

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
August 7, 2012**

A meeting of the Fayetteville City Council will be held on August 7, 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:

1. 2nd Quarter Financial Report 2012

Agenda Additions:

A. Consent:

1. Approval of the July 17, 2012 City Council meeting minutes. **APPROVED**
2. **Drake Field Pavement Rehab & Re-Marking Phase II Project:** A resolution approving a budget adjustment in the amount of \$7,012.00 to reflect modifications to the Drake Field Pavement Rehab & Re-Marking Phase II Project necessitated by grant program changes.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 152-12

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

3. **Pavement Maintenance Unlimited, LLC Change Order No. 2:** A resolution approving Change Order No. 2 to a contract with Pavement Maintenance Unlimited, LLC reducing the contract by \$22,050.00 for the Pavement Rehab & Remarking Phase II Project at Drake Field, and approving a budget adjustment.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 153-12

4. **Bid #12-51 Truck Centers of Arkansas:** A resolution awarding Bid #12-51 and authorizing the purchase of two (2) Freightliner M2 trucks with Kann Versa Haul recycle bodies in the total amount of \$314,366.00 from Truck Centers of Arkansas for use by the Solid Waste Division.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 154-12

5. **Preferred Office Products, Inc.:** A resolution authorizing the purchase of five (5) Canon copiers in a total amount of \$63,723.00, pursuant to a state procurement contract, from Preferred Office Products, Inc.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 155-12

6. **Federal and State Law Enforcement Forfeiture Revenue:** A resolution approving a budget adjustment in the amount of \$28,558.00 representing federal and state law enforcement forfeiture revenue received during 2012 and establishing a corresponding expense budget.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 156-12

7. **Arkansas Department of Parks and Tourism's Outdoor Recreation Grant:** A resolution authorizing an application for a 50/50 matching grant, through the Arkansas Department of Parks and Tourism's Outdoor Recreation Grant Program, in the amount of \$50,000.00 for improvements at Mount Sequoyah Gardens.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 157-12

8. **Arkansas Recreational Trails Program:** A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Recreational Trails funds and authorizing application for a 20% local match grant through the Arkansas Recreational Trails Program in an amount up to \$100,000.00 for construction of a section of Lake Fayetteville Trail.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 158-12

9. **2012 Arkansas Department of Environmental Quality Recycling Grant:** A resolution authorizing application for a 2012 Arkansas Department of Environmental Quality Recycling Grant through the Boston Mountain Solid Waste District in the amount of \$25,000.00 to fund apartment recycling containers.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 159-12

- 10. McClelland Consulting Engineers:** A resolution approving an engineering contract with McClelland Consulting Engineers in the amount of \$131,328.00, plus a \$20,000.00 project contingency, for design services for the State Highway 16 Water and Sewer Relocation Project at the West Fork of the White River.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 160-12

B. Unfinished Business:

- 1. Amend §154.03 Private Parties/Zoning Amendment:** An ordinance to amend §154.03 Private Parties/Zoning Amendment to clarify the powers of the Planning Commission and City Council when a property owner seeks rezoning. ***This ordinance was left on the First reading at the July 17, 2012 City Council meeting.***

THIS ITEM WAS LEFT ON THE SECOND READING.

C. New Business:

- 1. United States Tennis Association:** A resolution authorizing acceptance of renovation services to tennis courts at Wilson Park by the United States Tennis Association as part of its Two Court Renovation Grant Program at no cost to the City of Fayetteville.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 161-12

- 2. RZN 12-4135 (521 N. College Ave./Roddey):** An ordinance rezoning that property described in rezoning petition RZN 12-4135, for approximately 0.34 acres, located at 521 North College Avenue from C-2, thoroughfare commercial to DG, Downtown General.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5514

- 3. VAC 12-4147 (510 W. 11th St. & 989 S. School Ave./The Grove):** An ordinance approving VAC 12-4147 submitted by Morrison Shipley Engineers, Inc. for property located at 510 West 11th Street and 989 South School Avenue to vacate a portion of right-of-way, a total of 0.01 acres.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5515

- 4. ADM 12-4136 (2768 E. Shagbark Bend/Zweig):** An ordinance amending a Residential Planned Zoning District entitled R-PZD 04-05.00, Hickory Park Subdivision, located north of 2730 East Township Street, containing approximately 4.4 acres, to reflect revised building setbacks for Lot 14.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5516

- 5. ADM 12-4174 (Complete Neighborhood Plan):** A resolution to authorize City Staff to prepare a complete Neighborhood Plan for the Wedington Drive Corridor.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 162-12

- 6. Petition for Writ of Certiorari and Appeal to United States Supreme Court:** A resolution to authorize the City Attorney to file a petition for Writ of Certiorari to the United States Supreme Court and appeal the awarding of attorneys fees in the Rock Quarry Case.

THIS ITEM FAILED.

City Council Tour:

Announcements:

Adjournment: 8:10 p.m.

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.

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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.

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City Council Meeting:

August 7, 2012

Adjourn: 8:10 p.m.

Subject:	Roll				
<i>Alderman Petty was absent</i>	Lewis	✓			
	Gray	✓			
	Boudreaux	✓			
	Kinion	✓			
	Petty	<i>absent</i>			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Mayor Jordan	✓			

8-0

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

Subject:	Consent				
Motion To:					
Motion By:		Approve Gray			
Seconded:		Lewis			
Minutes <u>Approved</u> <u>Passed</u> 152-12 thru 160-12	Lewis	✓			
	Gray	✓			
	Boudreaux	✓			
	Kinion	✓			
	Petty	Absent			
	Tennant	✓			
	Ferrell	Absent during the vote.			
	Adams	✓			
	Mayor Jordan				

6-0

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

Subject:	Amend §154.03 Private Parties/Zoning Amendment				
Motion To:					
Motion By:		<i>2nd Reading</i>			
Seconded:		<i>Gray</i>			
		<i>Lewis</i>			
B. 1 Unfinished Business <i>Left on</i> <i>the</i> <i>Second</i> <i>Reading</i> <i>✓</i>	Lewis	<i>✓</i>			
	Gray	<i>✓</i>			
	Boudreaux	<i>✓</i>			
	Kinion	<i>✓</i>			
	Petty	<i>Absent</i>			
	Tennant	<i>✓</i>			
	Ferrell	<i>✓</i>			
	Adams	<i>✓</i>			
	Mayor Jordan				

70

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

Subject:		United States Tennis Association			
Motion To:		Approve			
Motion By:		Boudreaux			
Seconded:		Adams			
C. 1 New Business <u>Passed</u> 161-12	Lewis	N			
	Gray	✓			
	Boudreaux	✓			
	Kinion	N			
	Petty	Absent			
	Tennant	✓			
	Ferrell	N			
	Adams	✓			
	Mayor Jordan	✓			

5-3 Mayor Voted yes to approve

Subject:		RZN 12-4135 (521 N. College Ave./Roddey)			
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Boudreaux	Tennant		
Seconded:		Tennant	Ferrell		
C. 2 New Business <u>Passed</u> 5514 ✓	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Boudreaux	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	Absent	Absent	Absent	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Mayor Jordan				

7-0

7-0

7-0

Subject:		VAC 12-4147 (510 W. 11 th St. & 989 S. School Ave./The Grove)			
Motion To:			2nd Read	3rd Read	Pass
Motion By:			Ferrell	Ferrell	
Seconded:			Adams	Tennant	
C. 3 New Business <u>passed</u>	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Boudreaux	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	Absent	Absent	absent	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
5515 ✓	Mayor Jordan				

7-0

7-0

7-0

Subject:		ADM 12-4136 (2768 E. Shagbark Bend/Zweig)			
Motion To:			2nd Read	3rd Read	Pass
Motion By:			Ferrell	Ferrell	
Seconded:			Tennant	Tennant	
C. 4 New Business <u>passed</u>	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Boudreaux	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	absent	Absent	absent	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
5516 ✓	Mayor Jordan				

7-0

7-0

7-0

Subject:		ADM 12-4174 (Complete Neighborhood Plan)			
Motion To:		Amend map to add east of I-540 (small portion east of I-540)		Approve	
Motion By:		Lewis		Adams	
Seconded:		Adams		Boudreaux	
C. 5 New Business <u>Passed</u> 11-2-12	Lewis	✓		✓	
	Gray	✓		✓	
	Boudreaux	✓		✓	
	Kinion	✓		✓	
	Petty	Absent		Absent	
	Tennant	✓		✓	
	Ferrell	✓		✓	
	Adams	✓		✓	
	Mayor Jordan				

7-0

7-0

Subject:		Petition for Writ of Certiorari and Appeal to United States Supreme Court			
Motion To:		Approve			
Motion By:		Boudreaux			
Seconded:		Tennant			
C. 6 New Business <u>This resolution Failed</u>	Lewis	✓			
	Gray	N			
	Boudreaux	N			
	Kinion	N			
	Petty	Absent			
	Tennant	N			
	Ferrell	N			
	Adams	N			
	Mayor Jordan				

1-6 failed



Departmental Correspondence



www.accessfayetteville.org

LEGAL
DEPARTMENT

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan

THRU: Sondra Smith, City Clerk

FROM: Kit Williams, City Attorney

DATE: August 8, 2012

RE: Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of August 7, 2012

1. **Drake Field Pavement Rehab & Re-Marking Phase II Project:** A resolution approving a budget adjustment in the amount of \$7,012.00 to reflect modifications to the Drake Field Pavement Rehab & Re-Marking Phase II Project necessitated by grant program changes.
2. **Pavement Maintenance Unlimited, LLC Change Order No. 2:** A resolution approving Change Order No. 2 to a contract with Pavement Maintenance Unlimited, LLC reducing the contract by \$22,050.00 for the Pavement Rehab & Re-Marking Phase II Project at Drake Field, and approving a budget adjustment.
3. **Bid #12-51 Truck Centers of Arkansas:** A resolution awarding Bid #12-51 and authorizing the purchase of two Freightliner M2 Trucks with Kann Versa Haul Recycle Bodies in the total amount of \$314,366.00 from Truck Centers of Arkansas for use by the Solid Waste Division.
4. **Preferred Office Products, Inc.:** A resolution authorizing the purchase of five Canon Copiers in a total amount of \$63,723.00, pursuant to a State Procurement Contract, from Preferred Office Products, Inc.

5. **Federal & State Law Enforcement Forfeiture Revenue:** A resolution approving a budget adjustment in the amount of \$28,558.00 representing federal and state law enforcement forfeiture revenue received during 2012 and establishing a corresponding expense budget.
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7. **Arkansas Recreational Trails Program:** A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Recreational Trails Funds and authorizing application for a 20% local match grant through the Arkansas Recreational Trails Program in an amount up to \$100,000.00 for construction of a section of Lake Fayetteville Trail.
8. **2012 ADEQ Recycling Grant:** A resolution authorizing application for a 2012 Arkansas Department of Environmental Quality Recycling Grant through the Boston Mountain Solid Waste District in the amount of \$25,000.00 to fund apartment recycling containers.
9. **McClelland Consulting Engineers:** A resolution approving an Engineering Contract with McClelland Consulting Engineers in the amount of \$131,328.00 plus a \$20,000.00 project contingency, for design services for the State Highway 16 water and sewer relocation project at the West Fork of the White River.
10. **U.S. Tennis Association:** A resolution authorizing acceptance of renovation services to tennis courts at Wilson Park by the United States Tennis Association as part of its Two Court Renovation Grant Program at no cost to the City of Fayetteville.
11. **ADM 12-4174(Complete Neighborhood Plan):** A resolution to authorize City Staff to prepare a complete Neighborhood Plan for the Wedington Drive Corridor.

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1. **Amend §154.03 Private Parties/Zoning Amendment:** An ordinance to amend §154.03 Private Parties/Zoning Amendment to clarify the powers of the Planning Commission and City Council when a property owner seeks rezoning. ***This ordinance was left on the First reading at the July 17, 2012 City Council meeting.***

Left on the First Reading

C. New Business:

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**City of Fayetteville Arkansas
City Council Meeting Minutes
July 17, 2012**

A meeting of the Fayetteville City Council was held on July 17, 2012 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

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

ABSENT: Alderman Adams

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

Mayor Jordan recognized the pre-academic Fulbright students representing 15 countries.

City Council Meeting Presentations, Reports and Discussion Items: None

Agenda Additions: None

Consent:

Mayor Jordan: We are going to remove Item #4.

City Attorney Kit Williams: You don't really need a motion because it will be considered immediately after the Consent Agenda. There is an amendment to it.

Approval of the June 19, 2012 and July 3, 2012 City Council meeting minutes.

Approved

Parkland Dedication Fees: A resolution approving a budget adjustment in the total amount of \$38,426.00 recognizing parkland dedication fees from the Northeast and Northwest Quadrants to be applied for additions to Gulley Park and insurance proceeds related to the destruction of the Red Oak Park playground.

Resolution 142-12 as recorded in the office of the City Clerk.

Bid #12-40 Luber Bros, Inc.: A resolution awarding Bid #12-40 and authorizing the purchase of one (1) Deweze ATM72LG slope mower from Luber Bros., Inc. of Tulsa, Oklahoma in the total amount of \$41,209.40, for use by the Transportation Division, and approving a budget adjustment.

Resolution 143-12 as recorded in the office of the City Clerk.

Bid #12-48 Williams Tractor: A resolution awarding Bid #12-48 and authorizing the purchase of one (1) large square baler from Williams Tractor of Fayetteville in the total amount of \$81,488.00, for use by wastewater treatment, and approving a budget adjustment.

Removed from the Consent Agenda for discussion.

Bid #12-49 Sellers Trading Post: A resolution awarding Bid #12-49 and authorizing the purchase of two (2) Rhino FR180 batwing cutters from Sellers Trading Post of Siloam Springs in the total amount of \$30,192.00, for use by the Parks Department and wastewater treatment.

Resolution 145-12 as recorded in the office of the City Clerk.

Bid #12-50 Countryside Farm & Lawn: A resolution awarding Bid #12-50 and authorizing the purchase of one (1) mower conditioner from Countryside Farm & Lawn of Springdale in the total amount of \$20,916.08, for use by wastewater treatment.

Resolution 146-12 as recorded in the office of the City Clerk.

Bid #12-42 Endless Power Corp.: A resolution awarding Bid #12-42 and authorizing the purchase of one (1) power generator from Endless Power Corp. in the amount of \$61,330.00, plus applicable sales tax, for use at the Owl Creek lift station, and approving a budget adjustment.

Resolution 147-12 as recorded in the office of the City Clerk.

Bid #12-54 Instrument & Supply, Inc.: A resolution awarding Bid #12-54 and authorizing the purchase of three (3) large water pumps from Instrument & Supply, Inc. in the amount of \$88,800.00, plus applicable sales tax, for use at the South Mountain pump station.

Resolution 148-12 as recorded in the office of the City Clerk.

John David Brown Settlement Agreement: A resolution approving a settlement agreement with John David Brown, concerning condemnation litigation filed as part of the Highway 265 Water and Sewer Relocation and Improvement Project, in the total amount of \$46,666.50.

Resolution 149-12 as recorded in the office of the City Clerk.

Richard and Caren Hanna Settlement Agreement: A resolution approving a settlement agreement with Richard and Caren Hanna, concerning condemnation litigation filed as part of the N. Garland Avenue Improvement Project, in the total amount of \$1,600.00.

Resolution 150-12 as recorded in the office of the City Clerk.

Street Name Change – N. Chrysler Drive: A resolution renaming Frazier Street between Vantage Drive and Mountain View Drive to N. Chrysler Drive.

Resolution 151-12 as recorded in the office of the City Clerk.

Alderman Gray moved to approve the Consent Agenda as read with Bid #12-48 Williams Tractor removed for discussion. Alderman Tennant seconded the motion. Upon roll call the motion passed 7-0. Alderman Adams was absent.

The following resolution was removed from the Consent Agenda for discussion:

Bid #12-48 Williams Tractor: A resolution awarding Bid #12-48 and authorizing the purchase of one (1) large square baler from Williams Tractor of Fayetteville in the total amount of \$81,488.00, for use by wastewater treatment, and approving a budget adjustment.

Mayor Jordan read the amended resolution.

Alderman Gray moved to amend the resolution as read by the Mayor. Alderman Boudreaux seconded the motion. Upon roll call the motion passed 7-0. Alderman Adams was absent.

City Attorney Kit Williams: I will note that the only change was the inclusion of sales tax that was not included in the original amount.

Alderman Ferrell moved to approve the resolution. Alderman Tennant seconded the motion. Upon roll call the resolution passed 7-0. Alderman Adams was absent.

Resolution 144-12 as recorded in the office of the City Clerk.

Unfinished Business:

Amend §173.08 Arkansas Energy Code: An ordinance to amend §173.08 Arkansas Energy Code of the Building Regulations chapter of the U.D.C. to adopt the 2009 International Energy Conservation Code, for residential structures, with amendments herein. ***This ordinance was left on the First Reading at the June 05, 2012 City Council meeting. This ordinance was left on***

the First Reading at the June 19, 2012 City Council meeting and Tabled to the July 17, 2012 City Council meeting.

Mayor Jordan: I understand that the City Attorney does not want us to go to the second reading because he wants to read the whole thing in its entirety.

City Attorney Kit Williams: This went to the Ordinance Review Committee and several changes were made. I think that the whole ordinance should be read due to the changes. An amendment to the ordinance that was presented in your packet is in order.

Alderman Boudreaux moved to amend the ordinance. Alderman Kinion seconded the motion. Upon roll call the motion passed 7-0. Alderman Adams was absent.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director gave a brief description of the ordinance.

Alderman Boudreaux: As Chair of the Ordinance Review Committee we supported this. We made some really good amendments to it. I certainly support it and hope we can get it passed.

Alderman Petty: There was one amendment that I did not previously notice and am not sold on regarding the Hertz rating index sticker and how it is required to be displayed until the home is sold or until 90 days has past, whichever is less.

Jeremy Pate: We had a concern because there are residential structures and small apartment buildings to which this would apply that are never intended to be sold.

Alderman Petty: Do you think it would meet your intent to say until sold or first leased?

Jeremy Pate: Yes. Essentially it is until someone moves in.

Alderman Boudreaux: So until occupied.

Alderman Petty moved to amend Section 2 to read until occupied. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Adams was absent.

Alderman Petty moved to suspend the rules and go to the third and final reading. Alderman Boudreaux seconded the motion.

Alderman Ferrell: Kit, did you want that left on this reading tonight because you just read it?

City Attorney Kit Williams: It certainly wouldn't hurt to leave it tonight because it does not go into effect until September.

Alderman Ferrell: I was just wondering, was your intent to try and move forward tonight and vote on it?

Alderman Petty: I am recognizing that we didn't hear any comment tonight and I do not see any harm in being expedient.

Alderman Boudreaux: It's already gone through Ordinance Review.

A discussion followed.

Upon roll call the motion passed 6-1. Alderman Ferrell voting no. Alderman Adams was absent.

City Attorney Kit Williams read the ordinance.

Alderman Lewis: There has been a lot of work with stake holders all through this process and there are people here involved in this issue. This is a way to level the playing field, increase energy efficiency and have long term benefits for our community. This will also help create jobs. I am very supportive of this.

Alderman Ferrell: I think it is commendable that Alderman Petty, Lewis and staff want Fayetteville and its citizens to conserve energy. When I ran for office the citizens in my Ward asked if I would stand against discretionary mandated taxes, revenue measures and City requirements pronounced to them by City passed mandates that don't affect life or limb. We are asked to be the first in the state to accept an international standard that not only drives the homeowner cost up for new construction but possibly requires existing home remodels or repairs to be subject to the hand of government. I would consider voting for an incentive ordinance.

Alderman Petty: When people have asked me about this I have said this is probably the most important thing I have done since I have been elected. I would like to thank the Mayor and staff for their part on pursuing the partnerships in getting this done. The incentive is the Hertz rating. This will open a green jobs market.

Alderman Ferrell: You said we were on a race to the bottom. Do you think there is any other first class city in the State of Arkansas that has as stringent requirements for building and development as Fayetteville?

Alderman Petty: Yes, in fact most of the state is on the 2003 Code. After we pass this the answer will be no. North Little Rock is looking at the 2009 Code for commercial buildings which if passed would put them ahead of us on the commercial side.

Alderman Ferrell: I wasn't talking about just the energy side. I was talking about the whole side for development requirements. Are there some that are overall lower in the state than Fayetteville?

Alderman Petty: I think in Arkansas Fayetteville does the best. When we talk about what we can do better I think we need to cast a wider net than Arkansas.

Alderman Ferrell: I respect you but I respectfully disagree.

Mayor Jordan thanked John Coleman, who was in the audience, for his efforts in making Fayetteville better. He also thanked everyone that worked on this.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-1. Alderman Ferrell voting no. Alderman Adams was absent.

Ordinance 5512 as Recorded in the office of the City Clerk.

New Business:

Amend §154.03 Private Parties/Zoning Amendment: An ordinance to amend §154.03 Private Parties/Zoning Amendment to clarify the powers of the Planning Commission and City Council when a property owner seeks rezoning.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams gave a brief description of the ordinance.

Alderman Lewis asked what the process was when petitions are presented. She asked if they can be included in the packet.

City Clerk Sondra Smith: Anything we receive on an agenda item is included in the packet as long as we get it in time.

City Attorney Kit Williams: There have been many petitions submitted but this particular provision saying you have to have 75% vote, that issue has never come up before to my knowledge.

Alderman Lewis: And only for zoning in this case.

City Attorney Kit Williams: The Unified Development Code is for zoning only.

City Clerk Sondra Smith: We get petitions for other items so all we are talking about are petitions on an agenda item that is going before the City Council.

Alderman Ferrell: Before we went paperless it was not out of the ordinary at all to have large packets. We had petitions all the time.

City Attorney Kit Williams: This is not saying that there shouldn't be petitions, it just says that even if there are, you are still bound by the state law that a majority controls and not 75%.

Alderman Kinion: My concern is the timing. It looks like we are taking some type of process that in the past protected neighborhoods and it is taking less protection of the neighborhood that is already established, that has an organization to move forward. We need to be sure that we understand that there still is a way that a group of individuals around the zoning still has input and they still have the authority to come forward with an appeal to a City Council member and the member can bring it forward. He expressed concerns that have been expressed to him.

City Attorney Kit Williams: There is certainly no rush on this at all. It has been on the books for decades. It is just my job when I see something, that I believe is illegal, that I need to bring it to your attention and ask for a remedy on that. I am not saying that you need to pass it tonight.

Mayor Jordan: So you want to hold it on the first reading?

Alderman Kinion: Yes.

This ordinance was left on the First Reading.

Amend §167.04 Tree Preservation and Protection During Development and §177.05 Street Tree Planting Standards: An ordinance amending §167.04 Tree Preservation and Protection During Development and §177.05 Street Tree Planting Standards of the Code of Fayetteville to provide a fixed amount to be paid into the tree escrow account rather than reasonable maintenance cost estimates.

City Attorney Kit Williams read the ordinance.

Megan Dale, Urban Forester gave a brief description of the ordinance. She stated if a project comes through and we allow them to take out a certain amount of preservation, if they walk away from the bond we can not plant the number of trees required by the bond and maintain them.

Alderman Boudreaux: You referred to some examples of how developers walk away from the required trees they had planted. So they had cut down a certain amount of trees and we have lost the tree canopy.

Megan Dale: Correct, we have lost the tree canopy. They had bonded the trees with a maintenance bond and it is cheaper for them economically to walk away than to plant the trees and maintain them. We are obligated as a city to take the money we have from that bond and use it on the project.

Alderman Ferrell: Would you have any idea of what percentage of the trees that are planted make it for three years?

Megan Dale: The ordinance states that there needs to be a 90% survival rate. Realistically the people who maintain their trees pass the 90% survival rate. The ones who don't water typically don't pass.

Alderman Boudreaux: From what you have said they removed some canopy of trees so if they hadn't done anything then I could understand us not charging anything, but they have removed them. This might also encourage people to keep the trees they have on a development rather than mitigating or putting money in lieu of.

Megan Dale: The money they would make selling the lots would be almost equal to the amount of preservation not equal but it starts to even out.

Aubrey Shepherd: We are trying to get back toward the original intent and wording of the ordinance to encourage people to keep the canopy. He asked the council to please pass this.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Lewis: I will support this because it provides an incentive to preserve. I feel this will ensure the consumer will be provided with the components of their property they were entitled to.

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

Ordinance 5513 as Recorded in the office of the City Clerk

Adjournment: 7:00 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk/Treasurer

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
August 7, 2012**

A meeting of the Fayetteville City Council will be held on August 7, 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:

1. 2nd Quarter Financial Report 2012

Agenda Additions:

A. Consent:

1. Approval of the July 17, 2012 City Council meeting minutes.
2. **Drake Field Pavement Rehab & Re-Marking Phase II Project:** A resolution approving a budget adjustment in the amount of \$7,012.00 to reflect modifications to the Drake Field Pavement Rehab & Re-Marking Phase II Project necessitated by grant program changes.

3. **Pavement Maintenance Unlimited, LLC Change Order No. 2:** A resolution approving Change Order No. 2 to a contract with Pavement Maintenance Unlimited, LLC reducing the contract by \$22,050.00 for the Pavement Rehab & Remarking Phase II Project at Drake Field, and approving a budget adjustment.
4. **Bid #12-51 Truck Centers of Arkansas:** A resolution awarding Bid #12-51 and authorizing the purchase of two (2) Freightliner M2 trucks with Kann Versa Haul recycle bodies in the total amount of \$314,366.00 from Truck Centers of Arkansas for use by the Solid Waste Division.
5. **Preferred Office Products, Inc.:** A resolution authorizing the purchase of five (5) Canon copiers in a total amount of \$63,723.00, pursuant to a state procurement contract, from Preferred Office Products, Inc.
6. **Federal and State Law Enforcement Forfeiture Revenue:** A resolution approving a budget adjustment in the amount of \$28,558.00 representing federal and state law enforcement forfeiture revenue received during 2012 and establishing a corresponding expense budget.
7. **Arkansas Department of Parks and Tourism's Outdoor Recreation Grant:** A resolution authorizing an application for a 50/50 matching grant, through the Arkansas Department of Parks and Tourism's Outdoor Recreation Grant Program, in the amount of \$50,000.00 for improvements at Mount Sequoyah Gardens.
8. **United States Tennis Association:** A resolution authorizing acceptance of renovation services to tennis courts at Wilson Park by the United States Tennis Association as part of its Two Court Renovation Grant Program at no cost to the City of Fayetteville.
9. **Arkansas Recreational Trails Program:** A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Recreational Trails funds and authorizing application for a 20% local match grant through the Arkansas Recreational Trails Program in an amount up to \$100,000.00 for construction of a section of Lake Fayetteville Trail.
10. **2012 Arkansas Department of Environmental Quality Recycling Grant:** A resolution authorizing application for a 2012 Arkansas Department of Environmental Quality Recycling Grant through the Boston Mountain Solid Waste District in the amount of \$25,000.00 to fund apartment recycling containers.
11. **McClelland Consulting Engineers:** A resolution approving an engineering contract with McClelland Consulting Engineers in the amount of \$131,328.00, plus a \$20,000.00 project contingency, for design services for the State Highway 16 Water and Sewer Relocation Project at the West Fork of the White River.

B. Unfinished Business:

1. **Amend §154.03 Private Parties/Zoning Amendment:** An ordinance to amend §154.03 Private Parties/Zoning Amendment to clarify the powers of the Planning Commission and City Council when a property owner seeks rezoning. ***This ordinance was left on the First reading at the July 17, 2012 City Council meeting.***

Left on the First Reading

C. New Business:

1. **RZN 12-4135 (521 N. College Ave./Roddey):** An ordinance rezoning that property described in rezoning petition RZN 12-4135, for approximately 0.34 acres, located at 521 North College Avenue from C-2, thoroughfare commercial to DG, Downtown General.
2. **VAC 12-4147 (510 W. 11th St. & 989 S. School Ave./The Grove):** An ordinance approving VAC 12-4147 submitted by Morrison Shipley Engineers, Inc. for property located at 510 West 11th Street and 989 South School Avenue to vacate a portion of right-of-way, a total of 0.01 acres.
3. **ADM 12-4136 (2768 E. Shagbark Bend/Zweig):** An ordinance amending a Residential Planned Zoning District entitled R-PZD 04-05.00, Hickory Park Subdivision, located north of 2730 East Township Street, containing approximately 4.4 acres, to reflect revised building setbacks for Lot 14.
4. **ADM 12-4174 (Complete Neighborhood Plan):** A resolution to authorize City Staff to prepare a complete Neighborhood Plan for the Wedington Drive Corridor.
5. **Petition for Writ of Certiorari and Appeal to United States Supreme Court:** A resolution to authorize the City Attorney to file a petition for Writ of Certiorari to the United States Supreme Court and appeal the awarding of attorneys fees in the Rock Quarry Case.

D. City Council Agenda Session Presentations:

1. **Fayetteville Chamber of Commerce Economic Development 10th and 11th Quarterly Report – Chung Tan**

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

A. 2
 Drake Field Pavement Rehab &
 Re-Marking Phase II Project
 Page 1 of 4

City Council Agenda Items
 and
 Contracts, Leases or Agreements

7/17/2012

City Council Meeting Date
 Agenda Items Only

Ray M. Boudreaux

Submitted By

Aviation

Division

Transportation

Department

Action Required:

Action Required: A resolution to approve a Budget Adjustment revising the project budget for the Pavement Rehab & Re-marking Phase II project.

\$ -

Cost of this request

\$ 147,252.00

Category / Project Budget

Pavement Rehab & Re-marking Phase II

Program Category / Project Name

VARIOUS

Account Number

\$ 18,000.00

Funds Used to Date

Airport Capital Exp

Program / Project Category Name

12012 1

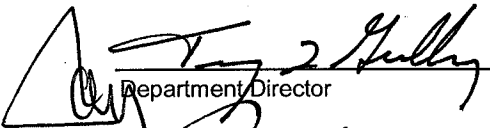
Project Number

\$ 129,252.00

Remaining Balance

Airport

Fund Name

Budgeted Item ☒Budget Adjustment Attached ☒

 Department Director

Date

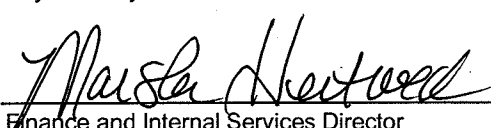
Previous Ordinance or Resolution # 128-12

Original Contract Date:


 City Attorney

Date

Original Contract Number:


 Finance and Internal Services Director

Date

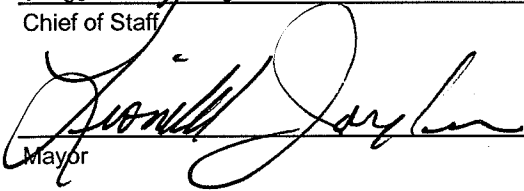
 Received in City
 Clerk's Office

06-25-12 P04:54 RCVD


 Chief of Staff

Date

 Received in
 Mayor's Office



 Mayor

Date

Comments:



City Council Meeting of: July 17, 2012

Agenda Item Number: _____

A. 2
Drake Field Pavement Rehab &
Re-Marking Phase II Project
Page 2 of 4
THE CITY OF FAYETTEVILLE, ARKANSAS
AVIATION DIVISION
4500 S School Ave, Ste F
Fayetteville, AR 72701
P (479) 718-7642

www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan
Thru: Don Marr, Chief of Staff
Thru: Terry Gulley, Transportation Director *TG*
Thru: Staff/Contract Review Committee
From: Ray M. Boudreaux, Aviation Director *RB*
Date: 6/26/12
Subject: Project Budget Revision

BACKGROUND: The City Council approved a Budget Adjustment for the Drake Field Pavement Rehab & Re-marking Phase II project at their June 19, 2012 meeting, Resolution 128-12. Revisions to the original FAA grant application and recent grant program changes by the Arkansas Department of Aeronautics necessitate a modification to the project budget.

The FAA project manager recommended elimination of the 5% contingency line item and ineligible third-party insurance from the original grant submission. The Arkansas Department of Aeronautics recently increased the FAA grant match from 5% to 10%. The project is now eligible to be fully funded, FAA 90%, State 10% of the project cost.

This Budget Adjustment aligns the expected grant revenue with the project expense based on those changes.

RECOMMENDATION: Review and approval of a Budget Adjustment.

BUDGET IMPACT: Reduces the overall project budget but increases the percentage of project costs reimbursed by grant funds. Restores the Airport's fund balance used for Design & Engineering cost at the start of the project, (except \$700 grant-ineligible expense).

Attachments: Budget Adjustment

RESOLUTION NO. _____

A RESOLUTION APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$7,012.00 TO REFLECT MODIFICATIONS TO THE DRAKE FIELD PAVEMENT REHAB & RE-MARKING PHASE II PROJECT NECESSITATED BY GRANT PROGRAM CHANGES

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 \$7,012.00 to reflect modifications to the Drake Field Pavement Rehab & Re-Marking Phase II Project necessitated by grant program changes.

PASSED and APPROVED this 17th day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

A. 2 V11.0415
Drake Field Pavement Rehab &
Re-Marking Phase II Project

Budget Year	Division: Aviation	Request Date	Adjustment Number
2012	Department: Transportation Services	7/17/2012	

BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION	
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To make necessary changes to the Pavement Rehab Phase II project budget. 1. Reduces the FAA grant revenue in accordance with changes requested by the FAA project manager. 2. Increases the expected Arkansas Department of Aeronautics (ADA) grant revenue from 5% to 10% in accordance with recent revisions to the ADA grant program for FAA grant matching. 3. Decreases the project expense to eliminate the 5% contingency line item per FAA request. 4. Increases the amount to be restored to the Airport's Use of Fund Balance account that was used for design and engineering costs during project formulation. *z*

Prepared By: James Nicholson

Reference: AIP 41

Budget & Research Use Only

Type: A B C D E P

General Ledger Date

Posted to General Ledger

Initial	Date
---------	------

Checked / Verified

Initial _____ Date _____

TOTAL BUDGET ADJUSTMENT

(7,012)

(7,012)

Increase / (Decrease)

Project.Sub
Number

Account Name

Account Number

Expense

Revenue

Use of fund balance

5550.0955.4999.99

(6,663)

State grants on Fed proj

5550.0955.6803.00

6,592

12012 . 1

Pavement Rehab & Resurfacing II

5550.0955.6820.41

(6.941)

12012 . 1

Pavement Rehab & Re Marking II

5550.3960.7820.41

(7,012)

12012 . 1

EXHIBIT

A

City of Fayetteville Staff Review Form

A. 3
 Pavement Maintenance Unlimited, LLC
 Change Order No. 2
 Page 1 of 8

City Council Agenda Items
 and
 Contracts, Leases or Agreements

8/7/2012

City Council Meeting Date
 Agenda Items Only

Ray M. Boudreaux

Submitted By

Aviation

Division

Transportation

Department

Action Required:

Action Required: A resolution to approve Change Order No. 2 to a Contract with Pavement Maintenance Unlimited, LLC, for the Pavement Rehab & Re-marking Phase II project. Approve a Budget Adjustment revising the project budget.

\$ (22,050.00)

Cost of this request

\$ 147,252.00

Category / Project Budget

Pavement Rehab & Re-marking Phase II

Program Category / Project Name

5550.3960.7820.41

Account Number

\$ 18,000.00

Funds Used to Date

Airport Capital Exp

Program / Project Category Name

12012 1

Project Number

\$ 129,252.00

Remaining Balance

Airport

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☒

Ray M. Boudreaux
 Department Director

7/18/12
 Date

Previous Ordinance or Resolution # 128-12

Paul A. Behr
 City Attorney

7/18/12
 Date

Original Contract Date: 6/19/2012

Original Contract Number:

Paul A. Behr
 Finance and Internal Services Director

7-19-2012
 Date

Received in City Clerk's Office
UNP

Ray M. Boudreaux
 Chief of Staff

7-19-12
 Date

Received in
 Mayor's Office



David L. Jordan
 Mayor

7/19/12
 Date

Comments:



AVIATION DIVISION
FAYETTEVILLE EXECUTIVE AIRPORT • DRAKE FIELD

CITY COUNCIL AGENDA MEMO/STAFF CONTRACT REVIEW MEMO

TO: Mayor Jordan
THRU: Chief of Staff
THRU: Staff/Contract Review Committee
THRU: Terry Gulley, Transportation Director *TJG*
FROM: Ray M. Boudreaux, Aviation Director *RB*
DATE: July 2, 2012

SUBJECT: Approve Change Order #2 and a revised Budget Adjustment for Phase II of the Pavement Rehab and Painting Project at the Airport. Signature of the Mayor.

RECOMMENDATION: Approve the attached Change Order # 2 to the project and a revised Budget Adjustment for the project. Signature of the Mayor.

BACKGROUND: The City Council has approved the project and application to the FAA and State Aeronautics for grants to cover the cost of the project. The FAA Program Manager for our airport has changed and thus we must change our grant application and issue a new change order to eliminate the changes we made with Change Order #1. The new program manager will not accept the change order even though the funding is available for use at our airport. The funding is Entitlement Funding granted to general aviation airport for projects such as this. The remaining authorized grant funding for this Airport will roll over to next fiscal year.

BUDGET IMPACT: This change order reduces the project amount and reallocates the 5% local match to the State which changed its policy to fund the full 10% against FAA 90/10 grants until the FAA returns to the 95/5 funding policy next year.

Attachments: Change Order #2
Staff Review
Budget Adjustment

RESOLUTION NO. _____

A RESOLUTION APPROVING CHANGE ORDER NO. 2 TO A CONTRACT WITH PAVEMENT MAINTENANCE UNLIMITED, LLC REDUCING THE CONTRACT BY \$22,050.00 FOR THE PAVEMENT REHAB & RE-MARKING PHASE II PROJECT AT DRAKE FIELD, 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 approving Change Order No. 2 to a contract with Pavement Maintenance Unlimited, LLC reducing the contract by \$22,050.00 for the Pavement Rehab & Re-marking Phase II project at Drake Field.

Section 2. 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 7th day of August, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

A. 3
Pavement Maintenance- Unlimited, LLC
Change Order No. 2

Page 4 of 8
Adjustment Number

To make necessary changes to the Pavement Rehab Phase II project budget. 1. Reduces the FAA grant revenue in accordance with changes requested by the FAA project manager. 2. Increases the expected Arkansas Department of Aeronautics (ADA) grant revenue from 5% to 10% in accordance with recent revisions to the ADA grant program for FAA grant matching. 3. Decreases the project expense to eliminate the 5% contingency line item and Change Order #1 per FAA request. 4. Increases the amount to be restored to the Airport's Use of Fund Balance account that was used for design and engineering costs during project formulation.

TOTAL BUDGET ADJUSTMENT		(29,062)	(29,062)		
Account Name	Account Number	Increase / (Decrease) Expense	Revenue	Project.	Sub Number
Use of fund balance	5550.0955.4999.99		(6,663)	.	.
State grants on Fed proj	5550.0955.6803.00		4,387	12012	1
Pavement Rehab & Re-Marking Phase II	5550.0955.6820.41		(26,786)	12012	1
Pavement Rehab & Re-Marking Phase II	5550.3960.7820.41	(29,062)		12012	1
				.	.
				.	.
				.	.
				.	.
				.	.
				.	.

EXHIBIT



CHANGE ORDER

Order No. 2
Date: July 11, 2012
Agreement Date: June 19, 2012

NAME OF PROJECT: Phase II, Airfield Pavement Rehabilitation & Striping (AIP Proj. No. 3-05-0020-41-2012)

OWNER: City of Fayetteville (Airport Department)

CONTRACTOR: Pavement Maintenance Unlimited, LLC

The following changes are hereby made to the CONTRACT DOCUMENTS:

1. Delete the quantity increases for Bid Items No. 3 and 5 from Change Order No. 1. **Delete cost of \$ 22,050.00 from the contract.**

Justification:

1. The Owner has been unable to convince the FAA that the additional striping are necessary and thus the FAA will not allow these items to be added to original bid amounts of the Contract and to the FAA Grant the City will receive.

CONTRACT PRICE prior to this Change Orders: \$ 121,240.00

Decrease in Contract Price: \$ (22,050.00)

Revised CONTRACT PRICE Including this Change Order: \$ 99,190.00

Final Completion Time Prior to This Change Order: 45 Calendar Days

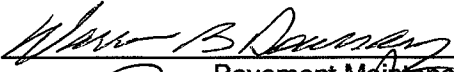
Net Time Change Resulting From This Change Order: 0 Calendar Days

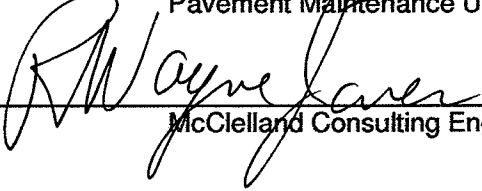
Change to CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased) by 0 calendar days.

Approvals Required:

To be effective this Order must be approved by the Owner if it changes the scope or objective or the PROJECT, or as may otherwise be required by the GENERAL CONDITIONS.

Requested by:  7-10-12
Pavement Maintenance Unlimited, LLC Date

Recommended by:  7-12-12
McClelland Consulting Engineers, Inc. Date

Approved by: _____
City of Fayetteville Date

CHANGE ORDER

Order No. 2
Date: July 11, 2012
Agreement Date: June 19, 2012

NAME OF PROJECT: Phase II, Airfield Pavement Rehabilitation & Striping (AIP Proj. No. 3-05-0020-41-2012)

OWNER: City of Fayetteville (Airport Department)

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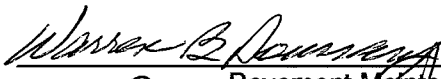
Net Time Change Resulting From This Change Order: 0 Calendar Days

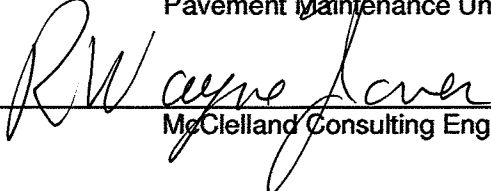
Change to CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased) by 0 calendar days.

Approvals Required:

To be effective this Order must be approved by the Owner if it changes the scope or objective or the PROJECT, or as may otherwise be required by the GENERAL CONDITIONS.

Requested by:  7-10-12
Pavement Maintenance Unlimited, LLC Date

Recommended by:  7-12-12
McClelland Consulting Engineers, Inc. Date

Approved by: _____
City of Fayetteville Date

CHANGE ORDER

Order No. 2
Date: July 11, 2012
Agreement Date: June 19, 2012

NAME OF PROJECT: Phase II, Airfield Pavement Rehabilitation & Striping (AIP Proj. No. 3-05-0020-41-2012)

OWNER: City of Fayetteville (Airport Department)

CONTRACTOR: Pavement Maintenance Unlimited, LLC

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Decrease in Contract Price: \$ (22,050.00)

Revised CONTRACT PRICE Including this Change Order: \$ 99,190.00

Final Completion Time Prior to This Change Order: 45 Calendar Days

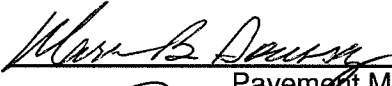
Net Time Change Resulting From This Change Order: 0 Calendar Days

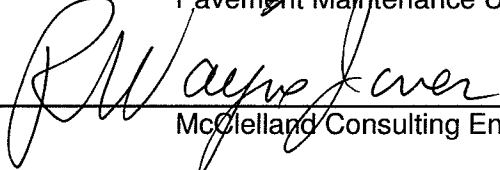
Change to CONTRACT TIME:

The CONTRACT TIME will be (~~increased~~) (decreased) by 0 calendar days.

Approvals Required:

To be effective this Order must be approved by the Owner if it changes the scope or objective or the PROJECT, or as may otherwise be required by the GENERAL CONDITIONS.

Requested by:  7-10-12
Pavement Maintenance Unlimited, LLC Date

Recommended by:  7-12-12
McClelland Consulting Engineers, Inc. Date

Approved by: _____
City of Fayetteville Date

CHANGE ORDER

Order No. 2
Date: July 11, 2012
Agreement Date: June 19, 2012

NAME OF PROJECT: Phase II, Airfield Pavement Rehabilitation & Striping (AIP Proj. No. 3-05-0020-41-2012)

OWNER: City of Fayetteville (Airport Department)

CONTRACTOR: Pavement Maintenance Unlimited, LLC

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Decrease in Contract Price: \$ (22,050.00)

Revised CONTRACT PRICE Including this Change Order: \$ 99,190.00

Final Completion Time Prior to This Change Order: 45 Calendar Days

Net Time Change Resulting From This Change Order: 0 Calendar Days

Change to CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased) by 0 calendar days.

Approvals Required:

To be effective this Order must be approved by the Owner if it changes the scope or objective or the PROJECT, or as may otherwise be required by the GENERAL CONDITIONS.

Requested by: Wann B. Downum 7-10-12
Pavement Maintenance Unlimited, LLC Date

Recommended by: R. Wayne 7-12-12
McClelland Consulting Engineers, Inc. Date

Approved by: _____
City of Fayetteville Date

City of Fayetteville Staff Review Form

A. 4
 Bid #12-51 Truck Centers of Arkansas
 Page 1 of 6

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

8/7/2012

**City Council Meeting Date
 Agenda Items Only**

Dennis Pratt / Barbara Olsen
Submitted By

Fleet Operations
Division

Transportation
Department

Action Required:

A resolution awarding Bid #12-51 to Truck Centers of Arkansas of Springdale, Arkansas in the amount of \$314,366 for the purchase of two recycle trucks.

\$ 314,366.00
 Cost of this request

\$ 1,556,000.00
 Category / Project Budget

Solid Waste Vehicles / Equipment
 Program Category / Project Name

9700.1920.5802.00
 Account Number

\$ 775,629.00
 Funds Used to Date

Vehicles and Equipment
 Program / Project Category Name

02082.2012
 Project Number

\$ 780,371.00
 Remaining Balance

Shop Fund
 Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐

Ty 2 Gully 7-19-12
 Department Director Date

Previous Ordinance or Resolution # _____

[Signature] 7-19-12
 City Attorney Date

Original Contract Date: _____

Original Contract Number: _____

Paul a. Behn 7-19-2012
 Finance and Internal Services Director Date

Received in City Clerk's Office 7-19-12 P01:34 RCVD
USK

Ty 2 Gully 7-20-12
 Chief of Staff Date

Received in Mayor's Office
 ENTERED 7/19/12
[Signature]

[Signature] 7/20/12
 Mayor Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor/City Council

Thru: Terry Gulley, Director of Transportation *TJL*

From: Dennis Pratt, Fleet Operations Supt.

Date: July 16, 2012

Subject: Purchase of two Recycle Trucks for Solid Waste

PROPOSAL: That City Council approve the purchase of two Freightliner M2 trucks with Kann Versa Haul recycle bodies in the amount of \$314,366 for use by Solid Waste Division.

RECOMMENDATION: Bid 12-51 was opened May 23, 2012. One bid was received; a bid tab sheet is attached. I recommend acceptance of this bid.

These two trucks will replace units #471 and #472, 2003 Freightliner Recycle trucks which are no longer dependable for full time front line use. These trucks were due for replacement in 2011 but were pushed back to 2012. The new units should arrive and go into service in January 2013.

This was presented to the Equipment Committee on July 31, 2012.

BUDGET IMPACT: These replacements were budgeted for on both the capital and operating sides.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #12-51 AND AUTHORIZING THE PURCHASE OF TWO (2) FREIGHTLINER M2 TRUCKS WITH KANN VERSA HAUL RECYCLE BODIES IN THE TOTAL AMOUNT OF \$314,366.00 FROM TRUCK CENTERS OF ARKANSAS FOR USE BY THE SOLID WASTE DIVISION

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 #12-51 and authorizing the purchase of two (2) Freightliner M2 trucks with Kann Versa Haul recycle bodies in the total amount of \$314,366.00 from Truck Centers of Arkansas for use by the Solid Waste Division.

PASSED and APPROVED this 7th day of August, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



BID: 12-51
 DATE: 05/23/12
 TIME: 3:00 PM
 CITY OF FAYETTEVILLE

Bid 12-51, Recycle Trucks

BIDDER	Make & Model	UNIT PRICE	EST. QUANTITY	TOTAL BASE BID
1 Truck Centers of Arkansas	Freightliner M2	\$ 87,629.50	2	\$ 175,259.00
	Kann Versa Havi	\$ 69,553.50	2	\$ 139,107.00
				\$ 314,366.00

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

157,183.00 EACH

CERTIFIED:

P. Vice

P. VICE, PURCH MGR

Julie Paladino
 WITNESS

05/23/12
 DATE

City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

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

Requisition No.:	Date: A. 4 7/16/2012
P.O Number:	Expected Delivery Date:

Vendor #: 16751	Vendor Name: TRUCK CENTERS OF ARKANSAS	Mail Yes: No: X
--------------------	---	-----------------

Address:	Fob Point:	Taxable Yes: No: X	Quotes Attached Yes: No: X
----------	------------	--------------------	----------------------------

City:	State:	Zip Code:	Ship to code: 50	Division Head Approval: <i>[Signature]</i>
-------	--------	-----------	------------------	--

Requester: BARBARA OLSEN	Requester's Employee #: 1940	Extension: 485
-----------------------------	------------------------------	----------------

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	2012 FREIGHTLINER M2 TRUCK WITH KANN	2	EA	157,183.00	\$314,366.00	9700.1920.5802.00	02082.2012		
2	VERSA HAUL RECYCLE BODY, PER BID SPECS				\$0.00				
3	BID 12-51. TO BE UNIT 4016, FA 704016, AND				\$0.00				704016
4	UNIT 4017, FIXED ASSET 704017				\$0.00				704017
5					\$0.00				
6					\$0.00				
7					\$0.00				
8					\$0.00				
9					\$0.00				
10					\$0.00				
*	Shipping/Handling		Lot		\$0.00				

Special Instructions:

Subtotal:	\$314,366.00
Total:	\$314,366.00

Approvals:

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

City of Fayetteville Staff Review Form

A. 5
Preferred Office Products, Inc.
Page 1 of 10

City Council Agenda Items
and
Contracts, Leases or Agreements

August 7th, 2012

City Council Meeting Date
Agenda Items Only

Peggy Vice

Submitted By

Purchasing

Division

Finance & Internal Services

Department

Action Required:

Approval to purchase five copiers in the amount of \$63,723 from the State of Arkansas Canon Copier Contract. The vendor is Preferred Office Products Inc. of Fayetteville, AR. They are currently the City's copier maintenance contract provider.

\$ 63,723.00

Cost of this request

\$ 140,435.00

Category / Project Budget

Fixed Assets/Replacement Copier

Program Category / Project Name

4270.9270.5801.00

Account Number

0

Funds Used to Date

Replacement Copier Fund

Program / Project Category Name

04038.1

Project Number

\$ 140,435.00

Remaining Balance

Replacement Fund

Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐

Paul A. Behr

7-20-2012

Department Director

Date

Previous Ordinance or Resolution #

Jim Bell

7-20-12

City Attorney

Date

Original Contract Date:

Original Contract Number:

Paul A. Behr

7-23-2012

Finance and Internal Services Director

Date

Received in City 20-12 P03:34 RCVD
Clerk's Office

Terry Gully

7-23-12

Chief of Staff

Date

Donald Johnson

7/23/12

Mayor

Date

Received in
Mayor's Office

ENTERED
7/23/12

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan & City Council

Thru: Paul Becker, Finance & Internal Services Director

From: Peggy Vice, Purchasing Manager *P. Vice*

Date: July 20, 2012

Subject: Replacement Copiers

PROPOSAL:

In 2003, the City began evaluating copiers available on the competitively bid State of Arkansas Copier Contract. Several brands were evaluated for a month each and resulted in the City selecting Canon, as the copier that best fit the City's needs.

Canon copiers have provided the City with an outstanding life span and productivity, now replacing copiers every 6 or 7 years as opposed to the pre-consolidated life span of 4 or less years.

Occasionally we must replace a copier for a division where volume has outgrown their machine. We then transfer the used machine to another division where a lower monthly volume is expected. This allows them to reduce or eliminate the number of copies made on small inkjet printers or fax machines. Costs per copy for small inkjet printers and fax machines are three to four times the cost of utilizing the City's Canon copier program. This process has allowed the City to reduce copy expense, eliminate most small printers and fax machines, and keep the number of copiers and replacement printers we have had to purchase to a bare minimum. Because most all employees are familiar with Canon copiers, there is very little or no training needed, thus increasing productivity.

Reasons we recommend Canon copiers are:

- Minimum maintenance service cost. This has saved the City thousands of dollars.
- Virtually eliminated the purchase of small fax machines and printers which have extremely expensive toner costs.
- Free E-Copy Desktop software that allows staff to edit PDF documents without purchasing Adobe Acrobat Professional at a cost of up to \$150 for each user. There are 400 E-Copy software licenses available to the City that came with the purchase of Canon copiers.
- Decreased need to purchase special scanners to be used with the document imaging system.
- Savings on paper with more availability for 2-sided printing.
- All the same copier platforms allow efficient use for users that need to make copies when they are in other departments.
- Printer, scanner, fax and copier capability all in one machine.
- Ability to fax from a user's desktop eliminating the need to leave their workstation.

- Ability to read all the meters remotely without having to go to each machine
- Scans both sides of a document with a single pass, saving staff time and reducing wear and tear on the machine.
- Scanning to email has eliminated the need to make paper copies.
- Reduced staff time spent by Purchasing and IT by working with one vendor.
- Increased staff productivity with digital technology and reduced equipment downtime.
- Faster and fuller range of printing solutions.
- Allows scanning of documents to a mailbox to pull up and print later. Allows the ability to print on demand instead of storing paper copies.
- Free training on E-Copy software, training on use of copiers and review of office work flow provided at no charge by Preferred Office Products.

RECOMMENDATION:

Approve the purchase of five Canon copiers from Preferred Office Products who has the State of Arkansas Canon Copier Contract in the amount of \$63,723.00 total for all five units which includes sales tax.

BUDGET IMPACT:

Copiers are budgeted in the copier replacement account. Divisions are charged by the copy for the actual number of copies they make each month. The maintenance service program with Preferred Office Products requires no minimum contract. Each division pays only for the copies they make. The charge for a black and white copy is .031/copy and color is .18/copy. Color machines default to black and white so color is used only when needed for a specific application such as maps, graphs, etc. There is no charge to the division for scanning or faxing.

This per copy charge is to pay for the City's maintenance contract to Preferred Office Products, toner, staples, paper and a small amount to fund the replacement account. At the beginning of each month the prior month copier readings are read and a journal entry is created that charges each division for the amount of copies they have made for that month.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE PURCHASE OF FIVE (5) CANON COPIERS IN A TOTAL AMOUNT OF \$63,723.00, PURSUANT TO A STATE PROCUREMENT CONTRACT, FROM PREFERRED OFFICE PRODUCTS, INC.

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 purchase of five (5) Canon copiers in a total amount of \$63,723.00, pursuant to a state procurement contract, from Preferred Office Products, Inc.

PASSED and **APPROVED** this 7th day of August, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



319 South 9th Fort Smith, AR 72902-1621 479-782-7991 Fax 479-782-3772
4256 Frontage Road Fayetteville, AR 72703 479-521-6209 Fax 479-521-8986

www.preferred-office.com

Company: **City of Fayetteville District Court**

Date: **June 7, 2012**

Expiration Date: ~~July 7, 2012~~

Qty.	Equipment	Product Number	M.S.R.P.	State Contract Price
1	Canon imageRUNNER ADVANCE 4051	4801B003AA	\$12,500.00	\$6,360.00
1	Cassette Feeding Unit AF1	3755B001AA	\$1,523.00	\$877.50
1	Paper Deck Unit B2	3655B004AA	\$2,205.00	\$1,687.50
1	PCL Printer Kit AN1	4814B004AA	\$735.00	\$607.50
1	Super G3 FAX Board AK1	4816B002AA	\$840.00	\$742.50
Total Investment				\$10,275.00
PLUS APPLICABLE TAX				
Copies Per Month PreferredCare Extra Service Agreement Includes complete inspections, cleaning, lubrication, adjustments and all standard parts necessary to maintain equipment in good operating condition, plus any drums needing replacement due to normal yield expiration and all consumable items such as toner and developer. (Excludes staples and paper.)				
Excess B & W Copies will be billed in arrears @			\$0.0136	Per Copy

For your convenience, this quotation will become an order when accepted and approved.

.0093

QUOTATION ACCEPTED

BY: _____
DATE: _____

Notes



319 South 9th Fort Smith, AR 72902-1621 479-782-7991 Fax 479-782-3772
4256 Frontage Road Fayetteville, AR 72703 479-521-6209 Fax 479-521-8986

www.preferred-office.com

Company: **City of Fayetteville Prosecuting Attorney**

Date: **April 10, 2012**

Address:

City:

Attn:

Expiration Date: ~~May 10, 2012~~

Qty.	Equipment	Product Number	M.S.R.P.	State Contract Pricing
1	Color imageRUNNER ADVANCE C5045 Base Model	3615B023AD	\$17,850.00	\$9,860.00
1	Cabinet Type B	4364B001AA	\$300.00	\$243.00
1	Staple Finisher C1 (include Buffer Pass Unit G1)	3656B002AA	\$2,835.00	\$2,160.00
1	PCL Printer Kit AE1	3670B006AA	\$840.00	\$607.50
1	Universal Send Advanced Feature Set D1	3405B010AA	\$1,155.00	\$877.50
1	Universal Send Security Feature Set D1	3406B006AA	\$945.00	\$742.50
1	Super G3 FAX Board AE1	3675B002AA	\$840.00	\$648.00
Total Investment				\$15,138.50
PLUS APPLICABLE TAX				
PreferredCare Extra Service Agreement Includes complete inspections, cleaning, lubrication, adjustments and all standard parts necessary to maintain equipment in good operating condition, plus any drums needing replacement due to normal yield expiration and all consumable items such as toner and developer. (Excludes staples and paper.)				
Excess B & W Copies will be billed in arrears @			\$0.0136	Per Copy
Excess Color copies will be billed in arrears @			\$0.0971	Per Copy

For your convenience, this quotation will become an order when accepted and approved.

QUOTATION ACCEPTED

BY: _____

DATE: _____

Notes



319 South 9th Fort Smith, AR 72902-1621 479-782-7991 Fax 479-782-3772
4256 Frontage Road Fayetteville, AR 72703 479-521-6209 Fax 479-521-8986

www.preferred-office.com

Company: **City of Fayetteville Planning**

Date: **April 10, 2012**

Address:

City:

Attn:

Expiration Date: ~~May 10, 2012~~

Qty.	Equipment	Product Number	M.S.R.P.	State Contract Pricing
1	Color imageRUNNER ADVANCE C5035 Base Model	3616B023AD	\$13,020.00	\$7,316.00
1	Cassette Feeding Unit AD1	3654B001AA	\$1,523.00	\$877.50
1	Staple Finisher C1 (include Buffer Pass Unit G1)	3656B002AA	\$2,835.00	\$2,160.00
1	External 2/3 Hole Puncher B1	3660B002AA	\$893.00	\$607.50
1	PCL Printer Kit AE1	3670B006AA	\$840.00	\$607.50
1	Super G3 FAX Board AE1	3675B002AA	\$840.00	\$648.00
Total Investment				\$12,216.50
PLUS APPLICABLE TAX				
PreferredCare Extra Service Agreement Includes complete inspections, cleaning, lubrication, adjustments and all standard parts necessary to maintain equipment in good operating condition, plus any drums needing replacement due to normal yield expiration and all consumable items such as toner and developer. (Excludes staples and paper.)				
Excess B & W Copies will be billed in arrears @			\$0.0136	Per Copy
Excess Color copies will be billed in arrears @			\$0.0971	Per Copy

For your convenience, this quotation will become an order when accepted and approved.

QUOTATION ACCEPTED

BY: _____

DATE: _____

Notes



319 South 9th Fort Smith, AR 72902-1621 479-782-7991 Fax 479-782-3772
4256 Frontage Road Fayetteville, AR 72703 479-521-6209 Fax 479-521-8986

www.preferred-office.com

Company: **City of Fayetteville Water and Sewer**

Date: **April 19, 2012**

Address:

City:

Attn:

Expiration Date: ~~May 19, 2012~~

Qty.	Equipment	Product Number	M.S.R.P.	State Contract
1	Color imageRUNNER ADVANCE C2020 Base Model	3612B003AA	\$6,615.00	\$3,717.00
1	Cabinet Type D	5153B001AA	\$137.00	\$113.40
1	Inner Finisher C1	3756B001AA	\$1,260.00	\$850.50
1	PCL Printer Kit AG1	3775B005AA	\$840.00	\$607.50
1	Super G3 FAX Board AH1	3780B002AA	\$840.00	\$648.00
Total Investment				\$5,936.40
PLUS APPLICABLE TAX				
Copies Per Month PreferredCare Extra Service Agreement Includes complete inspections, cleaning, lubrication, adjustments and all standard parts necessary to maintain equipment in good operating condition, plus any drums needing replacement due to normal yield expiration and all consumable items such as toner and developer. (Excludes staples and paper.)				
Excess B & W Copies will be billed in arrears @			\$0.0136	Per Copy
Excess Color copies will be billed in arrears @			\$0.0971	Per Copy

For your convenience, this quotation will become an order when accepted and approved.

QUOTATION ACCEPTED

BY: _____

DATE: _____

Notes



319 South 9th Fort Smith, AR 72902-1621 479-782-7991 Fax 479-782-3772
4256 Frontage Road Fayetteville, AR 72703 479-521-6209 Fax 479-521-8986

www.preferred-office.com

Company: **City of Fayetteville Parks**

Date: **April 10, 2012**

Address:

City:

Attn:

Expiration Date: ~~May 10, 2012~~

Qty.	Equipment	Product Number	M.S.R.P.	State Contract Pricing
1	Color imageRUNNER ADVANCE C5045 Base Model	3615B023AD	\$17,850.00	\$9,860.00
1	Cassette Feeding Unit AD1	3654B001AA	\$1,523.00	\$877.50
1	Staple Finisher C1 (include Buffer Pass Unit G1)	3656B002AA	\$2,835.00	\$2,160.00
1	External 2/3 Hole Puncher B1	3660B002AA	\$893.00	\$607.50
1	PCL Printer Kit AE1	3670B006AA	\$840.00	\$607.50
1	Super G3 FAX Board AE1	3675B002AA	\$840.00	\$648.00
Total Investment				\$14,760.50
PLUS APPLICABLE TAX				
PreferredCare Extra Service Agreement Includes complete inspections, cleaning, lubrication, adjustments and all standard parts necessary to maintain equipment in good operating condition, plus any drums needing replacement due to normal yield expiration and all consumable items such as toner and developer. (Excludes staples and paper.)				
Excess B & W Copies will be billed in arrears @			\$0.0136	Per Copy
Excess Color copies will be billed in arrears @			\$0.0971	Per Copy

For your convenience, this quotation will become an order when accepted and approved.

QUOTATION ACCEPTED

BY: _____

DATE: _____

Notes

City of Fayetteville Staff Review Form

A. 6
Federal and State Law Enforcement
Forfeiture Revenue
Page 1 of 4

City Council Agenda Items
and
Contracts, Leases or Agreements

8/7/2012

City Council Meeting Date
Agenda Items Only

Greg Tabor
Submitted By

Police Projects
Division

Police
Department

Action Required:

Approval of a budget adjustment to recognize federal and state law enforcement forfeiture revenue received during budget year 2012 and establish expense budget in the amount of \$28,558.

\$ 28,558.00
Cost of this request

\$ 278,466.00
Category / Project Budget

LE Forfeitures
Program Category / Project Name

1010-2920-5802.00
Account Number

\$ 40,742.74
Funds Used to Date

Forfeitures
Program / Project Category Name

03045-1; 03046-1; 09024-2009
Project Number

\$ 237,723.26
Remaining Balance

General
Fund Name

Budgeted Item ☐Budget Adjustment Attached ☒


Department Director

7-17-12
Date

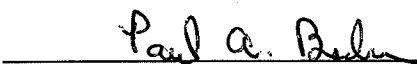
Previous Ordinance or Resolution #


City Attorney

7-18-12
Date

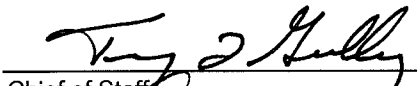
Original Contract Date:

Original Contract Number:


Finance and Internal Services Director

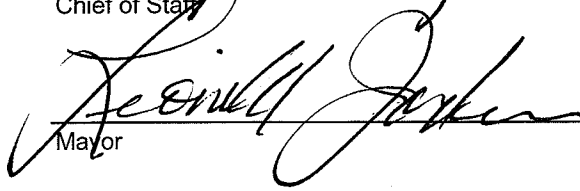
7-19-2012
Date

Received in City Clerk's Office 07-13-12 A08:46 RCVD



Chief of Staff

7-19-12
Date

Received in
Mayor's Office


Mayor

7/19/12
Date



Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and Members of the City Council

From: Greg Tabor, Chief of Police 

Date: July 20, 2012

Subject: Federal and State Law Enforcement Forfeitures for Fayetteville Police Department

PROPOSAL:

The Fayetteville Police Department receives forfeitures as a result of civil proceedings concerning cash or property seized during a criminal investigation. Most of the forfeitures we have received in the past are a direct result from the efforts of the officers we assign to the 4th Judicial District Drug Task Force (4th DTF) and the local office of the Federal Drug Enforcement Agency (DEA). By statute, federal and state forfeitures are to be spent for law enforcement purposes only. All purchases utilizing these funds must follow the City of Fayetteville Purchasing Policy.

The federal forfeitures consist of Department of Justice funds which are drug related forfeitures and Department of Treasury funds which are Internal Revenue Service related forfeitures. The requested budgeted adjustment will recognize the following forfeitures: \$25,698 from the Department of Justice; \$1,577 from the Department of Treasury; and \$1,283 from state forfeitures.

RECOMMENDATION:

Staff recommends approval of a budget adjustment to recognize federal and state law enforcement forfeiture revenue received during budget year 2012 and establish expense budget in the amount of \$28,558.

BUDGET IMPACT:

Increase expenses to correspond with federal and state law enforcement forfeiture revenue received during budget year 2012.

RESOLUTION NO. _____

A RESOLUTION APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$28,558.00 REPRESENTING FEDERAL AND STATE LAW ENFORCEMENT FORFEITURE REVENUE RECEIVED DURING 2012 AND ESTABLISHING A CORRESPONDING EXPENSE BUDGET

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 \$28,558.00 representing federal and state law enforcement forfeiture revenue received during 2012 and establishing a corresponding expense budget.

PASSED and APPROVED this 7th day of August, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

A. 6
Federal and State Law Enforcement
Adjustment Number
Page 4 of 4

City of Fayetteville Staff Review Form

A. 7
 Arkansas Department of Parks and
 Tourism's Outdoor Recreation Grant
 Page 1 of 18

City Council Agenda Items
 and
 Contracts, Leases or Agreements

8/7/2012

City Council Meeting Date
 Agenda Items Only

Carole Jones *CJ*
 Submitted By

Park Planning
 Division

Parks and Recreation
 Department

Action Required:

Parks and Recreation requests City Council approval of a resolution to authorize the City to apply for \$50,000 from the Arkansas Parks and Tourism Outdoor Recreation Grants Program for improvements at Mount Sequoyah Gardens.

\$ 50,000.00
 Cost of this request

\$ 151,268.00
 Category / Project Budget

Mt. Sequoyah Garden Improvements
 Program Category / Project Name

2250.0925.4809.00

2250.9255.5315.00

Account Number

\$ 393.00
 Funds Used to Date

Parks Development
 Program / Project Category Name

02013.1202

Project Number

\$ 150,875.00
 Remaining Balance

Neighborhood Park Development
 Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐

Connie Gromston
 Department Director 7-17-12
 Date

Previous Ordinance or Resolution # _____

Jeff Bailey
 City Attorney 7-17-12
 Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Beck
 Finance and Internal Services Director 7-17-2012
 Date

Received in City 7-17-12 10:53 RCVD
 Clerk's Office

Don Man
 Chief of Staff 7-17-12
 Date

Received in
 Mayor's Office

Frank Jordan
 Mayor 7/18/12
 Date

ENTERED
 7/17/12
 JH

Comments:



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council

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

From: Carole Jones, Park Planner II *CJ*

Date: July 20, 2012

Subject: Resolution to apply for 2013 Arkansas Outdoor Recreation Grant
Agenda Request for August 7, 2012 Meeting

PROPOSAL:

The Arkansas Department of Parks and Tourism annually offers a matching grant opportunity through its Outdoor Recreation Grants Program. Each year eligible entities may apply for funds for projects that create opportunity for outdoor recreation. The grant is funded from two sources. The Land and Water Conservation Fund (LWCF) is a federal program with funds derived from the sale of federal surplus real estate property, federal motor boat fuel tax, and Outer Continental Shelf mineral receipts. The Natural and Cultural Resources Grant and Trust Fund (NCRGTF) is a state program with funds collected from a tax on the transfer of certain real estate in the State of Arkansas. LWCF and NCRGTF funds are included in the Department of Parks and Tourism's Outdoor Recreation Grants Program for funding outdoor recreation facilities. Only incorporated cities and counties may apply. This is a 50/50 reimbursable matching grant with a \$250,000 maximum request on matching funds.

In 2009, Arkansas Parks and Tourism awarded our City with \$50,000 for the development of Doc Mashburn Park. Other parks funded in part by this grant include Sweetbriar Park, Bryce Davis Park, Braden Park, Grinders Skate Park at Walker Park, Gulley Park, Veterans Memorial Park at Lake Fayetteville Park and the Botanical Garden of the Ozarks at Lake Fayetteville Park. The 2013 grant application deadline is August 31, 2012. A resolution from the City of Fayetteville is required to apply for the grant (see attached sample resolution).

A public hearing was held at Mount Sequoyah Gardens on June 7, 2012 to gather input from the public regarding recreation needs and to prioritize an eligible grant project (see attached public hearing affidavit of publication and minutes). An outreach to groups such as ethnic minority populations, the elderly and persons with disabilities was attained through additional group meetings. Specific projects for the grant application were not defined at the outreach meetings or the public hearing.

Staff has analyzed available matching funds and current projects and recommends applying for funds for the development and improvements to Mount Sequoyah Gardens including ADA accessibility (see attached conceptual site plan).

The grant application must include detailed budgets, plans, specifications and bid documents that are ready for immediate bid and construction and asks the applicant to specify how funding meets the needs of the community.

This grant contains twelve (12) obligations covering items such as compliance of the Americans for Disabilities Act and requiring that the property be retained in perpetuity for outdoor recreation use (see attached grant obligations). The project area of Mount Sequoyah Gardens meets all of these obligations.

Section 6(f) (3) of the LWCF Act states "No property acquired or developed with the assistance under this section shall, without the approval of the Secretary of the United States Department of the Interior, be converted to other than public outdoor recreation use." If this property must ever be used for anything other than outdoor recreation use, it is possible to convert the park boundary.

The Parks and Recreation Advisory Board approved the selection of this project for the 2013 Arkansas Parks and Tourism Outdoor Recreation Grant. The conceptual plan was approved by PRAB on July 2, 2012 (see attached PRAB meeting minutes).

RECOMMENDATION:

Parks and Recreation requests City Council approval of a resolution to authorize the City to apply for \$50,000 from the Arkansas Parks and Tourism Outdoor Recreation Grants Program for improvements at Mount Sequoyah Gardens.

BUDGET IMPACT:

This grant application is for \$50,000. The Arkansas Outdoor Recreation Grant is a 50/50 matching grant. If the full amount requested is awarded, the City is responsible for matching \$50,000 towards the project. Currently, the Mount Sequoyah Gardens project has \$98,000 budgeted.

Attachments:

Sample Resolution
Public Hearing Affidavit of Publication
Public Hearing Minutes and Sign In Sheet from June 7, 2012
Conceptual Site Plan
Arkansas Outdoor Recreation Grant Obligations
PRAB Meeting Minutes from July 2, 2012

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING AN APPLICATION FOR A 50/50 MATCHING GRANT, THROUGH THE ARKANSAS DEPARTMENT OF PARKS AND TOURISM'S OUTDOOR RECREATION GRANT PROGRAM, IN THE AMOUNT OF \$50,000.00 FOR IMPROVEMENTS AT MOUNT SEQUOYAH GARDENS

WHEREAS, the City of Fayetteville seeks to improve recreation facilities at Mount Sequoyah Gardens and wishes to seek grant funding assistance; and

WHEREAS, in order to obtain the funds necessary to develop and/or improve the site for such a recreation area, it is necessary to obtain a 50/50 matching grant from the Arkansas Department of Parks and Tourism's Outdoor Recreation Grant Program; and

WHEREAS, the plans for such recreation area has been prepared and the price therefore has been established; and

WHEREAS, the City Council of the City of Fayetteville understands the grantee and grantor will enter into a binding agreement which obligates both parties to policies and procedures contained in the *Land and Water Conservation Fund Grants Manual* including, but not limited to the following: the park area defined by the project boundary map, submitted in the application, must remain in outdoor recreation use in perpetuity, regardless if the property is bought or developed with matching grant funds and; all present and future overhead utility lines within the project boundary must be routed away or placed underground and; the project area must remain open and available for use by the public at all reasonable times of the day and year; facilities can be reserved for special events, league play, etc. but cannot be reserved, leased or assigned for exclusive use, and; the project area must be kept clean, maintained, and operated in a safe and healthful manner; and

WHEREAS, the City Council of the City of Fayetteville is well aware and apprised of the above-mentioned project, and will provide the local portion of the development cost of the entire project.

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 Mayor to make application to the Arkansas Department of Parks and Tourism for assistance to develop recreational facilities at Mount Sequoyah Gardens located in the City of Fayetteville; therefore such application shall be submitted as expediently as possible.

PASSED and APPROVED this 7th day of August, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

RESOLUTION NO. _____

WHEREAS, _____, Arkansas seeks to improve the recreation facilities and wishes to seek grant funding assistance; and

WHEREAS, in order to obtain the funds necessary to develop and/or improve the site for such a recreation area, it is necessary to obtain a 50/50 Matching Grant from the Arkansas Department of Parks and Tourism's Outdoor Recreation Grant Program; and

WHEREAS, the plans for such recreation areas have been prepared and the price therefore has been established; and

WHEREAS, this governing body understands the grantee and grantor will enter into a binding agreement which obligates both parties to policies and procedures contained in the *Land and Water Conservation Fund Grants Manual* including, but not limited to the following; the park area defined by the project boundary map, submitted in the application, must remain in outdoor recreation use in perpetuity, regardless if the property is bought or developed with matching grant funds and; all present and future overhead utility lines within the project boundary must be routed away or placed underground and; the project area must remain open and available for use by the public at all reasonable times of the day and year; facilities can be reserved for special events, league play, etc. but cannot be reserved, leased or assigned for exclusive use, and; the project area must be kept clean, maintained, and operated in a safe and healthful manner.

City Council/Quorum Court is well aware and apprised of the above-mentioned project, and will provide the local portion of the development cost of the entire project:.

NOW, THEREFORE, BE IT RESOLVED by the City Council/Quorum Court of _____, Arkansas that the Mayor/County judge is hereby authorized to make application to the Arkansas Department of Parks and Tourism for assistance to develop recreational facilities in _____ park located at _____ for the City/County; therefore such application shall be submitted as expediently as possible.

Passed this _____ day of _____, 2012.

APPROVED: _____
Mayor/County Judge Clerk

NORTHWEST ARKANSAS NEWSPAPERS LLC

NORTHWEST ARKANSAS DEMOCRAT-GAZETTE

THE MORNING NEWS OF SPRINGDALE

THE MORNING NEWS OF ROGERS

NORTHWEST ARKANSAS TIMES

BENTON COUNTY DAILY RECORD

212 NORTH EAST AVENUE, FAYETTEVILLE, ARKANSAS 72701 | P.O. BOX 1607, 72702 | 479-442-1700 | WWW.NWANEWS.COM

A. 7

Arkansas Department of Parks and
Tourism's Outdoor Recreation Grant
Page 7 of 18

AFFIDAVIT OF PUBLICATION

I, Karen Caler, do solemnly swear that I am the Legal Clerk of the Northwest Arkansas Newspapers, LLC, printed and published in Washington and Benton County, Arkansas, bona fide circulation, that from my own personal knowledge and reference to the files of said publication, the advertisement of:

City of Fayetteville

Public Hearing

Was inserted in the Regular Editions on:
May 30, 2012

Publication Charges: \$ 78.00

Karen Caler
Karen Caler



Subscribed and sworn to before me
This 30 day of May, 2012.

Cathy Wiles
Notary Public
My Commission Expires: 2/20/2014

****NOTE****

Please do not pay from Affidavit. Invoice will be sent.

NORTHWEST ARKANSAS NEWSPAPERS
212 N. EAST AVENUE
FAYETTEVILLE, AR 72701
(479) 442-1700

A. 7
Arkansas Department of Parks and
Tourism's Outdoor Recreation Grant
Page 8 of 18

TERMINAL ID: 00007104060
MERCHANT #: 00001213099

VISA FLEET
*****0894
CLK: CKIMBRO EXP.: **/**
SALE
BATCH: 854 SQ: 032442
DATE: 05/10/12 TIME: 09:40:17
AV: Z - ZIP APPROVED: 002470
MANUAL

TOTAL \$ 78.00

* REPRINT *
I AGREE TO PAY ABOVE
TOTAL AMOUNT ACCORDING
TO CARD ISSUER AGREEMENT
(MERCHANT AGREEMENT
IF CREDIT VOUCHER)

SIGN X _____
CITY OF FAYETTEVILLE - ALAN B

CUSTOMER COPY

*Alan
Bearden*

5/30/12

*Receipt of Payment for
Public Meeting Notice
To Run 5/30/12*

A public hearing was held on June 7, 2012 at Mount Sequoyah Gardens located at 100 North Summit Avenue. There were 13 people in attendance plus four City of Fayetteville employees. The hearing began at 5:35 PM. The hearing was filmed by the City of Fayetteville Cable Administration staff to be broadcast on the government channel at a later date. Parks staff in attendance were:

Alison Jumper	Park Planning Superintendent
Chase Gipson	Recreation Superintendent
Carole Jones	Park Planner II

Alison Jumper opened the meeting with information about the Arkansas Parks and Tourism's Outdoor Recreation Grant Program. Jumper described the details of the 50/50 match process and how the land must remain in outdoor recreation use forever. Jumper explained that funds could be used for land acquisition, park development or a combination of both. Jumper mentioned past projects that utilized grant funds. Carole Jones went over the grant criteria and requirements, including the grant deadline and ADA requirements. Jones then asked the public for comments and ideas.

A citizen inquired what projects were on the Capital Improvements Plan (CIP) list for Parks and Recreation.

Jumper explained that funds are currently budgeted in the CIP project list for developing Mount Sequoyah Gardens, Wilson Park pool renovations and signage. Future projects in the 2013-2017 CIP list were focused on the community parks such as Wilson, Walker and Gulley Parks as well as some improvements to the Parks and Recreation offices. Jumper also stated that the City Council has reviewed the 2013-2017 CIP but has not approved it yet.

Comments and ideas from the public included:

- Citizen expressed the need to develop the Regional Park in southwest Fayetteville and connect to Kessler Mountain Greenways.
- Two citizens expressed the need for maintaining existing park properties particularly by removing invasive plant species.
- Citizen expressed the need for additional soccer fields.
- Citizen expressed the need for restrooms that would remain open year round along Scull Creek Trail.
- Citizen expressed the need for additional trash cans along the trails.
- Citizen expressed the need for a soft surface trail located within a natural, wooded area within the city limits with benches and other areas for viewing birds, wildlife and wildflowers.
- Citizen expressed the need for habitat restoration projects.
- Citizen expressed the need for access to the West Fork White River in Bayyari Park with an ADA-accessible observation platform.
- Citizen expressed the need for interpretive/educational signage with historical and native plant information.
- Citizen expressed the need for a drinking fountain, a sculpture, an outdoor classroom, interpretive signage and a walking trail at the World Peace Wetland Prairie.



www.accessfayetteville.org

A. 7
Arkansas Department of Parks and
Tourism's Outdoor Recreation Grant
THE CITY OF FAYETTEVILLE, ARKANSAS
PARKS AND RECREATION DEPARTMENT
113 West Mountain
Fayetteville, AR 72701
P (479) 444-3471 F (479) 521-7714

- Citizen expressed the need for park land acquisition on the west side of town (west of U.S. Interstate 540) with connections to the trail system.

Parks staff stated that citizens who were unable to attend the hearing could submit their comments to the Parks and Recreation Department by e-mail, U.S. mail or by phone. The meeting concluded at 6:40 PM.

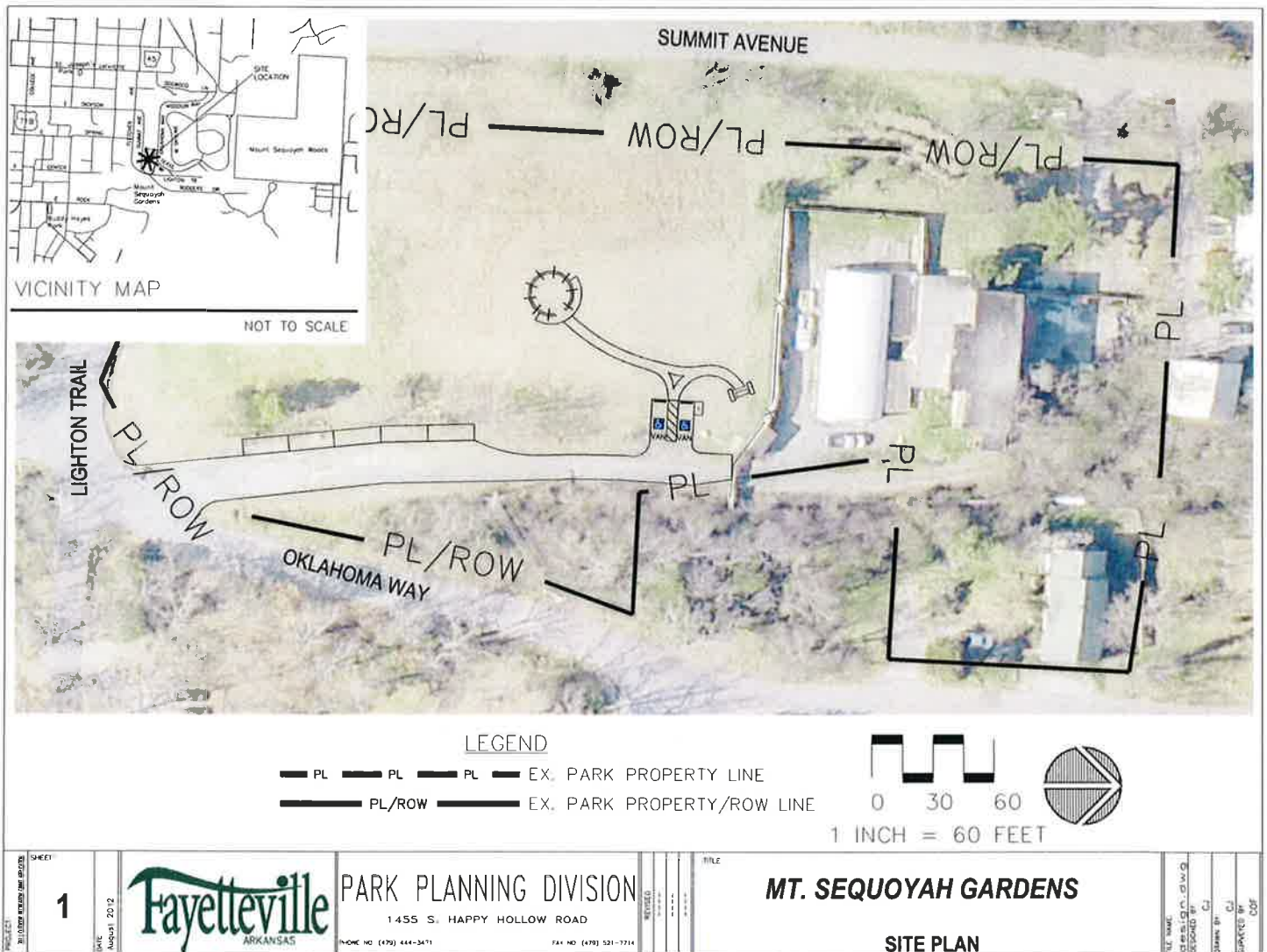


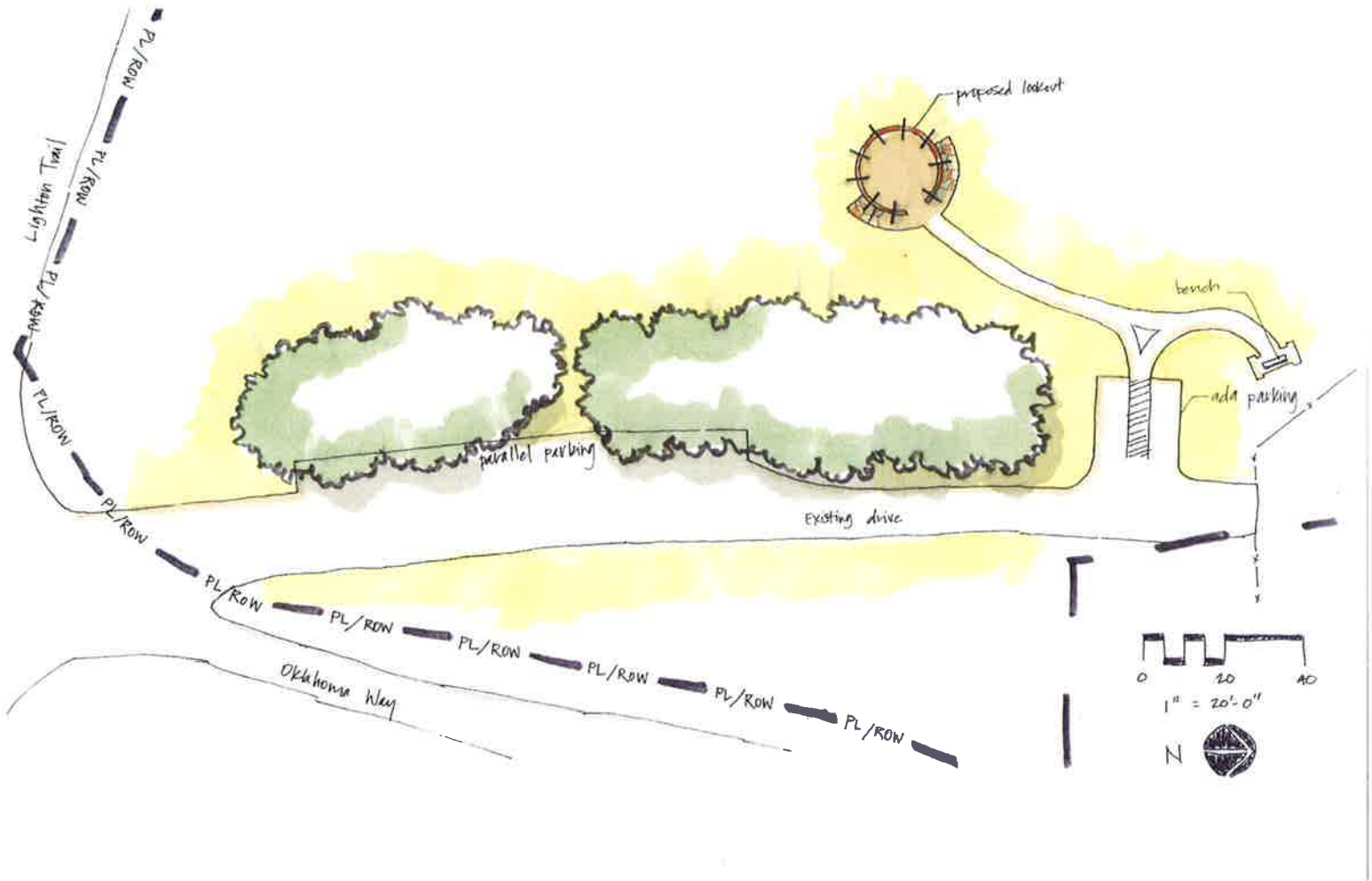
Arkansas Department of Parks and Tourism
2013 Outdoor Recreation Grant Program Public Hearing
Mount Sequoyah Gardens
5:30 PM Thursday, June 7, 2012
Sign In Sheet

A. 7
Arkansas Department of Parks and
Tourism's Outdoor Recreation Grant
Page 11 of 18



Name	Address	Phone	E-mail
1. Sharon Dawson	904 E. Rodgers Dr	587-8839	sdawsonl@juno
2. Bob Caulk	790 Mission Way		bobcaulk@cp.net
3. Sara Caulk	"		sara-caulk@yahoo.com
4. Alan Long	2075 W Archer Dr	466-8281	alanthomaslong@gmail.com
5. Tracy Varnil	531 E Rock St	479-811-7023	
6. Andy Stockton	2703 Woodcliff, 72701		amy@endeavorfoundation.net
7. Will LaPage	4309 E Laurendale	72701	curranmments@earthlink.net
8. Lauren Hawkins	1101 S. Duncan Ave	72701	LHdesign@hotmail.com
9. Joyce Richards	1673 N. Stephens	72703	joycerichards@hotmail.com
10. David Orr	1564 W. Cedar St.	72703	ozarknature@gmail.com
11. Aubrey James Shepherd	1101 S. Duncan Ave		aubrey.shepherd@hotmail.com
12. NAN LAWLER	68 S. KESTREL	442-2263	nlawler@uark.edu
13. RICHARD COVEY	68 S. KESTREL	442-2263	
14.			
15.			
16.			
17.			
18.			
19.			
20.			
21.			
22.			







WHERE TO SEND THE APPLICATION

Outdoor Recreation Grants Program
Department of Parks and Tourism
One Capitol Mall
Little Rock, Arkansas 72201

WHO CAN PREPARE THE APPLICATION?

- The application can be prepared locally.
- The application can be prepared by consultants. (Grant preparation cannot be paid for with grant funds).
- The application can be prepared by the local areawide Planning or Economic Development Districts or the Regional Planning Commissions.

WHAT ARE OUR OBLIGATIONS IF WE RECEIVE A GRANT?

We are jointly committed! Both the Department of Parks and Tourism's Outdoor Recreation Grants Program and the project sponsor are committed to long term program compliance. After the project is completed and all grant funds have been disbursed, our commitment to the requirements of the Arkansas Matching Grant Program continues. These ongoing commitments include:

1. Once a public park project boundary has been identified by the local project sponsor and provided to the Department of Parks and Tourism, all facilities constructed within that boundary, at any future time, must be in compliance with the rules and regulations of the Outdoor Recreation Grants Program *Project Management Guide*. This also applies to those facilities constructed in whole or in part with local funds.
2. Property acquired or developed with grant funds must be retained in perpetuity for outdoor recreation use and will be subject to inspection by the State at least once every five years. In addition each project will be inspected by the State during construction and before final reimbursement is made.
3. No overhead utility lines are allowed within the project boundary. All existing utility lines located within the park boundaries must be placed underground. This regulation applies to any overhead lines including electric lines, phone lines and public announcement system wiring. No vehicular right-of-way easements are allowed within the boundary.
4. A permanent sign stating that federal LWCF or state ANCRGTF monies were used to acquire and/or develop public outdoor recreation facilities must be maintained within the park in perpetuity. Guidelines for the size, placement and design of the signs will be presented to each applicant after grant approval. Upon project completion the applicant will be required to describe the location of the sign, and state that the sign location will not change.
5. All public recreation facilities constructed within a Matching Grant Program-assisted park must be accessible to persons with disabilities. This also applies to those facilities constructed in whole or part with local funds.
6. Property acquired or developed with assistance from the fund must be open to entry and use by all persons regardless of race, color, religion, sex, or national origin. Discrimination on the basis of residence, including preferential reservation or membership systems, is prohibited, except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence.

7. Property acquired or developed with assistance from the Matching Grant Program shall be operated and maintained in perpetuity. The property shall be maintained so as to appear attractive and inviting to the public. Sanitation and sanitary facilities shall be maintained in accordance with applicable health standards. Properties shall be kept safe for public use. Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their functional lifetime to prevent undue deterioration and to encourage public use. Facilities that have reached an age that renders them obsolete or worn out may be removed with written permission of the Arkansas Department of Parks and Tourism's Outdoor Recreation Grants Program Director. Permission must be obtained prior to removal of the facilities.
8. The Arkansas ORGP staff will conduct periodic post completion inspections of the project area to ensure that program compliance continues after the project is completed. These inspections will be unannounced. Sponsors who fail to comply with long term commitment may jeopardize future eligibility for matching grant funds for new projects and/or be subject to legal actions by the State or Federal government to enforce program compliance.
9. The property shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility. Property which is not operated and maintained in good condition may jeopardize the awarding of future grant funds to that jurisdiction.
10. Participants may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with Matching Grant Program assistance when such a limitation is necessary for maintenance or preservation. Thus, limitations may be imposed on the type of users (i.e. hunters or four-wheelers, etc.). All limitations must be in accord with the applicable grant agreement and amendments.
11. All recipients of Matching Grant Program monies must comply with the Architectural Barriers Act of 1968, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act, of 1990 Title II and Title III.
12. Properties (parks and recreation areas) acquired or developed with LWCF/ ANCRGTF assistance are prohibited by Section 6(f)(3) of the LWCF Act of 1965, as amended, from conversion to any use other than public outdoor recreation use.
Section 6(f)(3) of the LWCF Act states that "No property acquired or developed with assistance under this section shall, without the approval of the Secretary, U. S. Department of the Interior, be converted to other than public outdoor recreation use. The Secretary shall approve such conversion only if he/she finds it to be in accordance with the then existing Statewide Comprehensive Outdoor Recreation Plan (SCORP) and only upon such conditions as he/she deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonable equivalent usefulness and location."



FAYETTEVILLE PARKS AND RECREATION ADVISORY BOARD

Minutes for July 2, 2012

Opening:

The regular meeting of the Parks and Recreation Advisory Board was called to order by Steve Meldrum at 5:32 p.m. in Room 111 at the City Administration Building at 113 West Mountain Street in Fayetteville, Arkansas.

Present:

Parks and Recreation Advisory Board members Meldrum, Waite, Watson, Paul, Lawson, McKnight, Proffitt, and Leonard were present. Staff members Edmonston, Humphry, Jones, Gipson, Jumper, and Thomas were in attendance.

2013 Arkansas Department of Parks and Tourism Outdoor Recreation Grant: Carole Jones, Park Planner

Staff Recommendation: Staff has two recommendations as follows:

1. To apply for \$50,000 from Arkansas Parks and Tourism Outdoor Recreation matching grant program for development and improvements at Mount Sequoyah Gardens.
2. Staff recommends approval of the conceptual plan of Mount Sequoyah Gardens for the 2013 grant project.

Jones said that this is a grant that Parks applies for every year. It's a 50/50 grant and funds outdoor recreation projects. It's a reimbursable grant, which means the City has to have the funds available before applying for it. It's a very competitive grant that Parks has received for Doc Mashburn Park, Sweetbriar, and Bryce Davis. The deadline to turn in the grant application is August 31, 2012. Parks has held the series of required meetings for this year at the Senior Activity Center, YRCC, and Mt. Sequoyah Gardens. The attendees at these meeting requested items such as more trails, more restrooms, more soccer fields, and habitat restoration projects, just to name a few. Jones said that in 1998, people from the neighborhood at Mt. Sequoyah approached PRAB to request a park. In 2008, the underground storage tanks were removed. In 2009, the site was regraded. Parks Staff would like this to be the grant project for 2013. There is an undeveloped park there now, as

well as a greenhouse. The project would improve the existing drive and add ADA accessible parking. A native stone and wood outlook structure is proposed. There is funding for the project.

Leonard asked how much maintenance would be involved for this project.

Jumper said not much additional maintenance. She said there are established native grasses on the site now.

Bill Ward, a guest, asked if there would be water and restrooms available.

Jumper said no.

Meldrum asked if the gravel parking on the east side would be improved.

Jones said yes, there will be some paved parallel parking spaces. She added that there wasn't another neighborhood park within a half mile.

Watson said that the area has needed some work for some time.

Edmonston said that PRAB needed to vote on two issues. The first one is to say yes to apply for the grant. The second issue is to say yes to the conceptual plan.

Proffitt asked what the timeline would be for construction.

Jumper said it would probably be fall of next year.

A guest asked if bids would be requested.

Jones said bids would be needed for the construction.

PRAB Motion #1: Proffitt motioned to accept the Staff recommendation to apply for \$50,000 from the Arkansas Parks and Tourism Outdoor Recreation matching grant program for the development and improvements at Mount Sequoyah Gardens. Watson seconded it. Motion passed 8-0-0 by voice vote.

PRAB Motion #2: Watson motioned to accept the Staff recommendation to approve the conceptual plan of Mount Sequoyah Gardens for the 2013 grant project. McKnight seconded it. Motion passed 8-0-0 by voice vote.

City of Fayetteville Staff Review Form

A. 8
United States Tennis Association
Page 1 of 12

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

8/7/2012

City Council Meeting Date
Agenda Items Only

Chase Gipson
Submitted By

Recreation Programs
Division

Parks and Recreation
Department

Action Required:

Staff is requesting approval to accept a Wilson tennis court renovation from the United States Tennis Association, as part of their Two-Court Renovation Grant Program. The USTA will pay a contractor up to \$11,500 for the renovation of two tennis courts at Wilson Park.

No cost to the City
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 ☐

Connie Edmonston
Department Director

7-19-12
Date

Previous Ordinance or Resolution #

Mr. B. M.
City Attorney

7-19-12
Date

Original Contract Date:

Original Contract Number:

Paul A. Buh
Finance and Internal Services Director

7-19-2012
Date

Received in City Clerk's Office

Timothy Sully
Chief of Staff

7-20-12
Date

Received in Mayor's Office

David Jordan
Mayor

7/20/12
Date

Comments:



www.accessfayetteville.org



To: Lioneld Jordan, Mayor

Thru: Don Marr, Chief of Staff
Connie Edmonston, Parks and Recreation Director *C.E.*

From: Chase Gipson, Recreation Superintendent *CG*

Date: July 17, 2012

Re: Approval of a United States Tennis Association Grant for renovation of two Wilson Park tennis courts. As part of the grant, one of the courts will be converted into four youth courts.

PROPOSAL:

Fayetteville Parks and Recreation has been presented with a wonderful opportunity for much needed renovations to the Wilson Park Tennis courts. The USTA has offered a "two-court" grant renovation project, in the amount of \$10,000 and no match is required from the city. In addition, the Arkansas State Tennis Association has a resurfacing grant that can also be used towards the total costs of the project, should it exceed \$10,000. Although Wilson is a six court facility, staff received special permission for the lower two courts on the west side to be considered a separate two court facility. The two lower courts at Wilson are very much in need of resurfacing, as shown in the attached pictures.

The United States Tennis Association has made a huge push over the last few years to get more youth involved in tennis. Parks staff and the Parks Board agree that more kids being outside and being active is a good thing. A big part of the USTA push is the decision that children ages 10 and under no longer play tennis on full-sized courts. Tennis lagged behind other sports (soccer, basketball, football, baseball) in realizing that children need a space designed for children. The only current opportunities that exist in Fayetteville for youth tennis players, are for those whose families can afford memberships to private clubs. Middle to low income children have no place to play and no groups to play with. The construction of these courts would be a giant step in the right direction to help correct this problem. Previous grant recipients have reported to the USTA that these smaller courts have also proved to be popular with senior citizens as well.

Parks summer staff conducted separate observations in 2009 and 2012, where they recorded the number of participants and the number of courts being used in two-hour intervals. Both observations show the six courts at Wilson are rarely all in use at the same time. In addition, it has been the observation of Parks staff that all six courts are rarely full, with the exception of 3-6pm during the high school tennis season. The high school has recently constructed new tennis courts and will no longer be using Wilson, so this overcrowding problem should be remedied. The City of Fayetteville is in need of additional tennis courts for all ages, and has plans to build 8 tennis courts at the Regional Park facility. This grant is a great opportunity to address the lack of youth tennis opportunities in the area, while also putting a brand new surface on one of our adult courts, which is currently in need of repair.

RECOMMENDATION:

Parks staff is recommending for the City to accept the USTA grant, and State Resurfacing Grant to renovate two tennis courts at Wilson Park. On July 2 the Parks and Recreation Advisory Board voted unanimously, after a lengthy discussion including concerned citizens, in favor of accepting the grant.

BUDGET IMPACT:

There is no impact on our budget. Bids are currently being received by the USTA for the project. The USTA will pay the contractor directly and anticipates, based on previous similar projects, that the grants will fund the entire project.

ATTACHMENTS:

Staff Review Form

Parks and Recreation Advisory Board July 2 meeting minutes

Pictures of Wilson Park Tennis Courts to be renovated

Before and after pictures of two-court renovation in Milam Park, Clarkston, GA

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING ACCEPTANCE OF RENOVATION SERVICES TO TENNIS COURTS AT WILSON PARK BY THE UNITED STATES TENNIS ASSOCIATION AS PART OF ITS TWO COURT RENOVATION GRANT PROGRAM AT NO COST TO THE CITY OF FAYETTEVILLE

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes acceptance of renovation services to tennis courts at Wilson Park by the United States Tennis Association as part if its Two-Court Renovation Grant Program at no cost to the City of Fayetteville.

PASSED and APPROVED this 7th day of August, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



FAYETTEVILLE PARKS AND RECREATION ADVISORY BOARD

Minutes for July 2, 2012

Opening:

The regular meeting of the Parks and Recreation Advisory Board was called to order by Steve Meldrum at 5:32 p.m. in Room 111 at the City Administration Building at 113 West Mountain Street in Fayetteville, Arkansas.

Present:

Parks and Recreation Advisory Board members Meldrum, Waite, Watson, Paul, Lawson, McKnight, Proffitt, and Leonard were present. Staff members Edmonston, Humphry, Jones, Gipson, Jumper, and Thomas were in attendance.

Wilson Park Tennis Court Proposal: Chase Gipson, Recreation Superintendent

Our USTA representative has reached out to Fayetteville Parks and Recreation with a great opportunity. They currently have "two-court" grant renovation projects with funding available for \$10,000 (non-matching). It is basically a no-strings attached grant and the project should be within 10% either way of the \$10,000 grant money. Worst case scenario, the City may need to come up with \$1,500 for the project. Although Wilson is a six court facility, we received special permission for the lower two courts to be considered a separate two court facility. The two lower courts are in need of resurfacing. The grant would convert the two courts into one full size court and four 36 ft courts for youth. This is a major part of the current USTA movement for U10 tennis on 36 foot courts that would open opportunities for youth tennis in Fayetteville. These smaller courts have also proved to be popular with seniors as well. Our summer survey from two years ago shows the six courts are rarely, if ever, all in use at the same time. Staff is recommending for the City to apply for the USTA grant. Please view the attached link to view the tennis court project:

<http://www.southerntennis.com/uploads/TwoCourtProjects1.ppt>

Gipson said the USTA approached Parks about a grant opportunity. They have a two-court renovation grant, and Parks got permission to apply for the grant for two courts of a six court facility. The grant project would allow the courts to be resurfaced, which is needed, and would convert the two courts into one full size court and four 36 foot courts that would open opportunities for youth tennis in Fayetteville. Gibson said that an informal count was taken on the number of players in two hour intervals to see how many players there were.

A guest said that the numbers were taken during the hottest part of the summer and doesn't reflect from 8 pm to 10 pm. She said that during the day the adults work, so people play early or late.

Another guest said that the numbers don't reflect his observation. He said that Wilson Pool is only open two months out of the year, so the Parks numbers don't reflect the other months. He added there are times that it's impossible to get on the courts. During the months from September through May, there are lots of players. He said losing a court doesn't set well with him. He said that one group using the courts told him they had "hoodwinked" the City because they told them they were a group, but they played as individuals. He requested that no courts be taken away.

A guest asked why the chosen courts were at Wilson and not Walker.

Gipson replied that the courts are in very bad shape at Wilson.

A guest said the reason the numbers are low in the count is because people get turned off about playing. He then asked when the high school played.

Gipson said they play from 3 pm to 6 pm.

A guest said there was a shortage of courts. The article in the paper said the City should have 40 courts by now. That shortage has not been addressed. He said it's a planning issue.

Meldrum asked how many courts were planned for the Regional Park.

Edmonston said there would be 6 to 8 courts.

A guest said that the youth have the courts in the morning for camp. The only times the adults can play is during hot weather.

Edmonston said the tennis camp is only one week.

The guest said it seems that it's always one week. He suggested that rather sacrifice the courts, Parks could sponsor youth tennis with shorter nets. He asked that courts not be sacrificed for adults so that they have fewer courts.

Paul asked if seniors could use the courts.

Gipson said yes.

Meldrum asked if the adult courts would be resurfaced.

Gipson said yes.

A guest said that the surface on some courts is a rubberized surface that is very bad and uneven.

Edmonston said that is the first time she's heard that complaint. She thanked the guest.

A guest said that she sent an email today. She said she's sitting at this meeting feeling she's getting the runaround. She said she is always told that "someday" it will happen, or it's too expensive, or local parks are needed. Tennis courts are never first priority and the situation needs to be addressed.

Meldrum asked how much it cost to build a tennis court.

Jumper said the last estimate was anywhere from \$28,000 to \$80,000.

A guest suggested a tennis court at Gulley Park.

Edmonston said when the neighborhood meeting was held for Gulley Park, the neighbors said they didn't want basketball, tennis, or a community center.

Meldrum commented that a lot of money was being talked about. He asked if a court needed to be given up. He said that everyone was tired of waiting for Regional Park. He asked if Parks wanted the grant, and did they want a court resurfaced.

Edmonston said that the University of Arkansas was looking for an area for ballfields and tennis courts.

Watson said that he has lived in Fayetteville all his life. He said he would never turn away a sport for youth. He said his focus was on the community as a whole.

A guest interrupted Watson.

Watson asked the guest to let him finish. He continued by saying that he wants to focus on youth, not adults, adding that is his personal opinion.

A guest said that the last court was built in 1975. Soccer fields have been added. He said that Parks is behind on tennis courts.

Watson said he understood the frustration for the guest. He said Parks is behind on everything, and added that the Regional Park will satisfy needs, but not completely.

A guest asked if the youth courts would be permanent. He wondered if any exploration has been done for youth tennis that wouldn't be permanent.

Gipson said that the grant is only for permanent courts, so the facility would only be for kids.

A guest wanted to know if there was a chance the courts could be reverted back to normal size if they were not used by youth.

Another guest said that he played with an 8 year old and was beaten. He added that the Wilson Park gardens are always being worked on by the horticulturists, but the tennis courts are neglected. The cans and bottles are not being picked up.

Edmonston said it's like the dog park, because everyone needs to pick up after themselves.

A guest asked for Parks to please look at alternatives.

Meldrum asked what the time frame was for the grant.

Gipson said USTA doesn't want to wait, so Parks has to move on it now.

Meldrum said that tabling the motion wasn't an option because of the time frame of USTA. He suggested that PRAB vote on it, and let it go on to Council.

McKnight said to go ahead and vote.

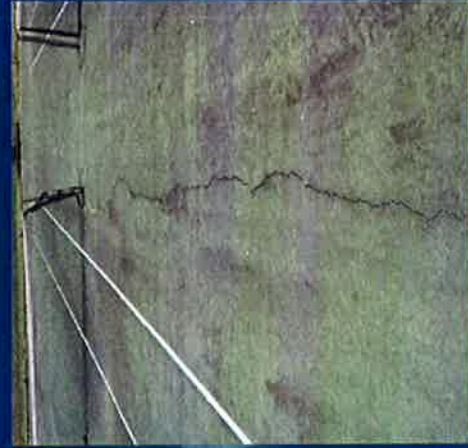
Watson said that he was appreciative for the public to come to the meeting to voice their opinion. He said he will keep tennis courts in mind.

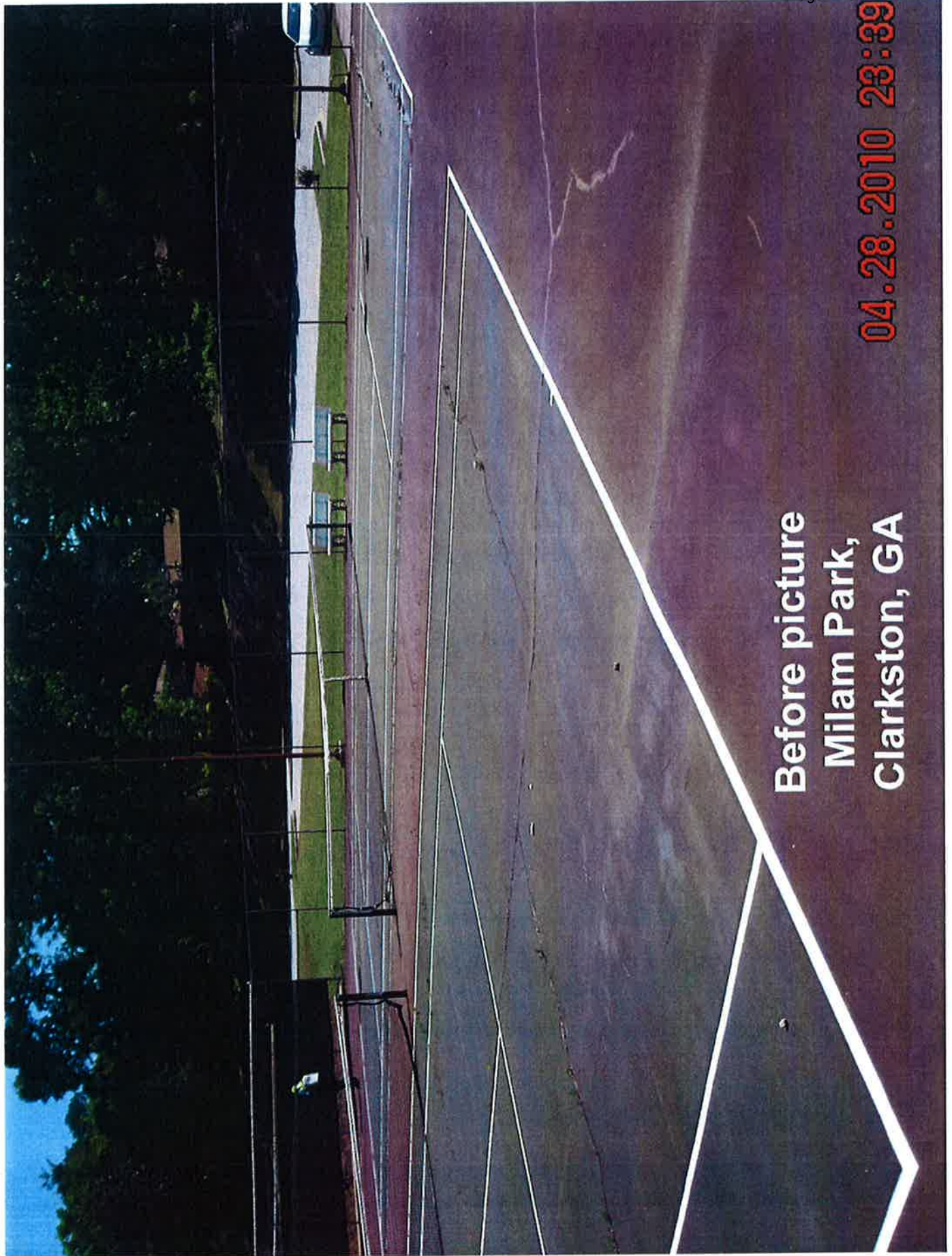
Edmonston said that different communities like different sports. She added that it's hard to have a national standard.

Watson said that soccer is played year round.

PRAB Motion: Watson motioned to accept the grant, and Lawson seconded it. Motion passed 8-0-0 by voice vote.

Wilson Court Pictures





Before picture
Milam Park,
Clarkston, GA

04.28.2010 23:39

After picture
Milam Park,
Clarkston, GA



City of Fayetteville Staff Review Form

A. 9
Arkansas Recreational Trails Program
Page 1 of 6

City Council Agenda Items
and
Contracts, Leases or Agreements

8/7/2012

City Council Meeting Date
Agenda Items Only

Matt Mihalevich

Submitted By

Engineering

Division

Development Services

Department

Action Required:

Staff requests approval of a resolution expressing the willingness to utilize federal-aid recreational funds and to allow the Engineering Division to submit an application for consideration of an 80/20 matching grant through the Arkansas Recreational Trails Program for an award of up to \$100,000.00 to be used for construction of a section of Lake Fayetteville Trail along the north side of the Marina to the North Shore Disc Golf Area.

\$ 20,000.00

Cost of this request

\$ 2,461,044.00

Category / Project Budget

Trail Development

Program Category / Project Name

4470-9470-5814.05

Account Number

\$ 1,028,985.40

Funds Used to Date

Trail Improvements

Program / Project Category Name

02016 / 1

Project Number

\$ 1,432,058.60

Remaining Balance

Sales Tax Capital Improvements

Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐


Department Director

07-18-2012
Date

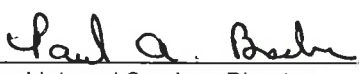
Previous Ordinance or Resolution #


City Attorney

7-20-12
Date

Original Contract Date:

Original Contract Number:


Finance and Internal Services Director

7-20-2012
Date

Received in City Clerk's Office
07-20-12 A09:39 RCVD


Chief of Staff

7-2-12
Date

Received in
Mayor's Office


Mayor

7/20/12
Date

ENTERED
7/20/12
PH

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
Jeremy Pate, Development Services Director
Chris Brown, City Engineer *CB*

From: Matt Mihalevich, Trails Coordinator *MM*

Date: July 30, 2010

Subject: 2012 Recreational Trails Grant Application

PROPOSAL:

Staff requests approval of a resolution expressing the willingness to utilize federal-aid recreational funds and to allow the Engineering Division to submit an application for consideration of an 80/20 matching grant through the Arkansas Recreational Trails Program for an award of up to \$100,000.00 to be used for construction of a section of Lake Fayetteville Trail along the north side of the Marina to the North Shore Disc Golf Area.

RECOMMENDATION:

The Recreational Trails Grant is administered through the Arkansas Highway and Transportation Department and has been the most substantial grant program for trail funding over the years (see history on next page). For the 2012 recreational trail grant application, staff has selected a 1/2-mile long section of paved trail along the south side of the existing park road along the north side of the Marina connecting to the North Shore Disc Golf Area. Currently this section of road is shared between trail users and vehicles presenting safety concerns especially as the use of the Lake Fayetteville continues to increase. The northern portion of Lake Fayetteville Trail including this section of trail will be part of the 36-mile Razorback Regional Greenway and this project would bring this section of trail up to the quality standards of the rest of the Greenway. Since this section of trail is part of the Razorback Regional Greenway, the project may also be eligible for additional private funding.

BUDGET IMPACT:

If the grant is approved for the full amount requested, the City will be responsible for 20% of the total project cost, or \$20,000.00. If approved by City Council, the \$20,000.00 for the City's portion of this project will be budgeted through the 2013 Trail Development Project, within the Sales Tax Capital Improvement Fund. The total estimated cost for the trail project is \$200,000.00. To complete the project, approximately \$80,000.00 additional will need to be funded by a separate grant through the Walton Family Foundation or with City funds.

Summary of the Recreational Trails Grant awards to the City of Fayetteville:

Funding Year	AHTD Project Number	Trail Project	Location/Description	Funding Amount
1997	040271	Lake Fayetteville Kiosks	Three trailhead kiosks at Lake Fayetteville – North Shore, Softball Parking and Veterans Park.	\$20,000
2002	040401	Lake Fayetteville Spillway Bridge	Lake Fayetteville spillway, west of Veterans Park	\$51,247
2003	040425	Lake Fayetteville Spillway Bridge	Combined with the 2002 funds into one project to complete the Lake Fayetteville Spillway Bridge	\$20,000
2007	040507	Mud Creek Trail	Replacement of narrow arch bridge east of Front Street with an ADA compliant bridge.	\$33,600
2008	040530	Mud Creek Trail	Extension of Mud Creek Trail across Mud Creek along Old Missouri Road to Sweetbriar Drive.	\$60,000
2009	040558	Oak Ridge Trail	Frisco Trail west to Garland (Partnership with the U of A)	\$116,534
2010	040613	Lake Fayetteville Trail	Botanical Gardens to Veterans Park	\$80,000

Total since 1997- \$381,381

RESOLUTION NO. _____

A RESOLUTION EXPRESSING THE WILLINGNESS OF THE CITY OF FAYETTEVILLE TO UTILIZE FEDERAL-AID RECREATIONAL TRAILS FUNDS AND AUTHORIZING APPLICATION FOR A 20% LOCAL MATCH GRANT THROUGH THE ARKANSAS RECREATIONAL TRAILS PROGRAM IN AN AMOUNT UP TO \$100,000.00 FOR CONSTRUCTION OF A SECTION OF LAKE FAYETTEVILLE TRAIL

WHEREAS, the City of Fayetteville understands Federal-Aid Recreational Trails funds are available in an amount up to \$100,000.00 at 80% federal participation and 20% local match to develop or improve Lake Fayetteville Trail; and

WHEREAS, the City of Fayetteville understands that Federal-Aid funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement; and

WHEREAS, the City of Fayetteville understands that there will be no reimbursement for any work accomplished prior to the issuance by the Arkansas State Highway and Transportation Department of an official Notice to Proceed; and

WHEREAS, this project, using federal funding, will be open and available for use by the general public and maintained by the City of Fayetteville.

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 determines that the City of Fayetteville will participate in accordance with its designated responsibility, including maintenance of this project.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to execute all appropriate agreements and contracts necessary to expedite the construction of the Lake Fayetteville Trail project.

Section 3. That the City Council of the City of Fayetteville, Arkansas pledges its full support and hereby authorizes the City of Fayetteville to cooperate with the Arkansas State Highway and Transportation Department to initiate action to implement this project.

PASSED and APPROVED this 7th day of August, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

RESOLUTION NO. _____

A RESOLUTION EXPRESSING THE WILLINGNESS OF

insert sponsor's name

TO UTILIZE FEDERAL-AID RECREATIONALS FUNDS

WHEREAS *(insert sponsor's name)* understands Federal-aid Recreational Trails Funds are available at 80% federal participation and 20% local match to develop or improve **(insert project name)**, and

WHEREAS *(insert sponsor's name)* understands that Federal-aid Funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement, and

WHEREAS *(insert sponsor's name)* understands that there will be no reimbursement for any work accomplished prior to the issuance by the Arkansas State Highway and Transportation Department of an official Notice to Proceed; and

WHEREAS this project, using federal funding, will be open and available for use by the general public and maintained by the applicant.

NOW, THEREFORE, BE IT RESOLVED BY *(insert sponsor's governing body)* **THAT:**

SECTION I: *(insert sponsor's name)* will participate in accordance with its designated responsibility, including maintenance of this project.

SECTION II: *(insert title of sponsor's CEO/CAO)* is hereby authorized and directed to execute all appropriate agreements and contracts necessary to expedite the construction of the above stated project.

SECTION III: *(insert sponsor's governing body)* pledges its full support and hereby authorizes the *(insert sponsor's name)* to cooperate with the Arkansas State Highway and Transportation Department to initiate action to implement this project.

THIS RESOLUTION adopted this _____ day of _____, 2010.

Signed: _____
(Insert sponsor's CEO/CAO)

ATTEST: _____

(SEAL)



City of Fayetteville Staff Review Form

A. 10
 2012 Arkansas Department of
 Environmental Quality Recycling Grant
 Page 1 of 20

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

8/7/2012

City Council Meeting Date
 Agenda Items Only

Brian Pugh
 Submitted By

Solid Waste
 Division

Operations
 Department

Action Required:

Resolution Authorizing Application for a 2012 ADEQ Recycling Grant through the Boston Mountain Solid Waste District for \$ 25,000 for Apartment Recycling Containers.

\$ _____	_____	_____
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 ☐

Terry J. Gully
 Department Director

7-20-12
 Date

Previous Ordinance or Resolution # _____

John B. Kelly
 City Attorney

7-20-12
 Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Baker
 Finance and Internal Services Director

7-23-2012
 Date

Received in City 07-20-12 P03:34 RCVD
 Clerk's Office

Terry J. Gully
 Chief of Staff

7-23-12
 Date

Received in
 Mayor's Office

Mayor

7/23/12
 Date



Comments:

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff
Terry Gulley, Operations Director *TLM*

From: Brian Pugh, Waste Reduction Coordinator

Date: July 19th, 2012

Subject: Resolution Authorizing Application for a 2012 ADEQ Recycling Grant through the Boston Mountain Solid Waste District for \$ 25,000 for Apartment Recycling Containers.

RECOMMENDATION

Fayetteville City Administration recommends authorizing application for a 2012 Arkansas Department of Environmental Quality (ADEQ) recycling grant through the Boston Mountain Solid Waste District for \$25,000 for purchasing apartment recycling containers.

BACKGROUND

Each year the Arkansas Department of Environmental Quality issues recycling grants through local Solid Waste Districts to help fund recycling programs. The City has benefited from these grants in the past. The Boston Mountain Solid Waste District compiles the grant pre applications and submits them to their Grant Committee for review. ADEQ no longer requires a signature from the Mayor for the pre application process.

DISCUSSION

This grant will be used to purchase new source separated recycling containers for use in the newly created apartment recycling program. The City received a similar grant in the amount of \$18,500 in 2011 for recycling containers at apartments. Staff is currently engaged in a Solid Waste and Recycling Plan that has a goal of providing 30% of the apartment complexes in Fayetteville with recycling service by 2015 and these containers would help to reach those goals.

The source separated recycling containers are similar to a drop box style container only with a roof and segregated bins which will support the source separated nature of the recycling program. The containers can be easily incorporated into existing operations since collection is handled with a drop off style truck, whereby eliminating the need to purchase new vehicles for this type of recycling collections at apartments.

BUDGET IMPACT

The recycling grant awards are not matching grants, so no City funds are obligated with this request. Upon approval and award of the grant a budget adjustment will be requested to recognize the grant revenue and a capital project will be created.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING APPLICATION FOR A 2012 ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY RECYCLING GRANT THROUGH THE BOSTON MOUNTAIN SOLID WASTE DISTRICT IN THE AMOUNT OF \$25,000.00 TO FUND APARTMENT RECYCLING CONTAINERS

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 application for a 2012 Arkansas Department of Environmental Quality recycling grant through the Boston Mountain Solid Waste District in the amount of \$25,000.00 to fund apartment recycling containers.

PASSED and **APPROVED** this 7th day of August, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Recycling Grants Application

2011

Fiscal Year 2012

Purpose The purpose of this application is to provide d
proposed Recycling Grant project.

General All items must be completed and returned to y
Management District to be forwarded to the A
Environmental Quality (ADEQ). Applications a
Sept. 15-Dec. 31. Incomplete applications will

2011 Form due
to 2012 Form not
available.

APPLICANT: CITY OF FAYETTEVILLE	CONTACT: BRIAN
ADDRESS: 1560 S. HAPPY HOLLOW ROAD	CITY: FAYETTEVILLE
COUNTY: WASHINGTON	ZIP CODE: 72701
PHONE: (479) 718-7685	E-MAIL: BPUGH@

GRANT CATEGORY

Select only one category

- | | |
|---|--|
| ☐ ADMINISTRATIVE | ☒ RECYCLING EQUIPMENT |
| ☐ COMPOSTING | ☐ RECYCLING PROGRAMS |
| ☐ EDUCATION | ☐ TRANSFER STATION WITH RECYCLING |
| ☐ MATERIAL RECOVERY FACILITY | ☐ WASTE REDUCTION ACTIVITIES |
| ☐ PLANNING | |

PROJECT PROPOSAL

In one sentence, explain what will be purchased with requested grant funds.

Three (3) roll off style recycling containers with six (6) compartments for separating recyclable materials at apartment complexes.

Grant Amount Requested \$25000

Total Project Cost \$86033

Other than Recycling Grant funds, how are expenses for the continuation of this project to be funded (including maintenance, repairs, labor and operating expenses)? User fees, Solid Waste and Recycling Enterprise Fund.

Who will manage the finances of this grant and how may s/he be contacted? (Who is responsible for maintaining records of income and expenses related to this grant?) Brian Pugh - contact information listed above.

ADEQ
ARKANSAS
Department of Environmental Quality

GRANT NUMBER:

PROJECT PROPOSAL (CONTINUED)

On a separate sheet, please describe your proposed project and explain why it is needed. At a minimum, answer the following: *(To curtail possible delays processing your application, please answer all questions completely. Examples of project descriptions are provided in the Overview & Application Instructions document.)*

1. Describe your current recycling program. Explain how it fits into your local solid waste management program and the overall district solid waste plan.
2. How will the proposed project enhance or improve the current recycling program?
3. What will the project accomplish and how will it be accomplished? How will success of the project be measured?
4. What actions will be taken to begin the project before pre-applications for the next grant round are submitted to ADEQ (July 15)? What actions will be taken to complete the project and spend all grant funds within three years?
5. Who will participate in and benefit from this project? How will they participate or benefit? If partnerships are involved, describe each partner's role in the project.
6. How will the public be made aware of recycling or other opportunities provided by this project? Describe the educational message to be delivered and the method(s) of delivery. When available, provide a copy of any materials developed.

Grant Proposals for Composting, Recycling Equipment, Material Recovery Facility, Recycling Programs, Transfer Station with Recycling and Waste Reduction Activities should also respond to the following questions:

7. Does existing mechanical processing equipment or facilities adequately serve the relevant area? If yes, the regional solid waste management board must determine that the requested equipment or facility is an indispensable component and would more efficiently serve the relevant area. Submit the board's rationale for the determination with the grant application.
8. If purchasing equipment or constructing facilities, provide a detailed description of these items. The description may include bid specifications, equipment brochures, drawings, illustrations, etc.
9. Provide the days and hours of operation and the physical location (address) for the equipment or facilities.
10. What materials will be collected as a direct result of this project? What are the plans for selling or reusing the materials? If composting, provide a physical location where organics will be composted.
11. How will the volume collected for recycling or diversion and revenue received as a result of this project be measured and recorded? Who is responsible for maintaining these records and how may s/he be contacted? Provide an estimate of new or increased tonnage collected or diverted as a result of this project.
12. Will the proposed project generate revenue? How? Will this revenue be enough to continue or expand the project?

PROJECT BUDGET

Please provide a separate sheet showing the budget for this project using the following headings and categorizing the expenditures using the numbered information as guidance. (See the example budget in the Overview & Application Instructions for one way of doing this.)

List of Items – Grant Request (\$) – Organizational Budget (\$) – Additional Information

Item	Grant Request	Organizational Budget	Additional Information
	\$	\$	

1. Salaries, Administrative – List project personnel, by position. Provide the percentage of this position's time to be devoted to the grant project in the additional information column. Salaries for managers, supervisors, office or support staff and educators should be included in this listing.
2. Salaries, Operational Labor – List project personnel, by position. Provide the percentage of this position's time to be devoted to the grant project in the additional information column. Salaries for forklift drivers, line workers, baler operators, etc., should be included in this listing.
3. Professional Services – List consultants, contractors, or others who will provide specialized services. List services to be provided in the additional information column.
4. Facilities – Costs associated with construction or expansion of recycling facilities. List percentage of the facility's time and/or space to be devoted to this project in the additional information column.
5. Equipment – Capital items (items whose lifespan would normally extend beyond a calendar year) to be purchased. List percentage of time this equipment will be used on this project in the additional information column.
6. Maintenance & Repairs – Costs associated with the upkeep and maintenance of facilities or equipment.
7. Materials & Supplies – Items that are expendable or consumed during the project. This may include office supplies such as paper, ink, envelopes, etc. or operational supplies such as baling wire, plastic bags, gloves, etc.
8. Transportation – Anticipated expenses for trucking, shipping or hauling recyclable materials.
9. Training – Costs associated with training staff, board members or applicants in areas directly related to recycling.
10. Education & Promotion – Costs, excluding salaries, to educate the public or promote the recycling program.

Don't forget to total the amounts for the Grant Request and Organizational Budget columns by category and provide a grand total.

Appendices that provide more information to help reviewers better understand the grant request may be included with complete grant application.

MINIMUM CONDITIONS OF RECYCLING GRANTS

All grants are subject to the requirements of A.C.A. 8-6-601 et. Seq. and Arkansas Pollution Control and Ecology Commission Regulation 11, Chapter Four: Solid Waste Management and Recycling Grants Program.

The following items are not eligible for funding from recycling grants:

Taxes	Retroactive purchases	Vehicle registration
Reimbursement of funds	Legal fees	Utilities
	Licenses or permits	

GRANT RECIPIENTS AGREE TO:

- ♦ Actively develop a recycling program, as outlined in the grant application, and expend all grant funds in the three (3) years following the date of the grant award by the department.
- ♦ Actively seek to market or reuse the materials diverted under the recycling program from deposition in landfills in the period of three (3) years following the date of the grant award by the department.
- ♦ Start grant project before July 15, the date pre-applications for the next grant round are due to the department.
- ♦ Use facilities or equipment purchased with grant funds no less than 50 percent of the time on the purposes specified in the grant application.
- ♦ Use any interest earned on grant funds exclusively for recycling programs consistent with the Regional Solid Waste Management District's Solid Waste Management Plan.
- ♦ Maintain an orderly accounting system to document that grant expenditures are made in accordance with project budget. This includes keeping copies of all bids, paid invoices, canceled checks, and other appropriate paperwork.
- ♦ Report for five years after receipt of grant funds or until all funds are expended, whichever is longer, as directed by statute and regulation.
- ♦ Conform to all state laws on the purchase, use or sale of equipment and facilities secured with grant funds.
- ♦ Seek competitive bids or requests for proposals (RFP) for purchase of equipment or services as required by state and local procurement laws.
- ♦ Receive written approval from the Board and the department for any modifications to the grant, including requests for time extensions.
- ♦ Receive written consent from the Board and department before selling, trading or transferring facilities or equipment.

REGIONAL SOLID WASTE MANAGEMENT DISTRICT BOARDS AGREE TO ensure recipients conform to requirements and to:

- ♦ Establish or designate at least one adequate recyclable materials collection center in each county as required in Arkansas Pollution Control & Ecology Commission Regulation 28.
- ♦ Ensure the grantee show adequate revenues are being collected to support the long-term operation and maintenance of a grant-funded project prior to the disbursement of grant funds.
- ♦ Ensure all applicable federal, state and local permits and licenses have been obtained.
- ♦ **Ensure the project has begun before disbursing funds.**
- ♦ Notify ADEQ in the event a recipient has not met conditions of the approved grant application.
- ♦ Ensure that the project is compatible with the approved RSWMD plan on file with ADEQ or submit documentation demonstrating why a deviation is necessary.
- ♦ Compile annual reports as required.

ADMINISTRATIVE REQUIREMENTS

All grants are subject to audit. Department personnel have the right of access to all records pertaining to grant-funded project or activity.

Grant application must include: answers to the Project Proposal questions, a complete Budget and Proof of Publication, as required. Copies of any comments received regarding the grant request shall be forwarded to ADEQ.

Incomplete grant applications will not be considered and may delay processing of grant funds.

Signature and Certification

The authorized representative of the organization applying for the grant and the Regional Solid Waste Management Board Chairman both must sign the application. The authorized representative must have the authority to obligate the applicant's resources.

I certify that to the best of my knowledge, the information provided in this application and its attachments is correct and true. I understand and agree that if grant money is subsequently awarded as a result of this application, I will comply with all applicable statutory and regulatory provisions and with applicable terms, conditions, and procedures of the Recycling Grants program. I have read and agree to abide by the Minimum Conditions of Recycling Grants. I certify that all proposed activities will be carried out and that all grant money received will be utilized solely for the purposes for which it is intended unless written authorization is provided by the Regional Solid Waste Management District and the Arkansas Department of Environmental Quality.

X _____
Applicant's Authorized Representative and Title Date

X _____
RSWMD Board Chairman Date

THE ABOVE-REFERENCED GRANT IS HEREBY APPROVED.

X _____
ADEQ Recycling/Market Development Branch Manager Date

X _____
ADEQ Solid Waste Management Division Chief Date

X _____
ADEQ Chief Deputy Director Date

2012 Recycling Container Grant Project Proposal questions

1. Describe your current recycling program. Explain how it fits into your local solid waste management program and the overall district solid waste plan.

Fayetteville's recycling program is a source separated program meaning the materials are separated at the source of collection. This is true in both the curbside and drop off services provided by the City. The curbside program services residential single family homes and small businesses can participate for a fee.

City crews operate the residential trash collection as a Pay As You Throw program where residents choose from 3 different cart sizes and pay according to the waste they dispose. The curbside recycling program allows residents to divert materials from their weekly waste stream and potentially lower their waste bill.

The drop off recycling service is designed for those without curbside service and non-city residents providing recycling options as required through our District Solid Waste Plan.

2. How will the proposed project enhance or improve the current recycling program?

The project will allow the Solid Waste and Recycling Division to grow existing services to apartment complexes in order to meet diversion goals. At the end of 2011, the City began an apartment recycling program and currently there are 5 large complexes participating in the program. Also, large festivals like Bike Blues and BBQ have not succeeded in establishing a valid recycling component. A container, like the one's identified for this grant, can be incorporated with existing equipment and processing capabilities utilized by the Division.

The recycling containers used with this grant will allow for growth in the apartment program as it has become evident that higher participation in apartment recycling would occur if recycling containers were made available more than the one day a week collection which is currently used. Having more containers would allow for longer periods of time in which the containers would stay on site, along with signing up new complexes for the service. A multi faceted approach for apartments utilizing several collection methods will probably best serve this sector for recycling. Expanding recycling services across the City is the main improvement associated with this grant request.

3. What will the project accomplish and how will it be accomplished? How will success of the project be measured?

The project will accomplish growing the newly created apartment recycling program and expanding services. The containers will be included into the current operations of the Solid Waste and Recycling Division using existing fleet and personnel.

Staff is currently proposing a Solid Waste and Recycling Resource Management Plan for City Council approval. The draft plan outline efforts to increase diversion of materials from the landfill and reach an established diversion goal. One goal currently being review is to have 30% of apartment complexes in Fayetteville having recycling on site by 2015. This grant would be used to help reach that goal by measuring complexes participating.

4. What actions will be taken to begin the project before pre-applications for the next grant round are submitted to ADEQ (July 15)? What actions will be taken to complete the project and spend all grant funds within three years?

The containers will be purchased and all funds expended at one time before July 15th, 2013. The containers will be included in the existing recycling program for apartments which has already begun.

5. Who will participate in and benefit from this project? How will they participate or benefit? If partnerships are involved, describe each partner's role in the project.

Apartment complexes and festivals within the City will benefit by allowing the City to provide containers for recycling. Apartment complexes with over 100 units are eligible for the on site recycling service.

Apartment participation will include coordinating education information to the tenants, providing space to house the container and helping to maintain metrics regarding participation among their tenants.

6. How will the public be made aware of recycling or other opportunities provided by this project? Describe the educational message to be delivered and the method(s) of delivery. When available, provide a copy of any materials developed.

The pilot programs will be well communicated through City staff with apartment owners and managers in order to participate. The City is utilizing Energy Corp positions to provide educational opportunities at the complexes. Events planned at the complexes and staffed by the Energy Corp positions help in delivering the recycling message to participating apartment complexes.

What can be recycled will be communicated with an education campaign and with picture signs on the containers and brochures. For apartments participating in the pilots the educational message will be given through brochures, monthly newsletters, tenant lease signings, laundry/mail room facility displays and other apartment complex communications between management and tenants.

7. Does existing mechanical processing equipment or facilities adequately serve the relevant area? If yes, the regional solid waste management board must determine that the requested equipment or facility is an indispensable component and would more efficiently serve the relevant area. Submit the board's rationale for the determination with the grant application.

Yes. The City of Fayetteville operates a recycling center where the materials would be processed.

8. If purchasing equipment or constructing facilities, provide a detailed description of these items. The description may include bid specifications, equipment brochures, drawings, illustrations, etc.

The containers will be separated into six (6) compartments for recycling of aluminum cans, steel cans, plastic #1 & #2 bottles, mixed paper and cardboard. These containers sit on a roll off style truck when being moved and when dumping the materials. A container drawing is included.

9. Provide the days and hours of operation and the physical location (address) for the equipment or facilities.

The containers will be used at different locations throughout the City in the apartment program. Apartments currently are added when contacted by staff and encouraged to participate. The containers will be collected by City personnel and processed at the recycling center located at 1560 S. Happy Hollow Road, Fayetteville, AR., 72701. The containers will be housed there during non use.

10. What materials will be collected as a direct result of this project? What are the plans for selling or reusing the materials? If composting, provide a physical location where organics will be composted.

The materials collected with this container will be aluminum cans, steel cans, plastic #1 and #2 bottles, mixed paper and cardboard. The recyclables will be processed along with the curbside and drop off recyclables currently collected.

11. How will the volume collected for recycling or diversion and revenue received as a result of this project be measured and recorded? Who is responsible for maintaining these records and how may s/he be contacted? Provide an estimate of new or increased tonnage collected or diverted as a result of this project.

The recyclables will be weighed together on our facilities certified scales to determine actual weight received from the apartments. Currently the containers in use are weighed and dumped as needed to improve operations. Recyclables are added to the other materials collected and sold with those materials. Revenue is received for the service which is currently priced at \$.95 cents per unit at an apartment complex. Currently the average collected through the participating complexes is 1.5 tons per month.

Brian Pugh will be responsible for maintaining these records and can be contacted through the information provided at the front of this application. It is estimated that 1 to 2 tons per week can be gained through various pilot programs.

12. Will the proposed project generate revenue? How? Will this revenue be enough to continue or expand the project?

There will be revenue generated from the sale of the material once processed. The City Council passed an ordinance requiring apartment to pay \$.95 cents per unit to participate in the program. This rate helps to cover the cost of servicing the container.

Item	Grant Request	Organizational Budget	Additional Information
Salaries / Administrative			
Waste Reduction Coordinator	\$0	\$6,800	10% of time on the project
Salaries Administrative Totals	\$0	\$6,800	
Salaries Operational			
Drop Box Driver	\$0	\$3,125	5% of time on the project
Salaries Operational Totals	\$0	\$3,125	
Equipment			
3 recycling roll off style containers	\$25,000	\$26,750	100% of time on the project
Drop box truck	\$0	\$46,800	10% of the time on the project
Signs	\$0	\$500	100% of time on the project
Information brochures	\$0	\$500	100% of time on the project
Equipment Totals	\$25,000	\$74,550	
Maintenance and Repairs			
General Maintenance	\$0	\$500	Modification to boxes if needed
Maintenance and Repair Totals	\$0	\$500	
Transportation			
Fuel for drop box truck	\$0	\$1,058	10% of the time on the project
Transportation Totals	\$0	\$1,058	
Grand Totals	25,000	\$86,033	



Accurate • Galbreath • MI • Terp • Parts Place • Pioneer • Toter

Wastequip
 P O Box 1029 - Beeville, TX 78104 -
 Phone: 469-853-7729 - Fax: 940-321-3004
 Email: shurtl@wastequip.com

QUOTE

Date	Quote #
06/04/12	SYNHQ4362

Sold To: City Of Fayetteville
 Jason Drummond
 1560 Happy Hollow
 113 West Mountain
 Fayetteville, AR 72701
 USA

Phone: 479-575-8397
Fax: 479-444-3478

Ship To:

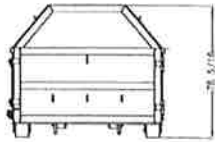
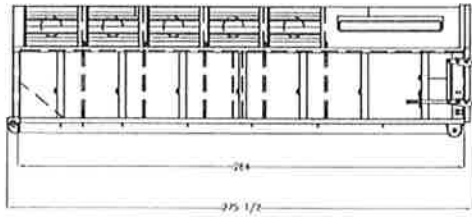
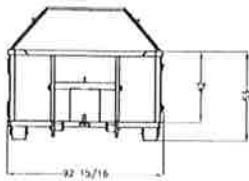
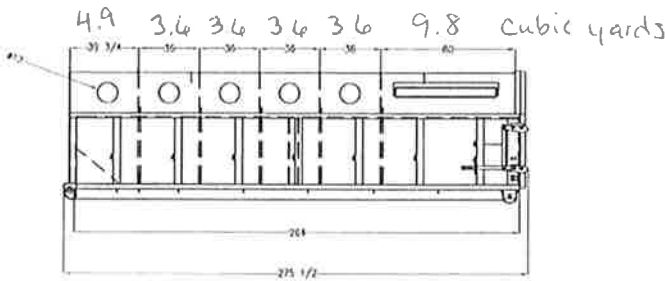
Phone:
Fax:

QUOTE GOOD FOR 14 DAYS
 FREIGHT TO BE CHARGE AT RATE AT TIME OF SHIPMENT

Terms	Rep	P.O. Number	Ship Via
	Steve Hurlt		

Ln #	Qty	Description	Unit Price	Ext. Price
1	3	Recylce roll off specials (as clarified in forwarded email from Jim Huffman dated 6-1-12 4:32PM) with exceptions	\$8,427.00	\$25,281.00
			SubTotal	\$25,281.00
			Sales Tax	\$0.00
			Shipping	\$1,536.00
			Total	\$26,817.00

APPROVED BY: _____
DATE: _____



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WASTEQUIP
Nationally known for personal service

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TOLERANCES: FRACTIONAL ± 1/16 ANGULAR ± 1°

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Drawing: SALES	Drawn By: EHOWELL	Date: (mm/dd/yy) 4/18/2012	Weight:	Scale: NTS.
Job No/Parent:	Checked By:	Date: (mm/dd/yy) / /	Drawing Number:	
Drawing Title: 30YD RECYCLE ROC WITH 61.75" WITH CARDBOARD SLOT AND HINGED			Sheet No: 006R3	Location ID:

Rev.# Date By: Revision Description:



Recycling Outreach Events Report

Daniel Dean & Elizabeth Hill

City of Fayetteville Sustainability & Strategic Planning

Spring Greening at North Creekside Apartments

We planned a Spring Greening Community Gathering with management at North Creekside Apartments on April 3rd from 5pm to 7pm. The University of Arkansas Applied Sustainability Center contributed 108 GE compact fluorescent light bulbs and US Pizza donated five pizzas. Each resident that signed a pledge/reminder card to recycle and save energy received a lightbulb and pizza. We distributed various materials, including "30 Simple things You Can Do to Save Energy and Money" books from the Arkansas Energy Office, canvas tote bags from Boston Mountain Solid Waste, and recycling brochures from Washington County Environmental Affairs. Liz obtained a \$100 gift card from Wal Mart, with which we purchased 5 ten gallon and 5 twenty gallon containers which residents could win by playing our reused water bottle bowling game. Liz brought materials to decorate vases from jars. Nineteen residents signed the pledge and management said they would provide food for monthly events in the future.



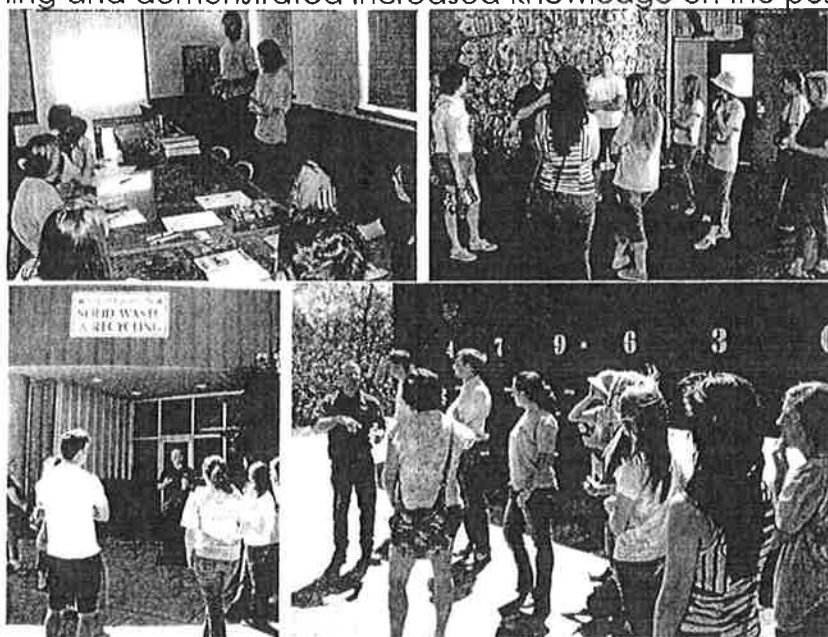
Tabling at Fayetteville Farmer's Market & Earth Day Eco Trade Show

Dan & Liz tabled at the first Fayetteville Farmer's market of the year April 7th from 9am until noon. Thirty-nine people stopped to ask questions and take information about Energy Corps, energy efficiency, apartment recycling, multi-use trails, hazardous waste, yard waste, community gardens, solar power, rain barrels, and how to address neighbors burning trash. The Earth Day Eco Trade Show at East Square Plaza in Fayetteville was not particularly well attended. We distributed some information and answered a few questions about the trails system.



Volunteer Training and Facility Tour

The Volunteer Training and Facility Tour took place on April 19th from 10 am to 1pm. We worked with professors in the University of Arkansas Sustainability Minor program to invite students and publicized in the Earth Day Eco Passport and on Facebook. Dan prepared a Powerpoint presentation giving an overview of the City's recycling program, including materials accepted at various locations and the financial, environmental, and social implications of the program. Attendees were given a pre/post quiz to determine their knowledge about Fayetteville recycling and Energy Corps before and after the presentation. The presentation included information on Community Based Social Marketing and volunteer opportunities with recycling outreach. COF Waste Reduction Coordinator Brian Pugh then led the group on a tour of the Material Recovery Facility. Nine individuals attended the training and demonstrated increased knowledge on the post quiz.



Energy Corps Eco Celebration at Maple Manor Apartments

We scheduled an outreach event with management at Maple Manor Apartments for April 29th from 3pm to 5pm. The format was similar to the Spring Greening event with giveaways of CFLs, pizza, and recycling bins to residents who signed the pledge and played the water bottle bowling game. We added a sandbag toss game with recycled pencils and stickers as prizes and borrowed materials for a recycling relay race from Washington County Environmental Affairs. We also added live music provided by Energy Corps members Bill Dollar and Dan Dean. Ten pizzas were donated by US Pizza. We created a flier for the event, which management posted on apartment doors along with reminders on their Facebook page. Twenty-eight residents signed the pledge with several children participating. Residents enjoyed the event, posting notes on the Facebook page such as "Great afternoon! Thanks guys!" and "Had a great time at the Eco-celebration!"

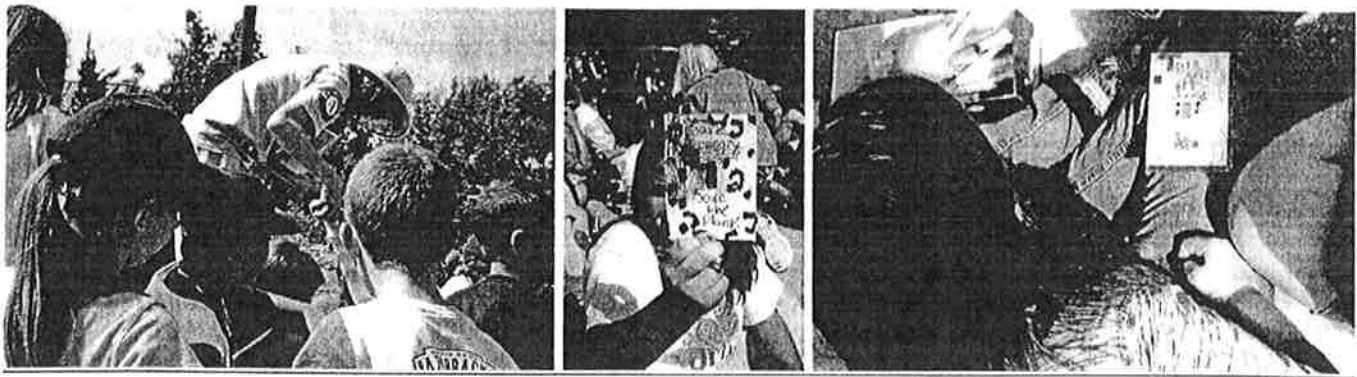


Fayetteville Green Team Celebration

On April 25th, we attended the Fayetteville Public Schools Green Team Celebration event at the Botanical Garden of the Ozarks. FPS Energy Corps member Sammi Jones organized an education station for students to decorate paperboard light switch plates to remind siblings and parents to turn off lights when not in use to conserve energy.

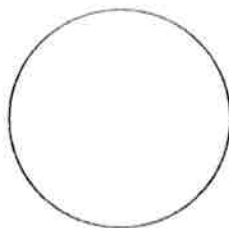
Shaw Elementary Earth Day

We repeated the light switch reminder project at the Shaw Elementary Earth Day at the Botanical Garden of the Ozarks on May 1st. Seventy-five students from Springdale came through our education station. We told them about our role as Energy Corps members and discussed three main reasons for conserving energy: to save money, reduce pollution, and preserve resources for future generations.



Summary

The outreach events were, on the whole, successful. Tabling at the Farmer's Market required the least amount of planning effort. Our hope is that the pledge cards at the apartment events will increase participation in the recycling program, although those who signed may already participate. The kids' events reached the largest number of participants, but the short time for each group limited the amount of information we could present. We have not yet drawn from the pool of volunteer energy of those who attended the training, but we plan door-to-door education when the university of Arkansas Fall semester begins. Training attendees appreciated the discussion after our presentation and offered thoughtful feedback on the potential for condominium recycling, encouraging businesses to offer products made from recycled materials, the need for collection of recyclables in City parks and in the Dickson Street entertainment district, the possibility of apartments sharing recycling containers, incentives for recycling, and recycling education on the University campus.



guess what??

RECYCLING IS HERE!!

Your apartment has been selected to participate in the
kick-off of the City of Fayetteville's new Multi-Family
Recycling Program!

WHAT IS ACCEPTED:

The **four-compartment recycling container** takes:
Aluminum Steel Cans Plastic #1 & #2 Bottles

The **cardboard** recycling container takes:
Flattened corrugated cardboard boxes

The **paper** recycling container takes:
Newspaper Copy Paper Magazines File Folders
Phone Books Envelopes Pamphlets Paperboard
Long-strand Shredded Paper

WHAT IS NOT ACCEPTED:

Plastic Bags Trash Other Metals Tissue Paper
Plastics #3 - #7 Glass Paper Towels
Hardback Books Food Confetti Shredded Paper
Construction Paper

HOW IT WORKS:

The recycling containers will be dropped at your apartment
on Monday morning and will remain for 24 hours until 6 am
Tuesday, when they will be taken to the next participating
apartment complex. Recyclables should be deposited by
no later than 6 am the morning after your recycling day.
Please do not deposit any trash in bins. Continuous abuse
of the facilities could lead to termination of the program.

PAYMENT:

Each apartment will be charged a monthly 95 cent fee on
their Fayetteville utility bill in order to cover the cost of this
convenient recycling program. We encourage you to utilize
this service to ensure the program's success and expansion
to other Fayetteville apartment complexes.

YOUR RECYCLING DAY IS MONDAY.

Fayetteville
ARKANSAS

City of Fayetteville Staff Review Form

A.11
McClelland Consulting Engineers
Page 1 of 38

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

7-Aug-12

City Council Meeting Date
Agenda Items Only

Shannon Jones
Submitted By

Utilities Capital Projects
Division

Utilities
Department

Action Required:

Approval of Engineering contract with McClelland Consulting Engineers in the amount of \$131,328 plus a \$20,000 contingency, for design services for the Hwy. 16 Water and Sewer Relocation project at the West Fork of the White River.

\$ 151,328

Cost of this request

\$ 956,636

Category / Project Budget

Waterline - Huntsville (265 - Van Hoose)

Program Category / Project Name

5400.5600.5314.00

Account Number

\$ -

Funds Used to Date

Water & Wastewater

Program / Project Category Name

11012.1201

Project Number

\$ 956,636

Remaining Balance

Water & Sewer

Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐

[Signature]
Department Director

20 July 12
Date

Previous Ordinance or Resolution #

[Signature]
City Attorney

7-23-12
Date

Original Contract Date:

Original Contract Number:

Paul A. Beale
Finance and Internal Services Director

7-23-2012
Date

Received in City
Clerk's Office



7/20/12
3:50 p.m.

[Signature]
Chief of Staff

7-23-12
Date

Received in
Mayor's Office



[Signature]
Mayor

7/24/12
Date

Comments:

To: Fayetteville City Council

Thru: David Jurgens, Utilities Director
Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: Shannon Jones, Utilities Engineer
Fayetteville Water and Sewer Committee

Date: July 20, 2012

Subject: Engineering contract with McClelland Consulting Engineers in the amount of \$131,328 plus a \$20,000 contingency, for design services for the Hwy. 16 Water and Sewer Relocation project.

RECOMMENDATION

Staff recommends approval of an engineering contract with McClelland Consulting Engineers in the amount of \$131,328 plus a \$20,000 contingency, for design services for the Hwy. 16 Water and Sewer Relocation project at the West Fork of the White River.

BACKGROUND

The project consists of relocating water and sewer lines as a result of the Arkansas State Highway and Transportation Department (AHTD) replacement and widening of the bridge across the West Fork of the White River along Highway 16. Existing utilities located within the planned new AHTD right-of-way must be relocated outside of the new right-of-way in accordance with the AHTD's utility accommodation policy. The 12-inch water line that serves portions of eastern Fayetteville and the City of Elkins is currently attached to the existing bridge. The proposed design will relocate the 12-inch water line to the north to allow for construction of the new bridge.

DISCUSSION

A selection committee met on June 26, 2012 to select an engineer for the project. Alderman Ferrell was present. The committee selected McClelland Consulting Engineers, Inc. City staff subsequently negotiated a contract with McClelland Consulting Engineers, Inc. The scope of work for this project consists primarily of:

- Field surveys to confirm rights-of-ways and utility locations
- Project cost estimating
- Right-of-way requirement identification and easement document development
- Final engineering design
- Stormwater pollution prevention plan
- Construction stakeout

This contract does not include construction phase services. We plan on using in-house staff for construction management and observation.

BUDGET IMPACT

Funds are available in the project budget.

RESOLUTION NO. _____

A RESOLUTION APPROVING AN ENGINEERING CONTRACT WITH MCCLELLAND CONSULTING ENGINEERS IN THE AMOUNT OF \$131,328.00, PLUS A \$20,000.00 PROJECT CONTINGENCY, FOR DESIGN SERVICES FOR THE STATE HIGHWAY 16 WATER AND SEWER RELOCATION PROJECT AT THE WEST FORK OF THE WHITE RIVER

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 an engineering contract with McClelland Consulting Engineers in the amount of \$131,328.00, a copy of which is attached as Exhibit "A", plus a \$20,000.00 project contingency, for design services for the State Highway 16 Water and Sewer Relocation Project at the West Fork of the White River.

PASSED and APPROVED this 7th day of August, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
MCCLELLAND CONSULTING ENGINEERS, INC.

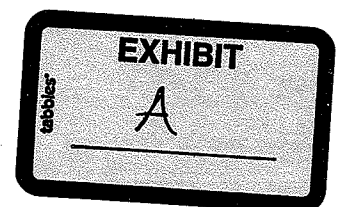
THIS AGREEMENT is made as of _____, 2012, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and McClelland Consulting Engineers, Inc. with offices located in Fayetteville, AR (hereinafter called MCE).

CITY OF FAYETTEVILLE requires professional engineering services in connection with the field surveys, design and easement preparation services for water and sewer system improvements along Arkansas Highway 16 in the vicinity of the West Fork River Bridge , as further defined by AHTD Job 040569, in order to facilitate the widening of said Highway 16 bridge by the Arkansas Highway and Transportation Department, and as further described in Appendix A. Therefore, CITY OF FAYETTEVILLE and MCE in consideration of their mutual covenants agree as follows:

MCE shall serve as CITY OF FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of MCE's services. All services shall be performed under the direction of a professional engineer registered in the State of Arkansas and qualified in the particular field. If Construction Phase Services are to be provided by MCE under this Agreement, the construction shall be executed under the observation of a professional engineer registered in the State of Arkansas in accordance with Arkansas Code Amended §22-9-101.

SECTION 1 - AUTHORIZATION OF SERVICES

- 1.1 Services on any assignment shall be undertaken only upon written Authorization of CITY OF FAYETTEVILLE and agreement of MCE. Assignments may include services described hereafter as Basic Services or as Additional Services of MCE.



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

SECTION 2 - BASIC SERVICES OF MCE

- 2.1.1 Perform professional design services in connection with the Project as hereinafter stated, which shall include normal civil, structural, and surveying services.
- 2.1.1.1 The Scope of Services to be furnished by MCE during the Preliminary and Final Design Phase is included in Section 2.2 hereafter and in Appendix A attached hereto and made part of this Agreement. Preliminary and Final Design Phase Services shall include Design Surveys and Bidding Phase Services.
- 2.1.1.2 The Scope of Services to be furnished by MCE for property mapping, easement mapping and easement preparation is included in Section 2.3 hereafter and in Appendix A attached hereto and made a part of this Agreement.
- 2.1.1.3 The Scope of Services to be furnished by MCE for Storm Water Pollution Prevention Plan Services is included in Section 2.4 hereafter and in Appendix A attached hereto and made a part of this Agreement.
- 2.1.1.4 The Scope of Services to be furnished by MCE for Construction Staking is included in Section 2.5 hereafter and in Appendix A attached hereto and made a part of this Agreement.
- 2.1.1.5 The Scope of Services to be furnished by MCE during other aspects of the Construction Phase, if desired by the CITY OF FAYETTEVILLE, will be negotiated in full and added by an amendment to this Agreement.
- 2.1.2 Execution of this agreement will authorize the Engineer to proceed with the services as described herein.

2.2 Design Services

2.2.1 MCE will perform engineering and related services in order to prepare Preliminary Drawings, and Final Drawings, and to assist the CITY OF FAYETTEVILLE with Project Specifications, Bidding assistance, AHTD Coordination, and related services as described in Appendix A.

2.2.1.1. Text documents shall be provided to CITY OF FAYETTEVILLE in Microsoft® Word version 2007 or later software. Contract drawings shall be prepared using standard borders, sheet sizes, title blocks and CADD standards provided by CITY OF FAYETTEVILLE. MCE may use its normal software for the preparation of drawings but the final product shall be provided to CITY OF FAYETTEVILLE in Autodesk AutoCAD version 2012 or later.

2.2.1.2. Develop and include in Appendix A of this Agreement for approval by CITY OF FAYETTEVILLE, a project design schedule in which MCE shall include, in an acceptable level of detail, the steps and milestone dates to be undertaken by MCE in the completion of this design. This Schedule shall include reasonable allowances for review and approval times required by CITY OF FAYETTEVILLE, performance of services by CITY OF FAYETTEVILLE's consultants, and review and approval times required by public authorities having jurisdiction over the Project. This Schedule shall be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the Project requested by CITY OF FAYETTEVILLE, or for delays or other causes beyond MCE's reasonable control. The progress design schedule shall consist of a tabular list of milestones for each phase of services.

2.2.1.3. When requested by the CITY OF FAYETTEVILLE's Utility Engineer, prepare for and attend Water and Sewer Committee meetings and a City Council meeting to provide support for the project.

- 2.2.2. Provide through contract amendments services or data such as geotechnical investigations, core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests, and inspections of samples, materials, and equipment as necessary for authorized Project services including appropriate professional interpretations of all the foregoing; property, boundary, easement, right-of-way, topographic, and utility surveys; noting zoning and deed restrictions.
- 2.2.2.1. Fully disclose all subcontract agreements including the name and address of the subconsultant, the scope of services to be provided and the value of the subcontract agreement.
- 2.2.2.2. Incorporate into all subcontract agreements for planning and design engineering services the applicable milestone dates from the Submittal Schedule and the CITY OF FAYETTEVILLE and require all MCE subconsultants to be bound by the Submittal Schedule.
- 2.2.3. Design shall be reviewed by CITY OF FAYETTEVILLE, or such parties as CITY OF FAYETTEVILLE shall designate, at completion of preliminary (30% complete) and final (90% complete) plans. Interim reviews may be performed at the request of MCE or the CITY OF FAYETTEVILLE in order to facilitate completion of the project.
- 2.2.3.1. Final Design shall be reviewed by the CITY OF FAYETTEVILLE, the Arkansas Highway and Transportation Department and the Arkansas Department of Health. Design documents shall be modified/updated by MCE as necessary for approval by all parties. River crossing plans shall be submitted to the Corps of Engineers for their approval.
- 2.2.3.2. MCE shall assist the CITY OF FAYETTEVILLE in the process of advertising the project for bids, receiving bids, and preparing a Bid Tabulation.

- 2.2.3.3. MCE shall assist the CITY OF FAYETTEVILLE concerning coordination with the Arkansas Highway and Transportation Department, attendance of AHTD coordination meetings and preparation of draft documents required by AHTD related to the project design. AHTD reimbursement is not anticipated and documentation of facilities to justify reimbursement percentage calculations is not included.

2.3 Property Mapping and Easement Services

- 2.3.1. MCE will perform property mapping, easement mapping and easement preparation services as described in Appendix A.

- 2.3.1.1. MCE shall rely on AHTD property maps and right-of-way maps concerning AHTD's right-of-way acquisition. MCE shall rely on CITY OF FAYETTEVILLE atlas maps and easement acquisition personnel for information on existing easements. Based on these data MCE shall prepare property maps and easement maps, determine the extent of required new easements, verify the current ownership of property where new easement are required, and prepare required easement documents in accordance with CITY OF FAYETTEVILLE easement criteria. MCE shall revise easements where AHTD right-of-way limits change or where the requirements by the CITY OF FAYETTEVILLE are revised, at the expense of the CITY OF FAYETTEVILLE. Any errors detected in easement documents prepared by MCE shall be revised by MCE at MCE's expense.

2.4 Storm Water Pollution Prevention Plan Phase

- 2.4.1 MCE shall complete a Storm Water Pollution Prevention Plan based on the final system design and in accordance with applicable ADEQ criteria for approval by the CITY OF FAYETTEVILLE and implementation by the construction contractor.

2.5 Construction Phase

2.5.1. MCE will perform Construction Staking during the Construction Phase. Construction Staking shall be completed under the direct supervision of a Registered Land Surveyor, and shall establish the pipeline alignment and grade as required by the Final Drawings, and as further described in Appendix A.

2.5.2. The scope of other Construction Phase Services will be described in detail in a future amendment to this Agreement, if the CITY OF FAYETTEVILLE chooses to have MCE provide other Construction Phase Services.

SECTION 3 - ADDITIONAL SERVICES OF MCE

3.1 General

If authorized in writing by the CITY OF FAYETTEVILLE Mayor and the City Council and agreed to in writing by MCE, MCE shall furnish or obtain from others Additional Services of the following types that are not considered normal or customary Basic Services. The scope of Additional Services may include:

3.1.1 Financial Consultation

Consult with CITY OF FAYETTEVILLE's fiscal agents and bond attorneys and provide such engineering data as required for any bond prospectus or other financing requirements.

3.1.2 Administrative Assistance

Provide Contract and Project administration to the degree authorized by CITY OF FAYETTEVILLE.

3.1.3 Furnishing renderings or models of the Project for CITY OF FAYETTEVILLE's use.

3.1.4 Miscellaneous Studies

Investigations involving detailed consideration of operations, maintenance, and overhead expenses, and the preparation of rate schedules, earnings, and expense statements; feasibility studies; appraisals and valuations; detailed quantity surveys of material, equipment, and labor; and audits or inventories required in connection with construction performed by CITY OF FAYETTEVILLE.

3.1.5 Preparing to serve or serving as a witness for CITY OF FAYETTEVILLE in any litigation or other proceeding involving the Project.

3.1.6 Extra Services

3.1.6.1 Services not specifically defined heretofore that may be authorized by CITY OF FAYETTEVILLE.

3.2 Contingent Additional Services

3.2.1 If services described under Contingent Additional Services in Paragraph 3.2 are required due to circumstances beyond MCE's control, MCE shall notify CITY OF FAYETTEVILLE and request a formal contract amendment approved by the Mayor and the City Council prior to commencing such services. If CITY OF FAYETTEVILLE deems that such services described in 3.2 are not required, CITY OF FAYETTEVILLE shall give prompt written notice to MCE. If CITY OF FAYETTEVILLE indicates in writing that all or parts of such Contingent Additional Services are not required, MCE shall have no obligation to provide those services.

3.2.2 Making revisions in Drawings, Specifications, or other documents when such revisions are:

3.2.2.1 Required because of inconsistent approvals or instructions previously given by CITY OF FAYETTEVILLE, including revisions made necessary by adjustments in CITY OF FAYETTEVILLE's program or Project Budget.

- 3.2.2.2 Required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents.

SECTION 4 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of MCE:

- 4.1 Provide AHTD's plans for MCE's use.
- 4.2 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 4.3 Assist MCE by placing at MCE's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 4.4 Guarantee access to and make all provisions for MCE to enter upon public and private property as required for MCE to perform its services under this Agreement.
- 4.5 Examine all studies, reports, sketches, cost opinions, Bid Documents, Drawings, proposals, and other documents presented by MCE and render in writing decisions pertaining thereto.
- 4.6 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.
- 4.7 Designate in writing a person to act as CITY OF FAYETTEVILLE's representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 4.8 Give prompt written notice to MCE whenever CITY OF FAYETTEVILLE observes or otherwise becomes aware of any defect in the Project.

- 4.9 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project. Pay directly to the governmental authorities the actual filing and permit fees.
- 4.10 Pay for placement of legal notices and advertisements in newspapers or other publications required by program requirements.
- 4.11 Furnish, or direct MCE to provide, necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.12 If CITY OF FAYETTEVILLE's standard bidding requirements, Agreement forms and General Conditions are to be used, CITY OF FAYETTEVILLE shall provide copies of such documents for MCE's use in coordinating the Contract Drawings and Specifications.
- 4.13 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to MCE in a timely manner.

SECTION 5 - PERIOD OF SERVICE

- 5.1 This Agreement will become effective upon the first written notice by CITY OF FAYETTEVILLE authorizing services hereunder.
- 5.2 The provisions of this Agreement have been agreed to in anticipation of the orderly progress of the Project through completion of the services stated in the Agreement. MCE will proceed with providing the authorized services immediately upon receipt of written authorization from CITY OF FAYETTEVILLE. Said authorization shall include the scope of the services authorized and the time in which the services are to be completed.

SECTION 6 - PAYMENTS TO MCE

6.1 Compensation

For the Scope of Services described herein, CITY OF FAYETTEVILLE shall pay MCE an amount Not to Exceed the sum amount of \$131,328 United States Dollars (US \$131,328) in accordance with the provisions described in the following paragraphs. The profit included in this Not to Exceed amount shall be \$14,070.00.

6.1.1 Design Surveys, Preliminary and Final Design and Bidding Services

For design surveys, preliminary design, final design and bidding services to be performed by MCE, CITY OF FAYETTEVILLE shall pay MCE for time spent on the project at the rates shown in attached Appendix B-1 for each classification of MCE personnel, and for reimbursable expenses. The rates shown in Appendix B-1 will be increased annually with the first increase effective on or about October 1, 2012.

6.1.2 Property Surveys and Property Acquisition Documents

For Property Surveys, Property and Easement Mapping, and Property Acquisition Documents, CITY OF FAYETTEVILLE shall pay MCE for time spent on the project at the rates shown in attached Appendix B-2 for each classification of MCE personnel, and for reimbursable expenses. The rates shown in Appendix B-2 will be increased annually with the first increase effective on or about October 1, 2012.

6.1.3 Storm Water Pollution Prevention Plan

For Storm Water Pollution Prevention Plan services, CITY OF FAYETTEVILLE shall pay MCE for time spent on the project at the rates shown in attached Appendix B-3 for each classification of MCE personnel, and for reimbursable expenses. The rates shown in Appendix B-3 will be increased annually with the first increase effective on or about October 1, 2012.

6.1.4 Construction Phase Services

For Construction Staking Services, CITY OF FAYETTEVILLE shall pay MCE for the time spent on the project at the rates shown in attached Appendix B-4 for each classification of MCE personnel, and for reimbursable expenses. The rates shown in Appendix B-4 will be increased annually with the first increase effective on or about October 1, 2012. If other Construction Phase Services besides Construction Staking are authorized, CITY OF FAYETTEVILLE shall pay MCE an amount to be negotiated at a later date.

6.1.5 Additional Services

For authorized Additional engineering services under Section 3, "Additional Services", compensation to MCE shall be negotiated at the time Additional Services are authorized.

6.2 Statements

Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate consistent with MCE's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by MCE and approved by CITY OF FAYETTEVILLE.

6.3 Payments

All statements are payable upon receipt and due within thirty (30) days. If a portion of MCE's statement is disputed by CITY OF FAYETTEVILLE, the undisputed portion shall be paid by CITY OF FAYETTEVILLE by the due date. CITY OF FAYETTEVILLE shall advise MCE in writing of the basis for any disputed portion of any statement. CITY OF FAYETTEVILLE will make reasonable effort to pay invoices within 30 days of date the invoice is approved, however, payment within 30 days is not guaranteed.

6.4 Final Payment

Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, MCE shall execute and deliver to CITY OF FAYETTEVILLE a release of all claims against CITY OF FAYETTEVILLE arising under or by virtue of this Agreement, except claims which are specifically exempted by MCE to be set forth therein. Unless otherwise provided in this Agreement or by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of CITY OF FAYETTEVILLE's claims against MCE or his sureties under this Agreement or applicable performance and payment bonds, if any.

6.5 Fee Changes

Subject to the City Council approval, adjustment of the Not to Exceed amount may be made should MCE establish and CITY OF FAYETTEVILLE agree that there has been or is to be a significant change in scope, complexity or character of the services to be performed; or if CITY OF FAYETTEVILLE decides to shorten the duration of work from the time period specified in the Agreement for completion of work and such modification warrants such adjustment. Changes, modifications or amendments in scope, price or fees to this Contract shall **not** be allowed without formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost, fees, or delivery schedule.

SECTION 7 - GENERAL CONSIDERATIONS

7.1 Insurance

7.1.1 During the course of performance of these services, MCE will maintain (in United States Dollars) the following minimum insurance coverages:

Type of Coverage	Limits of Liability
Workers' Compensation	Statutory
Employers' Liability	\$500,000 Each Accident
Commercial General Liability	
Bodily Injury and	\$1,000,000 Combined Single Limit
Property Damage	
Automobile Liability:	
Bodily Injury and	\$1,000,000 Combined Single Limit
Property Damage	
Professional Liability Insurance	\$1,000,000 Each Claim

MCE will provide to CITY OF FAYETTEVILLE certificates as evidence of the specified insurance within ten days of the date of this Agreement and upon each renewal of coverage.

7.1.2 Construction Contractors shall be required to provide (or CITY OF FAYETTEVILLE may provide) Owner's Protective Liability Insurance naming CITY OF FAYETTEVILLE as a Named Insured to endorse CITY OF FAYETTEVILLE. Construction Contractors shall be required to provide certificates evidencing such insurance to CITY OF FAYETTEVILLE and MCE.

7.1.3 CITY OF FAYETTEVILLE and MCE waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of MCE's services. A provision similar to this shall be incorporated into all Construction Contracts entered into by CITY OF FAYETTEVILLE, and all construction Contractors shall be required to provide waivers of subrogation in favor of CITY OF FAYETTEVILLE and MCE for damage or liability covered by any construction Contractor's policy of insurance.

7.2 Professional Responsibility

7.2.1 MCE will exercise reasonable skill, care, and diligence in the performance of MCE's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. MCE agrees not to seek or accept any compensation or reimbursements from the City of Fayetteville for engineering work it performs to correct any errors, omissions or other deficiencies caused by MCE's failure to meet customarily accepted professional engineering practices. CITY OF FAYETTEVILLE retains all other remedies to recover for its damages caused by any negligence of MCE.

7.2.2 In addition MCE will be responsible to CITY OF FAYETTEVILLE for damages caused by its negligent conduct during its activities at the Project Site to the extent covered by MCE's Commercial General Liability and Automobile Liability Insurance policies as specified in Paragraph 7.1.1.

7.3 Cost Opinions and Projections

Cost opinions and projections prepared by MCE relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on MCE's experience, qualifications, and judgment as a design professional. Since MCE has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, MCE does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by MCE.

7.4 Changes

CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of MCE's services, with an appropriate change in compensation and schedule only after Fayetteville City Council approval of such proposed changes and, upon execution of a mutually acceptable amendment or change order signed by the Mayor of the CITY OF FAYETTEVILLE and the President or any Vice President of MCE.

7.5 Termination

7.5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

7.5.1.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

7.5.1.2 An opportunity for consultation with the terminating party prior to termination.

7.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that MCE is given:

7.5.2.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

7.5.2.2 An opportunity for consultation with the terminating party prior to termination.

7.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but

7.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,

- 7.5.3.2 Any payment due to MCE at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of MCE's default.
- 7.5.4 If termination for default is effected by MCE, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to MCE for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by MCE relating to commitments which had become firm prior to the termination.
- 7.5.5 Upon receipt of a termination action under Paragraphs 7.5.1 or 7.5.2 above, MCE shall:
- 7.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
- 7.5.5.2 Deliver or otherwise make available to CITY OF FAYETTEVILLE all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by MCE in performing this Agreement, whether completed or in process.
- 7.5.6 Upon termination under Paragraphs 7.5.1 or 7.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.
- 7.5.7 If, after termination for failure of MCE to fulfill contractual obligations, it is determined that MCE had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 7.5.4 of this clause.

7.6 Delays

In the event the services of MCE are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond MCE's reasonable control, MCE shall be entitled to additional compensation and time for reasonable costs incurred by MCE in temporarily closing down or delaying the Project.

7.7 Rights and Benefits

MCE's services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.

7.8 Dispute Resolution

7.8.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between CITY OF FAYETTEVILLE and MCE which arise from, or in any way are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of CITY OF FAYETTEVILLE or MCE in the performance of this Agreement, and disputes concerning payment.

7.8.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate. If timely Notice is given under Paragraph 7.8.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 7.8.3 and 7.8.4 have been complied with.

7.8.3 Notice of Dispute

7.8.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice;

7.8.3.2 For disputes arising within one year after the making of final payment, CITY OF FAYETTEVILLE shall give MCE written Notice at the address listed in Paragraph 7.14 within thirty (30) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

7.8.4 Negotiation: Within seven days of receipt of the Notice, the Project Managers for CITY OF FAYETTEVILLE and MCE shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President of MCE and the Mayor of CITY OF FAYETTEVILLE or his designee. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.

7.9 CITY OF FAYETTEVILLE represents that it has sufficient funds or the means of obtaining funds to remit payment to MCE for services rendered by MCE.

7.10 Publications

Recognizing the importance of professional development on the part of MCE's employees and the importance of MCE's public relations, MCE may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to MCE's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to MCE. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of MCE's activities pertaining to any such publication shall be for MCE's account.

7.11 Indemnification

7.11.1 CITY OF FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless CITY OF FAYETTEVILLE and MCE from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

7.12 Computer Models

MCE may use or modify MCE's proprietary computer models in service of CITY OF FAYETTEVILLE under this Agreement, or MCE may develop computer models during MCE's service to CITY OF FAYETTEVILLE under this Agreement. Such use, modification, or development by MCE does not constitute a license to CITY OF FAYETTEVILLE to use or modify MCE's computer models. Said proprietary computer models shall remain the sole property of the MCE. CITY OF FAYETTEVILLE and MCE will enter into a separate license agreement if CITY OF FAYETTEVILLE wishes to use MCE's computer models.

7.13 Ownership of Documents

All documents provided by CITY OF FAYETTEVILLE including original drawings, disks of CADD drawings and cross sections, estimates, specification field notes, and data are and remain the property of CITY OF FAYETTEVILLE. MCE may retain reproduced copies of drawings and copies of other documents.

Engineering documents, drawings, and specifications prepared by MCE as part of the Services shall become the property of CITY OF FAYETTEVILLE when MCE has been compensated for all Services rendered, provided, however, that MCE shall have the unrestricted right to their use. MCE shall, however, retain its rights in its standard drawings details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of MCE.

Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. MCE makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the

event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

7.14 Notices

Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

CITY OF FAYETTEVILLE's address:

City of Fayetteville Attn: David Jurgens, PE
113 W. Mountain
Fayetteville, AR 72701

MCE's address:

McClelland Consulting Engineers, Inc. Attn: Branch Manager
1810 North College Avenue
Fayetteville, AR 72703

7.15 Successor and Assigns

CITY OF FAYETTEVILLE and MCE each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither CITY OF FAYETTEVILLE nor MCE shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.

7.16 Controlling Law

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas without regard to any conflicts of law provisions.

7.17 Entire Agreement

This Agreement represents the entire Agreement between MCE and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to MCE a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by MCE, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

SECTION 8 - SPECIAL CONDITIONS

8.1 Additional Responsibilities of MCE:

8.1.1 MCE shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by MCE's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.

8.1.2 MCE's obligations under this clause are in addition to MCE's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against MCE for faulty materials, equipment, or work.

8.2 Remedies

Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and MCE arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

8.3 Audit: Access to Records

8.3.1 MCE shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. MCE shall also maintain the financial information and data used by MCE in the preparation of support of the cost submission required for any negotiated agreement or change order and send to CITY OF FAYETTEVILLE a copy of the cost summary submitted. The United States Department of Labor, CITY OF FAYETTEVILLE, the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. MCE will provide proper facilities for such access and inspection.

8.3.2 Records under Paragraph 8.3.1 above, shall be maintained and made available during performance on assisted work under this Agreement and until three years from the date of final payment for the project. In addition, those records which relate to any controversy arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

8.3.3 This right of access clause (with respect to financial records) applies to:

8.3.3.1 Negotiated prime agreements:

8.3.3.2 Negotiated change orders or agreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement:

8.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier subagreement or purchase order awarded after effective price competition, except:

8.3.3.3.1 With respect to record pertaining directly to subagreement performance, excluding any financial records of MCE;

8.3.3.3.2 If there is any indication that fraud, gross abuse or corrupt practices may be involved;

8.3.3.3.3 If the subagreement is terminated for default or for convenience.

8.4 Covenant Against Contingent Fees

MCE warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by MCE for the purpose of securing business. For breach or violation of this warranty, CITY OF FAYETTEVILLE shall have the right to annul this Agreement without liability or at its discretion, to

deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8.5 Gratuities

8.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that MCE or any of MCE's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF FAYETTEVILLE, or the AHTD in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to MCE terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

8.5.2 In the event this Agreement is terminated as provided in Paragraph 8.5.1, CITY OF FAYETTEVILLE may pursue the same remedies against MCE as it could pursue in the event of a breach of the Agreement by MCE. As a penalty, in addition to any other damages to which it may be entitled by law, CITY OF FAYETTEVILLE may pursue exemplary damages in an amount (as determined by CITY OF FAYETTEVILLE) which shall be not less than three nor more than ten times the costs MCE incurs in providing any such gratuities to any such officer or employee.

8.6 Arkansas Freedom of Information Act

City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, MCE will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

8.7 Debarment And Suspension

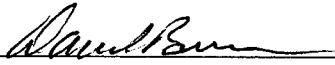
I certify that to the best of my knowledge and belief that the company that I represent and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification regarding debarment and suspension may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both. I further certify that I will obtain a similar certification for each subcontract awarded in excess of \$25,000.

**DEBARMENT CERTIFICATION
AUTHORIZED REPRESENTATIVE**

COMPANY NAME: McClelland Consulting Engineers, Inc.

SIGNATURE:  DATE: _____

PRINTED NAME: Daniel Barnes TITLE: President

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and
McClelland Consulting Engineers, Inc., by its authorized officer have made and executed this Agreement
as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

By: _____

Mayor

ATTEST:

By: _____

City Clerk

McClelland Consulting Engineers, Inc.

By: _____

Title: President

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

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

APPENDIX A – SCOPE OF SERVICES

2.1 General

Generally, the scope of services includes design surveys along the Highway 16 corridor in the vicinity of the West Fork River Bridge, as defined by AHTD's Job No. 040569 for widening this segment of Highway 16. Surveys will be limited to those areas where existing and new water and sewer facilities must be coordinated with the AHTD highway improvement plans. Preliminary and Final Design services related to water and sewer improvements within the limits outlined above shall be completed. The design work shall cover a 12-inch water main for the length of the AHTD project, replacing an existing 8-inch water main generally located in the existing Highway 16 right of way on the north side of the highway. This 12-inch main shall cross the West Fork River with a bored undercrossing, replacing the existing 8-inch main attached to the bridge that is being replaced by AHTD. Design services shall include parallel water distribution mains and / or service line crossings to provide service to existing water mains and water meters on the south side of Highway 16. Design service shall also include documenting the location of existing sanitary sewer lines, manholes and force mains in the vicinity of the highway project and designing replacement sanitary sewer facilities if required to accommodate the highway widening project. Approximately 7,000 feet total of 12-inch water main on the north side and parallel distribution mains on the south side are anticipated.

2.2 Design Surveys, Preliminary Design, Final Design and Bidding Services

2.2.1 Design Surveys

MCE will complete design surveys as necessary to located existing water and sewer facilities and to located other existing utilities that are marked by One-Call services in areas required to accommodate the AHTD widening plans and the 12-inch water main design along Highway 16. Design surveys shall also cover the areas along the new Highway 16 right of way where required for the design of the new water and sewer facilities. Areas where there are no water and sewer conflicts and no new water and sewer facilities are required will not be surveyed. This includes a portion of the south side of the Highway 16 project. MCE shall rely on the Fayetteville water and sewer atlas information for general utility locations and on Fayetteville's personnel marking water and sewer facilities during the one call process for design survey locations.

2.2.2. Preliminary Design

Preliminary plans shall be submitted to the City of Fayetteville for the purpose of confirming the final design scope of work, including the extent of new water and sewer mains, location of interconnections, coordination issues with the highway plans, preliminary easement requirements, anticipated right of way conflicts, and a preliminary estimate of construction costs. The preliminary plans shall include illustrating the proposed work on the Highway Department plans with minimal profile information.

2.2.3 Final Design

Based on review comments from Preliminary Design, the Final Design shall be completed, including plans, profiles, details, AHTD coordination issues, final estimate construction cost, easement requirements, and related documents as necessary to obtain approvals by the City of Fayetteville, the Arkansas Department of Health, and the Arkansas Highway and Transportation Department. Once it is evident that the Final Design is acceptable, appropriate documents suitable for submission to the Corps of Engineers for river crossing permit shall be developed. Final Design deliverables shall include:

1. Two full sized sets of plans, as well as cost estimates for the City of Fayetteville.
2. Six full sized sets of plans and cost estimates for AHTD.
3. Two full sized sets of plans and specifications for the Health Department.
4. A summary of easement requirements for the City of Fayetteville.

It is anticipated that the City of Fayetteville will prepare the final Project Specifications. To support this effort, MCE will prepare a draft Bid Schedule with final quantities estimated and a draft Specification Section for Measurement and Payment of construction items.

2.2.4 Bidding Phase

MCE shall assist the City of Fayetteville with an Advertisement for Bids, assist in addressing bidders questions, assist in issuing Addenda as authorized by the City of Fayetteville, attend a Prebid Conference if desired by the City of Fayetteville, attend the bid opening and prepare Bid Tabulation with an award recommendation.

2.3 Property Surveys, Property Mapping, Easement Mapping and Easement Preparations Services.

2.3.1 Property Surveys

MCE shall rely on the AHTD Highway 16 right of way plans, the AHTD ownership map and Fayetteville easement atlas information for the initial evaluation of easement requirements. Based on these sources of information, an initial map of easements needs will be submitted to the City of Fayetteville. Upon Fayetteville's concurrence, property surveys as necessary to confirm property lines needed for the easement preparation process will be completed. The property survey process shall include verification of current property ownership/current property legal descriptions based on courthouse records.

2.3.2 Property Mapping

The AHTD property maps shall be updated/modified based on any changes determined during the property survey process and property ownership verification process.

2.3.3 Easement Mapping

The easement maps obtained from Fayetteville atlas sheets shall be updated as needed to reflect more current existing easement records, as provided by the City of Fayetteville personnel, in areas where the exact location of existing easements has an impact on the project. New easements shall be added to this easement map and to the project plans, as necessary to illustrate to the bidders and construction contractor the limits of their authorized work areas.

2.3.4 Easement Preparation Services

For those areas identified and subsequently approved by the City of Fayetteville, individual easement legal descriptions and tract maps will be prepared in accordance with criteria established by the City of Fayetteville, generally in accordance with documents prepared on previous projects. It is anticipated that as many as 34 new easement documents may be required and as many as 9 of these documents may require revisions based on design changes by AHTD or the City of Fayetteville.

2.4 Storm Water Pollution Prevention Plan Services

A Storm Water Pollution Prevention Plan shall be completed at the end of the design phase, to conform to the design documents and ADEQ criteria, and to further be acceptable to the City of Fayetteville.

2.5 Geotechnical Services

The scope of Geotechnical Services will be added with a future amendment to this agreement.

2.6 Construction Phase Services

MCE will complete Construction Staking as necessary to provide field references for the construction contractor relative to the alignment and grade of the water and sewer facilities. Construction Staking shall be at 100 ft intervals and at all horizontal and vertical deflection points. Staking shall be along the centerline of the water and sewer facilities, with offset stakes as needed to preserve the field stakes. MCE shall coordinate with the construction contractor to provide the staking he needs, within these parameters. The project shall be staked once, in segments as desired by the construction contractor. Stakes destroyed shall be replaced at the construction contractor's expense. The scope of any other Construction Phase Services besides Construction Staking, if desired by the City of Fayetteville, will be added with a future amendment to this agreement.

2.7 Extra Work

The following items are not included under this agreement but will be considered as extra work:

1. Redesign for the City's convenience or due to changed conditions after prior approval or conflicting direction from the City or from AHTD.
2. Submittals or deliverables in addition to those listed in paragraph 2.2.3.
3. Environmental Assessment.
4. Work related to environmentally or historically (culturally) significant items.

Extra work will be as directed by the City of Fayetteville in writing for an additional fee as agreed upon by the City of Fayetteville and MCE.

2.8 Schedule

MCE will begin work under this Agreement within ten (10) days of a Notice to Proceed and will complete the work in accordance with the schedule below:

<u>Phase Description</u>	<u>Calendar Days</u>
Design Survey	45 days from start date
Draft Preliminary Design	30 days from completion of Design Surveying
Preliminary Design Review	30 days from Preliminary Design Submittal
Final Design	45 days from Preliminary Design Review
Final Design Approval	75 days from Final Design Submittal
Easement Preparation	60 days from Final Design Approval
Bidding Phase	75 days from Final Design Approval
Storm Water Pollution Prevention Plan	Concurrent with Easement Preparation
Construction Staking	Within 7 days after notification by the Construction Contractor

APPENDIX B - FEE PROPOSAL

B-1, Fee Proposal for Design Surveys
Preliminary Design, Final Design & Limited Bidding Assistance
In Conjunction with the Highway 16 Water & Sewer
Relocation and Improvements
AHTD Job No. 040569
Fayetteville, Arkansas

Labor Classification	Time/Hours	Labor Rate	Extended
Project Manager	160	\$155.00	\$24,800.00
Project Engineer	32	\$143.00	\$4,576.00
Engineering Tech	24	\$55.00	\$1,320.00
Chief Draftsman	60	\$73.00	\$4,380.00
Senior Draftsman	96	\$60.00	\$5,760.00
Survey Supervisor, RLS	32	\$104.00	\$3,328.00
Survey Crew (2 man)	85	\$143.00	\$12,155.00
Robotic Survey Crew	72	\$143.00	\$10,296.00
Surveyor (1 man)	16	\$72.00	\$1,152.00
Computer Tech	77	\$80.00	\$6,160.00
Clerical Support	20	\$60.00	\$1,200.00
Subtotal			\$75,127.00
Travel, 400 Miles @ \$0.50			\$200.00
Reproduction			\$700.00
Materials & Supplies			\$400.00
Total Design Cost			\$76,427.00

APPENDIX B-2 - FEE PROPOSAL

For Property Surveys, Property Mapping, Easement Mapping
Easement Preparation Services in Conjunction with the Highway 16
Water and Sewer Relocation and Improvements
AHTD Job No. 040569
Fayetteville, Arkansas

Labor Classification	Time/Hours	Labor Rate	Extended
Project Manager	12	\$155.00	\$1,860.00
Survey Supervisor, RLS	24	\$104.00	\$2,496.00
Registered Land Surveyor	320	\$104.00	\$33,280.00
Survey Crew (2 man)	16	\$143.00	\$2,288.00
Surveyor (1 man)	8	\$72.00	\$576.00
Computer Tech	20	\$80.00	\$1,600.00
Clerical Support	16	\$60.00	\$960.00
		Subtotal	\$43,060.00
		Travel, 120 Miles @ \$0.50	\$60.00
		Materials & Supplies	\$40.00
		Total Easement Services	\$43,160.00

APPENDIX B-3 - FEE PROPOSAL

For Storm Water Pollution Prevention Plan Services
In Conjunction with the Highway 16 Water & Sewer
Relocation and Improvements
AHTD Job No. 040569
Fayetteville, Arkansas

Labor Classification	Time/Hours	Labor Rate	Extended
Project Manager	3	\$155.00	\$465.00
Project Engineer	16	\$135.00	\$2,160.00
Senior Draftsman	8	\$60.00	\$480.00
Computer Tech	2	\$80.00	\$160.00
Clerical Support	3	\$60.00	\$180.00
		Subtotal	\$3,445.00
		Materials & Supplies	\$40.00
		Total SWPPP Cost	\$3,485.00

APPENDIX B-4 - FEE PROPOSAL

For Construction Staking Services in Conjunction with the Highway 16
Water and Sewer Relocation and Improvements

AHTD Job No. 040569

Fayetteville, Arkansas

Labor Classification	Time/Hours	Labor Rate	Extended
Project Manager	2	\$155.00	\$310.00
Survey Supervisor, RLS	6	\$104.00	\$624.00
Survey Crew (2 man)	36	\$143.00	\$5,148.00
Robotic Survey Crew	8	\$143.00	\$1,144.00
Computer Tech	10	\$80.00	<u>\$800.00</u>
		Subtotal	\$8,026.00
		Travel, 180 Miles @ \$0.50	\$90.00
		Materials & Supplies	<u>\$140.00</u>
		Total Construction Staking Cost	\$8,256.00

City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

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

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

Vendor #: 7460	Vendor Name: McClelland Consulting Engineers, Inc	Requisition No.: 7/20/2012	Date: 7/20/2012
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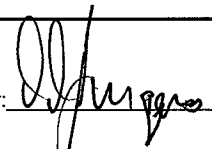
Address: PO Box 1229, 1810 N College Ave	Fob Point:	Mail Yes: ☒ No: ☐	Expected Delivery Date: McClelland Consulting Engineers
City: Fayetteville	State: AR	Taxable Yes: ☒ No: ☒	Quotes Attached Yes: ☐ No: ☐

Requester: Cheryl Partain	Requester's Employee #: 2548	Extension: 224	Divison Head Approval: 
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Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
------	-------------	----------	---------------	-----------	---------------	-----------------	----------------------	-------------	---------------

1	Design Services for the Hwy 16 W/S Relocation Project at the West Fork of the White River	1	Each	131,328.00	\$131,328.00	5400.5600.5314.00	11012.1201		
2					\$0.00				
3					\$0.00				
4					\$0.00				
5					\$0.00				
6					\$0.00				
7					\$0.00				
8					\$0.00				
9					\$0.00				
10					\$0.00				
*	Shipping/Handling		Lot		\$0.00				

Special Instructions: Per RFQ 11-01	Subtotal: \$131,328.00
	Tax: \$0.00
	Total: \$131,328.00

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

City of Fayetteville Staff Review Form

B. 1
Amend §154.03 Private
Parties/Zoning Amendment
Page 1 of 14

City Council Agenda Items
and
Contracts, Leases or Agreements

7/17/2012

City Council Meeting Date
Agenda Items Only

Andrew Garner

Submitted By

Planning

Division

Development Services

Department

Action Required:

ADM 12-4170: Administrative Item (UDC SECTION 154.03(C)(2)): Submitted by the CITY PLANNING DIVISION to repeal UDC section 154.03(C)(2).

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 ☐

James P. King
Department Director

06-11-2012
Date

Previous Ordinance or Resolution #

A large rewrite was needed.

Original Contract Date:

James P. King
City Attorney

June 25, 2012
Date

Original Contract Number:

Marsha Hester
Finance and Internal Services Director

6/25/12
Date

06-22-12 A09:29 RCVD
Received in City
Clerk's Office

Don Mann
Chief of Staff

6/26/12
Date

Received in
Mayor's Office

Don Mann
Mayor

6/26/12
Date

ENTERED
6/25/12
PH

Comments:

Left on first Reading at the 7/17/12 Cmty.

Revised January 15, 2009



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff

From: Jeremy Pate, Development Services Director

Date: June 20, 2012

Subject: ADM 12-4170 Repeal UDC Section 154.03(C)(2) Petition opposed to rezoning

BACKGROUND:

Chapter 154.03(C)(2) states that if a certain number of property owners have signed a petition opposed to a rezoning, then the rezoning cannot become effective except by a three-fourths vote of the City Council. This code section appears to have been enacted with all other zoning and development code sections for the City during a Special Meeting of the City Board of Directors on June 29, 1970. The City Attorney does not believe this section of the code has ever been used in an attempt to require a super majority vote. Further, the City Attorney believes that this code section is illegal because it is beyond our statutory power. A memo from the City Attorney is attached.

RECOMMENDATION:

Staff recommends approval of an ordinance to amend the Unified Development Code to repeal Section 154.03(C)(2).

BUDGET IMPACT:

None.

CHAPTER 154: AMENDMENTS

154.03 Private Parties/Zoning Amendment

(A) *Petition.* Any private party or parties desiring an amendment to Chapter 160, upon payment of the appropriate fee, shall submit to the Planning Commission a petition giving the following information:

- (1) Legal description of the property involved;
- (2) Zoning classification request for the property; and,
- (3) Statement explaining why the proposed changes will not conflict with the surrounding land uses.

(B) *Action by Planning Commission.* The Planning Commission may take one of the following actions:

- (1) *Approval.* The proposed amendment may be approved as presented.
- (2) *Approval in modified form.* Approved in modified form by a majority of the Planning Commission and recommended for adoption by the City Council with the reasons for such recommendations stated in writing.
- (3) *Disapproval.* If the Planning Commission disapproves a proposed amendment, the reason for such disapproval shall be given in writing to the petitioner.
- (4) *Neither approves nor disapproves.* If the Planning Commission neither approves nor disapproves a proposed amendment within 45 days after the public hearing the action on such amendment by said Planning Commission shall be deemed favorable; this period may be further extended by vote of the Planning Commission if all the parties involved agree in writing to an extension.

(C) *Action by the City Council.*

- (1) *Action.* The City Council, may take one of the following actions:
 - (a) *Approval.* The City Council, by majority vote, may by ordinance adopt the recommended amendment submitted by the Planning Commission.
 - (b) *Modify and adopt.* By ordinance, may modify and adopt the proposed amendment.

(c) *Return to Planning Commission.* By resolution, may return the proposed amendment to the Planning Commission for further study and recommendation.

~~(2) *Vote.* When a proposed amendment affects the zoning classification of property, and in case a protest against such change is signed by the owners of 20% or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending 300 feet from the street frontage of such opposite lots, then such amendments shall not become effective except by the favorable vote of three-fourths of the City Council.~~

(D) *Re-petitions for amendment.* No application for zoning amendments will be considered by the Planning Commission within 12 months from the date of final disapproval of a proposed amendment unless there is evidence submitted to the Planning Commission which justifies reconsideration.

(E) *Withdrawal.*

- (1) *Before publication.* A petition for amendment may be withdrawn at any time before publication of the notice and posting signs for the public hearing.
- (2) *After publication and posting of notice.* After the publication and posting of notice, the petition may be withdrawn at the discretion of the Planning Commission. If the petition is permitted to be withdrawn after the public hearing, it shall be in the Planning Commission's discretion whether or not a petition affecting part or all of the same property may be refiled sooner than one year from the date of withdrawal.

(Code 1965, App. A., Art. 12(1); Ord. No. 1747, 6-29-70; Ord. No. 2538, 7-3-79; Code 1991, §160.156; Ord. No. 2716, §1, 6-15-93; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98)

Cross reference(s)--Notification and Public Hearings, Ch. 157.

154.04-154.99 Reserved



Departmental Correspondence



www.accessfayetteville.org

**LEGAL
DEPARTMENT**

**TO: Mayor Jordan
City Council**

**Kit Williams
City Attorney**

**Jason B. Kelley
Assistant City Attorney**

**CC: Andrew Garner, Senior Planner – Current Planning
Sondra Smith, City Clerk**

FROM: Kit Williams, City Attorney

A handwritten signature in dark ink, appearing to read "Kit Williams", followed by a long horizontal line.

DATE: June 18, 2012

RE: Update on §154.03 (C)(2) Petition opposed to rezoning

HISTORY

My research reveals that this code section was enacted along with all other zoning and development code sections for the City during a Special Meeting of the City Board of Directors on June 29, 1970. The Board of Directors suspended the rules to get to the third and final reading at this Special Meeting. The minutes do not reflect any discussion or questions before Ordinance No. 1747 was passed unanimously. Current Code §154.03 (C) was on pages 85 and 86 of Ordinance No. 1747. During my six plus years as an Alderman and eleven plus years as City Attorney, I do not believe this section has ever been used in an attempt to require a super majority vote. I do not believe the City Board of Directors then nor the City Council now could require such a three-fourths vote to rezone property because it is probably beyond our statutory power to do so. Therefore I recommend the repeal of this probably illegal subsection of the UDC.

A.C.A. §14-55-203 **Voting requirements for passage** -- **Effective dates** is the general state statute detailing how many votes are needed to pass an Ordinance or resolution: "To pass any bylaw, ordinance, resolution, or order, a concurrence of a majority of a whole number of members elected to the council shall be required." There are a few specific exemptions to this rule (for example a two-thirds vote is required to pass a business license **tax**).

The state statutes are clear that an amendment to the zoning of a district shall be "by a majority vote of the city council." A.C.A. §14-56-423. Can the Board of Directors or City Council place more strenuous requirements for passage of a zoning amendment than specified in state law? I do not think so.

"[4-6] Cities have no inherent authority to enact legislation. That authority is dependent upon the Constitution and the General Assembly. Municipal zoning authority is conferred solely by state enabling legislation. Failure to comply with mandatory procedural requirements of the enabling statute renders a zoning ordinance invalid." *Brooks v. City of Benton*, 308 Ark. 571, 826 S.W. 2d 259, 261 (1992) (Citations omitted). (emphasis added)

Arkansas Attorney General David Pryor opined in Opinion NO. 2002-132: **"a municipality may not, by the adoption of procedural rules, deviate from the requirement of state law.** The procedure for the passage of municipal ordinances is a state, rather than a municipal affair." (emphasis added).

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §154.03 PRIVATE PARTIES/ZONING AMENDMENT TO CLARIFY THE POWERS OF THE PLANNING COMMISSION AND CITY COUNCIL WHEN A PROPERTY OWNER SEEKS REZONING

WHEREAS, the provision of §154.03 **Private Parties/Zoning Amendment** relating to the Planning Commission should clarify that it cannot approve a rezoning request, but only recommend approval to the City Council; and

WHEREAS, subsection (C) should be repealed as it does not comply with statutorily required procedures for approving a rezoning request.

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 repeals §154.03 (B) of the Unified Development Code and enacts a replacement §154.03 (B) as shown below:

“§154.03 (B) *Action by Planning Commission.*

- (1) The Planning Commission may forward the rezoning request as submitted or amended by the Planning Commission to the City Council with a recommendation of approval.
- (2) The Planning Commission may disapprove the rezoning request so that the rezoning request will not be considered by the City Council unless the applicant properly appeals.”

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby repeals §154.03 (C) and enacts a new (C) as shown below:

“(C) Action by the City Council.

- (1) The City Council may by majority vote approve and enact the rezoning ordinance as recommended by the Planning Commission or as requested by the applicant who has properly appealed the Planning Commission’s denial of the requested rezoning.
- (2) The City Council may amend the proposed rezoning request and approve such amended rezoning ordinance by majority vote.
- (3) The City Council may refuse to approve the rezoning request which is thereby denied.
- (4) The City Council can by motion return the proposed rezoning to the Planning Commission for further study and recommendation.

PASSED and APPROVED this 17th day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

*Handed out at the
City Council Meeting 7-17-12*

City Clerk - Fwd: PZD ordinance change

From: Alan Long
To: , City Clerk
Date: 7/17/2012 4:01 PM
Subject: Fwd: PZD ordinance change
CC: mayor , , , Justin Tennant , Bob Ferrell , Rhonda Adams , Sarah Lewis , Sarah Lewis , Matthew Petty

Kit, please see below. I believe that there may be some confusion regarding the ammendment that you have brought forward. In your memo to the city council and the mayor it states, "...I do not believe this section has ever been used in an attempt to require a super majority vote."

If you read the email below, you will recall that we specifically asked if this section could prevent a PZD. This was during the time when the 5 person ordinance was being considered and the Marinoni property development was being discussed along with project Cleveland.

Our neighborhood specifically intends to use this section of the UDC. I ask that the council not change this section of the code. It would be improper to change the code during a time when residents have asked if this code can be applied to protect their property.

Best Regards,

Alan Long
Ward 4 resident
Waterman Woods.

From: "Kit Williams" <kwilliams@ci.fayetteville.ar.us>
Date: April 18, 2012 4:41:52 PM CDT
To: "kay steven@rockhouselaw.com" <kay steven@rockhouselaw.com>
Cc: Andrew Garner <agarner@ci.fayetteville.ar.us>, Jeremy Pate <jpate@ci.fayetteville.ar.us>, steven kay <steven@rockhouselaw.com>
Subject: Re: PZD ordinance change

Steve,

As Alan has informed me that you represent him, I must direct my answer to you. The Unified Development Code speaks for itself. However, it appears to me that this section (which I have never seen used before) would apply to all zoning actions which should include a Planned Zoning District which does have an explicit zoning component.

Please keep in mind that zoning regulations are always construed in favor of the Property owner and against the City. Language in this section "those immediately adjacent in the rear thereof" seem to limit those who may object rather strangely. It will be difficult to construe the intended meaning of this language.

Kit

Kit Williams, Fayetteville City Attorney
(479) 575-8313
FAX (479) 575-8315
113 West Mountain
Fayetteville, AR 72701

Alan Long <alanthomaslong@gmail.com> 4/18/2012

11:38 AM >>>

Does the following (154.03)(c)(2) apply to the PZD process for each approved PZD that comes before the city council?

(2)

*Vote. *When a proposed amendment affects the zoning classification of property, and in case a protest against such change is signed by the owners of 20% or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending 300 feet from the street frontage of such opposite lots, then such amendments shall not become effective except by the favorable vote of three-fourths of the City Council.

--

Alan
479.466.8219

--

Alan Long
Ward 4 resident
Waterman Woods.

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

FROM: Kit Williams, City Attorney



DATE: July 12, 2012

RE: State Statutory Procedural Rules To Adopt Ordinances Must Be
Obeyed

I understand there is still some question about the legal need to repeal §154.03 (C)(2) of the Unified Development Code. This section reads as follows:

“Vote. When a proposed amendment affects the zoning classification of property, and in case a protest against such change is signed by the owners of 20% or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending 300 feet from the street frontage of such opposite lots, then such amendments shall not become effective except by the favorable vote of three-fourths of the City Council.”
§154.03 (C)(2)

By requiring a 75% super majority to pass a rezoning ordinance if a proper opposition petition has been presented, this U.D.C. Code section directly conflicts with at least three State statutes. State law provides that a rezoning amendment shall be “made in conformance with the procedure prescribed in §14-56-422, or by **majority vote** of the City Council.” A.C.A. §14-56-423 **Change in plans, etc.** (emphasis added).

A.C.A. §14-56-422 **Adoption of plans, ordinances and regulations** states that the ordinances recommended by the Planning Commission to the City Council may be adopted by the City Council “by a **majority vote of the entire**

membership” and that “nothing in this subchapter shall be construed to limit the city council’s authority to recall the ordinances ... by a **vote of majority of the council**. (emphasis added).

Therefore both of the statutes that prescribe the procedure for the adoption of the zoning code (§14-56-422) and amendment of that code and all rezoning (§14-56-423) clearly specify that the permissible procedure for passage will be “by a **majority** vote of the city council.”

The general State statute which prescribes the procedure for passing all ordinances by city councils also requires a simply majority.

“To pass any ... ordinance ..., a concurrence of a **majority** of a whole number of members elected to the council shall be required.” A.C.A. §14-55-203 **Voting requirements for passage – Effective dates** (emphasis added).

With these State statutes requiring a majority vote to pass an ordinance, can the city council require 75% rather than a simple majority? The answer is “No”.

In my initial memo to you, I quoted the Arkansas Supreme Court in *Brooks v. City of Benton*, 308 Ark. 571, 826 S.W. 2d 259, 261 (1992) holding that the earlier quoted statutory procedural requirements are **MANDATORY** and must be complied with. Adopting a conflicting procedural rule that a 75% super majority is needed for passage rather than a simple majority is not legally allowed.

“Cities have no inherent authority to enact legislation. That authority is dependent upon the Constitution and the General Assembly. Municipal zoning authority is conferred solely by state enabling legislation. **Failure to comply with mandatory procedural requirements of the enabling statute renders a zoning ordinance invalid.**” *Id.* (emphasis added).

This has been a consistent holding by the Arkansas Supreme Court. For example in *Osborne v. City of Camden*, 301 Ark. 420, 784 S.W. 2d 596, 597 (1990), the Arkansas Supreme Court stated: “Municipal zoning authority is conferred solely by State enabling legislation (such as A.C.A. §§14-56-422 and 423). **Failure to comply with a mandatory procedural requirement of the enabling statute renders a zoning ordinance invalid.**” (citations omitted). (emphasis added).

In an issue of how a rezoning ordinance must be adopted to be valid, the Arkansas Supreme Court stated:

“As we read the statutes, §14-56-423 is controlling, and it permits a change in the zoning plan, or **rezoning, by ‘majority vote of the city council’**” *Russellville v. Banner Real Estate*, 326 Ark. 673, 933 S.W. 2d 803, 805 (1996) (emphasis added).

Thus, we must follow state law and state law prescribes votes by a majority (not 75%) of the City Council to pass a rezoning ordinance.

ARKANSAS ATTORNEY GENERAL OPINIONS

Arkansas Attorney Generals have interpreted the clear holdings of the Arkansas Supreme Court on the requirement to follow State statutory procedure not only for passage of ordinances, but in other similar contexts. I quoted Arkansas Attorney General Pryor’s Opinion No. 2002-132 in my earlier memo to you: **“a municipality may not, by adoption of procedural rules, deviate from the requirements of state law.”** (page 2, emphasis added). Let me provide you with a longer explanation from that same Arkansas Attorney General Opinion:

“State law sets the requisite majority requirement for passage of such matters. A municipality may not adopt local procedural rules that conflict with the requirements of state law. I will also point out that the procedure for the passage of ordinances by a municipality is not a ‘municipal affair’ under A.C.A. §14-43-601 (a)(0), but is rather a ‘state affair’ subject to the general laws of the state. A municipality may not, therefore, deviate from state law on this issue.” *Id.* at page 3

Arkansas Attorney General Mark Pryor’s Opinion is in agreement with both earlier and more recent Arkansas Attorney General Opinions. For example when the City of Conway sought to make the civil service promotion process “more strict” than the statutory process, the Arkansas Attorney General opined such an effort would not be allowed.

“Cities are prohibited by state law from enacting any ordinance that is inconsistent with or contrary to state law.”
Arkansas Attorney General Opinion No. 99-055, page 1

“(I)t is clear under state law that city ordinances – whether more stringent or less stringent than state law – must be consistent with and not contrary to state law.” *Id.* at page 2

Since §154.03 (C)(2) conflicts with state law by requiring a much greater super majority to pass a rezoning ordinance than the simple majority required by state law, this code section must be repealed and is not enforceable.

“Because Conway City Ordinance 2.28.06, No. 6 directly conflicts with this requirement of state law, I must conclude that it is impermissible under Article 12, §4 of the Arkansas Constitution, and under the various statutes limiting cities’ authority to the requirements and parameters of state law.”
Id. at pages 2-3

A very recent Arkansas Attorney General Opinion (No. 2011-064) agrees with these earlier opinions. This opinion deals with state mandated procedure for a mayor to employ when issuing a veto of a ordinance or resolution. The Pine Bluff City Council had enacted a procedural requirement which would have required an earlier presentation to the City Council of the Mayor’s written reasons for vetoing an ordinance than is required by statute. Arkansas Attorney General Dustin McDaniel responded that “the ordinance conflicts with state law and is consequently unenforceable.” (page 1). The Attorney General explains his response later in his Opinion.

“In my opinion, given that the legislature has clearly delineated the mayor’s procedural obligations following a veto, it is equally clear that the city council cannot burden the mayor beyond these statutory obligations. Simply stated, a mayor is obliged to observe only the statutory procedural formalities, which cannot be enhanced by city ordinance.

‘Municipalities are creatures of the legislature and as such have only the powers bestowed upon them by statute or the constitution. ... **The validity of a city**

ordinance thus depends upon the authority granted by the legislature or constitution.' (citations omitted, emphasis in original).

"In the present case, the legislature has unambiguously stated what a mayor is obliged to do following a veto. A city council cannot by ordinance enhance that obligation." *Id.* at page 4

CONCLUSION

As I stated in my memo of June 18, 2012 to you, §154.03 (C)(2) clearly conflicts with at least three State statutes that mandate only a **majority** of the City Council is needed to pass a rezoning amendment. Because §154.03 (C)(2) would sometimes require a 75% super majority in conflict with these State statutes, §154.03 (C)(2) is unenforceable and should be repealed. All of the decisions of the Arkansas Supreme Court and all of the Arkansas Attorney General Opinions that I could find relevant to this issue agree that **"a municipality may not, by adoption of procedural rules, deviate from the requirement of State law."** Arkansas Attorney General Opinion No. 2002-132.

I do not believe that the issue of trying to apply or enforce §154.03 (C)(2) had come up during either my Alderman years (1992-1998) or my service as City Attorney (2001 to date) prior to the Cleveland Street Project. When it was brought to my attention that someone might attempt to use §154.03 (C)(2) to require a 75% super majority, I analyzed and researched this old (and unused) code section and determined it was unenforceable because it conflicts with State law. That is why I have presented the City Council with a revised §154 to remove this invalid subsection as well as to clarify and simplify the procedural options for the Planning Commission and City Council when dealing with proposed rezoning amendments.

City of Fayetteville Staff Review Form

C. 1
RZN 12-4135 (521 N.
College Ave./Roddey)
Page 1 of 18

City Council Agenda Items
and
Contracts, Leases or Agreements

8/7/2012

City Council Meeting Date
Agenda Items Only

Jesse Fulcher

Submitted By

Planning

Division

Development Services

Department

Action Required:

RZN 12-4135: (521 N. COLLEGE AVE./RODDEY, 445): Submitted by COMMUNITY DEVELOPMENT PARTNERS, LLC for property located at 521 NORTH COLLEGE AVENUE. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 0.34 acres. The request is to rezone the subject property to DG, DOWNTOWN GENERAL.

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

07-18-2012
Date

Previous Ordinance or Resolution #

City Attorney

7-20-2012
Date

Original Contract Date:

Original Contract Number:

Finance and Internal Services Director

Paul A. Bush
7-20-2012
Date

Received in City 20-12 A09:39 RCVD
Clerk's Office

Chief of Staff

9-20-12
Date

Received in
Mayor's Office

Mayor

7/20/12
Date

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council
Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director &
From: Jesse Fulcher, Current Planner
Date: July 19, 2012
Subject: RZN 12-4135 (521 N. College Avenue/Roddey)

RECOMMENDATION

Planning staff and the Planning Commission recommend approval of an ordinance to rezone the subject property from C-2, Thoroughfare Commercial to DG, Downtown General.

BACKGROUND

The subject property is located at 521 N. College Avenue and zoned C-2, Thoroughfare Commercial. The property is currently developed with the Twin Arch Motel, a two building complex constructed in approximately 1950.

Proposal: The applicant proposes to rezone the property from C-2, Thoroughfare Commercial to DG, Downtown General.

DISCUSSION

On June 25, 2012 the Planning Commission voted 9-0-0 to forward this request to the City Council with a recommendation for approval.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 12-4135, FOR APPROXIMATELY 0.34 ACRES, LOCATED AT 521 NORTH COLLEGE AVENUE FROM C-2, THOROUGHFARE COMMERCIAL TO DG, DOWNTOWN GENERAL

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 changes the zone classification of the following described property from C-2, Thoroughfare Commercial to DG, Downtown General, as shown on Exhibits "A" and "B" attached hereto and made a part hereof.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends the official zoning map of the City of Fayetteville to reflect the zoning change provided in Section 1.

PASSED and APPROVED this day of , 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

EXHIBIT "A"

C. 1
RZN 12-4135 (521 N.
College Ave./Roddey)
Page 4 of 18

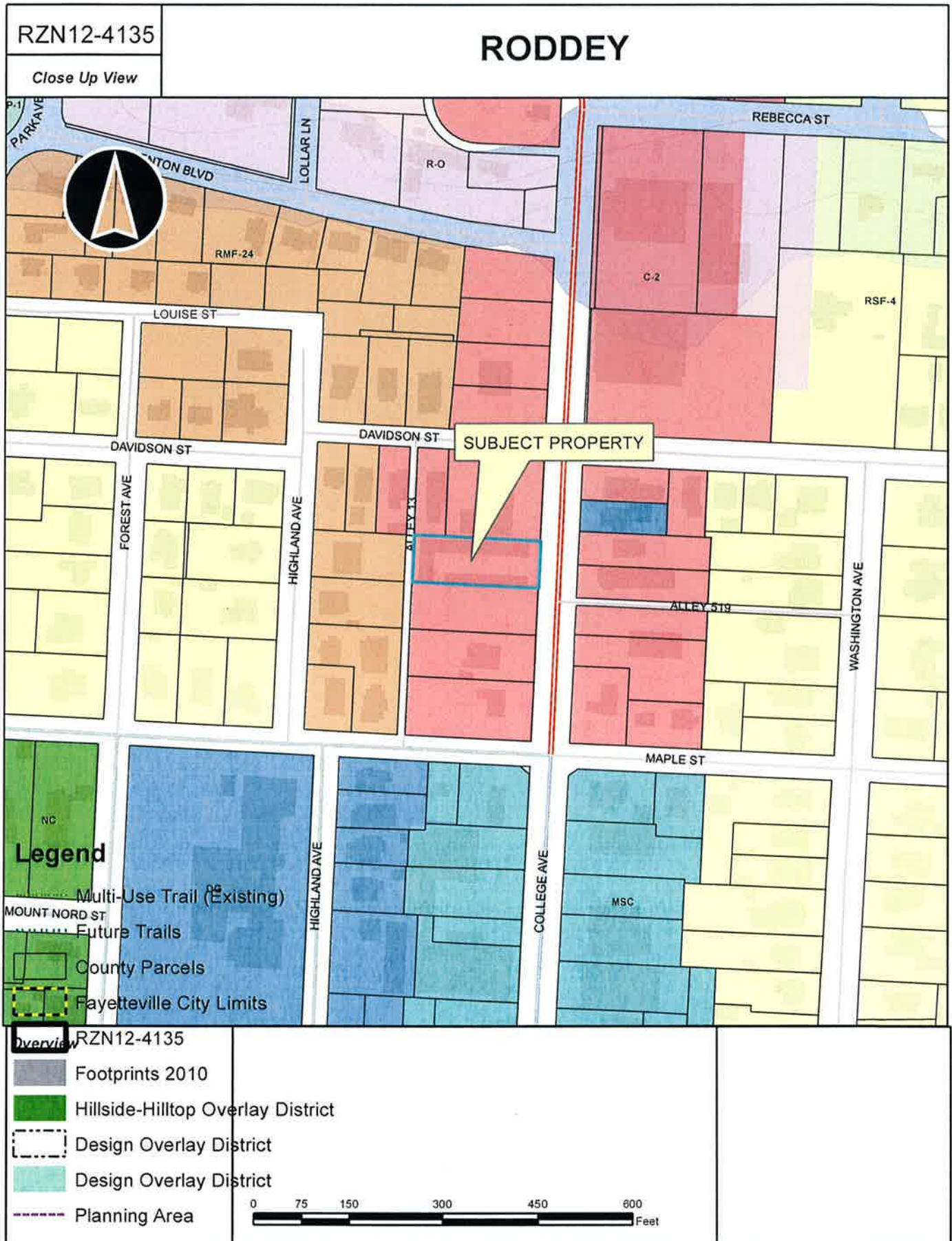


EXHIBIT "B"
RZN 12-4135

LOT 8, BLOCK 1 (OAK GROVE), FAYETTEVILLE, ARKANSAS.



PC Meeting of June 25, 2012

THE CITY OF FAYETTEVILLE, ARKANSAS

PLANNING DIVISION CORRESPONDENCE

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

TO: Fayetteville Planning Commission
FROM: Jesse Fulcher, Current Planner
THRU: Jeremy Pate, Development Services Director
DATE: ~~June 19, 2012~~ Updated June 26, 2012

RZN 12-4135: Rezone (521 N. COLLEGE AVE./RODDEY, 445): Submitted by COMMUNITY DEVELOPMENT PARTNERS, LLC for property located at 521 NORTH COLLEGE AVENUE. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 0.34 acres. The request is to rezone the subject property to DG, DOWNTOWN GENERAL.

Planner: Jesse Fulcher

BACKGROUND:

Property Description: The subject property is located at 521 N. College Avenue and zoned C-2, Thoroughfare Commercial. The property is currently developed with the Twin Arch Motel, a two building complex constructed in approximately 1950. Surrounding land use and zoning is listed in *Table 1*.

Table 1
SURROUNDING LAND USE AND ZONING:

Direction from Site	Land Use	Zoning
North	Commercial	C-2, Thoroughfare Commercial
South	Commercial	C-2, Thoroughfare Commercial
East	Commercial	C-2, Thoroughfare Commercial
West	Residential	RMF-24, Residential Multi-family

Proposal: The applicant proposes to rezone the property from C-2, Thoroughfare Commercial to DG, Downtown General.

Public Comment: Staff has not received public comment.

RECOMMENDATION:

Staff recommends forwarding rezoning request RZN 12-4135 (521 N. College Ave./Roddey) to the City Council with a recommendation for approval based on the findings stated herein.

PLANNING COMMISSION ACTION: Required <u>YES</u>			
Date: <u>June 25, 2012</u>	☐ Tabled	☒ Forwarded	☐ Denied
Motion: Chesser	Second: Cook	Vote: 9-0-0	
CITY COUNCIL ACTION:		Required <u>YES</u>	
		☐ Approved	☐ Denied
Date:			

INFRASTRUCTURE:

- Streets:** The site has access to N. College Avenue, which is a four-lane paved state highway, and a public alley to the west. Street improvements would be evaluated at the time of redevelopment.
- Water:** Public water is available to the property. There is an 8" main along N. College Avenue. A public main may need to be extended through the property to provide domestic and fire flow for future development.
- Sewer:** Sanitary sewer is available to the site. There is a 8" public main along N. College Avenue. A public main may need to be extended through the property to serve future development.
- Drainage:** Standard improvements and requirements for drainage will be required for the development. This property is not affected by the 100-year floodplain.
- Police:** Staff has not received any objection from the Police Department to this rezoning.
- Fire:** This property will be covered by Engine #1 located at 303 W. Center Street. It is 1.1 miles from the station with an anticipated response time of 3 minutes. The Fire Department does not feel that this rezoning will affect the calls for service or response times.

CITY PLAN 2030 FUTURE LAND USE PLAN: *City Plan 2030 Future Land Use Plan designates this site as **City Neighborhood Area**, are more densely population than residential neighborhood areas and provide a varying mix of nonresidential and residential land uses. This designation supports the widest spectrum of uses and encourages density in all housing types, from single-family to multifamily. .*

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 that rezoning the property to Downtown General would be more consistent with the land use planning objectives, principles and policies than the existing C-2 zoning district. The Downtown General zoning district will allow for office, retail, light commercial and residential uses. A conventional zoning district such as C-2, Thoroughfare Commercial may allow some of the same types of uses, but prohibit a desired development pattern due to the large setbacks from the right-of-way (between 25'-50'). Additionally, residential uses in the C-2 zoning district are only permitted as an accessory use, restricting the use of the property to predominantly commercial use.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The subject property has been utilized as a motel since construction in the early 1950's. The current C-2 zoning designation requires that at least 51% of the structure be utilized for commercial purposes. A rezoning to Downtown General will allow the applicant to utilize the existing structures for residential or commercial uses with no restriction on the size of either use. Additionally, the buildings currently violate the C-2 district building setbacks. Rezoning the property to DG, with a 0-25' build-to zone will resolve this encumbrance.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: Based on staff findings and the Fayetteville Police Department report, the proposed rezoning will not create or appreciably increase traffic danger and congestion in the area. The property has access to College Ave., a Principal Arterial, and a public alley. Access to the site will be reviewed at the time of redevelopment.

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: Staff finds that the proposed zoning will not create undesirable impacts to public services, or a residential density that is incompatible with the surrounding area, based on a review of infrastructure, existing land uses, and the development potential of the property. The property is currently zoned C-2, Thoroughfare Commercial. The change in zoning to Downtown General will not permit uses that will adversely impact public services.

Increased load on public services were taken into consideration and recommendations from the Engineering, Fire, and Police Departments are included in this report.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
 - a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

FAYETTEVILLE UNIFIED DEVELOPMENT CODE

161.18 District C-2, Thoroughfare Commercial

(A) *Purpose.* The Thoroughfare Commercial District is designed especially to encourage the functional grouping of these commercial enterprises catering primarily to highway travelers.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government Facilities
Unit 12	Offices, studios and related services
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 15	Neighborhood shopping goods
Unit 16	Shopping goods
Unit 17	Trades and services
Unit 18	Gasoline service stations & drive-in restaurants
Unit 19	Commercial recreation, small sites
Unit 20	Commercial recreation, large sites
Unit 25	Professional offices
Unit 33	Adult live entertainment club or bar
Unit 34	Liquor store

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 21	Warehousing and wholesale
Unit 28	Center for collecting recyclable materials
Unit 29	Dance Halls
Unit 32	Sexually oriented business
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities
Unit 38	Mini-storage units
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies
Unit 43	Animal boarding and training

(C) *Density.* None.

(D) *Bulk and area regulations.* None.

(E) *Setback regulations.*

Front	50 ft.
Side	None
Side, when contiguous to a residential district	15 ft.
Rear	20 ft.

(F) *Height regulations.* In District C-2 any building which exceeds the height of 20 feet shall be set back from any boundary line of any residential district a distance of one foot for each foot of height in excess of 20 feet. No building shall exceed six stories or 75 feet in height.

(G) *Building area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot.

(Code 1965, App. A., Art. 5(VI); Ord. No. 1833, 11-1-71; Ord. No. 2351, 6-2-77; Ord. No. 2603, 2-19-80; Ord. No. 1747, 6-29-70; Code 1991, §160.036; Ord. No. 4034, §3, 4, 4-15-97; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 4727, 7-19-05; Ord. 4992, 3-06-07; Ord. 5028, 6-19-07; Ord. 5195, 11-6-08; Ord. 5238, 5-5-09)

161.22 Downtown General.

(A) *Purpose.* *Downtown General* is a flexible zone, and it is not limited to the concentrated mix of uses found in the *Downtown Core* or *Main Street / Center*. *Downtown General* includes properties in the neighborhood that are not categorized as identifiable centers, yet are more intense in use than *Neighborhood Conservation*. There is a mixture of single-family homes, rowhouses, apartments, and live/work units. Activities include a flexible and dynamic range of uses, from public open spaces to less intense residential development and businesses. For the purposes of Chapter 96: Noise Control, the Downtown General district is a residential zone.

(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 12	Offices, studios and related services
Unit 13	Eating places
Unit 15	Neighborhood shopping goods
Unit 24	Home occupations
Unit 25	Professional offices
Unit 26	Multi-family dwellings

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	Trades and services
Unit 19	Commercial recreation, small sites
Unit 28	Center for collecting recyclable materials
Unit 36	Wireless communication facilities
Unit 40	Sidewalk Cafes

(C) *Density.* *None*

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Dwelling (all unit types)	18 ft.
---------------------------	--------

(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 the front property line and a line 25 ft. from the front property line.
Side, facing street	The principal façade of a building shall be built within a build-to zone that is located between the front property line and a line 25 ft. from the front property line.
Side, internal	None
Rear, without easement or alley	5 ft.
Rear, from center line of an easement or alley	12 ft.

(F) *Minimum buildable street frontage.* 50% of lot width.

(G) *Height regulations.* Maximum height is 4 stories or 56 feet which ever is less.

(H) *Parking regulations.* No parking lots are allowed to be located in the front or side build-to-zone facing a public right of way.

(Ord. 5028, 6-19-07; Ord. 5029, 6-19-07)

[Type text]

Community Development Partners LLC
6424 Bridge Bay Ln.
Rogers, AR 72758
May 15, 2012

City of Fayetteville Planning Commission Board Members
125 W. Mountain St.
Fayetteville, AR 72701

Dear Planning Committee Board Members

On behalf of Community Development Partners LLC I would like to thank you for your time and ask for consideration in rezoning parcel 765-08940-00 also referred to as 521 N. College Fayetteville, AR 72701. This property is currently home to the Twin Arch Motel, an 11 unit motel complex that in not in working status.

Community Development Partners LLC has placed a buy offer with the current owner, which was accepted, contingent on successful rezoning of the parcel through the Fayetteville City Planning Commission. The current owner of the property is Grace M. Warren who currently resides in California. Mrs. Warren and her late husband had successfully operated the Twin Arch Motel since purchase in 1985.

The current zoning status for this parcel is C-2 Commercial Thoroughfare. Community Development Partners LLC is requesting a rezoning status of DG Downtown General in order to re-develop the property into a 9 unit studio apartment complex amid at serving graduate level student and young business professionals.

The current surrounding properties are comprised of small businesses to the north, south and west as well as multi-family units to the east. The appearance of the property, from its' current state, will be improved with landscaping and basic visual improvements. Traffic to and from the subject property will not be dramatically altered; parking for automobiles will be available for future tenants. Signage for the proposed complex will not change drastically from the current signage today and will comply with city code requirements.

All current utilities lines at the subject property will not altered and can support tenant usage as they have for many years prior.

We believe that the proposed rezoning for the subject parcel will fit well with in the Fayetteville City Master Plan as all properties to the south have been rezoned to DG Downtown General. The use of the land and property for this parcel for studio apartments, we believe, will promote stable living environments and aid in further economic development along the College Avenue/71B corridor.

We would like to request that, if deemed acceptable by the Committee, rezoning take place as soon as possible in order to close on the sale of the parcel so that Community Development Partners LLC may begin re-development and construction processes. The current C-2 zoning does not appear to be the future direction of the city. We are excited and honored to be part of the growth happening in Fayetteville.

Sincerely,

Garrison Roddey

Community Development Partners LLC.

RZN12-4135

RODDEY

Current Land Use



Overview RZN12-4135

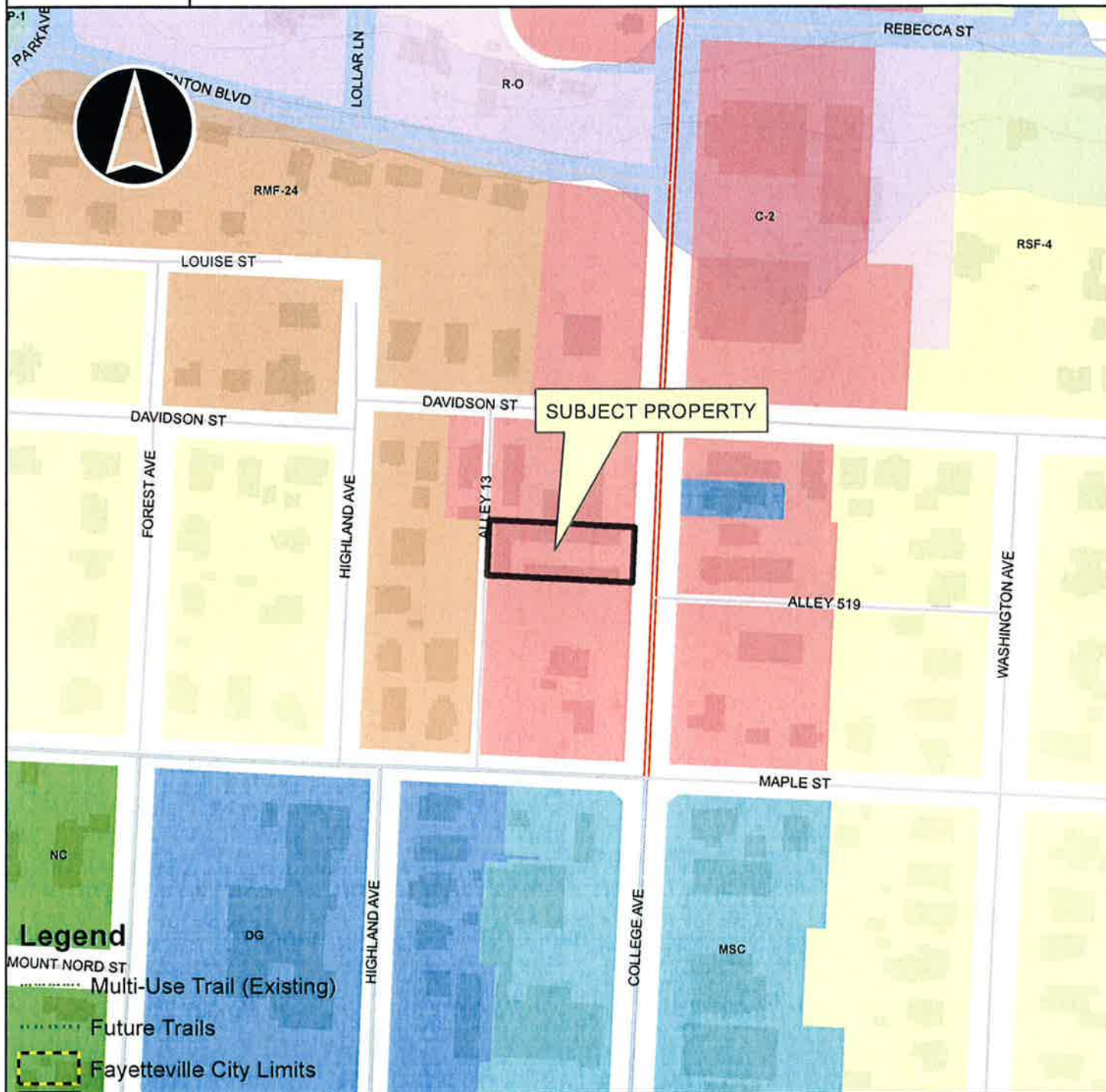
- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Design Overlay District
- Planning Area



RZN12-4135

RODDEY

Close Up View



Legend

- Multi-Use Trail (Existing)
- Future Trails
- Fayetteville City Limits

Overview

RZN12-4135

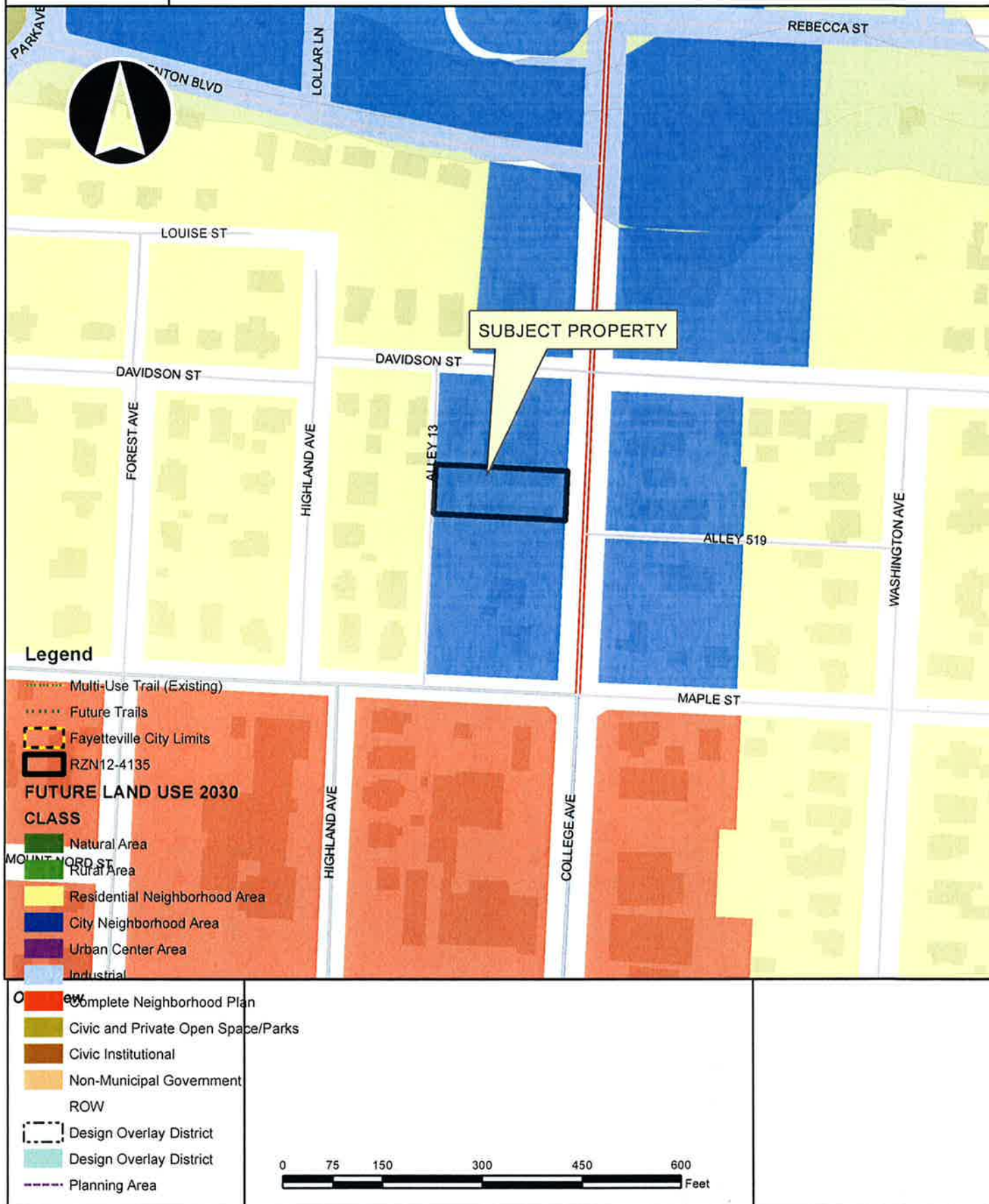
- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Design Overlay District
- Planning Area



RZN12-4135

RODDEY

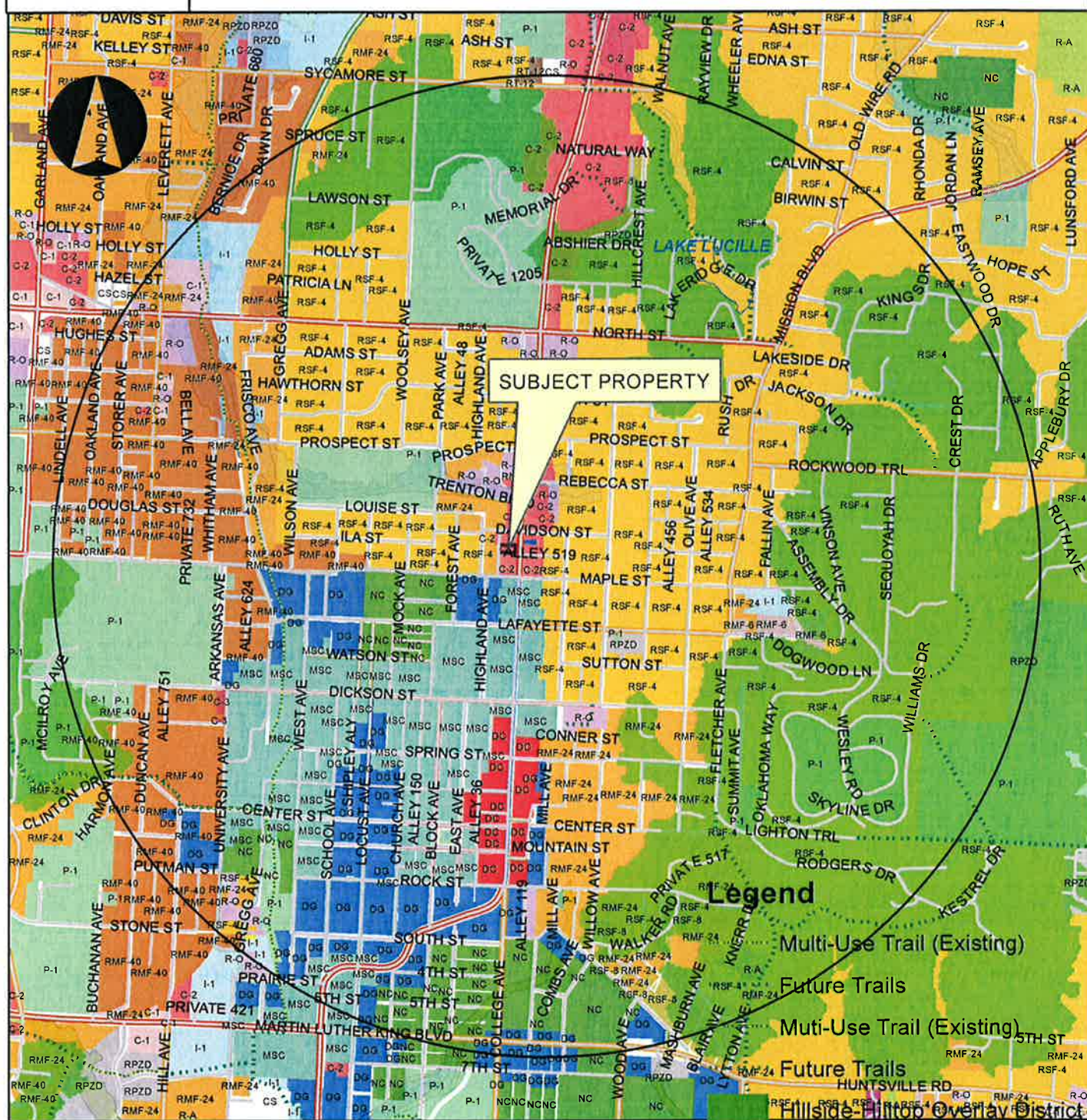
Future Land Use



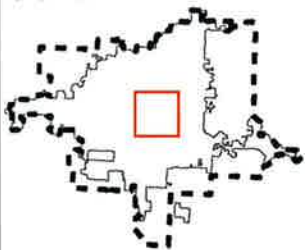
RZN12-4135

RODDEY

One Mile View



Overview



Legend

Subject Property

RZN12-4135

Boundary



RZN12-4135



Design Overlay District



Planning Area



Fayetteville

0 0.25 0.5 1

Miles

City of Fayetteville Staff Review Form

C. 2
 VAC 12-4147 (510 W. 11th St. & 989
 S. School Ave./The Grove)
 Page 1 of 20

City Council Agenda Items
 and
 Contracts, Leases or Agreements

8/7/2012

City Council Meeting Date
 Agenda Items Only

Jesse Fulcher

Submitted By

Planning

Division

Development Services

Department

Action Required:

VAC 12-4147: Vacation (510 W. 11TH ST. & 989 S. SCHOOL AVE./THE GROVE, 562): Submitted by MORRISON SHIPLEY ENGINEERS, INC. for property located at 510 WEST 11TH STREET AND 989 SOUTH SCHOOL AVENUE. The property is zoned CS, COMMUNITY SERVICES and contains approximately 12.16 acres. The request is to vacate a portion of right-of-way.

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

 07.18.2012
 Date

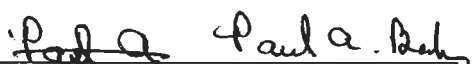
Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

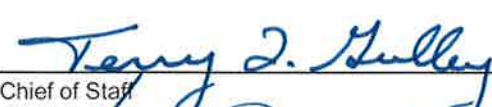

 City Attorney

 7-20-12
 Date


 Finance and Internal Services Director

 7-20-2012
 Date

 Received in City 7-20-12 A09:39
 Clerk's Office


 Chief of Staff

 7-20-12
 Date

 Received in
 Mayor's Office


 Mayor

 7/20/12
 Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director 

From: Jesse Fulcher, Current Planner

Date: July 19, 2012

Subject: VAC 12-4147 (510 W. 11TH ST. & 989 S. SCHOOL AVE./THE GROVE)

RECOMMENDATION

The Planning Commission and staff recommend approval of an ordinance to vacate a portion of right-of-way.

BACKGROUND

The subject property is located south of Martin Luther King Jr. Boulevard and west of South School and was formally used as the Washington County Sale Barn. The approximately 12.16-acre project boundary has frontage onto South School, 11th Street, Dunn Avenue, National Street, and Government Avenue. A Large Site Improvement Plan (LSIP) for a multi-family development was approved in 2011 and is under construction. All of the adjacent streets will be improved on the project side, including new curb and gutter, greenspace and sidewalks.

Request: The applicant's request is to vacate approximately 500 square feet of right-of-way within the right angle created by the two intersecting street right-of-ways. A small retaining wall is required to be constructed adjacent to the private sidewalk in this area, but isn't permitted within street right-of-way.

DISCUSSION

On July 9, 2012, the Planning Commission forwarded this item to the City Council with a recommendation of approval with a vote of 5-0-0.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE APPROVING VAC 12-4147 SUBMITTED BY MORRISON SHIPLEY ENGINEERS, INC. FOR PROPERTY LOCATED AT 510 WEST 11TH STREET AND 989 SOUTH SCHOOL AVENUE TO VACATE A PORTION OF RIGHT-OF-WAY, A TOTAL OF 0.01 ACRES.

WHEREAS, the City Council has the authority under A.C.A. § 14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes; and

WHEREAS, the City Council has determined that the following described portion of the platted right-of-way is not required for corporate purposes;

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby vacates and abandons the following described in Exhibit B (attached).

Section 2: That a copy of this Ordinance duly certified by the City Clerk along with the map attached and labeled Exhibit A shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 3: That this vacation approval is subject to the Condition of Approval and shall not be in effect until the condition is met herein.

“The vacated right-of-way shall be retained as a utility easement.”

PASSED and **APPROVED** this day of , 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

EXHIBIT "B"
VAC 12-4147

PROPERTY DESCRIPTION FOR ABANDONMENT

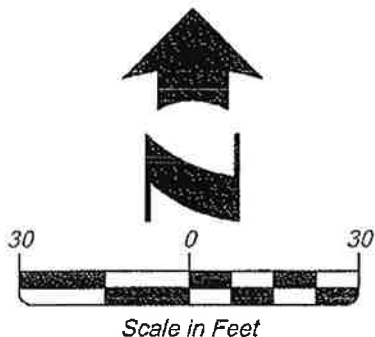
BEGINNING AT THE INTERSECTION OF THE EXISTING NORTH RIGHT-OF-WAY OF NATIONAL STREET AND EXISTING EAST RIGHT-OF-WAY OF DUNN AVENUE; THENCE S1°11'27"W, A DISTANCE OF 48.32 FEET, 77.36 FEET ALONG A 51.00 FOOT RADIUS NON-TANGENT CURVE LEFT, WHOSE CHORD BEARS N42°15'54"W, A DISTANCE OF 70.15 FEET; THENCE S85°43'14"E, A DISTANCE OF 48.32 FEET TO THE POINT OF BEGINNING. CONTAINING 491.72 SQUARE FEET MORE OR LESS.

EXHIBIT "A"

C. 2
VAC 12-4147 (510 W. 11th St. & 989
S. School Ave./The Grove)
Page 5 of 20

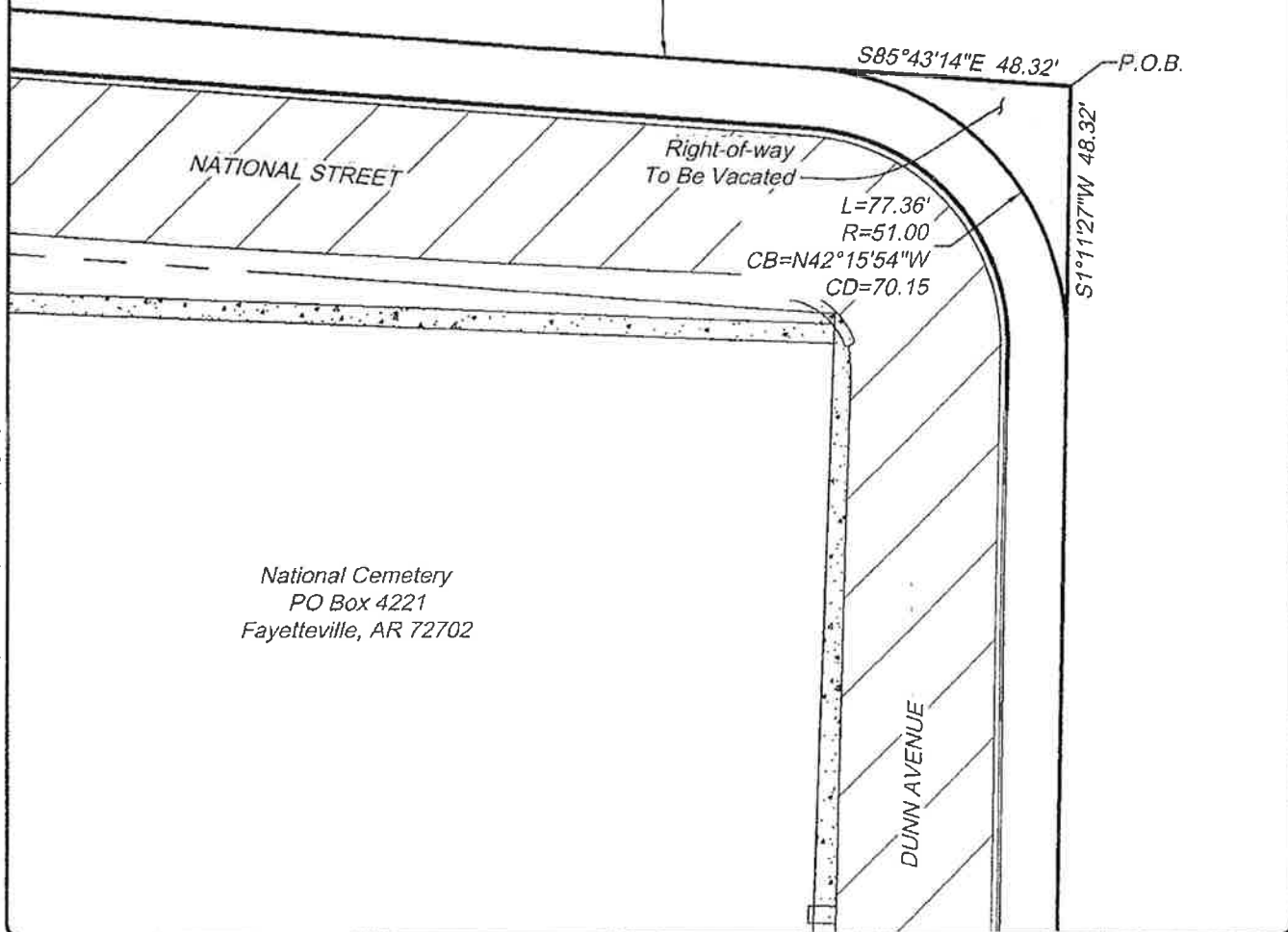
Right-of-way Vacation Description:

Beginning At The Intersection Of The Existing North Right-of-way Of National Street
And Existing East Right-of-way Of Dunn Avenue; Thence $S1^{\circ}11'27''W$, A Distance Of
48.32 Feet, 77.36 Feet Along A 51.00 Foot Radius Non-Tangent Curve Left, Whose
Chord Bears $N42^{\circ}15'54''W$, A Distance Of 70.15 Feet; Thence $S85^{\circ}43'14''E$, A Distance
Of 48.32 Feet To The Point Of Beginning. Containing 491.72 Square Feet More Or Less.



Campus Crest Development
2100 Rexford Road, Suite 414
Charlotte, NC 28211

Right-of-way Per Property Line
Adjustment And Right-of-way Dedication
File # 2001-00033075, Dated 11/30/2011



MORRISON SHIPLEY
ENGINEERS • SURVEYORS

2407 SE Cottonwood Street • Bentonville, AR 72712 • 479.273.2209 • morrisonshipley.com

RIGHT-OF-WAY VACATION EXHIBIT

Fayetteville, Washington County, Arkansas

Drawn By:	CLM
Date:	5-10-2012
Project No:	CCD-01
Drawing Name:	ROW Exhibit



PC Meeting of July 9, 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: Jesse Fulcher, Current Planner
THRU: Jeremy Pate, Development Services Director
DATE: July 3, 2012 Updated July 19, 2012

VAC 12-4147: Vacation (510 W. 11TH ST. & 989 S. SCHOOL AVE./THE GROVE, 562): Submitted by MORRISON SHIPLEY ENGINEERS, INC. for property located at 510 WEST 11TH STREET AND 989 SOUTH SCHOOL AVENUE. The property is zoned CS, COMMUNITY SERVICES and contains approximately 12.16 acres. The request is to vacate a portion of right-of-way. Planner: Jesse Fulcher

Findings:

Property Description and Background: The subject property is located south of Martin Luther King Jr. Boulevard and west of South School and was formally used as the Washington County Sale Barn. The approximately 12.16-acre project boundary has frontage onto South School, 11th Street, Dunn Avenue, National Street, and Government Avenue. A Large Site Improvement Plan (LSIP) for a multi-family development was approved in 2011 and is under construction. All of the adjacent streets will be improved on the project side, including new curb and gutter, greenspace and sidewalks.

Request: The applicant's request is to vacate approximately 500 square feet of right-of-way within the right angle created by the two intersecting street right-of-ways. A small retaining wall is required to be constructed adjacent to the private sidewalk in this area, but isn't permitted within street right-of-way.

Right-of-way Vacation Approval: The applicant has submitted the required right-of-way vacation notification forms to the utility companies and to the City with the result summarized below.

UTILITIES

RESPONSE

Ozarks Electric	No Objections
Cox Communications	No Objections
Southwestern Electric Power Company	No Objections

Arkansas Western Gas No Objections

AT&T No Objections

<u>CITY OF FAYETTEVILLE:</u>	<u>RESPONSE</u>
-------------------------------------	------------------------

Water/Sewer	No Objections
-------------	---------------

Transportation	No Objections
----------------	---------------

Solid Waste	No Objections
-------------	---------------

Engineering	No Objections
-------------	---------------

Public Comment: No public comment has been received.

Recommendation: Staff recommends forwarding **VAC 12-4147** to the City Council with a recommendation for approval subject to the following condition:

1. The vacated right-of-way shall be retained as a utility easement.

CITY COUNCIL ACTION: Required

PLANNING COMMISSION ACTION: Required

Planning Commission Action: ☒ Forwarded ☐ Denied ☐ Tabled

Date: July 9 2012

Motion: Chesser

Second: Hoskins

Vote: 5-0-0

Notes: _____



May 25, 2012

City of Fayetteville
Planning Division
125 W. Mountain St.
Fayetteville, AR 72701

**Re: Right-of-Way Vacation Request
The Grove at Fayetteville**

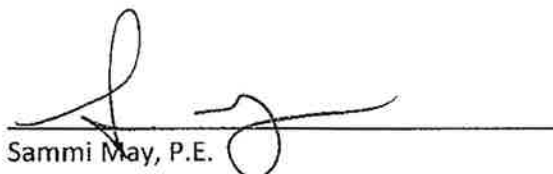
Dear Commissioners and Councilmen,

Campus Crest Development is constructing a student housing development located on the old Sale Barn Property in South Fayetteville. Construction plans include a two foot tall retaining wall at the corner of National Street and Dunn Avenue which parallels the back of sidewalk but encroaches in the existing street right-of-way. Although the street right of way makes a 90 degree angle, the curb and sidewalk are curved. Since the City does not allow retaining walls within their right-of-way, we are respectfully requesting to vacate this corner of right-of-way.

Exhibits along with legal descriptions have been attached for your review.

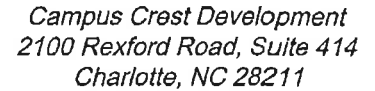
If you have any questions or need additional information, please do not hesitate to contact me at (479)273-2209.

Sincerely,
Morrison-Shipley Engineers, Inc.

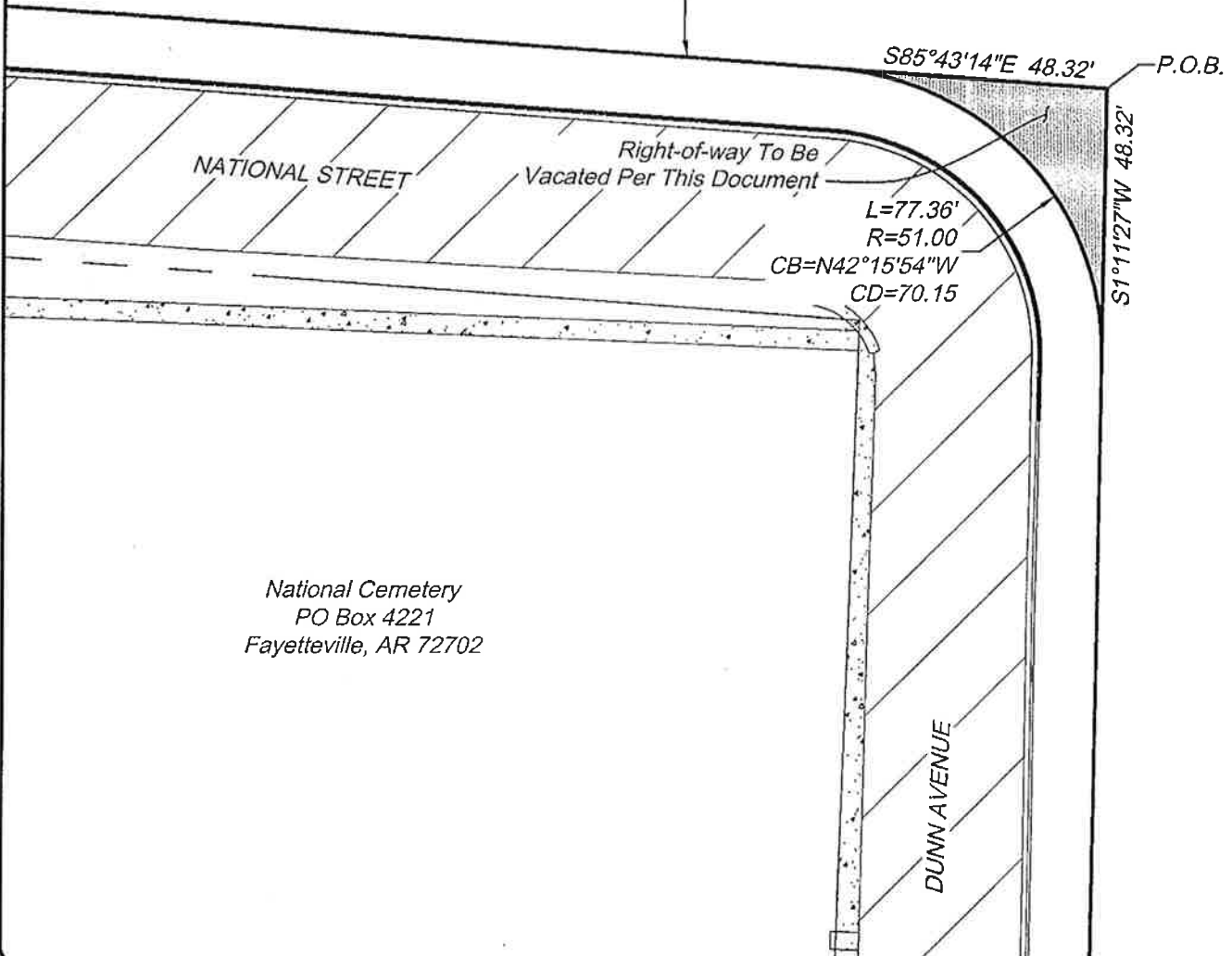


Sammi May, P.E.
Project Manager

Beginning At The Intersection Of The Existing North Right-of-way Of National Street And Existing East Right-of-way Of Dunn Avenue; Thence S1°11'27"W, A Distance Of 48.32 Feet, 77.36 Feet Along A 51.00 Foot Radius Non-Tangent Curve Left, Whose Chord Bears N42°15'54"W, A Distance Of 70.15 Feet; Thence S85°43'14"E, A Distance Of 48.32 Feet To The Point Of Beginning. Containing 491.72 Square Feet More Or Less.



S85°43'14"E 48.32' — P.O.B.



National Cemetery
PO Box 4221
Fayetteville, AR 72702

MORRISON SHIPLEY
ENGINEERS ▀ SURVEYORS

2407 SE Cottonwood Street • Bentonville, AR 72712 • 479.273.2209 • marthasonshipley.com

RIGHT-OF-WAY VACATION EXHIBIT

Fayetteville, Washington County, Arkansas

Drawn By:	CLM
Date:	5-10-2012
Project No:	CCD-01
Drawing Name:	ROW Exhibit

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: May __, 2012

UTILITY COMPANY: OZARKS Electric

APPLICANT NAME: Campus Crest

APPLICANT PHONE: 704-496-2500

REQUESTED VACATION (*applicant must check all that apply*):

- ~ Utility Easement
- ~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ~ Alley
- ~ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

..Portion of street right-of-way located at the corner of National Street and Dunn Avenue.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:


Signature of Utility Company Representative

Lead staking Tech
Title

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: May 17, 2012

UTILITY COMPANY: Cox Communications
APPLICANT NAME: Campus Crest APPLICANT PHONE: 704-496-2500
REQUESTED VACATION (*applicant must check all that apply*):

- ~ Utility Easement
~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
~ Alley
~ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

******Portion of street right-of-way located at the corner of National Street and Dunn Avenue.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:

Any damage to or relocations of our existing facilities will be at
the owners/deverlopers expense.

Chad A. [Signature]
Signature of Utility Company Representative

Construction Planner NWA
Title

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: May 18, 2012

UTILITY COMPANY: AEP-SWEPCO

APPLICANT NAME: Campus Crest

APPLICANT PHONE: 704-496-2500

REQUESTED VACATION (applicant must check all that apply):

- ~ Utility Easement
- ~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ~ Alley
- ~ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

**** Portion of street right-of-way located at the corner of National Street and Dunn Avenue.**

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:

John Bayne
Signature of Utility Company Representative

Dist. Engineer
Title

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: May 22, 2012

UTILITY COMPANY: ATT

APPLICANT NAME: Campus Crest

APPLICANT PHONE: 704-496-2500

REQUESTED VACATION (*applicant must check all that apply*):

- ~ Utility Easement
- ~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ~ Alley
- ~ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

**Portion of street right-of-way located at the corner of National Street and Dunn Avenue.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:

DAMAGE TO OR RELOCATION OF ANY EXISTING ATT
FACILITIES WILL BE @ THE OWNER DEVELOPER'S

Susan A. Clouser

Signature of Utility Company Representative

OSP DESIGN ENGINEER

Title

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: May 24, 2012

UTILITY COMPANY: Source Gas

APPLICANT NAME: Campus Crest

APPLICANT PHONE: 704-496-2500

REQUESTED VACATION (*applicant must check all that apply*):

~ Utility Easement

~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.

~ Alley

~ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed)**)

**Portion of street right-of-way located at the corner of National Street and Dunn Avenue.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:

Any damage or relocation will be at the owners
expense.



Signature of Utility Company Representative

Division Manager

Title

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: May 15, 2012

UTILITY COMPANY: _____

APPLICANT NAME: Campus Crest

APPLICANT PHONE: 704-496-2500

REQUESTED VACATION (*applicant must check all that apply*):

- ~ Utility Easement
- ~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ~ Alley
- ~ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

**Portion of street right-of-way located at the corner of National Street and Dunn Avenue.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- ☒ No objections to the vacation(s) described above.
- ☐ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- ☐ No objections provided the following conditions are met:

Brian P. [Signature]
Signature of Utility Company Representative

Waste Reduction Coordinator
Title

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: May 17, 2012

UTILITY COMPANY: CITY OF FAYETTEVILLE - TRANSPORTATION DIVISION

APPLICANT NAME: Campus Crest

APPLICANT PHONE: 704-496-2500

REQUESTED VACATION (*applicant must check all that apply*):

- ~ Utility Easement
- ~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ~ Alley
- ~ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

**Portion of street right-of-way located at the corner of National Street and Dunn Avenue.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- ☒ No objections to the vacation(s) described above.
- ☐ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- ☐ No objections provided the following conditions are met:

Signature of Utility Company Representative

Title

ASSISTANT TRANSPORTATION MANAGER

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: May 16, 2012

UTILITY COMPANY: City of Fayetteville Water/B sewer
APPLICANT NAME: Campus Crest APPLICANT PHONE: 704-496-2500
REQUESTED VACATION (*applicant must check all that apply*):

- ~ Utility Easement
- ~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ~ Alley
- ~ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

******Portion of street right-of-way located at the corner of National Street and Dunn Avenue.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

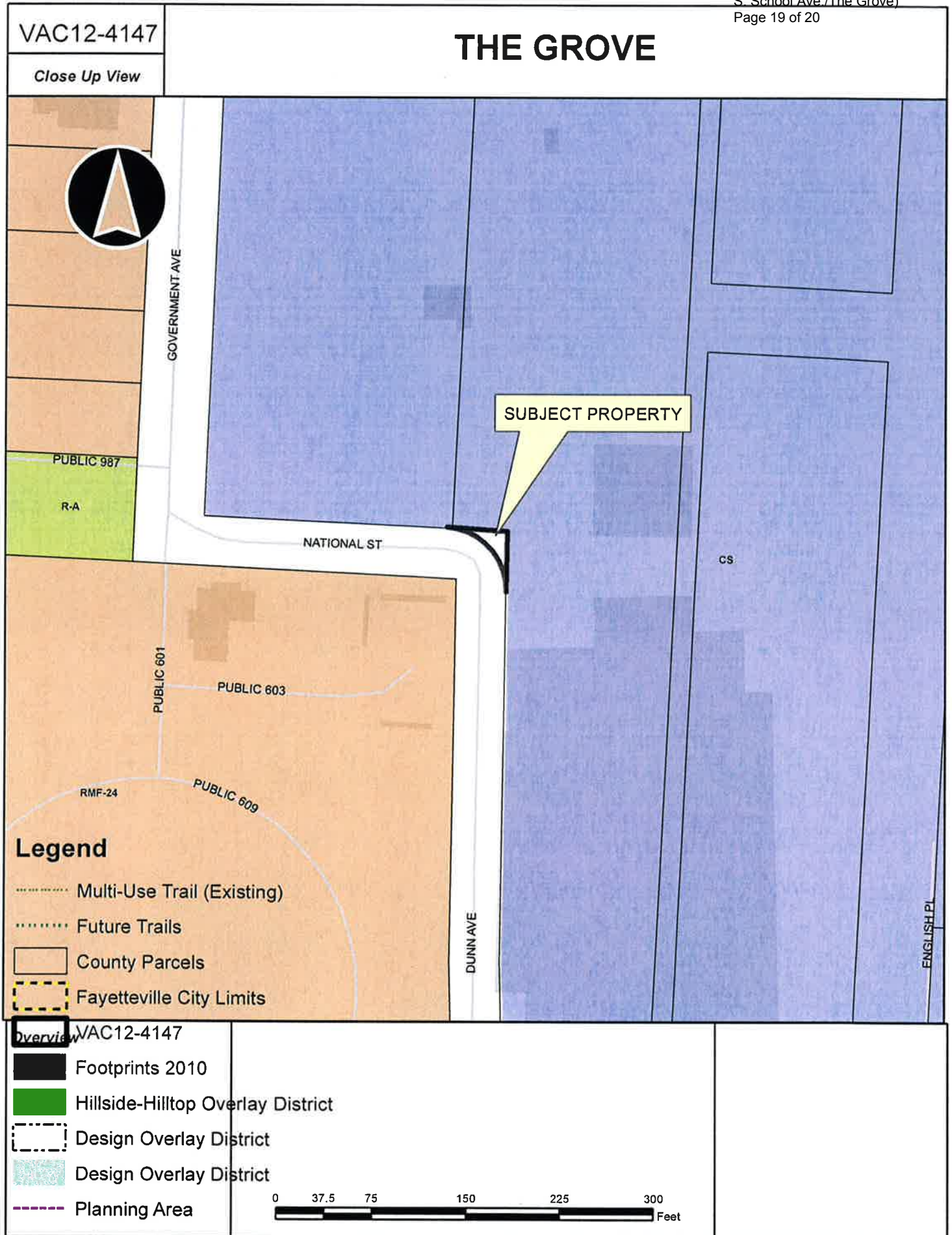
- No objections to the vacation(s) described above.
- ☒ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

All easements for the vacated ROW shall be retained

- No objections provided the following conditions are met:

Shannon Jones
Signature of Utility Company Representative

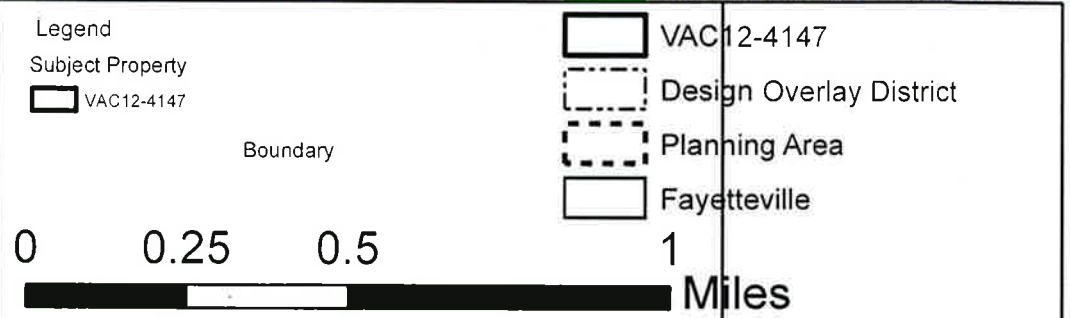
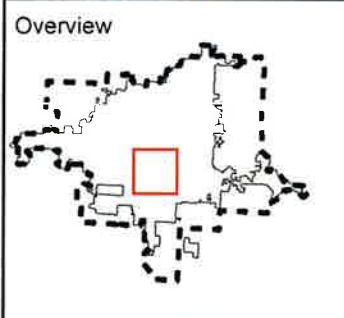
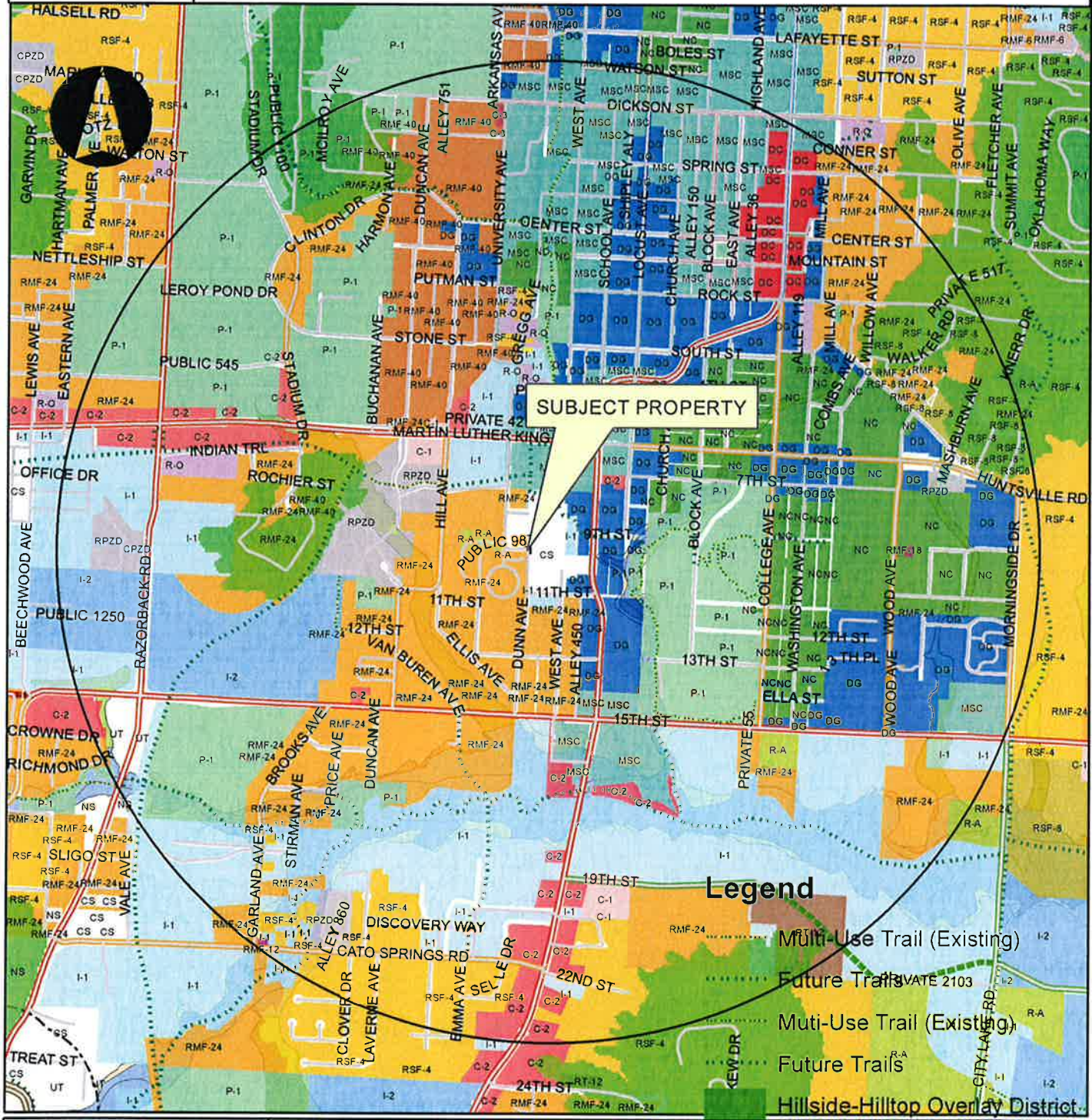
Utilities Engineer
Title



VAC12-4147

THE GROVE

One Mile View



City of Fayetteville Staff Review Form

C. 3
 ADM 12-4136 (2768 E.
 Shagbark Bend/Zweig)
 Page 1 of 14

City Council Agenda Items
 and
 Contracts, Leases or Agreements

8/7/2012

City Council Meeting Date
 Agenda Items Only

Jesse Fulcher

Submitted By

Planning

Division

Development Services

Department

Action Required:

ADM 12-4136: Administrative Item (2768 E. SHAGBARK BEND/ZWEIG, 294): Submitted by ALAN REID AND ASSOCIATES for property located at 2768 EAST SHAGBARK BEND. The property is zoned R-PZD, RESIDENTIAL PLANNED ZONING DISTRICT (R-PZD 04-05.00 HICKORY PARK SD) and contains approximately 0.23 acres. The request is to amend the setbacks of Lot 14.

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

07-18-2012

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

7-20-2012

Date

Finance and Internal Services Director

7-20-2012

Date

Received in City 07-20-12 A09:39 RCVD
 Clerk's Office

Chief of Staff

7-20-12

Date

Received in
 Mayor's Office

Mayor

7/20/12

Date

Comments:



www.accessfayetteville.org

C. 3
ADM 12-4136 (2768 E.
Shagbark Bend/Zweig)

Page 2 of 14
THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director &

From: Jesse Fulcher, Current Planner

Date: July 19, 2012

Subject: ADM 12-4136 (Hickory Park R-PZD 04-05.00, Modification No. 1)

RECOMMENDATION

Planning staff and the Planning Commission recommend approval of an ordinance amending the setbacks of Lot 14 in the approved R-PZD 04-05.00 Hickory Park Subdivision.

BACKGROUND

The Hickory Park Subdivision was approved in 2004 with 14 single-family lots (see plat attached). As a custom zoning district, the developer was responsible for proposing bulk and area regulations, including building setbacks, for each lot. A setback table was included on the final plat and outlines the requirements for each lot.

A building permit was approved for Lot 14 in 2011 and construction was completed in 2012. The site plan submitted with the building permit (attached) shows that construction will be compliant with the required building setbacks. However, a survey completed this year shows that a corner of the roof overhang encroaches slightly into the east 20 foot building setback. Additionally, the survey reveals that a wood deck, which was added to the design after the permits were approved, also extends into the same building setback.

The encroachments were discovered after the home was constructed and after the property was sold to the current owner.

Proposal: The applicant proposes to change the Hickory Park R-PZD zoning criteria for Lot 14, to reduce the rear (east) setback from 20 feet to 8 feet. The applicant has requested this change to resolve the building encroachments discussed herein.

DISCUSSION

On June 25, 2012 the Planning Commission voted 9-0-0 to forward this request to the City Council with a recommendation for approval.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE AMENDING A RESIDENTIAL PLANNED ZONING DISTRICT ENTITLED R-PZD 04-05.00, HICKORY PARK SUBDIVISION, LOCATED NORTH OF 2730 EAST TOWNSHIP STREET, CONTAINING APPROXIMATELY 4.4 ACRES, TO REFLECT REVISED BUILDING SETBACKS FOR LOT 14.

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

Section 1: That R-PZD 04-05.00 (Hickory Park Subdivision) as passed and approved by the City Council on March 16, 2004 with Ordinance No. 4549 is hereby amended by reducing the rear (east) setback for Lot 14 from 20 feet to 8 feet.

PASSED and **APPROVED** this day of , 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



PC Meeting of June 25, 2012

THE CITY OF FAYETTEVILLE, ARKANSAS

PLANNING DIVISION CORRESPONDENCE

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

TO: Fayetteville Planning Commission
FROM: Jesse Fulcher, Current Planner
THRU: Jeremy Pate, Development Services Director
DATE: ~~June 18, 2012~~ Updated June 26, 2012

ADM 12-4136: Administrative Item (2768 E. SHAGBARK BEND/ZWEIG, 294): Submitted by ALAN REID AND ASSOCIATES for property located at 2768 EAST SHAGBARK BEND. The property is zoned R-PZD, RESIDENTIAL PLANNED ZONING DISTRICT (R-PZD 04-05.00 HICKORY PARK SD) and contains approximately 0.23 acres. The request is to amend the setbacks of Lot 14 in the approved R-PZD 04-05.00 Hickory Park Subdivision. Planner: Jesse Fulcher

BACKGROUND

The Hickory Park Subdivision was approved in 2004 with 14 single-family lots (see plat attached). As a custom zoning district, the developer was responsible for proposing bulk and area regulations, including building setbacks, for each lot. A setback table was included on the final plat and outlines the requirements for each lot.

A building permit was approved for Lot 14 in 2011 and construction was completed in 2012. The site plan submitted with the building permit (attached) shows that construction will be compliant with the required building setbacks. However, a survey completed this year shows that a corner of the roof overhang encroaches slightly into the east 20 foot building setback. Additionally, the survey reveals that a wood deck, which was added to the design after the permits were approved, also extends into the same building setback.

The encroachments were discovered after the home was constructed and after the property was sold to the current owner.

Proposal: The applicant proposes to change the Hickory Park R-PZD zoning criteria for Lot 14, to reduce the rear (east) setback from 20 feet to 8 feet. The applicant has requested this change to resolve the building encroachments discussed herein.

RECOMMENDATION

Recommendation: In staff's opinion, the 20 foot setback requirement on the east side of this property is excessive. First, it is not a rear setback. By definition, the east side of this property is a side, and an 8 foot or 10 foot setback should have been established, consistent with other lots in the

G:\ETC\Development Services Review\2012\Development Review\12-4136 ADM 2768 Shagbark/Zweig\10-Planning Commission\6-25-12\Comments and Redlines

Planned Zoning District. In fact the side setback for Lot 13, adjacent to the east, is 8 feet. It should also be noted that the City of Fayetteville reduced the building setbacks for most of the residential single-family zoning districts several years ago, establishing a 5 foot side setback in most instances.

Staff recommends forwarding **ADM 12-4136 Hickory Park R-PZD Modification No. 1** to the City Council with a recommendation for approval, finding that the proposed 8 foot *side* setback is consistent with and appropriate for this development and surrounding residential developments.

Planning Commission Action: ☒ **Forwarded** ☐ **Denied**

Motion: Chesser

Second: Cook

Vote: 9-0-0 (Approved on consent)

Meeting Date: June 25, 2012



Alan Reid
& ASSOCIATES
PROFESSIONAL
LAND
SURVEYORS

May 3, 2012

City of Fayetteville
Planning & Engineering
125 West Mountain Street
Fayetteville, Arkansas 72701

Re: Amendment request for Lot 14, Hickory Park Subdivision, Fayetteville, Arkansas

Dear Planners,

On behalf of my client, Mark Zweig, I am submitting for your review, a request for an amendment to the setback requirement of Lot 14, Hickory Park Subdivision, Fayetteville, Arkansas.

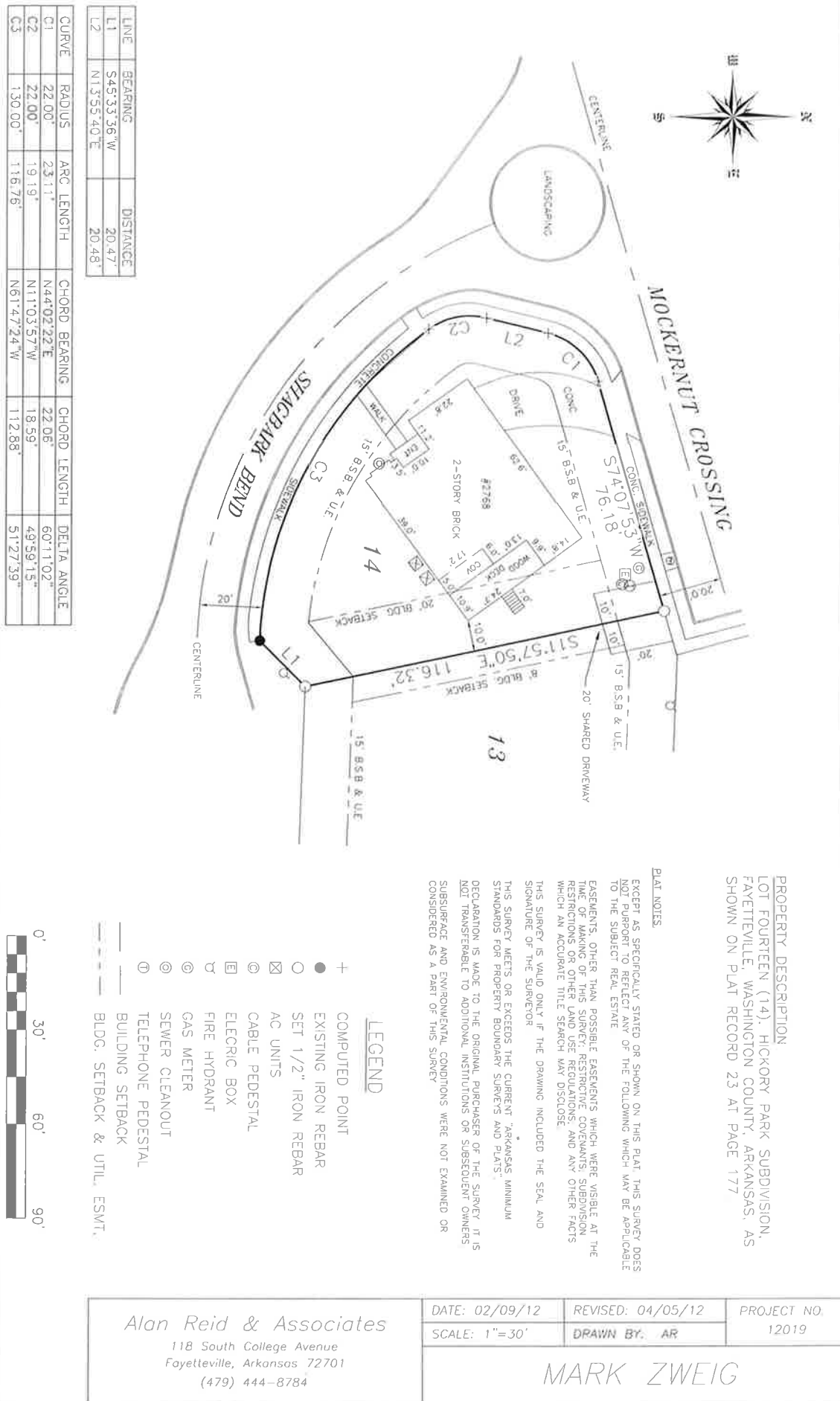
Mr. Zweig purchased the home from the builder, Riggins Construction, for his personal residence in February of this year. The home was an existing finished structure at the time of purchase. Upon completion of my survey for new fences, it became apparent that a small corner of the roof which sheltered a covered deck and a portion of the uncovered deck encroaches into the designated twenty (20) foot wide property setback.

Hickory Park Subdivision was originally designed as a Planned Zoning Development (PZD) with specific homes predetermined for each of the lots. The subdivision did not make it through the slow economy to be developed as it was initially designed, and the majority of the lots were obtained by speculative builders. The speculative built homes by Riggins Construction, including the one owned by Mark Zweig, Inc., were permitted by the City of Fayetteville with a design not approved for the original PZD. In the original PZD, the designed home for the unusual 20' setback requirement on the east side of this property would not have been an issue. It appears from the original subdivision plat the plan was a double drive to be shared by adjacent owners along the 20' setback at issue in this letter. This double drive is no longer necessary with the driveway coming from a different area of the street, and not a shared drive. The issue which occurred at the result of Riggins Construction will be remedied by changing the unnecessary 20' setback to a typical 8' setback.

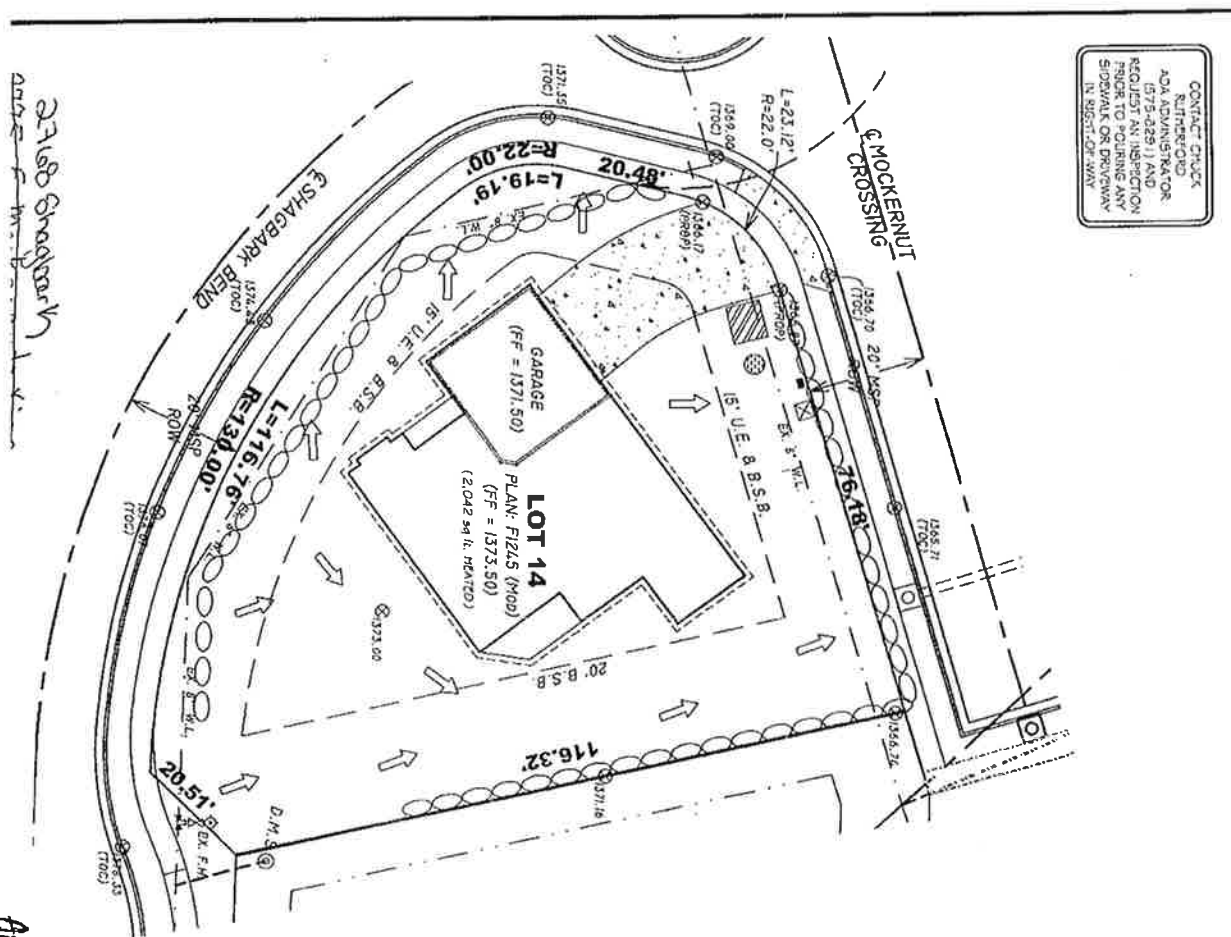
Mr. Zweig is requesting the approval of an amendment to Lot 14, reducing the setback from twenty (20) feet to eight (8) feet. If approved, the new setback along the East line of Lot 14 will mirror the existing setback along the West line of Lot 13, which is immediately adjacent to the East. This amendment will also allow him the continued use and benefit of the existing deck as it now exists.

Sincerely,

Alan Reid
Professional Land Surveyor
Arkansas Registration 1005



Approved Site Plan - 2011



$AP = 46.813$

*PARCEL #765-64592-000
 S-I-R, 31-17-29
 ZONING: RSF-1
 SITE AREA: 0.24 ACRES
 TOTAL SITE
 AREA DISTURBED: 0.21 ACRES
 OWNER:
 RIGGINS CONSTRUCTION
 FAYETTEVILLE, AR.
 72703

SITE ADDRESS:
 2715 MOORENUT CROSSING
 FAYETTEVILLE, AR.
 72703

FLOOD PLAIN NOTE:
THIS PROPERTY IS NOT AFFECTED BY
THE 100 YEAR FLOOD PLAIN AS PER FIR
#051435011SD DATED FEBRUARY 5, 1997.

*ALL FINISHED GRADE ADJACENT TO HOUSE SHALL DRAIN AWAY FROM HOUSE @ 5% FOR 10'.

GRADING NOTES/ OPERATIONS AND MAINTENANCE PLAN

- 1) ALL GRASSES AREAS INDICATED BY SPOT ELEVATIONS ON PLAN, AND EXCESSIVE DIRT BECOMES A PROBLEM, A PLAN FOR WATERING THE CITY ENGINEER BY THE CONTRACTOR.
- 2) ALL EROSION CONTROL MEASURES SHALL BE IN PLACE PRIOR TO PRIMARY GRADING.
- 3) CONTRACTOR SHALL MODIFY EROSION CONTROL MEASURES AS NECESSARY TO ELIMINATE SEDIMENTATION FROM LEAVING THE SITE.
- 4) THERE ARE NO KNOWN EROSION PROBLEMS ON THIS SITE OR THE PROPERTY DOWNSIDE.
- 5) EROSION CONTROL MEASURES AS OUTLINED BY THE PLAN SHALL BE IN PLACE AND INSPECTED BY THE CITY OF PAVEMENT PRIOR TO ANY CONSTRUCTION.
- 6) ALL AREAS WHICH RECEIVE CONCENTRATED RAINOFF SHALL BE STABILIZED WITH STONE CHECK DAMS
- 7) ALL IMPORTED FILL SHALL BE FREE OF ROCKS GREATER THAN 12 INCHES IN DIAMETER AND ANY DETRIMENTAL ORGANIC MATERIAL OR REFUSE DEBRIS
- 8) FILL SHALL NOT BE PLACED ON EXISTING SLUGS WITH A GRADE STEEPER THAN 15 % UNLESS NEEDED INTO STEPS IN THE EXISTING GRADE AND THOROUGHLY STABILIZED BY MECHANICAL COMPACTION.
- 9) ALL DISTURBED AREAS SHALL HAVE 4" OF TOPSOIL BEFORE VEGETATION.
- 10) DETOURS, MID AND SOIL SHALL NOT BE ALLOWED IN PUBLIC STREETS BUT IF ANY DEBRIS, MID, OR SOIL FROM OTHER AREAS REACHES THE PUBLIC STREET IT SHALL BE IMMEDIATELY REMOVED VIA SWEEPING OR OTHER MEANS OF PUBLIC MAINTENANCE. DEBRIS MID, OR SOIL IN THE STREET MAY NOT BE WASHED OFF THE STREET OR USED FOR STORM DRAINAGE SYSTEM. STORM DRAINAGE SYSTEMS DOWNSTREAM OF A DEVELOPMENT SITE SHOULD BE PROTECTED FROM DEBRIS, MID, OR SOIL IN THE EVENT THAT DEBRIS, MID, OR SOIL REACHES THE DRAINAGE SYSTEM.
- 11) ALL GRADED AND OTHERWISE DISTURBED AREAS SHALL BE STABILIZED WITHIN 15 DAYS IMMEDIATELY AFTER GRADING OR DISTURBANCE HAS CEASED.
- 12) TOP SOIL OR OTHER SOIL IS TO BE STOCKPILED FOR MORE THAN 30 DAYS, A TEMPORARY COVER OF ANNUAL, RYE OR OTHER SUITABLE GRASS SHALL BE PLANTED
- 13) RE-VEGETATION SHALL BE IN ACCORDANCE WITH THE CITY OF FAYETTEVILLE RESIDENTIAL EROSION CONTROL PLANNING REQUIREMENTS. A MINIMUM OF 4" OF TOPSOIL SHALL BE REQUIRED EITHER EXISTING OR INSTALLED. IN ALL AREAS TO BE RE-VEGETATED, THE RE-VEGETATION SHALL, AT A MINIMUM, CONSIST OF SEEDING AND MULCHING. ADDITIONAL MEASURES MUST BE TAKEN FOR THE FOLLOWING CONDITIONS:
 - A) FOR SLOPES OF 10:1 TO 3:1 GRADE, RE-VEGETATION SHALL BE A MINIMUM OF HYDRO-SEEDING WITH MULCH AND FERTILIZER, SOO, OR GROUNDCOVER.
 - B) FOR SLOPES OF 4:1 TO 3:1 GRADE, THE SLOPE SHALL BE COVERED WITH LANDSCAPE FABRIC AND HYDRO-SEEDED WITH MULCH AND FERTILIZER, SOO, OR GROUNDCOVER.
 - C) FOR SLOPES WITH A GRADE IN EXCESS OF 3:1, THE FINISH GRADE IN EXCESS OF 3:1 MUST BE APPROVED BY THE CITY ENGINEER.

**VICINITY MAP**

W+E

LEGEND

- ✕ STREET LIGHT
 ✕ FIRE HYDRANT
 ✕ OTHER EXISTING DOUBLE METER SET
 ✕ EXISTING SEWER SERVICE
 CENTERLINE STREET

 UTILITY EASEMENT

 BUILDING SETBACK

 PROPOSED SIDEWALK

 EXISTING SIDEWALK

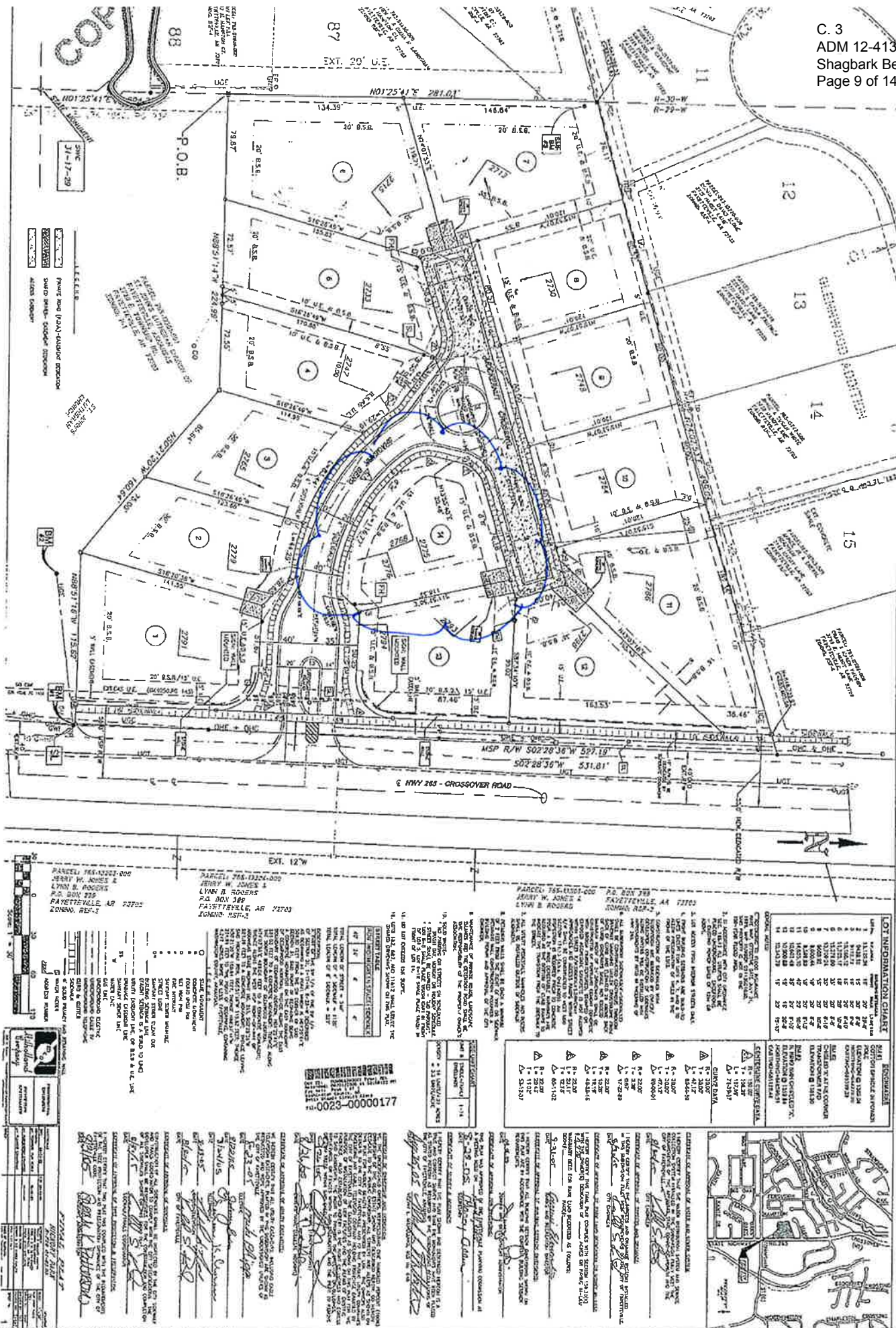
 (X) TRASH CONTAINER (X) CURB FT. MIN.
 (X) PORTABLE TOILET
 (X) CONCRETE WASHOUT
 (X) PERMIT BOX

 SLIT FENCE

 (X) ASSESS EXISTING SPOT ELEVATION
 (X) ASSESS PROPOSED SPOT ELEVATION
 (X) DRAINAGE DIRECTION OF DRAINAGE

 JORGENSEN & ASSOCIATES
CIVIL ENGINEERS • SURVEYORS

LOT 14 OF HICKORY PARK SUBD. 1/2



LOT INFORMATION CHART

LOT No.	S.F. AREA	BUILDING SETBACKS		
		FRONT	REAR	LT-RT SIDE
1	13,129.34	15'	20'	20'-8'
2	9439.10	15'	30'	8'-8'
3	9112.73	15'	30'	8'-8'
4	10,156.12	15'	20'	8'-10'
5	11,703.17	15'	20'	10'-8'
6	15,279.00	35'	20'	8'-8'
7	13,709.24	35'	20'	8'-10'
8	9669.92	15'	20'	10'-8'
9	9,600.44	15'	20'	8'-8'
10	9,599.89	15'	20'	8'-10'
11	14,655.10	40'	20'	10'-8'
12	10,603.49	35'	20'	8'-10'
13	10,900.89	15'	15'	20'-8'
14	10,343.79	15'	20'	15'-15'

GENERAL NOTES:

1. ACCORDING TO FLOOD INSURANCE RATE MAP, EFFECTIVE DATE JULY 21, 1999, MAP NUMBER 05143C0103D, SAID PROPERTY IS NOT IN THE 100-YEAR FLOOD AREA.
2. IN ACCORDANCE WITH CITY ORDINANCE SEC. 166.13 ALL UTILITIES SHALL BE PLACED UNDERGROUND. EXCEPTIONS - EXISTING POWER LINES OF 12kv OR ABOVE.
3. LOT ACCESS FROM INTERIOR STREETS ONLY.
4. FRONT BUILDING SETBACKS ARE BUILD-TO LINES EXCEPT FOR LOTS 4, 7, AND 8 TO ALLOW PRESERVATION OF TREES IN THE FRONT OF THE LOTS.
5. CONSTRUCTION OF SIDEWALKS WITH SUBDIVISION ARE BOUNDED BY OWNER/DEVELOPER. CONSTRUCTION OF SIDEWALKS ALONG HWY265 WILL BE INSTALLED WITH IMPROVEMENTS BY AHTD IN WIDENING OF HWY 265.
6. ALL SUBDIVISION SIDEWALKS(4'-SIDEWALKS) SHALL BE CONSTRUCTED CONTINUOUS THROUGH DRIVEWAY MAINTAINING MAX.2% CROSSSLOPE FROM BACK OF CURB AND ELEVATED 2% ABOVE BACK OF CURB; DRIVEWAYS SHALL NOT EXCEED MAXIMUM WIDTH OF 24'. DRIVEWAYS SHALL BE CONSTRUCTED OF PORTLAND CEMENT CONCRETE WITH BROOM FINISH. TEXTURED, STAMPED OR EXPOSED AGGREGATE CONCRETE IS NOT ALLOWED WITHIN STREET R/W. SIDEWALKS, DRIVEWAY APPROACHES AND ACCESS RAMPS WITHIN STREET R/W SHALL BE CONSTRUCTED TO MEET UDO SECTION 171.13 (a.k.a. Ord#4005). AN INSPECTION IS REQUIRED PRIOR TO CONCRETE POUR. A 24" WIDE DETECTABLE WARNINGS ARE REQUIRED AT THE BOTTOM OF CURB RAMPS TO INDICATE THE TRANSITION FROM THE SIDEWALK TO THE STREET.
7. ALL UTILITY PEDESTALS, MANHOLES AND RISERS SHALL BE INSTALLED OUTSIDE OF SIDEWALK ALIGNMENT.
8. RETAINING WALLS SHALL BE BACK A MINIMUM OF 2 FEET FROM THE RIGHT OF WAY OR SIDEWALK. RETAINING WALL CONSTRUCTION REQUIRES A BUILDING PERMIT AND APPROVAL OF THE CITY.

BENCHMARKS

BM #1
COTTON SPINDLE IN POWER POLE
ELEVATION @ 1389.04
NORTHING=648270.20
EASTING=685599.39

BM #2
CHISELED 'X' AT NE CORNER TRANSFORMER PAD
ELEVATION @ 1388.30

BM #3
N. RING SMH CHISELED "X".
ELEVATION @ 1359.84
NORTHING=648590.51
EASTING=685128.44

CENTERLINE CURVE DATA

C1
R = 150.00'
T = 108.29'
L = 187.59'
Δ = 71-39-17

CURVE DATA

A
R = 30.00'
T = 30.00'
L = 47.12'
Δ = 89-59-59

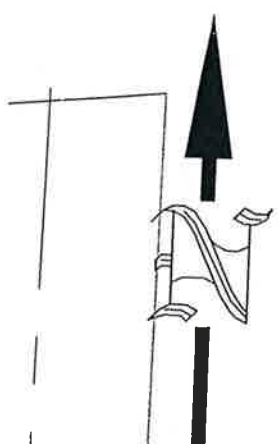
B
R = 30.00'
T = 30.00'
L = 47.12'
Δ = 90-00-01

C
R = 22.00'
T = 3.36'
L = 6.67'
Δ = 17-22-29

D
R = 22.00'
T = 10.26'
L = 19.19'
Δ = 49-59-15

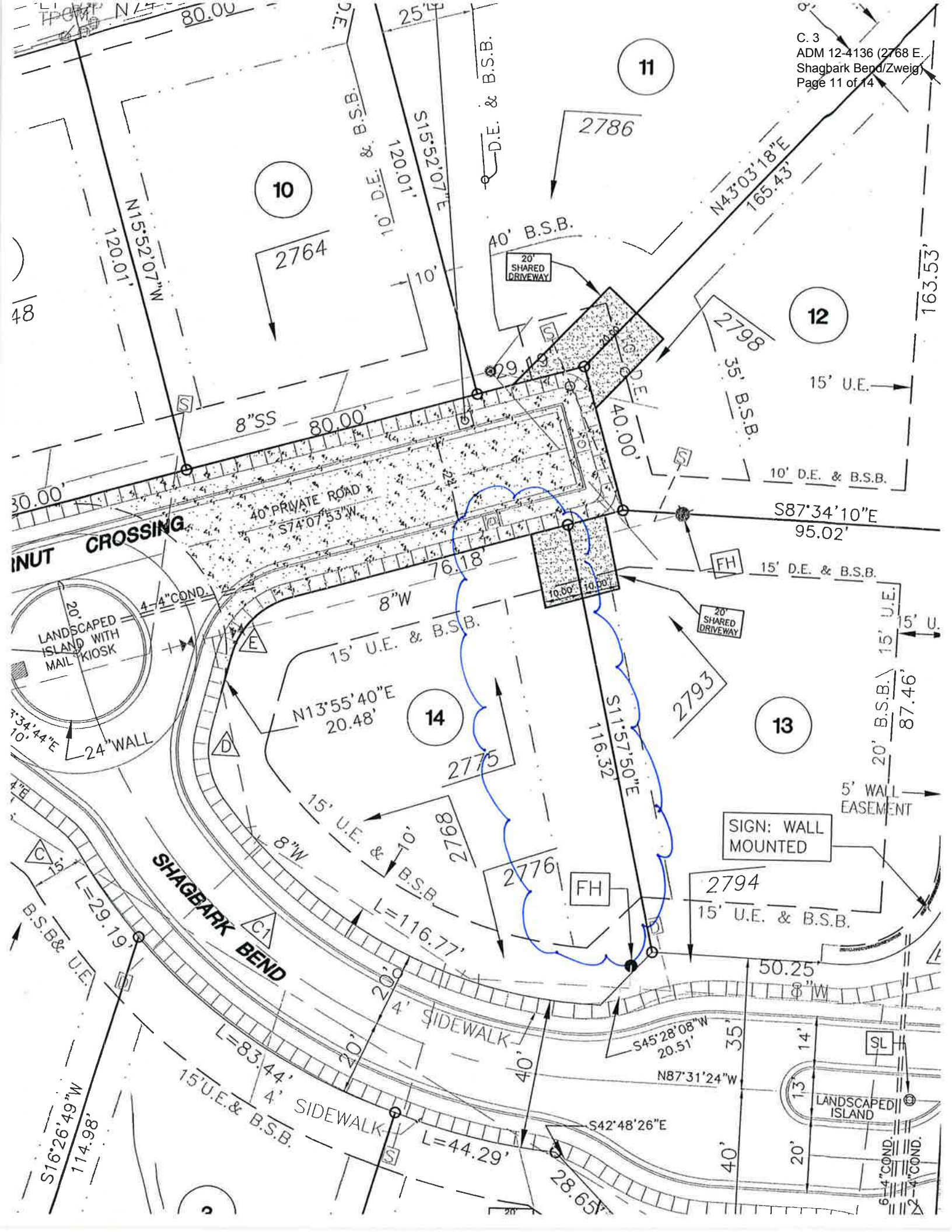
E
R = 22.00'
L = 23.11'
T = 12.75'
Δ = 60-11-02

F
R = 22.00'
L = 20.43'
T = 11.02'
Δ = 53-12-37



5.0' NEW DEDICATED R/W

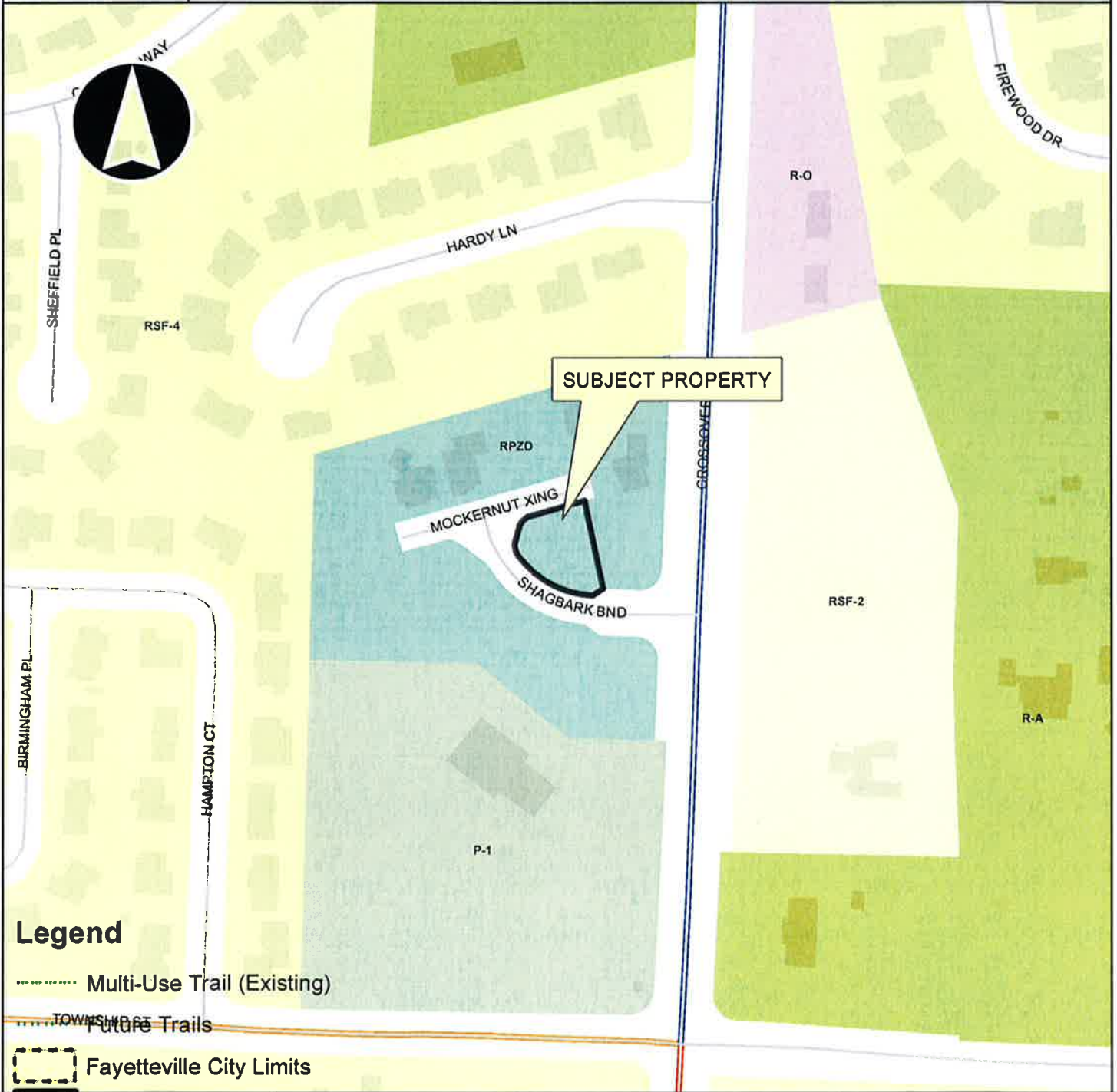
PARCEL: 765-19303-000
JERRY W. JONES &
LYNN B. ROGERS
P.O. BOX 399
FAYETTEVILLE, AR 72703
ZONING: RSF-2



ADM12-4136

ZWEIG

Close Up View



Legend

Multi-Use Trail (Existing)
 Future Trails

Fayetteville City Limits

ADM12-4136

Footprints 2010

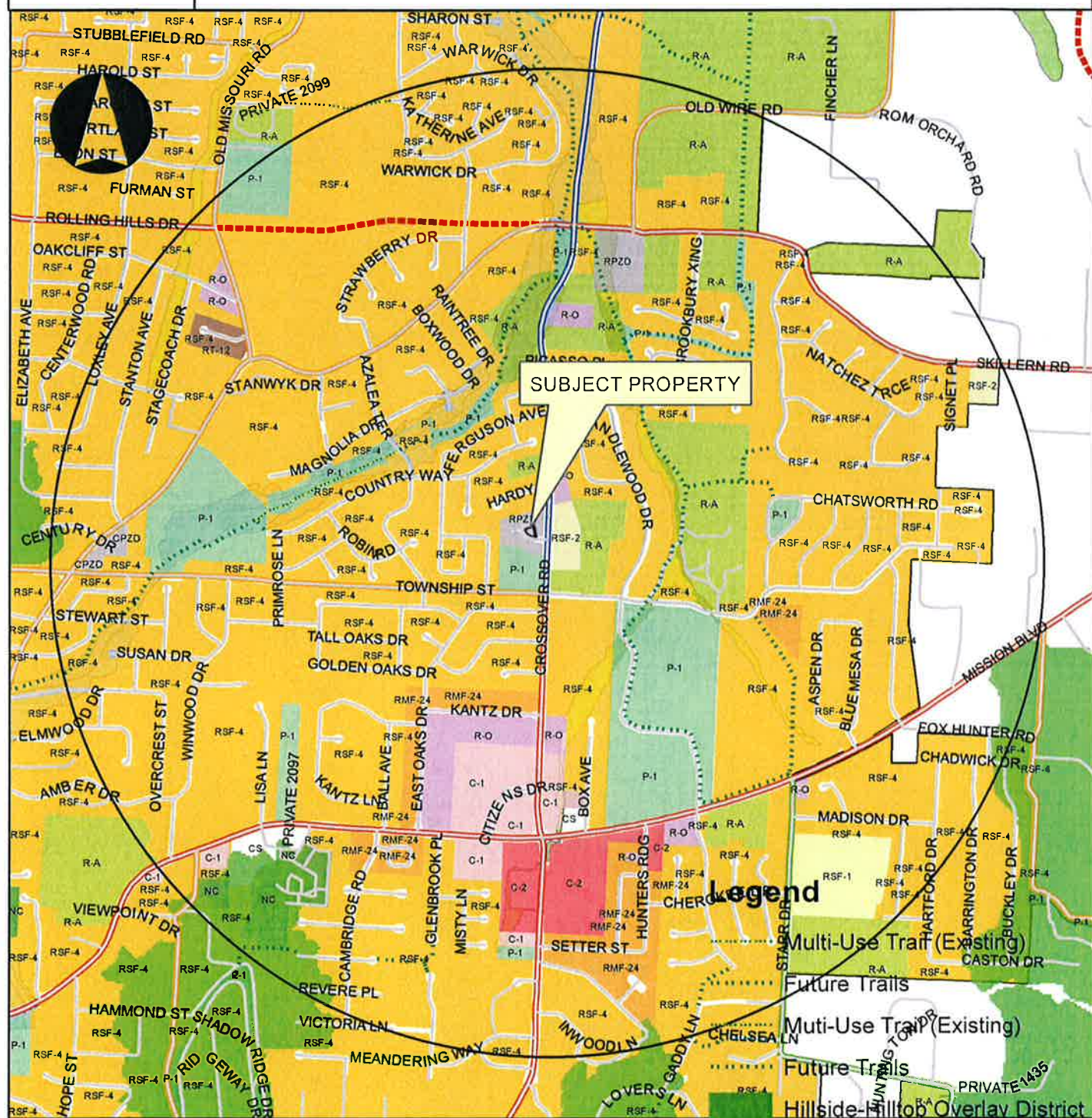
Hillside-Hilltop Overlay District

Design Overlay District

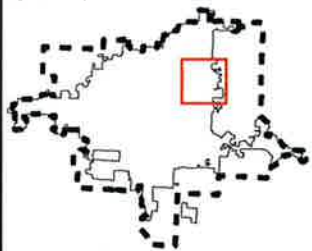
Design Overlay District

Planning Area

0 75 150 300 450 600 Feet



Overview



Legend

Subject Property

 ADM12-4136

Boundary

0

0.25

0.5

ADM 12-4136

Design Overlay District

Planning Area

Fayetteville

1

Miles

City of Fayetteville Staff Review Form

C. 4
 ADM 12-4174 (Complete
 Neighborhood Plan)
 Page 1 of 8

City Council Agenda Items
 and
 Contracts, Leases or Agreements

8/7/2012

City Council Meeting Date
 Agenda Items Only

Leif Olson

Submitted By

Division

Sustainability & Strategic Planning

Department

Action Required:

ADM 12-4174: (Complete Neighborhood Plan): Submitted by Sustainability and Strategic Planning and Development Services Staff to create a Complete Neighborhood Plan for the Wedington Drive area west of I-540.

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

07-20-2012

Date

Previous Ordinance or Resolution #

City Attorney

7-20-12

Date

Original Contract Date:

Original Contract Number:

Finance and Internal Services Director

7-23-2012

Date

Received in City
 Clerk's Office

7-20-12 A11:02 RCVD

Chief of Staff

7-20-12

Date

Received in
 Mayor's Office

Mayor

7/25/12

Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director JP

From: Leif Olson, Associate Planner LO

Date: July 2, 2012

Subject: ADM 12-4174 Complete Neighborhood Plan

RECOMMENDATION

Staff recommends approval of a resolution to create a Complete Neighborhood Plan for the Wedington Drive area west of I-540, pursuant to City Council's direction for staff to conduct a Complete Neighborhood Plan process every two years.

BACKGROUND

The City Council adopted City Plan 2030 by Resolution Number 116-11 on July 5, 2011. As with the previous City Plan 2025, City Plan 2030 states that Planning Staff will create a complete neighborhood or corridor plan every other year utilizing a charrette process. These plans will embody the goals and principles of City Plan 2030 and target strategic areas throughout the City. Subsequently, a complete neighborhood plan was first developed in 2004 for the Downtown Master Plan area by Dover Kohl and Partners, utilizing a public engagement charrette process that was highly successful. City staff has previously developed master plans for the Walker Park and Fayette Junction neighborhoods utilizing a similar process. These plans generate public feedback and invite engagement in the development of implementation steps for the continual success of a neighborhood.

DISCUSSION

Planning Staff presents a recommendation for a Complete Neighborhood Plan for an area of the City every other year. The following products can be expected from this process:

- **Research:** Staff will conduct research into the identified neighborhood area, utilizing historic data, traffic patterns and counts, infrastructure constraints and opportunities, demographic and other census data trends, environmental impacts, etc. All of the data is compiled into reports and graphics that can then be further analyzed comparatively during the development of the plan.

- Public participation: Staff will facilitate a five to seven day charrette that encourages quality public participation from neighborhoods and other stakeholders;
- A vision document will be created which will include an analysis and recommendations for applicable implementation steps. This could include tools such as zoning recommendations, design guidelines, Master Street Plan amendments and capital improvement project recommendations, and;
- Illustrative maps that depict an idealized build-out of the area utilizing the principles of City Plan 2030 and the information and feedback generated from the neighborhoods and other stakeholders in the public participation process.

Neighborhood Plan Assessment: Development Services and Sustainability and Strategic Planning staff discussed a total of four possible areas of the City to conduct a complete neighborhood plan. These areas were: 1) Joyce Ave. and vicinity east of College Ave. and west of Crossover Road; 2) Colt Square and the surrounding neighborhood; 3) neighborhoods directly to the north, west and east of the University of Arkansas campus; 4) and the Wedington Drive corridor west of I-540 to 51st Street.

The criteria used to compare sites included: 1) Meets the City's goals outlined in City Plan 2030; 2) Is experiencing development pressure; 3) Has a high percentage of vacant or underutilized land; and 4) Has potential for significant public participation.

Staff developed a list of opportunities and challenges for each of the four proposed areas based upon the above criteria. The following is a brief synopsis of this analysis:

1) The Joyce Ave. area has opportunities for creating a more complete street network and a comprehensive zoning and buildout scenario. The challenges would be the existing disjointed nature of the development pattern, lack of street and sidewalk connectivity and possibly limited public participation due to the commercial nature of this neighborhood.

2) The Colt Square area is in a great central location with easy access to most major destinations in the City and there is a good mix of residential, commercial and institutional uses within this neighborhood. A good street, sidewalk, trail and bus system exists which provides alternative transportation options. Challenges include much of the area lying in a floodplain and the fact that this area has not seen significant development pressures recently.

3) Staff also explored the idea recently discussed of creating a University Overlay District that extended in all directions from the U of A growth boundary. The growth of the University directly impacts the areas adjacent to the campus with new development, traffic and livability concerns. The opportunity exists to identify appropriate infill and transition policies to address some of the existing neighborhoods concerns. Challenges include; the physical size of the areas surrounding the U of A makes it difficult to propose a viable boundary for a Complete Neighborhood Plan, challenging topography and lack of street connectivity to the west of the University, coordinating meaningful public input in the condensed time frame of a Complete Neighborhood Plan, and the fact that the implementation steps and final products of a Complete Neighborhood Plan may not be the best vehicle for addressing some of these specific issues experienced by U of A neighbors. While this is an important area to consider again in the future, staff also recognizes that the formation of the Town and Gown

Committee is just beginning and that significant policy discussions should occur within this group first in order to guide the formation of a successful master plan.

PROPOSAL

Ultimately, staff recommends creating a complete neighborhood plan for an area in west Fayetteville along Wedington Drive from I-540 to 51st Street. The proposed plan boundary along Wedington Drive contains approximately 350 acres. Wedington Drive is a principal arterial with high traffic counts that serves a large number of residential, commercial and institutional uses on the west side of I-540. Staff felt that this area provided the greatest opportunity for a Complete Neighborhood Plan to impact future growth and meet the goals of City Plan 2030. Staff's analysis follows:

City Goals: City Plan 2030 Goal 1 states; "We will make infill appropriate infill and revitalization our highest priorities". This area offers opportunities for addressing all six of the goals outlined in City Plan 2030, with infill and revitalization remaining the highest priority. The areas immediately north and south of the Wedington corridor have had significant single family development occur in the last 10-20 years. The Wedington corridor is now beginning to see commercial development pressure along its' frontage in response to the increase in residential density in this area, therefore, it is timely to propose a corridor plan for this area.

City Plan 2030 goal 4 is to "Grow a livable transportation network". The suburban residential form of the developments in this area could benefit from a more connected street network and specifically the development of walkable commercial destinations along Wedington Dr. The undeveloped nature of the lands adjacent to Wedington Dr. provides a unique opportunity to proactively plan the corridor for commercial uses, additional street connections, curb cuts and the Wedington Drive street cross-section.

Additionally, opportunities exist to address Goal 5; "We will assemble an enduring green network". The City's Enduring Green Network map illustrates a north/south connection bisecting the Wedington corridor. This neighborhood plan will provide an opportunity to do a site specific analysis of this proposed enduring green network connection.

Development Pressure: Development in this area of west Fayetteville is inevitable over the next several years, as commercial development follows the thousands of rooftops that have been constructed in the last 10 years.. The large number of single and multi-family developments north and south of Wedington Drive will be the catalyst to drive commercial development and other neighborhood support services along this corridor. A Master Plan for this corridor can create a vision that directs new development toward the creation of complete, compact and connected neighborhoods. A vision that meets the goals of City Plan 2030 and promotes economic development is the desired outcome.

Vacant or Underutilized land: Approximately 70% of the land area in this proposed area is developable land that is either vacant or underutilized, indicating significant opportunities for infill.

Potential Partners in the Process: This area of west Fayetteville offers multiple opportunities for resources and partners in the design process. Staff intends to work closely with the established neighborhoods, developers and local businesses in the area. This area also includes a number of existing civic and commercial establishments that could participate including: the Boys and Girls Club, Owl Creek Elementary School, Ozarks Electric and the existing retail, restaurant, grocery and hotel uses.

Staff has attached maps of the proposed Wedington Drive Corridor Plan.

BUDGET IMPACT

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE CITY STAFF TO PREPARE A
COMPLETE NEIGHBORHOOD PLAN FOR THE WEDINGTON DRIVE
CORRIDOR

**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
City Staff to prepare a complete Neighborhood Plan for the Wedington Drive Corridor.

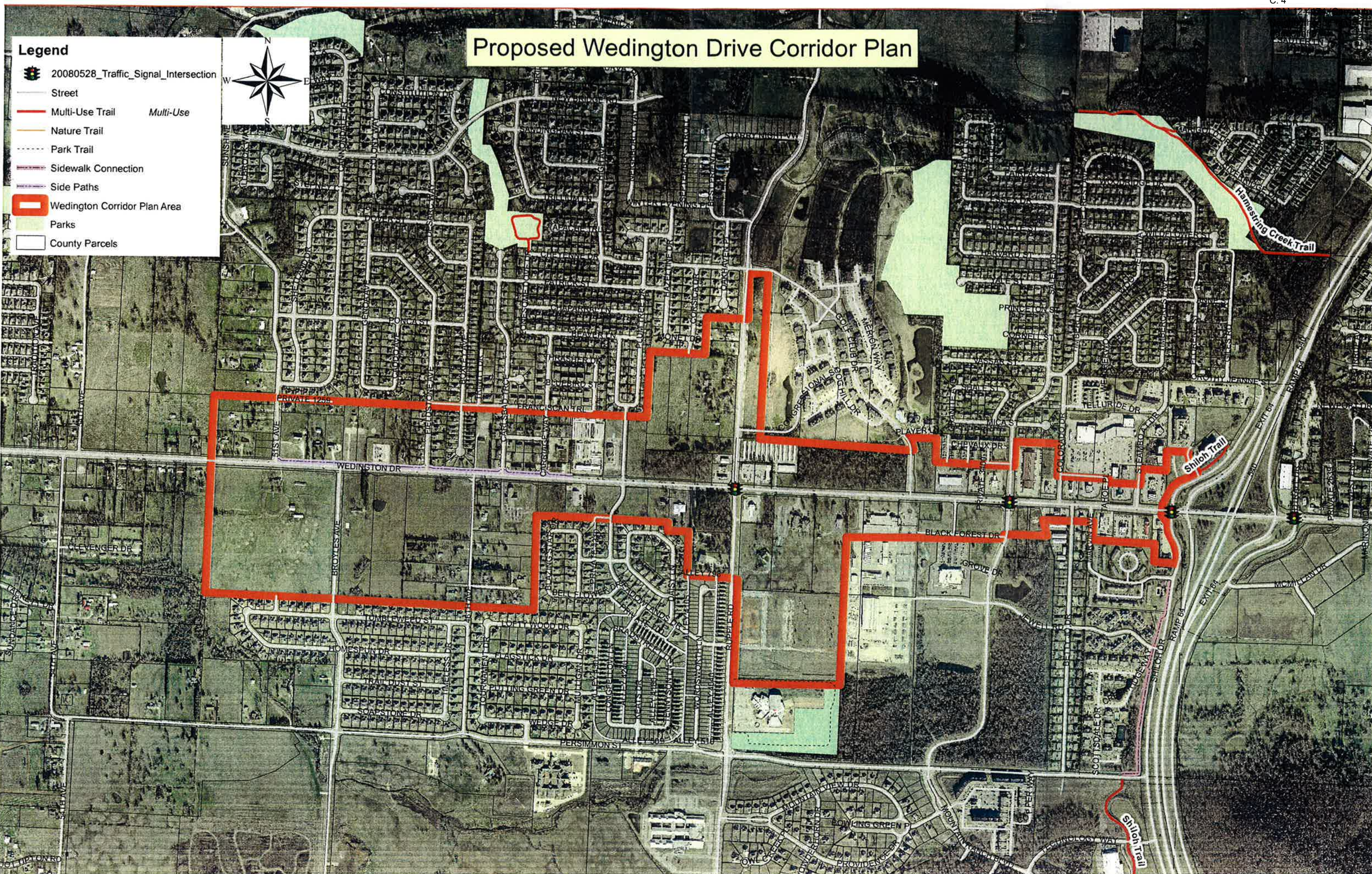
PASSED and APPROVED this 7th day of August, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

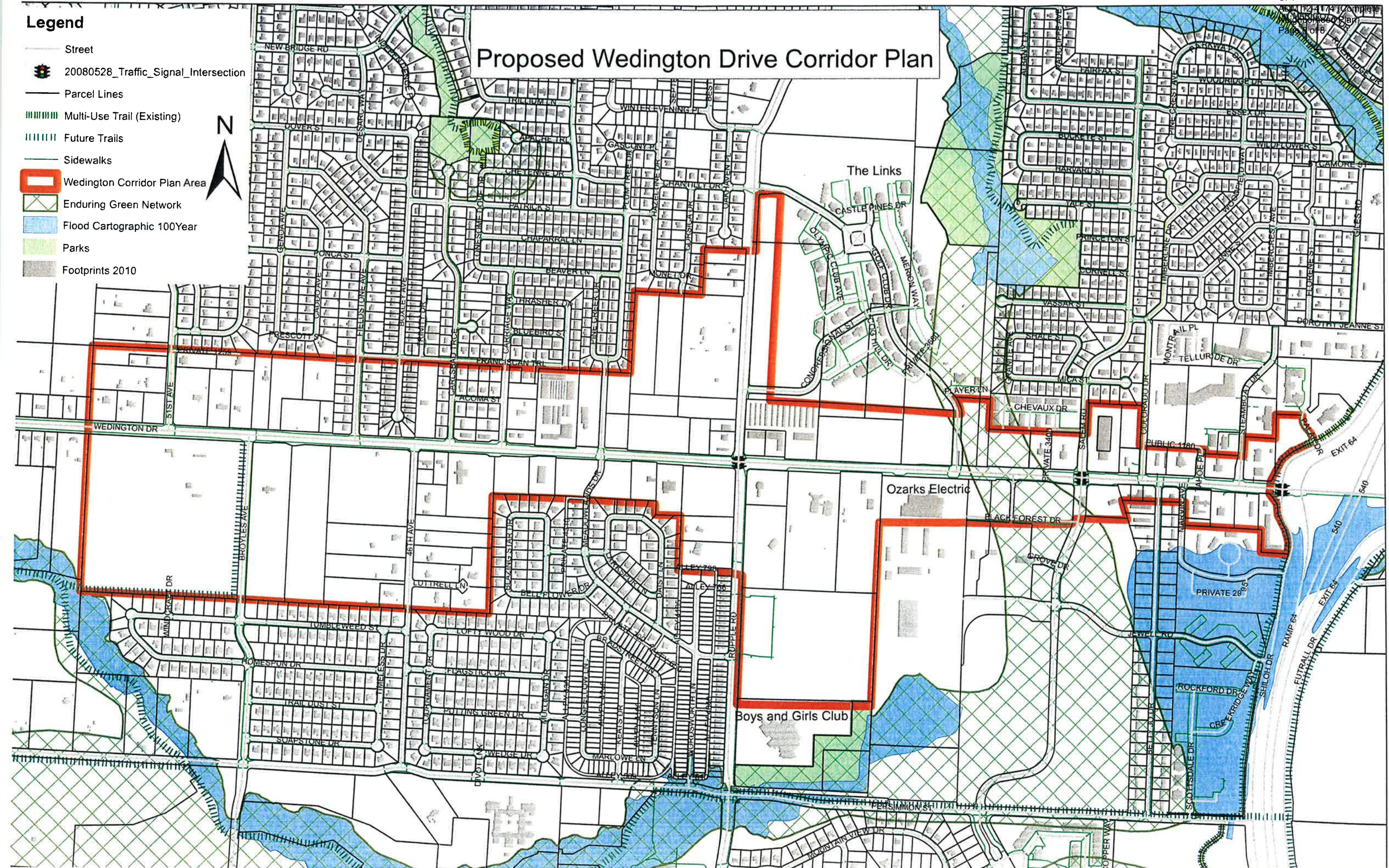


Legend

- Street
- 20080528_Traffic_Signal_Intersection
- Parcel Lines
- Multi-Use Trail (Existing)
- Future Trails
- Sidewalks
- Wedington Corridor Plan Area
- Enduring Green Network
- Flood Cartographic 100Year
- Parks
- Footprints 2010



Proposed Wedington Drive Corridor Plan



AGENDA REQUEST

C. 5
Petition for Writ of Certiorari and
Appeal to United States Supreme Court
Page 1 of 8

FOR: COUNCIL MEETING OF AUGUST 7, 2012

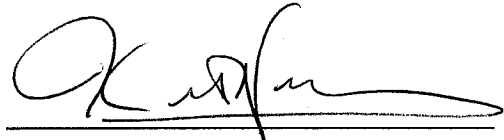
FROM:

KIT WILLIAMS, CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A Resolution To Authorize The City Attorney To File A Petition For Writ Of Certiorari To The United States Supreme Court And Appeal The Awarding Of Attorneys Fees In The Rock Quarry Case

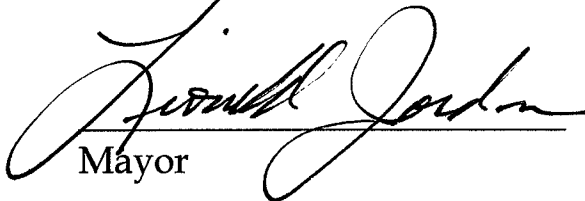
APPROVED FOR AGENDA:



City Attorney

July 24, 2012

Date



Mayor

7/24/12

Date

07-24-12 P04:59 RCVD

Kim J.



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Paul Becker, Finance Director

FROM: Kit Williams, City Attorney

DATE: July 24, 2012

RE: Petition for Writ of Certiorari and Appeal to United States Supreme Court

In my July 5, 2012 memo (attached) I notified you that the Eighth Circuit Court of Appeals had affirmed the lower court's decision to award attorneys fees to the Rogers Group, Inc. I pointed out why I felt this was wrong and recommended that we petition for a Writ of Certiorari to the United States Supreme Court. At that point I believed the cost to appeal would largely be only costs (filing record, printing, my travel expenses) that I could pay out of my office budget.

Unfortunately our insurance company has decided it makes business sense to pay the current attorneys fee award and not risk any further attorneys fees which could be awarded against the City if the Petition for Writ of Certiorari is denied (which is very likely since only a tiny percentage are granted). If a Writ is issued, we could still lose the actual appeal and have more attorney fees awarded against us. The insurance company appears to have this right to pay the attorneys fees now and have no further liability. Thus, all the risk for future attorneys fees would fall upon our taxpayers.

If we go forward and win it all, the insurance company would be entitled to receive back all the attorneys fees it paid while we would receive almost no monetary relief since civil rights attorney fees almost always are assessed against a city if it loses and not assessed against a plaintiff that loses. From a purely **immediate** monetary perspective, filing a Petition for Writ of Certiorari and appealing to the U.S. Supreme Court makes little sense. From a long term perspective, we and every city in the Eighth Circuit might be faced with more frequent declaratory judgment challenges to ordinances being filed in federal court with weak due process claims alleged in an effort to collect attorneys fees. So long term, cities could face increased costs.

But you need to decide what is best for Fayetteville. Our research shows attorneys fees awarded against a government for a Petition for Writ of Certiorari that was denied range between \$30,000.00 to \$40,000.00 which seem excessive to me. (A Washington D.C. lawyer was paid \$403.75 per hour for work responding to a Petition for Writ of Certiorari). But our taxpayers could well face such a large bill if our Petition For Writ of Certiorari is denied (which is likely).

If our Petition was granted, we would not pay any such fees, but could then appeal to the United States Supreme Court. If successful there, no attorney fees would be assessed against us, and we should be able to recover back the \$75,000.00 (plus appellate attorney fees) the insurance company has paid. The City will have paid slightly less than \$8,000.00 of these fees before meeting our deductible.

Thus, we are risking substantially more in attorney fees than what we could hope to recover back (\$8,000.00). The reason to appeal would be to establish the principle that our taxpayers and the taxpayers of every city and county should not be forced to pay attorneys fees unless that government has actually violated someone's civil rights. Our citizens should have their day in court to defend our actions rather than having attorney fees be awarded on bare and untested pleadings in a complaint when a case is decided on a state issue where attorney fees are not allowed.

I believe this is a very important principle that deserves our best efforts to protect which is why I still recommend we bite the bullet and seek a Petition for Writ of Certiorari despite long odds and a fairly significant monetary risk.



TO: Mayor Jordan
City Council

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

FROM: Kit Williams, City Attorney

DATE: July 5, 2012

RE: Eighth Circuit Court of Appeals Decision
Rogers Group, Inc. v. City of Fayetteville

This morning the three judge panel of the Eighth Circuit Court of Appeals affirmed the award of \$75,319.14 in attorney's fees, expenses and costs. (*Rogers* had originally sought \$110,927.31.)

Before 2001, the Eighth Circuit (and most other Circuit Courts) had expressly allowed attorney fees to be awarded in some cases in which the plaintiff alleged a civil rights violation like due process of law even if the case was decided on other grounds. In 2001, the United States Supreme Court reversed all these Circuit Courts in *Buckhannon Bd. & Care Home, Inc. v. West Virginian Department of Health and Human Resources*, 532 U.S. 598 (2001).

The United States Supreme Court in a 5 to 4 decision held that even if a civil rights allegation could withstand a Motion To Dismiss, it would not support an award of attorney's fees. *Id.* at 605. The Fourth Circuit Court of Appeals properly applied the new *Buckhannon* ruling in 2002.

"(P)laintiffs who do not prevail on the federal claims, but achieve success on supplemental state law claims are not prevailing parties under §1988, and are therefore not entitled to an (attorney's fee) award under that statute." *Robles v. Prince George's County, Md*, 302 F3d 262, 272 (4th Circuit 2002).

While our insurance carrier rather than our taxpayers would have to pay this \$75,000.00 attorney's fee award if it is finally upheld, this Eighth Circuit ruling if

left unchallenged would encourage substantially more litigation with every plaintiff who wishes to challenge any city or county ordinance to plead not only for declaratory judgment but also allege a due process civil rights claim in order to try to get attorneys fees.

I believe that even the four dissenters in the *Buckhannon* case would reject a civil rights attorney fees award when it is clear the City did not violate Federal Due Process by enacting an ordinance after long consultation with Rogers Group Inc. and amendments to the ordinance suggested by Rogers Group, Inc. Even the District Court acknowledged the careful consideration of the City Council in enacting the Rock Quarry Ordinance which his opinion stated “is to be commended in the enactment of laws and regulations”

Since the Washington County Circuit Court had already found the City had power to abate a nuisance within a mile of the city limits (Motor Vehicle Racing Facility Ordinance) and the Arkansas Attorney General opined the City had such power, Rogers Group, Inc. could never prove the City Council had violated its Due Process Rights.

“[S]ubstantive-due-process claims should be limited to ‘truly irrational’ governmental actions. An example would be attempting to apply a zoning ordinance only to persons whose names begin with the first half of the alphabet.” *Singleton v. Cecil*, 176 F.3d 419 432-33 (8th Cir. 1999) (citations omitted, emphasis added).

Unfortunately, even though our city never got its day in Court to disprove Rogers Group, Inc.’s meritless allegation of a Due Process violation, the Eighth Circuit has affirmed an award of attorney’s fees based upon unsupportable and untested “allegations in the complaint”

Eventually, the United States Supreme Court will need to reassert its authority over the Circuit Courts and its ruling of the *Buckhannon* case that some sort of a decision on the merits of a **federal civil rights claim** is needed to support an award of **civil rights attorney fees**. Our case would very clearly frame this issue so that the Supreme Court could clarify that the taxpayers of cities and counties will not have to pay federal civil right attorneys fees without the plaintiff having to prove an actual violation of federal civil rights of due process.

Without such an appeal and clarification, every part of the Fayetteville Code (and every other city and county code) and every ordinance we pass including rezonings and code amendments carry the danger of an award of attorneys fees. This carrot of attorneys fees will certainly spur increased litigation against all local governments as well as a stick to try to force local governments to give in to litigation threats.

CONCLUSION

It is very difficult and a very long shot to obtain review before the United States Supreme Court and would require much more additional work for my office. However, I feel this effort must be made.

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE CITY ATTORNEY TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT AND APPEAL THE AWARDING OF ATTORNEYS FEES IN THE ROCK QUARRY CASE

WHEREAS, the Eighth Circuit Court of Appeals affirmed the Federal District Court's award of \$75,319.14 in attorneys fees for the Rogers Group, Inc. against the City of Fayetteville; and

WHEREAS, the City Attorney has recommended that the City file a Petition for Writ of Certiorari to the United States Supreme Court to challenge this ruling; and

WHEREAS, the City's insurance carrier for constitutional claims has stated it will exercise its contractual right to pay the currently due attorney fees award, but will not be responsible for any future attorneys fee awarded against the City if the Petition for Writ of Certiorari is not granted or the decision is affirmed by the United States Supreme Court; and

WHEREAS, the City Council needs to decide whether or not to risk further city funds by authorizing the City Attorney to seek a Petition for Writ of Certiorari in an attempt to prevent the awarding of attorney fees which were based upon untested pleadings in a complaint.

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 proceed with filing the Petition for Writ of Certiorari to the United States Supreme Court and appeal if such Petition is granted.

PASSED and APPROVED this 7th day of August, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

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
August 7, 2012**

A meeting of the Fayetteville City Council will be held on August 7, 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:

1. 2nd Quarter Financial Report 2012

Agenda Additions:

A. Consent:

- ✓ 1. Approval of the July 17, 2012 City Council meeting minutes.
- ✓ 2. **Drake Field Pavement Rehab & Re-Marking Phase II Project:** A resolution approving a budget adjustment in the amount of \$7,012.00 to reflect modifications to the Drake Field Pavement Rehab & Re-Marking Phase II Project necessitated by grant program changes.

3. **Pavement Maintenance Unlimited, LLC Change Order No. 2:** A resolution approving Change Order No. 2 to a contract with Pavement Maintenance Unlimited, LLC reducing the contract by \$22,050.00 for the Pavement Rehab & Remarketing Phase II Project at Drake Field, and approving a budget adjustment.
4. **Bid #12-51 Truck Centers of Arkansas:** A resolution awarding Bid #12-51 and authorizing the purchase of two (2) Freightliner M2 trucks with Kann Versa Haul recycle bodies in the total amount of \$314,366.00 from Truck Centers of Arkansas for use by the Solid Waste Division.
5. **Preferred Office Products, Inc.:** A resolution authorizing the purchase of five (5) Canon copiers in a total amount of \$63,723.00, pursuant to a state procurement contract, from Preferred Office Products, Inc.
6. **Federal and State Law Enforcement Forfeiture Revenue:** A resolution approving a budget adjustment in the amount of \$28,558.00 representing federal and state law enforcement forfeiture revenue received during 2012 and establishing a corresponding expense budget.
7. **Arkansas Department of Parks and Tourism's Outdoor Recreation Grant:** A resolution authorizing an application for a 50/50 matching grant, through the Arkansas Department of Parks and Tourism's Outdoor Recreation Grant Program, in the amount of \$50,000.00 for improvements at Mount Sequoyah Gardens.
- NB #) (8. **United States Tennis Association:** A resolution authorizing acceptance of renovation services to tennis courts at Wilson Park by the United States Tennis Association as part of its Two Court Renovation Grant Program at no cost to the City of Fayetteville.
9. **Arkansas Recreational Trails Program:** A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Recreational Trails funds and authorizing application for a 20% local match grant through the Arkansas Recreational Trails Program in an amount up to \$100,000.00 for construction of a section of Lake Fayetteville Trail.
10. **2012 Arkansas Department of Environmental Quality Recycling Grant:** A resolution authorizing application for a 2012 Arkansas Department of Environmental Quality Recycling Grant through the Boston Mountain Solid Waste District in the amount of \$25,000.00 to fund apartment recycling containers.
11. **McClelland Consulting Engineers:** A resolution approving an engineering contract with McClelland Consulting Engineers in the amount of \$131,328.00, plus a \$20,000.00 project contingency, for design services for the State Highway 16 Water and Sewer Relocation Project at the West Fork of the White River.

B. Unfinished Business:

1. **Amend §154.03 Private Parties/Zoning Amendment:** An ordinance to amend §154.03 Private Parties/Zoning Amendment to clarify the powers of the Planning Commission and City Council when a property owner seeks rezoning. *This ordinance was left on the First reading at the July 17, 2012 City Council meeting.*

Left on the First Reading

U.S. Tennis C. Association → **New Business:**

- ✓ **RZN 12-4135 (521 N. College Ave./Roddey):** An ordinance rezoning that property described in rezoning petition RZN 12-4135, for approximately 0.34 acres, located at 521 North College Avenue from C-2, thoroughfare commercial to DG, Downtown General.
- ✓ **VAC 12-4147 (510 W. 11th St. & 989 S. School Ave./The Grove):** An ordinance approving VAC 12-4147 submitted by Morrison Shipley Engineers, Inc. for property located at 510 West 11th Street and 989 South School Avenue to vacate a portion of right-of-way, a total of 0.01 acres.
- ✓ **ADM 12-4136 (2768 E. Shagbark Bend/Zweig):** An ordinance amending a Residential Planned Zoning District entitled R-PZD 04-05.00, Hickory Park Subdivision, located north of 2730 East Township Street, containing approximately 4.4 acres, to reflect revised building setbacks for Lot 14.
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D. City Council Agenda Session Presentations:

- ✓ **Fayetteville Chamber of Commerce Economic Development 10th and 11th Quarterly Report – Chung Tan**

City Council Tour:

Announcements:

Adjournment:

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Old business and new business.

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Pre Agenda Meeting 7-25-12

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

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Lisa Branson - Presentation of 10th & 11th Quarterly Economic Development Reports to City Council during Agenda Session July 31, 2012

From: Chung Tan <CTan@fayettevillear.com>
To: Don Marr <dmarr@ci.fayetteville.ar.us>, "LBranson@ci.fayetteville.ar.us" <LBranson@ci.fayetteville.ar.us>
Date: 5/24/2012 8:24 AM
Subject: Presentation of 10th & 11th Quarterly Economic Development Reports to City Council during Agenda Session July 31, 2012
CC: Steve Clark <SClark@fayettevillear.com>, Jennifer Irwin <JIrwin@fayettevillear.com>, Katherine Brandt <KBrandt@fayettevillear.com>

Hi Don/Lisa:

Following my telephone conversation with Lisa and per the request of the city, we will combine the 10th Quarterly Economic Development reports (Jan-March, 2012) with the 11th Quarter (April-June, 2012) and will present the 6 months activities to the City Council during the Agenda Session on July 31st. As such, we will not be making a presentation for the 10th Quarter on Tuesday, May 29th.

Please confirm.

Chung

CHUNG TAN

Chamber Manager for Economic Development



Fayetteville Chamber of Commerce
123 W. Mountain / P.O. Box 4216
Fayetteville, AR 72702-4216
479-521-1710
479-521-1791 fax
www.fayettevillear.com

Note: Please consider the environment before printing this email.

