an interest in the business, and the percentage they own are (if a business entity is owner, indicate business name and percentage owned. If all parties are jointly and severally liable, percentage of ownership need not be listed):

Name of Owners, Individual or Business Entity	Street and Number	City and State	Zip Code	If listed, Percentage of ownership must equal 100%
<u>Mid America Pool Renovations, Inc.</u>	<u>6604 E 224th Terrace</u>	<u>Peculiar, MO</u>	<u>64078</u>	<u>100</u>

In Affirmation thereof, the facts stated above are true:

(The undersigned understands that false statements made in this filing are subject to the penalties of a false declaration under Section 575.060 RSMo 1986.)

[Signature] ALUSYN KATEUSZ, Pres 8-15-03
(Authorized Signature) (Printed Name) (Date)

(Authorized Signature) (Printed Name) (Date)

(Authorized Signature) (Printed Name) (Date)

State of Missouri
Fictitious Creation 1 Page(s)



FOR OFFICIAL USE ONLY
Check # _____
Amount: _____
Filer's Initials: _____

DOCUMENT 00410 – BID BOND (continued)

Signed and sealed this 13TH day of JUNE 20 12.

PRINCIPAL

(CORPORATE SEAL)

MID-AMERICA POOL RENOVATIONS, INC.

By _____

SURETY

BERKELEY REGIONAL INSURANCE COMPANY

By _____

KELLY R. WATSON, ATTORNEY-IN-FACT

ATTORNEY-IN-FACT

(CORPORATE SEAL)

(This Bond shall be accompanied with
Attorney-in-Fact's authority from Surety)

END OF DOCUMENT 00410

POWER OF ATTORNEY
BERKLEY REGIONAL INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY REGIONAL INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Urbandale, Iowa, has made, constituted and appointed, and does by these presents make, constitute and appoint: **George R. Donnelly, Erle Benton, Karra McGreevy or Kelly Watson of Cretcher Heartland, LLC of Overland Park, KS** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **Fifty Million and 00/100 U.S. Dollars (U.S.\$50,000,000)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on August 21, 2000:

"**RESOLVED**, that the proper officers of the Company are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued."

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 28 day of March, 2011.

Attest:

Berkley Regional Insurance Company

(Seal)

By

Ira S. Lederman
Senior Vice President & Secretary

By

Jeffrey M. Hafter
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 28 day of March, 2011, by Jeffrey M. Hafter and Ira S. Lederman who are sworn to me to be the Senior Vice President, and the Senior Vice President and Secretary, respectively, of Berkley Regional Insurance Company.

EILEEN KILLEEN
NOTARY PUBLIC
MY COMMISSION EXPIRES JUNE 30, 2012

Eileen Killeen
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY REGIONAL INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 13TH day of JUNE, 2012.

(Seal)

Andrew M. Tuma
Andrew M. Tuma

WARNING - Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and confirmation (on reverse) must be in blue ink.

Instructions for Inquiries and Notices Under the Bond Attached to This Power

Berkley Surety Group, LLC is the affiliated underwriting manager for the surety business of: Acadia Insurance Company, Berkley Insurance Company, Berkley Regional Insurance Company, Carolina Casualty Insurance Company, Union Standard Insurance Company, Continental Western Insurance Company, and Union Insurance Company.

To verify the authenticity of the bond, please call (866) 768-3534 or email BSGInquiry@berkleysurety.com

Any written notices, inquiries, claims or demands to the surety on the bond to which this Rider is attached should be directed to:

Berkley Surety Group, LLC
412 Mount Kemble Avenue
Suite 310N
Morristown, NJ 07960
Attention: Surety Claims Department

Or

email BSGClaim@berkleysurety.com

Please include with all notices the bond number and the name of the principal on the bond. Where a claim is being asserted, please set forth generally the basis of the claim. In the case of a payment or performance bond, please identify the project to which the bond pertains.

DOCUMENT 00410 – BID BOND

(Attached)

KNOW ALL MEN BY THESE PRESENTS: that we

as Principal, hereinafter called the Principal, and

a corporation duly organized under the laws of the State of Arkansas as Surety, hereinafter called
Surety, are held and firmly bound unto

City of Fayetteville, Arkansas

113 West Mountain Street

Fayetteville, Arkansas 72701

as Oblige, hereinafter called Owner, in the sum of _____
_____ Dollars (\$ _____), for the payment of which
sum, well and truly to be made, Principal and said Surety, bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has submitted a Bid for WILSON PARK POOL RENOVATIONS

NOW, THEREFORE, if the Owner shall accept the Bid of Principal and the Principal shall enter
into a Contract with the Owner in accordance with the terms of such Bid, and give such Bond or
Bonds as may be specified in the Bidding or Contract Documents with good and sufficient surety
for the faithful performance of such Contract and for the prompt payment of labor and material
furnished in the prosecution thereof, or in the event of the failure of Principal to enter such
Contract and give such Bond or Bonds, if the Principal shall pay to the Owner the difference not
to exceed the penalty hereof between the amount specified in said Bid and such larger amount for
which the Owner may in good faith contract with another party to perform the Work covered by
said Bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

DOCUMENT 00400 - BID FORM (continued)

A Corporation

Corporation Name: Mid-America Pool Renovation, Inc.

State of Incorporation: Missouri

Type (General Business, Professional, Service, Limited Liability): _____

Re-surfacing, Renovation, Repairs of Swimming Pools & Decks

By: [Signature]

(Signature - attach evidence of authority to sign)

Name (type or printed): ALLISYN KATEUSZ

Title: PRESIDENT

(CORPORATE SEAL)

Attest: [Signature]

(Signature of Corporate Secretary)

Business address: 5929 E. 154th Tce.
Grandview, Mo 64030

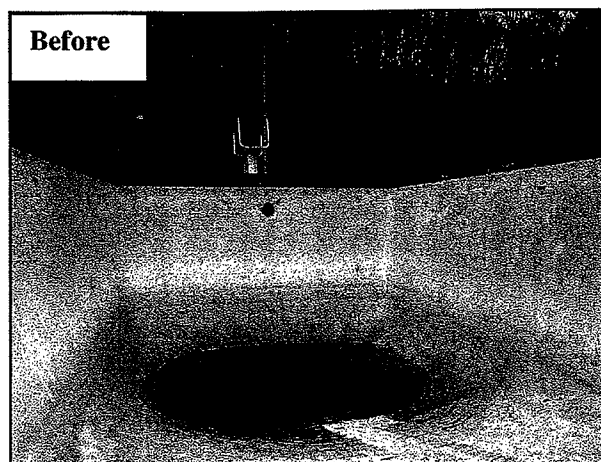
Phone No.: 816 994 3300 FAX No.: 816 994 3301
(800) 253 7349

END OF DOCUMENT 00400

McKEE FOODS COMMUNITY POOL (LITTLE DEBBIE CAKES)

CHATTANOOGA, TENNESSEE

COMPLETION: 2008



Before

PROJECT ASSESSMENT

"What needed to be done"

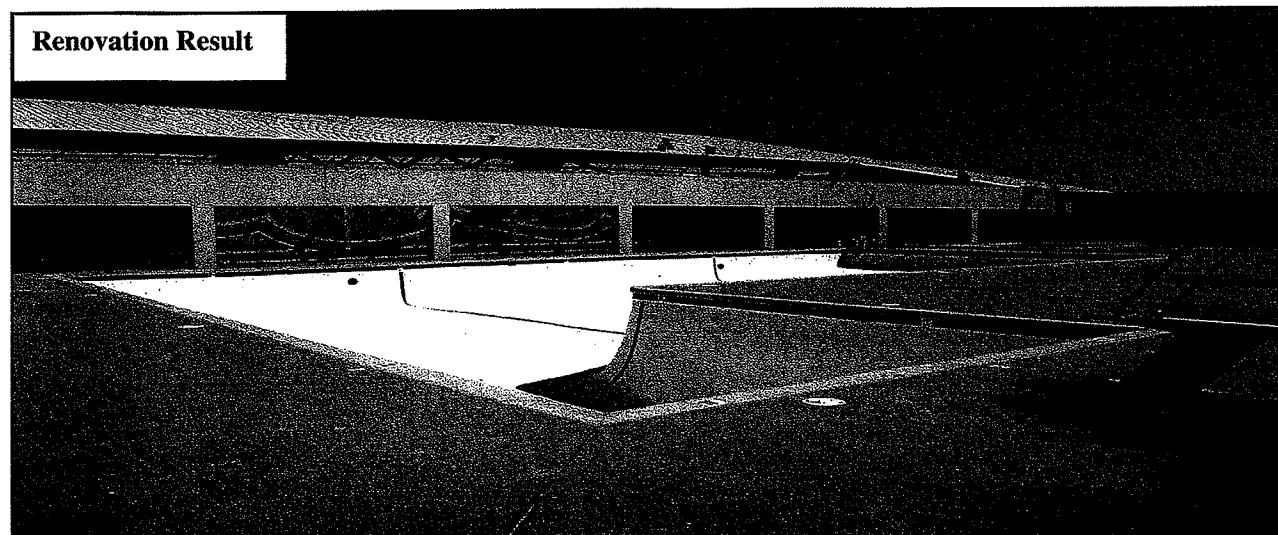
This large shot-creted pool was affected by numerous structure cracks created largely by the effects of hydrostatic pressure and poor construction practices. Built on a clay base with no gravel bedding and a lack of hydrostatic relief ports, subsurface water had no routes of escape. Numerous cracks and voids were created from this pressure in various areas of the pool. While the pool was drained, water bled through the cracks from underground, and while full, pool water leaked out through those same cracks in the pool shell. Rust bleeds from chemically treated water touching the reinforcement steel, as well as calcium and ettringite deposits were evident throughout the pool surface. The brick coping, un-glazed waterline tiling and 'paint over plaster' pool surface were all in a state of degradation.

RENOVATION PLAN

"How it was done"

Core drill and Schmidt Hammer testing determined that the pool was structurally sound for renovation. The deteriorating brick coping and unglazed tiling were mechanically removed. Abrasive blasting (coal slag) was used to remove the remaining pool paint and the various deposits from the pool surface. Several hydrostatic relief ports were drilled through the pool shell to offer relief to subsurface water while the pool was drained. These same ports would serve to offer relief in the future when the pool is

drained periodically for cleaning. Up to 4-diaphragm pumps were used at one time to control and remove subsurface water and relieve pressure on the pool shell during renovation. Structure cracks were sealed with a high-grade epoxy and permanently sealed with the **InterSteel Crack Repair** method. Following placement of new frost-proof waterline tiling and a pour *in situ* coping, the entire pool received the **INTER-GLASS® Reinforced Composite System**.

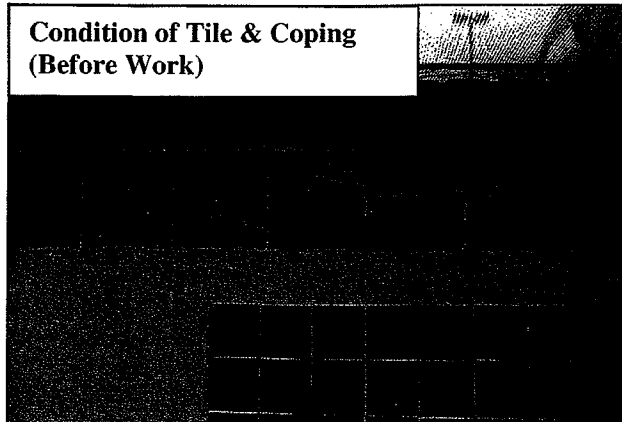


Renovation Result

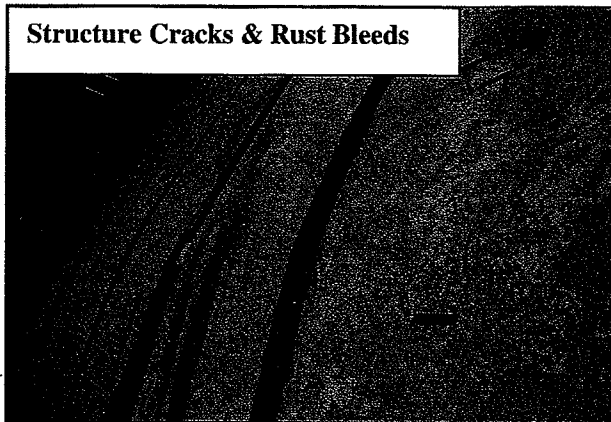
SAMPLE PICTORIAL SEQUENCE ON BACK OF THIS PAGE

McKEE FOODS COMMUNITY POOL (LITTLE DEBBIE CAKES) **CHATTANOOGA, TENNESSEE**

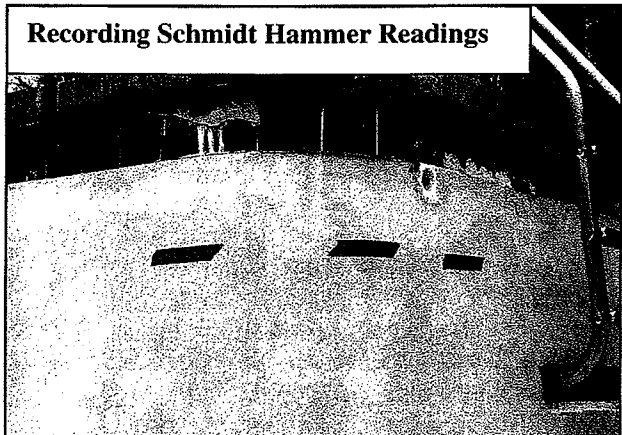
**Condition of Tile & Coping
 (Before Work)**



Structure Cracks & Rust Bleeds



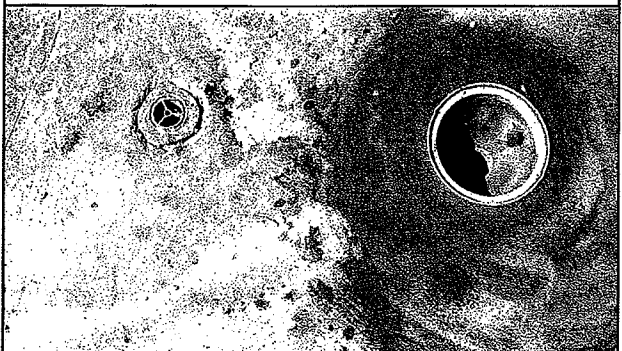
Recording Schmidt Hammer Readings



Coping Pour in Progress



**Old, unusable relief valve, and new, functioning
 Hydrostatic Relief Port & Sump**



InterSteel Crack Repair Underway

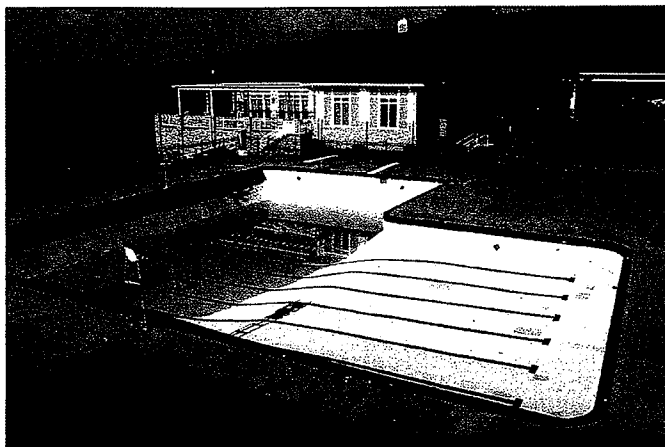


PROJECT SPECIFICATIONS:

TOTAL SQ. FT.:	5,585 w/KIDDY POOL
POOL SHAPE:	RECTANGULAR w/L DEEP END
TYPE OF CIRCULATION:	SKIMMERS
TYPE OF CONSTRUCTION:	SHOT-CRETE
TYPE OF FINISH AFTER RENOVATION:	INTER-GLASS®

DAVENPORT COUNTRY CLUB DAVENPORT, IOWA

COMPLETION: 2010



PROJECT ASSESSMENT

"The Objectives"

The project objectives for the Davenport Country Club pool were four-fold. The pool circulation lines were undersized. New VGB commercial standards required larger diameter suction and return lines. New main drain sumps were required, along with a new filter system. The pool suffered from extensive structure cracks across the entire shallow end, and a patched-looking, peeling and chalking painted finish. The pool also needed an entry set of steps.

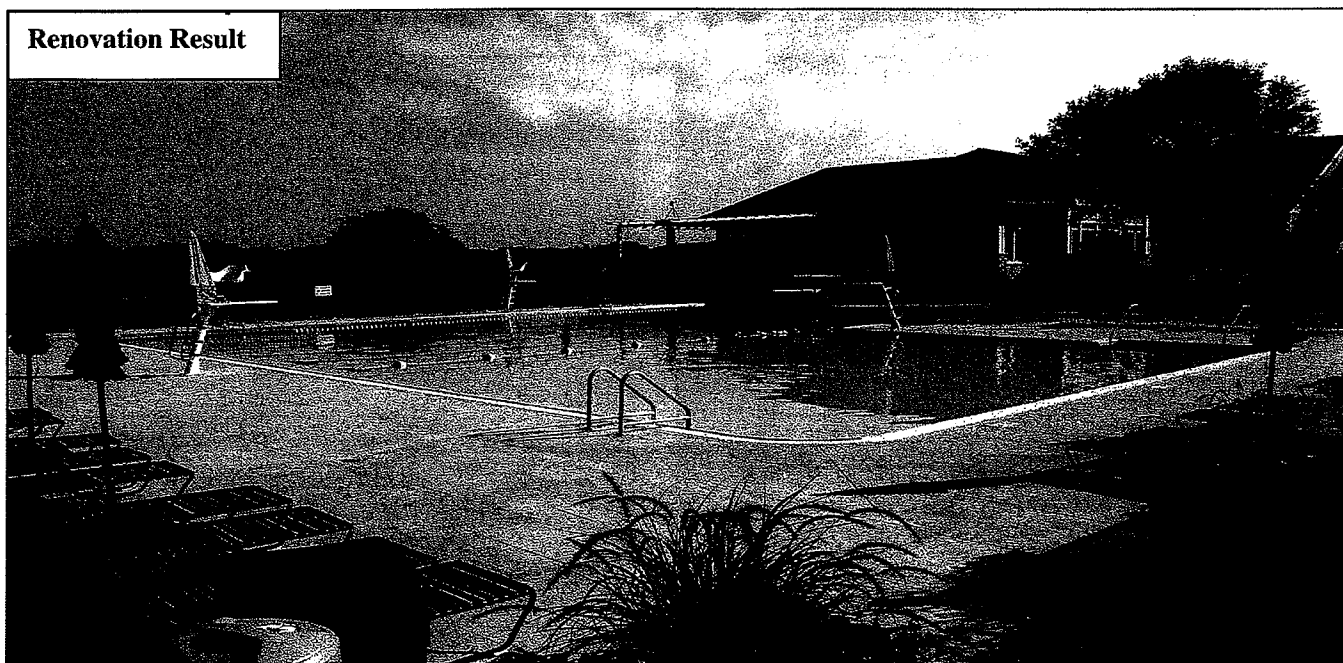
RENOVATION PLAN

"How it was done"

The first course of work in this project was to remove layers numerous layers of pool paint from the surface. This was followed by cutting off the top of the pool walls to accommodate new stainless steel gutters, and excavation for new main drain sumps and circulation lines. Part of the shallow end wall was cut out for off-set entry steps so as not to interfere with the pool's racing lanes during competitions. Due to the pool's unusual depth, two sets of scaffolding had to be used during sandblasting and re-surfacing. A sectioned

gutter grating and support system was designed for installation over the gutter channel. Such a system would now allow periodic inspections of the gutter, plus safety and comfort to the swimmers. Frost-proof racing lane, target and depth transition tiling was added onto the pool. Structure cracks were filled with a high-grade epoxy and permanently sealed with the **InterSteel Crack Repair** method using Kevlar® (by Dupont), and the entire pool received the **INTER-GLASS® Reinforced Composite System**.

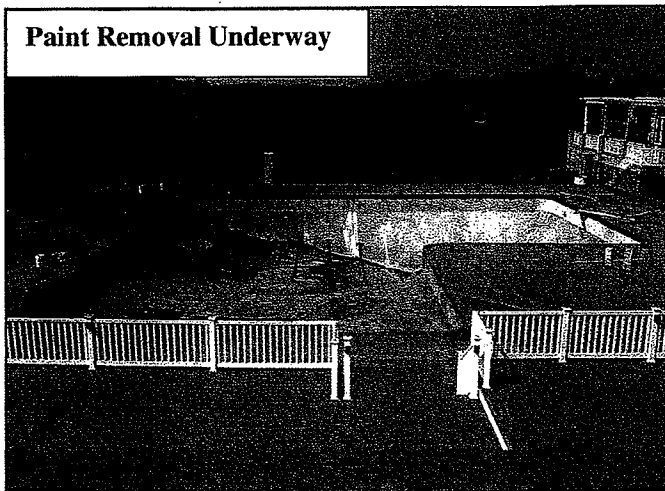
Renovation Result



Pictorial Sequence on Back Page

DAVENPORT COUNTRY CLUB
DAVENPORT, IOWA

Paint Removal Underway



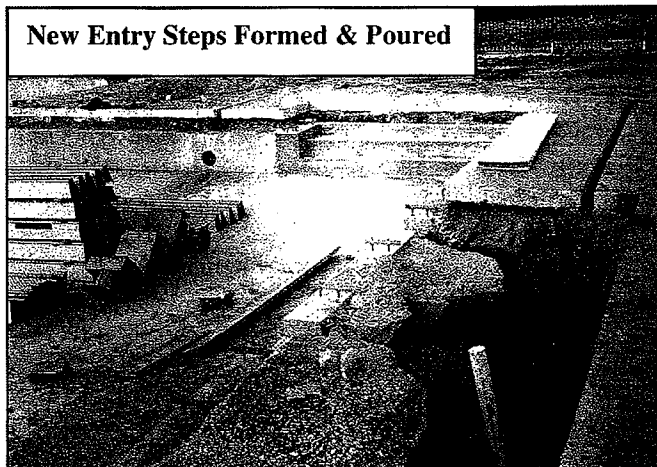
**Top of Pool Cut for New
 Stainless Steel Gutters**



Saw Cutting for New Main Drain Sumps



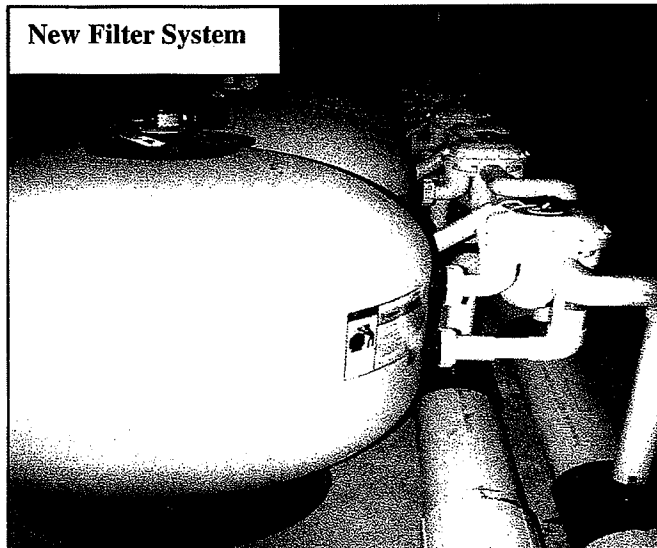
New Entry Steps Formed & Poured



**Installation of Blue INTER-GLASS®
 Two-Tierd Scaffolds for Depth**



New Filter System



PROJECT SPECIFICATIONS:

Total Sq. Ft. 7,714 inc. Kiddy Pool

Pool Shape: 'L'

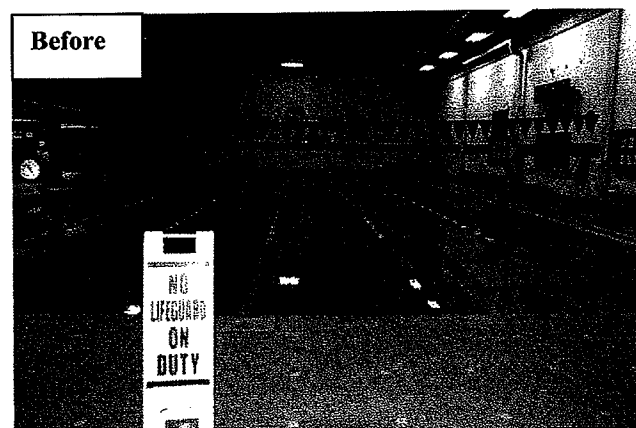
CIRCULATION SYSTEM: 6- 36" SAND FILTERS
 S/S GUTTERS

TYPE OF CONSTRUCTION: FORMED & POURED CONCRETE

FINISH: INTER-GLASS®

TOWN OF RIDGEFIELD RIDGEFIELD, CONNECTICUT

COMPLETION: 2010



PROJECT ASSESSMENT

"What needed to be done"

Pool chemicals and heated water had taken their toll on the cement-based surface of the indoor community swimming pool of the town of Ridgefield, Connecticut. Swimmers were tolerating a stained, rough and deteriorating pool surface. Numerous pop-offs had occurred on the pool with visible patches everywhere. A patched structure crack was visible across the shallow end of the pool.

RENOVATION PLAN

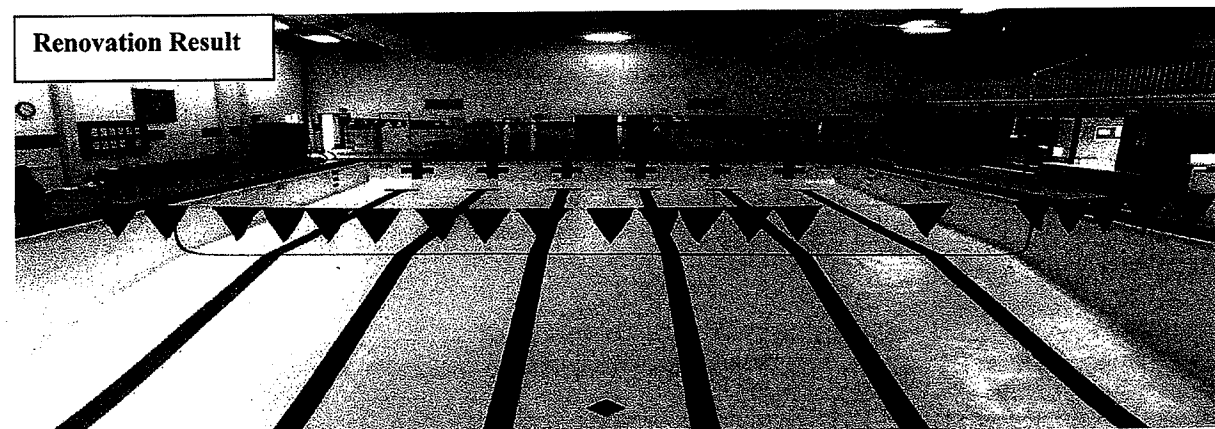
"How it was done"

Members of the Town of Ridgefield Council investigated options for resurfacing their aging, previously re-plastered swimming pool. The goal was to identify the longest-lasting, best process for their heated, indoor pool. They visited similar projects within their vicinity and as far away as Pennsylvania and Ohio in order to personally see installations in use.

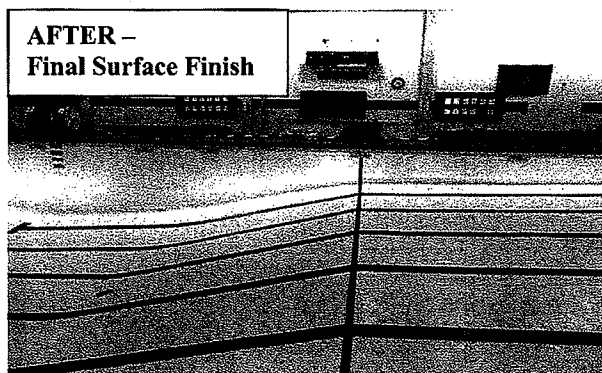
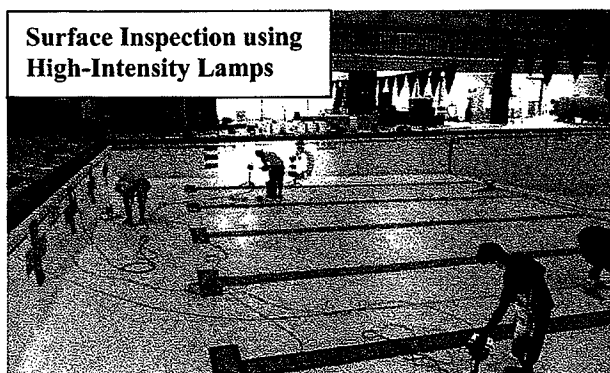
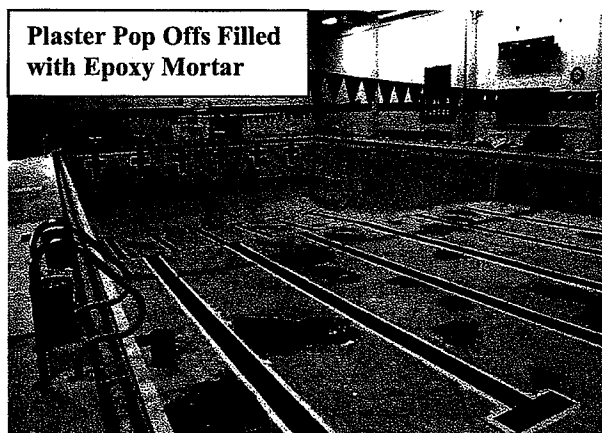
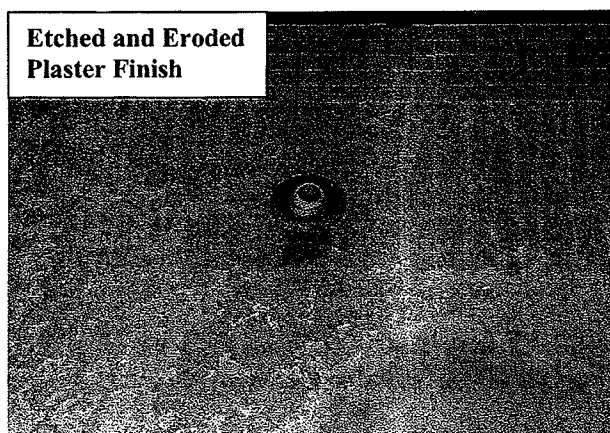
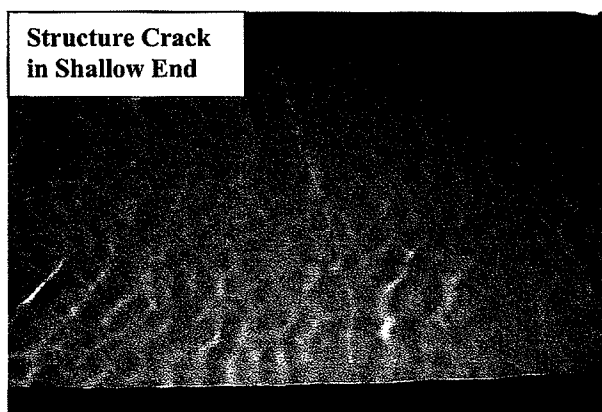
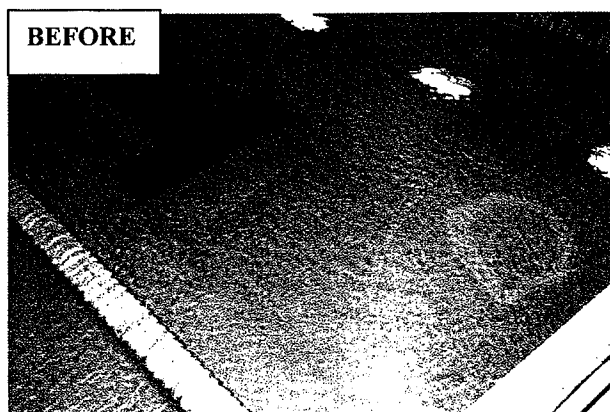
After the investigation was complete, the Building Maintenance Manager of the Town of Ridgefield submitted a recommendation to the Town Council. The recommendation was for the INTER-GLASS® Reinforced Composite System. During a large public hearing and vote, the Town Council unanimously accepted the recommendation.

The community began a vigorous fund-raising effort. Within a year the funding was acquired through the joint efforts of the local community and the Town Council. The project was publicly bid. The project included the INTER-GLASS® Reinforced Composite System for the pool interior, and new ceramic tile racing lanes and targets. Mid-America Pool Renovation, Inc. was awarded the work.

Mid-America dedicated two experienced crews to the project, and the contracted work was finished on schedule, in just one week. When complete, the pool performed better and looked more beautiful than new.



TOWN OF RIDGEFIELD RIDGEFIELD, CONNECTICUT



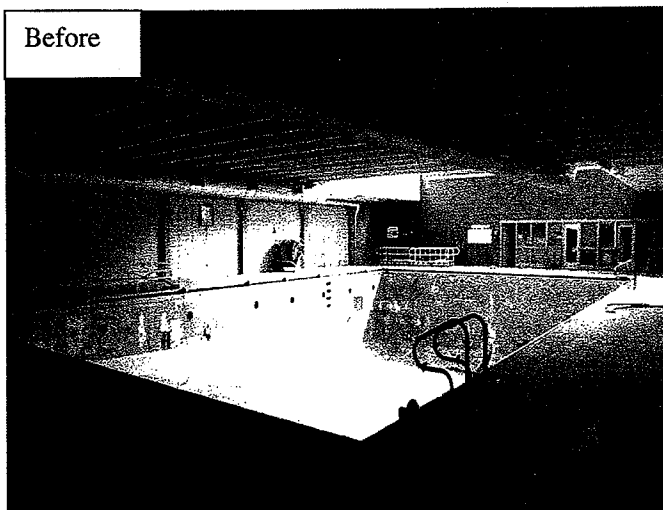
PROJECT SPECIFICATIONS:

TOTAL SQ. FT.:	5,430
POOL SHAPE:	RECTANGULAR WITH RACING LANES
TYPE OF CIRCULATION:	CONCRETE GUTTERS WITH GRATES
TYPE OF CONSTRUCTION:	SHOT-CRETE
TYPE OF INTERIOR FINISH:	INTER-GLASS® AFTER RE-SURFACING

ANNE ARUNDEL COMMUNITY COLLEGE ARNOLD, MARYLAND

COMPLETION: 2009

Before



PROJECT ASSESSMENT

"What needed to be done"

Although this pool had been leaking for years, failure of its cast iron main drain line, which flooded the below-grade equipment room, forced a renovation. All existing tiling in the pool and deck was removed in order to assess the condition of the structure. Several large structural cracks needed repair, as well as 25-foot sections of rebar that had corroded to the point that the Project Engineer specified removal and replacement. In addition to the addressing the structural needs of the pool, a portion of the pool wall was to be modified for the addition of entry steps, all 16-existing pool lights, housings and conduits were to be removed and replaced, and a UV sanitizing unit was to be installed to minimize chemical use and odor. New 1" X 1" tiles identical to those in the original construction were installed.

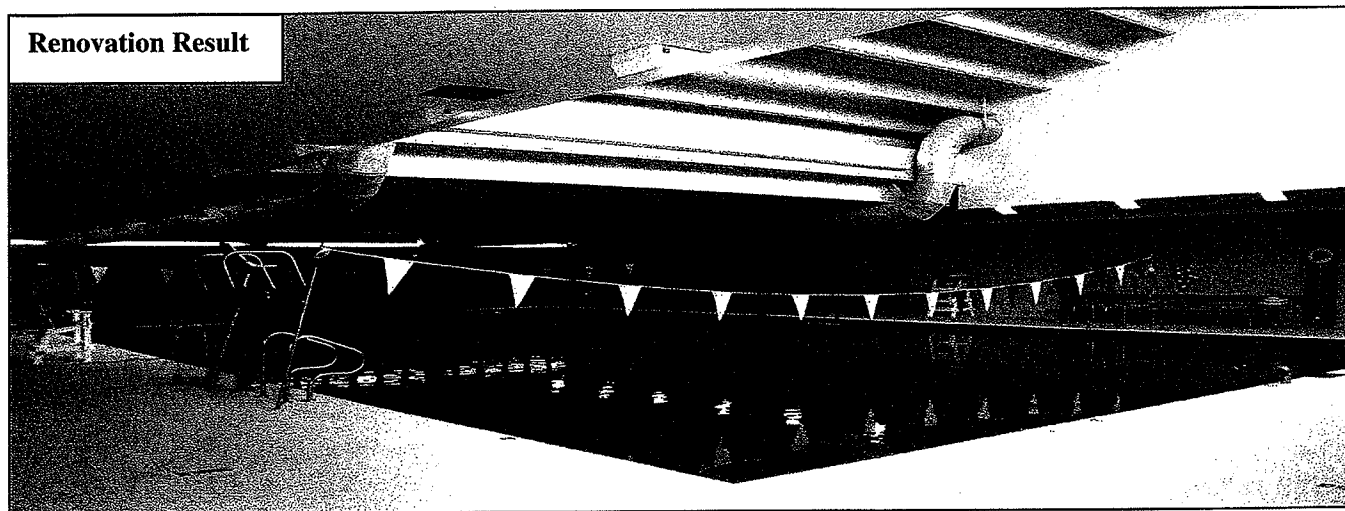
RENOVATION PLAN

"How it was done"

The first order of business on this project was to prepare the surface by removing all remaining grout and mortar left from the previous tile surface. Next an area of wall was removed in order to make way for the new steps, and the deep end floor was demolished in order to allow new main drain sumps and plumbing. Once the new steps were poured and the main drains had been inspected and encased, the existing gutters were modified to function with the new steps. The existing gutter was washed with low concentration nitric acid and polished. Sections of the deck were removed and new conduit, niches and lights were installed.

High-pressure epoxy injection was used to repair the structural cracks, new rebar was installed, primed with a zinc-based coating to inhibit rust, and encased in epoxy mortar. To fully seal the pool structure, the *Hydro Ester Protection System* by Fox Industries was applied to the entire surface. 1"x1" tile was then applied to the entire pool surface. A medium pressure UV filter system was installed to work in concert with the existing filtration system. Deck tile was installed using standard cement-based materials. The pool was filled and started, and is currently leak free and operating beautifully.

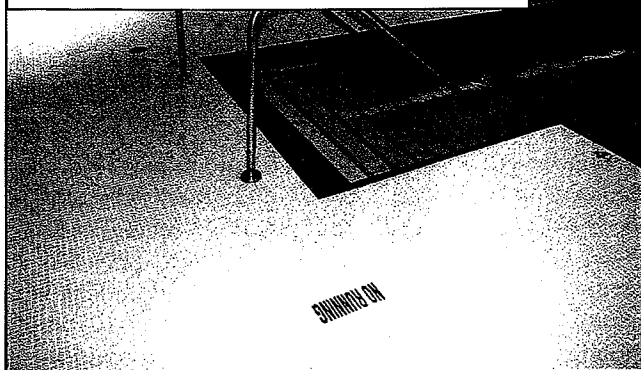
Renovation Result



ANNE ARUNDEL COMMUNITY COLLEGE ARNOLD, MARYLAND

COMPLETION: 2009

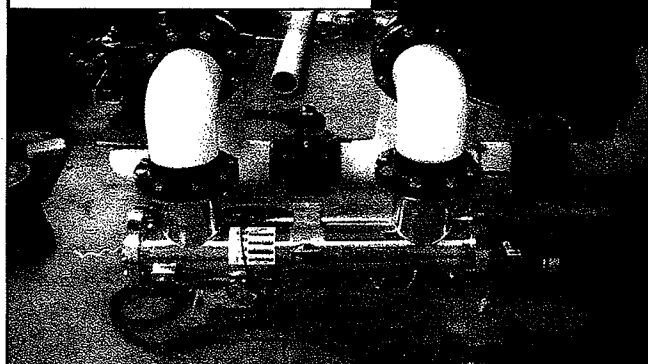
New Concrete Steps & Gutter Additions



Epoxy Injection in Progress



New Hanovia UV System



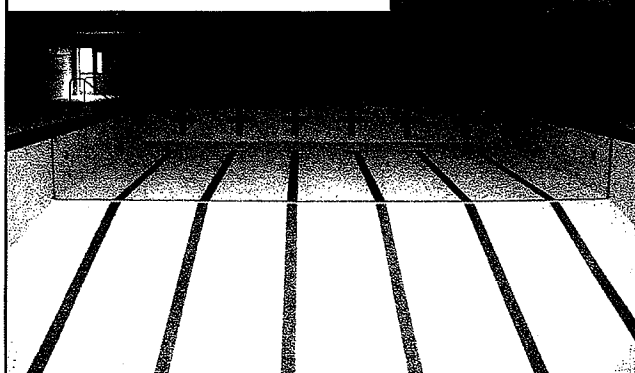
Flex Epoxy Composite Installation



New Deck Tile Installation



New Pool Tile Interior



PROJECT SPECIFICATIONS:

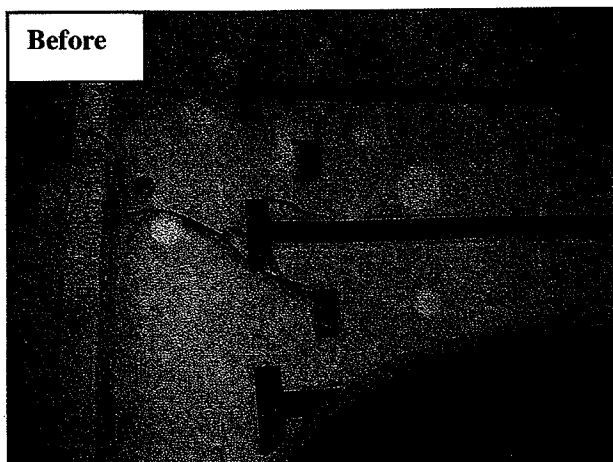
TOTAL SQ. FT.:	10,071 POOL & DECK
POOL SHAPE:	RECTANGULAR
TYPE OF CIRCULATION:	S/S GUTTERS
TYPE OF CONSTRUCTION:	CONCRETE
TYPE OF FINISH AFTER RENOVATION:	TILE

CITY OF MISSION, KANSAS

MISSION, KANSAS

COMPLETION: 2008

Before



PROJECT ASSESSMENT

“What needed to be done”

Large indoor pool complex originally surfaced with white pool plaster. Heat in combination with chemically treated water yellowed the surface and deteriorated the smooth finish. The rough, spalling surface took its toll on swimmers, especially children's feet. After years of draining, (repeated cycles of drying and wetting), cleaning and acid washing, the pool surface started to experience adhesion problems and a series of pop-offs developed.

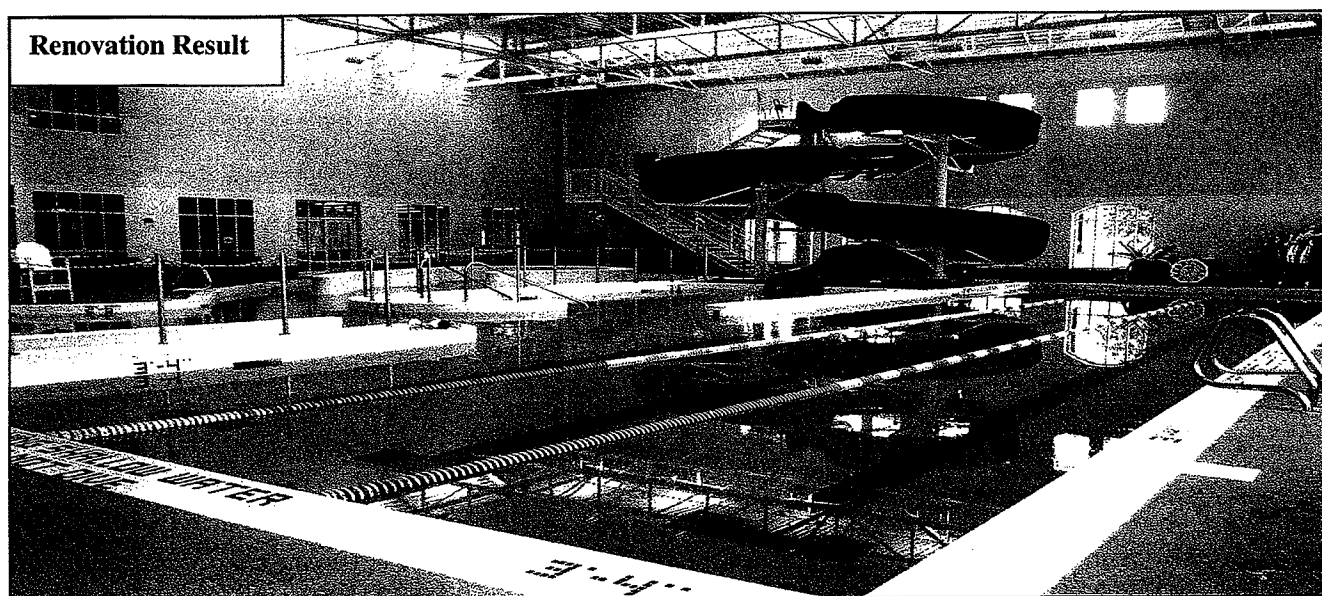
RE-SURFACING PLAN

“How it was done”

Pebblecrete was the choice for the new surface. Re-surfacing with Pebblecrete results in a thicker surface coating than re-plastering with pool plaster or Diamond Brite. The expected thicker new coating demanded deeper and wider removal of the existing pool plaster around waterline tiling, pool lights and other orifices. Brush blasting was used to remove the spalled and

weakened top layer surface finish, followed by high-pressure water blasting (>5000 psi). Mechanical removal of the existing plaster from the tile line and other fixtures extended to a depth of 6–8". Following cleaning and high-pressure water blasting, SGM bond coat was applied throughout the pool shell followed by a new, mist-cured Pebblecrete surface.

Renovation Result

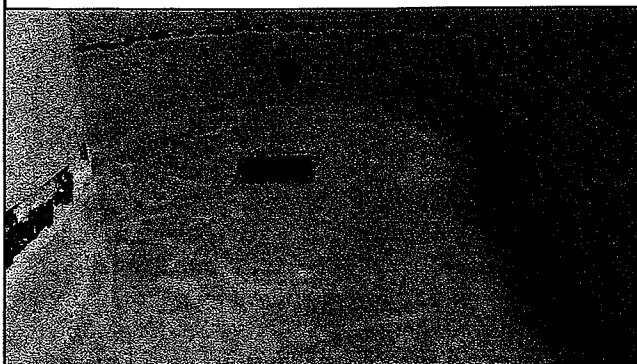


SAMPLE PICTORIAL SEQUENCE ON BACK OF THIS PAGE

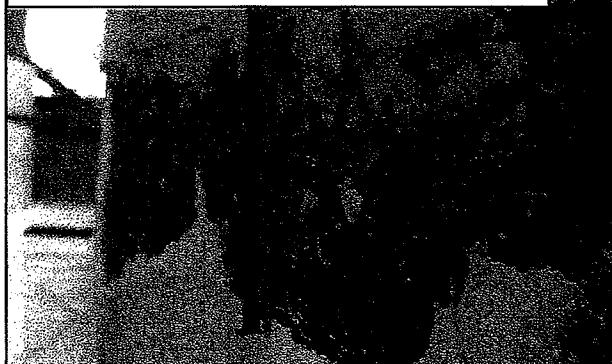
CITY OF MISSION, KANSAS

MISSION, KANSAS

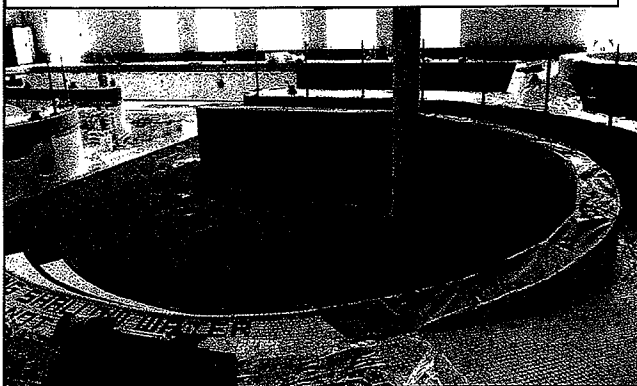
Removal in Progress from the Yellowed Surface



Depth of Plaster Removal from Tile Line



Protective Paper During Bond Coat Installation



Pebblecrete Installation in Progress



Exposing the Pebbles



Mist Curing in Progress



PROJECT SPECIFICATIONS:

TOTAL SQ. FT.:	5,780
POOL SHAPE:	RECTANGULAR, LAZY RIVER, ZERO-DEPTH WALK -IN
TYPE OF CIRCULATION:	SKIMMING, TILED CONCRETE GUTTER SYSTEM
TYPE OF CONSTRUCTION:	SHOT-CRETE
TYPE OF FINISH AFTER RENOVATION:	PEBBLECRETE

Commercial Ladders

STANDARD (LF)

Ladder frames are made of 1.90" O.D. x .065" wall 304 stainless steel tube with a polished and buffed finish. All bends are 6" radius. Ladder frames shall extend from pool wall 6 1/2".

Upper ends of ladder frames are fastened to the pool deck with two anchor sockets on 20" centers. Lower ends of ladder frames are bent to meet pool wall and fitted with two white rubber bumpers.

CROSS BRACE (LFB)

Cross brace is continuously welded to front and rear legs. All welds, sharp corners and edges are ground smooth and polished to a mirror finish after fabrication.

TREADS (LTDF-103)

Stainless steel elite frame steps with black, non-skid inserts. LTDF-103

NOTES:

ORDER ESCUTCHEON PLATES AND ANCHOR SOCKETS SEPARATELY. SEE PAGES 69-71 FOR OPTIONS.

AVAILABLE IN 316L STAINLESS STEEL UPON REQUEST. (ADD "-MG" TO MODEL NO.)

1.5" O.D. LADDERS ARE AVAILABLE UPON REQUEST

See page 147-148 for product specifications

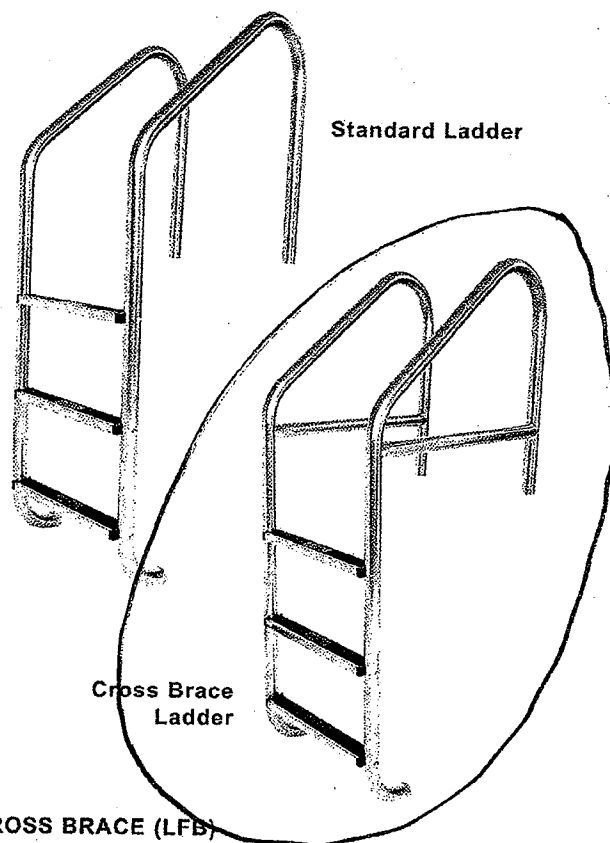
STANDARD (LF)

Item No.	Description	Shipping Wt.
LF-24-2A	2-Step 24" Ladder	28 lbs.
LF-24-3B	3-Step 24" Ladder	32 lbs.
LF-24-4C	4-Step 24" Ladder	36 lbs.
LF-24-5D	5-Step 24" Ladder	40 lbs.
LF-30-2A	2-Step 30" Ladder	33 lbs.
LF-30-3B	3-Step 30" Ladder	38 lbs.
LF-30-4C	4-Step 30" Ladder	42 lbs.
LF-30-5D	5-Step 30" Ladder	47 lbs.
LF-36-2A	2-Step 36" Ladder	40 lbs.
LF-36-3B	3-Step 36" Ladder	45 lbs.
LF-36-4C	4-Step 36" Ladder	50 lbs.
LF-36-5D	5-Step 36" Ladder	55 lbs.

WALL THICKNESS: .065"

SIZES: 24", 30", 36" or custom sizes

WEIGHTS: 28lbs - 60 lbs



CROSS BRACE (LFB)

Item No.	Description	Shipping Wt.
LFB-24-2A	2-Step 24" Ladder	35 lbs.
LFB-24-3B	3-Step 24" Ladder	38 lbs.
LFB-24-4C	4-Step 24" Ladder	43 lbs.
LFB-24-5D	5-Step 24" Ladder	48 lbs.
LFB-30-2A	2-Step 30" Ladder	40 lbs.
LFB-30-3B	3-Step 30" Ladder	45 lbs.
LFB-30-4C	4-Step 30" Ladder	50 lbs.
LFB-30-5D	5-Step 30" Ladder	55 lbs.
LFB-36-2A	2-Step 36" Ladder	45 lbs.
LFB-36-3B	3-Step 36" Ladder	50 lbs.
LFB-36-4C	4-Step 36" Ladder	55 lbs.
LFB-36-5D	5-Step 36" Ladder	60 lbs.



BID: 12-53
 DATE: 06/13/12
 TIME: 2:00 PM
 CITY OF FAYETTEVILLE

Bid 12-53, Construction - Wilson Park Pool Renovations

				Mid- America Pool Renovations, Inc.		USA Pools Construction, Inc.	
ITEM #	DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	Pool Liner	LS	1	\$ 164,700.00	\$ 164,700.00	\$ 224,800.00	\$ 224,800.00
2	Deck Surface	LS	1	\$ 52,500.00	\$ 52,500.00	\$ 75,450.00	\$ 75,450.00
3	Concrete Deck Repairs	SF	1000	\$ 13.80	\$ 13,800.00	\$ 41.93	\$ 41,930.00
4	Insurance and Bonding	LS	1	\$ 7,390.00	\$ 7,390.00	\$ 22,450.00	\$ 22,450.00
5	Mobilization (Shall not exceed 5% total bid)	LS	1	\$ 3,220.00	\$ 3,220.00	\$ 19,750.00	\$ 19,750.00
6	Pool Ladder	EA	9	\$ 920.00	\$ 8,280.00	\$ 685.00	\$ 6,165.00
7	Fence	LF	93	\$ 70.97	\$ 6,600.00	\$ 47.96	\$ 4,460.28
				TOTAL AMOUNT BID	\$256,490.00	TOTAL AMOUNT BID	\$395,005.28
Pricing in bold italics indicates corrected calculation.							

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

CERTIFIED

A. Foren, CPPB, CPPO, Purch. Agent

WITNESS

DATE

A. Foren

Julie Paladino

6/13/12

DOCUMENT 00500 – AGREEMENT

BETWEEN OWNER AND CONTRACTOR

Contract Name/Title: CONSTRUCTION OF WILSON PARK POOL RENOVATIONS

Contract No.: _____

THIS AGREEMENT is dated as of the _____ day of _____ in the year 20__ by and between The City of Fayetteville, Arkansas and _____.(hereinafter called Contractor).

ARTICLE 1 - WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The work under this Contract includes, but is not limited to:

Project includes repair of cracks within the pool structure and surrounding deck, removal of pool plaster interior and deck surface material, and replacement of pool and deck surface at Wilson Park pool located at 675 N. Park Avenue.

ARTICLE 2 - ENGINEER

- 2.01 The Contract Documents have been prepared by GARVER who is here in after called Engineer. GARVER assumes all duties and responsibilities, and has the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIME

- 3.01 TIME OF THE ESSENCE:

- A. All time limits for milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- 3.02 DATES FOR SUBSTANTIAL COMPLETION AND FINAL PAYMENT:

- A. The Work will be Substantially Completed within **60** calendar days after the date when the Contract Times commence to run as provided in the

DOCUMENT 00500 – AGREEMENT (continued)

GENERAL CONDITIONS, and completed and ready for final payment in accordance with the GENERAL CONDITIONS within 70 calendar days after the date when the Contract Times commence to run.

3.03 **LIQUIDATED DAMAGES:**

- A. Owner and Contractor recognize that time is of the essence of this Agreement and that The City of Fayetteville will suffer financial loss if the Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the GENERAL CONDITIONS. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by The City of Fayetteville if the Work is not Substantially Completed on time. Accordingly, instead of requiring any such proof, The City of Fayetteville and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay The City of Fayetteville Seven Hundred Fifty Dollars (\$250.00) for each calendar day that expires after the time specified above in Paragraph 3.02 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 3.02 for completion and readiness for final payment or any proper extension thereof granted by The City of Fayetteville, Contractor shall pay The City of Fayetteville Seven Hundred Fifty Dollars (\$250.00) for each calendar day that expires after the time specified for completion and readiness for final payment.

ARTICLE 4 - CONTRACT PRICE

- 4.01 The CITY OF FAYETTEVILLE agrees to pay, and the CONTRACTOR agrees to accept, as full and final compensation for all work done under this agreement, the amount based on the prices bid in the Proposal (BID FORM) which is hereto attached, for the actual amount accomplished under each pay item, said payments to be made in lawful money of the United States at the time and in the manner set forth in the Specifications.

DOCUMENT 00500 – AGREEMENT (continued)

- 4.02 As provided in the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in the General Conditions. Unit prices have been computed as provided in the General Conditions.
- 4.03 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.

ARTICLE 5 - PAYMENT PROCEDURES

5.01 **SUBMITTAL AND PROCESSING OF PAYMENTS:**

- A. Contractor shall submit Applications for Payment in accordance with the GENERAL CONDITIONS. Applications for Payment will be processed by Engineer as provided in the GENERAL CONDITIONS.

5.02 **PROGRESS PAYMENTS, RETAINAGE:**

- A. The 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 Engineer, on or about the 15th day of each month during construction. All such payments will be measured by the schedule of values established in the GENERAL CONDITIONS (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or The City of Fayetteville may withhold, in accordance with the GENERAL CONDITIONS.
- a. 95% of Work Completed (with the balance being retainage).

DOCUMENT 00500 – AGREEMENT (continued)

- b. 100% of Equipment and Materials not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to The City of Fayetteville as provided in the GENERAL CONDITIONS.
- 2. Upon Substantial Completion, The City of Fayetteville shall pay an amount sufficient to increase total payments to Contractor to 95% of the Contract Price (with the balance being retainage), less such amounts as Engineer shall determine, or The City of Fayetteville may withhold, in accordance with the GENERAL CONDITIONS.

5.03 **FINAL PAYMENT:**

- A. Upon final completion and acceptance of the Work in accordance with the GENERAL CONDITIONS, The City of Fayetteville shall pay the remainder of the Contract Price as recommended by Engineer and as provided in the GENERAL CONDITIONS.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

- 6.01 In order to induce The City of Fayetteville to enter into this Agreement, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents including the Addenda and other related data identified in the Bid Documents.
 - B. 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, and furnishing of the Work.
 - C. 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.

DOCUMENT 00500 – AGREEMENT (continued)

- D. Contractor has carefully studied all:
- (1) 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; and
 - (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site. Contractor acknowledges that The City of Fayetteville and Engineer 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.
- E. Contractor has obtained and carefully studied (or assumes responsibility of 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, and 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.
- F. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performing 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.
- G. Contractor is aware of the general nature of work to be performed by The City of Fayetteville and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings

DOCUMENT 00500 – AGREEMENT (continued)

identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
- J. 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

7.01 **CONTENTS:**

- A. The Contract Documents which comprise the entire Agreement between The City of Fayetteville and Contractor concerning the Work consist of the following and may only be amended, modified, or supplemented as provided in the GENERAL CONDITIONS:
 - 1. This Agreement.
 - 2. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed.
 - b. Contractor's Bid.
 - c. Documentation submitted by Contractor prior to Notice of Award.
 - 3. Performance, Payment, and other Bonds.
 - 4. General Conditions.

DOCUMENT 00500 – AGREEMENT (continued)

5. Supplementary Conditions.
6. Specifications consisting of divisions and sections as listed in table of contents of Project Manual.
7. Addenda numbers one (1) to _____(____), inclusive.
8. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the GENERAL CONDITIONS.

ARTICLE 8 - MISCELLANEOUS

8.01 TERMS:

- A. Terms used in this Agreement which are defined in the GENERAL CONDITIONS shall have the meanings stated in the GENERAL CONDITIONS.

8.02 ASSIGNMENT OF CONTRACT:

- A. 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.

DOCUMENT 00500 – AGREEMENT (continued)

8.03 **SUCCESSORS AND ASSIGNS:**

- A. The City of Fayetteville and Contractor each binds himself, his 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.

8.04 **SEVERABILITY:**

- A. 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 The City of Fayetteville and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 **FREEDOM OF INFORMATION ACT:**

- A. City 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, the 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.

DOCUMENT 00500 – AGREEMENT (continued)

8.06 **MATERIALMEN’S LIENS**

- A. **No liens against this construction project are allowed.** Arkansas law (A.C.A. §§ 18-44-501 through 508) prohibits the filing of any mechanics’ or materialmen’s liens in relation to this public construction project. Arkansas law requires and the Contractor promises to provide and file with the Circuit Clerk of Washington County a bond in a sum equal to the amount of this contract. Any subcontractor or materials supplier may bring an action for non-payment of labor or materials on the bond. The Contractor promises to notify every subcontractor and materials supplier for this project of this paragraph and obtain their written acknowledgement of such notice prior to commencement of the work of the subcontractor or materials supplier.

OTHER PROVISIONS: Not Applicable.

IN WITNESS WHEREOF, The City of Fayetteville and Contractor have signed this Agreement in quadruplicate. One counterpart each has been delivered to Contractor and Engineer. Two counterparts each has been delivered to The City of Fayetteville. All portions of the Contract Documents have been signed, initialed, or identified by The City of Fayetteville and Contractor or identified by Engineer on their behalf.

DOCUMENT 00500 – AGREEMENT (continued)

This Agreement will be effective on _____, 20__, which is the
Effective Date of the Agreement.

CONTRACTOR _____ CITY OF FAYETTEVILLE _____

By: _____ By: _____

Title: _____ Title: _____

(SEAL)

(SEAL)

Attest _____ Attest _____

Address for giving notices

Address for giving notices

License No. _____

(attach evidence of authority to
sign and resolution or other documents
authorizing execution of Agreement)

Agent for Service of process

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

Approved As to Form:

By: _____

Attorney For: _____

END OF DOCUMENT 00500

City of Fayetteville Staff Review Form

A. 3
2012 Assistance to
Firefighters Grant
Page 1 of 26

City Council Agenda Items
and
Contracts, Leases or Agreements

July 3, 2012

City Council Meeting Date
Agenda Items Only

David Dayringer

Submitted By

Fire

Division

Fire

Department

Action Required:

Staff requests a resolution for approval to apply for the 2012 Assistance To Firefighters Grant program. The amount to be requested will be \$179,410.00. The City's obligation under this grant program is a 20% matching contribution of \$35,882.00 if awarded.

\$35,882.00

Cost of this request

\$

200,000.00

Category / Project Budget

Fire Department Act 833 Revenue

Program Category / Project Name

1010.3020.5911.00

Account Number

\$

36,057.98

Funds Used to Date

Fire Improvements

Program / Project Category Name

03047

Project Number

163,942.02

Remaining Balance

General

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

[Signature]
Department Director

6-15-12
Date

Previous Ordinance or Resolution #

[Signature]
City Attorney

6-15-12
Date

Original Contract Date:

Original Contract Number:

[Signature]
Finance and Internal Services Director

6/15/12
Date

06-15-12 P02:23 RCVD
Received in City
Clerk's Office

[Signature]
Chief of Staff

6-15-12
Date

Received in
Mayor's Office

ENTERED
6-15-12 SEP

[Signature]
Mayor

6/15/12
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor & City Council

From: David Dayringer, Fire Chief

Date: July 3, 2012

Subject: Staff requests a resolution for approval to apply for the 2012 Assistance to Firefighters Grant. The amount to be requested will be \$179,410.00 for the purchase of wildland firefighting personal protective equipment. The city's obligation under this grant program is a 20% matching contribution of \$35,882.00 if awarded.

PROPOSAL:

The City of Fayetteville Fire Department is requesting approval to apply for the 2012 Assistance to Firefighter's Grant in order to fully outfit all of its firefighters with wildland firefighting personal protective equipment (PPE). If awarded, firefighters will be able to operate at wildland emergency scenes in a manner that will minimize the detrimental effects of the heavier structural firefighting gear that is currently being used. While the department's goal is to provide the best possible gear and equipment for each firefighter, budget limitations have made it impossible to acquire PPE for wildland fires.

The City of Fayetteville became a Firewise Community in 2005. The City is currently renewing our Firewise designation and performing an extensive assessment of our wildland urban interface conditions. The wildland urban interface areas in Fayetteville typically have steep slopes and heavy vegetation that contributes to the moderate and high fire risk level. The Firewise community analysis showed that 2,593 homes or 34% of the homes located in the city limits were graded at moderate and high risk for a wildland urban interface fire event.

Currently, our personnel use structural personal protective equipment when responding to wildland interface fires. If awarded, this grant will allow the Fire Department to purchase 110 wildland personal protective equipment ensembles (one for each firefighting position). The cost per ensemble is estimated to be \$1,631.00 for a total request amount of \$179,410.00. This protective equipment will provide all first alarm fire units with National Fire Protection Association compliant gear. This gear will include two-piece turnouts, gloves, helmets, goggles, hoods, boots, wildland packs with water and emergency shelters, etc.

RECOMMENDATION:

Staff requests a resolution for approval to apply for the 2012 Assistance to Firefighters Grant program. The amount to be requested will be \$179,410.00 for the purchase of wildland personal protective equipment. The city's obligation under this grant program is a 20% matching contribution of \$35,882.00 if awarded.

BUDGET IMPACT:

Funds for the City's 20% match contribution are available in Project 03047 Fire Department Act 833 Revenue.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING AN APPLICATION FOR A 80/20 MATCHING 2012 ASSISTANCE TO FIREFIGHTERS GRANT, THROUGH THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), IN THE AMOUNT OF \$179,410.00 FOR THE PURCHASE OF WILDLAND FIREFIGHTING PERSONAL PROTECTIVE EQUIPMENT BY THE FIRE DEPARTMENT

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 an application for a 80/20 matching 2012 Assistance to Firefighters Grant, through the Federal Emergency Management Agency (FEMA), in the amount of \$179,410.00 for the purchase of wildland firefighting personal protective equipment by the Fire Department.

PASSED and APPROVED this 3rd day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Overview

***Did you attend one of the workshops conducted by DHS's regional fire program specialist?**

No, I have not attended workshop

***Was a workshop offered within 2 hours drive?**

Do Not Know

***Are you a member, or are you currently involved in the management, of the fire department or non-affiliated EMS organization applying for this grant with this application?**

Yes, I am a member/officer of this applicant

If you answered No, please **complete** the information below. If you answered Yes, please skip the Preparer Information section.

Fields marked with an * are required.

Preparer Information

* Preparer's Name

* Address 1

Address 2

* City

* State

* Zip

-
Need help for ZIP+4?

In the space below please list the person your organization has selected to be the primary point of contact for this grant. This should be a Chief Officer or long time member of the organization who will see this grant through completion. Reminder: if this person changes at any time during the period of performance please update this information. Please list only phone numbers where we can get in direct contact with the POC.

Primary Point of Contact

* Title

Fire Chief

Prefix (check one)

Mr.

* First Name

David

Middle Initial

* Last Name

Dayringer

* Business Phone (e.g. 123-456-7890)

479-575-8365 Ext.

* Home Phone (e.g. 123-456-7890)

479-846-6099 Ext.

Mobile Phone/Pager (e.g. 123-456-7890)

479-841-5970

Fax (e.g. 123-456-7890)

479-575-0471

* Email (e.g. user@xyz.org)

ddayringer@ci.fayetteville.ar.us

Contact Information

Alternate Contact Information Number 1

* Title Assistant Fire Chief
Prefix N/A
* First Name Kyle
Middle Initial
* Last Name Curry
* Business Phone 479-575-8365 Ext.
* Home Phone 479-439-2435 Ext.
Mobile Phone/Pager 479-439-2435
Fax 479-575-0471
* Email kcurry@ci.fayetteville.ar.us

Alternate Contact Information Number 2

* Title Captain
Prefix N/A
* First Name Scott
Middle Initial
* Last Name Jones
* Business Phone 479-575-8365 Ext.
* Home Phone 479-789-2808 Ext.
Mobile Phone/Pager 479-263-4282
Fax 479-575-0471
* Email sjones@ci.fayetteville.ar.us

Applicant Information

* Organization Name	City of Fayetteville Fire Department
* Type of Applicant	Fire Department/Fire District
* Type of Jurisdiction Served	City
If other, please enter the type of Jurisdiction	
* <u>Employer Identification Number</u>	71-6018462
* What is your organization's <u>DUNS Number</u> ?	883381550 (call 1-866-705-5711 to get a DUNS number)
Headquarters or Main Station Physical Address	
* Physical Address 1	303 W Center St
Physical Address 2	
* City	Fayetteville
* State	Arkansas
* Zip	72701 - 5201 <u>Need help for ZIP+4?</u>
Mailing Address	
* Mailing Address 1	303 W Center St
Mailing Address 2	
* City	Fayetteville
* State	Arkansas
* Zip	72701 - 5201 <u>Need help for ZIP+4?</u>
* Please describe all grants that you have received from DHS, for example, 2008 AFG grant for a vehicle or 2010 HSGP grant for exercises. (Enter N/A if Not Applicable).	
2002 AFG for Physical Fitness equipment and Turnouts	
2006 AFG for Mobile Data Terminals	
2006 AFG for Fire Prevention & Safety	
2008 AFG for SCBA's	
Account Information	
* Type of bank account	Checking
* Bank routing number - <u>9 digit</u> number on the bottom left hand corner of your check	082900872
* Your account number	4841984406
Additional Information	
* For this fiscal year (Federal) is your organization receiving Federal funding from any other grant program that may duplicate the purpose and/or scope of this grant request?	No
* If awarded the AFG grant, will your organization expend more than \$500,000 in Federal funds during your organization's fiscal year in which this AFG grant was awarded?	No
* Is the applicant <u>delinquent on any Federal debt</u> ?	No

If you answered yes to any of the additional questions above, please provide an explanation in the space provided below:

Department Characteristics (Part I)

* Are you a member of a Federal Fire Department or contracted by the Federal government and solely responsible for suppression of fires on Federal property? No

* What kind of organization do you represent? All Paid/Career

If you answered combination, above, what is the percentage of career members in your organization? %

If you answered volunteer or combination or paid on-call, how many of your volunteer Firefighters are paid members from another career department?

* What type of community does your organization serve? Urban

* Is your Organization considered a Metro Department? No

* What is the square mileage of your first-due response area? 55

* What percentage of your response area is protected by hydrants? 98 %

* In what county/parish is your organization physically located? If you have more than one station, in what county/parish is your main station located? Washington

* Does your organization protect critical infrastructure of the state? Yes

* How much of your jurisdiction's land use is for agriculture, wildland, open space, or undeveloped properties? 33 %

* What percentage of your jurisdiction's land use is for commercial and industrial purposes? 36 %

* What percentage of your jurisdiction's land is used for residential purposes? 31 %

* How many occupied structures (commercial, industrial, residential, or institutional) in your jurisdiction are more than three stories tall? Do not include structures which are not regularly occupied such as silos, towers, steeples, etc. 45

* What is the permanent resident population of your Primary/First-Due Response Area or jurisdiction served? 73580

* Do you have a seasonal increase in population? Yes

If "Yes" what is your seasonal increase in population? 25000

* How many active firefighters does your department have who perform firefighting duties? 110

* How many ALS level trained members do you have in your department/organization? 7

* How many stations are operated by your organization? 7

* Is your department compliant to your local Emergency Management standard for the National Incident Management System (NIMS)? Yes
* Do you currently report to the National Fire Incident Reporting System (NFIRS)? Yes

If you answered yes above, please enter your FDIN/FDID 72600

* What percent of your active firefighters are trained to the level of Firefighter I? 100 %

* What percent of your active firefighters are trained to the level of Firefighter II? 100 %

If you answered less than 100% to either question above, are you requesting for training funds in this application to bring 100% of your firefighters into compliance with NFPA 1001?

If you indicated that less than 100% of your firefighters are trained to the Firefighter II level and you are not asking for training funds in this application, please describe in the box below your training program and your plans to bring your membership up to Firefighter II.

* What services does your organization provide?

Structural Fire Suppression	Emergency Medical Responder	Haz-Mat Operational Level
Wildland Fire Suppression	Basic Life Support	Haz-Mat Technical Level
Airport Rescue Firefighting (ARFF)		Rescue Operational Level
	Formal/Year-Round Fire Prevention Program	Rescue Technical Level

* Please describe your organization and/or community that you serve. We recommend typing your response in a Word Document outside of this application, then copying and pasting it into the written field. There is a 4000 character limit.

The City of Fayetteville Fire Department provides fire, ems, hazardous materials, specialized rescue, public education, fire code enforcement, and origin/cause investigations to our community of 73,580. Located in Northwest Arkansas and home to the state's flagship university, the University of Arkansas. Fayetteville is a growing, diverse city that focuses on sustainability and great quality of life.

Fayetteville has consistently been listed in the top ten places to live in the United States. Situated in the beautiful Ozark Mountains, there are many activities and venues for our citizens and visitors alike.

Fayetteville utilizes the mayoral type of government that consistently manages resources and provides great public safety. Some of the major events that take place in Fayetteville include the annual Walmart Shareholder's Meeting, bringing in 15,000 people from all over the world, Bikes, Blues, and BBQ annual motorcycle rally that is considered the third largest in the United States, University of Arkansas sporting events, along with other festivals and conferences.

The Fayetteville Fire Department members are dedicated public servants that perform their jobs in a very professional manner and care about treating our citizens and visitors like family.

Fire Department Characteristics (Part II)

	2011	2010	2009
* What is the total number of fire-related civilian fatalities in your jurisdiction over the last three years?	2	0	0
* What is the total number of fire-related civilian injuries in your jurisdiction over the last three years?	2	2	4
* What is the total number of line of duty member fatalities in your jurisdiction over the last three years?	0	0	0
* What is the total number of line of duty member injuries in your jurisdiction over the last three years?	7	5	22
* Over the last three years, what was your organization's average operating budget?		8200000	
* What percentage of your TOTAL budget is dedicated to personnel costs (salary, overtime and fringe benefits)?		92 %	
* What percentage of your annual operating budget is derived from: Enter numbers only, percentages must sum up to 100%			
Taxes?	98 %		
<u>EMS Billing?</u>	0 %		
Grants?	0 %		
Donations?	1 %		
Fund drives?	0 %		
<u>Fee for Service?</u>	1 %		
Other?	0 %		

If you entered a value into Other field (other than 0), please explain

* Please describe your organization's need for Federal financial assistance. We recommend typing your response in a Word Document outside of this application, then copying and pasting it into the written field. There is a 4000 character limit.

Funding for the general fund for the City of Fayetteville is generated from sales tax revenue. The Fire Department is in constant competition with other city divisions for the same resources. With the amount of growth the city has experienced over the past several years and the sudden economic downturn experienced in the last three years, the needs of most city divisions far exceeded the available resources. The Fire Department has struggled to maintain quality of our fleet and facilities and our personnel went an extended period without receiving pay raises. Sales tax revenue declined over the last three years but shows signs of positive growth in the first half of 2012. The funding to support much needed life-saving equipment is far beyond the Department's capabilities, as we struggle to maintain the level of service we currently provide our community.

* How many vehicles does your organization have in each of the types or class of vehicle listed below? **You must include vehicles that are leased or on long-term loan as well as any vehicles that have been ordered or otherwise currently under contract for purchase or lease by your organization but not yet in your possession.** (Enter numbers only and enter 0 if you do not have any of the vehicles below.)

Type or Class of Vehicle	Number of Front Line Apparatus	Number of Reserve Apparatus	Number of Seated Riding Positions
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Engines or Pumpers (pumping capacity of 750 gpm or greater and

water capacity of 300 gallons or more): Pumper, Pumper/Tanker, Rescue/Pumper, Foam Pumper, CAFS Pumper, Type I or Type II Engine Urban Interface Ambulances for transport and/or emergency response	6 0 0	3 0 0	36 0 0
Tankers or Tenders (pumping capacity of less than 750 gallons per minute (gpm) and water capacity of 1,000 gallons or more):	0	0	0
Aerial Apparatus: Aerial Ladder Truck, Telescoping, Articulating, Ladder Towers, Platform, Tiller Ladder Truck, Quint	3	1	16
Brush/Quick attack (pumping capacity of less than 750 gpm and water carrying capacity of at least 300 gallons): Brush Truck, Patrol Unit (Pick up w / Skid Unit), Quick Attack Unit, Mini-Pumper, Type III Engine, Type IV Engine, Type V Engine, Type VI Engine, Type VII Engine	1	0	2
Rescue Vehicles: Rescue Squad, Rescue (Light, Medium, Heavy), Technical Rescue Vehicle, Hazardous Materials Unit	1	0	2
Additional Vehicles: EMS Chase Vehicle, Air/Light Unit, Rehab Units, Bomb Unit, Technical Support (Command, Operational Support/Supply), Hose Tender, Salvage Truck, ARFF (Aircraft Rescue Firefighting), Command/Mobile Communications Vehicle,	2	2	4

Department Call Volume

2011

2010

2009

* How many responses per year by category? (Enter whole numbers only. If you have no calls for any of the categories, enter 0)

Working Structural Fires	248	242	278
False Alarms/Good Intent Calls	865	814	893
Vehicle Fires	52	57	53
Vegetation Fires	62	50	59
EMS-BLS Response Calls	5345	4665	4384
EMS-ALS Response Calls	0	0	0
EMS-BLS Scheduled Transports	0	0	0
EMS-ALS Scheduled Transports	0	0	0
Vehicle Accidents w/o Extrication	363	435	0
Vehicle Extrications	110	50	491
Other Rescue	33	8	3
Hazardous Condition/Materials Calls	16	10	6
Service Calls	330	333	485
Other Calls and Incidents	250	286	550
Total	7674	6950	7202

* How many responses per year by category? (Enter whole numbers only. If you have no calls for any of the categories, enter 0)

What is the total acreage of all vegetation fires?	95	18	20
--	----	----	----

* How many responses per year by category? (Enter whole numbers only. If you have no calls for any of the categories, enter 0)

In a particular year, how many times does your organization receive mutual/automatic aid?	15	17	20
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In a particular year, how many times does your organization provide mutual/automatic aid? (Do not include first-due responses claimed above).	19	37	22
---	----	----	----

Total Mutual / Automatic Aid	34	54	42
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Out of the mutual/automatic aid responses, how many were structure fires?	7	10	0
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Request Information

1. Select a program for which you are applying. If you are interested in applying under both Vehicle Acquisition and Operations and Safety, and/or regional application **you will need to submit separate applications.**

Program Name

Operations and Safety

2. Will this grant benefit more than one organization?

Yes

If you answered Yes to Question 2 above, please explain.

The Fayetteville Fire Department has automatic mutual aid agreements with 7 surrounding fire departments. Most have wildland firefighting gear. The FFD will be more effective mutual aid partners with the appropriate PPE for wildland fires.

3. Enter Grant-writing fee associated with the preparation of this request. Enter 0 if there is no fee.

\$0

Request Details

The activities for program **Operations and Safety** are listed in the table below.

Activity	Number of Entries	Total Cost	Additional Funding	Action
Equipment	0	\$ 0	\$ 0	View Details
Modify Facilities	0	\$ 0	\$ 0	View Details
				View Details
Personal Protective Equipment	11	\$ 179,520	\$ 0	View Additional Funding Narratives
Training	0	\$ 0	\$ 0	View Details
Wellness and Fitness Programs	0	\$ 0	\$ 0	View Details
* Total Funding for all EMS requested in this application			\$0	
Grant-writing fee associated with the preparation of this request.			\$0	

Firefighting PPE - Narrative

* Section # 1 Project Description: In the space provided below include clear and concise details regarding your organization's project's description and budget. This includes providing local statistics to justify the needs of your department and a detailed plan for how your department will implement the proposed project. Further, please describe what you are requesting funding for including budget descriptions of the major budget items, i.e., personnel, equipment, contracts, etc.? *3000 characters

The City of Fayetteville, Arkansas Fire Department is applying for the 2012 Assistance to Firefighter's Grant in order to fully outfit all of its firefighters with wildland personal protective equipment (PPE).

If awarded, firefighters will be able to operate at wildland emergency scenes in a manner that will minimize the detrimental effects of the heavier structural gear that is currently being used.

The City of Fayetteville is situated in northwest Arkansas' Washington County and is home to the state's flagship university, the University of Arkansas. The Department protects 55 sq miles inside the city limits, with approximately 18% or 10 sq miles of wildland interface. Over 6,400 acres of wildland interface are included in the City limits that pose a significant wildland interface fire risk.

The department faces the challenges of structure fire control in commercial, industrial, and residential districts, along with emergency medical, rescue, hazmat, and various other calls for service including wildland urban interface incidents. In addition, the Department provides mutual and automatic aid to a dozen surrounding fire departments multiple times during the year with both manpower and equipment. These mutual and automatic aid departments cover even larger areas of wildland interface risk. All equipment is available to respond to mutual and automatic aid departments when those units are in service. These mutual and automatic aid fire departments have a 15 to 30 minute response time to the City of Fayetteville when called for assistance.

The City of Fayetteville became a Firewise Community in 2005. The City is currently renewing our Firewise designation and performing an extensive assessment of our wildland urban interface conditions. The wildland urban interface areas in Fayetteville typically have steep slopes and heavy vegetation that contributes to the moderate and high fire risk level. The Firewise community analysis showed that 2,593 homes or 34% of the homes located in the city limits were graded at moderate and high risk for a wildland urban interface fire event. Many homes built in these areas have little, if any, defensible space and are constructed of flammable materials (wood).

To accomplish this vitally needed project, the following personal protective equipment and gear will be purchased with the awarded grant funds:

Wildland Firefighter Coat \$188.00 ea
Wildland Firefighter Pant \$199.00 ea
Boots \$304.00 ea
Gloves \$41.00 ea
Helmet \$48.00 ea
Hood \$60.00 ea
Backpack with water \$220.00 ea
Goggles \$36.00 ea
Shelter Tent \$400.00 ea
Duffle Bag \$99.00 ea
Light \$36.00 ea

Total ensemble per firefighter \$1,631.00. We are requesting 110 ensembles, one for each firefighting position, making our total request for \$179,410.00.

* Section # 2 Cost/Benefit: In the space provided below please explain, as clearly as possible, what will be the benefits your department or your community will realize if the project described is funded (i.e. anticipated savings and/or efficiencies)? Is there a high benefit for the cost incurred? Are the costs reasonable? Provide justification for

the budget items relating to the cost of the requested items. *3000 characters

Total ensemble per firefighter is \$1,631.00. We are requesting 110 ensembles, one for each firefighting position, making our total request for \$179,410.00.

We are requesting 110 pair of NFPA 1977-2011 edition rated wildland fire fighting boots. Leather boots that are compliant with NFPA and OSHA standards for wildland interface fire situations are substantially lighter and fit better than standard structural fire boots. This results in less fatigue and lessens the possibility of foot or ankle injury to firefighters. Boots compliant with NFPA standards afford heat resistance, protection from cuts and punctures and resist blood borne pathogens for improved health protection.

The purchase of 110 sets of NFPA compliant wildland turnout coats and pants. These turnouts will enable each firefighter to have a complete, safe, and well fitted set of wildland fire personal protective gear. The new gear would be used for wildland fires in place of the structural turnout gear now in use. All members will have fully qualified wildland turnout sets, thus maximizing the safety of all firefighters.

Purchasing 110 NFPA 1977-2000 ed. compliant wildland fire helmets and hoods will provide maximum head protection for all firefighters at wildland fires. All members presently have structural firefighting helmets. The wildland style fire helmets are much lighter and provide for greater mobility and will improve the safety of firefighter head protection and help prevent fatigue.

The purchase of 110 pair NFPA wildland fire fighting gloves and 110 pairs of NFPA wildland goggles all meeting NFPA 1977-2011 qualifications. These items will be used with the wildland turnout gear to greatly enhance personnel safety through improved eye and hand protection.

This acquisition of proper wildland fire protective gear for each active member for use at wildland interface fires will involve the purchase of 110 pairs of NFPA 1977-2011 ed. rated two piece turnouts, 110 wild land fire helmets, and 110 pair wildland fire gloves.

Structure fire fighting gear is too heavy, very bulky, and produces excessive heat stress and fatigue if used in wildland urban interface fire situations. Also, use of structural gear during wildland urban interface fires can cause considerable physical damage to the gear from snags, tears, and abrasion. Rips and tears in structure turnouts are expensive to repair.

The wildland equipment will provide essential protection with much less heat stress and fatigue to our firefighters. Combined with the goggles and leather boots, this gear will outfit the firefighters for safe wildland interface fire operations.

The Fayetteville Fire Department believes that the completion of this firefighter personal protective equipment project, along with the continued training on the use of the new equipment, will be a very worthwhile investment in the community we serve.

* Section # 3 Statement of Effect: How would this award affect the daily operations of your department (i.e., describe how frequently the equipment will be used or what the benefits will provide the personnel in your department)? How would this award affect your department's ability to protect lives and property in your community? *3000 characters

The Fayetteville Fire Department responds to calls 24/7, using nine units staffed with a minimum of three personnel. Our nine frontline units respond to over 7,200 calls per year, with a response time goal of six minutes 90% of the time.

Currently, our personnel use structural firefighting personal protective equipment when responding to wildland urban interface fires. While the department's goal is to provide the best possible gear and equipment for each firefighter, budget limitations have made it impossible to acquire PPE for wildland fires.

This protective equipment will provide all first alarm fire units with NFPA 1977-2011 Standard on Protective Clothing and Equipment for Wildland Fire Fighting, 2011 Edition compliant gear. This gear will include two-piece turnouts, gloves, helmets, goggles, hoods, boots, wildland packs with water and emergency shelters, etc.

Equipping all active firefighters with personal protective gear for wildland urban interface fire responses will maximize health protection for each firefighter. The department will issue each firefighter a duffle bag for the storage of their wildland PPE. The Department provides an extractor type washing machine for cleaning the gear. This will prevent any unneeded exposure or cross-contamination.

Firefighters using structural gear to combat wildland interface fires are at risk for elevated physical problems and injuries. With this project's completion, the Fayetteville Fire Department can provide maximum firefighter safety when operating at wildland urban interface fire responses. The PPE requested is essential to the health and welfare of our firefighters.

* Section # 4 In the space provided below include details regarding your organization's request not covered in any other section. *3000 characters

The 73,850 residents of the City of Fayetteville are solid supporters of the Department through dedicated sales tax revenue. After the annual operational and capital needs of the department are prioritized, the City has no funding for this type of purchase without the assistance of grant funds. The project proposed in this application could not be implemented without this grant. The required project matching funds will be provided from ACT 833 (State of Arkansas insurance turn-back) funds.

This new acquisition will result in the Department's full compliance with OSHA rules and NFPA standards for wildland fire fighting gear for all its members. All Department personnel are wildland fire fighting certified by the state of Arkansas. The 2012 Assistance to Firefighters Grant funding priorities acknowledge, "Department requesting new PPE for the first time", as ranked in the "high" category.

In addition, the FFD will be more effective partners in our automatic and mutual aid areas. If this grant is awarded, it will maximize the health and safety of the Department's Firefighters as they face the challenges of wildland urban interface fire operations whenever needed in Fayetteville and the surrounding area.

BudgetBudget Object Class

a. Personnel	\$ 0
b. Fringe Benefits	\$ 0
c. Travel	\$ 0
d. Equipment	\$ 179,520
e. Supplies	\$ 0
f. Contractual	\$ 0
g. Construction	\$ 0
h. Other	\$ 0
i. Indirect Charges	\$ 0
j. State Taxes	\$ 0
Federal and Applicant Share	
Federal Share	\$ 143,616
Applicant Share	\$ 35,904
Federal Rate Sharing (%)	80/20

* Non-Federal Resources (The combined Non-Federal Resources must equal the Applicant Share of \$ 35,904)

a. Applicant	\$ 35904
b. State	\$ 0
c. Local	\$ 0
d. Other Sources	\$ 0

If you entered a value in Other Sources other than zero (0), include your explanation below. You can use this space to provide information on the project, cost share match, or if you have an indirect cost agreement with a federal agency.

Total Budget **\$ 179,520**

Narrative Statement

For 2011 and on, the Narrative section of the AFG application has been modified. You will enter individual narratives for the Project Description, Cost-Benefit, Statement of Effect, and Additional Information in the Request Details section for each Activity for which you are requesting funds. Please return to the Request Details section for further instructions. You will address the Financial Need in Applicant Characteristics II section of the application. We recommend that you type each response in a Word Document outside of the grant application and then copy and paste it into the spaces provided within the application.

Assurances and Certifications**FEMA Form SF 424B**

You must read and sign these assurances. These documents contain the Federal requirements attached to all Federal grants including the right of the Federal government to review the grant activity. You should read over the documents to become aware of the requirements. The Assurances and Certifications must be read, signed, and submitted as a part of the application.

Note: Fields marked with an * are required.

O.M.B Control Number 4040-0007

Assurances Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have any questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Section 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. Sections 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. Sections 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Acts of 1968 (42 U.S.C. Section 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal

assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interest in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. Section 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Section 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signed by **David Dayringer** on **06/15/2012**

Form 20-16C**You must read and sign these assurances.**

Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters and Drug-Free Workplace Requirements.

Note: Fields marked with an * are required.

O.M.B Control Number 1660-0025

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 44 CFR Part 18, "New Restrictions on Lobbying; and 44 CFR Part 17, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Homeland Security (DHS) determines to award the covered transaction, grant, or cooperative agreement.

1. Lobbying

A. As required by the section 1352, Title 31 of the US Code, and implemented at 44 CFR Part 18 for persons (entering) into a grant or cooperative agreement over \$100,000, as defined at 44CFR Part 18, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement and extension, continuation, renewal amendment or modification of any Federal grant or cooperative agreement.

(b) If any other funds than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all the sub awards at all tiers (including sub grants, contracts under grants and cooperative agreements and sub contract(s)) and that all sub recipients shall certify and disclose accordingly.

2. Debarment, Suspension and Other Responsibility Matters (Direct Recipient)

A. As required by Executive Order 12549, Debarment and Suspension, and implemented at 44CFR Part 67, for prospective participants in primary covered transactions, as defined at 44 CFR Part 17, Section 17.510-A, the applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency.

(b) Have not within a three-year period preceding this application been convicted of or had a civilian judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or perform 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 (1)(b) of this certification: and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. Drug-Free Workplace (Grantees other than individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 44CFR Part 17, Subpart F, for grantees, as defined at 44 CFR part 17, Sections 17.615 and 17.620:

(A) The applicant certifies that it will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantees policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant to be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

- (1) Abide by the terms of the statement and
- (2) Notify the employee in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

(e) Notifying the agency, in writing within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to the applicable DHS awarding office, i.e. regional office or DHS office.

(f) Taking one of the following actions, against such an employee, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency.

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance

Street

City

State

Zip

Action

If your place of performance is different from the physical address provided by you in the Applicant Information, press *Add Place of Performance* button above to ensure that the correct place of performance has been specified. You can add multiple addresses by repeating this process multiple times.

Section 17.630 of the regulations provide that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for DHS funding. States and State agencies may elect to use a Statewide certification.

Signed by **David Dayringer** on **06/15/2012**

FEMA Standard Form LLL

Only complete if applying for a grant for more than \$100,000 and have lobbying activities. See Form 20-16C for lobbying activities definition.

This form is not applicable

City Council Agenda Items
and
Contracts, Leases or Agreements

July 3, 2012

City Council Meeting Date
Agenda Items OnlyTerry Gulley
Submitted ByTransportation
DivisionTransportation Services
Department

Action Required:

A resolution to approve the attached budget adjustment to reimburse the Transportation Division for expenditures caused by the 2011 spring flood and reimbursed by FEMA and/or the State of Arkansas.

\$ 129,391.00
Cost of this request\$ 1,085,706.00
Category / Project BudgetFEMA Flood Damage
Program Category / Project NameVarious
Account Number\$ 252,962.04
Funds Used to DateGrant
Program / Project Category Name11020
Project Number\$ 832,743.96
Remaining BalanceVarious
Fund NameBudgeted Item ☐Budget Adjustment Attached ☒Terry S. Gulley
Department Director6-11-12
Date

Previous Ordinance or Resolution # 104-11

D. Kelly
City Attorney6-12-12
Date

Original Contract Date:

Original Contract Number:

Marsha Hestveck
Finance and Internal Services Director6/15/12
DateReceived in City 06-11-12 P03:09 RCVD
Clerk's OfficeDon Man
Chief of Staff6/15/12
DateReceived in
Mayor's OfficeLionel Jordan
Mayor6/18/12
Date

Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: Terry Gulley, Transportation Services Director *TG*

Date: July 3, 2012

Subject: A resolution to approve the attached budget adjustment to reimburse the Transportation Division for expenditures caused by the 2011 spring flood and reimbursed by FEMA and/or the State of Arkansas.

PROPOSAL:

Powerful damaging floods and severe weather struck the City of Fayetteville during April and May of 2011. The incident was declared a national disaster by the President. Following the declaration, the City worked with FEMA to obtain partial reimbursement of the costs incurred to respond to the event and perform permanent repairs to infrastructure damaged by the event.

RECOMMENDATION:

Staff recommends a resolution to approve the attached budget adjustment to reimburse the Transportation Division for expenditures caused by the 2011 spring flood and reimbursed by FEMA and/or the State of Arkansas.

This budget adjustment includes reimbursement for the following projects:

<u>PW#</u>	<u>Description</u>	<u>Claim Amount</u>
RFJ082C	Persimmon Bridge	\$42,861.25
RFJ161C	Azalea Terrace Bridge	\$7,784.00
RFJ166C	Holly Road	\$3,385.85
RFJ162C	Dead Horse Mtn., Huntsville, Rockwood, Zion (Roads)	\$15,733.58
RFJ168C	Louise, Vinson, & Maple (Roads)	\$6,488.35
RFJ081G	Scull Creek Trail & Mud Creek Trail (8 Sites)	\$49,475.90
RFJ167C	Smokehouse Trail (Road)	\$3,662.15

BUDGET IMPACT:

FEMA has reimbursed the City 75% of eligible costs incurred during this disaster. The State of Arkansas will reimburse the City 12.5% of eligible costs. The City's portion is also 12.5%. The impact of this resolution is to transfer \$129,391.00 from the Replacement and Disaster Recovery Fund to the Street Fund (\$79,915.00) and the Sales Tax Capital Improvements Fund (\$49,476.00).

RESOLUTION NO. _____

A RESOLUTION APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$129,391.00 TO REIMBURSE THE TRANSPORTATION DIVISION FOR EXPENDITURES INCURRED AS A RESULT OF SPRING 2011 FLOODING WHICH HAVE BEEN REIMBURSED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY AND/OR THE STATE OF ARKANSAS

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 \$129,391.00 to reimburse the Transportation Division for expenditures incurred as a result of Spring 2011 flooding which have been reimbursed by the Federal Emergency Management Agency and/or the State of Arkansas.

PASSED and APPROVED this 3rd day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

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

A. 4
Federal Emergency Management
Agency Reimbursement
Page 4 of 6

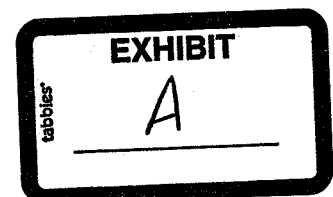
Budget Year 2012	Division: Transportation Services Department: Transportation Services	Request Date 7/3/2012	Adjustment Number
----------------------------	--	---------------------------------	--------------------------

BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION

This budget adjustment recognizes FEMA reimbursements per Project Worksheets RFJ082C Persimmon Bridge, RFJ161C Azalea Terrace Bridge, RFJ166C Holly Road, RFJ162C Dead Horse Mtn., Huntsville, Rockwood, Zion (Roads), RFJ168C Louise, Vinson, & Maple (Roads), RFJ081G Scull Creek Trail & Mud Creek Trail (8 Sites), and RFJ167C Smokehouse Trail (Road).

<u>Terry J. Gullett</u> Division Head	<u>6-11-12</u> Date	Prepared By: <u>Ginny Gundlach</u> ggundlach
<u>[Signature]</u> Budget Director	<u>6-15-12</u> Date	Reference: _____
<u>Terry J. Gullett</u> Department Director	<u>6-11-12</u> Date	Budget & Research Use Only
<u>Marsha Hutwagner</u> Finance Director	<u>6/5/12</u> Date	Type: A B C D E P
<u>Don Mann</u> Chief of Staff	<u>6/15/12</u> Date	General Ledger Date _____
<u>David Jordan</u> Mayor	<u>6/18/12</u> Date	Posted to General Ledger _____ Initial Date
		Checked / Verified _____ Initial Date

TOTAL BUDGET ADJUSTMENT		129,391	129,391	
		Increase / (Decrease)		Project.Sub
Account Name	Account Number	Expense	Revenue	Number
Trail Maintenance	4470.9470.5420.00	49,476		11020 . 4470
Trans from Replacement	4470.0947.6602.27		49,476	11020 . 4470
Hot mix, asphalt, gravel	2100.4120.5215.00	36,596		11020 . 2100
Construction materials	2100.4120.5216.00	43,319		11020 . 2100
Trans from Replacement	2100.0910.6602.27		79,915	11020 . 2100
				.



PW #	Date Signed	For	Cat.	Division	Claim	Total Claims	Federal Amount Expected (75%)	State Amount Expected (12.5%)	Total Expected Reimbursements	City Portion of Costs	Federal Emergency Management Agency Reimbursement		Operational Portion of Total Claim
											Project Costs Over or (Under)	Actual Costs	
RFJ082C	10/7/2011	Persimmon Bridge	C	Transp.	\$ 42,861.25	\$ 42,861.25	\$ 32,145.94	\$ 5,357.66	\$ 37,503.59	\$ 5,357.66	\$	\$ 42,861.25	0%
RFJ161C	10/7/2011	Azalea Terrace Bridge	C	Transp.	\$ 7,784.00	\$ 7,784.00	\$ 5,838.00	\$ 973.00	\$ 6,811.00	\$ 973.00	\$	\$ 7,784.00	0%
RFJ166C	10/7/2011	Holly Road	C	Transp.	\$ 3,385.85	\$ 3,385.85	\$ 2,539.39	\$ 423.23	\$ 2,962.62	\$ 423.23	\$	\$ 3,385.85	0%
RFJ162C	10/7/2011	Dead Horse Mtn, Huntsville, Rockwood, Zion Roads	C	Transp.	\$ 15,733.58	\$ 15,733.58	\$ 11,800.19	\$ 1,966.70	\$ 13,766.88	\$ 1,966.70	\$	\$ 15,733.58	0%
RFJ168C	10/7/2011	Louise, Vinson, Maple Roads	C	Transp.	\$ 6,488.35	\$ 6,488.35	\$ 4,866.26	\$ 811.04	\$ 5,677.31	\$ 811.04	\$	\$ 6,488.35	0%
RFJ081G	10/7/2011	Scull Creek Trail & Mud Creek Trail (8 sites)	G	Transp.	\$ 49,475.90	\$ 49,475.90	\$ 37,106.93	\$ 6,184.49	\$ 43,291.41	\$ 6,184.49	\$	\$ 49,475.90	0%
RFJ167C	10/19/2011	Smokehouse Trail (road)	C	Transp.	\$ 3,662.15	\$ 3,662.15	\$ 2,746.61	\$ 457.77	\$ 3,204.38	\$ 457.77	\$	\$ 3,662.15	0%
						\$ 129,391.08	reimbursement received 2011						
							\$ 378,772.21						
							\$ 121,303.80						
							revenue earned & received at 12/31/11						
							reimbursement received within 60 days in 2012						
							\$ 3,291.75	(earned in 2011)					
							\$ 48,339.56	federal					
							revenue earned in 2011 but not received						
							\$ 28,822.50	state					
							revenue earned in 2011 but not received						
							(13013.97 operational & 15771.25 capital)						

RESOLUTION NO. 104-11

A RESOLUTION AUTHORIZING APPLICATION FOR AND ACCEPTANCE OF A FEDERAL DISASTER GRANT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) RELATED TO SPRING 2011 FLOOD DAMAGE, AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$1,000,000.00

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 authorizes the application for and acceptance of a federal disaster grant from the Federal Emergency Management Agency (FEMA) related to Spring 2011 flood damage.

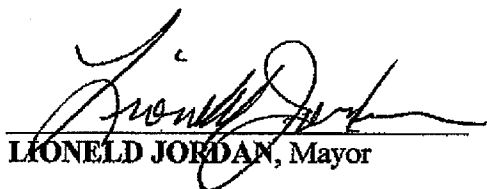
Section 2. That the City Council of the City of Fayetteville, Arkansas approves a budget adjustment, a copy of which is attached as Exhibit "A", in the amount of \$1,000,000.00.

PASSED and APPROVED this 21st day of June, 2011.

APPROVED:

ATTEST:

By:


LIONELD JORDAN, Mayor

By:


SONDRA E. SMITH, City Clerk/Treasurer



City Council Agenda Items
and
Contracts, Leases or Agreements

7/3/2012

City Council Meeting Date
Agenda Items Only

John Nelson

Submitted By

Transportation

Division

Transportation Services

Department

Action Required:

A resolution approving a budget adjustment in the amount of \$85,300 recognizing revenue for the installation of a traffic signal on Steele Boulevard at the Malco Theatre entrance.

\$ 85,300.00

Cost of this request

\$ 398,137.00

Category / Project Budget

Traffic Signal Improvements

Program Category / Project Name

4470.9470.5801.00

Account Number

\$ 93,598.00

Funds Used to Date

Transportation Improvements

Program / Project Category Name

02063.1201

Project Number

\$ 304,539.00

Remaining Balance

Sales Tax Cap Imp

Fund Name

Budgeted Item



Budget Adjustment Attached



Department Director

6-11-12
Date

Previous Ordinance or Resolution #

City Attorney

6-12-12
Date

Original Contract Date:

Original Contract Number:

Finance and Internal Services Director

6/12/12
Date

Received in City Clerk's Office 6-11-12 P03:09 RCVD

Chief of Staff

6/15/12
Date

Received in Mayor's Office

Mayor

6/18/12
Date

Comments:



CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Terry Gulley, Transportation Services Director *TGA*

From: John Nelson, Management Accounting Coordinator

Date: June 7, 2012

Subject: Steele Boulevard/Malco Theatre Entry Traffic Signal

PROPOSAL:

A resolution approving a budget adjustment in the amount of \$85,300 recognizing revenue for the installation of a traffic signal on Steele Boulevard at the Malco Theatre entrance.

RECOMMENDATION:

Unified Development Code authorizes the Planning Commission to determine the necessity of on and off-site improvements required of developers. The developer shares of the cost of infrastructure improvements are held in an interest bearing account.

Traffic volume generated by the development of Malco Theatre, Marketplace Express, and Academy Sports and recommendations of a traffic study by Peters & Associates Engineers, Inc. warrant the installation of a traffic signal at the main entrance to these establishments on Steele Boulevard.

BUDGET IMPACT:

Installation of this traffic signal will be offset by revenue funds contributed by developers.

Reference: LSD 06-1924; LSD 07-2478; LSD 12-4072

RESOLUTION NO. _____

A RESOLUTION APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$85,300.00 REPRESENTING REVENUE FOR THE INSTALLATION OF A TRAFFIC SIGNAL ON STEELE BOULEVARD AT THE ENTRANCE TO THE MALCO THEATRE

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 \$85,300.00 representing revenue for the installation of a traffic signal on Steele Boulevard at the entrance to the Malco Theatre.

PASSED and APPROVED this 3rd day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

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

A. 5 V11.0425
Steele Boulevard/Malco Theatre
Entry Traffic Signal

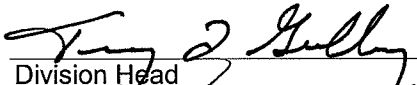
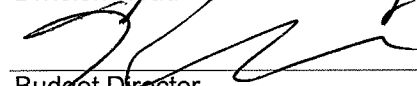
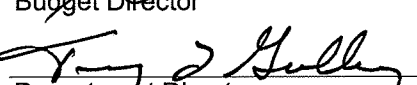
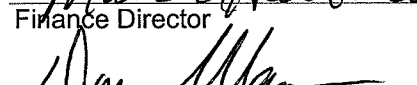
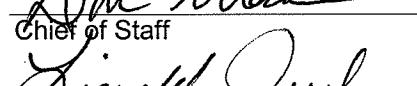
Budget Year 2012	Division: Transportation Services Department: Transportation Services	Request Date 7/3/2012	Adjustment Number
----------------------------	--	---------------------------------	--------------------------

BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION

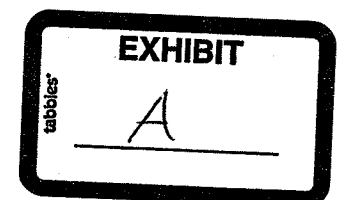
Based on a traffic study the Planning Commission required contribution from developers for the cost of a traffic signal at the Steele Blvd. entrance to Malco Theatre.

This budget adjustment recognizes revenue in the off-site improvements escrow account for the installation of this traffic signal. (FA #6184)

Reference: LSD 06-1924; LSD 07-2478; LSD 12-4072

 Division Head	6-7-12 Date	Prepared By: John Nelson <i>jnelson</i>
 Budget Director	6-7-12 Date	Reference:
 Department Director	6-7-12 Date	Budget & Research Use Only
 Finance Director	6-7-12 Date	Type: A B C D E P
 Chief of Staff	6/14/12 Date	General Ledger Date
 Mayor	6/15/12 Date	Posted to General Ledger
	6/18/12 Date	Initial Date
		Checked / Verified
		Initial Date

TOTAL BUDGET ADJUSTMENT		85,300	85,300	Project.Sub Number
		Increase / (Decrease)		
Account Name	Account Number	Expense	Revenue	
Pymts by property owners	4470.0947.4420.00		85,300	02063 . 1201
Fixed assets	4470.9470.5801.00	85,300		02063 . 1201
				.
				.



City Council Agenda Items
and
Contracts, Leases or Agreements

6/5/2012

City Council Meeting Date
Agenda Items Only

Andrew Garner

Submitted By

Planning

Division

Development Services

Department

Action Required:

RZN 12-4108: (4847 W. WEDINGTON DR./BANK OF WYNNE, 438): Submitted by BATES AND ASSOCIATES for property located at 4847 WEST WEDINGTON DRIVE. The property is zoned R-PZD, RESIDENTIAL PLANNED ZONING DISTRICT (R-PZD 07-2576 WOODSTOCK) and contains approximately 31.68 acres. The request is to rezone the subject property to CS, COMMUNITY SERVICES AND RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE.

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

05-17-2012
Date

Previous Ordinance or Resolution #

City Attorney

5-18-2012
Date

Original Contract Date:

Original Contract Number:

Finance and Internal Services Director

5/18/12
DateReceived in City
Clerk's Office

05-17-12 P04:45 RCVD

Chief of Staff

5/18/12
DateReceived in
Mayor's Office

Mayor

5/21/12
Date

Comments:

Left on the Second Reading at the 6/19/12 CC Mtg.
Left on the First Reading at the 6/5/12 CC Mtg.



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: May 17, 2012

Subject: RZN 12-4108 (Bank of Wynne Rezone/Woodstock PZD Revocation)

RECOMMENDATION

Planning Commission and staff recommend approval of an ordinance to revoke the expired Woodstock Planning Zoning District and rezone the property from R-PZD 07-2576 Woodstock to R-A, Residential Agricultural, the zoning that was in place prior to the R-PZD.

BACKGROUND

The subject property contains 31.68 acres located on the south side of Wedington Drive (State Highway 16) between 46th Street and Broyles Avenue. The site is zoned R-PZD 07-2576, and generally flat hay pasture with trees along the fence rows. The property is generally undeveloped except for two residences, one in the northwest corner and the other in the southeast corner of the site. On October 2, 2007 the City Council approved the Woodstock Planned Zoning District on the subject property (R-PZD 07-2576). The property was originally zoned R-A, Residential Agricultural. The R-PZD zoning permitted a total of 382 dwellings and 100,390 square feet of non-residential square feet. Construction permits for the project were never obtained and the R-PZD approval has expired. Within the past year, the Future Land Use Plan designation on this site changed, scaling back the City Neighborhood Area on this site from the entire Wedington Drive street frontage to the northwest corner of the site.

If an approved PZD expires the property does not automatically revert back to the original zoning. The property is unable to be developed or subdivided until the old PZD zoning is revoked and a new, valid zoning district is assigned. In an effort to establish a valid zoning district on the subject property the property owner, the Bank of Wynne, has requested a rezoning. Their request is to rezone 9.08 acres to CS, Community Services and 22.60 acres to RSF-4, Residential Single Family Four Units Per Acre. The areas of the site for the proposed rezoning are depicted on the attached survey provided by the applicant.

Staff recommends denial of applicant's proposal finding that the rezoning request is not consistent with the City Plan 2030 Future Land Use designation of this site. The Future Land Use Plan Designates a majority of this site as Residential Neighborhood, and confines the City Neighborhood designation in the northwest portion of the site around the intersection of Broyles and Wedington. The applicant proposes to rezone their entire frontage along Wedington (about 820 feet of street frontage, 300 feet deep, 9.08 acres) to Community Services. In addition, the proposal to rezone 22.60 acres of undeveloped pasture to RSF-4 on the edge of the developed area of the City could encourage a sprawling development pattern in conflict with the primary goals of City Plan 2030: *Goal 2: We will discourage suburban sprawl, and Goal 3: We will make traditional town form the standard.* This is discussed in more detail in the findings throughout the staff report.

DISCUSSION

Prior to the May 14, 2012 Planning Commission meeting, the City Attorney advised staff and the Planning Commission that if they did not recommend in favor of the applicant's proposed zoning request that they should recommend some zoning district. On May 14, 2012 the Planning Commission made a recommendation to forward the rezoning request to the City Council with a recommendation for the property to revert back to the zoning that was in place prior to the PZD, which was R-A, Residential Agricultural. The motion passed with a 7-1-0 vote (Commissioner Hoskins voted 'no').

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE REVOKING R-PZD 07-2576 (WOODSTOCK) AND REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 12-4108, FOR APPROXIMATELY 31.68 ACRES, LOCATED AT 4847 WEST WEDINGTON DRIVE FROM R-PZD, RESIDENTIAL PLANNED ZONING DISTRICT 07-2576, TO R-A, RESIDENTIAL AGRICULTURAL.

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

Section 1: That a portion of the property as described herein zoned R-PZD 07-2576 (Woodstock) is hereby revoked because the developer failed to obtain development permits in accordance with the approved phased development schedule.

Section 2: That the zone classification of the following described property is hereby changed as follows:

From R-PZD, Residential Planned Zoning District 07-2576 to R-A, Residential Agricultural, as shown on Exhibits "A" and "B" attached hereto and made a part hereof.

Section 3: That the official zoning map of the City of Fayetteville, Arkansas is hereby amended to reflect the zoning change provided in Section 2 above.

PASSED and APPROVED this day of , 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

EXHIBIT "A"

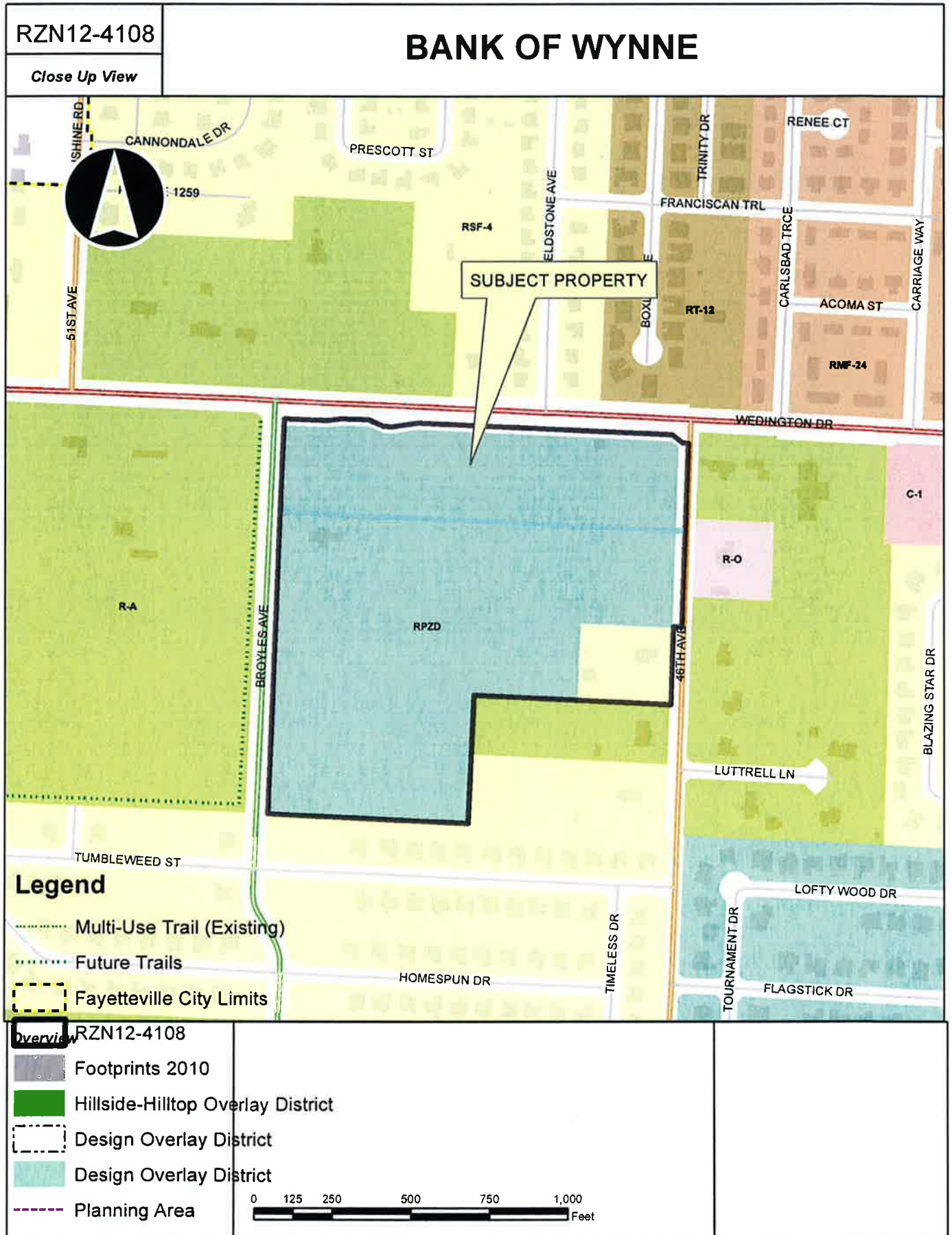


EXHIBIT "B"
RZN 12-4108

A PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 16 NORTH, RANGE 31 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS N02°21'23"E 966.66' FROM AN EXISTING REBAR MARKING THE SOUTHWEST CORNER OF SAID FORTY ACRE TRACT AND RUNNING THENCE N02°21'25"E 300.00' TO THE SOUTH RIGHT-OF-WAY OF ARKANSAS STATE HIGHWAY #16, THENCE ALONG SAID SOUTH RIGHT-OF-WAY THE FOLLOWING: S87°33'20"E 139.56' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE N83°32'33"E 44.48' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S88°03'22"E 88.17' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S67°34'26"E 53.20' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S87°16'19"E 27.89' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE N81°59'46"E 81.42' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S87°20'54"E 819.70' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S51°36'34"E 42.96' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S86°09'07"E 18.27', THENCE LEAVING SAID SOUTH RIGHT-OF-WAY S02°12'08"W 280.19', THENCE N87°20'54"W 1303.10' TO THE POINT OF BEGINNING, CONTAINING 9.08 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

A PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 16 NORTH, RANGE 31 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT AN EXISTING REBAR MARKING THE SOUTHWEST CORNER OF SAID FORTY ACRE TRACT AND RUNNING THENCE N02°21'25"E 966.66', THENCE S87°20'54"E 1303.10', THENCE S02°12'08"W 309.20', THENCE N87°14'57"W 26.21' TO THE WEST RIGHT-OF-WAY OF N. 46TH AVENUE, THENCE ALONG SAID WEST RIGHT-OF-WAY S02°08'46"W 249.44', THENCE LEAVING SAID WEST RIGHT-OF-WAY N87°14'45"W 634.58' TO AN EXISTING REBAR, THENCE S02°30'10"W 410.73' TO AN EXISTING REBAR, THENCE N87°12'44"W 643.04' TO THE POINT OF BEGINNING, CONTAINING 22.60 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.



**LEGAL
DEPARTMENT**



www.accessfayetteville.org

Departmental Correspondence

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Planning Commissioners

CC: Jeremy Pate, Development Services Director
Andrew Garner, Senior Current Planner

FROM: Kit Williams, City Attorney

DATE: May 11, 2012

RE: Expired PZD's must be rezoned upon owner's request

When a PZD has expired, the property owner loses **all** development rights on his property until it is rezoned. Almost all of a property's real worth and value is in its development rights. This loss of all of a property's development rights would constitute a government taking of the property requiring our taxpayers to pay the reasonable value of the property (very large amount of money) except the property owner must first "exhaust his remedies" by asking for a rezoning.

As long as the rezoning is granted by the City Council, no regulatory taking has occurred. However, if the property owner's request to rezone the property out of its "zombie" status (unusable and undevelopable) is just denied and the property is not rezoned into some developable zoning district, the property owner would probably have a textbook case of inverse condemnation or regulatory taking. **This must not be allowed to occur.**

Because the new owner of the property zoned for the now defunct Woodstock PZD has requested rezoning, the Planning Commission should recommend what you believe is appropriate zoning. If you get stuck on how it should be zoned now, please just recommend that the City Council rezone it back to the zoning it had prior to the approval of the PZD. **The City Council MUST rezone this property either to its prior zoning district or to the zoning district or districts that would conform to state law purposes and the 2030 Long Range Plan.** Just denying the property owner's requested rezoning is a recipe for disaster and must not happen.

When the Planning Commission is considering whether or not to recommend approval of a rezoning request, the City Planning Division presents useful information from various city departments that cover issues included with the City's 2030 Long Range

Plan. This document was the result of many public hearings and much input from citizens, staff, commissioners and council members. However, “A land use plan is meant to be just that – a plan. It is not legally binding on the city.” Taylor v. City of Little Rock, 583 S.W. 2d 72, 73 (1979).

State Statutes authorize cities to prepare zoning and development plans and list nine purposes or goals that these plans may promote:

- “ 1. Efficiency and economy in the process of development;
2. The appropriate and best use of land;
3. Convenience of traffic and circulation of people and goods;
4. Safety from fire and other dangers;
5. Adequate light and air in the use and occupancy of buildings;
6. Healthful and convenient distribution of population;
7. Good civic design and arrangement;
8. Adequate public utilities and facilities; and
9. Wise and efficient expenditure of funds.”

A.C.A. §14-56-403 (b).

The appellate courts of Arkansas have recognized and approved many different factors that a Planning Commission can consider when a proposed rezoning is contested.

1. **Public Opposition**

“Opposition by a large majority of the citizens in the neighborhood”
Thomas Petroleum v. West Helena (1992).

“The Opinion of local residents, when it reflects logical and reasonable concerns”

City of Lowell v. M & N Mobile Home Park (1996).

“Some of the residents (of the area) objected”
Tanner v. City of Green Forest (1990).

2. **Traffic**

“Increased traffic on limited roads”
City of Lowell v. M & N Mobile Home Park (1996).

“Increased risk of traffic accidents”
Thomas Petroleum v. West Helena (1992).

3. **Noise**
City of Lowell v. M & N Mobile Home Park (1996).
4. **Decreased value of adjoining land**
City of Lowell v. M & N Mobile Home Park (1996).
5. **Potential for criminal activity**
Thomas Petroleum v. West Helena (1992).
6. **Increased litter**
Thomas Petroleum v. West Helena (1992).
7. **Strain on Sewage service**
Tanner v. City of Green Forest (1990).
8. **Spot zoning**
“The need to maintain consistent zoning area, and not to set a precedent of spot zoning (T)he property was entirely surrounded by a residential area, and that the residents objected “ Thomas Petroleum v. West Helena, 310 Ark. 682, 839 S.W. 2d 523, 525 (1992).

“Spot zoning has been defined by several authorities. It has been said that:

‘ Spot zoning, by definition, is invalid because it amounts to an arbitrary, capricious and unreasonable treatment of a limited area within a particular district. As such, it departs from the comprehensive treatment or privileges not in harmony with the other use classifications in the area and without any apparent circumstances which call for different treatment. Spot zoning almost invariably involves a single parcel or at least a limited area.’ R. Wright and S. Webber, Land Use (1978).” Riddell v. City of Brinkley, 612 S.W. 2d 116, 117 (1981).

“(S)pot zoning includes zoning one lot in a manner entirely different from the surrounding area “ Smith v. City of Little Rock, 279 Ark. 4, 648 S.W. 2d 454, 457 (1983).

However, the most recent case I could find referring to “spot zoning” {Camden Community Development Corp. v. Sutton, 339 Ark. 368, 5 S.W. 3rd 439, 443 (1999)} cast doubt on Professor Wright’s quoted statement that “Spot zoning, by definition, is invalid”

Finally, a proponent of a rezoning will often argue that he or she is entitled to a rezoning in order to put the property to its “**highest and best use**” from a monetary viewpoint. The benefit to the owner of a proposed rezoning may certainly be considered, “(h)owever, we have held that **rezoning is not justified solely on the ground that it is necessary to put a particular tract to its most remunerative use.**” Tanner v. City of Green Forest, 302 Ark. 170, 788 S.W. 2d 727, 729 (1990). (emphasis added).

CONCLUSION/SUMMARY

Factors that may be considered in rezoning issues:

1. 2030 Plan objectives
2. Public opposition that is logical and reasonable
3. Traffic
4. Safety and Fire protection
5. Good civic design and efficiency
6. Adequacy of public facilities (sewage, water)
7. Noise
8. Litter
9. Decrease in value of adjoining land
10. Appropriate and best use of land
11. Compatibility with adjacent zones (spot zoning)



PC Meeting of May 14, 2012

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
THRU: Jeremy Pate, Development Services Director
DATE: ~~May 8, 2012~~ *Updated May 16, 2012*

RZN 12-4108: Rezone (4847 W. WEDINGTON DR./BANK OF WYNNE, 438): Submitted by BATES AND ASSOCIATES for property located at 4847 WEST WEDINGTON DRIVE. The property is zoned R-PZD, RESIDENTIAL PLANNED ZONING DISTRICT (R-PZD 07-2576 WOODSTOCK) and RSF-4 and contains approximately 31.68 acres. The request is to rezone the property to CS, COMMUNITY SERVICES and RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE.
Planner: Andrew Garner

BACKGROUND:

The subject property consists of approximately 31.68 acres located on the south side of Wedington Drive (State Highway 16) between 46th Street and Broyles Avenue. The site is zoned R-PZD 07-2576 (Woodstock) and RSF-4, and is generally flat hay pasture with trees along the fence rows. The property is generally undeveloped except for two residences, one in the northwest corner and the other in the southeast corner of the site. The surrounding zoning and land use are listed in *Table 1*.

Table 1
Surrounding Land Use/Zoning

Direction from Site	Land Use	Zoning
North	Single family residences; Ozark Electric facility, Duplexes	R-A; RSF-4; RT-12
South	Single family residences	RSF-4; R-A
East	Single family residences	R-A
West	Pasture	R-A

History: On October 2, 2007 the City Council approved the Woodstock Planned Zoning District on the subject property (R-PZD 07-2551). The property was originally zoned R-A, Residential Agricultural. The R-PZD zoning permitted a total of 382 dwellings and 100,390 square feet of non-residential square feet. Construction permits for the project were never obtained and the R-PZD approval has expired. Within the past year, the Future Land Use Plan designation on this site changed, scaling back the City Neighborhood Area on this site from the entire Wedington Drive street frontage to the northwest corner of the site.

PZD Revocation: If an approved PZD expires the property does not automatically revert back to the
G:\ETC\Development Services Review\2011\Development Review\11-3807 RZN SW Corner of Razorback Rd_15th St (Champion Club Condo's)\03 Planning Commission\05-09-2011\Comments and Redlines

original zoning. The property is unable to be developed or subdivided until the old PZD zoning is revoked and a new, valid zoning district is assigned.

Proposal: The property owner, the First National Bank of Wynne, proposes to rezone 9.08 acres from R-PZD 07-2576 Woodstock to CS, Community Services and 22.60 acres from R-PZD 07-2576 Woodstock to RSF-4, Residential Single Family Four Units Per Acre. The areas of the site for the proposed rezoning are depicted on the attached survey provided by the applicant.

Public Comment: Staff has not received public comment on this request.

RECOMMENDATION:

Staff recommends denial of **RZN 12-4108 (Woodstock)** finding that the proposed rezoning request is not consistent with the City Plan 2030 Future Land Use designation of this site. The Future Land Use Plan Designates a majority of this site as Residential Neighborhood, and confines the City Neighborhood designation in the northwest portion of the site around the intersection of Broyles and Wedington. The applicant proposes to rezone their entire frontage along Wedington (about 820 feet of street frontage, 300 feet deep, 9.08 acres) to Community Services. In addition, the proposal to rezone 22.60 acres of undeveloped pasture on the edge of the developed area of the City could encourage a sprawling development pattern in conflict with the primary goals of City Plan 2030: *Goal 2: We will discourage suburban sprawl, and Goal 3: We will make traditional town form the standard.* This is discussed in more detail in the findings throughout the staff report.

PLANNING COMMISSION ACTION:				Required	<u>YES</u>
Date: <u>May 14, 2012</u>	☐ Tabled	☒ Forwarded	☐ Denied		
Motion: <u>Chesser</u>	Second: <u>Bunch</u>	Vote: <u>7-1-0 (Hoskins voted 'no')</u>			
Notes: <u>Forwarded with a recommendation to have the property revert back to the zoning in place prior to the R-PZD, which was R-A, Residential Agricultural.</u>					
CITY COUNCIL ACTION:		Required	<u>YES</u>		
		☐ Approved	☐ Denied		
Date:					

CITY PLAN 2030 FUTURE LAND USE PLAN: *City Plan 2030 Future Land Use Plan designates the northwest portion of this site near the intersection of Wedington Road and Broyles Avenue as **City Neighborhood Area** and a majority of the site, including about half of the site's frontage on Wedington as a **Residential Neighborhood Area**.*

***City Neighborhood Areas** are more densely developed than residential neighborhood areas and provide a varying mix of nonresidential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types, from single family to multifamily. Non residential uses range in size, variety and intensity from grocery stores and offices to churches, and are typically located at corners and along connecting corridors...Setbacks and landscaping are urban in form with street trees typically being located within the sidewalk zone.*

***Residential Neighborhood Areas** are primarily residential in nature and support a variety of housing types of appropriate scale and context, including single family multifamily and row-houses...It also encourages traditional neighborhood development that incorporates low-intensity non-residential uses intended to serve the surrounding neighborhood, such as retail and offices, on corners and along connecting corridors.*

INFRASTRUCTURE:

Streets: The site has access to Wedington Drive, Broyles Avenue, and 46th Street. Wedington Drive has been recently improved to a five-lane state highway with a 10-foot wide asphalt trail adjacent to this site. Broyles Avenue is an improved two-lane Minor Arterial roadway with a turn lane at Wedington, and 46th Street is an unimproved Collector street adjacent to the eastern boundary of the property. Street improvements would be evaluated at the time of development.

Water: Public water is available to the property. There is an 18-inch water main on the south side of Wedington, a 12-inch water main on the east side of Broyles and an 8-inch water main on the west side of 46th Street. 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 adjacent to the site. There is a 6-inch main on the east side of 46th Street. Public sewer main improvements may need to be extended through the property at the time of development. The capacity of the existing main will need to be evaluated to ensure adequate capacity.

Drainage: Standard improvements and requirements for drainage will be required for the development. This property is not affected by the 100-year floodplain and the Streamside Protection Zones.

Police: Staff did not receive objections from the Police Department to this rezoning.

Fire: The subject property is located 1 mile from the Station No. 7 located at 835 Ruppel Road with an expected response time of 2.25 minutes. No adverse impacts on call volume or response time are anticipated.

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: Staff finds the proposal not consistent with the land use planning objectives, principles and policies. About half of this site's street frontage is designated as Residential Neighborhood Area and is proposed to be rezoned to CS, Community Services. The City's Future Land Use Plan intends more intense and dense uses along this stretch of Wedington to be concentrated around the node of the Broyles Avenue/Wedington Drive intersection, not along the entire 800-foot street frontage of this site. The applicant's proposal is not consistent with the Future Land Use Plan designation. This proposal extends the potential for non-residential, commercial, and multi-family uses along the entire property frontage at a depth of approximately 300 feet deep. This shape of the boundary appears to encourage a highway commercial strip center pattern which is not consistent with the City's land use planning objectives. With the recent adoption of City Plan 2030 less than a year ago, there was discussion and a modification to the Future Land Use Plan map to reduce the area of this particular site that was classified as City Neighborhood area. The boundary of City Neighborhood area on City Plan extends down Broyles Avenue approximately 700 feet to encourage the more intense and dense uses to allow for the potential of a square-back street and a more traditional neighborhood commercial pattern instead of a commercial strip center pattern. The proposed rezoning would allow commercial and multi-family dwellings along the entire Wedington frontage rather than limit these more intense uses in a compact pattern at the busier corner location. This is not consistent with the Guiding Policies for City Neighborhood Areas. The intent is not to have one continuous strip of commercial development along arterials/highways, but rather to have defined nodes primarily at corner locations, and transition in the land use transect along the corridor consistent with City Plan Goal 3 to "...make traditional town form the standard." Additionally, the proposal to rezone 22.60 acres of undeveloped pasture on the edge of the developed area of the City to RSF-4 could encourage a sprawling development pattern in conflict with some of the primary goals of City Plan 2030:

Goal 2: We will discourage suburban sprawl

Goal 3: We will make traditional town form the standard

The RSF-4 development pattern is a suburban zoning district (not traditional) that generally yields a gross density of approximately 2.5 units per acre. This is not consistent with the intent of Residential Neighborhood Areas to have a variety of housing types. Further, the RSF-4 adjacent to CS is a rather abrupt

transition of land uses that may result in some compatibility issues as the property develops in the future. Staff feels that this rezoning proposal is not consistent with the overriding land use plan of the City or the Future Land Use Plan and recommends denial of the request.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **The proposed zoning is needed at this time as the existing R-PZD zoning has expired and the property is unable to be developed in any manner, including minor applications such as a lot split or single family residence, until the expired PZD zoning is revoked and a new zoning district is assigned.**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: **The proposed rezone would not appreciably increase traffic over the existing R-PZD zoning that permitted up to 382 residences and 100,390 square feet of non-commercial space. However the R-PZD has fully expired and cannot be developed. The proposed zoning would certainly increase traffic over that existing on the largely undeveloped property. However, given this site's location at the intersection of a Principal Arterial roadway (Wedington) and a Minor Arterial (Broyles Avenue) at the site's northwest corner; the street infrastructure can safely accommodate increased traffic with street improvements required at the time of development. It should be noted that a traffic signal is anticipated at the intersection of Broyles/Wedington, and a condition of approval for the Woodstock R-PZD was payment of an assessment towards the installation of that signal. 46th Avenue is located along the site's eastern frontage is a Collector Street.**

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: **Increased load on public services were taken into consideration and recommendations from the Engineering, Fire, and Police Departments and are included in this report. The proposed zoning change to Community Services and RSF-4 should not have an adverse impact on public services with improvements required for development.**

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 recommends denial of the request.

PROPOSED ZONING

161.07 District RSF-4, Residential Single-Family – Four Units Per Acre

(A) *Purpose.* The RSF-4 Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 41	Accessory dwellings

(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 5	Government facilities
Unit 9	Two-family dwellings
Unit 12	Limited business
Unit 24	Home occupations
Unit 36	Wireless communications facilities
Unit 44	Cottage Housing Development

(C) *Density.*

	Single-family dwellings	Two-family dwellings
Units per acre	4 or less	7 or less

(D) *Bulk and area regulations.*

	Single-family dwellings	Two-family dwellings
Lot minimum width	70 ft.	80 ft.
Lot area minimum	8,000 sq. ft.	12,000 sq.-ft.
Land area per dwelling unit	8,000 sq. ft.	6,000 sq. ft.
Hillside Overlay District Lot minimum width	60 ft.	70 ft.
Hillside Overlay District Lot area minimum	8,000 sq. ft.	12,000 sq.-ft.
Land area per dwelling unit	8,000 sq. ft.	6,000 sq. ft.

(E) *Setback requirements.*

Front	Side	Rear
15 ft.	5 ft.	15 ft.

(F) *Building height regulations.*

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Building Height Maximum	45 ft.
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Height regulations. Structures in this District are limited to a building height of 45 feet. Existing structures that exceed 45 feet in height shall be grandfathered in, and not considered nonconforming uses, (ord. # 4858).

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

(Code 1991, §160.031; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 4858, 4-18-06; Ord. 5028, 6-19-07; Ord. 5128, 4-15-08; Ord. 5224, 3-3-09; Ord. 5312, 4-20-10; Ord. 5462, 12-6-11)

161.19 Community Services

(A) *Purpose.* The *Community Services* district is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas and is intended to provide for adaptable mixed use centers located along commercial corridors that connect denser development nodes. There is a mixture of residential and commercial uses in a traditional urban form with buildings addressing the street. For the purposes of Chapter 96: Noise Control, the Community Services district is a commercial zone. The intent of this zoning district is to provide standards that enable development to be approved administratively.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 15	Neighborhood Shopping goods
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 24	Home occupations
Unit 25	Offices, studios and related services
Unit 26	Multi-family dwellings
Unit 44	Cottage Housing Development

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation, trades and services
Unit 19	Commercial recreation, small sites

Unit 28	Center for collecting recyclable materials
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density. None*

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Dwelling	18 ft.
All others	None

(2) *Lot area minimum. None*

(E) *Setback regulations.*

Front:	The principal façade of a building shall be built within a build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side and rear:	None
Side or rear, when contiguous to a residential district:	15 feet

(F) *Height regulations.* Maximum height is 4 stories or 56 feet which ever is less.

(G) *Minimum buildable street frontage.* 65% of the lot width.

(Ord. 5312, 4-20-10; Ord. 5339, 8-3-10; Ord. 5462, 12-6-11)

166.06 Planned Zoning District (PZD)

(L) Revocation.

- (1) Causes for revocation as enforcement action. The Planning Commission may recommend to the City Council that any PZD approval be revoked and all building or occupancy permits be voided under the following circumstances:
 - (a) Building permit. If no building permit has been issued within the time allowed.
 - (b) Phased development schedule. If the applicant does not adhere to the phased master development plan schedule as stated in the approved development plan.
 - (c) Open space and recreational facilities. If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final plan are proceeding at a substantially slower rate than other project components.

Planning staff may report the status of each ongoing PZD at the first regular meeting of each quarter, so that the Planning Commission is able to compare the actual development accomplished with the approved development schedule. If the Planning Commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the Planning Commission may initiate revocation action or cease to approve any additional final plans if preceding phases have not been finalized. The city may also issue a stop work order, or discontinue issuance of building or occupancy permits, or revoke those previously issued.

- (2) Procedures. Prior to a recommendation of revocation, notice by certified mail shall be sent to the landowner or authorized agent giving notice of the alleged default, setting a time to appear before the Planning Commission to show cause why steps should not be made to totally or partially revoke the PZD. The Planning Commission recommendation shall be forwarded to the City Council for disposition as in original approvals. In the event a PZD is revoked, the City Council shall take the appropriate action in the city clerk's office and the public zoning record duly noted.
- (3) Effect. In the event of revocation, any completed portions of the development or those portions for which building permits have been issued shall be treated to be a whole and effective development. After causes for revocation or enforcement have been corrected, the City Council shall expunge such record as established above and shall authorize continued issuance of building permits.

Date 4/24/12

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request comments on proposed RZN 12-4108 (4847 W. Wedington Drive / Bank of Wynne, 438) submitted by Bates and Associates for property located at 4847 W. Wedington Drive.

It is the opinion of the Fayetteville Police Department that this RZN will not substantially alter the population density, and will not create an appreciable or undesirable increase in the load on police services. This will not create an appreciable increase in traffic danger and congestion.

Sincerely,

Captain William Brown
Fayetteville Police Department



Bates & Associates, Inc.

Civil Engineering & Surveying

91 W. Colt Square Suite 3/ Fayetteville, AR 72703

PH: 479-442-9350 * FAX: 479-521-9350

www.nwabatesinc.com

April 25, 2012

Planning Commission
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

RE: First National Bank of Wynne Wedington Property Rezoning

Dear Commissioners,

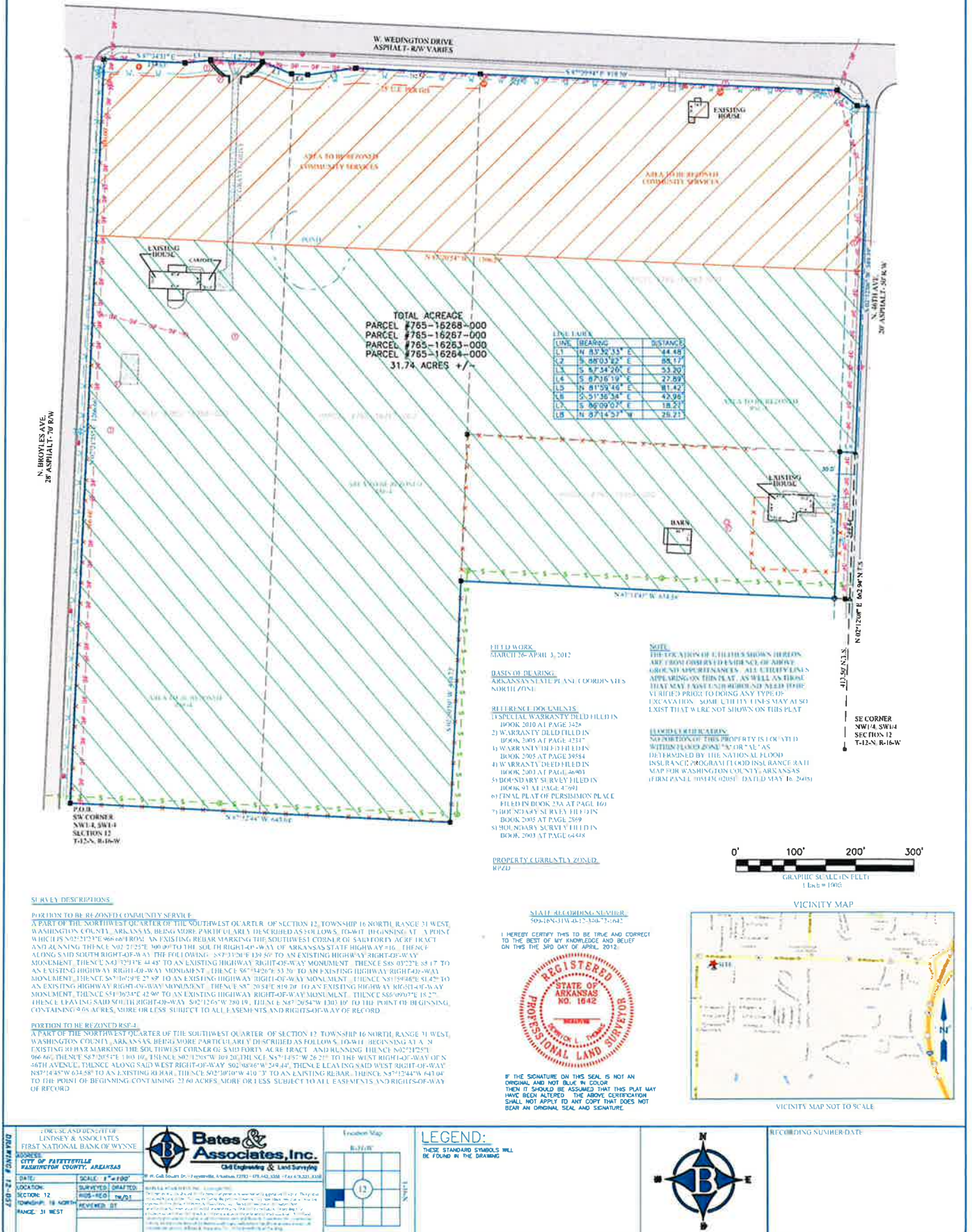
This letter is to fulfill the requirements of item 5 on the rezoning application. We are proposing to rezone the property from RPZD to CS and RSF-4.

- a. Current property owner: First National Bank of Wynne.; there are no pending sales.
- b. The zoning change is needed in order to bring the property that fronts Wedington Drive to a more conforming use than what the residential zoning allows. The zoning change is needed on the back portion in order to replace the expired RPZD with a more conforming RSF-4 zoning.
- c. With both commercial and residential development expanding to the West along Wedington, this property should conform with surrounding properties in terms of land use, traffic, appearance, and signage.
- d. A 30" sewer main is located West of the property. An 18" water main is located on the site along the north, as well as a 12" water main along Broyles Ave., and an 8" main along 46th Ave.
- e. This property conforms with the City's future land use plan for this area.
- f. The zoning change is needed in order to update the expired RPZD and get the property out of "Zoning Limbo."
- g. The rezoning from RPZD to CS and RSF-4 will increase traffic but with Broyles Ave. on the West and N. 46th Ave. in the East, access management will decrease the potential for danger and congestion.
- h. The proposed commercial zoning will reduce the population density should decrease the load on public services. The proposed residential zoning will conform with all neighboring properties and should not cause an undesirable increase the load on public services.
- i. Since the current RPZD zoning has expired, it is not possible for the new owner to use the existing property. Due to the location and nature of construction along Wedington, Community Services and RSF-4 zoning appears to be a more appropriate use for the site.

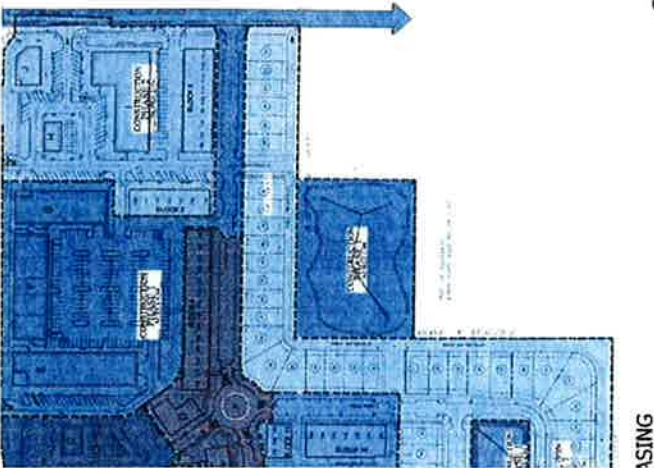
If you have any questions or require additional information, please feel free to call.

Sincerely,

Bates & Associates, Inc.



PHASE 4: Permits will be pulled within four years of approval. Construction will be completed within five and one half years of approval.
PHASE 5: Permits will be pulled within five years of approval. Construction will be completed within six and one half years of approval.
PHASE 6: Permits will be pulled within six years of approval. Construction will be completed within seven and one half years of approval.
PHASE 7: Permits will be pulled within seven years of approval. Construction will be completed within eight years of approval.



ASING

DEVELOPMENT PHASING AME

in seven phases to span over the next eight years.
It will be pulled within one year of city council approval.
Completed within two and one half years of approval.
Be pulled within two years of Fayetteville City
Construction will be completed within three and one
Improvements to the west side of 46th Ave. will
; II.
be pulled within three years for Fayetteville City

AERIAL VIEW OF THE WOODSTOCK COMMUNITY

Woodstock Community

Jack-Broyles Land Development

7

PZD-Large Scale Development
PZD-Master Development Plan

by: Applian Centre for Design & TSW

PLANNING AREA 1 - MIXED USE DEVELOPMENT

Description

These mixed-use planning areas are designed to create small scale commercial frontages with loft style spaces over the first floor of retail. While most buildings will be 4 stories, a select few will be 5 stories in order to enhance architectural character. Storefront character will create a main street pedestrian-friendly environment. These buildings are comprised of wide sidewalks in front to help separate the pedestrian from the street thoroughfare. The five large buildings have been carefully arranged around the perimeter of the block to create strong street edges and to conceal the interior parking. Retail, local service, cultural business, restaurants, and office suites are placed on the ground floor fronting onto the quieter streets. The upper floors are designed for attainable residential apartments/condos. Street facing facades help frame the street.

At least 75% of the front edge of the lot will have a building, and 60% of this required building frontage must be at the "build to line". Several mixed-use buildings will have urban loft - like apartments in the upper floors.

A. Permitted Uses

- Unit 1 City wide uses by right
- Unit 5 Government facilities
- Unit 12 Offices, studios and related services
- Unit 13 Eating places
- Unit 15 Neighborhood shopping goods
- Unit 16 Shopping goods
- Unit 17 Trades and Services
- Unit 19 Commercial recreation, small sites
- Unit 24 Home occupation
- Unit 25 Professional offices
- Unit 34 Liquor store
- Unit 26 Multi family dwellings

B. Conditional Uses

- Unit 2 City-wide uses by conditional use permit
- Unit 4 Cultural and recreational facilities
- Unit 14 Hotel, motel, amusement facilities
- Unit 17 Trades and services
- Unit 29 Dance halls
- Unit 35 Outdoor music establishments

Unit 40 Sidewalk Cafes

C. Residential density/Non-residential Intensity
Acreage 10.37

Residential Density
Dwelling units 184

Density (units/acre) 17.74

Non-residential Intensity
Sq.ft. of Non-residential Intensity (sq.ft./acre) 98,747 sq.ft.
9,522.4sq.ft./acre

D. Lot Width Minimum
Not Applicable

E. Lot Area Minimum
Not Applicable

F. Land Area per Dwelling Unit
No Bedroom 670 Sq. Ft. minimum
One Bedroom 850 Sq. Ft. minimum
Two or more bedroom 1000 Sq. Ft. minimum

G. Setback Requirements
Front - from Right of Way 5 ft.
Wedington - from City Right of Way 14 ft.
Broyles Ave - from City Right of Way 30 ft.
49th Ave - from City Right of Way 20 ft.
Rear - 4 ft.
Side- 5 ft.

Encroachments Into Setbacks

There will be no encroachments into right-of-ways. Covered entries, stairs, stoops bay windows etc. are allowed up to 8' within setbacks. At the second and fourth level of buildings, encroachments in the form of balconies and bay windows are encouraged, but shall not exceed 6' into the setback. Encroachments will comply with all applicable City Building Codes.

H. Height Regulations

Shall not exceed four stories except on facades with underground parking garage entrances. Building height on the northern half of buildings B, E, and G and the east half of building I shall not exceed 50' and three floors. The remaining halves of these

buildings shall not exceed 62' in height or four floors. Buildings F shall not exceed three stories or 50'.

I. Building Area

Shall not exceed 90% of Planning Area

J. Landscaping

Landscaping as indicated on the Master Development Plan and Landscaping Plan is required as part of this PZD.

K. Parking

In accordance with the Unified Development Code

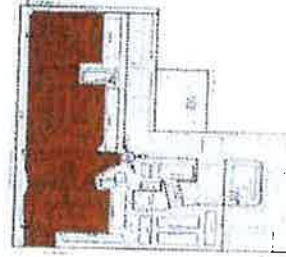
L. Architectural Design Standards

Architectural Design Standards - Material to be brick, stucco masonry, siding, wood trim shingles, aluminum clad window systems (see typical elevation). Dwellings shall not turn a rear facades to a public street and shall utilize articulation including windows, entries/doors, etc. to front public streets. Structures shall be constructed consistent with the architectural elevations presented in the PZD booklet.

M. Signage

In accordance with the Unified Development Code Commercial design standards.

Part of Phase 1, 2, & 3



Woodstock Community

PZD-Large Scale Development
PZD-Master Development Plan

PLANNING AREA 2 - TOWNHOUSES

Description

The building prototype in PA2 is designed to accommodate people who wish to own single family residential, attached townhouses. This type of townhouse is ideal for promoting a mix of residents of diverse ages and economic situations. Townhouses will be a minimum of 18 feet wide with varying depths. The preferred setback for the units from the right of way line will be 5 feet with some variance allowed, though all areas within the front setback, regardless of size, will feature a small entry space treated with a combination of low shrubs, groundcover and pavers.

Porches, stoops, balconies, bay windows, chimneys and stairs may encroach into the front setback to a maximum distance of three feet. These encroachments, combined with facades of two to three stories in height, will create an intimate sense of outdoor space. Parking for the residents is located at the rear of the buildings in alley-loaded garages, while visitors and guests will be allowed to park on-street in front of the units.

A. Permitted Uses

- Unit 1: City wide uses by right
- Unit 26: Multi family dwellings

B. Conditional Uses

- Unit 15: Neighborhood shopping goods
- Unit 24: Home occupations
- Unit 25: Professional offices
- Unit 40: Sidewalk cafes

C. Residential Density

- Acreage 7.56 ac.
- Dwelling units 104
- Density 13.76 units/ac.

D. Lot Width Minimum

- Multi Family 20'

E. Lot Area Minimum
900 sq.ft.

F. Land Area per Dwelling
One Bedroom 800 sq.ft.
Two Bedroom 1,000 sq.ft.
Three or more Bedroom 1,000 sq.ft.

G. Setback Requirements

- Front -
Broyles Ave.
49th Ave
Townhouse blocks 11 through 14
Due to alley condition and site constraints
Side -
Rear -
- 5 ft.
30 ft.
20 ft.
0 ft.
0 ft.
0 ft.

Encroachments

No encroachments will be allowed into right-of-ways. Encroachments such as porches, covered entries, balconies, stairs, stoops bay windows etc. are allowed up to 6' within setbacks when setbacks are greater than 15'.
(Note: All Encroachments will comply with all applicable City Building Codes).

H. Height Regulation
Shall not exceed 45 Ft.

I. Building Area
None

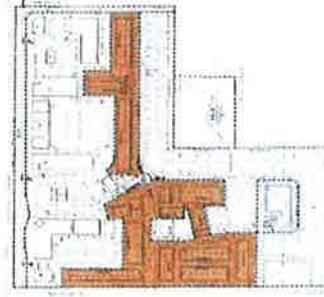
J. Landscaping
Landscaping as indicated on the Landscaping Plan is required as part of this PZD.

K. Parking
Parking for residents shall be located off alleys in two-car garages. Visitor parking shall be located on streets or in lots. Off-street parking may be located in shared parking districts. On-Street parking is permitted on most public streets. The number of parking spaces provided in this planning area will comply with city code.

L. Architectural Design Standards
Architectural Design Standards - Material to be brick, stucco masonry, siding, wood trim shingles, aluminum clad window systems (See typical elevation). Dwellings shall not turn a rear facades to a public street and shall utilize articulation including windows, entries/doors, etc. to front, public streets. Structures shall be constructed consistent with the architectural elevations and concepts presented in the PZD booklet.

M. Signage

In accordance with the Unified Development Code for multi family residential areas.
Part of Phase 2, 4, 5, and 6



Woodstock Community

PZD-Large Scale Development
PZD-Master Development Plan

PLANNING AREA 3 - SINGLE FAMILY

Single Family 22.5 ft

E. Lot Area Minimum
 Single Family 3000 sq. ft.

F. Land Area per Dwelling
 Single Family 3000 sq. ft.

G. Setback Requirements
 Front - 10 ft.
 Broyles Ave. - 30 ft.
 49th Ave. - 15 ft.
 Side - 0 ft.
 Lot 7 - 8 ft.
 Rear - 0 ft.

H. Height Regulation
 Shall not exceed 40 ft.

I. Building Area
 Shall not exceed 80%

J. Landscaping
 In accordance with the Fayetteville Landscape Ordinance.
 Landscaping as indicated on the Master Development Plan and
 Landscaping Plan is required as part of this PZD

K. Parking
 Will be in accordance with the Unified Development Code

L. Architectural Design Standards
 Architectural Design Standards - Material to be brick, stucco
 masonry, siding, wood trim shingles, aluminum clad window
 systems (see typical elevation). Dwellings shall not turn a rear
 facades to a public street and shall utilize articulation including
 windows, entries/doors, etc. to front, public streets. Structures
 shall be constructed consistent with the architectural elevations
 and concepts presented in the PZD booklet

M. Signage

Description

This planning area is designed to promote a charming
 streetscape scene and provide easy, walkable access to enjoying
 the nearby community building, greenspace, and nearby offices
 and commercial center. Medium-sized, single-family lots will be
 40 x 90 feet on average. Garages will be serviced from alley
 ways with allowances for zero lot line garages, while on-street
 parking is provided on public streets for residents' visitors.
 These homes will face directly onto public streets with rear alley
 access.

This planning area is designed to promote a charming
 streetscape scene and provide easy, walkable access to enjoying
 the nearby community building, greenspace, commercial center,
 greenspace, and offices. Medium-sized, single-family lots will be
 40 x 90 feet on average. On-street parking is provided on public
 streets for residents' visitors. A build to line will be established
 in the covenants for this neighborhood so homes will have
 similar distances from the right-of-way, creating an intimate
 sense of outdoor space along the community's sidewalks. An
 urban residential character will thus be created, serving to tie
 the neighborhood together as a pedestrian friendly space.

A. Permitted Uses

Unit 1:
 Unit 8: City wide uses by right
 Single-family dwellings

B. Conditional Uses

Unit 2: City-wide uses by conditional use permit
 Unit 24: Home occupations
 Detached Second Dwelling Units

C. Residential Density

Acreage 8.36 ac.
 Lots 54
 Density 6.46 units/ac.

D. Lot Width Minimum

In accordance with the Unified Development Code for single
 family residential areas.

Part of Phase 7



Woodstock Community

PZD-Large Scale Development
 PZD-Master Development Plan

PLANNING AREA 4 - CIVIC BUILDING AND WOODSTOCK PARK

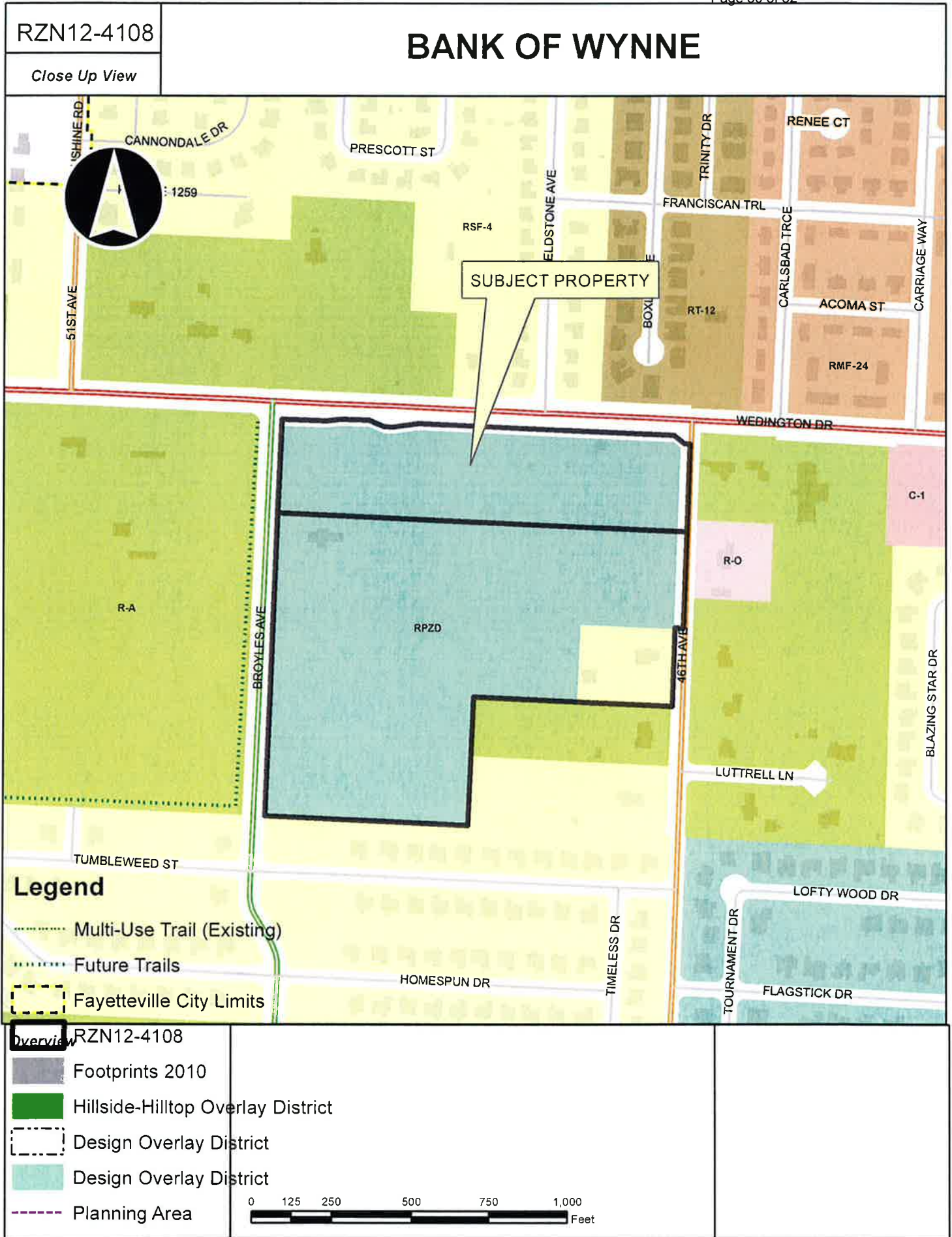
Description The Civic Building encourages a sense of belonging among residents of the neighborhood. Sited to be a focal anchor for the community, with cultural and recreational facilities, offices, and possibly, a post office and swimming pool. Possible occupants include the office of the Property Owners Association (POA), for Woodstock Community. Integral to the Civic Building, the Woodstock Park area provides flexibility for outdoor recreation, gatherings, block parties and neighborhood events. The park greens, gazebos and civic building allow neighbors to interact on a day to day basis. Woodstock park is planned to serve as a focal point of the neighborhood, as opposed to simply being space that's left over once the buildings are finished.	F. Land Area per Dwelling N/A G. Setback Requirements Front - 5 ft H. Height Regulation Shall not exceed 35 Ft I. Building Area N/A J. Landscaping In accord with the Fayetteville Landscape Ordinance. Landscaping as indicated on the Master Development Plan and Landscaping Plan is required as part of this PZD K. Parking Parking will be located on streets, and in accord with the Unified Development Code L. Architectural Design Standards Architectural Design Standards - Material to be brick, stucco masonry, siding, wood trim shingles, aluminum clad window systems. Structure shall not turn a rear facades to a public street and shall utilize articulation including windows, entries/doors, etc. with the architectural elevations and concepts presented in the PZD booklet M. Signage In accordance with the Unified Development Code for single family residential areas.	N. Part of Phase 1, 5, 6, and 7
A. Permitted Uses Unit 12 Offices, studios and related offices Unit 19 Commercial recreation, small sites	B. Conditional Uses Unit 2 City-wide uses by conditional use permit Unit 4 Cultural and recreational facility Unit 13 Eating Place	C. Non-residential Intensity Acreage 3.34 Non-residential Area 1650 sqft Intensity 494.01 sqft./acre
D. Lot Width Minimum N/A.	E. Lot Area Minimum N/A	F. Part of Phase 1, 5, 6, and 7

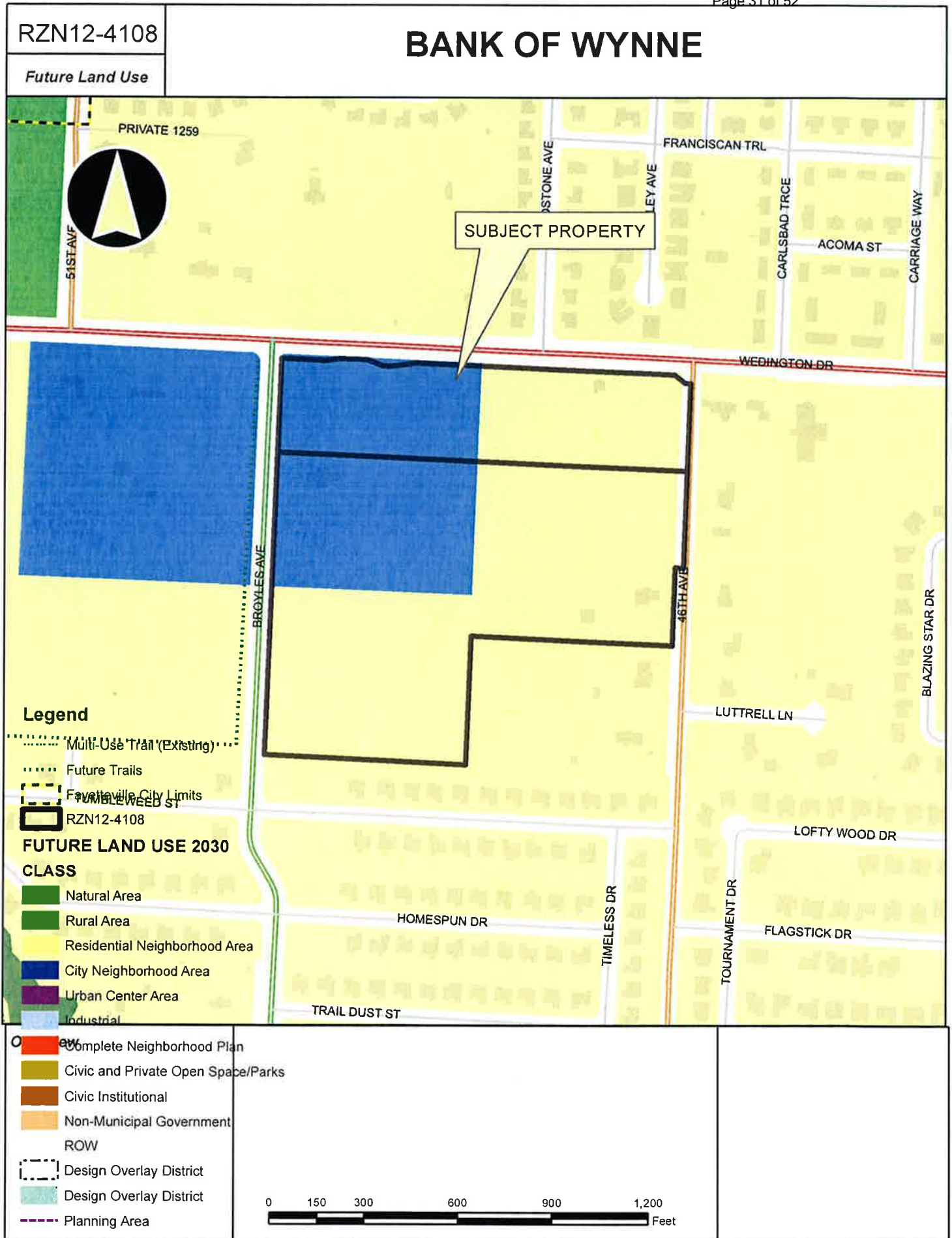


Woodstock Community

PZD-Large Scale Development
PZD-Master Development Plan



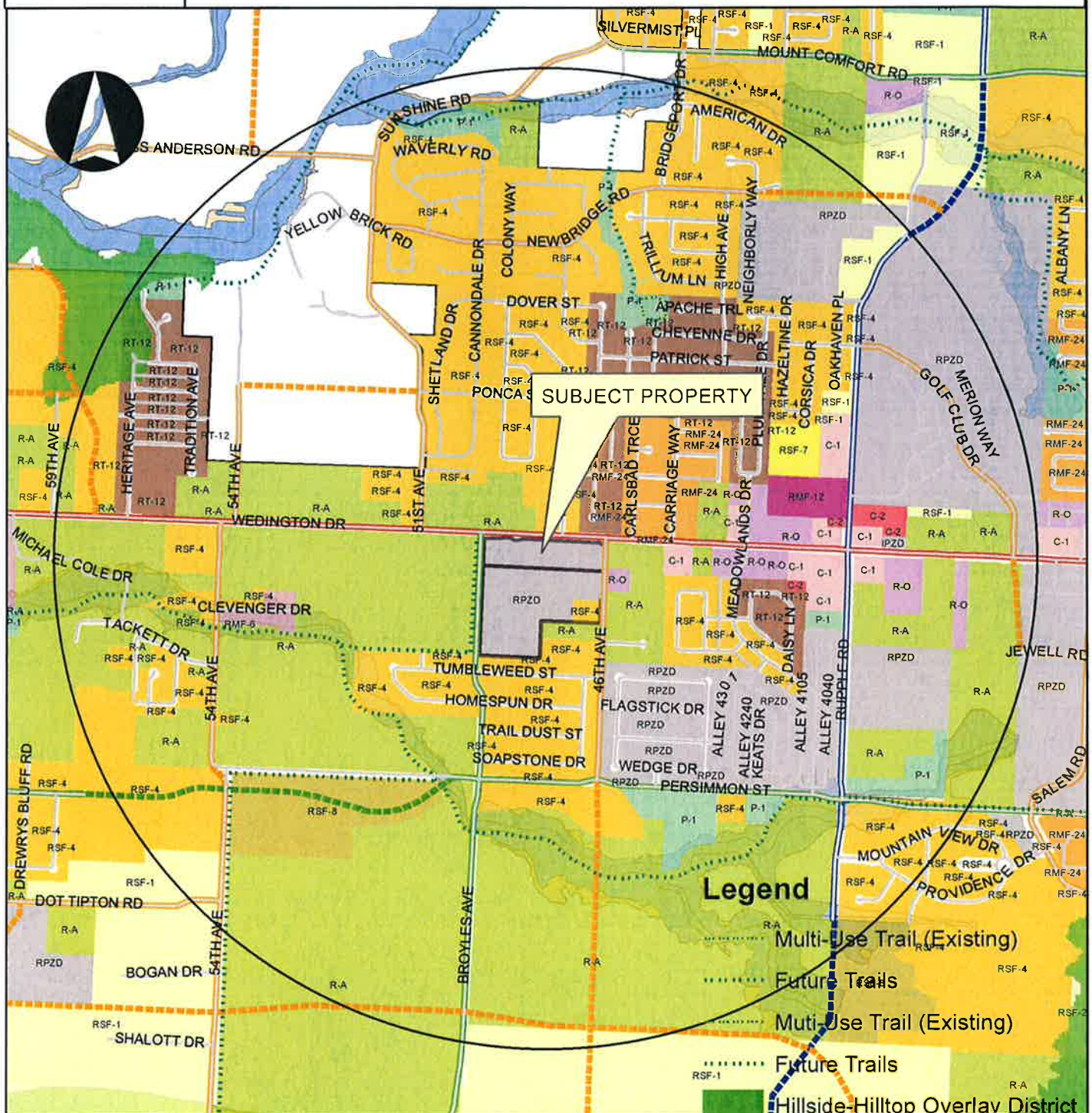




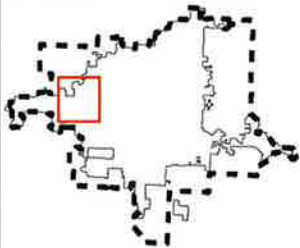
RZN12-4108

One Mile View

BANK OF WYNNE



Overview



Legend

Subject Property

RZN12-4108

Boundary

0

0.25

0.5

1

Miles



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Jeremy Pate, Development Services Director

FROM: Kit Williams, City Attorney

A handwritten signature in black ink, appearing to read 'Kit Williams', written over a horizontal line.

DATE: May 30, 2012

RE: Woodstock Rezoning and Cleveland Street Project PZD
Zoning and Planned Zoning District considerations

I have been providing Aldermen the legal factors they can consider when determining whether or not to approve a PZD or zoning request for over a decade. When the City Council first began considering whether or not to approve a PZD, I provided the attached memo on May 22, 2003. It is still correct today. Please especially read the section entitled "Voting" to ensure that I can effectively defend any decision the City Council will make.

When the land now zoned PZD (Woodstock) was presented to the Planning Commission, I gave them the attached memo of May 11, 2012, stating that the property owner had the legal right to have his property zoned away from the defunct PZD into a developable zone. The City Council needs to rezone this property to the best possible zoning district or districts after considering all of the relevant factors.

You can weigh many factors to determine what is the best zoning district or districts for this property. You should certainly consider the 2030 Plan, but it is only one of many factors to consider when determining the proper zoning. It is also proper to consider the desires of the property owner, the appropriate and best use of the property, traffic issues, good civil design and arrangement and the other factors detailed in my May 11th memo. All of these factors are proper considerations both for the Cleveland Street Apartment Project PZD and the defunct Woodstock PZD property whose new owner requests rezoning into various

zoning districts: Community Services, Neighborhood Services, Neighborhood Conservation, Resident Single Family, 4 units per acre and Residential Multi-Family, 24 units per acre.

CONCLUSION

If any Alderman desires to vote against a proposed rezoning or PZD approval, please explain your opposition based upon one or more of the factors approved by the Supreme Court:

1. 2030 Plan objectives
2. Public opposition that is logical and reasonable
3. Traffic
4. Safety and Fire protection
5. Good civic design and efficiency
6. Adequacy of public facilities (sewage, water)
7. Noise
8. Litter
9. Decrease in value of adjoining land
10. Appropriate and best use of land
11. Compatibility with adjacent zones (spot zoning)



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Planning Commissioners

CC: Jeremy Pate, Development Services Director
Andrew Garner, Senior Current Planner

FROM: Kit Williams, City Attorney

DATE: May 11, 2012

RE: Expired PZD's must be rezoned upon owner's request

When a PZD has expired, the property owner loses **all** development rights on his property until it is rezoned. Almost all of a property's real worth and value is in its development rights. This loss of all of a property's development rights would constitute a government taking of the property requiring our taxpayers to pay the reasonable value of the property (very large amount of money) except the property owner must first "exhaust his remedies" by asking for a rezoning.

As long as the rezoning is granted by the City Council, no regulatory taking has occurred. However, if the property owner's request to rezone the property out of its "zombie" status (unusable and undevelopable) is just denied and the property is not rezoned into some developable zoning district, the property owner would probably have a textbook case of inverse condemnation or regulatory taking. **This must not be allowed to occur.**

Because the new owner of the property zoned for the now defunct Woodstock PZD has requested rezoning, the Planning Commission should recommend what you believe is appropriate zoning. If you get stuck on how it should be zoned now, please just recommend that the City Council rezone it back to the zoning it had prior to the approval of the PZD. **The City Council MUST rezone this property either to its prior zoning district or to the zoning district or districts that would conform to state law purposes and the 2030 Long Range Plan.** Just denying the property owner's requested rezoning is a recipe for disaster and must not happen.

When the Planning Commission is considering whether or not to recommend approval of a rezoning request, the City Planning Division presents useful information from various city departments that cover issues included with the City's 2030 Long Range

Plan. This document was the result of many public hearings and much input from citizens, staff, commissioners and council members. However, "A land use plan is meant to be just that – a plan. It is not legally binding on the city." Taylor v. City of Little Rock, 583 S.W. 2d 72, 73 (1979).

State Statutes authorize cities to prepare zoning and development plans and list nine purposes or goals that these plans may promote:

- " 1. Efficiency and economy in the process of development;
2. The appropriate and best use of land;
3. Convenience of traffic and circulation of people and goods;
4. Safety from fire and other dangers;
5. Adequate light and air in the use and occupancy of buildings;
6. Healthful and convenient distribution of population;
7. Good civic design and arrangement;
8. Adequate public utilities and facilities; and
9. Wise and efficient expenditure of funds."

A.C.A. §14-56-403 (b).

The appellate courts of Arkansas have recognized and approved many different factors that a Planning Commission can consider when a proposed rezoning is contested.

1. **Public Opposition**

"Opposition by a large majority of the citizens in the neighborhood"
Thomas Petroleum v. West Helena (1992).

"The Opinion of local residents, **when it reflects logical and reasonable concerns**"

City of Lowell v. M & N Mobile Home Park (1996).

"Some of the residents (of the area) objected"
Tanner v. City of Green Forest (1990).

2. **Traffic**

"Increased traffic on limited roads"
City of Lowell v. M & N Mobile Home Park (1996).

"Increased risk of traffic accidents"
Thomas Petroleum v. West Helena (1992).

3. **Noise**
City of Lowell v. M & N Mobile Home Park (1996).
4. **Decreased value of adjoining land**
City of Lowell v. M & N Mobile Home Park (1996).
5. **Potential for criminal activity**
Thomas Petroleum v. West Helena (1992).
6. **Increased litter**
Thomas Petroleum v. West Helena (1992).
7. **Strain on Sewage service**
Tanner v. City of Green Forest (1990).
8. **Spot zoning**
“The need to maintain consistent zoning area, and not to set a precedent of spot zoning (T)he property was entirely surrounded by a residential area, and that the residents objected “ Thomas Petroleum v. West Helena, 310 Ark. 682, 839 S.W. 2d 523, 525 (1992).

“Spot zoning has been defined by several authorities. It has been said that:

‘ Spot zoning, by definition, is invalid because it amounts to an arbitrary, capricious and unreasonable treatment of a limited area within a particular district. As such, it departs from the comprehensive treatment or privileges not in harmony with the other use classifications in the area and without any apparent circumstances which call for different treatment. Spot zoning almost invariably involves a single parcel or at least a limited area.’ R. Wright and S. Webber, Land Use (1978).” Riddell v. City of Brinkley, 612 S.W. 2d 116, 117 (1981).

“(S)pot zoning includes zoning one lot in a manner entirely different from the surrounding area “ Smith v. City of Little Rock, 279 Ark. 4, 648 S.W. 2d 454, 457 (1983).

However, the most recent case I could find referring to “spot zoning” {Camden Community Development Corp. v. Sutton, 339 Ark. 368, 5 S.W. 3rd 439, 443 (1999)} cast doubt on Professor Wright’s quoted statement that “Spot zoning, by definition, is invalid”

Finally, a proponent of a rezoning will often argue that he or she is entitled to a rezoning in order to put the property to its “**highest and best use**” from a monetary viewpoint. The benefit to the owner of a proposed rezoning may certainly be considered, “(h)owever, we have held that **rezoning is not justified solely on the ground that it is necessary to put a particular tract to its most remunerative use.**” Tanner v. City of Green Forest, 302 Ark. 170, 788 S.W. 2d 727, 729 (1990). (emphasis added).

CONCLUSION/SUMMARY

Factors that may be considered in rezoning issues:

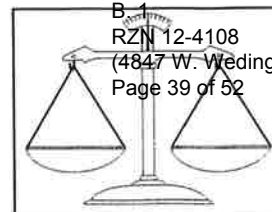
1. 2030 Plan objectives
2. Public opposition that is logical and reasonable
3. Traffic
4. Safety and Fire protection
5. Good civic design and efficiency
6. Adequacy of public facilities (sewage, water)
7. Noise
8. Litter
9. Decrease in value of adjoining land
10. Appropriate and best use of land
11. Compatibility with adjacent zones (spot zoning)

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY

DAVID WHITAKER, ASST. CITY ATTORNEY



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor
City Council

FROM: **Kit Williams**, City Attorney

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

DATE: **May 22, 2003**

RE: **City Council Considerations for Planned Zoning Districts (PZD's)**

Since you are now considering a PZD for Lowe's and will consider the St. Joseph property for a Planned Zoning District at your next meeting, I thought you might like a short summary of issues that are appropriate for your consideration of these requests.

A Planned Zoning District includes approval of both a zoning change and a large-scale development. Thus, all zoning considerations as well as considerations relevant to LSD approval are relevant. You legally have much more discretion for the zoning part of the PZD decision. Therefore, my recommendation is that if you do not believe a Planned Zoning District should be passed, you should refer primarily to problems with changing the zoning rather than problems in the Large Scale Development when explaining why you are voting against any Planned Zoning District.

ZONING CONSIDERATIONS

1. 20/20 Plan objectives
2. Public opposition that is logical and reasonable
3. Traffic
4. Safety and Fire protection
5. Good civic design and efficiency
6. Adequacy of public facilities (sewage, water)
7. Noise
8. Litter
9. Decrease in value of adjoining land
10. Appropriate and best use of land
11. Compatibility with adjacent zones (spot zoning)

"Spot Zoning" has been recognized by state courts as a violation of a city's comprehensive zoning plan.

"The need to maintain consistent zoning area, and not to set a precedent of spot zoning (T)he property was entirely surrounded by a residential area, and that the residents objected " Thomas Petroleum v. West Helena, 310 Ark. 682, 839 S.W. 2d 523, 525 (1992).

"Spot zoning" has been defined by several authorities. It has been said that:

" ' Spot zoning', by definition, is invalid because it amounts to an arbitrary, capricious and unreasonable treatment of a limited area within a particular district. As such, it departs from the comprehensive treatment or privileges not in harmony with the other

use classifications in the area and without any apparent circumstances which call for different treatment. Spot zoning almost invariably involves a single parcel or at least a limited area." R. Wright and S. Webber, *Land Use* (1978)." Riddell v. City of Brinkley, 612 S.W. 2d 116, 117 (1981).

"(S)pot zoning includes zoning one lot in a manner entirely different from the surrounding area "Smith v. City of Little Rock, 279 Ark. 4, 648 S.W. 2d 454, 457 (1983).

"Highest and best use."

A proponent of a rezoning will often argue that he or she is entitled to a rezoning in order to put the property to its **"highest and best use"** from a monetary viewpoint. The benefit to the owner of a proposed rezoning may certainly be considered, "(h)owever, we have held that **rezoning is not justified solely on the ground that it is necessary to put a particular tract to its most remunerative use.**" Tanner v. City of Green Forest, 302 Ark. 170, 788 S.W. 2d 727, 729 (1990). (emphasis added).

LARGE SCALE DEVELOPMENT CONSIDERATIONS

In the second part of your decision, you have less discretion. As long as the developer has complied with our development ordinances (you should rely upon our city staff for this analysis), the remaining issue would be whether this proposed development would **compound a dangerous traffic condition**. That does not mean only whether more traffic will result from a development (which would almost always be the case), but whether the existing and proposed transportation infrastructure serving the new development can handle the anticipated increased flow without causing or compounding 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.” §166.05 7. d. (4) Unified Development Code.

In that context, if you determine that parking from the proposed development would regularly and significantly overflow onto nearby, narrow streets, you might conclude that this creates or compounds a dangerous traffic condition.

Traffic is also a factor to be considered in the **rezoning** segment of your decision (where you have greater discretion). At least two recent Arkansas Supreme Court cases relied on traffic issues to sustain a rejection of rezoning.

“Increased traffic on limited roads”

City of Lowell v. M & N Mobile Home Park (1996).

“Increased risk of traffic accidents”

Thomas Petroleum v. West Helena (1992).

VOTING

When you state your reasons to vote for or against these PZDs and any other potentially controversial rezonings or PZDs, please refer to some of the eleven factors recognized by our Supreme court to be relevant to zoning considerations.

Do not refer to things you have no control over such as the current zoning of the property when explaining any vote against the PZD.

Keep in mind that most developmental issues such as compliance with the Commercial Design Standards, Tree Ordinance, Parking Lot Landscaping Ordinance, Sign Ordinance, drainage and grading regulations, etc. have already been carefully considered and approved by our Planning and Engineering Departments and Planning Commission. Your job under the PZD Ordinance is not to go back to square one to re-examine everything as a second Planning Commission.

However, I believe you have the power to agree to changes in the Large Scale Development or Preliminary Plat contrary to the precise approval of the Planning Commission. You have these rights now on appeal from Planning Commission decisions on LSDs and Preliminary Plats. I believe the City Council may judiciously approve changes (if consistent with our ordinances). Most changes should also be acceptable to the developer/proponent. Changes unacceptable to the developer equate with a rejection of the project and should be supported by reasons sufficient to reject the whole PZD (without the changes).

Please feel free to call upon me at the meeting prior to moving to accept or reject the PZD request to clarify any factors or issues presented in this memo.

RZN 12-4108 (4847 W. Wedington Dr. / Bank of Wyand)

Page 44 of 52

DRAINING 12-057	FOR USE AND BENEFIT OF: LYNDEE & ASSOCIATES FIRST NATIONAL BANK OF WYNNIE	 Bates & Associates, Inc. Civil Engineering & Land Surveying 717 W. Oak Avenue, Suite 1, Fayetteville, Arkansas 72701-4794, (501) 799-1000 • Fax (501) 799-1000	Location Map: 	LEGEND: THESE STANDARD SYMBOLS WILL BE FOUND IN THE DRAWING	
	ADDRESS: CITY OF FAYETTEVILLE FAYETTEVILLE COUNTY, ARKANSAS	DATE: _____ SCALE: 1"=100' REVISIONS: _____ REVISIONS: _____ REVISIONS: _____ REVISIONS: _____			
	PROJECT NO.: 12 TOWNSHIP: 16 NORTH RANGE: 21 WEST				



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

From: Jeremy Pate, Development Services Director JP

Date: 19 June 2012

Subject: Rezoning for Bank of Wynne/Wedington Property

Attached you will find a letter of request, ordinance, exhibit and legal descriptions reflecting the amended request for RZN 12-4108, Bank of Wynne rezoning. This request differs from the original application, in which the applicants requested Community Services and RSF-4, and also differs from the Planning Commission's recommendation after considering the original request. The Planning Commission did not support the applicant's original request and recommended the property be rezoned to R-A, Residential Agricultural.

The attached is for your consideration. You may return this item directly to the Planning Commission for further consideration, delay a decision on the new application to a future date, or approve/deny the request.

ORDINANCE NO.

AN ORDINANCE REVOKING R-PZD 07-2576 (WOODSTOCK) AND REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 12-4108, FOR APPROXIMATELY 31.68 ACRES, LOCATED AT 4847 WEST WEDINGTON DRIVE FROM R-PZD, RESIDENTIAL PLANNED ZONING DISTRICT 07-2576, TO CS, COMMUNITY SERVICES; R-O, RESIDENTIAL OFFICE; NC, NEIGHBORHOOD CONSERVATION; AND RSF-4, RESIDENTIAL SINGLE FAMILY FOUR UNITS PER ACRE.

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

Section 1: That a portion of the property as described herein zoned R-PZD 07-2576 (Woodstock) is hereby revoked because the developer failed to obtain development permits in accordance with the approved phased development schedule.

Section 2: That the zone classification of the following described property is hereby changed as follows:

From R-PZD, Residential Planned Zoning District 07-2576 to CS, Community Services; R-O, Residential Office; NC, Neighborhood Conservation; and RSF-4, Residential Single Family Four Units Per Acre, as shown on Exhibits "A" and "B" attached hereto and made a part hereof.

Section 3: That the official zoning map of the City of Fayetteville, Arkansas is hereby amended to reflect the zoning change provided in Section 2 above.

PASSED and APPROVED this day of , 2012.

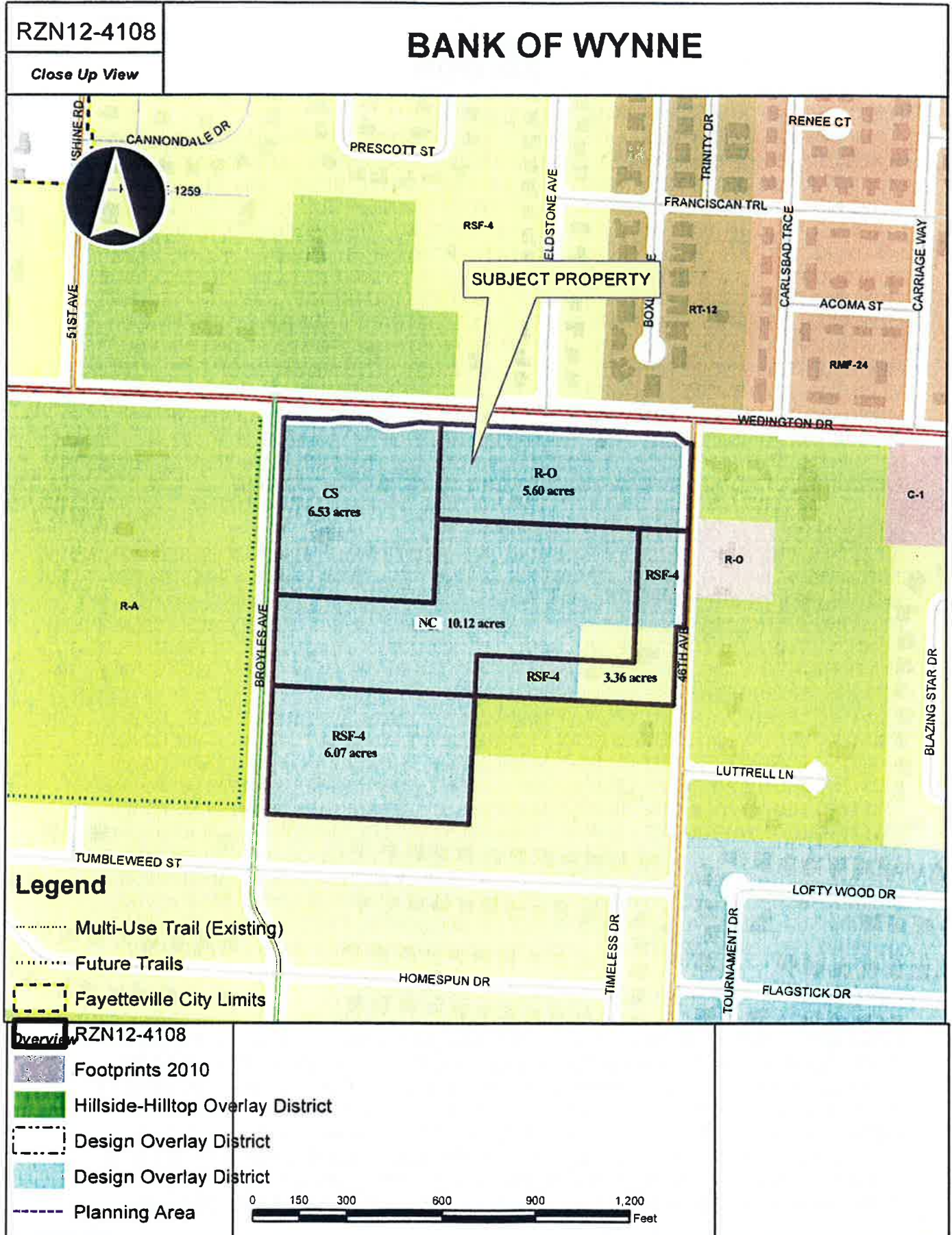
APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

EXHIBIT "A"



Ord. Pg. 2

EXHIBIT "B"
RZN 12-4108

PORTION TO BE REZONED COMMUNITY SERVICE:

A PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 16 NORTH, RANGE 31 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS N02°21'23"E 700.36' FROM AN EXISTING REBAR MARKING THE SOUTHWEST CORNER OF SAID FORTY ACRE TRACT AND RUNNING THENCE N02°21'25"E 566.29' TO THE SOUTH RIGHT-OF-WAY OF ARKANSAS STATE HIGHWAY #16, THENCE ALONG SAID SOUTH RIGHT-OF-WAY S87°33'20"E 139.56' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE N83°32'33"E 44.48' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S88°03'22"E 88.17' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S67°34'26"E 53.20' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S87°16'19"E 27.89' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE N81°59'46"E 81.42' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S87°20'54"E 70.36' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE LEAVING SAID SOUTH RIGHT-OF-WAY S02°21'25"W 572.84', THENCE N87°14'45"W 500.01' TO THE POINT OF BEGINNING, CONTAINING 6.53 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

PORTION TO BE REZONED RESIDENTIAL OFFICE:

A PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 16 NORTH, RANGE 31 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: COMMENCING AT AN EXISTING REBAR MARKING THE SOUTHWEST CORNER OF SAID FORTY ACRE TRACT AND RUNNING THENCE N02°21'23"E 1266.66' TO THE SOUTH RIGHT-OF-WAY OF ARKANSAS STATE HIGHWAY #16, THENCE ALONG SAID SOUTH RIGHT-OF-WAY S87°33'20"E 139.56' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE N83°32'33"E 44.48' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S88°03'22"E 88.17' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S67°34'26"E 53.20' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S87°16'19"E 27.89' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE N81°59'46"E 81.42' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S87°20'54"E 70.36' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT AT THE TRUE POINT OF BEGINNING, THENCE S87°20'54"E 749.33' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S51°36'34"E 42.96' TO AN EXISTING HIGHWAY RIGHT-OF-WAY MONUMENT, THENCE S86°09'07"E 18.27', THENCE S02°12'08"W 280.19', THENCE N87°20'54"W 803.09', THENCE N02°21'25"E 305.66' TO THE POINT OF BEGINNING, CONTAINING 5.60 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

PORTION TO BE REZONED NEIGHBORHOOD CONSERVATION:

A PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 16 NORTH, RANGE 31 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS N02°21'23"E 410.36' FROM AN EXISTING REBAR MARKING THE SOUTHWEST CORNER OF SAID FORTY ACRE TRACT AND RUNNING THENCE N02°21'25"E 290.01', THENCE S87°14'45"E 500.01', THENCE N02°21'25"E 267.19', THENCE S87°20'54"E 646.58', THENCE S02°08'46"W 428.36', THENCE N87°14'45"W 503.76', THENCE S02°30'10"W 130.00', THENCE N87°14'45"W 644.08' TO THE POINT OF BEGINNING, CONTAINING 10.12 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

Ord. Pg. 3

PORTION TO BE REZONED RSF-4:

A PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 16 NORTH, RANGE 31 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS N02°21'23"E 410.36', AND S87°14'45"E 644.08' FROM AN EXISTING REBAR MARKING THE SOUTHWEST CORNER OF SAID FORTY ACRE TRACT AND RUNNING THENCE N02°30'10"E 130.00', THENCE S87°14'45"E 503.76', THENCE N02°08'46"E 428.36', THENCE S87°20'54"E 156.52', THENCE S02°12'08"W 309.20', THENCE N87°14'57"W 26.21', THENCE S02°08'46"W 249.44', THENCE N87°14'45"W 634.58' TO THE POINT OF BEGINNING, CONTAINING 3.36 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

PORTION TO BE REZONED RSF-4:

A PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 16 NORTH, RANGE 31 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT AN EXISTING REBAR MARKING THE SOUTHWEST CORNER OF SAID FORTY ACRE TRACT AND RUNNING THENCE N02°21'25"E 410.36', THENCE S87°14'45"E 644.08', THENCE S02°30'10"W 410.73', THENCE N87°12'44"W 643.04' TO THE POINT OF BEGINNING, CONTAINING 6.07 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.



Bates & Associates, Inc.

Civil Engineering & Surveying

91 W. Colt Square Suite 3/ Fayetteville, AR 72703

PH: 479-442-9350 * FAX: 479-521-9350

www.nwabatesinc.com

June 18, 2012

Planning Commission
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

RE: First National Bank of Wynne Wedington Property Rezoning

Dear Commissioners,

This letter is to fulfill the requirements of item 5 on the rezoning application. We are proposing to rezone the property from RPZD to CS, RO, NC and RSF-4.

- a. Current property owner: First National Bank of Wynne.; there are no pending sales.
- b. The zoning change is needed in order to bring the property to a more conforming use than what the residential zoning allows. The zoning change is needed in order to replace the expired RPZD with a more conforming zoning.
- c. With both commercial and residential development expanding to the West along Wedington, this property should conform with surrounding properties in terms of land use, traffic, appearance, and signage.
- d. A 30" sewer main is located West of the property. An 18" water main is located on the site along the north, as well as a 12" water main along Broyles Ave., and an 8" main along 46th Ave.
- e. This property conforms with the City's future land use plan for this area.
- f. The zoning change is needed in order to update the expired RPZD and get the property out of "Zoning Limbo."
- g. The rezoning from RPZD to CS, RO, NC and RSF-4 will increase traffic but with Broyles Ave. on the West and N. 46th Ave. in the East, access management will decrease the potential for danger and congestion.
- h. The proposed commercial zoning will reduce the population density should decrease the load on public services. The proposed residential zoning will conform with all neighboring properties and should not cause an undesirable increase the load on public services.
- i. Since the current RPZD zoning has expired, it is not possible for the new owner to use the existing property. Due to the location and nature of construction along Wedington, Community Services and RSF-4 zoning appears to be a more appropriate use for the site.

If you have any questions or require additional information, please feel free to call.

Sincerely,

Bates & Associates, Inc.



City of Fayetteville Staff Review Form

C. 1
 Water and Sewer Relocation
 Project Condemnation and Possession
 Page 1 of 24

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

7/3/2012

City Council Meeting Date
 Agenda Items Only

David Jurgens

Submitted By

Utilities

Division

Utilities

Department

Action Required:

Approval of a Resolution authorizing the City Attorney to seek condemnation and orders of possession of certain lands necessary for the Water and Sewer Relocation Project required by the Arkansas Highway and Transportation Department's Highway 265 widening project between Joyce Boulevard and the northern City limits.

\$ 67,690
 Cost of this request

\$ 1,685,327
 Category / Project Budget

Hwy 265 Water/Sewer Relocation
 Program Category / Project Name

5400.5600.5810.00
 Account Number

\$ 1,060,873
 Funds Used to Date

Land Acquisition
 Program / Project Category Name

08072.1102
 Project Number

\$ 624,454
 Remaining Balance

Water and Sewer
 Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐

[Signature]
 Department Director

15 Jun 12
 Date

Previous Ordinance or Resolution # _____

[Signature]
 City Attorney

6-15-12
 Date

Original Contract Date: _____

[Signature]
 Finance and Internal Services Director

6/15/12
 Date

Original Contract Number: _____

[Signature]
 Chief of Staff

6-15-12
 Date

Received in City Clerk's Office 15-12 P01:37 RCVD

[Signature]
 Mayor

6/18/12
 Date

Received in
 Mayor's Office



Comments:



www.accessfayetteville.org

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director
Water/Sewer Committee

Date: June 15, 2012

Subject: Crossover Road - Northern Section - Water and Sewer Relocation Easement Condemnations

RECOMMENDATION

Staff recommends a resolution authorizing the City Attorney to seek possession by condemnation of portions of properties along Highway 265 (Crossover Road), north section, for the Arkansas Highway and Transportation Department (AHTD) widening project between Joyce Boulevard and the northern City limits. The properties are owned by the individuals and/or organizations listed on the attached pages.

BACKGROUND

The AHTD is widening Crossover Road (Highway 265) between Joyce Boulevard and the northern City limits. Due to AHTD's acquisition of additional right-of-way to widen the road, utility lines must be relocated outside of the expanded right-of-way. All proposed utility easements are adjacent to the new highway right-of-way and/or existing utility easements.

DISCUSSION

Staff has acquired easements from 11 of 23 owners. We also have agreement from three more, but have not received the signed documents. We do not yet have full agreement from the remaining owners. These owners are aware of the City's intent to turn any unresolved easement purchases over to the City Attorney to initiate the condemnation process. Negotiations are still underway and are expected to succeed with most of the owners, but the timing is such that we must proceed with the condemnation process in order to advertise the project.

Tract (Owner)	Initial Offer
Tract 4 (Brown)	\$10,785
Tract 5 (Kisor)	\$6,575
Tract 11 (McMichael)	\$345
Tract 16 (Benevolent Building)	\$18,970
Tract 17 (SM-WLJ FAC)	\$14,545
Tract 20 (PCC Properties)	\$2,825
Tract 22 (Presbytery)	\$13,645
Tract 25 (Dunnerstock Dev.)	No compensation
Total	\$ 67,690

BUDGET IMPACT

The payment for land acquisition is made from the Highway 265 Water/Sewer Relocations project budget. The \$67,690 is an estimate; the final cost is subject to negotiation with the property owners or by court order. If we go to court, the appraised value will be deposited into the Registry of the Circuit Court as just compensation.

Attachments: Case history and property exhibit for each tract

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO SEEK CONDEMNATION AND POSSESSION OF CERTAIN LANDS OWNED BY RICHARD E. & DOROTHY BROWN, BILL R. & DORIS A. KISOR, WOLFREDRICK & SERENA MCMICHAEL, BENEVOLENT BUILDING CORPORATION, SM-WLJ FAC OWNER INC., PCC PROPERTIES LLC, PRESBYTERY OF ARKANSAS, AND DUNNERSTOCK DEVELOPMENT, INC. NEEDED FOR WATER AND SEWER RELOCATIONS ALONG ARKANSAS STATE HIGHWAY 265 BETWEEN JOYCE BOULEVARD AND THE NORTHERN CITY LIMITS

WHEREAS, the City of Fayetteville and certain property owners have been unable to agree on a fair price for the portions of property owned by each of them which is needed for easements to facilitate water and sewer relocations, and

WHEREAS, the City of Fayetteville needs to gain possession of these property promptly to begin work on water and sewer relocations along Arkansas State Highway 265 between Joyce Boulevard and the northern city limits.

NOW, THEREFORE, 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 the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by Richard E. & Dorothy Brown that is needed for a utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by Bill R. & Doris A. Kisor that is needed for a utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by Wolfredrick & Serena McMichael that is needed for a utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

Section 4. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by Benevolent Building Corporation that is needed for a

utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

Section 5. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by SM-WLJ FAC Owner, Inc. that is needed for a utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

Section 6. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by PCC Properties LLC that is needed for a utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

Section 7. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by Presbytery of Arkansas that is needed for a utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

Section 8. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near Arkansas State Highway 265 and owned by Dunnerstock Development, Inc. that is needed for a utility easement for water and sewer relocations along Arkansas State Highway 265, and to pay into the registry of the Circuit Court just compensation therefor.

PASSED and APPROVED this 3rd day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

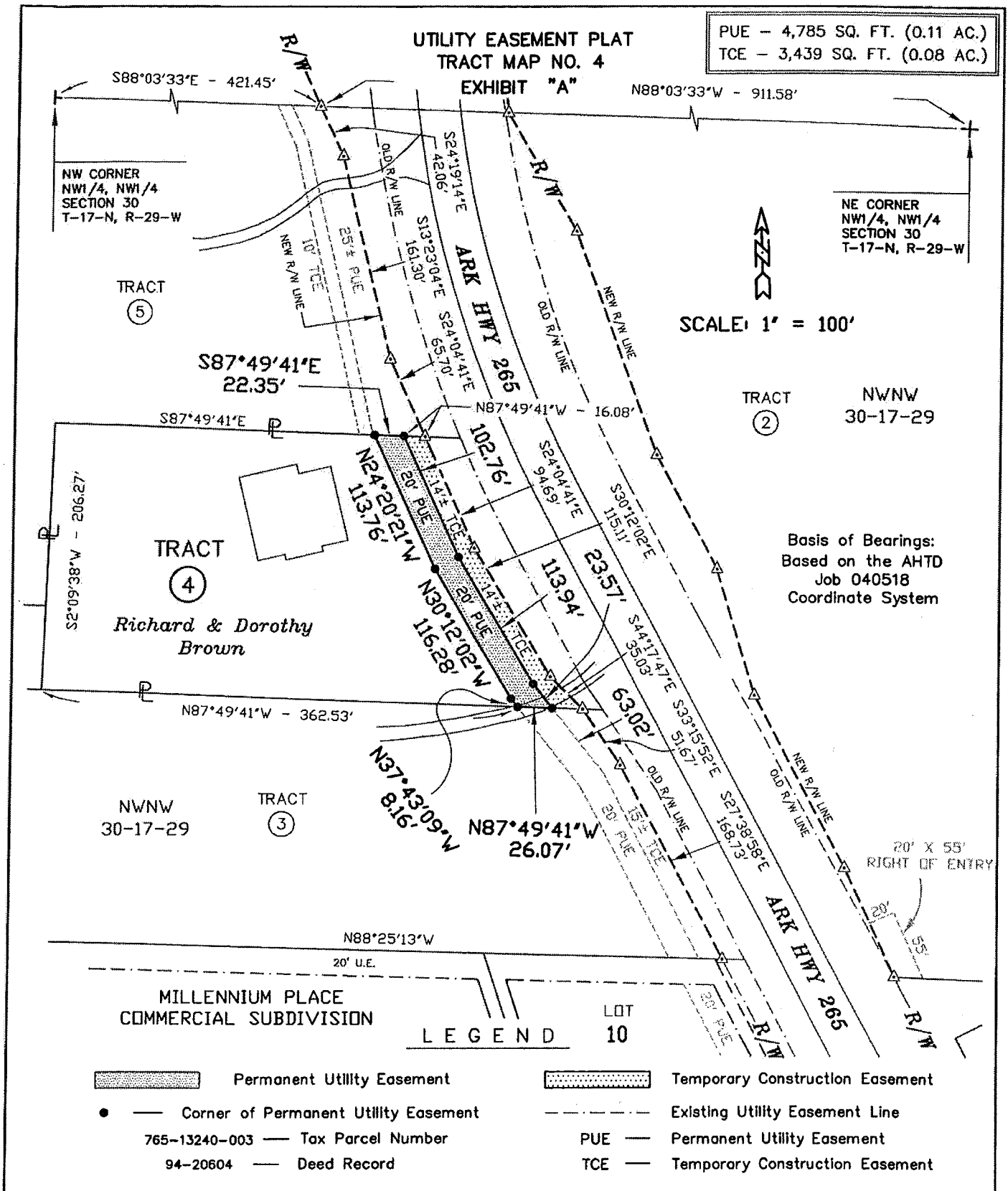
By: _____
SONDRA E. SMITH, City Clerk/Treasurer

CASE HISTORY

Hwy. 265 North

Tract 4: Richard E. & Dorothy Brown

- 4/11/12 Offer packet mailed including offer letter (\$10,785.00), proposed easement, and exhibit.
- 5/21/12 Reminder letter sent.
- 5/25/12 HJ met with the Browns on site.
- 6/12/12 The Browns are supposedly talking to "the engineers" (Robert White w/ McClelland?). Paperwork not yet signed, but is expected.



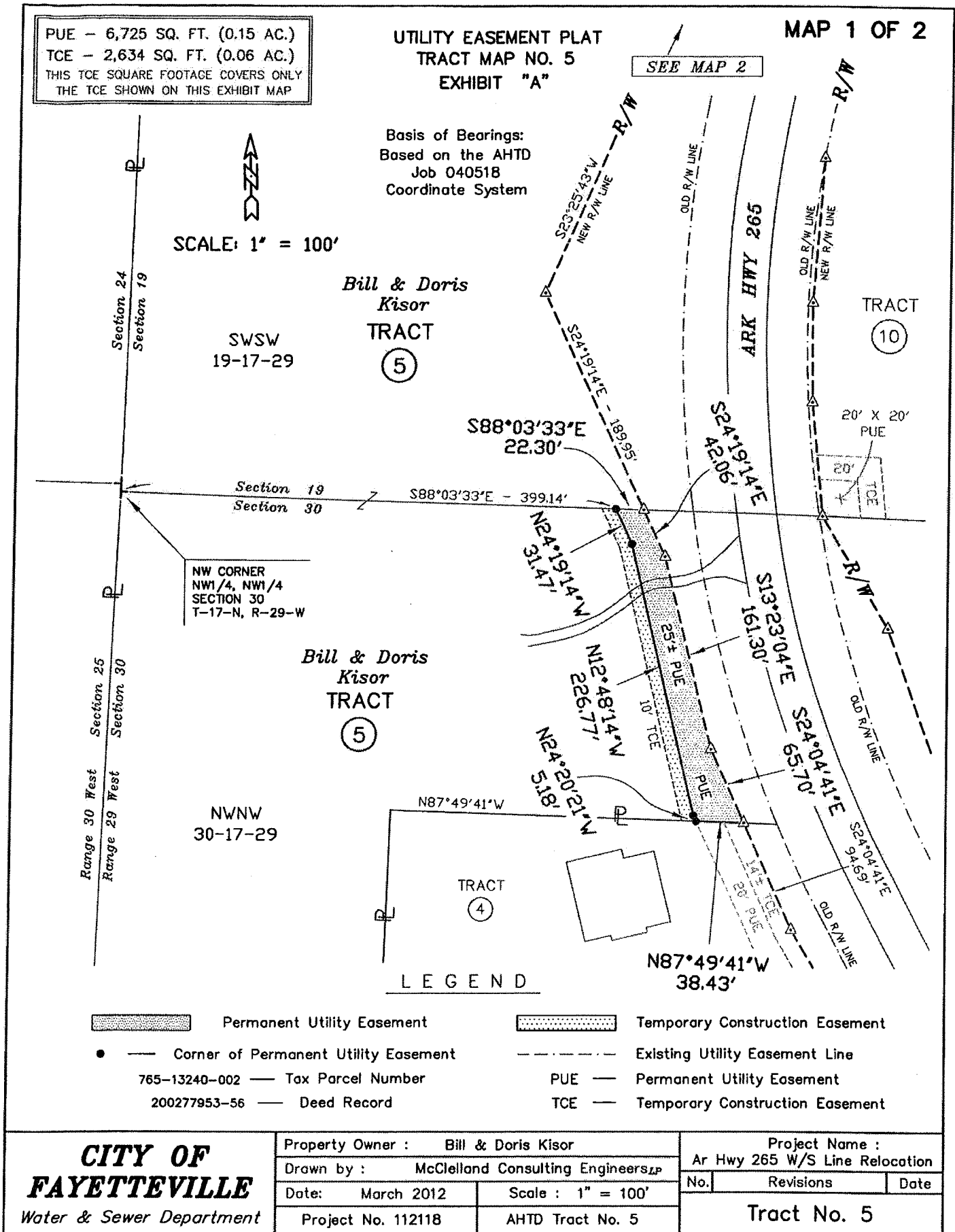
CITY OF FAYETTEVILLE Water & Sewer Department	Property Owner : Richard & Dorothy Brown		Project Name : Ar Hwy 265 W/S Line Relocation		
	Drawn by : McClelland Consulting Engineers		No.	Revisions	Date
	Date: March 2012	Scale : 1" = 100'			
	Project No. 112118		Tract No. 4		

CASE HISTORY

Hwy. 265 North

Tract 5: Bill R. and Doris A. Kisor

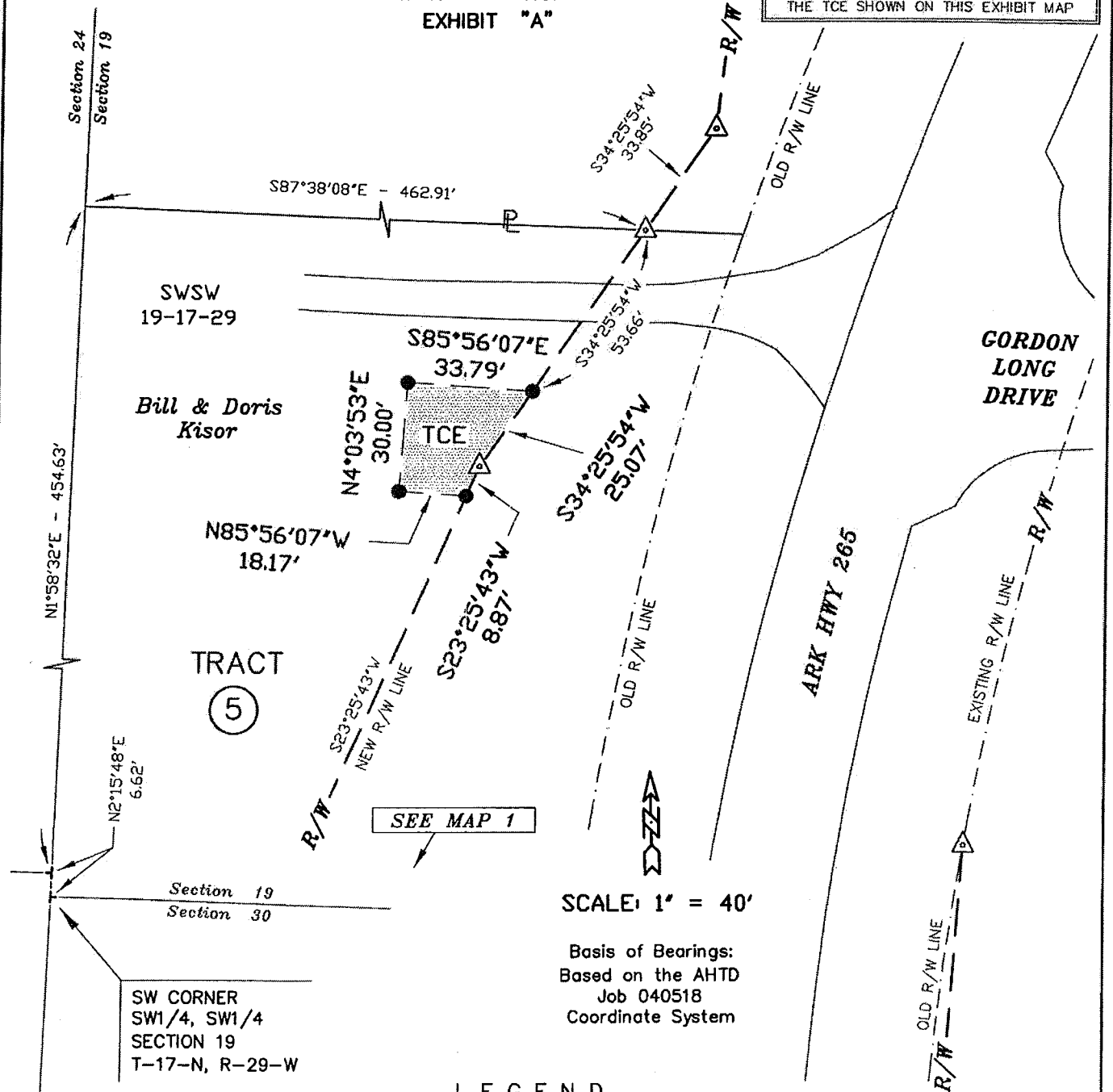
- 4/11/12 Offer packet mailed including offer letter (\$6,575.00), proposed easement, and exhibit.
- 4/23/12 Bill Kisor called. He said that AHTD took nearly 540 trees and that our easement will take at least 150 more. He has already settled with the gas company. Gas said they would not take out trees but would bore. Mr. Kisor is convinced that the trees will still die. HJ to call.
- 5/16/12 HJ called Mr. Kisor and informed him that the City of Fayetteville will also bore under trees. HJ tried to assure him that they would be okay. He is still convinced that they will all die. HJ to meet with Mr. Kisor.
- 5/18/12 HJ tried to set up an appointment to meet, but Mr. Kisor is putting it off.
- 5/29/12 HJ and Shannon Jones met at Mr. Kisor's office (Fayetteville Mechanical). He is taking everything to his attorney (Larry McCready). HJ will get a copy of the plans from McClelland for Mr. Kisor. Mr. Kisor is not open to discussion with the City and is in condemnation with AHTD.
- 6/1/12 Notification letter sent.
- 6/6/12 Larry McCready, Mr. Kisor's attorney called. He would like to settle. He wanted to know all the details about the easement and will probably talk to Kisor about presenting a counter offer.
- 6/12/12 Put on list of potential condemnations as will probably need Order of Possession before issue is settled.



MAP 2 OF 2

TEMPORARY CONSTRUCTION EASEMENT PLAT
 TRACT MAP NO. 5
 EXHIBIT "A"

TCE - 758 SQ. FT. (0.02 AC.)
 THIS TCE SQUARE FOOTAGE COVERS ONLY
 THE TCE SHOWN ON THIS EXHIBIT MAP



**CITY OF
 FAYETTEVILLE**
 Water & Sewer Department

Property Owner : Bill & Doris Kisor
 Drawn by : McClelland Consulting Engineers
 Date: March 2012
 Project No. 112118

Scale : 1" = 40'
 AHTD Tract No. 5

Project Name :
 Ar Hwy 265 W/S Line Relocation

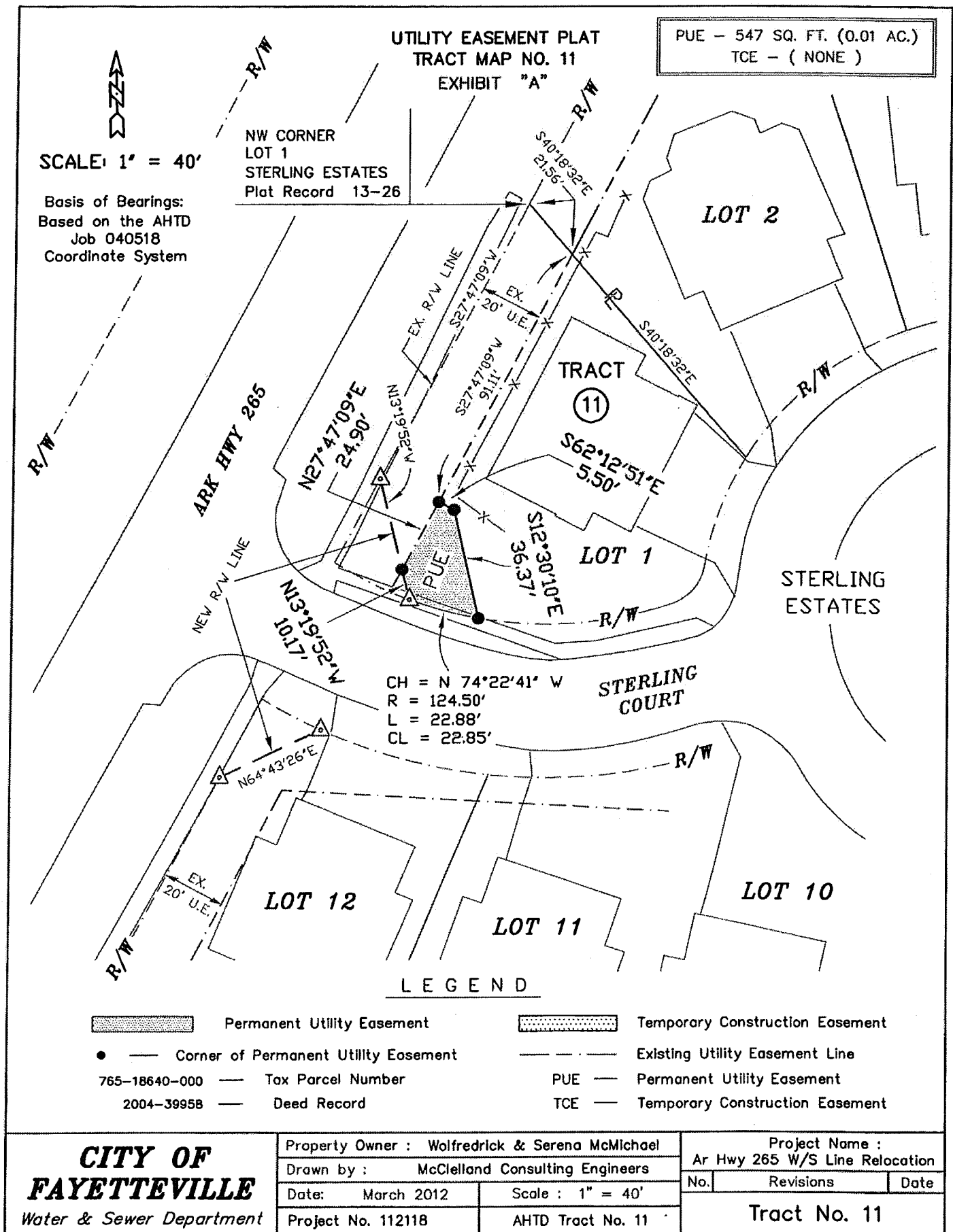
No.	Revisions	Date
Tract No. 5		

CASE HISTORY

Hwy. 265 North

Tract 11: Wolfredrick and Serena McMichael

- 4/11/12 Offer packet mailed including offer letter (\$345.00), proposed easement, and exhibit.
- 5/21/12 Reminder letter (with copy of original packet) sent to 1784 Balboa St., Eugene OR 97408 (last know address per Anywho) as the Springdale AR address was sold years ago.
- 6/1/12 Notification letter sent to Eugene OR.
- 6/12/12 Phone call from Serena McMichael. At her request, HJ sent copies of the plans and the aerial image. She may request more money. Planning on sending in signed paperwork by end of the month.



CASE HISTORY

Hwy. 265 North

Tract 16: Benevolent Building Corporation (Elks Lodge)

- | | |
|---------|--|
| 4/11/12 | Offer packet mailed including offer letter (\$18,970.00), proposed easement, and exhibit. |
| 5/21/12 | Reminder letter sent. |
| 5/25/12 | Call from Tammie Shelly with Elks Lodge. Board members want to meet on 5/30/12. |
| 5/30/12 | HJ met on site. Members concerned about landscaping in easement. There is a light pole at the edge of the easement. They will present counter offer. |
| 6/4/12 | McClelland to stake easement and provide tree count. |
| 6/12/12 | Paperwork not yet signed. Counter offer not yet received. |

MAP 1 OF 2

UTILITY EASEMENT PLAT
 TRACT MAP NO. 16
 EXHIBIT "A"

PUE - 16,403 SQ. FT. (0.38 AC.)
 TCE - 6,408 SQ. FT. (0.15 AC.)

SEE MAP 2

NW CORNER
 ELKS ADDITION
 Plat Record
 12-100

ARK HWY 265

AREA
 ENLARGED

RANDAL PLACE

SW CORNER
 SE1/4, NW1/4
 SECTION 19
 T-17-N, R-29-W

LEGEND

- | | | | |
|---|----------------------------|---|---------------------------------|
|  | Permanent Utility Easement |  | Temporary Construction Easement |
| ● — Corner of Permanent Utility Easement | | — Existing Utility Easement Line | |
| 765-18592-000 — Tax Parcel Number | | PUE — Permanent Utility Easement | |
| 93-05011 — Deed Record | | TCE — Temporary Construction Easement | |

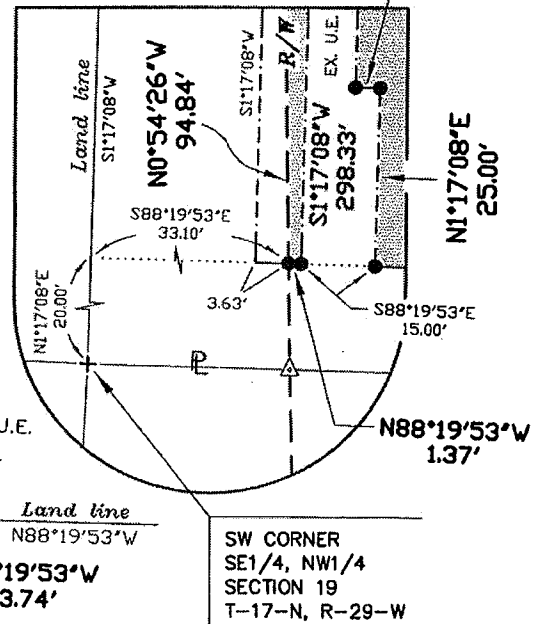
ELKS ADDITION
 Plat Record 12-100

Benevolent
 Building
 Corporation

TRACT
 16

SCALE: 1" = 60'
 Basis of Bearings:
 Based on the AHTD
 Job 040518
 Coordinate System

ENLARGED AREA
 NOT TO SCALE



**CITY OF
 FAYETTEVILLE**
 Water & Sewer Department

Property Owner : Benevolent Building Corporation
 Drawn by : McClelland Consulting Engineers
 Date: March 2012
 Project No. 112118

Project Name :
 Ar Hwy 265 W/S Line Relocation
 No. Revisions Date
 Tract No. 16

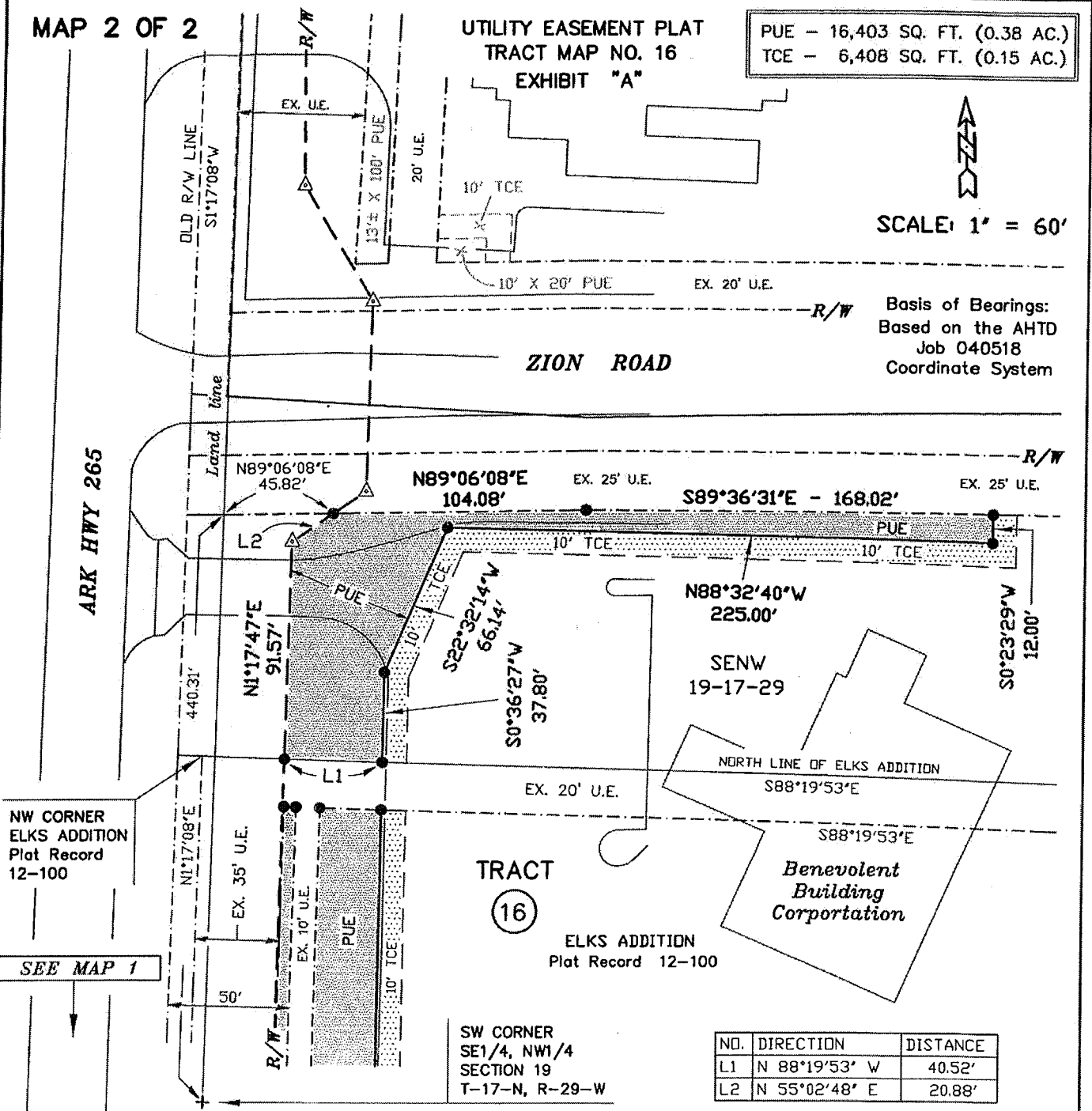
MAP 2 OF 2

UTILITY EASEMENT PLAT
TRACT MAP NO. 16
EXHIBIT "A"

PUE - 16,403 SQ. FT. (0.38 AC.)
TCE - 6,408 SQ. FT. (0.15 AC.)

SCALE: 1" = 60'

Basis of Bearings:
Based on the AHTD
Job 040518
Coordinate System



LEGEND

- Permanent Utility Easement
- Temporary Construction Easement
- Corner of Permanent Utility Easement
- Existing Utility Easement Line
- 765-18592-000 — Tax Parcel Number
- PUE — Permanent Utility Easement
- 93-05011 — Deed Record
- TCE — Temporary Construction Easement

**CITY OF
FAYETTEVILLE**
Water & Sewer Department

Property Owner : Benevolent Building Corporation
Drawn by : McClelland Consulting Engineers
Date: March 2012
Project No. 112118

Project Name :
Ar Hwy 265 W/S Line Relocation
No. Revisions Date
Tract No. 16

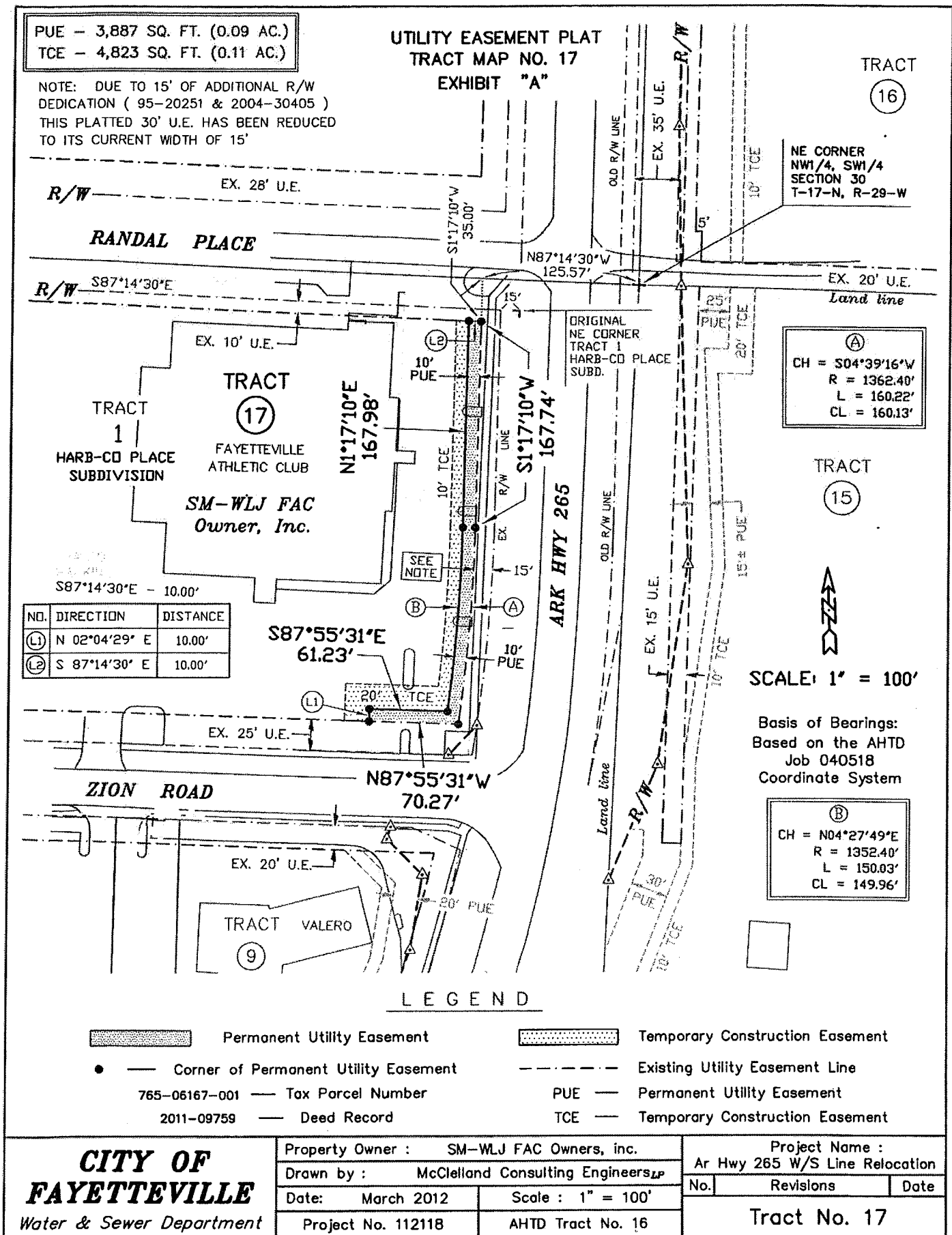
Scale : 1" = 60'
AHTD Tract No. 21

CASE HISTORY

Hwy. 265 North

Tract 17: SM-WLJ FAC Owner Inc.

- | | |
|----------------|---|
| 4/11/12 | Offer packet mailed including offer letter (\$14,545.00), proposed easement, and exhibit. |
| 5/21/12 | Reminder letter sent. |
| 6/1/12 | Notification letter sent. |
| 6/12/12 | No mailings have been returned. No contact with the new owners of FAC. Shannon Jones was to have talked to someone local who worked at FAC, but have received no additional information. |

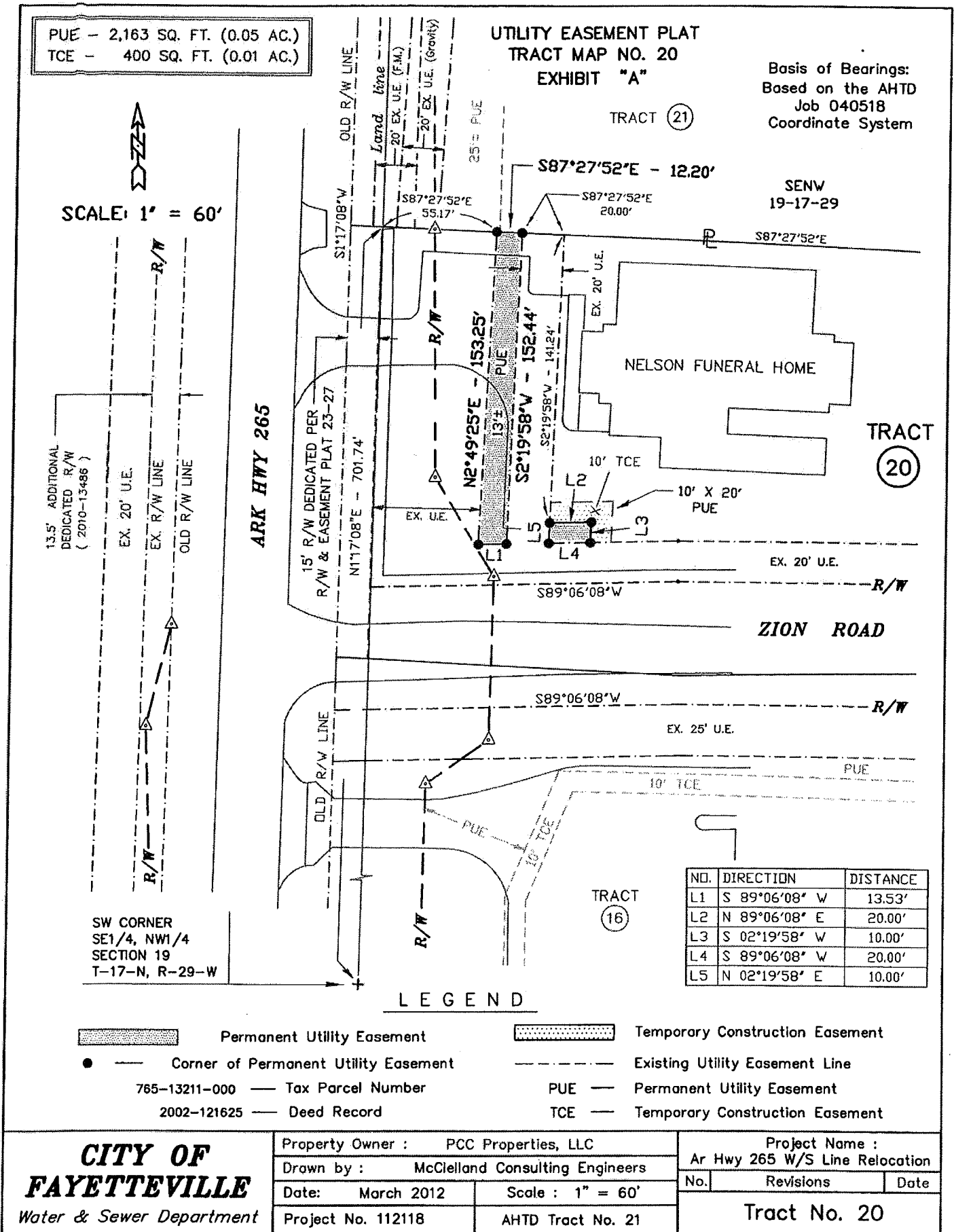


CASE HISTORY

Hwy. 265 North

Tract 20: PCC Properties LLC (Nelson Berna Funeral Home)

- 4/11/12 Offer packet mailed including offer letter (\$2,825.00), proposed easement, and exhibit. (Mailed to Ray Smith, attorney for Scott Berna)
- 4/20/12 Ray Smith called and requested a copy of the plans. HJ hand-delivered.
- 5/8/12 Doug Hemingway, surveyor, came in to review the plans.
- 5/9/12 Doug Hemingway came in again with a couple more questions.
- 6/1/12 Notification letter sent.
- 6/12/12 Paperwork not yet signed. No further contact.



CASE HISTORY

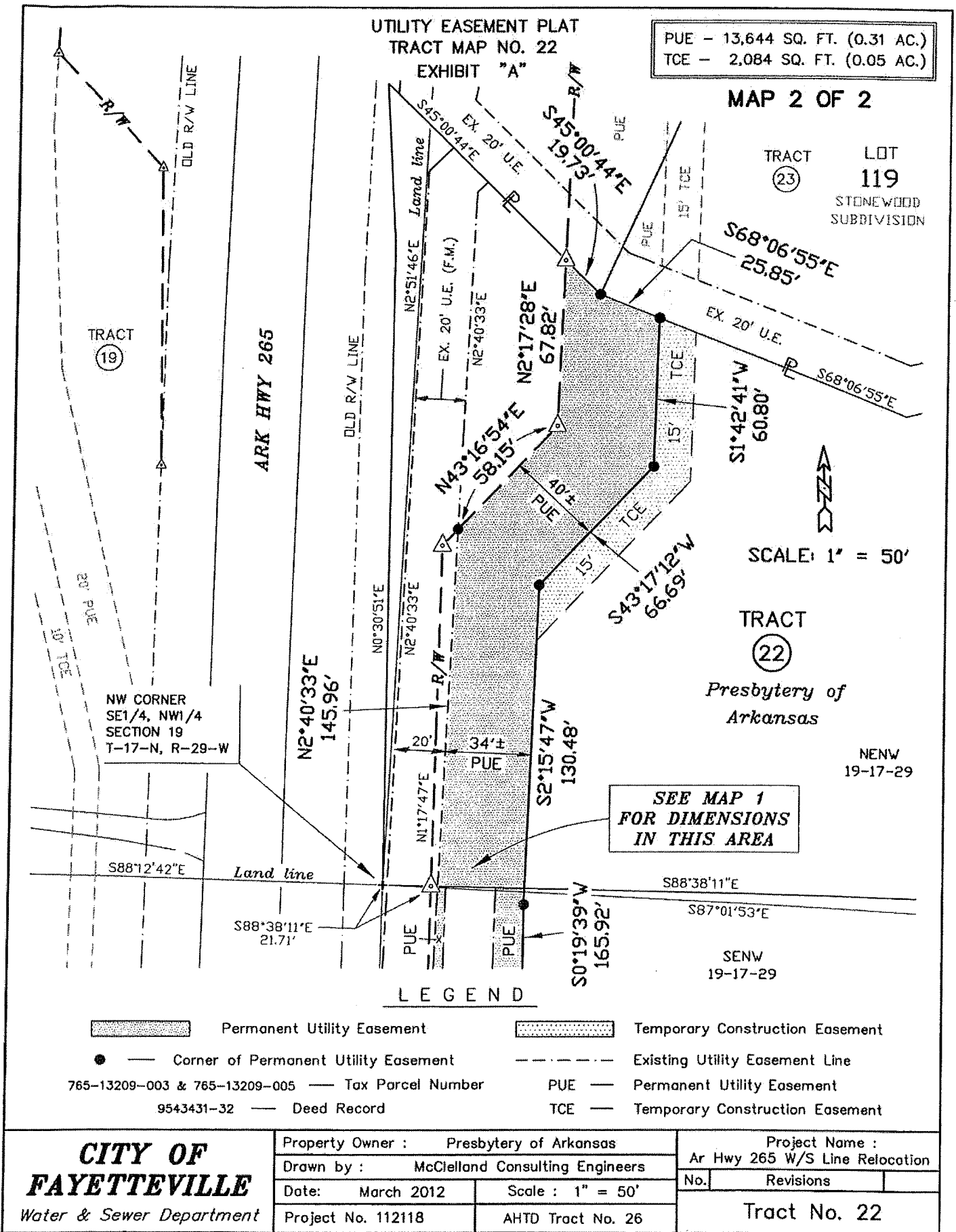
Hwy. 265 North

Tract 22: Presbytery of Arkansas

- | | |
|---------|--|
| 4/11/12 | Offer packet mailed including offer letter (\$13,645.00), proposed easement, and exhibit. |
| 5/4/12 | Packet returned. Re-sent to 9221 N. Rodney Parham Rd., Little Rock, AR. |
| 5/21/12 | Reminder letter sent. |
| 5/30/12 | Bill Galbraith, General Presbyter, called to set up appointment. |
| 6/5/12 | HJ met with Bill Galbraith and Bill Bradley on site. Explained options for building concerns about north side of property, showed them floodplain and unbuildable area. They want to converse with the Board next week in Little Rock. |
| 6/12/12 | Paperwork not yet signed. No further contact. |



Water & Sewer Department



**CITY OF
FAYETTEVILLE**
 Water & Sewer Department

Property Owner : Presbytery of Arkansas	
Drawn by : McClelland Consulting Engineers	
Date: March 2012	Scale : 1" = 50'
Project No. 112118	AHTD Tract No. 26

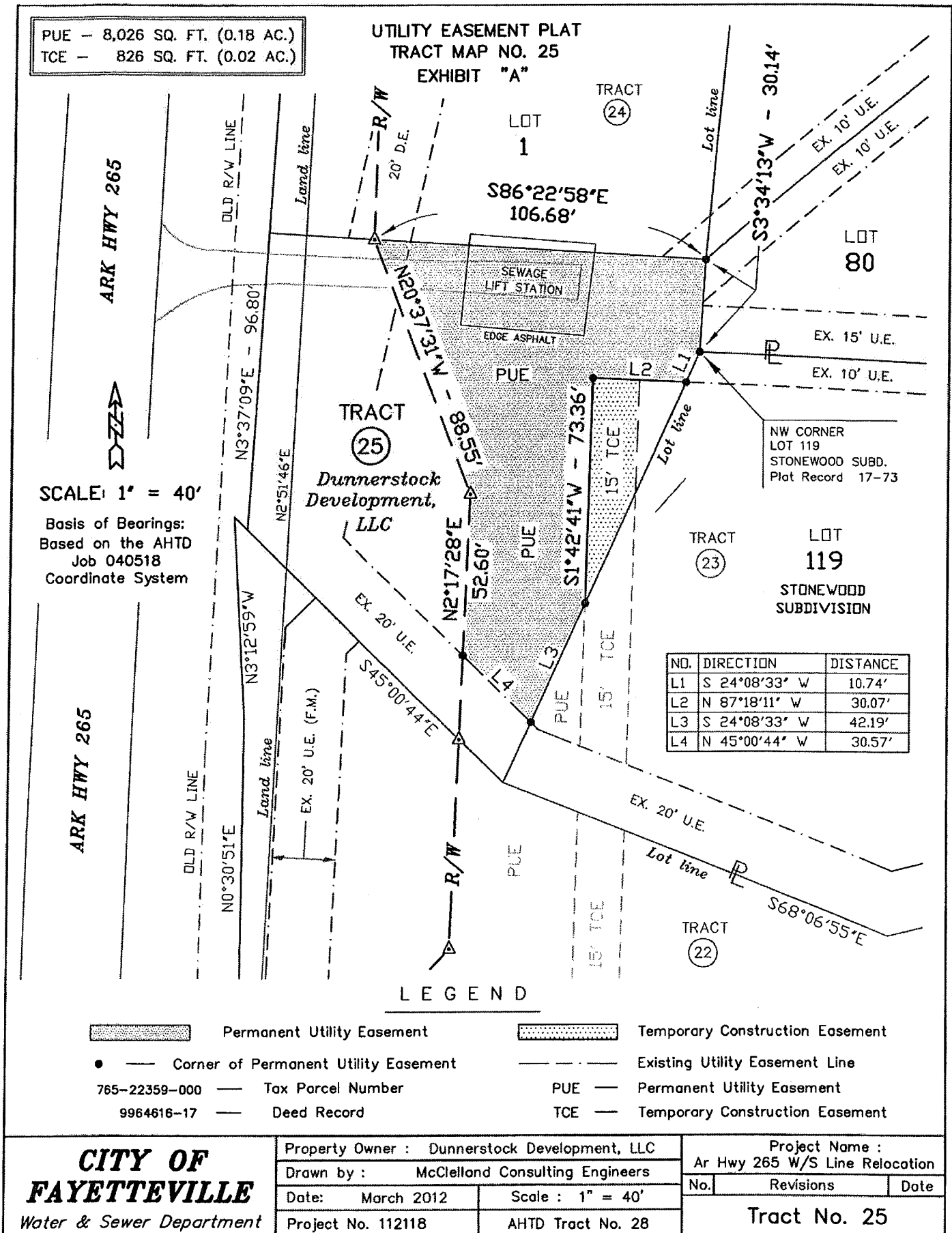
Project Name : Ar Hwy 265 W/S Line Relocation	
No.	Revisions
Tract No. 22	

CASE HISTORY

Hwy. 265 North

Tract 25: Dunnerstock Development

- 5/4/12 Letter and deed sent to Buddy Peoples. No compensation as the lift station property should have been transferred to the City at the time of development and wasn't. NOTE: AHTD and Gas Co. paid them for ROW and easement across this property
- 5/29/12 Mark Foster brought in signed easement for Tract 26 (Dunnerstock Development). He is to mail vendor form and signed deed for Tract 25.
- 6/12/12 Have not received deed, nor has Foster been paid for easement on Tract 26. No further contact.



City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

7/3/2012

City Council Meeting Date
Agenda Items Only

Julie McQuade
Submitted By

Division

Communications & Volunteer Services
Department

Action Required:

Approve a resolution establishing a Fayetteville Town Gown Advisory Committee, defining the membership structure and terms for Community representative members.

\$ -
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

6-15-12
Date

Previous Ordinance or Resolution #

Original Contract Date:

City Attorney

6-18-12
Date

Original Contract Number:

Finance and Internal Services Director

6-18-2012
Date

Received in City
Clerk's Office

06-15-12 P04:49 RCVD

Chief of Staff

6-18-12
Date

Received in
Mayor's Office

ENTERED
6/18/12
P.H.

Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Lindsley Smith, Communication Director
From: Julie McQuade, Community Outreach Coordinator

Date: June 15, 2012

Subject: Establishing a Fayetteville Town Gown Advisory Committee

PROPOSAL:

Staff proposes a resolution establishing a Fayetteville Town Gown Advisory Committee, defining the membership structure and terms for Community representative members.

BACKGROUND:

In recent months citizens and City Council members have had discussions around issues found commonly in cities that are home to universities. Issues being discussed in Fayetteville are consistent with many of the typical challenges that many university communities face. To date, the University of Arkansas or City of Fayetteville have attempted to address many of these issues separately.

Issues such as campus expansions, need for student housing, parking and noise complaints in areas adjacent to campus, and demands on budgets, services, and infrastructure are expected to continue to increase with the growth of the University of Arkansas's student population as well as the growth of the city's population.

RECOMMENDATION:

Research has shown that a collaborative relationship between the community (town) and the local college or university (gown) contributes to an overall quality of life for everyone involved. However, issues such as local budget cuts, off-campus student conduct, and campus expansions can often cause strained relations between town and gown. Initiating a dialogue and opening up the lines of communication between the campus and its neighbors can foster a positive relationship based on a common understanding of the role that each plays—or can play—to promote a healthy and thriving community.

As such, city staff recommends the creation of a Fayetteville Town Gown Advisory Committee for the purpose of improving communication on town/gown issues and collaborate on solutions. Staff also believes establishing such an Advisory Committee provides a forum for identifying opportunities and facilitating partnerships that can benefit the entire community.

THE CITY OF FAYETTEVILLE, ARKANSAS

Furthermore, staff recommends that membership of the Fayetteville Town Gown Advisory Committee be structured in order to provide equal representation of city, university, and community interests for productive communication about the unique issues, challenges and opportunities our community faces as home to the state's flagship public university. The recommended membership structure and terms of members follows:

The Fayetteville Town Gown Advisory Committee shall be comprised of twenty-one (21) members; seven (7) to be appointed by the City Administration, seven (7) to be appointed by the University of Arkansas, one (1) City Council member appointed by the mayor, and the following six (6) to be appointed by the City Council:

1. One (1) member shall be a Ward 1 resident
2. One (1) member shall be a Ward 2 resident
3. One (1) member shall be a Ward 3 resident
4. One (1) member shall be a Ward 4 resident
5. One (1) member shall be a Fayetteville business owner or a representative of the Fayetteville development community
6. One (1) member shall be a university student living in the City of Fayetteville

Membership Terms:

1. Members appointed by the City Council and the City Council representative appointed by the mayor shall serve a term of two (2) years.
2. All other members appointed by the City Administration and University of Arkansas shall serve until replaced.

Membership structure shall be reviewed every four (4) years and revised as appropriate in regard to any additional town (city) and gown (university and college) stakeholder representation.

BUDGET IMPACT:

Minimal administrative staff support only.

ORDINANCE NO. _____

**AN ORDINANCE ENACTING ARTICLE XXIV TOWN AND GOWN
ADVISORY COMMITTEE (§ 33.360 THROUGH § 33.365) OF CHAPTER
33: DEPARTMENTS, BOARDS, COMMISSIONS, AND AUTHORITIES
OF THE CODE OF FAYETTEVILLE TO PROVIDE FOR THE CREATION OF
A TOWN AND GOWN ADVISORY COMMITTEE, AND DEFINING ITS
COMPOSITION, AUTHORITY AND DUTIES**

**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 enacts Article XXIV Town and Gown Advisory Committee (§ 33.360 through § 33.365) of Chapter 33: Departments, Boards, Commissions, and Authorities of the Code of Fayetteville, a copy of which is attached to this Ordinance as Exhibit "A" and incorporated herein as if set out word for word, to provide for the creation of a Town and Gown Advisory Committee, and defining its composition, authority and duties.

PASSED and APPROVED this _____ day of _____, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

ARTICLE XXIV TOWN AND GOWN ADVISORY COMMITTEE

33.360 Purpose and Establishment

There is hereby established the Town and Gown Advisory Committee. This Committee shall be a forum for collaboration between the City of Fayetteville and the University of Arkansas on mutually relevant issues including, but not limited to, campus expansions, the need for student housing both on and off campus, and parking and noise in areas adjacent to or nearby the campus. The Committee is empowered only to advise and make recommendations on a periodic basis to both the City Council and the University of Arkansas on such issues, and to adopt rules for the conduct of its own business.

33.361 Composition

The Town and Gown Advisory Committee shall be comprised of twenty-one (21) voting members, consisting of the following:

- (A) One (1) member of the Committee shall be a member of the City Council appointed by the Mayor;
- (B) One (1) member shall be a resident of Ward 1 appointed by the City Council;
- (C) One (1) member shall be a resident of Ward 2 appointed by the City Council;
- (D) One (1) member shall be a resident of Ward 3 appointed by the City Council;
- (E) One (1) member shall be a resident of Ward 4 appointed by the City Council;
- (F) One (1) member shall be a business owner in the City or a representative of the City development community appointed by the City Council;
- (G) One (1) member shall be a University of Arkansas student living in the City appointed by the City Council;
- (H) Seven (7) members shall be City staff appointed by the Mayor, and shall include one (1) representative of the Mayor's office, one (1) representative of Development Services-Current Planning, one (1) representative of Development Services-Code Compliance, one (1) representative of Police, one (1) representative of Fire, one (1) representative of Parking, and one (1) representative from either Transportation or Utilities.

- (I) Seven (7) members shall be representatives from the University of Arkansas, to be selected by the Chancellor or the Chancellor's designee, and shall include one (1) representative of the Chancellor's Office, one (1) representative of Government Relations, one (1) representative from the Division of Student Affairs, one (1) representative of Parking and Transit, one (1) representative of Athletics, one (1) representative of Facilities Management, and the current Associated Student Government President.

33.362 Terms Of Office

Members appointed by the City Council shall serve a two (2) year term, with no limit to the number of terms they may serve. Members appointed by the Mayor, with the exception of the City Council member appointed by the Mayor, shall serve at the pleasure of the Mayor. Members appointed from the University of Arkansas shall serve for such period as to be determined by the University.

33.363 Officers and Quorum

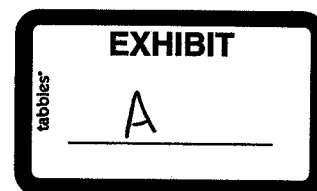
At the first regularly scheduled Committee meeting of each calendar year, the members of the Committee shall elect from among themselves a Chairperson and a Secretary, who shall operate as Vice-Chair. A majority of the whole number of members shall constitute a quorum to conduct business, and a majority vote of those present shall be sufficient to approve or deny any matter before the Committee.

33.364 Meetings

The Town and Gown Advisory Committee shall meet at least once per quarter to conduct regular business, at a time and place that is mutually convenient to the membership. The Town and Gown Advisory Committee may meet more frequently if needed.

33.365 Selection Process

When appointing its members, the City Council shall use the Nominating Committee process.



FAYETTEVILLE TOWN GOWN ADVISORY COMMITTEE

Proposed Membership - June 12, 2012

Purpose of structure: To provide equal representation of city, university, and community interests for productive communication about the unique issues, challenges and opportunities our community faces as home to the state's flagship public university.

CITY ADMINISTRATION (7 SEATS)

Mayor appoints city staff seats representing each of the following departments:

- Mayor's office
- Development services - Current planning
- Development services - Code compliance
- Police
- Fire
- Parking
- Transportation or Utilities (or other representatives as needed for specific discussions - like City Prosecuting Attorney's office, etc.)

Terms: City Administration members shall serve until replaced as determined by the Mayor.

UNIVERSITY OF ARKANSAS (7 SEATS)

UA appoints representatives for UA seats:

- Danny Pugh (Chancellor's Office)
- Richard Hudson (Governmental Relations)
- Melissa Harwood-Rom (Division of Student Affairs)
- Gary Smith (Parking and Transit)
- Bev Lewis (Athletics)
- Mike Johnson (Facilities Management)
- Tori Pohlner (ASG President)

Terms: University of Arkansas members shall serve until replaced as determined by the university.

COMMUNITY MEMBERS (7 SEATS)

The public are invited to apply for one of the following six (6) seats, applications reviewed by the City Council Nominating Committee and finally appointed by the City Council:

- One (1) member shall be a Ward 1 resident
- One (1) member shall be a Ward 2 resident
- One (1) member shall be a Ward 3 resident
- One (1) member shall be a Ward 4 resident
- One (1) member shall be a Fayetteville business owner or a representative of the Fayetteville development community
- One (1) member shall be a university student living in the City of Fayetteville

The seventh (7) Community Member will be a representative from the City Council.

- One (1) City Council member to be appointed by the mayor

Terms: Members appointed by the City Council shall serve a term of two (2) years.

Note: Community Outreach Coordinator will provide staff support for this Advisory Committee.

ALDERMAN APPEAL REQUEST FORM

July 3, 2012 City Council Meeting

PLANNING COMMISSION MEETING OF: June 11, 2012

**FROM: Alderman Bobby Ferrell
Ward 3**

APPEAL TITLE AND SUBJECT:

ADM 12-4144: Administrative Item (3078 N. COLLEGE AVE./SIEBERT, 252):
Submitted by ERIC SIEBERT for property located at 3078 NORTH COLLEGE AVENUE.
The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains
approximately 1.88 acre. The request is a variance to allow for an outdoor mobile
vendor (Shave the Planet snow cones) for longer than 90 days.


Alderman

6-13-12
Date




Approved as to form

6-18-12



Paul A. Buh
Finance + Internal Serv. Dir.

6-18-2012


Chief of Staff

6-18-12


Mayor

6/18/12

June 12, 2012

Sondra,

Please consider this an official Alderman appeal, of the June 11, 2012 Planning Commission's decision to grant a variance for the following:

ADM 12-4144: Administrative Item (3078 N. COLLEGE AVE./SIEBERT, 252):

Submitted by ERIC SIEBERT for property located at 3078 NORTH COLLEGE AVENUE. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 1.88 acre. The request is a variance to allow for an outdoor mobile vendor (**Shave the Planet** snow cones) for longer than 90 days.

A handwritten signature in cursive script, appearing to read "Bobby Ferrell".

Bobby Ferrell
Alderman Ward 3

RESOLUTION NO. _____

A RESOLUTION TO REVERSE THE PLANNING COMMISSION'S DECISION TO GRANT AND THEREBY TO DENY THE VARIANCE TO ERIC SIEBERT TO OPERATE HIS SHAVE THE PLANET SNOW CONE BUSINESS LONGER THAN 90 DAYS AS AN OUTDOOR MOBILE VENDOR

WHEREAS, the Planning Commission by a 6 yes, 1 no and one abstain granted the variance to Eric Siebert to continue operating his Shave the Planet snow cone business as an outdoor mobile vendor at 3078 North College for a longer period than 90 days.

NOW, THEREFORE 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 reverses the Planning Commission's decision to grant and thereby denies the variance to Eric Siebert to operate his Shave The Planet snow cone business longer than 90 days as an outdoor mobile vendor.

PASSED and APPROVED this 3rd day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

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

TITLE XV UNIFIED DEVELOPMENT CODE

- (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)

Sondra Smith - Re: Fwd: appeal

From: Andrew Garner
To: Smith, Sondra
Date: 6/14/2012 8:25 AM
Subject: Re: Fwd: appeal
CC: Pate, Jeremy

Sondra,

I will be putting together a packet to go along with this appeal and will hopefully route it over to you tomorrow. This item would then be placed on the July 3rd CC meeting.

Thanks,
Andrew

Andrew M. Garner, AICP
Senior Planner
City of Fayetteville
125 West Mountain Street
Fayetteville, Arkansas 72701
Tel.479.575.8262
Fax.479.575.8202
agarner@ci.fayetteville.ar.us
www.accessfayetteville.org

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

>>> Sondra Smith 6/13/2012 12:53 PM >>>
Hi Andrew

What is the next step?

Sondra Smith CAMC, CMC
City Clerk/Treasurer
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

(479) 575-8323
ssmith@ci.fayetteville.ar.us

>>> Bobby Ferrell 6/12/2012 8:47 PM >>>

Sondra- Please consider this an official appeal, of the planning Commission's granting a variance to shaved Ice business at last night's Planning Commission, meeting, by an Alderman.

From: Sondra Smith
To: Garner, Andrew
Date: 6/14/2012 12:03 PM
Subject: Re: Fwd: appeal
Attachments: Sondra Smith.vcf

Thanks Andrew

Sondra Smith CAMC, CMC
City Clerk/Treasurer
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

(479) 575-8323
ssmith@ci.fayetteville.ar.us

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Sondra- Please consider this an official appeal, of the planning Commission's granting a variance to shaved Ice business at last night's Planning Commission, meeting, by an Alderman.



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CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council
Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director X
From: Andrew Garner, Senior Planner
Date: ADM 12-4144 (Shave the Planet Appeal)

RECOMMENDATION

On June 11, 2012 the Planning Commission recommended approval of a variance to allow Shave the Planet snowcone stand to be in operation at 3078 N. College Avenue for a total of 180 days.

BACKGROUND

The subject property is located at 3078 North College Avenue, near Hobby Lobby and Fiesta Square north of the intersection of College Avenue and Rolling Hills Drive. The snowcone stand is across College Avenue (approximately 400 feet away) from an existing ice cream shop, Maggie Moo's at 3155 College Avenue.

On March 14, 2011 the Planning Commission approved CUP 11-3765 (Shave the Planet) which permitted a snowcone stand on the property for a period of 175 days. In late spring 2012 the applicant applied for another conditional use permit to allow for their snowcone stand to remain on the property for longer than 90 days during 2012. The City Attorney advised the Planning Commission that a more appropriate approval process for these types of requests would be a variance, not a conditional use permit. The applicable ordinance has been recently changed to allow these types of requests as a variance and the applicant is again requesting permission to continue operation of their snowcone stand at this property for longer than 90 days.

The applicant requests a variance of Fayetteville Unified Development Code Section 178.04(C) to allow for their Outdoor Mobile Vendor Permit to be granted for a total of 180 days, when the maximum by ordinance is 90 days. The snowcone stand is proposed in the same location as approved last year, as indicated on the attached site plan.

DISCUSSION

At the June 11, 2012 Planning Commission meeting nine members of the public spoke (including several employees of Shave the Planet and the owner of Maggie Moo's ice cream). Their comments are summarized in the draft meeting minutes (attached). The Planning Commission approved the variance. The approval passed with a 6-1-1 vote (Commissioner Honchell voted 'no' and Commissioner Hoskins recused). Alderman Bobby Ferrell has appealed the decision.

BUDGET IMPACT

None.

New Business:

ADM 12-4144: Administrative Item (3078 N. COLLEGE AVE./SIEBERT, 252):
Submitted by ERIC SIEBERT for property located at 3078 NORTH COLLEGE AVENUE. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 1.88 acre. The request is a variance to allow for an outdoor mobile vendor (Shave the Planet snow cones) for longer than 90 days.

Andrew Garner, Senior Planner, gave the staff report.

Jason Kelley, Assistant City Attorney, asked Commissioner Hoskins if he would be recusing from the item.

Commissioner Hoskins indicated that he would be recusing.

Commissioner Winston indicated that if Commissioner Hoskins was recusing he would need to leave the room.

Commissioners Hoskins indicated he did not think he would need to leave the room as he was not directly involved in the application.

Garner discussed that it was a general practice for commissioners to leave the room when recusing.

Kelley confirmed that it was a general practice but not a legal requirement.

Commissioner Hoskins left the room.

Eric Siebert, applicant, discussed that ice cream and shaved are different. He discussed that Andy's Frozen Custard closed this year and they did not see an increase in business. They are not getting the same customers.

Katie Siebert, applicant, discussed that people come for the experience and product. She discussed different customers that come to their business from long distances for their product (Bentonville, West Fork, Siloam Springs and further as far as Stillwell, Oklahoma). They come for our experience and our produce. It is a destination.

Eric Siebert, applicant, discussed that they would be willing to plant a tree or anything we could do to make it a little more permanent.

Katie Siebert, applicant, discussed that they are willing to work with the City.

Public Comment:

Andrea Lister, discussed that the prices at Maggie Moo's are exorbitant. Shave the Planet is a place in town where I can take all my kids to get something for \$2. Ice cream and shave ice are totally different markets and two different experiences. Shave the Planet is a homegrown business.

Sarah McNeil, I work at Shave the Planet. She discussed that shaved ice and ice cream are very

different products. This site has always been used for an ice cream stand and is not a transient vendor. I was offended by that. I have lived in Fayetteville all my life and there has always been shaved ice in this location. We have people coming all the way from Centerton three times a week to get this product. Shutting down a homegrown business might be frowned upon. Shave the Planet is a locally owned business.

Jacqueline Buntin, is thankful for the existing 90-day permit. I trust the City will make a fair decision. I have known Eric and Katie for eight years. They are really interested in obeying the guidelines and doing this right. Shave the Planet has 25 total employees. Fifteen of them work at this College Avenue location. This keeps people with a job during the summer months. When I decide I want ice cream I have 10 locations in Fayetteville, that is not counting the fast food restaurants. There is plenty of competition for ice cream in Fayetteville. Their business is successful and they should be rewarded.

Cody Buntin, a resident of Fayetteville my entire life, commercial realtor. This business creates another reason to drive and spend money in this area of Fayetteville. Fiesta Square is not what it used to be. It seems out of place to deny extending this permit to a successful business. They are just bringing more traffic to this side of town.

Ben Israel, I own the property that Shave the Planet is on. I don't pay any less tax because they are only there for six months. They pay sales tax. I'm a little confused why a brick-and-mortar is preferred over this kind of business. I would encourage you to give them this variance.

Justin Leflar, school teacher at Holt Middle School. He spoke about a donation from Shave the Planet to their school to reward kids for their hard work. If this is denied where will the kids use their voucher.

Cody Yancey, discussed that it is an unfair advantage that he has to go through all this to be in business. He has to apply for a different variance every year. He has to carry the same insurance for his employees. Snow cones and ice cream are two separate things. There is no proof that it is detrimental to their sales.

Mena Shombod (sp?), Shave the Planet employee. We really rely on this job. There are not a lot of places where you can find a summer job so you can focus on academics during the other time of the year. This is a great opportunity for high school and college students to gain experience and grow their character. This stand on College has established itself as a great environment for customers. There have not been issues with traffic or any other detrimental effects. I hope that you guys consider that.

Celeste Hoskins, Maggie Moo's. I like Shave the Planet and eat there with my kids. What I was asking for is that they take into consideration that there are ordinances. We have no issue with the 90-day permit. What I am asking for is that when they are asking for that extension that an ordinance be established so that we are all on the same playing field. I think it's great to support the community. I like the couple and Shave the Planet. It is just the ordinance. I think we need to establish some playing rules here. I think this is a great business model. What stops someone like me or other businesses from doing it. I don't think this is about competition or a customer base. I'm just wanting to see some guidelines on where we're going with mobile or transient vendors. If this is something you want to set precedence for that's great.

No more public comment was presented.

Commissioner Chesser asked about the mobile vendor ordinance.

Garner discussed that this ordinance was under examination at the request of council members.

Commissioner Chesser discussed that this body doesn't write ordinance we just interpret the ordinance. There is a very specific part of the ordinance we are considering regarding whether this is a similar business. You said you had proof this was not a similar business?

Katie Siebert, applicant, discussed the HMR tax records for March, April, May, and June of last year for Shake's, Andy's, Maggie Moo's, and us. Last year Andy's was the highest grossing and they are now out of business. Last year we saw a 113% increase in our sales and most of that was due to the weather. This year you would expect since an ice cream shop went out of business we would see an increase. However, we only saw a 101% increase in our sales, this is 12% less than last year. It kind of shows that an ice cream business going out of business didn't help us.

Commissioner Chesser asked staff how an extension would hurt when the first three months of the busy season have been utilized. That seems like something we should take into consideration. The bulk of the problem is already occurring.

Garner discussed that the commission is just looking at the variance findings and he read the variance findings.

Commissioner Chesser asked staff why staff felt it was a similar business.

Garner discussed that we did not do a market study. In our drafting the findings and for the commission to consider, the rationale was what would a reasonable person think. I thought yes they are similar because it is a desert, you eat it mainly during the summer, and it is similar. Would it create an unfair advantage? I thought it could because you could have some of the same types of customers.

Commissioner Chesser asked if it would be worth it for them to only be there for 90 days.

Katie Siebert indicated that they would open in this location even if it is only for 90 days.

Commissioner Chesser asked about property tax on a brick-and-mortar versus a mobile vendor.

Jason Kelley, Assistant City Attorney, discussed that more improvements create more value and more property tax.

Commissioner Chesser discussed that lower property taxes could potentially be an unfair advantage.

Commissioner Cook agreed with Commissioner Chesser that it is not our responsibility to legislate. In this case the City Council has established the factors and it is up to our judgment. I think it is compatible and it does not create an unfair advantage.

Commissioner Cook made a motion to approve CUP 12-4144 **Commissioner Cabe** seconded the

motion.

Garner requested Commissioner Cook clarify condition of approval #3.

Commissioner Cook clarified that condition #3 be modified to require the Urban Forester to approval the type and size of tree that is planted. Commissioner Cabe agreed with this modification to the motion.

Commissioner Cabe asked when this applicant's previous application came before the commission.

Katie Siebert confirmed that it was March 26th.

Commissioner Cabe discussed that the new ordinance was revised and came through May 1 of this year. He also asked about the City Attorney's memo that was in their packet and direction for the commission on several of the terms in the ordinance such as 'similar', 'compatible'. 'not detrimental.

Jason Kelley, Assistant City Attorney, stated that it is completely up to your judgment based on the facts that have been presented. The best thing I can equate it to is if you are on a jury and you hear all this testimony and you have to decide. That is the job.

Commissioner Cabe stated that the ordinance did change and it requires judgment. The ordinance was first written and first became an opportunity for businesses to get their legs under them and do something that is atypical. I fully feel like a seasonal business is exactly that sort of opportunity. Like the applicant said there are very few brick-and-mortar businesses of this type around the country and as a seasonal business model like pool cleaning or window washing. I will be able to support this without a problem.

Commissioner Winston discussed that he has become convinced that there is a substantial amount of different between shaved ice and ice cream and I will support this.

Upon roll call the motion passed with a vote of 6-1-1. Commissioner Honchell voted 'no' and **Commissioner Hoskins** recused.



PC Meeting of June 11, 2012

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
THRU: Jeremy Pate, Development Services Director
DATE: ~~June 6, 2012~~ Updated June 12, 2012

ADM 12-4144: Administrative Item (3078 N. COLLEGE AVE./SIEBERT, 252): Submitted by ERIC SIEBERT for property located at 3078 NORTH COLLEGE AVENUE. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 1.88 acre. The request is a variance to allow for an outdoor mobile vendor (Shave the Planet snowcones) for longer than 90 days.
Planner: Andrew Garner

Findings:

Property Description and Background: The subject property is located at 3078 North College Avenue, near Hobby Lobby and Fiesta Square north of the intersection of College Avenue and Rolling Hills Drive. The snowcone stand is across College Avenue (approximately 400 feet away) from an existing ice cream shop, Maggie Moo's at 3155 College Avenue. Surrounding zoning and land use is listed in *Table 1*.

Table 1
Surrounding Zoning and Land Use

Direction from Site	Land Use	Zoning
North	Hobby Lobby shopping center	C-2, Thoroughfare Commercial
South	Mixed commercial	C-2, Thoroughfare Commercial
East	Mixed commercial/office	C-2, Thoroughfare Commercial
West	Fiesta Square shopping center	C-2, Thoroughfare Commercial

On March 14, 2011 the Planning Commission approved CUP 11-3765 (Shave the Planet) which permitted a snowcone stand on the property for a period of 175 days. In late spring 2012 the applicant applied for another conditional use permit to allow for their snowcone stand to remain on the property for longer than 90 days. The City Attorney advised the Planning Commission that a more appropriate approval process for these types of requests would be a variance, not a conditional use permit. The applicable ordinance has been recently changed to address the potential legal concerns and the applicant is again requesting permission to continue operation of their snowcone stand at this property for longer than 90 days.

Proposal: The applicant requests a variance of Fayetteville Unified Development Code Section 178.04(C) to allow for their Outdoor Mobile Vendor Permit to be granted for a total of 180 days, when the maximum by ordinance is 90 days. The snowcone stand is proposed in the same location as

approved last year, as indicated on the attached site plan.

Public Comment: At the previous Planning Commission meeting when this applicant was requesting a conditional use permit to operate their snowcone stand for longer than 90 days, the owner of the Maggie Moo's ice cream shop across College Avenue discussed objections to this proposal citing several concerns including an unfair advantage to this applicant compared to their brick-and-mortar business. The applicant notified all adjacent property owners and posted a public notice sign advertising for this meeting and staff has not received any public comment.

RECOMMENDATION: There is the potential for this snowcone business to adversely affect the Maggie Moo's ice cream shop across College Avenue as both businesses sell similar products and are in close proximity. Both businesses are very seasonal with a majority of their products sold during the summer months. As a snowcone stand is not subject to many of the same requirements as a permanent business, staff finds that the variance would create an unfair advantage that could adversely impact the ice cream shop. For these reasons staff recommends denial of the variance. These findings are discussed in more detail in the report.

Should the Planning Commission choose to approve this conditional use permit staff would recommend the following conditions of approval:

Conditions of Approval:

1. The snowcone stand shall be permitted for total of 180 days in 2012. The current Outdoor Mobile Vendor ordinance was issued on March 29, 2012, so this variance grants approval for operation until September 25, 2012.
2. The temporary vending structure shall be removed from the property by September 25, 2012.
3. Because this property has been utilized for a snowcone stand on a semi-permanent basis for a several consecutive years, the applicant or property owner shall install one ~~two-inch caliper large species shade tree~~ species and size to be determined by the urban forester prior to installation, to start bringing the property into compliance with the parking lot landscape codes.

PLANNING COMMISSION MODIFIED AND APPROVED THIS CONDITION AS NOTED (06/11/2012).

Additional Conditions/Comments:

PLANNING COMMISSION ACTION: yes Required

X Approved Denied Tabled

Motion: Cook

Second: Cabe

Vote: 6-1-1 (Honchell voted 'no' and Hoskins recused.)

Date: June 11, 2012

FINDINGS:

City of Fayetteville Unified Development Code 178.04

(C) *Variances.* Outdoor Vendors may request a variance from the Planning Commission to operate for an extended period of time, not to exceed twelve consecutive months, in the same location subject to the following standards:

- (1) A vendor may request a variance from the 90 day location requirement to operate for an extended period of time. The maximum time period that the Planning Commission may grant this variance is limited to no more than twelve consecutive months.

Finding: The applicant is requesting a variance to operate for a total of 180 days, or six months, well below the maximum.

- (2) The applicant shall comply with the notification requirements of section 157.05 of the Unified Development Code.

Finding: The applicant has notified all adjacent property owners and posted a public notice sign in compliance with section 157.05 of the UDC.

- (3) A variance may be granted by the Planning Commission when the following findings have been met:

- (a) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.

Finding: The snowcone stand does not create or worsen a dangerous traffic condition as it has operated safely in this parking lot for several years. This snowcone stand does not improve the aesthetics of the streetscape, in staff's opinion.

There is a permanent ice cream shop across College Avenue from the proposed snowcone stand. This shop is addressed at 3155 College Avenue and is approximately 410 feet north of the snowcone stand. In staff's opinion, granting the requested variance to operate the snowcone stand for six months from March 29-September 25 may adversely affect the ice cream shop which is a permanent brick-and-mortar business. The development of the building at 3155 College Avenue was required to meet many development regulations of the City including greenspace, landscaping, architectural design standards, building code, and permanent utilities. A temporary business such as the snowcone stand would directly compete with the ice cream shop and is not required to meet permanent development standards and is therefore theoretically able to offer a substantially lower price for their products than a similar brick-and-mortar business. Both the ice cream shop and snow cone stand are primarily seasonal.

According to the International Dairy Foods Association June is the highest production month of the year for ice cream. Production for ice cream remains strong through August to satisfy summer demand and production declines through the end of the year (1). The snowcone stand can operate under a temporary permit for a period of up to 90 days by right. However, to operate for six months for two years in a row establishes this as a semi-permanent business, without having to meet the standard development requirements. This results in an unequal playing field and could adversely affect a nearby business. It should be noted that this applicant has been in this location for several years in a row, including almost six months during 2011.

- (b) That the outdoor mobile vendors' presence for an extended period of time at one location will not create an unfair advantage over similar and nearby permanent businesses.

Finding: See Finding 3.a. above. The presence of this outdoor mobile vendor for an extended period of time in this one location will create an unfair advantage over similar and nearby permanent businesses, including an ice cream shop approximately 410 feet away from this location.

1 International Dairy Foods Association Website. www.idfa.org Ice Cream Sales & Trends
G:\ETC\Development Services Review\2012\Development Review\12-4093 ADM Cobble Stone Ph III Modification\03 Planning Commission\04-09-2012\Comments and Redlines

Fayetteville Unified Development Code
178.04 Outdoor Mobile Vendors Located On Private Property

- (A) *Purpose.* This section's purpose is to facilitate and control the ability of outdoor vendors to temporarily operate on private property while ensuring such use is compatible with and not detrimental to nearby properties, does not adversely affect nearby businesses, fosters an aesthetically appealing streetscape, and does not create or worsen a dangerous traffic condition.
- (B) *Requirements.* Outdoor Mobile Vendors located on private property shall meet the following requirements and submittals prior to approval:
- (1) Permit Application. Each application for a permit to conduct an Outdoor Mobile Vendor business shall be accompanied by a \$50 permit review and processing fee.
 - (2) Application for a permit to conduct an Outdoor Mobile Vendor business shall include the following items in a format acceptable to the Zoning and Development Administrator:
 - (a) Name, address and contact information.
 - (b) Type of items sold or services rendered. A change in product or service will require a new permit to be issued.
 - (c) A valid copy of all necessary permits required by State and County health authorities.
 - (d) Proof of application for remittance of HMR tax to the City of Fayetteville.
 - (e) Means to be used in conducting business including but not limited to a description of any mobile device to be used for transport or to display approved items or services.
 - (f) A detailed site plan and written description illustrating the type, location, and dimensions of the mobile vendor business including parking.
 - (g) Written authorization, signed by the property owner or legal representative of record, stating that the transient merchant business is permitted to operate on the subject property.
 - (3) The permit issued shall not be transferable in any manner.
 - (4) The permit is valid for one mobile vendor location only.
 - (5) The proposed use must be a permitted use-by-right within the underlying zoning district in order to be permitted.
 - (6) An Outdoor Mobile Vendor business may be approved by the Planning Division after making the following determinations:
 - (a) All of the requirements of 178.04(B)(2) have been met.
 - (b) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.
 - (7) Outdoor mobile vendors are allowed on a temporary basis (90 days), by nature of their temporary occupancy, in one location over a one-year (twelve month) timeframe. Outdoor mobile vendors may move to a different location at least one half mile from the original location after this 90-day period has expired. However, a new Outdoor Mobile Vendor Application will have to be reviewed and approved

by the Planning Division for a new location.

- (8) Outdoor mobile vendors shall be in compliance with parking lot requirements for any existing and the proposed business. The number of required parking spaces is determined by the use and size of the proposed transient merchant business, and by the use and size of the existing business. Parking spaces on the property where the outdoor mobile vendor is located shall be paved and striped in order to be utilized. The use of parking for an out door mobile vendor may not reduce the number of spaces necessary for other uses occurring on the property. An adequate number of parking spaces for the existing businesses and the outdoor mobile vendor must be provided onsite. The location of the outdoor mobile vendor shall not impede traffic flow or create a dangerous traffic condition, as determined by Planning Division upon review of the site plan.
- (C) *Variances.* Outdoor Vendors may request a variance from the Planning Commission to operate for an extended period of time, not to exceed twelve consecutive months, in the same location subject to the following standards:
- (1) A vendor may request a variance from the 90 day location requirement to operate for an extended period of time. The maximum time period that the Planning Commission may grant this variance is limited to no more than twelve consecutive months.
 - (2) The applicant shall comply with the notification requirements of section 157.05 of the Unified Development Code.
 - (3) A variance may be granted by the Planning Commission when the following findings have been met:
 - (a) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.
 - (b) That the outdoor mobile vendors' presence for an extended period of time at one location will not create an unfair advantage over similar and nearby permanent businesses.
 - (4) In granting the variance, the Planning Commission may require appropriate conditions and safeguards, including semi-permanent or permanent improvements to the property to secure the substantial objectives of the ordinance.

(Ord. 5185, 10-7-08; Ord. 5425, 8-2-11; Ord. No. 5498 05-01-12)

We are requesting a variance for an Outdoor Mobile Vending permit to extend for longer than 90 days. The request would grant us an additional 90 days in our current location of 3078 N College.

We are submitting this request because the shaved ice season in Fayetteville lasts anywhere from 5-7 months, depending upon the weather that year. We have a loyal following of repeat customers that are pushing for us to stay longer than 90 days.

Just as stated in our Outdoor Mobile Permit:

This mobile vending unit is a portable building on skids to be used for selling shaved ice. We will use 2 parking spaces; one to place the building and another for order/seating. The area of the parking lot we will be located in is relatively unused. The setback from College Ave is 100 feet and we will be at least that distance away from the centerline of the road. The building measures 8 feet in width and 16 feet in length. We will place 1-2 tables/chairs for seating in front of the building.



Hours of Operation: 12pm-10pm

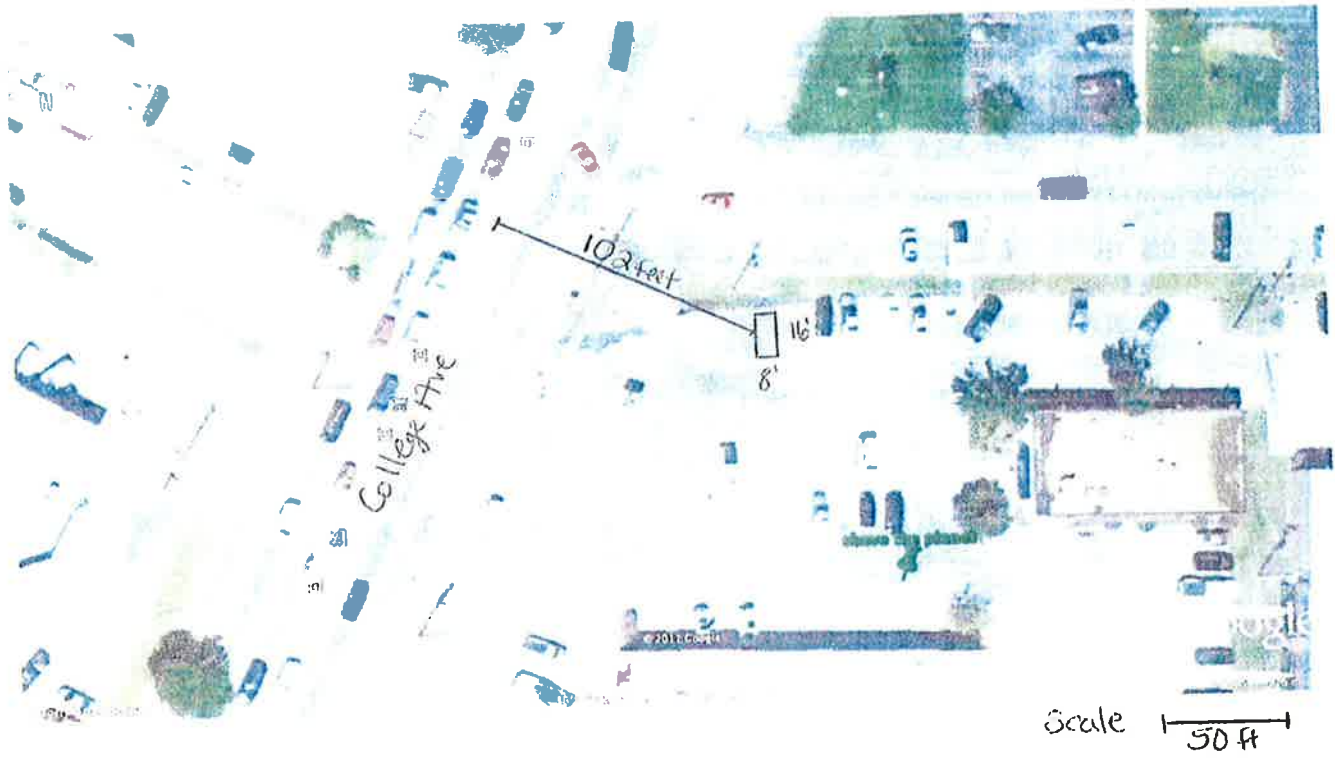
Number of Employees: 8-12

Anticipated customer flow: 20/hour during peak season

We have outside lights on our building, as well as parking lot lights. Noise will be kept to a minimum. Light music will be played for the customers. Trash is collected in a well-kept and clean trashcan and is taken out to a dumpster provided by Lessor. Traffic will not be disturbed.

Our shaved ice stand fits in well with the surrounding neighborhood and community and provides a safe, wholesome environment for kids, teens, and families to mingle.

[illegible]





Departmental Correspondence



www.accessfayetteville.org

LEGAL
DEPARTMENT

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: **Planning Commissioners**

CC: **Planning Staff**

FROM: **Kit Williams, City Attorney**

A handwritten signature in blue ink, appearing to read "Kit Williams", written over a horizontal line.

DATE: **June 1, 2012**

RE: **New amended and enacted §178.04 Outdoor Mobile Vendors
Located on Private Property: Variance request**

The City Attorney's Office and Planning Division worked together to draft and recommend amendments to the former Outdoor Mobile Vendors section. The City Council agreed with our proposed amendment and formally enacted the amended §178.04 **Outdoor Mobile Vendors Located on Private Property** by Ordinance No. 5498 (attached) passed on May 1 and effective now.

The "Purpose" section was revised to reflect the City Council's intent "to facilitate and control the ability of outdoor vendors to temporarily operate on private property while ensuring such use is compatible with and not detrimental to nearby properties, does not adversely effect nearby businesses; fosters an aesthetically appealing streetscape and does not create or worsen a dangerous traffic condition." Thus, the City Council wants to encourage outdoor mobile vendors under the right circumstances and with any necessary safeguards for nearby businesses and the public.

A 90-day Outdoor Mobile Vendor permit can be issued by Planning Staff. Lengthening this permit requires a variance approval by the Planning Commission. Variances from development requirements usually require a finding of undue hardship and unique circumstances. Planning Staff and the City Attorney's Office did not believe that was the appropriate test for merely lengthening the permit period. The City Council agreed and enacted a specific test for the Planning Commission to administer for lengthening a permit.

The City Council spelled out the specific factors that the Planning Commission should consider when determining whether or not it should grant a requested variance to extend the permit period. The last section gives the Planning Commission the power to require “appropriate conditions and safeguards” for the variance.

- “(3) A variance may be granted by the Planning Commission when the following findings have been met:
 - (a) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.
 - (b) That the outdoor mobile vendors/ presence for an extended period of time at one location will not create an unfair advantage over similar and nearby permanent businesses.
- (4) In granting the variance, the Planning Commission may require appropriate conditions and safeguards including semi-permanent or permanent improvements to the property to secure the substantial objectives of the ordinance.”

Please consider everything the City Council has determined important for your decision about whether or not to approve the requested

ORDINANCE NO. 5498

**AN ORDINANCE REPEALING AND REPLACING § 178.04 OUTDOOR
MOBILE VENDORS LOCATED ON PRIVATE PROPERTY OF THE
CODE OF FAYETTEVILLE TO PROVIDE FOR A VARIANCE PROCEDURE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
FAYETTEVILLE, ARKANSAS:**

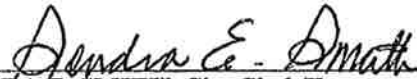
Section 1. That the City Council of the City of Fayetteville, Arkansas hereby repeals
§178.04 Outdoor Mobile Vendors Located on Private Property of the Code of Fayetteville, and
enacts a replacement §178.04 Outdoor Mobile Vendors Located on Private Property, as
presented in the attached Exhibit "A", which is incorporated herein as if set out word for word.

PASSED and APPROVED this 1st day of May, 2012.

APPROVED:

By: 
LIONELD JORDAN, Mayor

ATTEST:

By: 
SONDRA E. SMITH, City Clerk/Treasurer



TITLE XV UNIFIED DEVELOPMENT CODE

**178.04 Outdoor Mobile Vendors
Located On Private Property**

(A) *Purpose.* This section's purpose is to facilitate and control the ability of outdoor vendors to temporarily operate on private property while ensuring such use is compatible with and not detrimental to nearby properties, does not adversely affect nearby businesses, fosters an aesthetically appealing streetscape, and does not create or worsen a dangerous traffic condition.

(B) *Requirements.* Outdoor Mobile Vendors located on private property shall meet the following requirements and submittals prior to approval:

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(a) Name, address and contact information.

(b) Type of items sold or services rendered. A change in product or service will require a new permit to be issued.

(c) A valid copy of all necessary permits required by State and County health authorities.

(d) Proof of application for remittance of HMR tax to the City of Fayetteville.

(e) Means to be used in conducting business including but not limited to a description of any mobile device to be used for transport or to display approved items or services.

(f) A detailed site plan and written description illustrating the type, location, and dimensions of the mobile vendor business including parking.

(g) Written authorization, signed by the property owner or legal representative of record, stating

that the transient merchant business is permitted to operate on the subject property.

(3) The permit issued shall not be transferable in any manner.

(4) The permit is valid for one mobile vendor location only.

(5) The proposed use must be a permitted use-by-right within the underlying zoning district in order to be permitted.

(6) An Outdoor Mobile Vendor business may be approved by the Planning Division after making the following determinations:

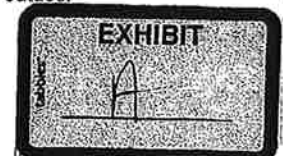
(a) All of the requirements of 178.04(B)(2) have been met.

(b) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.

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CD178:1



TITLE XV UNIFIED DEVELOPMENT CODE

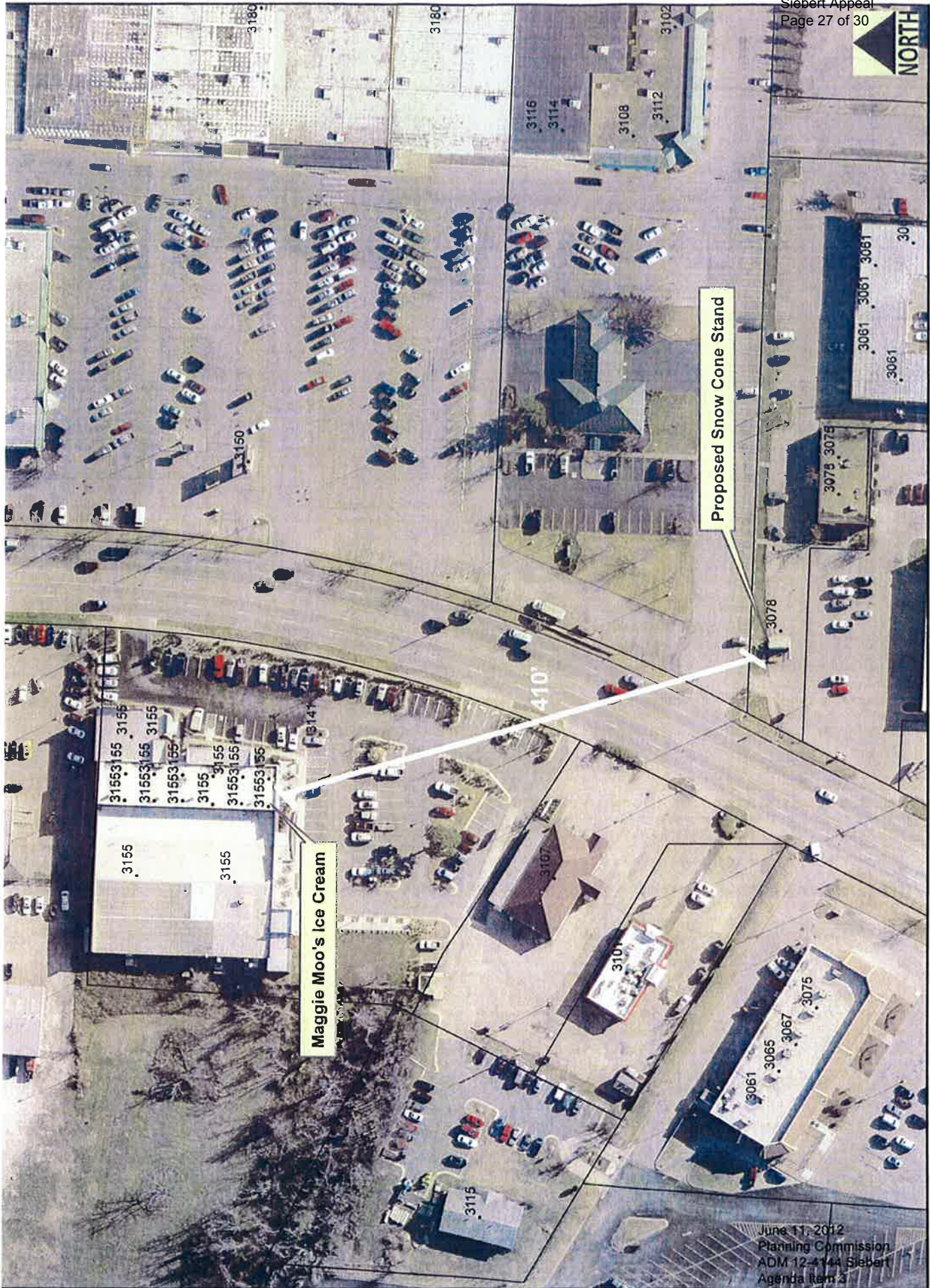
mobile vendor must be provided onsite.
The location of the outdoor mobile vendor shall not impede traffic flow or create a dangerous traffic condition, as determined by Planning Division upon review of the site plan.

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(Ord. 5185, 10-7-08; Ord. 5425, 8-2-11)

CD178:2

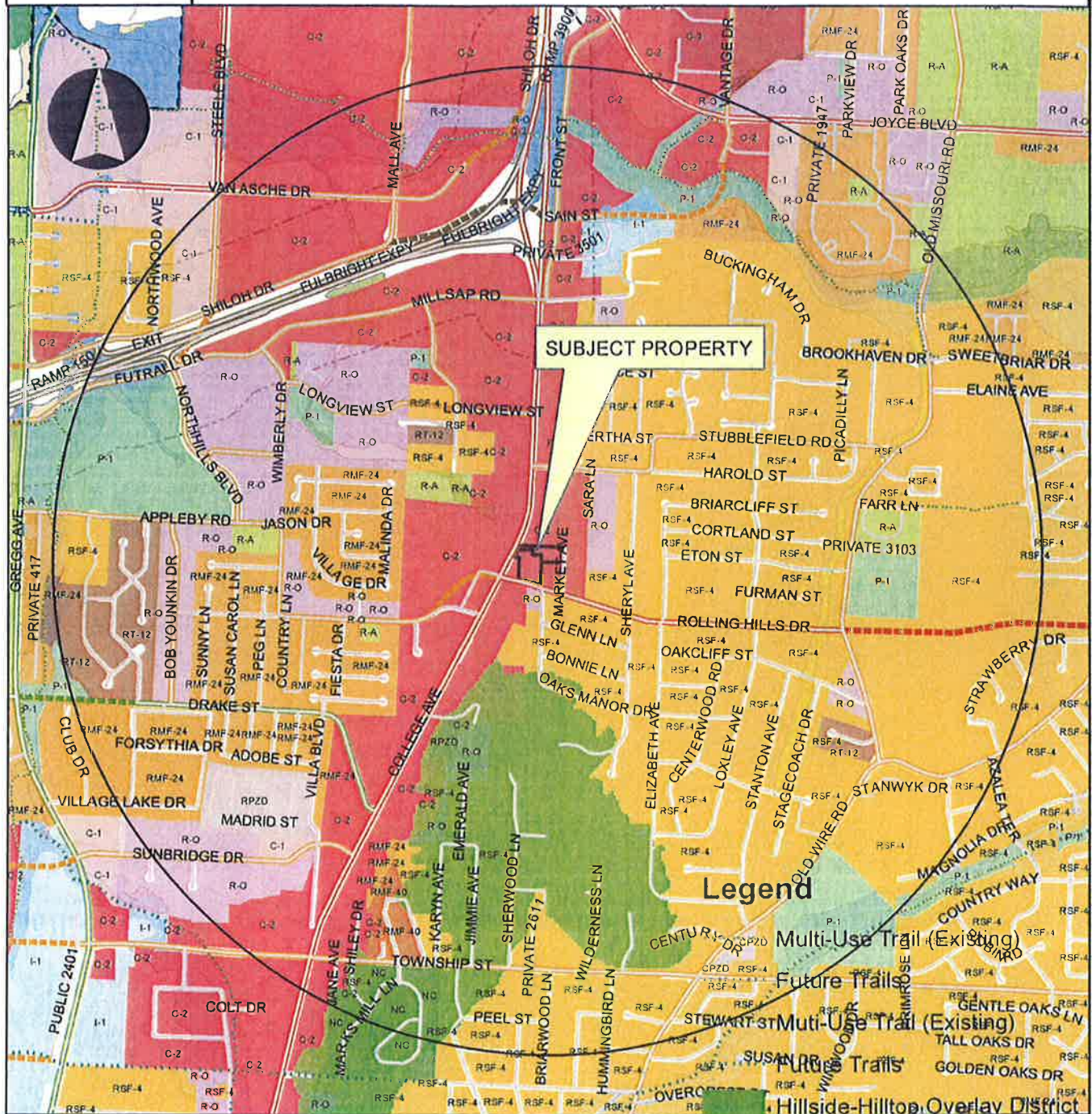


1 inch = 100 feet
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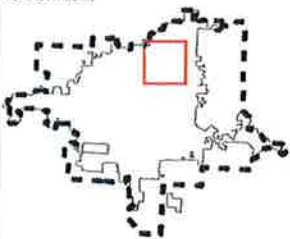
ADM12-4144

SIEBERT

One Mile View



Overview



Legend

Subject Property

ADM12-4144

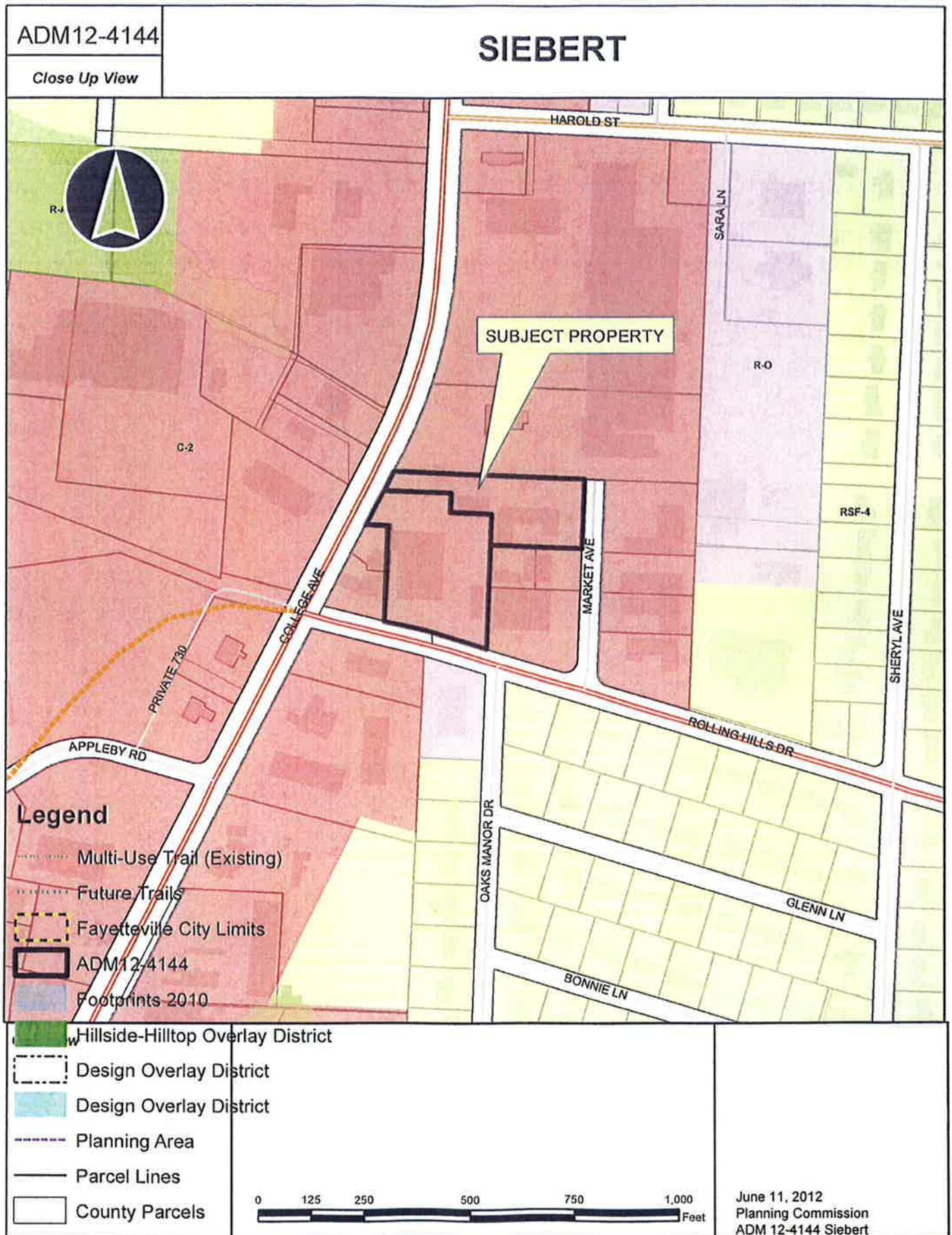
Boundary

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Miles

June 11, 2012
Planning Commission
ADM 12-4144 Siebert
Agenda Item 3
Page 16 of 18



Agenda Session 6/26/12

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Boudreaux
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
July 03, 2012**

A meeting of the Fayetteville City Council will be held on July 03, 2012 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:

Agenda Additions:

A. Consent:

1. ✓ Approval of the June 19, 2012 City Council meeting minutes.

2. ✓ **Bid #12-53 Mid-America Pool Renovation, Inc.:** A resolution awarding Bid #12-53 and authorizing a contract with Mid-America Pool Renovation, Inc. in the amount of \$256,490.00 for the construction of Wilson Park pool renovations, approving a ten percent (10%) project contingency and approving a budget adjustment.

3. **2012 Assistance to Firefighters Grant:** A resolution authorizing an application for a 80/20 matching 2012 Assistance to Firefighters Grant, through the Federal Emergency Management Agency (FEMA), in the amount of \$179,410.00 for the purchase of wildland firefighting personal protective equipment by the Fire Department.
4. **Federal Emergency Management Agency Reimbursement:** A resolution approving a budget adjustment in the amount of \$129,391.00 to reimburse the Transportation Division for expenditures incurred as a result of Spring 2011 flooding which have been reimbursed by the Federal Emergency Management Agency and/or the State of Arkansas.
5. **Steele Boulevard/Malco Theatre Entry Traffic Signal:** A resolution approving a budget adjustment in the amount of \$85,300.00 representing revenue for the installation of a traffic signal on Steele Boulevard at the entrance to the Malco Theatre.

B. Unfinished Business:

1. **RZN 12-4108 (4847 W. Wedington Dr./Bank of Wynne):** An ordinance revoking R-PZD 07-2576 (Woodstock) and rezoning that property described in rezoning petition RZN 12-4108, for approximately 31.68 acres, located at 4847 West Wedington Drive from R-PZD, Residential Planned Zoning District 07-2576, to R-A, Residential Agricultural. *This ordinance was left on the First Reading at the June 05, 2012 City Council meeting. This ordinance was left on the Second Reading at the June 19, 2012 City Council meeting.*

Left on the Second Reading

C. Public Hearing:

1. **Water and Sewer Relocation Project Condemnation and Possession:** A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by Richard E. & Dorothy Brown, Bill R. & Doris A. Kisor, Wolfredrick & Serena McMichael, Benevolent Building Corporation, SM-WLJ FAC Owner, Inc., PCC Properties, LLC, Presbytery of Arkansas, and Dunnerstock Development, Inc. needed for water and sewer relocations along Arkansas State Highway 265 between Joyce Boulevard and the northern city limits.
- Remove from resolution*
Need a new resolution from Kit.

D. New Business:

1. **Town and Gown Advisory Committee:** An ordinance enacting Article XXIV Town and Gown Advisory Committee (§33.360 through §33.365) of Chapter 33: Departments, Boards, Commissions, and Authorities of the Code of Fayetteville to provide for the creation of a Town and Gown Advisory Committee, and defining its composition, authority and duties.
 2. **ADM 12-4144 3078 N. College Ave. Siebert Appeal:** A resolution to reverse the Planning Commission's decision to grant and thereby to deny the variance to Eric Siebert to operate his Shave the Planet snow cone business longer than 90 days as an outdoor mobile vendor.
- New ordinance from Kit*
New resolution

E. City Council Agenda Session Presentations:

City Council Tour: *NONE*

Announcements:

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested persons may address the City Council on agenda items of New and Old Business. Please wait for the Mayor to request public comment and then come to the podium, give your name, address, and comments about the agenda item. Please address only the Mayor. Questions are usually answered by the Mayor, Aldermen or Staff after the public comment period is over. Please keep your comments brief and respectful. Each person is only allowed one turn at the microphone for discussion of an agenda item.

All cell phones must be silenced and may not be used within the City Council Chambers.

Below is a portion of the **Rules of Order and Procedure of the Fayetteville City Council** pertaining to City Council meetings:

Agenda additions. A new item which is requested to be added to the agenda at a City Council meeting should only be considered if it requires immediate City Council consideration and if the normal agenda setting process is not practical. The City Council may only place such new item on the City Council meeting's agenda by suspending the rules by two-thirds vote. Such agenda addition shall be heard prior to the Consent Agenda.

Consent Agenda. Consent Agenda items shall be read by the Mayor and voted upon as a group without discussion by the City Council. If an Alderman wishes to comment upon or discuss a Consent Agenda item, that item shall be removed and considered immediately after the Consent Agenda has been voted upon.

Old business and new business.

Presentations by staff and applicants. Agenda items shall be introduced by the Mayor and, if an ordinance, read by the City Attorney. City staff shall then present a report. An agenda applicant (city contractor, rezoning or development applicant, etc.) may present its proposal only during this presentation period, but may be recalled by an alderman later to answer questions. Staff and applicants may use electronic visual aides in a City Council meeting as part of their presentation.

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who violates these standards shall be ruled out of order by the Mayor, must immediately cease speaking and shall leave the podium.

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Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Boudreaux
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
July 03, 2012**

A meeting of the Fayetteville City Council will be held on July 03, 2012 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:

Agenda Additions:

A. Consent:

- 1. Approval of the June 19, 2012 City Council meeting minutes.
- 2. **Bid #12-53 Mid-America Pool Renovation, Inc.:** A resolution awarding Bid #12-53 and authorizing a contract with Mid-America Pool Renovation, Inc. in the amount of \$256,490.00 for the construction of Wilson Park pool renovations, approving a ten percent (10%) project contingency and approving a budget adjustment.

3. **2012 Assistance to Firefighters Grant:** A resolution authorizing an application for a 80/20 matching 2012 Assistance to Firefighters Grant, through the Federal Emergency Management Agency (FEMA), in the amount of \$179,410.00 for the purchase of wildland firefighting personal protective equipment by the Fire Department.
4. **Federal Emergency Management Agency Reimbursement:** A resolution approving a budget adjustment in the amount of \$129,391.00 to reimburse the Transportation Division for expenditures incurred as a result of Spring 2011 flooding which have been reimbursed by the Federal Emergency Management Agency and/or the State of Arkansas.
5. **Steele Boulevard/Malco Theatre Entry Traffic Signal:** A resolution approving a budget adjustment in the amount of \$85,300.00 representing revenue for the installation of a traffic signal on Steele Boulevard at the entrance to the Malco Theater.

B. Unfinished Business:

1.

C. Public Hearing:

1. **Water and Sewer Relocation Project Condemnation and Possession:** A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by Richard E. & Dorothy Brown, Bill R. & Doris A. Kisor, Wolfredrick & Serena McMichael, Benevolent Building Corporation, SM-WLJ FAC Owner, Inc., PCC Properties, LLC, Presbytery of Arkansas, and Dunnerstock Development, Inc. needed for water and sewer relocations along Arkansas State Highway 265 between Joyce Boulevard and the northern city limits.

D. New Business:

- Name* (1) **Town/Gown Advisory Committee:** An ordinance enacting Article XXIV Town Gown Advisory Committee (§33.360 through §33.365) of Chapter 33: Departments, Boards, Commission, and Authorities of the Code of Fayetteville to provide for the creation of a Town Gown Advisory Committee, and defining its composition, authority and duties.
- New resolution* (2) **ADM 12-4144 3078 N. College Ave. Siebert Appeal:** A resolution to reverse the Planning Commission's decision to grant and thereby ~~denies~~ the variance to Eric Siebert to operate his Shave the Planet snow cone business longer than 90 days as an outdoor mobile vendor.
- to deny*

E. City Council Agenda Session Presentations:

City Council Tour:

Announcements:

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested persons may address the City Council on agenda items of New and Old Business. Please wait for the Mayor to request public comment and then come to the podium, give your name, address, and comments about the agenda item. Please address only the Mayor. Questions are usually answered by the Mayor, Aldermen or Staff after the public comment period is over. Please keep your comments brief and respectful. Each person is only allowed one turn at the microphone for discussion of an agenda item.

All cell phones must be silenced and may not be used within the City Council Chambers.

Below is a portion of the **Rules of Order and Procedure of the Fayetteville City Council** pertaining to City Council meetings:

Agenda additions. A new item which is requested to be added to the agenda at a City Council meeting should only be considered if it requires immediate City Council consideration and if the normal agenda setting process is not practical. The City Council may only place such new item on the City Council meeting's agenda by suspending the rules by two-thirds vote. Such agenda addition shall be heard prior to the Consent Agenda.

Consent Agenda. Consent Agenda items shall be read by the Mayor and voted upon as a group without discussion by the City Council. If an Alderman wishes to comment upon or discuss a Consent Agenda item, that item shall be removed and considered immediately after the Consent Agenda has been voted upon.

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