

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

**Final Agenda
City of Fayetteville, Arkansas
City Council Meeting
October 20, 2009**

A meeting of the Fayetteville City Council will be held on October 20, 2009 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:

Presentations, Reports and Discussion Items:

A. Consent:

1. Approval of the October 6, 2009 City Council meeting minutes. **APPROVED**
2. **Safe Routes To School Program:** A resolution to approve and support a grant application of \$300,800.00 to the Arkansas Highway and Transportation Department for 100% funding for Clabber Creek Trail through the Safe Routes To Schools Program.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 214-09

3. **2009 COPS Technology Grant:** A resolution to accept the 2009 COPS Technology Grant in the amount of \$500,000.00 and to approve the attached budget adjustment to recognize this revenue.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 215-09

4. **Baird, Kurtz & Dobson (BKD), LLP:** A resolution to approve an annual contract with BKD, LLP for external auditing services for the 2009 audit in the amount of \$81,000.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 216-09

5. **Energy Efficiency Rehabilitation Project:** A resolution to approve Bid in the amount of \$64,210.00 from Joe Perme Construction for rehabilitation and increased Energy Efficiency of a city owned building at 1932 S. Garland Avenue.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 217-09

Agenda Additions:

B. Unfinished Business:

1. **Amend Police Department's Policies, Procedures & Rules Manual:** A resolution approving and adopting amendments to the Fayetteville Police Department's Policies, Procedures & Rules Manual. This resolution was tabled at the October 6, 2009 City Council meeting to the October 20, 2009 City Council meeting.

THIS RESOLUTION WAS TABLED TO THE NOVEMBER 3, 2009 CITY COUNCIL MEETING.

2. **2009 Millage Levy:** An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2009 fixing the rate thereof at 1.3 mills for General Fund Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mill for the Fayetteville Public Library; and certifying the same to the County Clerk of Washington County, Arkansas. *This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting. This Ordinance was left on the Second Reading*

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5279

3. **Old Wire Annexation Appeal:** An ordinance annexing that property described in annexation petition ANX 09-3409 (CC2009-4), for property located at 3231 North Old Wire Road, the northwest corner of Old Wire Road and Rom Orchard Road, containing approximately 39 acres. *This ordinance was left on the First Reading at the October 6, 2009 City Council meeting. This Ordinance was left on the First Reading*

THIS ORDINANCE WAS LEFT ON THE SECOND READING.

4. **Rock Quarries Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting. This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting and Tabled to the October 20, 2009 City Council meeting. This Ordinance was left on the Second Reading*

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5280

5. **Red Dirt Mining Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting. This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting and Tabled to the October 20, 2009 City Council meeting. This Ordinance was left on the Second Reading*

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5281

C. New Business:

1. **Justice Assistance Grant (JAG):** An ordinance to waive competitive bidding and to purchase 45 X-26 Tasers and Taser-Cams for \$69,967.25 from TEECO Safety, Inc.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5282

2. **Amend Chapter 35: Taxation:** An ordinance to amend Chapter 35: Taxation of the Fayetteville Code to incorporate amendments of State Law affecting the Hotel, Motel and Restaurant Tax.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5283

Announcements:

1. **City Council Tour:** None

Adjournment: 10:10 p.m.

NOTICE TO MEMBERS OF THE AUDIENCE

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

City Council Meeting:

October 20, 2009

Adjourn: 10:10 P.M.

Subject:	Roll				
	Cook	✓			
	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Mayor Jordan	✓			

9-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Cook				
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Mayor Jordan				

Subject:	Consent				
Motion To:		Approve			
Motion By:		Petty			
Seconded:		Lucas			
passed Minutes <u>Approved</u> 2/14-09/2/17-09	Cook	✓			
	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Mayor Jordan				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Cook				
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Mayor Jordan				

Subject:		Amend Police Department's Policies, Procedures & Rules Manual			
Motion To:		Table to Nov. 3, 2009			
Motion By:		Ferrell			
Seconded:		Lewis			
B. 1 Unfinished Business Table to Nov. 3, 2009 City Council meeting	Cook	✓			
	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Mayor Jordan				

8-0

Subject:		2009 Millage Levy			
Motion To:		3rd Reading	Pass		
Motion By:		Ferrell			
Seconded:		Lucas			
B. 2 Unfinished Business passed 5279	Cook	✓	✓		
	Petty	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Lewis	✓	✓		
	Gray	✓	✓		
	Thiel	✓	✓		
	Mayor Jordan				

8-0

8-0

Subject:	Old Wire Annexation Appeal				
Motion To:		<i>2nd Read</i>			
Motion By:		<i>Ferrell</i>			
Seconded:		<i>Lucas</i>			
B. 3 Unfinished Business <i>This Ordinance was left on the 2nd Reading</i>	Cook	<i>✓</i>			
	Petty	<i>✓</i>			
	Rhoads	<i>✓</i>			
	Ferrell	<i>✓</i>			
	Lucas	<i>✓</i>			
	Lewis	<i>✓</i>			
	Gray	<i>✓</i>			
	Thiel	<i>✓</i>			
	Mayor Jordan				

8-0

Subject:	Rock Quarries Facilities <i>Amend to Approve Changes</i> <i>Amend</i>				
Motion To:		<i>3rd Read</i>	<i>#1 #3 #4 #8 #9</i>	<i>the # of days blasting can occur</i>	
Motion By:		<i>Lewis</i>	<i>Thiel</i>	<i>Thiel</i>	
Seconded:		<i>Lucas</i>	<i>Petty</i>	<i>Lucas</i>	
B. 4 Unfinished Business	Cook	<i>✓</i>	<i>✓</i>	<i>(With drawn)</i>	
	Petty	<i>✓</i>	<i>✓</i>		
	Rhoads	<i>✓</i>	<i>✓</i>		
	Ferrell	<i>✓</i>	<i>✓</i>		
	Lucas	<i>✓</i>	<i>✓</i>		
	Lewis	<i>✓</i>	<i>✓</i>		
	Gray	<i>✓</i>	<i>✓</i>		
	Thiel	<i>✓</i>	<i>✓</i>		
	Mayor Jordan				

Subject:	Rock Quarries Facilities				
Motion To:	1st & 3rd	Amend the amendment to blast on certain days	Amend Operational Hours & day	8:30-6:00 School	
Motion By:	<u>Wednesday</u>	Petty	Lewis	7:00-6:00 Summer	
Seconded:		Gray	Lucas		
	Cook	N	N		
	Petty	✓	N		
	Rhoads	N	N		
	Ferrell	N	N		
	Lucas	✓	✓		
	Lewis	✓	✓		
	Gray	✓	N		
	Thiel	✓	N		
	Mayor Jordan				

5-3

failed 2-6

Subject:	Rock Quarries Facilities				
Motion To:		Amend. #5 7:00-6:00 M-F 7:00-12:00 SAT.	Amend Rock crushing 1/2 mile from house in city limits	major noise	
Motion By:		Thiel	Rhoads		
Seconded:		Petty	Ferrell		
	Cook	✓	✓		
	Petty	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Lewis	✓	✓		
	Gray	✓	✓		
	Thiel	✓	✓		
	Mayor Jordan				

8-0

8-0

Subject:	Rock Quarries Facilities				
Motion To:		Amend Dump Truck tailgate hanging		Amend per Kit.	
Motion By:		Rhoads		Thiel	
Seconded:		Lucas			
	Cook	✓		N	
	Petty	✓		✓	
	Rhoads	✓		✓	
	Ferrell	N		N	
	Lucas	✓		✓	
	Lewis	✓		✓	
	Gray	✓		✓	
	Thiel	✓		✓	
	Mayor Jordan				

7-1

6-2

Subject:	Rock Quarries Facilities				
Motion To:		Pass			
Motion By:					
Seconded:					
Passed 5280	Cook	N			
	Petty	✓			
	Rhoads	✓			
	Ferrell	N			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Mayor Jordan				

6-2

Subject:	Red Dirt Mining Facilities				
Motion To:		<i>3rd Read</i>	<i>Amend as Rock Quarries was amended.</i>		
Motion By:					
Seconded:					
B. 5 Unfinished Business	Cook	<i>✓</i>	<i>N</i>		
	Petty	<i>✓</i>	<i>✓</i>		
	Rhoads	<i>✓</i>	<i>✓</i>		
	Ferrell	<i>✓</i>	<i>N</i>		
	Lucas	<i>✓</i>	<i>✓</i>		
	Lewis	<i>✓</i>	<i>✓</i>		
	Gray	<i>✓</i>	<i>✓</i>		
	Thiel	<i>✓</i>	<i>✓</i>		
	Mayor Jordan				

*8-0**6-2*

Subject:	<i>Red Dirt Mining Facilities</i>				
Motion To:		<i>Pass</i>			
Motion By:					
Seconded:					
<i>Passed</i> <i>5281</i>	Cook	<i>N</i>			
	Petty	<i>✓</i>			
	Rhoads	<i>✓</i>			
	Ferrell	<i>N</i>			
	Lucas	<i>✓</i>			
	Lewis	<i>✓</i>			
	Gray	<i>✓</i>			
	Thiel	<i>✓</i>			
	Mayor Jordan				

6-2

Subject:		Justice Assistance Grant (JAG)			
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Cook	Cook		
Seconded:		Ferrell	Ferrell		
C. 1 New Business <i>passed</i> 5282	Cook	✓	✓	✓	
	Petty	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	Absent during the vote	Absent during the vote.	Absent during the vote	
	Mayor Jordan				
		7-0	7-0	7-0	

Subject:		Amend Chapter 35: Taxation			
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Cook	Cook		
Seconded:		Ferrell	Petty		
C. 2 New Business <i>passed</i> 5283	Cook	✓	✓	✓	
	Petty	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	Absent during the vote		—	
	Mayor Jordan				

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY



DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams**, City Attorney

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

DATE: **October 21, 2009**

RE: **Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of October 20, 2009**

1. **Safe Routes To School Program:** A resolution to approve and support a grant application of \$300,800.00 to the Arkansas Highway and Transportation Department for 100% funding for Clabber Creek Trail through the Safe Routes To Schools Program;
2. **2009 COPS Technology Grant:** A resolution to accept the 2009 COPS Technology Grant in the amount of \$500,000.00 and to approve the attached budget adjustment to recognize this revenue;
3. **BKD, LLP:** A resolution to approve an annual contract with BKD, LLP for external auditing services for the 2009 audit in the amount of \$81,000.00;
4. **Energy Efficiency Rehabilitation Project:** A resolution approving the bid in the amount of \$64,210.00 from Joe Perme Construction for rehabilitation and increased energy efficiency of a city owned building at 1932 S. Garland Avenue;
5. **2009 Millage Levy:** An ordinance levying a tax on the real and personal property within the City of Fayetteville for the year 2009 fixing the rate thereof at 1.3 mills for General Fund Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mill for the Fayetteville Public Library and certifying the same to the County Clerk of Washington County, AR;

6. Rock Quarries Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances;

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Mayor Lioneld Jordan
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City Council Meeting
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Agenda Additions:

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Announcements:

- 1. City Council Tour: None**

Adjournment:

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Added at
Agenda Session
10-13-09

City of Fayetteville Staff Review Form

A. 5
Energy Efficiency Rehabilitation Project
Page 1 of 22

City Council Agenda Items
and
Contracts, Leases or Agreements

10-20-09

City Council Meeting Date
Agenda Items Only

Yolanda Fields

Submitted By

Community Services

Division

Development Services

Department

Action Required:

CDBG - Recovery Act Project (Res 184-09) Approval of P.O. for a Energy Efficiency Rehabilitation project on a CDBG Public Facility Building located at 1932 S. Garland Ave

\$64,210.00

Cost of this request

\$

65,000.00

Category / Project Budget

Program Category / Project Name

2180.4990.5390.27

Account Number

\$

-

Funds Used to Date

Program / Project Category Name

09029 - 0903

Project Number

\$

65,000.00

Remaining Balance

Community Development

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Department Director

10-9-09

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

10-9-09

Date

Finance and Internal Services Director

10-9-2009

Date

Received in City
Clerk's Office



King

Chief of Staff

10-9-09

Date

Received in
Mayor's Office



Mayor

10/13/09

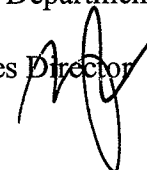
Date

Comments: Staff recommends approval of P.O. for Energy Efficiency Rehabilitation Project

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Jeremy Pate, Development Services Department Director 

From: Yolanda Fields, Community Services Director 

Date: October 7, 2009

Subject: CDBG Public Facility Program – Approval of PO for Energy Efficiency Rehabilitation Project

RECOMMENDATION

Staff recommends approval of PO for this project, located at 1932 South Garland Ave.

BACKGROUND

The property located at 1932 S. Garland Ave was acquired with Community Development Block Grant (CDBG) funds. This property is a part of the CDBG Public Facility Program. Properties acquired with CDBG are made available through an application process to non – profits that provide services to low / mod residents in the City Of Fayetteville. Improvements to this project will the energy efficiency of the building. Improvement to be made

- Windows and Roof repairs
- Gutters and Sub-flooring needs to be replaced
- HVAC and Plumbing, Electrical upgrades
- Replace Siding ,Soffit and Fascia around the building
- Some interior patch and paint work

DISCUSSION

This project will create 20 temporary jobs that will complete the various components of this facility rehabilitation. This property is a part of the CDBG Public Facility Program and will be made available for use by a local non-profit. The number of jobs to be created or maintained by this process can not be determined at this time. The lease process will begin upon completion of the rehabilitation process.

BUDGET IMPACT

Project cost is approximately \$64,210.00.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE BID IN THE AMOUNT OF \$64,210.00 FROM JOE PERME CONSTRUCTION FOR REHABILITATION AND INCREASED ENERGY EFFICIENCY OF A CITY OWNED BUILDING AT 1932 S. GARLAND AVENUE

WHEREAS, Community Development Block Grant funds from the 2009 American Recovery and Reinvestment Act were requested by and granted to the City for energy efficiency rehabilitation of a city owned building at 1932 S. Garland Avenue.

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the bid in the amount of \$64,210.00 from Joe Perme Construction for rehabilitation and increased energy efficiency of a city owned building at 1932 S. Garland Avenue.

PASSED and APPROVED this 20th day of October, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

COMMUNITY SERVICES DIVISION

Summary of Attachments

<u>Document Identification Code</u>	<u>Document Name</u>
-------------------------------------	----------------------

- **(A) Receipt Of Bids**
- **(B) Standard Bid Proposal Form**
- **(C) Public Facility Rehabilitation Project**
- **(D) Funding Approval / Agreement with HUD /
Approval a Budget Adjustment**
- **(E) CDBG – R Substantial Amendment 2008 Action
Plan**
- **(F) Budget Adjustment # 09 - 238**



community resources
CITY OF FAYETTEVILLE

A

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

RECEIPT OF BIDS

OWNER(S): City of Fayetteville
ADDRESS: 1932 S. Garland PROJECT No: 0223-0902
PROJECT TITLE: Rehabs
BID CLOSING DAY/DATE/TIME: March 9, 2009

CONTRACTOR: Joe Perme Construction BID AMOUNT: 64,210⁰⁰

CONTRACTOR: _____ BID AMOUNT: _____

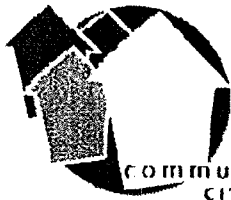
CONTRACTOR: _____ BID AMOUNT: _____

CONTRACTOR: _____ BID AMOUNT: _____

CONTRACTOR: _____ BID AMOUNT: _____

Certified by: Kelly S. Colebau Date: 3-9-09

Witness: [Signature] Date: 3-8-09



community resources
CITY OF FAYETTEVILLE

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

B

STANDARD BID PROPOSAL FORM

PROJECT NUMBER: 02123-0902

DATE ISSUED: February 23, 2009

DATE AND TIME OF OPENING: Monday, March 9, 2009

OWNER'S NAME: City of Fayetteville

PROJECT ADDRESS: 1932 S. Garland, Fayetteville AR 72701

*In blanks below please quote price for each item and the total for project at the bottom.

A: Windows	550 ⁰⁰	G: Electrical	3960 ⁰⁰
B: Roof	200 ⁰⁰	H: Siding Soffit & Fascia	10,050 ⁰⁰
C: Gutters	1800 ⁰⁰	I: Ramp Replacement with Porch	8,900 ⁰⁰
D: Sub Floor Repair	4600 ⁰⁰	J: Interior Patch and Paint	14,750 ⁰⁰
E: HVAC	11,000 15,000 ⁰⁰	K: Clean Up	2000 ⁰⁰
F: Plumbing	2400 ⁰⁰		

MY TOTAL BID PRICE FOR THIS PROJECT IS \$ 64,210⁰⁰

Upon signing this Bid, the bidder certifies that they have viewed the property, read and agree to the requirements set forth in this bid proposal, including specifications, terms and standard conditions, and pertinent information regarding the articles being bid on, and agree to furnish these articles at the prices stated.

Complete Business Address:

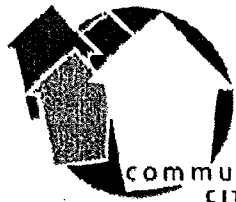
Name of Firm: Joe Perme Construction Phone # 479-409-1101

Street address or P O Box 1874 S. Doral Dr.

City / State/ Zip Code Fayetteville, Ar 72701

Printed Name: Joe Perme

Signature: [Signature] Title: Vice President



community resources
CITY OF FAYETTEVILLE



COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

PUBLIC FACILITY REHABILITATION PROJECT

Scope of Project: Windows, Roof repair, Gutters, Sub Floor repair, HVAC, Plumbing upgrades, Electrical upgrades, Siding Soffit & Fascia, Porch, Interior patch and paint

Owner's Name: City of Fayetteville

Phone: 575-8270

Project Location: 1932 S. Garland, Fayetteville, AR 72701

Project #: 02123-0902

Administrator: Ricky Williams

Phone: 575-8270 **Fax:** 444-3445

Contractors Description of Work

Minimum requirement for bidder: Proof of current Arkansas Residential Contractor's license.
Proof of Insurance.

GENERAL:

The contractor will be responsible for all aspects of the construction, installation, and repairs - as stated in the Scope of Work - at 1932 S. Garland Fayetteville, Arkansas.

Each bidder will be responsible for a complete inspection of the City property. All the distances, measurements, and listed materials should be verified before submitting your bid. The requirements listed here - in the description of work - are general requirements and it will be the responsibility of the winning bidder to assure the City of Fayetteville that the finished project is in compliance with all applicable codes and standards.

The contractor's duties include, but are not limited to, the following:

- 1) Purchasing of all materials.
- 2) Supervision of all employees and subcontractors.
- 3) Coordination with the City of Fayetteville CDBG Administrator, and The City of Fayetteville Code Compliance Office.
- 4) Project Design.
- 5) Clean up and restoration of all lawns, planters, walking and driving surfaces to their original condition.





COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

SPECIFIC:

A: WINDOWS

- A-1** Remove the existing windows in former office on Westside (the broken window).
- A-2** Replace the windows in the office with maintenance free, single hung (or sliders) double paned, insulated, solid vinyl windows with half screens. (2 Windows Total)

Note: It will be the responsibility of the contractor to ensure that where required by code that at least 1 window in bedrooms without a separate exit meet emergency egress requirements.

B: ROOF

- B-1** Replace + - 10' of missing ridge cap at peak of roof.

It will be the responsibility of the contractor to return to its original condition any interior or exterior surfaces damaged during the installation process.

C: GUTTERS

- C-1** Repair existing Aluminum Seamless Gutters.
- C-2** Gutters should include downspouts and match the siding trim in color.

D: SUB FLOOR REPAIR

- D-1** Repair / replace subfloor in Southside bathrooms totally, and else ware as needed. This includes joists, subfloor material.

E: HVAC

- E-1** Upgrade existing HVAC units to fit size of building and per code.
- E-2** Minimum warranty on heating and cooling unit: one year labor, 5 years parts, and 20 years on the heat exchanger.
- E-3** A complete load calculation and design of the duct layout. Note: The load calculation and duct layout design shall be submitted with and will be considered an integral part of the contractors bid.
- E-4** Repair/Replace any existing duct work and registers as needed.





COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

E-5 All HVAC work will be performed under the supervision of a contractor or subcontractor holding a Class A and/or Class B Arkansas HVACR License.

It will be the responsibility of the contractor to return to its original condition any interior or exterior surfaces damaged during the installation process.

F: PLUMBING

F-1 Repair all clogged/blocked drains.

F-2 Replace any supply lines as needed.

F-3 Repair/Replace and damaged or leaking pipes, shutoffs, connections, or fittings as needed.

F-4 Check all drains for proper venting.

F-5 Repair any leaks underneath the house.

F-6 Check Toilets to make sure it is seated properly, replace wax ring, and repair rotten sub-floor if needed.

G: ELECTRICAL

G-1 Install GFCI outlets above the counter in the kitchen, in the bathrooms, and where required by code. Check existing GFCI outlets for proper installation.

G-2 Check and replace any outlets/receptacles/switches that are not grounded.

G-3 The receptacles that serve the refrigerator, smoke detectors, clothes dryer and hot water heater shall be on designated circuits.

G-4 Check/repair/replace smoke detectors as required by code.

G-5 In coordination with the HVAC contractor, the electrical upgrade will also include any wiring, disconnects, switches, circuits, receptacles in order to upgrade/install the furnace and AC compressor.

G-6 Check and replace any faulty/obsolete wiring.

NOTE: It will be the responsibility of the contractor to replace any aluminum wires found in the branch circuits with copper wires. It will be the responsibility of the contractor to repair and bring back to their original conditions any interior or exterior surfaces damaged while installing or repairing any part of the electrical system. All electrical work shall be performed by an Arkansas State Licensed Electrician with adherence to the current National Electrical Code and





community resources
CITY OF FAYETTEVILLE

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

all current codes adopted by the City of Fayetteville.

H: SIDING SOFFIT & FASCIA

- H-1** Install vinyl siding on house, repair any damaged surfaces prior to installation. Siding shall be Dutch lap dbl. 4 or 4.5" with a min.042 thickness. Color to be determined by owner.
- H-2** A complete siding install will include outside and inside corner trim, starter strip, J channel, F channel, window trim, and any other related trim.
- H-3** Repair/ replace wood fascia around perimeter of house and wrap with aluminum coil metal.
- H-4** Install new vinyl soffit and any applicable porch ceilings.

I: REPLACE RAMP ON NORTH SIDE WITH PORCH AND STEPS

- I-1** Tear out existing plywood ramp.
- I-2** Install porch with steps and handrails to code.

J: INTERIOR PATCH AND PAINT

- J-1** Patch existing holes in walls and ceilings and paint with specified color.

K: CLEAN UP

- K-1** All new, used, and excess construction materials related to the Scope of Work and any change order(s) belongs to the contractor and shall be removed from the property by the contractor as needed during the project.
- K-2** The Inside work shall be left "broom clean."
- K-3** All recyclable materials shall be recycled.

L: OTHER

- L-1** All work shall be performed in a workmanlike manner according to common construction practices, according to the specifications set forth in the Community Resources Program's General Specification Manual and with adherence to City, State, and National Codes.
- L-2** All work or materials which are not directly noted in the Scope of Work but are necessary for the proper carrying out of the obvious intentions thereof are to be understood as





COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

implied work and will be provided for by the contractor as if specifically described or drawn.

- L-3** Any damage to the dwelling or property, caused by the contractor, his/her worker(s) or delivery person and or vehicles during the project shall be repaired to like new condition.
- L-4** All plumbing work shall be performed by a State Licensed Plumbing Contractor with adherence to the current Arkansas Plumbing Code.
- L-5** All Electrical work shall be performed by a State Licensed Electrical Contractor with adherence to the current National Electrical Code.
- L-6** All Heating and Cooling work shall be performed under the supervision of a licensed HVAC contractor.



RESOLUTION NO. 184-09

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE FUNDING APPROVAL/AGREEMENT WITH THE U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO ACCEPT 2009 AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING OF COMMUNITY DEVELOPMENT BLOCK GRANT-R (CDBG-R) IN THE AMOUNT OF \$172,702.00; AND APPROVING A BUDGET ADJUSTMENT RECOGNIZING THE GRANT REVENUE.

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

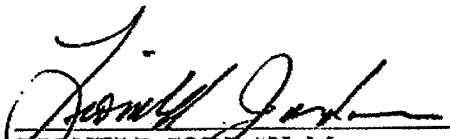
Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to execute the Funding Approval/Agreement with the U.S. Department of Housing and Urban Development to accept 2009 American Recovery and Reinvestment Act funding of Community Development Block Grant-R (CDBG-R) in the amount of \$172,702.00.

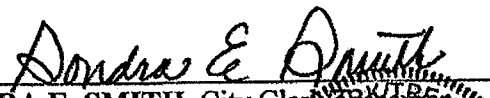
Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment recognizing the grant revenue.

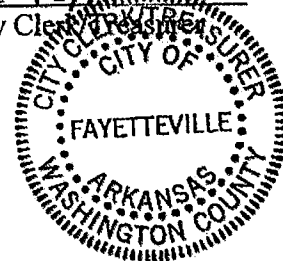
PASSED and APPROVED this 1st day of September, 2009.

APPROVED:

ATTEST:

By: 
LIONELD JORDAN, Mayor

By: 
SONDRA E. SMITH, City Clerk





Community Development Block Grant
2008 Action Plan
Proposed Substantial Amendment
Community Development Block Grant Recovery (CDBG-R)

Community Services Division
Helping to Build a Better Community

THE CDBG-R SUBSTANTIAL AMENDMENT

Jurisdiction(s): Fayetteville, AR Jurisdiction Web Address: • http://www.accessfayetteville.org	CDBG-R Contact Person: Yolanda Fields Address: 113 W Mountain Fayetteville AR 72701
http://www.accessfayetteville.org/government/community_resources/CDBG-R/CDBG-R_Substantial_Amendment_DRAFT.cfm	Telephone: 479-575-8290 Fax: 479-444-3445 Email: yfields@ci.fayetteville.ar.us

A. SPREADSHEET FOR REPORTING PROPOSED CDBG-R ACTIVITIES

See attachment A.

B. CDBG-R INFORMATION BY ACTIVITY (Complete for each activity)

Activity 1

(1) Activity Name: **Energy Efficiency Rehabilitation - 818 N Sang**

(2) Activity Narrative:

The building at 818 N Sang is owned by the City of Fayetteville and leased through the CDBG Public Facility Lease Program. The lease program allows area nonprofits to lease a City Public Facility building at a cost of \$1 per year. The tenant is chosen through a competitive process that evaluates factors such as the percentage of program beneficiaries that are low- and moderate-income and how many of the CDBG National Objectives are met.

The property at 818 N Sang needs to have some rehabilitation done in order to make it more energy efficient. CDBG-R funds in the amount of \$60,000.00 are going to be utilized to remove the existing roof and replace it with a more energy efficient roof. The current roof has leakage problems and is not energy efficient. The roof rehabilitation will remove the existing roof. The new roof deck will have 4" insulation and will be covered with a white membrane.

The decision to utilize CDBG-R funds for this type of project is multi-fold. Improving energy efficiency is one of the activities supported by the Recovery Act and also by HUD. This project will create temporary jobs to do the actual rehabilitation work. This project will also promote the retention of existing jobs. Our community has had two local nonprofits announce that they will be closing their doors due to lack of funding. The CDBG Public Facility Lease Program through provision of low cost building space and the further savings that will be derived through increased energy efficiency allow tenant nonprofits to utilize the rent and building expense savings to operate their programs and retain staff members. Organizations that provide services to low- and moderate-income individuals and families are always important to a community and ~~in the current economic climate it is imperative that effort is made to retain these organizations.~~

(3) Jobs Created:

This project will create 6 temporary jobs that will remove the existing roof and replace it with a more energy efficient roof.

The current tenant of this building is going to be vacating the building in July. A competitive application process that evaluates among other things job creation or retention activities will be utilized to determine who the new tenant will be. The City of Fayetteville Community Services Division has already been approached by organizations who are interested in the space.

(4) Additional Activity Information (energy efficiency and conservation):

The use of white reflective membranes on roofs has been shown to reduce peak energy demand and control energy costs. They also improve the thermal efficiency of the roof insulation.

(5) Responsible Organization:

City of Fayetteville
Community Services Division
113 W Mountain St
Fayetteville AR 72701

Contact

Yolanda Fields, Community Services Director
479-575-8290
yfields@ci.fayetteville.ar.us

Activity 2

(1) Activity Name: **Energy Efficiency Rehabilitation – 1932 S Garland**

(2) Activity Narrative:

The building at 1932 S Garland is owned by the City of Fayetteville and leased through the CDBG Public Facility Lease Program. The lease program allows area nonprofits to lease a City Public Facility building at a cost of \$1 per year. ~~The tenant is chosen through a competitive process that evaluates factors such as the percentage of program beneficiaries that are low- and moderate-income and how many of the CDBG National Objectives are met.~~

The property at 1932 S Garland had been occupied by the same nonprofit for more than 20 years. That agency received funding to construct a new facility and the property at 1932 S Garland is currently unoccupied. The property requires some rehabilitation work to repair some problem areas and to make it more energy efficient for the next tenant. CDBG-R funds in the amount of \$65,000.00 are going to be utilized to complete a number of upgrades to the facility. The rehabilitation will include: window replacement; roof, gutter and subfloor repair; HVAC energy efficient upgrade; plumbing repair; electrical upgrade and siding.

The decision to utilize CDBG-R funds for this type of project is multi-fold. Improving energy efficiency is one of the activities supported by the Recovery Act and also by HUD. This project will create temporary jobs to do the actual rehabilitation work. This project will also promote the retention of existing jobs. Our community has had two local nonprofits announce that they will be closing their doors due to lack of funding. The CDBG Public Facility Lease Program through provision of low cost building space and the further savings that will be derived through increased energy efficiency allow tenant nonprofits to utilize the rent and building expense savings to operate their programs and retain staff members. Organizations that provide services to low- and moderate-income individuals and families are always important to a community and in the current economic climate it is imperative that effort is made to retain these organizations.

(3) Jobs Created:

This project will create 20 temporary jobs that will complete the various components of this facility rehabilitation.

The building is currently unoccupied pending the necessary renovation and energy efficiency upgrades being done. A competitive application process that evaluates among other things job creation or retention activities will be utilized to determine who the new tenant will be. The City of Fayetteville Community Services Division has already been approached by organizations who are interested in the space.

(4) Additional Activity Information (energy efficiency and conservation):

All aspects of the renovation that can increase energy efficiency will. Replacement windows will be double-paned and insulated. HVAC replacement will ensure greater energy efficiency

than the current system. Plumbing and electrical upgrades will provide for more efficient use of water and electricity. Finally the upgrade to insulated vinyl siding will also provide a more energy efficient facility. The combination of all these upgrades will contribute to reduced energy use and expense to the next tenant.

(5) Responsible Organization:

City of Fayetteville
Community Services Division

113 W Mountain St

Fayetteville AR 72701

Contact

Yolanda Fields, Community Services Director

479-575-8290

yfields@ci.fayetteville.ar.us

Activity 3

(1) Activity Name: **Energy Efficiency Rehabilitation – 2052 S Garland**

(2) Activity Narrative:

The building at 2052 S Garland is owned by the City of Fayetteville and currently leased through the CDBG Public Facility Lease Program to the Fayetteville Head Start Program. The lease program allows area nonprofits, such as Head Start, to lease a City Public Facility building at a cost of \$1 per year. The tenant is chosen through a competitive process that evaluates factors such as the percentage of program beneficiaries that are low- and moderate-income and how many of the CDBG National Objectives are met.

The property at 2052 S Garland needs to have some rehabilitation done in order to make it more energy efficient. CDBG-R funds in the amount of \$47,702.00 are going to be utilized to upgrade to more energy efficient lighting and to replace water heaters and HVAC with energy efficient models. The current lighting system is extremely outdated and inefficient. The building currently utilizes two non-energy efficient water heaters that will be replaced with one new system that is 96% efficient. The existing HVAC systems will be upgraded with new air handlers and a heat pump system and repair/insulation work will be done on the duct work.

The decision to utilize CDBG-R funds for this type of project is multi-fold. Improving energy efficiency is one of the activities supported by the Recovery Act and also by HUD. This project will create temporary jobs to do the actual rehabilitation work. This project will also promote the retention of existing jobs. Our community has had two local nonprofits announce that they will be closing their doors due to lack of funding. The CDBG Public Facility Lease Program through provision of low cost building space and the further savings that will be derived through increased energy efficiency will allow the current tenant to utilize the rent and building expense

savings to operate their programs and retain staff members. Organizations that provide services to low- and moderate-income individuals and families are always important to a community and in the current economic climate it is imperative that effort is made to retain these organizations.

(3) Jobs Created:

This project will create 12 temporary jobs that will do the lighting, HVAC and water heater upgrades and replacements.

The current tenant of this building, Fayetteville Head Start, employs 10 people and the energy efficiency savings will contribute to the retention of their current staffing levels.

(4) Additional Activity Information (energy efficiency and conservation):

The lighting upgrade will provide better and more efficient lighting. Fluorescent fixtures will be upgraded to increase efficiency and exit lights will be upgraded to led lights. The water heater and HVAC replacement should have a significant impact on the energy efficiency and utility costs of the facility.

(5) Responsible Organization:

City of Fayetteville
Community Services Division
113 W Mountain St
Fayetteville AR 72701

Contact

Yolanda Fields, Community Services Director
479-575-8290
yfields@ci.fayetteville.ar.us

Summary Information

The proposed activities will increase energy efficiency at three buildings utilized in the CDBG Public Facility Lease Program. The energy savings paired with the low rent (\$1 per year) will allow the tenant nonprofits to retain their staff levels. The projects will create 38 temporary jobs.

The competitive process for selecting tenants ensures that CDBG National Objectives are met and that selected organizations benefit primarily low- and moderate-income individuals and/or families.

The decision was made to not utilize any of the CDBG-R funds for administration and planning. Additionally, since all proposed activities are energy efficient rehabilitations none of the grant amount is being spent on public services. Therefore, the caps placed on administration/planning and public services are not a factor in the proposal. The bid process utilized by CDBG will allow contracts to be awarded within the 120 day timeframe.

C. PUBLIC COMMENT

The 2008 Action Plan Proposed Substantial Amendment for Community Development Block Grant Recovery (CDBG-R) funds was made available for public comment beginning May 18, 2009 through May 26, 2009. The public notice announcing the public comment period ran three times in the Northwest Arkansas Times (May 14, 16 and 27) and once in Noticias Libres (May 21). The public notice was also placed on the City of Fayetteville website:

http://www.accessfayetteville.org/government/community_resources/Public_Notices/index.cfm

The Proposed Substantial Amendment was available for review at two locations within the City of Fayetteville; the City Clerk's Office at 113 W Mountain and the Community Services Division at 123 W Mountain. It was also available on the City of Fayetteville website:

http://www.accessfayetteville.org/government/community_resources/CDBG-R/CDBG-R_Substantial_Amendment_DRAFT.cfm

As of May 29, 2009 no public comments have been received.

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

F

Budget Year 2009	Department: Operations Division: Community Resources Program: Public Facilities & Improvements	Date Requested 8/3/2009	Adjustment Number 09-238
----------------------------	--	-----------------------------------	------------------------------------

Project or Item Added/Increased: Increase Sang Avenue account by \$60,000. Increase Head Start Rehab account by \$47,702. Increase Domestic Violence Shelter account by \$65,000.	Project or Item Deleted/Reduced: None - increase in revenue from CDBG-R grant
--	--

Justification of this Increase: Allocation of CDBG-R grant amount	Justification of this Decrease:
--	---------------------------------

Account Name	Increase Budget Account Number	Amount	Project Number
<i>see attached detail page</i>			

Account Name	Decrease Budget Account Number	Amount	Project Number

	8-6-09 Date 8-18-09 Date 08.01.09 Date 9-3-2009 Date 9-3-09 Date 9/3/09 Date Date	V.090403 Budget & Research Use Only Type: A B C D E Requested By General Ledger Date Posted to General Ledger Initial Date
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Budget Adjustment Detail Backup

[illegible]

HUGH JARRATT*
ATTORNEY AT LAW
1200 EAST JOYCE BLVD., 6TH FLOOR
FAYETTEVILLE, ARKANSAS 72703
TELEPHONE 479.521.6686 / FACSIMILE 479.527.8833

* Licensed in Arkansas, Oklahoma
& Missouri

October 13, 2009

Mr. Kit Williams
Fayetteville City Attorney
113 West Mountain Street
Fayetteville, AR 72701

RE: Red Dirt Mining Ordinance

Dear Mr. Williams:

When the Red Dirt Mining Ordinance was first drafted in an effort to abate an alleged nuisance, the ordinance addressed the strength of blasting used in Red Dirt Mining Facilities, dust from the mining operations, fumes from mining operations, and noise created by the mining operations. However, it appears that the City is pre-empted by State regulations on those issues with the exception of noise and the time blasting is allowed.

It has become apparent from the public meetings held by the City Council and Ordinance Review Committee that there are two separate issues regarding Red Dirt Mining Facilities which can be addressed by the City of Fayetteville: (1) The timing of blasting that may be done by the Red Dirt Mining Facilities, and (2) the noise created by the Red Dirt Mining Facilities.

From listening at the public meetings, it appears that limiting the timing of blasting to the hours between 10:30 a.m. and 3:30 p.m. has met with general agreement from the various parties involved in this discussion.

The remaining issue is the noise created by the Red Dirt Mining Facilities which, it is claimed, annoys Fayetteville citizens. If the red dirt mining facilities can operate in a manner which does not create undue annoyance to the citizens of Fayetteville, the annoyance would be dealt with, and the City would require no further steps in the regulation of these businesses.

The proposed ordinance sets out certain times which the Red Dirt Mining Facilities may operate, and another more restrictive time frame during which the Red Dirt Mining Facilities may operate but must not perform certain alleged noisy operations. The limitation of the hours of operation of the Red Dirt Mining Facilities seems to be an arbitrary regulation which would not necessarily deal with alleged problems that have been claimed by certain individuals, some of whom are Fayetteville residents many of whom are not Fayetteville residents.

Mr. Kit Williams

- 2 -

October 13, 2009

Pursuant to Arkansas Code Section 14-54-103(1), the City has authority to "prevent injury or annoyance within the limits of the municipal corporation from anything dangerous, offensive, or unhealthy and cause any nuisance to be abated..." I request that comments related to this ordinance be limited to the residents of the City of Fayetteville. Any comments from individuals outside the corporate limits of the City of Fayetteville should be excluded so that the City Council is not unduly influenced by individuals who have no standing pursuant to Arkansas law.

Under Arkansas law, the City of Fayetteville has certain regulatory power to "abate a nuisance" that is within the jurisdiction of its Board of Health. That jurisdiction is up to one (1) mile from the city limits or one half the distance to the nearest neighboring city limits, whichever is farther. The alleged nuisance in this case is the timing of the blasts used in red dirt mining operations and the alleged noise created by operating Red Dirt Mining Facilities, if Red Dirt Mining Facilities operate in a manner in which blasting and noise do not rise to the level of a "nuisance" the need to restrict the hours of operation of the Red Dirt Mining Facilities goes away.

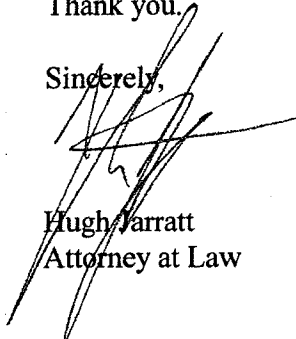
I propose that the City of Fayetteville give the Red Dirt Mining Facilities sixty (60) days during which time those facilities can address any potential noise issues which may annoy Fayetteville citizens. At the end of that sixty (60) day period, the City Council can reassess the actual impact the Red Dirt Mining Facilities have on Fayetteville citizens. The limitation on hours of operation does nothing but hurt the Red Dirt Mining Facility, and if those facilities can operate in the manner described above, the Red Dirt Mining Facilities should not be subject to arbitrary restrictions on their hours of operation.

In this letter I have not addressed the dump truck numbering portions of the ordinance. I would like to separate the dump truck numbering requirements from the actual operations of the Red Dirt Mining Facility, and address those two issues individually. Stephens Red Dirt Farm has no objections to requiring its trucks and trucks contracted with Stephens Red Dirt Farm to have the numbers required by the ordinance so long as all vehicles requiring a Commercial Drivers License which operate within the jurisdiction of the City of Fayetteville are required to have the same numbering system.

Attached to this letter, please find a coversheet with detailed weather information, along with a coversheet with detailed real estate records. If you have any questions of if I can help in any way, please let me know.

Thank you.

Sincerely,



Hugh Varratt
Attorney at Law

Stephen's Red Dirt Farm, Inc

Memo

To: The City of Fayetteville
From: Hugh Jarratt, Attorney at Law
Date: 10/13/2009
Re: Red Dirt Mining Ordinance

Attached please find detailed weather information for the Fayetteville area. These measurements were taken at Drake Field. As shown by this data, as of October 11 there have been 63 days with rainfall greater than one-tenth ($1/10^{\text{th}}$) of an inch, 31 days with rainfall greater than one-half ($1/2$) an inch and ten days with rainfall greater than one (1) inch. After discussing this information with the managers of the Red Dirt Mining Facility, every day with one (1) inch of an inch of rain or greater the Red Dirt Operator loses two (2) days of work. For every day with half ($1/2$) an inch of rain the Red Dirt Operator loses on average 1.5 days of work. Therefore, as of October 11, the Red Dirt Operator has lost 51.5 days of work.

If you have any questions, please call.

Thank you?

Sincerely

Hugh Jarratt

(479) 521-6686

STATION: FAYETTEVILLE ARKANSAS
MONTH: JANUARY
YEAR: 2009
LATITUDE: 36 0 N
LONGITUDE: 94 10 W

Red Dirt Mining Facilities
Page 4 of 44

TEMPERATURE IN F:											PCPN:	SNOW:	WIND	SUNSHINE:		SKY	PK WND				
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18			
12Z AVG MX 2MIN											SNW	DPTH	SPD	SPD	DIR	MIN	PSBL	S-S	WX	SPD	DR
1	50	22	36	2	29	0	0.00	0.0	M	6.8	20	180	M	M	M		24	170			
2	59	23	41	7	24	0	0.00	0.0	M	4.3	18	170	M	M	M	1	21	170			
3	74	45	60	26	5	0	T	M	M	13.6	26	190	M	M	M		33	180			
4	45	26	36	2	29	0	0.00	0.0	M	9.6	18	340	M	M	M	18	23	340			
5	35	26	31	-3	34	0	0.01	M	M	4.6	13	50	M	M	M	13	16	50			
6	44	29	37	3	28	0	0.00	0.0	M	6.4	14	300	M	M	M	1	17	300			
7	51	29	40	6	25	0	T	M	M	8.3	17	250	M	M	M		23	230			
8	57	26	42	8	23	0	0.00	0.0	M	2.9	17	270	M	M	M		22	270			
9	59	31	45	11	20	0	0.05	M	M	10.0	22	180	M	M	M	1	28	200			
10	56	18	37	3	28	0	T	M	M	10.0	24	300	M	M	M	18	28	300			
11	50	16	33	-1	32	0	0.00	0.0	M	4.3	13	300	M	M	M	18	15	290			
12	58	26	42	8	23	0	0.00	0.0	M	11.5	29	210	M	M	M		35	210			
13	34	15	25	-9	40	0	0.00	0.0	M	8.9	25	330	M	M	M	8	29	340			
14	49	20	35	1	30	0	0.00	0.0	M	11.9	23	220	M	M	M		29	230			
15	20	12	16	-18	49	0	0.00	0.0	M	6.7	13	340	M	M	M		15	340			
16	31	11	21	-13	44	0	0.00	0.0	M	8.9	18	210	M	M	M		22	220			
17	54	25	40	6	25	0	0.00	0.0	M	10.8	24	210	M	M	M		30	220			
18	51	22	37	3	28	0	0.00	0.0	M	8.8	18	300	M	M	M		25	290			
19	49	28	39	5	26	0	0.00	0.0	M	10.6	21	330	M	M	M		25	340			
20	35	18	27	-7	38	0	0.00	0.0	M	9.4	24	340	M	M	M		30	340			
21	51	15	33	-1	32	0	0.00	0.0	M	6.5	21	210	M	M	M		25	250			
22	69	18	44	10	21	0	0.00	0.0	M	4.2	16	200	M	M	M		21	190			
23	59	33	46	12	19	0	0.00	0.0	M	6.3	16	10	M	M	M		22	10			
24	35	22	29	-5	36	0	0.00	0.0	M	7.5	15	10	M	M	M		21	10			
25	34	25	30	-5	35	0	0.00	0.0	M	4.0	9	50	M	M	M		12	60			
26	31	26	29	-6	36	0	0.55	M	M	5.7	13	50	M	M	M	18	16	60			
27	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M			
28	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M			
29	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M			
30	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M			
31	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M			
SM	1240	607			759	0	0.61	0.0	202.5				M		M						
AV	47.7	23.3								7.8	FASTST	M	M	0		MAX(MPH)					
											MISC	----	#	29	210		#	35	210		

NOTES:

LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6) , PAGE 2

STATION: FAYETTEVILLE ARKANSAS
MONTH: JANUARY
YEAR: 2009
LATITUDE: 36 0 N
LONGITUDE: 94 10 W

[TEMPERATURE DATA]

AVERAGE MONTHLY: 35.5
DPTR FM NORMAL: 1.2
HIGHEST: 74 ON 3
LOWEST: 11 ON 16

[PRECIPITATION DATA]

TOTAL FOR MONTH: 0.61
DPTR FM NORMAL: -1.53
GRTST 24HR 1.01 ON 26-27
SNOW, ICE PELLETS, HAIL
TOTAL MONTH: 0.0 INCH
GRTST 24HR 0.0
GRTST DEPTH: M ON M

SYMBOLS USED IN COLUMN 16

1 = FOG OR MIST
2 = FOG REDUCING VISIBILITY
TO 1/4 MILE OR LESS
3 = THUNDER
4 = ICE PELLETS
5 = HAIL
6 = FREEZING RAIN OR DRIZZLE
7 = DUSTSTORM OR SANDSTORM:
VSBY 1/2 MILE OR LESS
8 = SMOKE OR HAZE
9 = BLOWING SNOW
X = TORNADO

[NO. OF DAYS WITH]

MAX 32 OR BELOW: 3
MAX 90 OR ABOVE: 0
MIN 32 OR BELOW: 24
MIN 0 OR BELOW: 0

[WEATHER - DAYS WITH]

0.01 INCH OR MORE: 3
0.10 INCH OR MORE: 1
0.50 INCH OR MORE: 1
1.00 INCH OR MORE: 0

[HDD (BASE 65)]

TOTAL THIS MO. 759
DPTR FM NORMAL -194
TOTAL FM JUL 1 2470
DPTR FM NORMAL -122

CLEAR (SCALE 0-3) 0
PTCLDY (SCALE 4-7) 0
CLOUDY (SCALE 8-10) 0

[CDD (BASE 65)]

TOTAL THIS MO. 0
DPTR FM NORMAL 0
TOTAL FM JAN 1 0
DPTR FM NORMAL 0

[PRESSURE DATA]

HIGHEST SLP M ON M
LOWEST SLP 29.52 ON 6

STATION: FAYETTEVILLE ARKANSAS
 MONTH: FEBRUARY
 YEAR: 2009
 LATITUDE: 36 0 N
 LONGITUDE: 94 10 W

Red Dirt Mining Facilities
 Page 5 of 44

TEMPERATURE IN F:										PCPN:	SNOW:	WIND	:SUNSHINE:			SKY	:PK WND					
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18				
12Z AVG MX 2MIN										SNW	DPTH	SPD	SPD	DIR	MIN	PSBL	S-S	WX	SPD	DR		
=====																						
1	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M		M	M			
2	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M		M	M			
3	35	20	28	-9	37	0	0.00	M	M	M	17	330	M	M	M			20	340			
4	41	12	27	-10	38	0	0.00	0.0	M	1.3	9	170	M	M	M			12	190			
5	59	20	40	3	25	0	0.00	0.0	M	12.6	24	200	M	M	M			31	210			
6	64	49	57	20	8	0	0.00	0.0	M	16.8	30	190	M	M	M			41	200			
7	66	58	62	24	3	0	0.00	0.0	M	13.7	24	190	M	M	M			30	200			
8	69	52	61	23	4	0	0.00	0.0	M	8.7	20	160	M	M	M			26	170			
9	62	50	56	18	9	0	0.25	0.0	M	16.1	30	160	M	M	M	1		39	170			
10	67	49	58	20	7	0	0.83	M	M	9.7	28	310	M	M	M	138		35	310			
11	51	31	41	2	24	0	0.48	M	M	9.0	28	240	M	M	M	13		33	230			
12	63	28	46	7	19	0	0.00	0.0	M	4.3	12	200	M	M	M	1		14	160			
13	61	34	48	9	17	0	0.00	0.0	M	7.4	23	160	M	M	M			31	160			
14	49	33	41	1	24	0	0.03	M	M	8.2	17	330	M	M	M			23	330			
15	40	23	32	-8	33	0	0.06	M	M	3.9	12	60	M	M	M	128		14	70			
16	51	22	37	-3	28	0	0.00	0.0	M	5.7	18	180	M	M	M	12		24	170			
17	57	40	49	9	16	0	0.07	M	M	14.9	26	190	M	M	M	13		33	190			
18	59	30	45	4	20	0	0.00	0.0	M	11.7	21	210	M	M	M			28	310			
19	41	23	32	-9	33	0	0.00	0.0	M	8.4	17	330	M	M	M			22	300			
20	61	23	42	1	23	0	0.00	0.0	M	12.4	22	190	M	M	M			26	210			
21	51	25	38	-3	27	0	0.00	0.0	M	11.4	26	320	M	M	M			30	320			
22	47	18	33	-9	32	0	0.00	0.0	M	2.2	12	330	M	M	M			14	330			
23	53	21	37	-5	28	0	0.00	0.0	M	5.8	16	190	M	M	M			20	180			
24	53	42	48	6	17	0	0.00	0.0	M	9.8	20	180	M	M	M			26	160			
25	69	36	53	10	12	0	0.00	0.0	M	4.6	15	180	M	M	M	1		17	190			
26	73	49	61	18	4	0	0.17	M	M	15.8	30	270	M	M	M	138		41	260			
27	53	33	43	0	22	0	0.04	M	M	8.9	17	50	M	M	M	18		24	40			
28	36	18	27	-17	38	0	0.08	M	M	12.9	23	330	M	M	M	18		28	320			
=====																						
SM 1431					839		548		0		2.01		0.0		236.2		M		M			
=====																						
AV 55.0 32.3										9.4 FASTST					M		M		0		MAX(MPH)	
										MISC ---->					# 30		190				# 41 200	

NOTES:

LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6) , PAGE 2

STATION: FAYETTEVILLE ARKANSAS
 MONTH: FEBRUARY
 YEAR: 2009
 LATITUDE: 36 0 N
 LONGITUDE: 94 10 W

[TEMPERATURE DATA]

AVERAGE MONTHLY: 43.7
 DPTR FM NORMAL: 4.0
 HIGHEST: 73 ON 26
 LOWEST: 12 ON 4

[PRECIPITATION DATA]

TOTAL FOR MONTH: 2.01
 DPTR FM NORMAL: -0.40
 GRTST 24HR 1.31 ON 10-11
 SNOW, ICE PELLETS, HAIL
 TOTAL MONTH: 0.0 INCH
 GRTST 24HR 0.0
 GRTST DEPTH: M ON M

SYMBOLS USED IN COLUMN 16

1 = FOG OR MIST
 2 = FOG REDUCING VISIBILITY
 TO 1/4 MILE OR LESS
 3 = THUNDER
 4 = ICE PELLETS
 5 = HAIL
 6 = FREEZING RAIN OR DRIZZLE
 7 = DUSTSTORM OR SANDSTORM:
 VSBY 1/2 MILE OR LESS
 8 = SMOKE OR HAZE
 9 = BLOWING SNOW
 X = TORNADO

[NO. OF DAYS WITH]

MAX 32 OR BELOW: 0
 MAX 90 OR ABOVE: 0
 MIN 32 OR BELOW: 14
 MIN 0 OR BELOW: 0

[WEATHER - DAYS WITH]

0.01 INCH OR MORE: 9
 0.10 INCH OR MORE: 4
 0.50 INCH OR MORE: 1
 1.00 INCH OR MORE: 0

[HDD (BASE 65)]

TOTAL THIS MO. 548
 DPTR FM NORMAL -162
 TOTAL FM JUL 1 3018
 DPTR FM NORMAL -284

CLEAR (SCALE 0-3) 0
 PTCLDY (SCALE 4-7) 0
 CLOUDY (SCALE 8-10) 0

[CDD (BASE 65)]

TOTAL THIS MO. 0
 DPTR FM NORMAL 0
 TOTAL FM JAN 1 0
 DPTR FM NORMAL 0

[PRESSURE DATA]

HIGHEST SLP 30.64 ON 4
 LOWEST SLP 29.50 ON 11

STATION: FAYETTEVILLE ARKANSAS
MONTH: MARCH
YEAR: 2009
LATITUDE: 36 0 N
LONGITUDE: 94 10 W

TEMPERATURE IN F:											PCPN:	SNOW:	WIND	SUNSHINE:	SKY	PK WND					
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18			
12Z AVG MX 2MIN											SNW	DPH	SPD	SPD	DIR	MIN	PSBL	S-S	WX	SPD	DR
1	37	13	25	-19	40	0	0.00	0.0	M	7.6	17	340	M	M	M		22	330			
2	49	18	34	-10	31	0	0.00	0.0	M	3.6	9	120	M	M	M		10	120			
3	48	29	39	-5	26	0	0.00	0.0	M	8.5	17	180	M	M	M		21	140			
4	63	37	50	5	15	0	0.00	0.0	M	10.2	20	180	M	M	M	8	23	190			
5	73	55	64	19	1	0	0.00	0.0	M	19.9	30	190	M	M	M		38	190			
6	80	62	71	26	0	6	0.00	0.0	M	14.0	23	210	M	M	M		30	170			
7	71	62	67	21	0	2	0.00	0.0	M	17.1	32	200	M	M	M		40	200			
8	68	36	52	6	13	0	0.01	M	M	12.1	31	270	M	M	M		41	290			
9	75	33	54	8	11	0	0.00	0.0	M	10.2	23	180	M	M	M	8	28	170			
10	76	37	57	11	8	0	0.14	M	M	15.5	28	330	M	M	M	1	32	330			
11	43	32	38	-9	27	0	T	M	M	9.1	17	60	M	M	M		22	60			
12	39	31	35	-12	30	0	0.09	M	M	8.1	16	80	M	M	M		20	70			
13	47	34	41	-6	24	0	0.00	0.0	M	6.9	14	40	M	M	M		17	40			
14	48	39	44	-4	21	0	0.10	M	M	3.9	9	60	M	M	M	18	13	40			
15	59	38	49	1	16	0	0.00	0.0	M	4.0	13	200	M	M	M	18	15	190			
16	72	35	54	6	11	0	0.00	0.0	M	1.9	8	200	M	M	M	12	10	240			
17	78	35	57	8	8	0	0.00	0.0	M	6.6	18	200	M	M	M	1	23	190			
18	79	45	62	13	3	0	0.00	0.0	M	6.7	21	200	M	M	M		25	210			
19	60	49	55	6	10	0	0.02	M	M	8.3	18	70	M	M	M	3	24	70			
20	64	38	51	2	14	0	0.40	M	M	7.0	17	180	M	M	M	13	20	180			
21	57	45	51	1	14	0	0.94	M	M	5.6	16	180	M	M	M	13	18	170			
22	73	44	59	9	6	0	0.00	0.0	M	11.5	22	180	M	M	M		26	150			
23	71	61	66	16	0	1	T	0.0	M	20.3	32	160	M	M	M	3	47	140			
24	67	42	55	4	10	0	0.99	M	M	13.2	35	240	M	M	M	123	49	260			
25	58	33	46	-5	19	0	T	M	M	3.8	16	260	M	M	M		18	260			
26	68	35	52	1	13	0	0.13	M	M	4.3	22	120	M	M	M	12	28	110			
27	62	47	55	3	10	0	0.59	M	M	9.8	22	70	M	M	M	13	26	70			
28	53	32	43	-9	22	0	0.28	M	M	13.3	21	300	M	M	M	1	28	290			
29	59	30	45	-7	20	0	0.00	0.0	M	6.0	16	300	M	M	M		22	140			
30	66	52	59	6	6	0	0.23	0.0	M	16.6	31	170	M	M	M	13	39	170			
31	53	33	43	-10	22	0	0.09	M	M	11.1	25	270	M	M	M	13	32	280			
SM	1916	1212			451	9	4.01		0.0	296.7			M		M						
AV	61.8	39.1								9.6	FASTST		M	M	0		MAX(MPH)				
										MISC	----		# 35	240			# 49	260			

NOTES:

LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6) , PAGE 2

STATION: FAYETTEVILLE ARKANSAS
MONTH: MARCH
YEAR: 2009
LATITUDE: 36 0 N
LONGITUDE: 94 10 W

[TEMPERATURE DATA]	[PRECIPITATION DATA]	SYMBOLS USED IN COLUMN 16
AVERAGE MONTHLY: 50.5	TOTAL FOR MONTH: 4.01	1 = FOG OR MIST
DPTR FM NORMAL: 2.2	DPTR FM NORMAL: -0.16	2 = FOG REDUCING VISIBILITY TO 1/4 MILE OR LESS
HIGHEST: 80 ON 6	GRTST 24HR 0.99 ON 24-24	3 = THUNDER
LOWEST: 13 ON 1		4 = ICE PELLETS
	SNOW, ICE PELLETS, HAIL	5 = HAIL
	TOTAL MONTH: 0.0 INCH	6 = FREEZING RAIN OR DRIZZLE
	GRTST 24HR 0.0	7 = DUSTSTORM OR SANDSTORM: VSBY 1/2 MILE OR LESS
	GRTST DEPTH: M ON M	8 = SMOKE OR HAZE
		9 = BLOWING SNOW
		X = TORNADO
[NO. OF DAYS WITH]	[WEATHER - DAYS WITH]	
MAX 32 OR BELOW: 0	0.01 INCH OR MORE: 13	
MAX 90 OR ABOVE: 0	0.10 INCH OR MORE: 9	
MIN 32 OR BELOW: 7	0.50 INCH OR MORE: 3	
MIN 0 OR BELOW: 0	1.00 INCH OR MORE: 0	
[HDD (BASE 65)]		
TOTAL THIS MO. 451	CLEAR (SCALE 0-3) 0	
DPTR FM NORMAL -69	PTCLDY (SCALE 4-7) 0	
TOTAL FM JUL 1 3469	CLOUDY (SCALE 8-10) 0	
DPTR FM NORMAL -353		
[CDD (BASE 65)]		
TOTAL THIS MO. 9		
DPTR FM NORMAL 9	[PRESSURE DATA]	
TOTAL FM JAN 1 9	HIGHEST SLP 30.58 ON 1	
DPTR FM NORMAL 9	LOWEST SLP 29.38 ON 28	

STATION: FAYETTEVILLE ARKANSAS
MONTH: APRIL
YEAR: 2009
LATITUDE: 36 0 N
LONGITUDE: 94 10 W

TEMPERATURE IN F:											PCPN:	SNOW:	WIND	:SUNSHINE: SKY				:PK WND			
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18			
DY MAX MIN AVG DEP HDD CDD WTR											SNW	DPTR	SPD	SPD	DIR	MIN	PSBL	S-S	WX	SPD	DR
1	67	30	49	-4	16	0	0.00	0.0	M	11.2	29	180	M	M	M			37 150			
2	64	39	52	-2	13	0	0.20	M	M	9.6	24	310	M	M	M	1		30 310			
3	66	28	47	-7	18	0	0.00	0.0	M	4.7	15	180	M	M	M	12		17 170			
4	74	52	63	9	2	0	0.00	0.0	M	14.6	30	170	M	M	M			37 160			
5	64	37	51	-3	14	0	0.11	M	M	16.7	29	300	M	M	M	13		36 310			
6	45	30	38	-17	27	0	0.00	0.0	M	16.5	29	330	M	M	M			35 330			
7	56	26	41	-14	24	0	0.00	0.0	M	7.8	17	230	M	M	M			22 260			
8	73	35	54	-1	11	0	0.00	0.0	M	4.7	13	220	M	M	M			16 220			
9	68	46	57	1	8	0	0.50	M	M	11.0	31	160	M	M	M	1		40 240			
10	58	34	46	-10	19	0	0.15	M	M	12.5	25	260	M	M	M	1		32 280			
11	67	29	48	-8	17	0	0.00	0.0	M	4.7	13	60	M	M	M	12		16 50			
12	55	44	50	-6	15	0	1.54	M	M	8.3	30	90	M	M	M	13		39 80			
13	48	41	45	-12	20	0	0.02	M	M	8.9	17	300	M	M	M	1		22 280			
14	63	34	49	-8	16	0	0.00	0.0	M	5.7	17	340	M	M	M	1		22 310			
15	73	34	54	-3	11	0	0.00	0.0	M	2.9	12	120	M	M	M	1		15 110			
16	71	46	59	1	6	0	0.00	0.0	M	7.2	15	70	M	M	M			20 90			
17	71	46	59	1	6	0	T	M	M	8.0	22	190	M	M	M	18		26 190			
18	67	52	60	2	5	0	0.27	0.0	M	8.8	31	300	M	M	M	13		39 300			
19	61	50	56	-2	9	0	0.32	0.0	M	9.2	25	320	M	M	M	1		32 320			
20	72	37	55	-4	10	0	0.00	0.0	M	8.1	22	340	M	M	M			29 230			
21	68	42	55	-4	10	0	0.00	0.0	M	6.8	18	340	M	M	M			23 330			
22	86	47	67	8	0	2	0.00	0.0	M	5.4	13	230	M	M	M			16 230			
23	85	60	73	13	0	8	0.00	0.0	M	16.1	29	200	M	M	M			36 190			
24	80	63	72	12	0	7	T	0.0	M	17.4	29	180	M	M	M			38 170			
25	79	65	72	12	0	7	0.00	0.0	M	15.9	30	180	M	M	M			35 190			
26	80	67	74	14	0	9	0.00	M	M	16.2	26	160	M	M	M			37 150			
27	71	57	64	3	1	0	0.06	0.0	M	11.5	28	170	M	M	M	123		38 160			
28	76	57	67	6	0	2	0.00	0.0	M	3.4	9	70	M	M	M	1		14 340			
29	74	57	66	5	0	1	0.30	0.0	M	8.1	25	130	M	M	M	13		37 130			
30	69	57	63	2	2	0	0.14	0.0	M	5.3	20	220	M	M	M	1		25 220			
SM	2051	1342			280	36	3.61		0.0	287.2			M								
AV	68.4	44.7							9.6	FAST	ST		M		M	0		MAX(MPH)			
									MISC	----	#	31	160					#	40 240		

NOTES:

LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6; , PAGE 2

STATION: FAYETTEVILLE ARKANSAS
MONTH: APRIL
YEAR: 2009
LATITUDE: 36 0 N
LONGITUDE: 94 10 W

[TEMPERATURE DATA]

AVERAGE MONTHLY: 56.6
DPTR FM NORMAL: -0.8
HIGHEST: 86 ON 22
LOWEST: 26 ON 7

[PRECIPITATION DATA]

TOTAL FOR MONTH: 3.61
DPTR FM NORMAL: -0.72
GRTST 24HR 1.54 ON 12-12
SNOW, ICE PELLETS, HAIL
TOTAL MONTH: 0.0 INCH
GRTST 24HR 0.0
GRTST DEPTH: M ON M

SYMBOLS USED IN COLUMN 16

1 = FOG OR MIST
2 = FOG REDUCING VISIBILITY
TO 1/4 MILE OR LESS
3 = THUNDER
4 = ICE PELLETS
5 = HAIL
6 = FREEZING RAIN OR DRIZZLE
7 = DUSTSTORM OR SANDSTORM:
VSBY 1/2 MILE OR LESS
8 = SMOKE OR HAZE
9 = BLOWING SNOW
X = TORNADO

[NO. OF DAYS WITH]

MAX 32 OR BELOW: 0
MAX 90 OR ABOVE: 0
MIN 32 OR BELOW: 5
MIN 0 OR BELOW: 0

[WEATHER - DAYS WITH]

0.01 INCH OR MORE: 11
0.10 INCH OR MORE: 9
0.50 INCH OR MORE: 2
1.00 INCH OR MORE: 1

[HDD (BASE 65)]

TOTAL THIS MO. 280
DPTR FM NORMAL 34
TOTAL FM JUL 1 3749
DPTR FM NORMAL -319CLEAR (SCALE 0-3) 0
PTCLDY (SCALE 4-7) 0
CLOUDY (SCALE 8-10) 0

[CDD (BASE 65)]

TOTAL THIS MO. 36
DPTR FM NORMAL 19
TOTAL FM JAN 1 45
DPTR FM NORMAL 28

[PRESSURE DATA]

HIGHEST SLP 30.27 ON 11
LOWEST SLP 29.37 ON 2

STATION: FAYETTEVILLE ARKANSAS
 MONTH: MAY
 YEAR: 2009
 LATITUDE: 36 0 N
 LONGITUDE: 94 10 W

TEMPERATURE IN F:											PCPN:	SNOW:	WIND	SUNSHINE:	SKY	PK WND				
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18		
122 AVG MX 2MIN											SNW	DPTR	SPD	DIR	MIN	PSBL	S-S	WX	SPD	DR
1	71	54	63	1	2	0	0.73	0.0	M	6.3	22	310	M	M	M	13	26	330		
2	57	51	54	-8	11	0	0.49	0.0	M	6.5	23	90	M	M	M	13	28	90		
3	57	52	55	-7	10	0	0.71	0.0	M	5.4	14	280	M	M	M	13	17	70		
4	60	50	55	-7	10	0	0.04	0.0	M	3.1	9	80	M	M	M	1	13	80		
5	64	51	58	-5	7	0	1.38	0.0	M	2.7	17	140	M	M	M	123	22	150		
6	76	58	67	4	0	2	0.65	0.0	M	3.8	13	270	M	M	M	13	20	240		
7	83	53	68	5	0	3	0.00	0.0	M	4.9	18	200	M	M	M	12	23	180		
8	74	62	68	5	0	3	0.94	0.0	M	4.2	20	190	M	M	M	13	29	180		
9	69	59	64	0	1	0	0.05	0.0	M	3.3	10	340	M	M	M	13	16	60		
10	64	52	58	-6	7	0	0.11	0.0	M	5.8	15	70	M	M	M	1	24	40		
11	68	49	59	-5	6	0	0.00	0.0	M	5.9	14	180	M	M	M		18	70		
12	71	54	63	-1	2	0	0.83	0.0	M	7.8	25	340	M	M	M	13	36	330		
13	83	63	73	8	0	8	0.39	0.0	M	16.2	31	190	M	M	M	13	39	180		
14	76	61	69	4	0	4	0.08	0.0	M	2.8	15	210	M	M	M	13	18	210		
15	83	59	71	6	0	6	0.23	0.0	M	8.5	36	330	M	M	M	13	48	340		
16	66	50	58	-7	7	0	0.08	0.0	M	6.3	20	350	M	M	M	3	25	350		
17	67	44	56	-10	9	0	0.00	0.0	M	3.4	16	80	M	M	M		22	70		
18	75	40	58	-8	7	0	0.00	0.0	M	1.1	10	180	M	M	M		13	180		
19	81	45	63	-3	2	0	0.00	0.0	M	2.5	180	12	M	M	M		170	15		
20	78	45	62	-5	3	0	0.00	0.0	M	3.3	15	190	M	M	M		20	180		
21	82	50	66	-1	0	1	0.00	0.0	M	2.2	14	140	M	M	M		18	150		
22	84	53	69	2	0	4	0.00	0.0	M	2.9	14	70	M	M	M	1	18	100		
23	81	57	69	2	0	4	0.66	0.0	M	3.1	28	100	M	M	M	13	36	110		
24	72	61	67	-1	0	2	0.20	0.0	M	3.9	12	50	M	M	M	12	17	50		
25	75	64	70	2	0	5	0.43	0.0	M	6.3	14	320	M	M	M	18	21	230		
26	79	62	71	3	0	6	0.01	0.0	M	5.9	15	230	M	M	M	1	21	220		
27	69	58	64	-4	1	0	0.02	0.0	M	6.7	16	290	M	M	M	18	22	280		
28	65	52	59	-10	6	0	0.00	0.0	M	4.6	12	330	M	M	M	12	15	320		
29	81	50	66	-3	0	1	0.01	0.0	M	3.3	12	330	M	M	M	12	15	350		
30	85	53	69	0	0	4	0.00	0.0	M	5.4	14	240	M	M	M		18	260		
31	86	54	70	0	0	5	0.00	0.0	M	4.4	15	180	M	M	M		18	170		
SM 2282 1666											91	58	7.95	0.0	152.5	M	M			
AV 73.6 53.7											4.9 FASTST			M	M	0	MAX(MPH)			
											MISC ----> #180 12			#170 15						

NOTES:

LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6) , PAGE 2

 STATION: FAYETTEVILLE ARKANSAS
 MONTH: MAY
 YEAR: 2009
 LATITUDE: 36 0 N
 LONGITUDE: 94 10 W

[TEMPERATURE DATA]	[PRECIPITATION DATA]	SYMBOLS USED IN COLUMN 16
AVERAGE MONTHLY: 63.7	TOTAL FOR MONTH: 7.95	1 = FOG OR MIST
DPTR FM NORMAL: -1.8	DPTR FM NORMAL: 2.89	2 = FOG REDUCING VISIBILITY TO 1/4 MILE OR LESS
HIGHEST: 86 ON 31	GRTST 24HR 2.03 ON 5- 6	3 = THUNDER
LOWEST: 40 ON 18		4 = ICE PELLETS
	SNOW, ICE PELLETS, HAIL	5 = HAIL
	TOTAL MONTH: 0.0 INCH	6 = FREEZING RAIN OR DRIZZLE
	GRTST 24HR 0.0	7 = DUSTSTORM OR SANDSTORM: VSBY 1/2 MILE OR LESS
	GRTST DEPTH: M ON M	8 = SMOKE OR HAZE
		9 = BLOWING SNOW
		X = TORNADO
[NO. OF DAYS WITH]	[WEATHER - DAYS WITH]	
MAX 32 OR BELOW: 0	0.01 INCH OR MORE: 20	
MAX 90 OR ABOVE: 0	0.10 INCH OR MORE: 13	
MIN 32 OR BELOW: 0	0.50 INCH OR MORE: 7	
MIN 0 OR BELOW: 0	1.00 INCH OR MORE: 1	
[HDD (BASE 65)]		
TOTAL THIS MO. 91	CLEAR (SCALE 0-3) 0	
DPTR FM NORMAL 1	PTCLDY (SCALE 4-7) 0	
TOTAL FM JUL 1 3840	CLOUDY (SCALE 8-10) 0	
DPTR FM NORMAL -318		
[CDD (BASE 65)]		
TOTAL THIS MO. 58		
DPTR FM NORMAL -45	[PRESSURE DATA]	
TOTAL FM JAN 1 103	HIGHEST SLP 30.36 ON 17	
DPTR FM NORMAL -17	LOWEST SLP 29.59 ON 8	

STATION: FAYETTEVILLE ARKANSAS
 MONTH: JUNE
 YEAR: 2009
 LATITUDE: 36 0 N
 LONGITUDE: 94 10 W

TEMPERATURE IN F:										PCPN:	SNOW:	WIND	SUNSHINE:	SKY	PK WND			
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18
										12Z	AVG	MX	2MIN					
DAY	MAX	MIN	AVG	DEP	HDD	CCD	WTR	SNW	DPHT	SPD	SPD	DIR	MIN	PSEL	S-S	WX	SPD	DR
1	85	59	72	2	0	7	0.00	0.0	M	6.9	20	180	M	M	M		26	190
2	82	59	71	1	0	6	0.00	0.0	M	4.3	17	180	M	M	M	1	21	180
3	71	60	66	-5	0	1	0.23	0.0	M	6.0	16	340	M	M	M	138	20	50
4	75	53	64	-7	1	0	0.00	0.0	M	5.8	17	50	M	M	M		25	50
5	79	49	64	-7	1	0	0.00	0.0	M	2.1	9	160	M	M	M	1	13	80
6	50	54	67	-4	0	2	0.00	0.0	M	7.1	19	170	M	M	M		26	170
7	84	68	76	4	0	11	0.00	0.0	M	11.5	22	180	M	M	M		29	170
8	84	66	75	3	0	10	0.00	0.0	M	7.4	21	180	M	M	M		26	180
9	86	65	76	4	0	11	0.00	0.0	M	8.0	26	330	M	M	M	13	43	330
10	85	64	75	3	0	10	0.29	0.0	M	7.8	21	210	M	M	M	13	26	210
11	81	60	71	-2	0	6	0.00	0.0	M	4.9	15	200	M	M	M	1	23	250
12	80	60	70	-3	0	5	0.74	0.0	M	1.7	32	320	M	M	M	123	41	310
13	87	63	75	2	0	10	0.00	0.0	M	2.3	9	100	M	M	M	123	13	60
14	77	67	72	-1	0	7	0.84	0.0	M	3.5	30	230	M	M	M	13	41	230
15	58	68	78	4	0	13	0.00	0.0	M	6.0	21	180	M	M	M	1	26	170
16	87	66	77	3	0	12	0.04	0.0	M	9.3	30	320	M	M	M	3	41	310
17	89	70	80	6	0	15	0.00	0.0	M	6.9	21	190	M	M	M	18	25	200
18	88	69	79	5	0	14	0.00	0.0	M	8.8	21	190	M	M	M		25	200
19	88	73	81	6	0	16	0.00	0.0	M	10.5	23	210	M	M	M		31	210
20	89	70	80	5	0	15	0.00	0.0	M	7.0	20	210	M	M	M		24	180
21	90	69	80	5	0	15	0.00	0.0	M	6.9	20	190	M	M	M	18	24	190
22	93	69	81	6	0	16	0.00	0.0	M	4.4	15	210	M	M	M	18	18	230
23	94	70	82	6	0	17	0.00	0.0	M	1.9	10	70	M	M	M		13	70
24	96	69	83	7	0	18	0.00	0.0	M	1.4	13	230	M	M	M		15	230
25	94	70	82	6	0	17	0.66	0.0	M	2.9	24	220	M	M	M		33	220
26	95	70	83	7	0	18	0.00	0.0	M	3.2	9	330	M	M	M	1	12	270
27	95	71	83	7	0	18	0.00	0.0	M	3.5	13	260	M	M	M	1	15	250
28	87	64	76	-1	0	11	0.00	0.0	M	3.5	13	50	M	M	M	1	20	50
29	91	59	75	-2	0	10	0.00	0.0	M	2.9	9	310	M	M	M		13	300
30	92	65	79	2	0	14	0.00	0.0	M	6.1	20	280	M	M	M		28	270

SM 2592	1939	2	325	2.53	0.0	166.5	M	M
AV 86.4	64.6						5.5	FASTST M M 0 MAX(MPH)
							MISC ----> # 32 320	# 43 330

NOTES:

LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6) , PAGE 2

 STATION: FAYETTEVILLE ARKANSAS
 MONTH: JUNE
 YEAR: 2009
 LATITUDE: 36 0 N
 LONGITUDE: 94 10 W

(TEMPERATURE DATA)	(PRECIPITATION DATA)	SYMBOLS USED IN COLUMN 16
AVERAGE MONTHLY: 75.5	TOTAL FOR MONTH: 2.53	1 = FOG OR MIST
DPTR FM NORMAL: 1.8	DPTR FM NORMAL: -2.73	2 = FOG REDUCING VISIBILITY TO 1/4 MILE OR LESS
HIGHEST: 96 ON 24	GRST 24HR 0.84 ON 14-14	3 = THUNDER
LOWEST: 49 ON 5	SHOW, ICE PELLETS, HAIL	4 = ICE PELLETS
	TOTAL MONTH: 0.0 INCH	5 = HAIL
	GRST 24HR 0.0	6 = FREEZING RAIN OR DRIZZLE
	GRST DEPTH: M ON M	7 = DUSTSTORM OR SANDSTORM: VSBY 1/2 MILE OR LESS
		8 = SMOKE OR HAZE
(NO. OF DAYS WITH)	(WEATHER - DAYS WITH)	9 = BLOWING SNOW
MAX 32 OR BELOW: 0	0.01 INCH OR MORE: 7	X = TORNADO
MAX 90 OR ABOVE: 9	0.10 INCH OR MORE: 5	
MIN 32 OR BELOW: 0	0.50 INCH OR MORE: 2	
MIN 0 OR BELOW: 0	1.00 INCH OR MORE: 0	
(HDD (BASE 65):		
TOTAL THIS MO. 2	CLEAR (SCALE 0-3): 0	
DPTR FM NORMAL -6	PTCLDY (SCALE 4-7): 0	
TOTAL FM JUL 1 3842	CLOUDY (SCALE 8-10): 0	
DPTR FM NORMAL -324		
(CDD (BASE 65):		
TOTAL THIS MO. 325		
DPTR FM NORMAL 56	(PRESSURE DATA)	
TOTAL FM JAN 1 428	HIGHEST SLP 30.07 ON 14	
DPTR FM NORMAL 39	LOWEST SLP 29.68 ON 8	

STATION: FAYETTEVILLE ARKANSAS
MONTH: JULY
YEAR: 2009
LATITUDE: 36 0 N
LONGITUDE: 94 10 W

TEMPERATURE IN F:										PCPN:	SNOW:	WIND	SUNSHINE:		SKY	PK WND		
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18
										12Z	AVG	MX	ZMIN					
DY	MAX	MIN	AVG	DEP	HDD	CDD	WTR	SNW	DPTH	SPD	SPD	DIR	MIN	PSBL	S-S	WX	SPD	DR
1	86	61	74	-3	0	9	0.00	0.0	M	2.3	13	340	M	M	M	1	15	320
2	87	58	73	-4	0	8	0.00	0.0	M	1.4	12	330	M	M	M		14	330
3	89	64	77	0	0	12	0.16	0.0	M	4.4	13	330	M	M	M	3	17	340
4	84	71	78	0	0	13	0.95	0.0	M	8.4	26	300	M	M	M	13	33	300
5	82	66	74	-4	0	9	T	0.0	M	5.2	15	340	M	M	M	3	18	330
6	81	63	72	-6	0	7	0.00	0.0	M	2.0	10	70	M	M	M	18	14	50
7	83	59	71	-7	0	6	0.00	0.0	M	2.0	10	180	M	M	M	12	14	190
8	85	61	73	-5	0	8	0.00	0.0	M	2.8	12	200	M	M	M	1	17	220
9	90	66	78	0	0	13	0.00	0.0	M	5.5	14	140	M	M	M	1	21	130
10	93	77	85	6	0	20	0.00	0.0	M	10.7	22	200	M	M	M		30	200
11	95	74	85	6	0	20	0.00	0.0	M	6.8	20	200	M	M	M		24	200
12	96	72	84	5	0	19	0.00	0.0	M	6.1	18	210	M	M	M		24	220
13	96	72	84	5	0	19	0.02	0.0	M	3.6	20	110	M	M	0	3	26	100
14	92	75	84	5	0	19	0.00	0.0	0	9.4	20	180	M	M	1	3	25	180
15	98	76	87	8	0	22	0.00	0.0	0	6.0	15	260	M	M	2		22	220
16	89	70	80	1	0	15	T	0.0	0	3.7	17	290	M	M	1		21	330
17	82	57	70	-9	0	5	0.00	0.0	0	5.3	20	320	M	M	1		24	320
18	83	52	68	-11	0	3	0.00	0.0	0	3.9	15	290	M	M	1		21	310
19	86	58	72	-7	0	7	0.00	0.0	0	1.6	9	340	M	M	3		13	360
20	88	60	74	-5	0	9	0.01	0.0	0	5.2	17	70	M	M	1	3	22	60
21	78	65	72	-7	0	7	1.35	0.0	0	8.0	26	240	M	M	8	13	35	250
22	82	60	71	-8	0	6	0.00	0.0	0	4.5	14	350	M	M	4	1	17	340
23	85	56	71	-9	0	6	0.00	0.0	0	2.6	10	280	M	M	1		13	280
24	89	61	75	-5	0	10	0.00	0.0	0	7.4	18	220	M	M	0		25	210
25	86	69	78	-2	0	13	0.00	0.0	0	4.5	13	200	M	M	0		15	190
26	88	67	78	-2	0	13	0.00	0.0	0	2.1	10	30	M	M	3		15	10
27	86	62	74	-6	0	9	0.14	0.0	0	2.4	23	200	M	M	3	13	29	200
28	86	68	77	-3	0	12	0.00	0.0	0	2.9	13	220	M	M	6	18	15	210
29	83	66	75	-5	0	10	0.02	0.0	0	1.6	9	190	M	M	3	1	10	190
30	76	62	69	-11	0	4	1.39	0.0	0	2.5	12	330	M	M	5		16	320
31	82	58	70	-10	0	5	0.00	0.0	0	1.7	7	160	M	M	2	1	12	340
SM	2686	2006			0	338	4.04	0.0	136.5				M			45		
AV	86.6	64.7							4.4	FASTST	M	M	2			MAX (MPH)		
									MISC	--->	# 26	300				# 35	250	

NOTES:

LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6) , PAGE 2

STATION: FAYETTEVILLE ARKANSAS
MONTH: JULY
YEAR: 2009
LATITUDE: 36 0 N
LONGITUDE: 94 10 W

[TEMPERATURE DATA]

[PRECIPITATION DATA]

SYMBOLS USED IN COLUMN 16

AVERAGE MONTHLY: 75.7
DPTR FM NORMAL: -3.2
HIGHEST: 98 ON 15
LOWEST: 52 ON 18TOTAL FOR MONTH: 4.04
DPTR FM NORMAL: 0.90
GRST 24HR 1.39 ON 30-30SNOW, ICE PELLETS, HAIL
TOTAL MONTH: 0.0 INCH
GRST 24HR 0.0
GRST DEPTH: 01 = FOG OR MIST
2 = FOG REDUCING VISIBILITY
TO 1/4 MILE OR LESS
3 = THUNDER
4 = ICE PELLETS
5 = HAIL
6 = FREEZING RAIN OR DRIZZLE
7 = DUSTSTORM OR SANDSTORM:
VSBY 1/2 MILE OR LESS
8 = SMOKE OR HAZE
9 = BLOWING SNOW
X = TORNADO

[NO. OF DAYS WITH]

[WEATHER - DAYS WITH]

MAX 32 OR BELOW: 0 0.01 INCH OR MORE: 8
MAX 90 OR ABOVE: 7 0.10 INCH OR MORE: 5
MIN 32 OR BELOW: 0 0.50 INCH OR MORE: 3
MIN 0 OR BELOW: 0 1.00 INCH OR MORE: 2

[HDD (BASE 65)]

TOTAL THIS MO. 0 CLEAR (SCALE 0-3) 14
DPTR FM NORMAL 0 PTCLDY (SCALE 4-7) 5
TOTAL FM JUL 1 0 CLOUDY (SCALE 8-10) 0
DPTR FM NORMAL 0

[CDD (BASE 65)]

TOTAL THIS MO. 338
DPTR FM NORMAL -92 [PRESSURE DATA]
TOTAL FM JAN 1 766 HIGHEST SLP M ON M
DPTR FM NORMAL -53 LOWEST SLP 29.73 ON 21

STATION: FAYETTEVILLE ARKANSAS
MONTH: AUGUST
YEAR: 2009
LATITUDE: 36 0 N
LONGITUDE: 94 10 W

TEMPERATURE IN F:											PCPN:	SNOW:	WIND	:SUNSHINE:		SKY	:PK WND				
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18			
122 AVG MX 2MIN											SNW	DPTH	SPD	SPD	DIR	MIN	PSBL	S-S	WX	SPD	DR
1	82	62	72	-8	0	7	0.22	0.0	0	2.9	20	300	M	M	4		25	300			
2	86	64	75	-5	0	10	0.00	0.0	0	2.2	8	270	M	M	3	2	10	270			
3	91	65	78	-2	0	13	0.00	0.0	0	8.4	20	180	M	M	1		23	190			
4	94	74	84	4	0	19	0.00	0.0	0	9.8	20	200	M	M	0		25	200			
5	92	64	78	-1	0	13	3.46	0.0	0	5.8	35	230	M	M	4	13	48	240			
6	88	63	76	-3	0	11	0.00	0.0	0	1.8	13	150	M	M	4	1	16	150			
7	88	67	78	-1	0	13	0.00	0.0	0	8.1	22	180	M	M	0		26	160			
8	89	74	82	3	0	17	0.00	0.0	0	10.5	21	200	M	M	0		28	190			
9	89	74	82	3	0	17	0.00	0.0	0	8.8	17	200	M	M	0		22	210			
10	92	69	81	2	0	16	0.41	0.0	0	8.5	22	180	M	M	4	13	28	180			
11	84	65	75	-4	0	10	T	0.0	0	3.9	24	330	M	M	2		29	340			
12	86	60	73	-6	0	8	0.01	0.0	0	2.5	12	80	M	M	1	1	15	80			
13	86	58	72	-7	0	7	0.00	0.0	0	1.5	12	180	M	M	1		17	110			
14	86	58	72	-7	0	7	0.00	0.0	0	2.1	9	170	M	M	0	1	15	200			
15	88	62	75	-3	0	10	0.00	0.0	0	8.7	20	180	M	M	2		25	170			
16	89	76	83	5	0	18	0.00	0.0	0	10.0	21	180	M	M	1		26	200			
17	90	69	80	2	0	15	T	0.0	0	4.6	26	330	M	M	1	38	33	320			
18	85	67	76	-2	0	11	T	0.0	0	3.1	20	280	M	M	3	3	24	270			
19	85	70	78	0	0	13	0.00	0.0	0	8.1	17	190	M	M	2	3	22	180			
20	77	63	70	-8	0	5	0.70	0.0	0	5.5	17	190	M	M	5	13	22	190			
21	81	57	69	-8	0	4	0.00	0.0	0	5.8	20	330	M	M	3	1	24	310			
22	79	53	66	-11	0	1	0.00	0.0	0	2.3	14	340	M	M	1		18	330			
23	82	51	67	-10	0	2	0.00	0.0	0	1.2	9	190	M	M	1	18	10	190			
24	83	56	70	-7	0	5	0.00	0.0	0	3.5	13	180	M	M	1		15	170			
25	88	60	74	-2	0	9	0.00	0.0	0	3.5	12	170	M	M	1		14	170			
26	86	58	72	-4	0	7	0.00	0.0	0	3.3	13	170	M	M	0		17	160			
27	85	61	73	-3	0	8	1.10	0.0	0	3.1	12	140	M	M	6	138	14	130			
28	79	62	71	-5	0	6	0.23	0.0	0	4.3	16	330	M	M	6	13	20	320			
29	79	60	70	-5	0	5	0.00	0.0	0	2.0	13	330	M	M	6		15	330			
30	76	55	66	-9	0	1	0.00	0.0	0	3.1	13	70	M	M	4		20	60			
31	75	51	63	-12	2	0	0.00	0.0	0	1.5	9	340	M	M	3		13	360			
SM 2640 1948											2	288	6.13	0.0	150.4	M	70				
AV 85.2 62.8											4.9 FASTST				M	M	2	MAX (MPH)			
											MISC ---->				# 35	230	# 48	240			

NOTES:

LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6) , PAGE 2

STATION: FAYETTEVILLE ARKANSAS
MONTH: AUGUST
YEAR: 2009
LATITUDE: 36 0 N
LONGITUDE: 94 10 W

[TEMPERATURE DATA]	[PRECIPITATION DATA]	SYMBOLS USED IN COLUMN 16
AVERAGE MONTHLY: 74.0	TOTAL FOR MONTH: 6.13	1 = FOG OR MIST
DPTR FM NORMAL: -3.9	DPTR FM NORMAL: 3.13	2 = FOG REDUCING VISIBILITY
HIGHEST: 94 ON 4	GRTST 24HR 3.47 ON 5- 6	TO 1/4 MILE OR LESS
LOWEST: 51 ON 31,23	SNOW, ICE PELLETS, HAIL	3 = THUNDER
	TOTAL MONTH: 0.0 INCH	4 = ICE PELLETS
	GRTST 24HR 0.0	5 = HAIL
	GRTST DEPTH: 0	6 = FREEZING RAIN OR DRIZZLE
		7 = DUSTSTORM OR SANDSTORM:
		VSBY 1/2 MILE OR LESS
		8 = SMOKE OR HAZE
		9 = BLOWING SNOW
		X = TORNADO
[NO. OF DAYS WITH]	[WEATHER - DAYS WITH]	
MAX 32 OR BELOW: 0	0.01 INCH OR MORE: 7	
MAX 90 OR ABOVE: 5	0.10 INCH OR MORE: 6	
MIN 32 OR BELOW: 0	0.50 INCH OR MORE: 3	
MIN 0 OR BELOW: 0	1.00 INCH OR MORE: 2	
[HDD (BASE 65)]		
TOTAL THIS MO. 2	CLEAR (SCALE 0-3): 21	
DPTR FM NORMAL -2	PTCLDY (SCALE 4-7): 10	
TOTAL FM JUL 1 2	CLOUDY (SCALE 8-10): 0	
DPTR FM NORMAL -2		
[CDD (BASE 65)]		
TOTAL THIS MO. 288		
DPTR FM NORMAL -114	[PRESSURE DATA]	
TOTAL FM JAN 1 1054	HIGHEST SLP 30.25 ON 31	
DPTR FM NORMAL -167	LOWEST SLP 29.74 ON 20	

STATION: FAYETTEVILLE ARKANSAS
 MONTH: SEPTEMBER
 YEAR: 2009
 LATITUDE: 36 0 N
 LONGITUDE: 94 10 W

Red Dirt Mining Facilities
 Page 12 of 44

TEMPERATURE IN F:										PCPN:	SNOW:	WIND	SUNSHINE:	SKY	PK WND			
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18
DY MAX MIN AVG DEP HDD CDD WTR SNW DPTH SPD SPD DIR MIN PSEL S-S WX										122 AVG MX 2MIN								
1	78	49	64	-11	1	0	0.00	0.0	0	0.8	7	120	M	M	1		9	110
2	72	55	64	-10	1	0	0.72	0.0	0	2.4	17	350	M	M	3	13	23	360
3	79	56	68	-6	0	3	0.03	0.0	0	1.9	13	160	M	M	6	13	15	160
4	82	58	70	-4	0	5	T	0.0	0	1.3	8	130	M	M	4	1	10	120
5	82	64	73	0	0	8	1.15	0.0	0	2.9	13	220	M	M	6	13	15	220
6	82	62	72	-1	0	7	0.01	0.0	0	2.3	12	310	M	M	5	13	15	320
7	85	61	73	0	0	8	0.00	0.0	0	0.9	10	330	M	M	5	12	13	330
8	86	60	73	1	0	8	0.00	0.0	0	2.5	10	180	M	M	2	12	13	40
9	75	69	72	0	0	7	0.59	0.0	0	2.9	9	70	M	M	8	1	15	100
10	80	67	74	2	0	9	0.02	0.0	0	2.4	12	70	M	M	8	1	15	60
11	82	63	73	1	0	8	0.00	0.0	0	2.0	9	80	M	M	7	18	14	90
12	79	63	71	0	0	6	0.00	0.0	0	2.3	13	70	M	M	3	128	16	80
13	71	63	67	-4	0	2	0.07	0.0	0	4.7	15	80	M	M	7	18	20	60
14	71	64	68	-3	0	3	T	0.0	0	3.9	13	80	M	M	10	1	17	70
15	76	67	72	2	0	7	0.31	0.0	0	4.4	10	10	M	M	10	1	16	20
16	69	66	68	-2	0	3	0.63	0.0	0	6.8	14	50	M	M	10	18	23	50
17	73	65	69	-1	0	4	0.37	0.0	0	4.2	14	60	M	M	9	18	20	50
18	77	63	70	1	0	5	0.00	0.0	0	2.8	14	80	M	M	10		17	80
19	73	64	69	0	0	4	T	0.0	0	2.9	9	20	M	M	10	18	17	100
20	77	61	69	0	0	4	0.00	0.0	0	2.6	9	310	M	M	6	12	13	310
21	84	59	72	4	0	7	2.32	0.0	0	7.7	33	330	M	M	4	1238	44	330
22	65	58	62	-6	3	0	0.04	0.0	0	5.4	15	290	M	M	8	18	17	290
23	70	58	64	-4	1	0	0.04	0.0	0	2.2	8	350	M	M	7	1	16	50
24	71	54	63	-4	2	0	T	0.0	0	1.5	8	310	M	M	5	128	12	20
25	77	50	64	-3	1	0	0.00	0.0	0	0.7	7	180	M	M	3	12	9	80
26	74	52	63	-3	2	0	0.00	0.0	0	5.3	18	290	M	M	1	1	23	290
27	85	49	67	1	0	2	0.00	0.0	0	7.2	22	190	M	M	0		26	200
28	72	45	59	-7	6	0	0.00	0.0	0	7.5	18	320	M	M	0		24	320
29	71	40	56	-9	9	0	0.00	0.0	0	1.6	10	290	M	M	0	1	14	290
30	75	42	59	-6	6	0	0.00	0.0	0	5.7	17	160	M	M	0	1	23	180
SM 2293 1747										32 110 6.30		0.0 101.7		M 158				
AV 76.4 58.2												3.4 FASTST		M M 5		MAX(MPH)		
										MISC ---->		# 33 330				# 44 330		

NOTES:

LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6) , PAGE 2

STATION: FAYETTEVILLE ARKANSAS
 MONTH: SEPTEMBER
 YEAR: 2009
 LATITUDE: 36 0 N
 LONGITUDE: 94 10 W

(TEMPERATURE DATA)	(PRECIPITATION DATA)	SYMBOLS USED IN COLUMN 16
AVERAGE MONTHLY: 67.3	TOTAL FOR MONTH: 6.30	1 = FOG OR MIST
DPTR FM NORMAL: -2.7	DPTR FM NORMAL: 1.47	2 = FOG REDUCING VISIBILITY TO 1/4 MILE OR LESS
HIGHEST: 86 ON 8	GRST 24HR 2.42 ON 21-21	3 = THUNDER
LOWEST: 40 ON 29	SNOW, ICE PELLETS, HAIL	4 = ICE PELLETS
	TOTAL MONTH: 0.0 INCH	5 = HAIL
	GRST 24HR 0.0	6 = FREEZING RAIN OR DRIZZLE
	GRST DEPTH: 0	7 = DUSTSTORM OR SANDSTORM: VSBY 1/2 MILE OR LESS
		8 = SMOKE OR HAZE
		9 = BLOWING SNOW
		X = TORNADO
(NO. OF DAYS WITH)	(WEATHER - DAYS WITH)	
MAX 32 OR BELOW: 0	0.01 INCH OR MORE: 13	
MAX 90 OR ABOVE: 0	0.10 INCH OR MORE: 7	
MIN 32 OR BELOW: 0	0.50 INCH OR MORE: 5	
MIN 0 OR BELOW: 0	1.00 INCH OR MORE: 2	
(HDD (BASE 65))		
TOTAL THIS MO. 32	CLEAR (SCALE 0-3) 9	
DPTR FM NORMAL -10	PTCLDY (SCALE 4-7) 13	
TOTAL FM JUL 1 34	CLOUDY (SCALE 8-10) 8	
DPTR FM NORMAL -12		
(CDD (BASE 65))		
TOTAL THIS MO. 110		
DPTR FM NORMAL -80	[PRESSURE DATA]	
TOTAL FM JAN 1 1164	HIGHEST SLP 30.25 ON 2	
DPTR FM NORMAL -247	LOWEST SLP 29.65 ON 27	

STATION: FAYETTEVILLE ARKANSAS
 MONTH: OCTOBER
 YEAR: 2009
 LATITUDE: 36 0 N
 LONGITUDE: 94 10 W

TEMPERATURE IN F:											PCPN:	SNOW:	WIND	SUNSHINE:	SKY	PK WND			
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18	
DY MAX MIN AVG DEP HDD CDD WTR SNW DPTH SPD SPD DIR MIN PSBL S-S WX											SPD	DR							
1	78	47	63	-2	2	0	0.07	M	0	12.4	24	190	M	M	5	1	33	230	
2	68	40	54	-10	11	0	0.00	0.0	0	8.5	22	300	M	M	0		31	240	
3	68	38	53	-11	12	0	0.00	0.0	0	2.3	12	230	M	M	4		15	250	
4	57	52	55	-9	10	0	0.02	0.0	0	4.9	15	80	M	M	8	1	20	70	
5	62	51	57	-6	8	0	0.07	0.0	0	5.1	15	150	M	M	10	1	20	150	
6	65	46	56	-7	9	0	0.55	M	0	6.6	21	190	M	M	6	13	28	190	
7	70	38	54	-8	11	0	0.76	M	0	3.3	14	190	M	M	4	123	16	190	
8	80	57	69	7	0	4	4.21	0.0	0	11.1	31	350	M	M	10	138	38	340	
9	M	M	M	M	M	M	1.52	M	0	8.9	14	340	M	M	9	13	18	340	
10	M	M	M	M	M	M	0.00	0.0	M	2.6	7	80	M	M	6	1	M	M	
11	54	45	50	-11	15	0	0.01	M	M	3.6	12	140	M	M	10	1	15	130	
SM	602	414			78	4	7.21	0.0	69.3				M		72				
AV	66.9	46.0							6.3	FASTST	M	M	7				MAX(MPH)		
									MISC	----	#	31	350				#	38	340

NOTES:

LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6) , PAGE 2

 STATION: FAYETTEVILLE ARKANSAS
 MONTH: OCTOBER
 YEAR: 2009
 LATITUDE: 36 0 N
 LONGITUDE: 94 10 W

[TEMPERATURE DATA]	[PRECIPITATION DATA]	SYMBOLS USED IN COLUMN 16
AVERAGE MONTHLY: 56.4	TOTAL FOR MONTH: 7.21	1 = FOG OR MIST
DPTR FM NORMAL: -6.4	DPTR FM NORMAL: 5.81	2 = FOG REDUCING VISIBILITY
HIGHEST: 80 ON 8	GRTST 24HR 5.65 ON 8- 9	TO 1/4 MILE OR LESS
LOWEST: 38 ON 7, 3	SNOW, ICE PELLETS, HAIL	3 = THUNDER
	TOTAL MONTH: 0.0 INCH	4 = ICE PELLETS
	GRTST 24HR 0.0	5 = HAIL
	GRTST DEPTH: 0	6 = FREEZING RAIN OR DRIZZLE
		7 = DUSTSTORM OR SANDSTORM:
		VSBY 1/2 MILE OR LESS
		8 = SMOKE OR HAZE
		9 = BLOWING SNOW
		X = TORNADO
[NO. OF DAYS WITH]	[WEATHER - DAYS WITH]	
MAX 32 OR BELOW: 0	0.01 INCH OR MORE: 8	
MAX 90 OR ABOVE: 0	0.10 INCH OR MORE: 4	
MIN 32 OR BELOW: 0	0.50 INCH OR MORE: 4	
MIN 0 OR BELOW: 0	1.00 INCH OR MORE: 2	
[HDD (BASE 65)]		
TOTAL THIS MO. 78	CLEAR (SCALE 0-3) 1	
DPTR FM NORMAL 32	PTCLDY (SCALE 4-7) 5	
TOTAL FM JUL 1 112	CLOUDY (SCALE 8-10) 5	
DPTR FM NORMAL 20		
[CDD (BASE 65)]		
TOTAL THIS MO. 4		
DPTR FM NORMAL -17	[PRESSURE DATA]	
TOTAL FM JAN 1 1168	HIGHEST SLP M ON M	
DPTR FM NORMAL -264	LOWEST SLP 29.62 ON 1	

Stephen's Red Dirt Farm, Inc

Memo

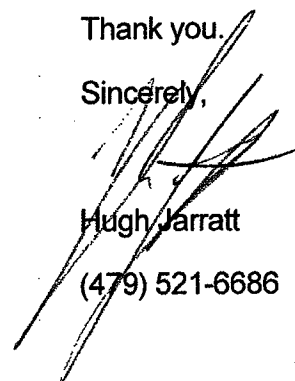
To: The City of Fayetteville
From: Hugh Jarratt, Attorney at Law
Date: 10/13/2009
Re: Red Dirt Mining Ordinance

Attached please find real estate records that relate to property close to Hamestring Road which lie inside the city limits of Fayetteville. Although there have been comments made that the Red Dirt Mining Operations hurt property values, I researched all transactions that I could find for this area dated 1994 or later (1994 is the date red dirt mining began in the Hamestring Road area). In my research, there has not been a single sale for a loss in the area since 1994. Therefore, the argument that the red dirt mining operations have hurt property values is not correct.

If you have any questions, please call.

Thank you.

Sincerely,



Hugh Jarratt

(479) 521-6686

Record 1 of 1 &nbsp;Last Updated 10/01/09

Parcel Number: **765-16151-600** Prev. Parcel Number: **001-11607-000** Type: **AI**
 Location: **1075 N HAMSTRING RD**
 Owner Name: **BOLEN, DAVE C**
 Mailing Address: **1075 N Hamstring Rd Fayetteville AR 72704-7801**
 Lot: Block: S-T-R: **09-16-31**
 Addition: **09-16-31 FAYETTEVILLE OUTLOTS**
 School District: **FARMINGTON SCH, FAY** Tax District: **062**
 City: **FAYETTEVILLE**
 Legal: **ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS
 PER ANNEXATION ORDINANCE NO. 4888 PT NE SE 10.99AC**
 Current Year A79 Credit Status: **O**
 Last Appraised: **2009**

	Appraised Value	Taxable Value
Land	26,350	4,180
Improvement	183,650	35,090
Total	210,000	39,270

Tax History

Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2008	37,582	\$1,924.20	\$0.00	\$1.05	\$0.00	\$350.00	O	\$1,575.25	\$1,575.25	PAID
2007	35,894	\$1,841.36	\$0.00	\$1.05	\$0.00	\$350.00	O	\$1,492.41	\$1,492.41	PAID
2006	34,014	\$1,785.74	\$0.00	\$1.05	\$0.00	\$300.00	O	\$1,486.79	\$1,486.79	PAID

Available Tax Payment Receipt(s)

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2008	1990	03/31/2009	\$1,574.20	\$0.00	\$1.05	\$0.00	\$0.00	\$1,575.25
2007	14445	04/28/2008	\$1,491.36	\$0.00	\$1.05	\$0.00	\$0.00	\$1,492.41
2006	32855	4/25/2007	\$1,485.74	\$0.00	\$1.05	\$0.00	\$0.00	\$1,486.79

Deed History

Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
6/4/1999	<u>99-52081</u>	BOLEN, DAVE C.		WD	157,000	518.10
		LMB ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS PER ANNEXATION ORDINANCE NO. 4888 FCS 99: 99-52081 WD \$518.10 REV (157M)				
12/23/1992	<u>92-68546</u>	WATT, WILLIAM G. & GRACE L.		WD	140,000	308.00
1/20/1988	<u>1256-132</u>	WARREN, GENE G. & ARLENE H.		WD	87,000	191.40

WD 73,000 80.30

Sketch:

```

graph LR
    SEP[SEP 6(400)]
    MFA[MFA (616)]
    MN[MN (2003)]
    B[B]

    SEP -- 25 --> MFA
    MFA -- 22 --> SEP
    MFA -- 22 --> MN
    MN -- 33 --> B
    B -- 7 --> MN
    B -- 8 --> MN
    B -- 21 --> MN
    MN -- 61 --> SEP
    MN -- 25 --> SEP
  
```

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Record 1 of 1 &nbsp;Last Updated 10/01/09

Parcel Number: **765-16151-950** Prev. Parcel Number: **344-01533-000** Type: **RI**
 Location: **741 N ED MOORE LN**
 Owner Name: **SILVA PROPERTIES, LLC**
 Mailing Address: **12198 LITTLE ELM RD FARMINGTON AR 72730**
 Lot: **006** Block: S-T-R: **09-16-31**
 Addition: **ED MOORE S/D**
 School District: **FARMINGTON SCH, FAY** Tax District: **062**
 City: **FAYETTEVILLE**
 Legal: **ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS PER ANNEXATION ORDINANCE NO. 4888 0.55 A.**
 Current Year A79 Credit Status: **V**

Last Appraised: 2007	Appraised Value	Taxable Value
Land	25,000	4,205
Improvement	6,600	1,320
Total	31,600	5,525

Tax History

Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit Status	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2008	5,100	\$261.12	\$0.00	\$0.00	\$0.00	\$0.00	V	\$261.12	\$0.00	
2007	4,675	\$239.83	\$0.00	\$0.00	\$0.00	\$0.00	V	\$239.83	\$239.83	PAID
2006	4,250	\$223.13	\$0.00	\$0.00	\$0.00	\$0.00		\$223.12	\$223.12	PAID

Available Tax Payment Receipt(s)

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2007	74525	10/17/2008	\$239.83	\$0.00	\$0.00	\$0.00	\$0.00	\$239.83
2006	111915	10/8/2007	\$223.12	\$0.00	\$0.00	\$0.00	\$0.00	\$223.12

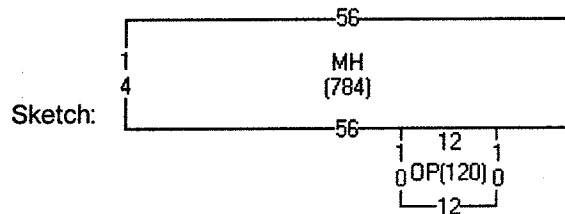
Deed History

Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
1/20/2006	<u>2006-2891</u>	SILVA PROPERTIES, LLC		WD	48,000	158.40
		LMB ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS PER ANNEXATION ORDINANCE NO. 4888 NLB 2006-2891 WD (48M)				
7/5/2002	<u>2002-96709</u>	GOODWIN, JOHN		WD	29,000	95.70
		KST 2002-96709 WD \$95.70(29M)				
8/20/1993	<u>93-48926</u>	MARTIN, KENT & OLETA		WD	24,000	79.20
		93-51868 REFILED TO CORR ORDER. MH TRANSFERRED FROM 765-15093-092				

1/1/1985 1101-802 MOUNCE, SCOTT WD 0 0.00

Structure Number	Occupancy Type	Construction Type	First Floor Living Area	Total Living Area	Year Constructed	Basement Area
1	MH	FS	784	784	1986	

Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
5	A	STANDARD			21



Out Buildings and Yard Improvements

Qty	Description	Size	Quality
1	Driveway, concrete	26x25	
1	Fence, chain link 4'	330	
1	Outbuilding, metal	7x9	
1	Pole Sheds	30x24	

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Record 1 of 1 &nbsp;Last Updated 10/01/09

Parcel Number: **765-16151-920** Prev. Parcel Number: **344-01530-000** Type: **RM**Location: **797 N ED MOORE LN**Owner Name: **JOHNSON, DONALD H JR & DEBBIE**Mailing Address: **797 N ED MOORE LN FAYETTEVILLE AR 72704**Lot: **003**

Block:

S-T-R: **09-16-31**Addition: **ED MOORE S/D**School District: **FARMINGTON SCH, FAY**Tax District: **062**City: **FAYETTEVILLE**Legal: **ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS
PER ANNEXATION ORDINANCE NO. 4888 0.55 A.**Current Year A79 Credit Status: **V**

Last Appraised: 2007	Appraised Value	Taxable Value
Land	25,000	4,931
Improvement	17,150	3,430
Total	42,150	8,361

Tax History

Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2008	7,974	\$408.27	\$0.00	\$0.00	\$0.00	\$0.00	V	\$408.27	\$408.27	PAID
2007	7,587	\$389.21	\$0.00	\$0.00	\$0.00	\$0.00	V	\$389.21	\$389.21	PAID
2006	3,870	\$203.18	\$0.00	\$0.00	\$0.00	\$0.00	V	\$203.18	\$203.18	PAID

Available Tax Payment Receipt(s)

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2008	42045	09/16/2009	\$408.27	\$0.00	\$0.00	\$0.00	\$0.00	\$408.27
2007	55685	10/07/2008	\$389.21	\$0.00	\$0.00	\$0.00	\$0.00	\$389.21
2006	1021183	10/07/2008	\$203.18	\$0.00	\$0.00	\$0.00	\$44.47	\$247.65

Deed History

Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
5/20/2005	<u>2005-22274</u>	JOHNSON, DONALD H. JR & DEBBIE		WD	20,000	66.00
		LMB ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS PER ANNEXATION ORDINANCE NO. 4888 GFJ 2005-22274 WD \$66.00 REV(20M)				
8/10/2001	<u>2001-97244</u>	GABBARD, LEONARD & MARY		RD	0	0.00
		WCS 2001-97244 REDEMPTION DEED #159509				
11/4/1993	<u>2002-72455</u>	WILLIAMS, MARION E.		WD	16,000	52.80
		KST 2002-72455 WD \$52.80(16M)				

11/4/1993	<u>2002-72455</u>	WILLIAMS, MARION E.	WD	16,000	52.80
KST 2002-72455 WD \$52.80(16M)					
12/1/1986	<u>1205-612</u>	GABBARD, LEONARD & MARY	CT	5,000	5.50
1/1/1985	<u>103-848</u>	GABBARD, GREG ALLEN & BRENDA LEE	WD	0	0.00

Out Buildings and Yard Improvements

Qty	Description	Size	Quality
1	Pole Sheds	20x20	
1	Outbuilding, metal	10x12	
1	Utility Bldg, Avg, Exc Class	30x60	

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Record 1 of 1 &nbsp;Last Updated 10/01/09

Parcel Number: **765-16151-900** Prev. Parcel Number: **344-01528-000** Type: **RI**
 Location: **860 N ED MOORE LN**
 Owner Name: **LANCE, JOY M**
 Mailing Address: **860 N Ed Moore Ln Fayetteville AR 72704-7802**
 Lot: **001** Block: S-T-R: **09-16-31**
 Addition: **ED MOORE S/D**
 School District: **FARMINGTON SCH, FAY** Tax District: **062**
 City: **FAYETTEVILLE**
 Legal: **ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS PER ANNEXATION ORDINANCE NO. 4888 0.63 A.**
 Current Year A79 Credit Status: **O**
 Last Appraised: **2007**

	Appraised Value	Taxable Value
Land	25,000	3,450
Improvement	5,150	360
Total	30,150	3,810

Tax History

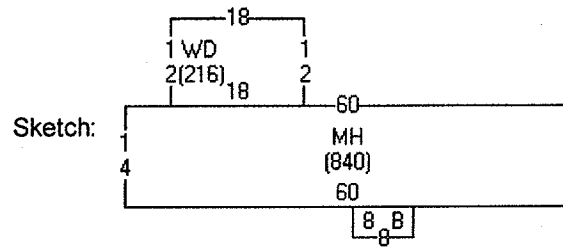
Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2008	3,644	\$186.57	\$0.00	\$0.00	\$0.00	\$186.57	O	\$0.00	\$0.00	PAID
2007	3,478	\$178.42	\$0.00	\$0.00	\$0.00	\$178.42	O	\$0.00	\$0.00	PAID
2006	3,312	\$173.88	\$0.00	\$0.00	\$0.00	\$173.88	O	\$0.00	\$0.00	PAID

Deed History

Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
7/21/1997	<u>97-48431</u>	LANCE, JOY M		WD	28,000	92.40
LMB ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS PER ANNEXATION ORDINANCE NO. 4888 LPW 97-48431 WD REV \$92.40 (28M)						
3/11/1994	<u>94-15313</u>	SILVA, MARK & DEBBIE		WD	22,000	72.60
MH ADDED FOR 1986.						
1/1/1985	<u>1117-773</u>	HUTCHINS, MARK & KATHY		WD	0	0.00

Structure Number	Occupancy Type	Construction Type	First Floor Living Area	Total Living Area	Year Constructed	Basement Area
1	MH	FS	840	840	1985	

Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
5	A	STANDARD			22



Out Buildings and Yard Improvements

Qty	Description	Size	Quality
1	Carport, Dirt Floor	20x20	
1	Outbuilding, metal	10x12	

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Parcel Number: 765-16152-600 Prev. Parcel Number: 001-11714-004 Type: RI

Location: 7299 W WEDINGTON DR

Owner Name: GARCIA, JOSE & RAQUEL; GARCIA, LUZ & JOSE G JR

Mailing Address: 7299 W WEDINGTON DR FAYETTEVILLE AR 72704

Lot: **Block:** **S-T-R: 10-16-31**

Addition: 10-16-31 FAYETTEVILLE OUTLOTS

School District: FARMINGTON SCH, FAY **Tax District: 062**

City: FAYETTEVILLE

**Legal: ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS
PER ANNEXATION ORDINANCE NO. 4888 PT NW SW 1.50A**

Current Year A79 Credit Status: F

Last Appraised: 2007	Appraised Value	Taxable Value
Land	34,400	4,530
Improvement	173,000	27,200
Total	207,400	31,730

Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2008	31,730	\$1,624.58	\$0.00	\$0.00	\$0.00	\$350.00	F	\$1,274.58	\$1,274.58	PAID
2007	31,730	\$1,627.75	\$0.00	\$0.00	\$0.00	\$350.00	F	\$1,277.75	\$1,277.75	PAID
2006	31,730	\$1,665.83	\$0.00	\$0.00	\$0.00	\$300.00	O	\$1,365.82	\$1,365.82	PAID

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2008	12743	04/27/2009	\$1,274.58	\$0.00	\$0.00	\$0.00	\$0.00	\$1,274.58
2007	14445	04/28/2008	\$1,277.75	\$0.00	\$0.00	\$0.00	\$0.00	\$1,277.75
2006	32858	4/25/2007	\$1,365.82	\$0.00	\$0.00	\$0.00	\$0.00	\$1,365.82

Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
10/13/2005	<u>2005-46805</u>	GARCIA, JOSE & RAQUEL;	GARCIA, LUZ & JOSE G JR TNTS IN COM	WD	175,000	577.50
LMB ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS PER ANNEXATION ORDINANCE NO. 4888 NLB 2005-46805 WD \$577.50 REV (175M)						
10/15/2003	<u>2003-54573</u>	KRUGER, OLIVER & REBA		CR	0	495.00
SJJ 2003-54573 CR \$495.00 (150M) RECORDED TO CORRECT DEED 2003-34314 * FILE DATE USED AS DEED DATE						

6/11/2003 2003-34314 KRUGER, OLIVER & REBA CR 0 495.00

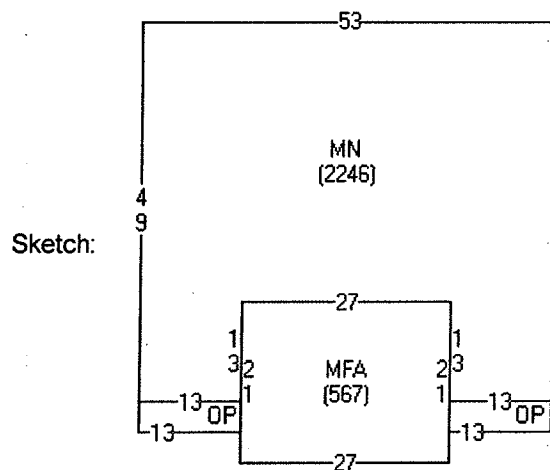
SJJ FOR 2003: 1.50A FROM #003 BRYAN & LIZ LAW W/
 IMPROVEMENTS NOTE: DEED INCLUDES AN INCORRECT CALL (S00.10'52"W 474.52 FT) - THE CORRECT CALL SHOULD BE S00.10'52"W 257.68 FT - WALT & CHERYL FROM WACO TITLE COMPANY SAID THAT THEY WOULD FILE A CORRECTION DEED OR A CORRECTION ADDIVADIT OF SCRIVENER'S ERROR - PER BH GO AHEAD & SPLIT B/C THE DEED SAYS..." ... TO THE POINT OF BEGINNING. SJJ 2003-34314 CR \$495.00 (150M) REV

6/11/2003 2003-32213 KRUGER, OLIVER & REBA WD 150,000 495.00

SJJ 2003-32213 WD \$495.00 (150M) REV - BAD LEGAL

Structure Number	Occupancy Type	Construction Type	First Floor Living Area	Total Living Area	Year Constructed	Basement Area
1	DP	MV	2246	2246	2002	

Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
4	A	MASONVEN			5



Out Buildings and Yard Improvements

Qty	Description	Size	Quality
1	Driveway, concrete	23x47	
1	Driveway, concrete	14x15	
1	Driveway, concrete	14x15	

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Record 1 of 1 &nbsp;Last Updated 10/01/09

Parcel Number: **765-16152-525** Prev. Parcel Number: **001-11714-001** Type: **RI**Location: **7313 7315 W WEDINGTON DR**Owner Name: **GLOVER, CLARA SUE**Mailing Address: **PO BOX 306 UNIONTOWN AR 72955**

Lot:

Block:

S-T-R: **10-16-31**Addition: **10-16-31 FAYETTEVILLE OUTLOTS**School District: **FARMINGTON SCH, FAY**Tax District: **062**City: **FAYETTEVILLE**Legal: **ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS
PER ANNEXATION ORDINANCE NO. 4888 PT NW SW 1.02 A**Current Year A79 Credit Status: **VF**Last Appraised: **2009**

	Appraised Value	Taxable Value
Land	22,500	4,500
Improvement	144,850	28,970
Total	167,350	33,470

Tax History

Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit Status	A79	Net Total Tax	Total Tax Paid	Payment Status
2008	41,290	\$2,114.05	\$0.00	\$0.00	\$0.00	\$0.00	N	\$2,114.05	\$2,114.05	PAID
2007	43,720	\$2,242.84	\$0.00	\$0.00	\$0.00	\$0.00	N	\$2,242.84	\$2,242.84	PAID
2006	52,680	\$2,765.70	\$0.00	\$0.00	\$0.00	\$0.00	N	\$2,765.70	\$2,765.70	PAID

Available Tax Payment Receipt(s)

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2008	49534	10/01/2009	\$2,114.05	\$0.00	\$0.00	\$0.00	\$0.00	\$2,114.05
2007	27711	06/25/2008	\$2,242.84	\$0.00	\$0.00	\$0.00	\$0.00	\$2,242.84
2006	98625	10/2/2007	\$2,765.70	\$0.00	\$0.00	\$0.00	\$0.00	\$2,765.70

Deed History

Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
6/17/2008	<u>2008-21049</u>	GLOVER, CLARA SUE		WD	164,000	541.20
		JRW 2008-21049 WD \$541.2 REV(164M)				
6/6/2008	<u>2008-18895</u>	ROBBINS INVESTMENT, INC; ADCOCK	INVESTMENTS, INC	QC	0	
		LAJ 2008-18895 QC NO REV /// TENANTS IN COMMON				
6/6/2008	<u>2008-18894</u>	ROBBINS INVESTMENT, INC; ADCOCK	INVESTMENTS, INC	QC	0	

SLB FOR 2008: 0.004 A TRANSFERRED FROM #575 & 0.654 A TRANSFERRED TO #575 ROBBINS INVESTMENTS, INC; ADCOCK INVESTMENTS (SEE SURVEY 2008-7388) SLB 2008-18894 QC NO REV.

3/6/2008 2008-7388 ROBBINS INVESTMENT, INC; ADCOCK, WARREN P.; TENANTS INCOMMON SV 0

WJC 2008-7388 SV FOR ROBBINS INVESTMENT //INCLUDES 765-16125-575// RMC SURVEY ON RECORD

8/9/2006 2006-37567 ROBBINS INVESTMENT, INC; ADCOCK, WARREN P.; TENANTS INCOMMON QC 0

SLB FOR 2007: 1.06 A TO #530 R STEVEN & SARAH SMITH WITH CARD #2 (SEE SURVEY 2002-15469) LMB ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS PER ANNEXATION ORDINANCE NO. 4888 SN 2006-37567 QC NO REV INCLUDES PARCELS: 001-11714-001, 001-11714-003

1/25/2002 2002-15468 ROBBINS INVESTMENTS, INC.; ADCOCK, WARREN P. & MARILYN JO WD 0 0.00

BH FOR 2002: 2.18 A. TO #003 BRYAN C. & ELIZABETH J. LAW BH FOR 2002: 1.07 A. TO #002 JAMES LEON & HELEN Y. GREGORY BH 2002-15468 WD NO REV 1/2 INTEREST FROM ROBBINS INVESTMENTS, INC.

12/5/2001 2001-158720 ROBBINS INVESTMENTS, INC. WD 150,000 495.00

BH FOR 2002: 5.98 A. FR #000 BARBARA W. WYNN WITH IMPROVEMENTS 2001-158720 WD \$495.00 REV (150M)

Structure Number	Occupancy Type	Construction Type	First Floor Living Area	Total Living Area	Year Constructed	Basement Area
1	DP	MV	2282	2282	2002	

Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
4	A	MASONVEN			5

Qty	Description	Size	Quality
1	Driveway, concrete	23x47	
1	Driveway, concrete	14x15	
1	Driveway, concrete	14x15	

} of 3

Parcel Number: 765-16151-300 Prev. Parcel Number: 001-11615-000 Type: RI
Location: 882 N RAINCROW RD
Owner Name: LEWIS, MATTHEW MILES
Mailing Address: 882 N RAINCROW RD FAYETTEVILLE AR 72704
Lot: Block: S-T-R: 09-16-31
Addition: 09-16-31 FAYETTEVILLE OUTLOTS
School District: FARMINGTON SCH, FAY Tax District: 062
City: FAYETTEVILLE
Legal: ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS
 PER ANNEXATION ORDINANCE NO. 4888 PT NW SE 1.50AC
Current Year A79 Credit Status: O

Last Appraised: 2008	Appraised Value	Taxable Value
Land	31,250	4,774
Improvement	138,150	26,079
Total	169,400	30,853

Year	Taxable Value	Ad. Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2008	29,652	\$1,518.18	\$0.00	\$0.00	\$0.00	\$350.00	O	\$1,168.18	\$1,168.18	PAID
2007	25,221	\$1,293.84	\$0.00	\$0.00	\$0.00	\$350.00	O	\$943.84	\$943.84	PAID
2006	24,020	\$1,261.05	\$0.00	\$0.00	\$0.00	\$300.00	O	\$961.05	\$961.05	PAID

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2008	13255	04/28/2009	\$1,168.18	\$0.00	\$0.00	\$0.00	\$0.00	\$1,168.18
2007	15223	04/29/2008	\$943.84	\$0.00	\$0.00	\$0.00	\$0.00	\$943.84
2006	1863	3/23/2007	\$961.05	\$0.00	\$0.00	\$0.00	\$0.00	\$961.05

Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
7/25/2005	<u>2005-32678</u>	LEWIS, MATTHEW MILES		WD	162,500	537.90
LMB ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS PER ANNEXATION ORDINANCE NO. 4888 SN 2005-32678 WD \$537.90 REV(163M)						
3/2/1999	<u>99-20457</u>	MELCHER, THEODORE & LINDA K.		WD	111,000	366.30
DKS 99-20457 WD \$366.30 REV (111M) INCLUDES #11614						
5/20/1994	<u>94-31130</u>	GRAVES, LAWRENCE L. &		WD	8,000	26.40

IDA J.

ALSO 001-11614-000

BAILEY, CASEY

3/4/1993 94-30639 DON; BAILEY, DEWAYNE WD 0 0.00
ANDY

NO REV ALSO #11614

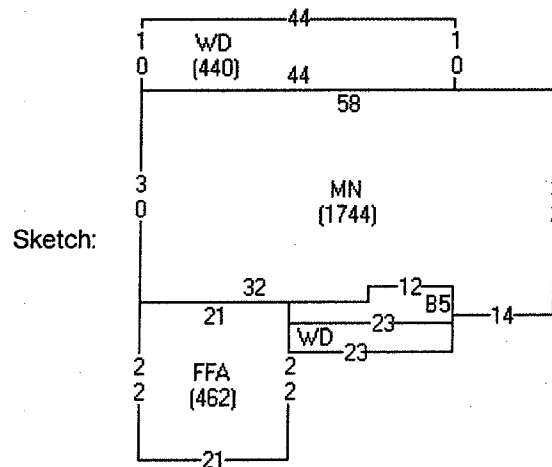
BOWERS,

4/19/1991 1413-020 EDWARD D. & CHRISTINE FD 3,000 6.60
GENEVA

1/1/1985 1141-967 SECKINGER, WD 0 0.00
WILLIAM C. SR

Structure Number	Occupancy Type	Construction Type	First Floor Living Area	Total Living Area	Year Constructed	Basement Area
1	SF	FS	1744	1744	1995	

Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
4	A	FRAME			12



Out Buildings and Yard Improvements

Qty	Description	Size	Quality
1	Utility Bldg, Low, Dirt Floor	24x18	
1	Hot tub/Jacuzzi		
1	Driveway, concrete	6x19	
1	Driveway, concrete	22x42	
1	Wood deck	13x30	
1	Wood deck	20x51	
1	Hot tub/Jacuzzi		

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Parcel Number: **765-16151-250** Prev. Parcel Number: **001-11614-000** Type: **RV**

Location:

Owner Name: **LEWIS, MATTHEW MILES**Mailing Address: **882 N RAINCROW RD FAYETTEVILLE AR 72704**

Lot:

Block:

S-T-R: **09-16-31**Addition: **09-16-31 FAYETTEVILLE OUTLOTS**School District: **FARMINGTON SCH, FAY**Tax District: **062**City: **FAYETTEVILLE**Legal: **ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS
PER ANNEXATION ORDINANCE NO. 4888 PT NW SE (67 X 324.06) 0.50AC**Current Year A79 Credit Status: **V**Last Appraised: **2007**

	Appraised Value	Taxable Value
Land	9,400	1,469
Improvement	0	0
Total	9,400	1,469

Tax History

Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2008	1,356	\$69.43	\$0.00	\$0.00	\$0.00	\$0.00	V	\$69.43	\$69.43	PAID
2007	1,243	\$63.77	\$0.00	\$0.00	\$0.00	\$0.00	V	\$63.77	\$63.77	PAID
2006	593	\$31.13	\$0.00	\$0.00	\$0.00	\$0.00	V	\$31.13	\$31.13	PAID

Available Tax Payment Receipt(s)

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2008	17460	05/06/2009	\$69.43	\$0.00	\$0.00	\$0.00	\$0.00	\$69.43
2007	19616	05/08/2008	\$63.77	\$0.00	\$0.00	\$0.00	\$0.00	\$63.77
2006	1860	3/23/2007	\$31.13	\$0.00	\$0.00	\$0.00	\$0.00	\$31.13

Deed History

Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
7/25/2005	<u>2005-32678</u>	LEWIS, MATTHEW MILES		WD	163,000	537.90
LMB ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS PER ANNEXATION ORDINANCE NO. 4888 SN 2005-32678 WD \$537.90 REV(163M)						
3/2/1999	<u>99-20457</u>	MELCHER, THEODORE & LINDA K.		WD	111,000	366.30
DKS 99-20457 WD \$366.30 REV (111M) INCLUDES #11615						
5/20/1994	<u>94-31130</u>	GRAVES, LAWRENCE L. &		WD	8,000	26.40

IDA J.

ALSO 001-11615-000

3/4/1993	<u>94-30639</u>	BAILEY, CASEY DON; BAILEY ANDY	DEWAYNE	WD	0	0.00
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NO REV ALSO #11615

4/19/1991	1413-020	BOWERS, EDWARD D. & GENEVA	CHRISTINE	FD	3,000	6.60
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12/5/1985	<u>1162-200</u>	SECKINGER, WILLIAM C. SR		WD	0	0.00
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1/1/1985	<u>1037-668</u>	ADKINS, JOHNNY P. & SUSAN CARSON		WD	0	0.00
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Parcel Number: 765-16152-425 Prev. Parcel Number: 001-11711-000 Type: RI

Location: 7105 W WEDINGTON DR

Owner Name: BOWERS-CASSELL, ANNALEA K &JEFFREY

Mailing Address: 7105 W WEDINGTON DR FAYETTEVILLE AR 72704-9140

Lot: **Block:** **S-T-R: 10-16-31**

Addition: 10-16-31 FAYETTEVILLE OUTLOTS

School District: FARMINGTON SCH, FAY **Tax District: 062**

City: FAYETTEVILLE

**Legal: ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS
PER ANNEXATION ORDINANCE NO. 4888 PT NW SW 0.80AC**

Current Year A79 Credit Status: V

Last Appraised: 2007	Appraised Value	Taxable Value
Land	22,500	3,978
Improvement	92,850	17,966
Total	115,350	21,944

Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2008	20,256	\$1,037.11	\$0.00	\$0.00	\$0.00	\$0.00	V	\$1,037.11	\$1,037.11	PAID
2007	18,568	\$952.54	\$0.00	\$0.00	\$0.00	\$0.00	V	\$952.54	\$952.54	PAID
2006	16,880	\$886.20	\$0.00	\$0.00	\$0.00	\$0.00	V	\$886.20	\$886.20	PAID

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2008	12743	04/27/2009	\$1,037.11	\$0.00	\$0.00	\$0.00	\$0.00	\$1,037.11
2007	14445	04/28/2008	\$952.54	\$0.00	\$0.00	\$0.00	\$0.00	\$952.54
2006	32856	4/25/2007	\$886.20	\$0.00	\$0.00	\$0.00	\$0.00	\$886.20

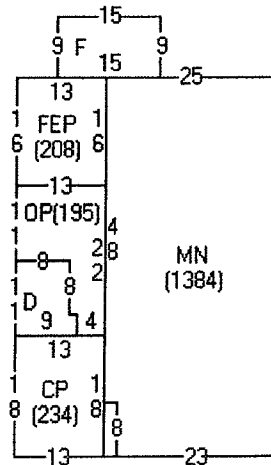
Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
12/28/2005	<u>2005-57885</u>	BOWERS- CASSELL, ANNALEA K &	JEFFREY L12159 W. HWY 16	WD	155,000	511.50
LMB ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS PER ANNEXATION ORDINANCE NO. 4888 SN 2005-57885 WD \$511.50 REV(155M)						
5/23/2005	<u>2005-22339</u>	WILSON, RUTH MANON		WD	104,000	343.20
BJF WD 2005 22339 \$343.20 REV ()104M						
1/1/1985	774-381	GRAVES, MACK		WD	0	0.00

**MILLARD &
JEANNIE**

Structure Number	Occupancy Type	Construction Type	First Floor Living Area	Total Living Area	Year Constructed	Basement Area
1	SF	FS	1384	1384	1963	

Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
4	G	STEELE	1SG		44

Sketch:

**Out Buildings and Yard Improvements**

Qty	Description	Size	Quality
1	Driveway, concrete	10x100	
1	Fence, chain link 4'	80	
1	Outbuilding, block	12x12	
1	Patio cover, steel	21x16	
1	Pole Sheds	29x20	
1	Outbuilding, metal	12x10	

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Parcel Number: 765-16152-675 Prev. Parcel Number: 001-11717-000 Type: RM

Location: 7094 W WEDINGTON DR

Owner Name: NWACHUKWU, PRINCE N & RHONDA G

Mailing Address: 7123 W WEDINGTON DR FAYETTEVILLE AR 72704

Lot: **Block:** **S-T-R: 10-16-31**

Addition: 10-16-31 FAYETTEVILLE OUTLOTS

School District: FARMINGTON SCH, FAY **Tax District: 062**

City: FAYETTEVILLE

**Legal: ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS
PER ANNEXATION ORDINANCE NO. 4888 PT NW SW 0.50 AC**

Current Year A79 Credit Status:

Last Appraised: 2007	Appraised Value	Taxable Value
Land	11,250	2,250
Improvement	15,250	3,050
Total	26,500	5,300

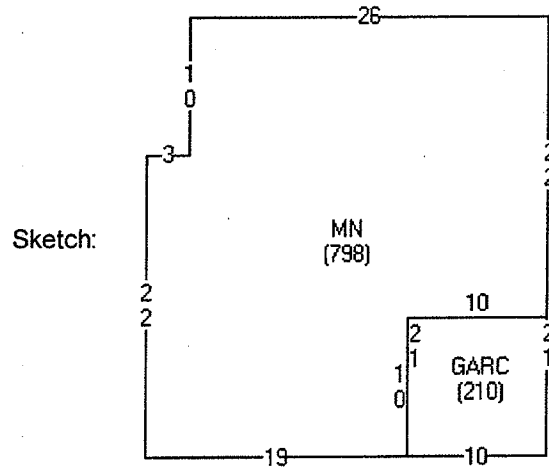
Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2008	5,300	\$271.36	\$0.00	\$0.00	\$0.00	\$0.00		\$271.36	\$271.36	PAID
2007	5,071	\$260.14	\$0.00	\$0.00	\$0.00	\$0.00		\$260.14	\$260.14	PAID
2006	4,610	\$242.03	\$0.00	\$0.00	\$0.00	\$0.00		\$242.02	\$242.02	PAID

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2008	2519	04/07/2009	\$271.36	\$0.00	\$0.00	\$0.00	\$0.00	\$271.36
2007	10189	04/21/2008	\$260.14	\$0.00	\$0.00	\$0.00	\$0.00	\$260.14
2006	14653	4/6/2007	\$242.02	\$0.00	\$0.00	\$0.00	\$0.00	\$242.02

Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
11/3/1999	<u>99-99818</u>	NWACHUKWU, PRINCE N. & RHONDA G.		WD	22,000	72.60
LMB ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS PER ANNEXATION ORDINANCE NO. 4888 LMV FOR 2006: ACREAGE CORRECTION FROM 0.75 AC TO 0.50 AC PER MEETS AND BOUNDS DESCRIPTION LRR 99-99818 WD 72.60 (22M)						
11/17/1998	<u>98-101002</u>	MCCARTY, ALVIN & SHIRLEY M.		WD	21,000	69.30
MS 98-101002 WD \$69.30 (21M)						
1/5/1989	<u>1303-373</u>	ADKINS, TILLMAN R. & BETTY S.		WD	17,000	37.40

1/1/1985	<u>843-379</u>	REEL, V J & BESSIE	WD	0	0.00
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Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
6	P	CONC/BLK			63



Record 1 of 1 &nbsp;Last Updated 10/01/09

Parcel Number: **765-16152-625** Prev. Parcel Number: **001-11715-000** Type: **RI**Location: **7170 W WEDINGTON DR**Owner Name: **GOAD, JUDY L**Mailing Address: **7170 W WEDINGTON DR FAYETTEVILLE AR 72701**Lot: Block: S-T-R: **10-16-31**Addition: **10-16-31 FAYETTEVILLE OUTLOTS**School District: **FARMINGTON SCH, FAY** Tax District: **062**City: **FAYETTEVILLE**Legal: **ANNEXED TO CITY OF FAYETTEVILLE FOR 2006 & FOLLOWING YEARS
PER ANNEXATION ORDINANCE NO. 4888 PT NW SW 1.25AC**Current Year A79 Credit Status: **V**

Last Appraised: 2007	Appraised Value	Taxable Value
Land	29,700	5,191
Improvement	47,950	9,590
Total	77,650	14,781

Tax History

Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit Status	A79	Net Total Tax	Total Tax Paid	Payment Status
2008	13,644	\$698.57	\$0.00	\$0.00	\$0.00	\$0.00		\$698.57	\$698.57	PAID
2007	12,507	\$641.61	\$0.00	\$0.00	\$0.00	\$0.00		\$641.61	\$641.61	PAID
2006	11,370	\$596.93	\$0.00	\$0.00	\$0.00	\$0.00		\$596.92	\$596.92	PAID

Available Tax Payment Receipt(s)

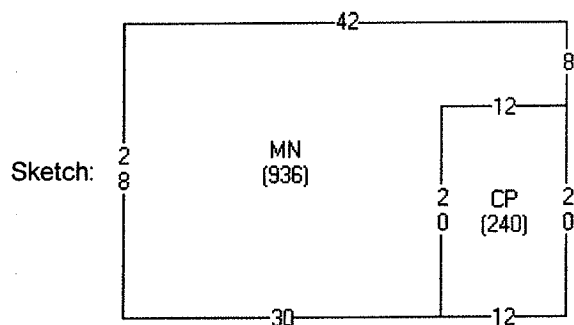
Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2008	38189	09/02/2009	\$698.57	\$0.00	\$0.00	\$0.00	\$0.00	\$698.57
2007	49731	10/02/2008	\$641.61	\$0.00	\$0.00	\$0.00	\$0.00	\$641.61
2006	104403	10/4/2007	\$596.92	\$0.00	\$0.00	\$0.00	\$0.00	\$596.92

Deed History

Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
9/1/2009	<u>2009-28569</u>	GOAD, JUDY L		WD	80,000	264.00
	AJM 2009-28569 WD \$264.00 (80M)					
1/1/1985	<u>774-386</u>	GREGORY, JAMES LEON & HELEN Y.		WD	0	0.00

Structure Number	Occupancy Type	Construction Type	First Floor Living Area	Total Living Area	Year Constructed	Basement Area
1	SF	FS	936	936	1973	

Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
5	A	FRAME			34



Out Buildings and Yard Improvements

Qty	Description	Size	Quality
1	Driveway, concrete	12x16	
1	Wellhouse		

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Parcel Number: 001-11671-000 Prev. Parcel Number: 114309-000-00 Type: A1
Location: 12360 MARTIN RD
Owner Name: LEWIS, SCOTT A
Mailing Address: 12360 MARTIN RD FAYETTEVILLE AR 72704
Lot: **Block:** **S-T-R:** 10-16-31
Addition: 10-16-31
School District: FARMINGTON SCH, RURAL **Tax District:** 060
City: RURAL
Legal: PT S/2 NW NW 7.04AC
Current Year A79 Credit Status: O

Last Appraised: 2007	Appraised Value	Taxable Value
Land	35,700	4,050
Improvement	130,100	22,906
Total	165,800	26,956

Tax History

Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2008	25,794	\$1,266.49	\$0.00	\$0.60	\$0.00	\$350.00	O	\$917.09	\$917.09	PAID
2007	24,632	\$1,211.89	\$0.00	\$0.60	\$0.00	\$350.00	O	\$862.49	\$862.49	PAID
2006	23,470	\$1,182.89	\$0.00	\$0.60	\$0.00	\$300.00	O	\$883.49	\$883.49	PAID
2005	22,664	\$1,067.47	\$0.00	\$0.60	\$0.00	\$300.00	O	\$768.07	\$768.07	PAID
2004	21,627	\$1,028.58	\$0.00	\$0.60	\$0.00	\$300.00	O	\$729.18	\$729.18	PAID
2003	20,590	\$998.82	\$0.00	\$0.60	\$0.00	\$300.00		\$699.42	\$699.42	PAID
2002	20,590	\$895.87	\$0.00	\$0.60	\$0.00	\$0.00		\$896.47	\$896.47	PAID
2001	20,031	\$871.55	\$0.00	\$0.60	\$0.00	\$0.00		\$872.15	\$872.15	PAID
2000	18,210	\$692.89	\$0.00	\$0.60	\$0.00	\$0.00		\$693.49	\$693.49	PAID
1999	18,210	\$702.00	\$0.00	\$0.60	\$0.00	\$0.00		\$702.60	\$702.60	PAID
1998	18,210	\$703.82	\$0.00	\$0.60	\$0.00	\$0.00		\$704.42	\$704.42	PAID
1997	18,210	\$613.68	\$0.00	\$0.60	\$0.00	\$0.00		\$614.28	\$614.28	PAID

Available Tax Payment Receipt(s)

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2008	13255	04/28/2009	\$916.49	\$0.00	\$0.60	\$0.00	\$0.00	\$917.09
2007	15223	04/29/2008	\$861.89	\$0.00	\$0.60	\$0.00	\$0.00	\$862.49
2006	39968	4/27/2007	\$882.89	\$0.00	\$0.60	\$0.00	\$0.00	\$883.49
2005	22105	4/19/2006	\$767.47	\$0.00	\$0.60	\$0.00	\$0.00	\$768.07
2004	7763	4/25/2005	\$728.58	\$0.00	\$0.60	\$0.00	\$0.00	\$729.18
2003	124650	10/23/2004	\$698.82	\$0.00	\$0.60	\$0.00	\$0.00	\$699.42
2002	35720	5/8/2003	\$895.87	\$0.00	\$0.60	\$0.00	\$0.00	\$896.47
2001	19635	4/18/2002	\$871.55	\$0.00	\$0.60	\$0.00	\$0.00	\$872.15
2000	11660	5/15/2001	\$692.89	\$0.00	\$0.60	\$0.00	\$0.00	\$693.49

1999	13149	5/1/2000	\$702.00	\$0.00	\$0.60	\$0.00	\$0.00	\$702.60
1998	7071	4/21/1999	\$703.82	\$0.00	\$0.60	\$0.00	\$0.00	\$704.42

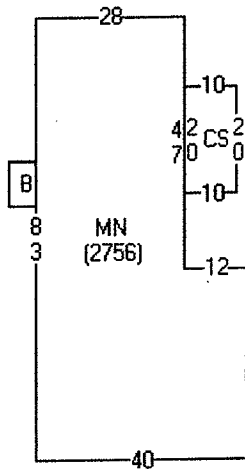
Deed History

Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
6/4/2003	<u>2003-32230</u>	LEWIS, SCOTT A		FD	125,000	412.50
PYM 2003-32230 FD \$412.50 REV (125M) (JEFFERY A. BYNUM ADMINISTRATOR OF THE ESTATE OF PERRY NATHAN BYNUM						
1/9/1995	<u>97-73498</u>	BYNUM, PERRY		QC	0	0.00
JLF 4/3/98 97-73498 QCD NO REV. FROM MARY ANN BYNUM						
4/6/1992	<u>92-18124</u>	BYNUM, PERRY N. & MARY ANN		WD	75,000	165.00
1/1/1985	<u>800-134</u>	ATTO, BILLY J & SYLVIA E		WD	0	0.00

Structure Number	Occupancy Type	Construction Type	First Floor Living Area	Total Living Area	Year Constructed	Basement Area
1	SF	FS	2756	2756	1964	

Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
4	A	STANDARD	1SG		43

Sketch:



Out Buildings and Yard Improvements

Qty	Description	Size	Quality
1	General Purpose Barn	28x18	
1	Garage - frame unfinished, det	26x24	

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Record 1 of 1 Last Updated 10/01/09

Parcel Number: **001-11672-000** Prev. Parcel Number: **114307-000-00** Type: **AI**Location: **12341 MARTIN RD**Owner Name: **GALLAGHER, JAMES F & DIANA L**Mailing Address: **12279 MARTIN RD. FAYETTEVILLE AR 72704**

Lot:

Block:

S-T-R: **10-16-31**Addition: **10-16-31**School District: **FARMINGTON SCH, RURAL**Tax District: **060**City: **RURAL**Legal: **PT NW NW 6.62AC**Current Year A79 Credit Status: **V**Last Appraised: **2007**

Appraised Value

Taxable Value

Land

35,600**4,512**

Improvement

102,650**20,530**

Total

138,250**25,042**

Tax History

Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2008	23,116	\$1,135.00	\$0.00	\$0.75	\$0.00	\$0.00	V	\$1,135.75	\$1,135.75	PAID
2007	21,190	\$1,042.55	\$0.00	\$0.75	\$0.00	\$0.00	V	\$1,043.30	\$1,043.30	PAID
2006	19,264	\$970.91	\$0.00	\$0.75	\$0.00	\$0.00	V	\$971.66	\$971.66	PAID
2005	19,252	\$906.77	\$0.00	\$0.75	\$0.00	\$300.00	O	\$607.52	\$607.52	PAID
2004	18,371	\$873.72	\$0.00	\$0.75	\$0.00	\$300.00	O	\$574.47	\$574.47	PAID
2003	17,490	\$848.44	\$0.00	\$0.75	\$0.00	\$300.00	O	\$549.19	\$549.19	PAID
2002	17,314	\$753.33	\$0.00	\$0.75	\$0.00	\$300.00	O	\$454.08	\$454.08	PAID
2001	16,527	\$719.09	\$0.00	\$0.75	\$0.00	\$300.00	O	\$419.84	\$419.84	PAID
2000	15,740	\$598.91	\$0.00	\$0.75	\$0.00	\$300.00	O	\$299.66	\$299.66	PAID
1999	15,740	\$606.78	\$0.00	\$0.75	\$0.00	\$0.00		\$607.53	\$607.53	PAID
1998	15,740	\$608.35	\$0.00	\$0.75	\$0.00	\$0.00		\$609.10	\$609.10	PAID
1997	15,740	\$530.44	\$0.00	\$0.75	\$0.00	\$0.00		\$531.19	\$531.19	PAID

Available Tax Payment Receipt(s)

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2008	12743	04/27/2009	\$1,135.00	\$0.00	\$0.75	\$0.00	\$0.00	\$1,135.75
2007	14445	04/28/2008	\$1,042.55	\$0.00	\$0.75	\$0.00	\$0.00	\$1,043.30
2006	29832	4/25/2007	\$970.91	\$0.00	\$0.75	\$0.00	\$0.00	\$971.66
2005	35483	4/25/2006	\$606.77	\$0.00	\$0.75	\$0.00	\$0.00	\$607.52
2004	51642	6/28/2005	\$573.72	\$0.00	\$0.75	\$0.00	\$0.00	\$574.47
2003	22327	4/27/2004	\$548.44	\$0.00	\$0.75	\$0.00	\$0.00	\$549.19
2002	35721	5/8/2003	\$453.33	\$0.00	\$0.75	\$0.00	\$0.00	\$454.08
2001	14122	4/16/2002	\$419.09	\$0.00	\$0.75	\$0.00	\$0.00	\$419.84
2000	4861	4/24/2001	\$298.91	\$0.00	\$0.75	\$0.00	\$0.00	\$299.66

Deed History						
Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
6/24/2005	<u>2005-27779</u>	GALLAGHER, JAMES F. & DIANA L.		WD	145,000	478.50
SN 2005-27779 WD \$478.50 REV(145M)						
6/25/1990	<u>1373-512</u>	FLEMING, MARSHALL C., JR. & NONA		WD	64,000	140.80
1/1/1985	<u>1373-518</u>	YOUNG, WILSON & NAOMI		WD	43,000	47.30

Sketch:

The diagram shows a structural frame with the following details:

- Nodes:**
 - Node 1: Top-left corner.
 - Node 2: Top-right corner.
 - Node 3: Middle-right corner.
 - Node 4: Bottom-right corner.
 - Node 5: Bottom-left corner.
- Members:**
 - Member 12: Top horizontal member (Node 1 to Node 2).
 - Member 21: Right vertical member (Node 2 to Node 3).
 - Member 32: Middle vertical member (Node 3 to Node 4).
 - Member 43: Bottom horizontal member (Node 4 to Node 5).
 - Member 51: Left vertical member (Node 5 to Node 1).
- Loads:**
 - OP: A point load acting downwards at the midpoint of member 12.
 - 70: A uniformly distributed load acting downwards along the entire length of member 12.
- Supports:**
 - Node 1: Fixed support.
 - Node 5: Roller support.
- Other Labels:**
 - MN (1816): A label placed in the central area of the frame.
 - MFA (462): A label placed near the middle-right corner (Node 3).

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Parcel Number: 001-11670-002 Prev. Parcel Number: 001-11670-000 Type: AI
Location: 12375 W DOUBLE SPRINGS RD
Owner Name: GOLDEN, GARY & KATHY
Mailing Address: 12375 W Double Springs Rd Fayetteville AR 72704-9538
Lot: **Block:** **S-T-R:** 10-16-31
Addition: 10-16-31
School District: FARMINGTON SCH, RURAL **Tax District:** 060
City: RURAL
Legal: PT N/2 NW NW 8.66 A
Current Year A79 Credit Status: V

Last Appraised: 2007	Appraised Value	Taxable Value
Land	70,750	9,620
Improvement	30,250	6,050
Total	101,000	15,670

Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2008	14,760	\$724.72	\$0.00	\$0.90	\$0.00	\$0.00	V	\$725.62	\$0.00	
2007	13,850	\$681.42	\$0.00	\$0.90	\$0.00	\$0.00	V	\$682.32	\$682.32	PAID
2006	9,100	\$458.64	\$0.00	\$0.90	\$0.00	\$0.00	V	\$459.54	\$459.54	PAID
2005	8,532	\$401.86	\$0.00	\$0.90	\$0.00	\$0.00	V	\$402.76	\$402.76	PAID
2004	7,821	\$371.97	\$0.00	\$0.90	\$0.00	\$0.00	V	\$372.87	\$372.87	PAID
2003	7,110	\$344.91	\$0.00	\$1.05	\$0.00	\$0.00	V	\$345.96	\$345.96	PAID
2002	7,110	\$309.36	\$0.00	\$1.05	\$0.00	\$0.00	V	\$310.41	\$310.41	PAID
2001	7,110	\$309.36	\$0.00	\$1.05	\$0.00	\$263.67	O	\$51.42	\$51.42	PAID
2000	7,060	\$268.63	\$0.00	\$1.05	\$0.00	\$268.63	O	\$1.05	\$1.05	PAID
1999	7,060	\$272.16	\$0.00	\$1.05	\$0.00	\$0.00		\$273.21	\$273.21	PAID
1998	7,060	\$272.87	\$0.00	\$1.05	\$0.00	\$0.00		\$273.92	\$273.92	PAID
1997	7,060	\$237.92	\$0.00	\$1.05	\$0.00	\$0.00		\$238.97	\$238.97	PAID

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2007	1043618	07/15/2009	\$681.42	\$0.00	\$0.99	\$0.00	\$124.13	\$806.54
2006	1014979	04/14/2008	\$458.64	\$0.00	\$0.99	\$0.00	\$73.45	\$533.08
2005	58481	6/7/2006	\$401.86	\$0.00	\$0.90	\$0.00	\$0.00	\$402.76
2004	42320	5/17/2005	\$371.97	\$0.00	\$0.90	\$0.00	\$0.00	\$372.87
2003	47285	6/9/2004	\$344.91	\$0.00	\$1.05	\$0.00	\$0.00	\$345.96
2002	48039	5/30/2003	\$309.36	\$0.00	\$1.05	\$0.00	\$0.00	\$310.41
2001	117015	11/7/2002	\$45.69	\$0.00	\$1.05	\$0.00	\$4.68	\$51.42
2000	2625	4/5/2001	\$0.00	\$0.00	\$1.05	\$0.00	\$0.00	\$1.05
1999	1908	9/19/2000	\$272.16	\$0.00	\$1.05	\$0.00	\$0.00	\$273.21

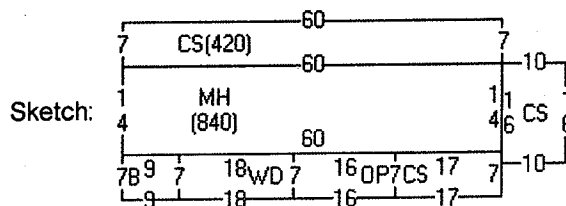
1998 3550 9/29/1999 \$272.87 \$0.00 \$1.05 \$0.00 \$0.00 \$273.92

Deed History

Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
3/9/2001	<u>2001-65667</u>	GOLDEN, GARY & KATHY		WD	0	207.90
SLC FOR 2005: 0.17 A TRANSFERED TO #11669-000 HARVEY & MILDRED LUTTRELL (SEE SURVEY 2004-2962) BH 2001-65667 WD \$207.90 (63M) RE-RECORDED TO SHOW CORRECT LEGAL						
3/9/2001	<u>2001-24959</u>	GOLDEN, GARY & KATHY		WD	63,000	207.90
WCS 2001-24959 WD \$207.90 REV (63M)						
11/14/1991	<u>1441-689</u>	SMITH, PAUL D. & BARBARA J.		WD	44,000	96.80

Structure Number	Occupancy Type	Construction Type	First Floor Living Area	Total Living Area	Year Constructed	Basement Area
1	MH	FS	840	840	1974	

Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
5	A	STANDARD			33

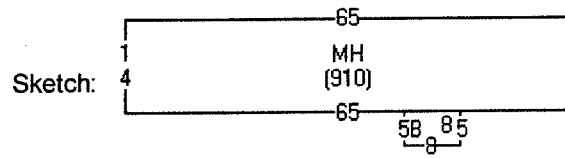


Out Buildings and Yard Improvements

Qty	Description	Size	Quality
1	Wellhouse		

Structure Number	Occupancy Type	Construction Type	First Floor Living Area	Total Living Area	Year Constructed	Basement Area
2	MH	FS	910	910	1979	

Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
5	A	STANDARD			28

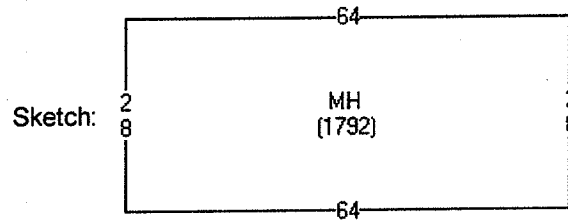


Out Buildings and Yard Improvements

Qty	Description	Size	Quality
1	Outbuilding, frame	10x12	

Structure Number	Occupancy Type	Construction Type	First Floor Living Area	Total Living Area	Year Constructed	Basement Area
3	MH	FS	1792	1792	1996	

Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
5	A	STANDARD			9



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Added at
Agenda Session
10-13-09

AGENDA REQUEST

FOR: COUNCIL MEETING OF OCTOBER 20, 2009

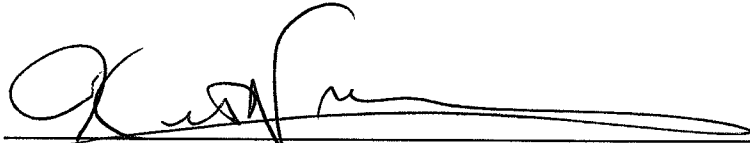
FROM:

KIT WILLIAMS, CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO AMEND CHAPTER 35: TAXATION OF THE FAYETTEVILLE CODE TO INCORPORATE AMENDMENTS OF STATE LAW AFFECTING THE HOTEL, MOTEL AND RESTAURANT TAX

APPROVED FOR AGENDA:



City Attorney

10-13-09
Date



Paul a. Bahr

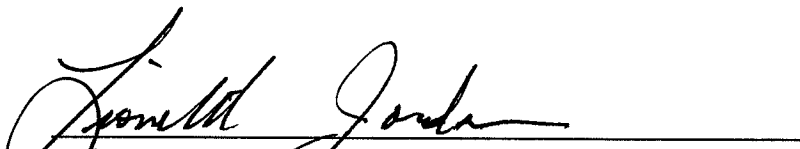
Finance Director & Internal Services Director

10-13-2009
Date



Chief of Staff

10-13-09
Date



Mayor

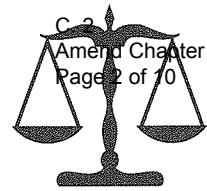
10/13/09
Date

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor
City Council
Don Marr, Chief of Staff

FROM: **Kit Williams**, City Attorney

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

DATE: **October 13, 2009**

RE: **Updating Fayetteville Code To Mirror State Law For Hotel, Motel and Restaurant Tax Revenue Sources and Uses**

The State Legislature has broadened the allowed sources and uses of HMR revenue in the years since Fayetteville adopted its levying ordinance. In 2001, the City Council did amend the Fayetteville Code to broaden the definition of restaurants as allowed by state law. In order to ensure the Advertising and Promotion Commission has the legal authority to fund or loan its revenues to the Botanical Garden Society, I recommend the City Council also amend our Code to mirror current state law.

My proposed language "as currently enacted and as may be amended in the future," will keep our Fayetteville Code in accordance with any further amendments to state law of the definitions of hotels, motels, and restaurants and allowed purposes for use of the A & P Commission's funds.

Since the City Council referred Ordinance 3900 establishing the Parks HMR tax to the voters, an amendment by the City Council requires a two-thirds vote of "members elected to ... the City Council ..." (Amendment 7 of the Arkansas Constitution.) Therefore, an amendment to the Parks HMR ordinance requires six of the eight aldermen to vote yes. A mayor cannot vote on issues involving Amendment 7.

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND CHAPTER 35: TAXATION OF
THE FAYETTEVILLE CODE TO INCORPORATE AMENDMENTS
OF STATE LAW AFFECTING THE HOTEL, MOTEL AND
RESTAURANT TAX**

WHEREAS, on March 1, 1977, the Fayetteville Board of Directors passed Ordinance No. 2310 levying a one percent Hotel, Motel, and Restaurant Tax and creating the Advertising and Promotion Commission; and

WHEREAS, on July 5, 1995, the City Council passed Ordinance No. 3900 which levied a one percent Hotel, Motel, and Restaurant tax to be used by the City Parks and Recreation Department for the promotion and development of City parks and recreation areas; and

WHEREAS, Ordinance No. 3900 was referred to the voters pursuant to A.C.A. §14-55-301 (a) who adopted the ordinance; and

WHEREAS, state law has been amended since the passage of those ordinances (which have been codified into Chapter 35: **Taxation** of the Fayetteville Code); and

WHEREAS, the City Council desires to incorporate all aspects of the current state law regarding the Hotel, Motel and Restaurant tax into the Fayetteville Code.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends the names of Article II and Article III of Chapter 35: **Taxation** of the Fayetteville Code from their current "**Transient Occupancy Tax**" and "**Additional Occupancy Tax**" to "**Hotel, Motel and Restaurant Tax**" and "**Parks Hotel, Motel and Restaurant Tax**."

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends Chapter 35: **Taxation** of the Fayetteville Code by amending §35.20 **Levy of Tax** and §35.31 **Levy of Parks HMR tax** by adding a following sentence at the end of each section: "The levy of this tax shall also be applied to and include all items described in A.C.A. §26-75-602 **Levying authority** as currently enacted and as may be amended in the future."

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby amends §35.24 **Advertising and Promotion Fund**, subsection (B) by enacting and adding the following sentence: "The Advertising and Promotion Fund may be used for any purpose authorized by state law within A.C.A. §26-75-606 as currently enacted and as may be amended in the future."

PASSED and APPROVED this 20th day of October, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

FAYETTEVILLE CODE OF ORDINANCES
TITLE III ADMINISTRATION

CHAPTER 35: TAXATION

ARTICLE I
TAX ON REAL AND
PERSONAL PROPERTY

35.01 Levying Of Tax

- (A) A tax is hereby levied on the real and personal property within the city.
- (B) The tax so levied and the rate provided therefor are hereby certified to the County Clerk, to be placed in the tax book by the County Clerk and collected in the same manner that the county and school district taxes are collected.
- (C) The City Clerk is hereby authorized and directed to file certified copies of this section in the office of the County Recorder, County Clerk, County Assessor, and the County Tax Collector.

(Ord. No. 3384, 10-18-88; Code 1991, §35.01)

State law reference(s)--Taxation generally, A.C.A. §26-73-101 et seq.; Levying of tax, A.C.A. §26-75-207.

35.02-35.18 Reserved

ARTICLE II
TRANSIENT OCCUPANCY TAX*

35.19 Definitions

Bakeries, donut shops and ice cream shop. These are included within the definitions of "similar businesses" of this ordinance and are therefore subject of this tax.

Beverage shops. Businesses that sell beverages prepared or dispensed at their business are included within the definition of "similar businesses" of this ordinance and are therefore subject to this tax.

Caterers. Caterers are for profit businesses or persons who deliver or serve catered food or beverages at a location within the city limits of Fayetteville.

Concession stands. Stands run by non-profit groups are excluded from this taxation, as well as stands operated on a short term basis, such as First Night, Springfest, Autumnfest and county fairs. Other stands operated on a recurring basis, such as for

athletic events, barbecue stands and other on-going stands, whether mobile or stationary, will collect the Parks HMR tax.

Convenience stores. All food and beverages prepared on site are taxable.

Delis. Delis shall include establishments selling prepared food or beverage as defined, however this tax shall not apply to sliced meat and/or cheese sold by the pound.

Prepared food or beverage. Any food or beverage product prepared or altered in a food/beverage establishment for sale.

(Ord. No. 4317, 6-5-01)

***Note**--The definitions section of this ordinance was assigned a new number to make it consistent with other definition sections throughout this code and arranged in alphabetical order by this codifier.

35.20 Levy Of Tax

There is hereby levied, effective, a tax of 1% (the tax) upon the gross receipts from the renting, leasing or otherwise furnishing of hotel or motel accommodations for profit in the city and upon the portion of gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, caterers and similar businesses as may be defined from time to time by ordinance from the sale of prepared food and beverages for on or off-premises consumption, but such tax shall not apply to such gross receipts or gross proceeds of organizations qualified under §501(c)(3) of the Federal Internal Revenue Code.

(Code 1965, §18A-1(a); Ord. No. 2310, 3-1-77; Ord. No. 2648, 7-15-80; Ord. No. 2711, 3-24-81; Ord. No. 2869, 10-19-82, Ord. No. 4317, 6-5-01; Code 1991, §35.20)

Cross reference(s)--Penalty, §35.99.

State law reference(s)--Authority generally, A.C.A. §26-75-602.

35.21 Collection; When Payment Due

The tax shall be collected from the purchaser or user of the food or accommodations by the person, firm, corporation, association, trust, or estate (or other entity of whatever nature) selling such food or furnishing such accommodations (the taxpayer), and

FAYETTEVILLE CODE OF ORDINANCES
TITLE III ADMINISTRATION

the taxpayer shall remit to the city by the 20th day of each month all collections of the tax for the preceding month, accompanied by reports on forms to be prescribed by the mayor.

(Code 1965, §18A-1(b); Ord. No. 2310, 3-1-77; Ord. No. 2648, 7-15-80; Ord. No. 2711, 3-24-81; Ord. No. 2869, 10-19-82; Code 1991, §35.21)

State law reference(s)--Gross receipts taxes authorized, A.C.A. §26-75-602.

35.22 Application Of Rules And Regulations

As provided in A.C.A. §26-52-301 et seq., as amended, together with the rules and regulations thereunder, shall, so far as practicable, apply to the administration, collection, assessment, and enforcement of the tax.

(Code 1965, §18A-1(c); Ord. No. 2310, 3-1-77; Ord. No. 2648, 7-15-80; Ord. No. 2711, 3-24-81; Ord. No. 2869, 10-19-82; Code 1991, §35.22)

State law reference(s)--Tax levied. §26-52-301 at seq 1.

35.23 Repealed

See 33.311

35.24 Advertising And Promotion Fund

- (A) There is hereby created the city Advertising and Promotion Fund, to which fund there shall be credited all collections of the tax.
- (B) The city Advertising and Promotion Fund shall be used, in the manner determined by the city Advertising and Promotion Commission, exclusively for the advertisement and promotion of the city and its environs and/or for the construction, maintenance, repair, and operation of a convention center, including the pledge of revenues therein to the payment of bonds issued under A.C.A. §26-75-607.

ADD SENTENCE
(Code 1965, §18A-1(d), (e); Ord. No. 2310, 3-1-77; Ord. No. 2648, 7-15-80; Ord. No. 2711, 3-24-81; Ord. No. 2869, 10-19-82; Code 1991, §35.24)

State law reference(s)--A.C.A. §26-75-607, Authority to issue bonds.

35.25 Penalties And Enforcement

The city may assess penalties and interest against taxpayers who fail to timely report or pay the tax. The penalty shall be equal to five percent of the unpaid tax amount per month not to exceed a total assessment of 35% of the unpaid tax. Simple interest on unpaid

taxes shall be assessed at the rate of 10% per annum. In addition, the city may exercise all powers listed under A.C.A. §26-75-603 (c) as may be amended from time to time and may utilize the provisions of A.C.A. §26-75-603 (d) and (e) amended from time to time in enforcing the tax.

(Ord. No. 4303, 3-20-01)

State law reference(s)--A.C.A. §26-75-603, collection of tax.

35.26 Examinations And Investigations

The collector of the tax in order to enforce the tax, by determining the accuracy of taxpayer reports and remittances, or fixing any liability under the ordinance, may make an examination or investigation of the place of business, the tangible personal property, equipment, and facilities, and the books, records, papers, vouchers, accounts, and documents of any taxpayer or other person. Every taxpayer or other person and his agents and employees shall exhibit to the collector these places and items and facilitate any examination or investigation.

(Ord. No. 4303, 3-20-01)

35.27 Rules And Regulations

The city after notice and public hearing may pass any rules and regulations necessary for carrying into effect the provisions for the enforcement of this ordinance.

(Ord. No. 4303, 3-20-01)

35.28-35.29 Reserved

ARTICLE III ADDITIONAL OCCUPANCY TAX*

Change Title

35.30 Definitions

Bakeries, donut shops and ice cream shop. These are included within the definitions of "similar businesses" of this ordinance and are therefore subject of this tax.

Beverage shops. Businesses that sell beverages prepared or dispensed at their business are included within the definition of "similar businesses" of this ordinance and are therefore subject to this tax.

Caterers. Caterers are for profit businesses or persons who deliver or serve catered food or beverages at a location within the city limits of Fayetteville.

FAYETTEVILLE CODE OF ORDINANCES
TITLE III ADMINISTRATION

Concession stands. Stands run by non-profit groups are excluded from this taxation, as well as stands operated on a short term basis, such as First Night, Springfest, Autumnfest and county fairs. Other stands operated on a recurring basis, such as for athletic events, barbecue stands and other on-going stands, whether mobile or stationary, will collect the Parks HMR tax.

Convenience stores. All food and beverages prepared on site are taxable.

Delis. Delis shall include establishments selling prepared food or beverage as defined, however this tax shall not apply to sliced meat and/or cheese sold by the pound.

Prepared food or beverage. Any food or beverage product prepared or altered in a food/beverage establishment for sale.

(Ord. No. 4317, 6-5-01; Ord. No. 4318, 6-5-01)

State law reference(s)--Gross receipts tax authorized, A.C.A. §26-75-602(c)(2).

Fed law reference(s)--F.I.R.C. §501(c)(3)

35.31 Levy Of Parks HMR Tax

There is hereby levied, a tax of 1% (the tax) upon the gross receipts or gross proceeds from the renting, leasing, or otherwise furnishing of hotel or motel accommodations for profit in the city and upon the portion of the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, caterers and similar businesses as may be defined from time to time by ordinance from the sale of prepared food and beverages for on or off-premises consumption, but such tax shall not apply to such gross receipts or gross proceeds of organizations qualified under §501(c)(3) of the Federal Internal Revenue Code.

(Ord. No. 3900, §1, 7-5-95; Ord. No. 4318, 6-5-01; Code 1991, §35.31)

State law reference(s)--Penalty, A.C.A. §26-75-601 et seq.

35.32 Disposition Of Revenues

- (A) The revenues collected from the additional tax of 1% shall be used by the city parks and recreation department for the promotion and development of city parks and recreation areas.

- (B) Proceeds of the additional 1% tax shall be deposited into a special fund established by the city to be used for the development, construction, and maintenance of city parks. The funds shall be disbursed by the mayor upon approval of the City Council.

(Ord. No. 3900, §2, 7-5-95; Code 1991, §35.32)

State law reference(s)--A.C.A. Collection of tax § 26-75-603.

35.33 Penalties And Enforcement

The city may assess penalties and interest against taxpayers who fail to timely report or pay the tax. The penalty shall be equal to five percent of the unpaid tax amount per month not to exceed a total assessment of 35% of the unpaid tax. Simple interest on unpaid taxes shall be assessed at the rate of 10% per annum. In addition, the city may exercise all powers listed under A.C.A. §26-75-603 (c) as may be amended from time to time and may utilize the provisions of A.C.A. §26-75-603 (d) and (e) as may be amended from time to time in enforcing the tax.

(Ord. No. 4302, 3-20-01)

35.34 Examinations And Investigations

The collector of the tax in order to enforce the tax, by determining the accuracy of taxpayer reports and remittances, or fixing any liability under the ordinance, may make an examination or investigation of the place of business, the tangible personal property, equipment, and facilities, and the books, records, papers, vouchers, accounts, and documents of any taxpayer or other person. Every taxpayer or other person and his agents and employees shall exhibit to the collector these places and items and facilitate any examination or investigation.

(Ord. No. 4302, 3-20-01)

35.35 Rules And Regulations

The city after notice and public hearing may pass any rules and regulations necessary for carrying into effect the provisions for the enforcement of this ordinance.

(Ord. No. 4302, 3-20-01)

35.36-35.39 Reserved

35.40 Enforcement Of Tax Laws And Code Compliance For Outdoor Vendors During The Bikes, Blues, And Barbeque, Inc. Annual Festival

FAYETTEVILLE CODE OF ORDINANCES
TITLE III ADMINISTRATION

- (A) During the annual Bikes, Blues and Barbeque festival; Bikes, Blues and Barbeque, Inc. shall ensure that all outdoor vendors have all necessary health permits and zoning compliance permits prior to issuing its permit to allow the vendor to operate.
- (B) Bikes, Blues and Barbeque, Inc. shall require all of its authorized vendors to conspicuously display its authorizing permit during all hours of operation.
- (C) Bikes, Blues and Barbeque, Inc. shall ensure that each authorized vendor shall remit all required sales and use taxes at the end of each day's operation and shall remove its authorizing permit from any vendor who fails to timely and completely remit these taxes.
- (D) If a vendor attempts to sell goods or services without all the required permits conspicuously displayed, such vendor shall be guilty of a violation and be subject to the penalty provided for in §35.99.
- (E) The above permit requirement shall not be applicable to vendors at the Fayetteville Farmer's Market, for merchants with an established physical address and building and established record of proper HMR tax remission to the City, or other vendors specifically exempted by state law from such permit requirements.

(Ord. 4912, 8-15-06)

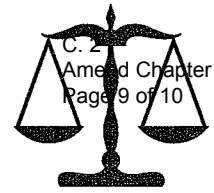
35.41-35.98 Reserved

35.99 Penalty

It shall be unlawful for any taxpayer, as defined in §35.21, to fail to remit to the city by the twentieth day of each month all collections of the tax for the preceding month as levied by §35.20, and, upon conviction thereof, the taxpayer shall be punished by a fine of not more than \$500.00, or double that sum for each repetition of such offense.

(Code 1965, §18A-(b); Ord. No. 2310, 3-1-77; Ord. No. 2648, 7-15-80; Ord. No. 2711, 3-24-81; Ord. No. 2869, 10-19-82)

Note--Ordinance No. 4318, adopted June 2001, enacts provisions to add a new section which is now included §35.30 definitions, to be consistent with this Code.



TO: **Lioneld Jordan, Mayor**
City Council
A & P Commissioners

FROM: **Kit Williams, City Attorney**

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

DATE: **October 13, 2009**

RE: **Legality of no interest loan to Botanical Garden Society from**
A & P Commission

State law allows the Advertising and Promotion Commission to use its funds for the "(o)peration of tourist promotion facilities in the city ... if the city owns an interest in the ... facility" A.C.A. §26-75-606 (a)(iii).

The law further allows A & P funds to "be used, spent or pledged by the commission in addition to all other purposes prescribed in this subchapter, on and for the ... operation of public recreation facilities in the city ... if the city owns an interest in the ... facility" A.C.A. §26-75-606 (b)(2).

The law also states that revenues from the HMR tax may be used or pledged "for the operation of tourist-oriented facilities, including ... family entertainment facilities" A.C.A. §26-75-606 (b)(1)(A).

These A & P Commission funds may only be used if the A & P Commission determines that such funding generally promotes or encourages tourism and is not "utilized for expenditures that are normally paid from the general revenues of the city." A.C.A. §26-75-606 (c)(4).

State law, thus appears to give the A & P Commission the power to use or pledge funds for the operation of the Botanical Garden in Lake Fayetteville Park. If the A & P Commission can "use" funds, I think the broad term "use" can include a no interest loan.

The state law I have quoted has evolved over time to allow the A & P Commissions throughout Arkansas more discretion of the use of their funds. Some of the statutory authority granted to A & P Commissions relevant to this request to fund the operation of the Botanical Garden was added after the City of Fayetteville passed ordinances establishing the A & P Commission and granting it the powers then existing in state law. Prior to using \$50,000.00 of its A & P Commission revenues to fund the operation of the Botanical Garden, it would be advisable to amend the Fayetteville Code to match current state law. I will draft such an amendment to the Fayetteville Code if Mayor Jordan wishes to present it for City Council consideration during its Agenda meeting today.

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

**City of Fayetteville Arkansas
City Council Meeting Minutes
October 6, 2009**

A meeting of the Fayetteville City Council was held on October 6, 2009 at 6:00 PM 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 Thiel, Cook, Petty, Rhoads, Ferrell, Lucas, Lewis, Gray, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Alderman Rhoads arrived at 6:25 p.m.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan welcomed Troop 116 from Sequoyah United Methodist Church. He stated it is wonderful to have you all here tonight.

Methamphetamine Awareness Month Proclamation.

Mayor Jordan read the proclamation.

Presentations, Reports and Discussion Items:

Newspaper Publishing Discussion: Resolution 77-09 was passed on April 7, 2009 to be revisited in 6 months.

Alderman Cook: We passed this and chose to revisit this in six months to discuss it. I was given some numbers from staff and we had seen some savings from advertising so at this point I am just asking that we continue with the policy unless anyone else has other comments.

Mayor Jordan: What is the wish from the Council, to just continue on?

A discussion followed on if a motion to continue was required.

City Attorney Kit Williams stated to continue on we do not need a motion.

The City Council decided to continue on as is.

Nominating Committee Report:

Alderman Cook stated the Housing Authority has selected Brittany Kendrick to represent them.

Alderman Cook moved to approve the appointment to the Housing Authority Board. Alderman Gray seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

Consent:

Approval of the September 1, 2009 and September 15, 2009 City Council meeting minutes.

Approved

Bid # 09-54 Frost Oil Company: A resolution awarding Bid # 09-54 and approving a contract with Frost Oil Company in the estimated annual amount of \$58,363.06 to supply engine oil and lubricants to the Fleet Operations Division.

Resolution 204-09 as recorded in the office of the City Clerk.

Bid # 09-55 Electronic Video Systems: A resolution awarding Bid # 09-55 and approving the purchase of a video production system and related equipment from Electronic Video Systems in the amount of \$23,183.00 for use in the City Council Chamber.

Resolution 205-09 as recorded in the office of the City Clerk.

Bid # 09-57 Danny Robinson Construction, LLC: A resolution awarding Bid # 09-57 and approving a contract with Danny Robinson Construction, LLC in the amount of \$91,044.00 for the complete installation of two (2) trail bridges for the third phase of Lake Fayetteville Trail; and approving a 15% project contingency in the amount of \$13,656.60.

Resolution 206-09 as recorded in the office of the City Clerk.

Bid # 09-58 Chevy of Fayetteville: A resolution rescinding resolution # 117-09, awarding Bid # 09-58 and approving the purchase of one (1) compact 4 x 4 pickup truck from Chevy of Fayetteville in the amount of \$19,800.00 for use by the Fayetteville Executive Airport.

Resolution 207-09 as recorded in the office of the City Clerk.

Bid # 09-59 Chevy of Fayetteville: A resolution rescinding resolutions # 118-09 and # 122-09 and awarding Bid # 09-59, approving the purchase of two (2) 2 x 4 pickup trucks from Chevy of Fayetteville in the amount of \$33,994.00 for use by the Inspections and Meter Operations Divisions.

Resolution 208-09 as recorded in the office of the City Clerk.

State and Tribal Assistance Grant (STAG): A resolution authorizing the Mayor to accept a State and Tribal Assistance Grant (STAG) in the amount of \$291,000.00 from the U.S. Environmental Protection Agency for sanitary sewer system improvements; and approving a budget adjustment recognizing the grant revenue.

Resolution 209-09 as recorded in the office of the City Clerk.

Insituform Technologies, Inc.: A resolution approving a task order to the contract with Insituform Technologies, Inc. in the amount of \$300,000.00 for cured in-place sanitary sewer main line linings; and approving a contingency in the amount of \$30,000.00.

Resolution 210-09 as recorded in the office of the City Clerk.

Runway 16 Safety Area Improvement Project: A resolution approving offer and acceptance contracts between the City of Fayetteville and the Standard Register Company and Coulson Properties Limited Partnership for the purchase of land needed for the Runway 16 Safety Area Improvement Project; and authorizing the Mayor and City Clerk to execute said agreements.

Resolution 211-09 as recorded in the office of the City Clerk.

2009-2010 Selective Enforcement Program Grant: A resolution accepting the 2009-2010 Selective Traffic Enforcement Program (STEP) grant in the amount of \$108,000.00 for the purpose of paying overtime to officers engaged in the enforcement of DWI/DUI and seatbelt laws and other purposes; and approving a budget adjustment recognizing the grant revenue.

Resolution 212-09 as recorded in the office of the City Clerk.

Amend Police Department's Policies, Procedures & Rules Manual: A resolution approving and adopting amendments to the Fayetteville Police Department's Policies, Procedures & Rules Manual.

Mayor Jordan: The Police Chief asked that Item #11 on the Consent Agenda be tabled.

City Attorney Kit Williams: It will need to be pulled from the Consent Agenda and then tabled to the next meeting.

Alderman Petty moved to remove Item # 11 Amend Police Department's Policies, Procedures & Rules Manual from the Consent Agenda and table it to The October 20, 2009 City Council meeting. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

This resolution was removed from the Consent Agenda.

Alderman Cook moved to approve the Consent Agenda as read with Item # 11 Amend Police Department's Policies, Procedures & Rules Manual removed from the Consent Agenda. Alderman Petty seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

Agenda Additions: None

Unfinished Business:

Rock Quarries Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting.*

Mayor Jordan: This was left on the second reading at the last meeting. There was discussion about sending this to Ordinance Review.

City Attorney Kit Williams handed out the current ordinance that was amended at the last meeting. He stated if you choose to table it tonight that will be what will be considered at Ordinance Review unless you make other changes tonight. I would like to get some input from you on the suggested changes that the Rogers Group submitted to you.

A discussion followed on what steps should be taken in regards to tabling and taking public comment.

City Attorney Kit Williams recommended that it not be read tonight and that it be tabled.

Alderman Thiel: It is going to Ordinance Review Committee meeting tomorrow afternoon at 4:30 PM in Room 326.

Mayor Jordan: So there will be public comment at the Ordinance Review Committee.

Alderman Petty moved to table this ordinance to the October 20, 2009 City Council meeting. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

This ordinance was left on the Second Reading and Tabled to the October 20, 2009 City Council meeting.

Red Dirt Mining Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting.*

Mayor Jordan: Do you all want to do the same thing with this one?

Alderman Lewis: I do want to mention for both of these at the Ordinance Review Committee I would like it to be done in an orderly way that can be addressed on each part of it.

Alderman Thiel: I will certainly try to do that as Chair.

Alderman Lewis: It is a lot of information and to hop around it can be confusing.

Alderman Thiel: Right and have Kit explain it.

City Attorney Kit Williams: Also if any Aldermen want to call me tomorrow and make any suggestions I would be happy to talk with you. Otherwise we will try to do redrafting if any at the Ordinance Review Committee meeting.

Alderman Petty moved to table this ordinance to the October 20, 2009 City Council meeting. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

This ordinance was left on the Second Reading and Tabled to the October 20, 2009 City Council meeting.

New Business:

2009 Sales and Use Tax Bond Ordinance: An ordinance authorizing the issuance and sale of the City's Sales and Use Tax Capital Improvement Bonds, Series 2009, for the purpose of financing a portion of the costs of certain street and trail system improvements; authorizing the execution and delivery of a second supplemental trust indenture pursuant to which the bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

City Attorney Kit Williams read the ordinance.

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

Alderman Petty: Will this issuance of bonds to the trails program affect capital funds that we had allocated in previous years to the trails program?

Paul Becker: We will still allocate additional money to the trails program but this will help supplement it.

Alderman Petty: I just wanted to make sure that it's supplemental as we intended originally.

Alderman Ferrell: As we move forward, with the economy changing, is that going to have a positive impact on our ability to go for more down the road?

Paul Becker: If the sales tax picks up we will be able to pay off the old bonds earlier therefore giving us the capacity to issue new bonds faster. Right now it looks like 2013 or 2014 before we can issue new bonds. However if the economy picks up then we can pay those bonds off earlier and issue the third phase quicker.

Alderman Petty: During the 2008 campaign season we heard a lot about our bond rating. What is our bond rating now and could you explain what that indicator is?

Paul Becker stated these bonds were rated at A+ which in these times is pretty good because that is stable. That indicates how the rating agency perceives the liability or stability of the bond payments. He went on to describe the ratings.

Alderman Petty: How does our bond rating on these bonds compare to ratings on other bonds in your portfolio in this State and maybe in the four state regions?

Dennis Hunt with Stephens Inc. stated keep in mind that these bonds are subordinate from any having a secondary security to the three quarters of pennies that secures the 2005 bonds that the voters originally approved. Those bonds have an AA- rating so it is very typical to see a slight drop if it is a subordinate bond to those. An AA rating in Northwest Arkansas is about as high as any that I have seen associated with issues in the State. This one is slightly below that because it is taking a second position on the three quarters of a penny until those three quarters of a penny pays off all of the 2005 bonds.

Alderman Lewis: I noticed in the memo it says that three out of every four sales tax dollars collected and paid on these bonds will be used to pay off the principal and one is to pay the interest. Can you talk more about that?

City Attorney Kit Williams: We initially start off just paying interest on these bonds but once the earlier bonds are paid off there is an amount of money that comes into these bonds and they are paid off very quickly. Not only because we have low interest rates because they are

municipal bonds that are tax exempt but also because they can be paid off pretty quickly that is why we do not have to pay so much interest compared to the principal payments.

Alderman Cook moved to suspend the rules and go to the second reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell: This did not just happen, there was an election passed for sales tax for us to build streets, infrastructure, and trails in the city and it took everyone working together to put this forward to the people for a vote. It has worked out good and is continuing to work good.

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: Before you ask for the vote I would like to recognize the Accounting Department who did a lot of work on this. He also thanked Gordon Wilburn of Kutak Rock and Dennis Hunt. They have provided excellent service over the last eight or nine years so I just wanted to recognize them as well as our own Accounting staff.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5277 as Recorded in the office of the City Clerk.

2009 Millage Levy: An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2009 fixing the rate thereof at 1.3 mills for General Fund Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mill for the Fayetteville Public Library; and certifying the same to the County Clerk of Washington County, Arkansas.

City Attorney Kit Williams read the ordinance.

Paul Becker gave a brief description of the ordinance.

Alderman Petty: I am looking at this diagram you placed in our boxes. I wanted to check in on what may be a typo. In the County column for Fayetteville it says 5.5 mills and for Springdale it says 6.5 mills. Can you explain what the difference is or if it is just a mistake? Is that because a portion of Springdale is in Benton County?

Paul Becker: That would be my explanation. I'll have to check it out for sure. Part of Springdale is in fact in Benton County and the taxes there may very well be higher.

Alderman Petty: I am just trying to make sense of all this especially in these economic times. Where I am coming from on the millage is I am not sure that we should raise it but at the same time I want to keep it on the table for us to talk about and think about between now and the end of the month. I am really trying to brainstorm investments in our economy that don't have ongoing costs, that are one time costs, and that will give us a return and will make 2010 more of a rebound year and 2011 an even more rebound year. What I am trying to do and what I would hope the rest of the Council members would join me in doing over the next two weeks is try and brainstorm those types of investments that are low cost and one time investments that we can make that are going to have a benefit to our economy. I was hoping we could leave this on the second reading to think about things and be open minded.

Mayor Jordan: So are you saying that you might want to take some of this money and invest it somewhere else?

Alderman Petty: I don't know what the appropriate action to take is yet but I want it to be on the table for raising the millage for a year for altering the current ordinance. Let's just take the time to think about it and see if there is something there that makes sense.

Alderman Thiel: You are looking at this table that we got tonight which shows the total millage for the cities in the surrounding area including the school district millage which we did not have on the report at the agenda meeting. We are not the highest in the region now but I assume you are talking about considering a half mill or a mill for something specific like economic development.

Alderman Petty: Yes, specifically for economic development and if there is something appropriate it has to be over in a year so we restore our capacity to address an emergency with the millage. It has to be something for economic development so it's not just an investment that is going to add more costs that aren't sustainable right now.

Alderman Ferrell: If you want to wait a couple of weeks that is fine but at this particular time I don't think that is constructive from an economic development point of view. If we don't listen to other people's ideas then we won't learn.

Alderman Petty: I am nervous about it too and I feel like I am going out on a limb here even suggesting that we keep it on the table. We did just have the school millage fail but at the same time it seems that the community is ready to make a certain kind of investment in itself.

Alderman Lucas: I don't have a problem with waiting two weeks either but it is going to have to be a pretty good project because once you get it on there it is very hard to take off. Hopefully you will come up with a good one. We have all been working on it and coming up with strategies so two weeks is fine with me.

Alderman Lewis: I am okay with waiting as well. I do like the idea of putting a whole group of people towards trying to find ways to invest in things that might have a return.

Alderman Petty moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

This ordinance was left on the Second Reading.

Amend Chapter 50: An ordinance waiving the automatic annual price increase for residential trash service for Fiscal Year 2010; and amending a portion of Chapter 50: Garbage and Trash of the Fayetteville Code of Ordinances.

City Attorney Kit Williams read the ordinance.

David Jurgens, Utilities Director gave a brief description of the ordinance.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Cook moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5278 as Recorded in the office of the City Clerk.

Old Wire Annexation Appeal: An ordinance annexing that property described in annexation petition ANX 09-3409 (CC2009-4), for property located at 3231 North Old Wire Road, the northwest corner of Old Wire Road and Rom Orchard Road, containing approximately 39 acres.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director: The applicant requested that this item be left on the first reading and not be discussed tonight. I don't believe they are present and they also notified the four members that spoke in opposition at the Planning Commission. I want to say thank you for doing that and for letting the property owners know.

This ordinance was left on the First Reading.

Amend Chapter 166 ADM 09-3435 (1121 N. Mission Boulevard ROW Variance): A resolution approving a variance of §166.18 Master Street Plan setbacks of the Unified Development Code to allow the existing structure located at 1121 N. Mission Boulevard to remain within the Master Street Plan right-of-way setback and to be improved greater than the 10% replacement cost allowed by code.

Jeremy Pate gave a brief description of the resolution. He stated the applicant went before the Board of Adjustments and received a variance and went before the Planning Commission and received a recommendation in favor of this proposal. Staff is also recommending approval.

Alderman Lucas: You said this is a little over half an acre?

Jeremy Pate: I believe that is correct.

Alderman Lucas: So if the porch was taken off then they could work on the house, is that correct?

Jeremy Pate: Yes.

Alderman Lucas: After this is approved that building can actually be torn down and other structures could be put on this lot is that not right? There is no reason why if we grant this variance that house has to be used.

Jeremy Pate: That is correct. If the applicant chose not to utilize this and they redevelop the property then none of these variances would apply because this only applies to this structure.

Alderman Lucas: Thank you.

Alderman Petty: It is really encouraging to me when you see homeowners with rock houses from the 1920's pursuing variances to remodel instead of just tearing it down and building a new structure. We need more of that kind of attitude in Fayetteville.

Alderman Thiel moved to approve the resolution. Alderman Petty seconded the motion. Upon roll call the resolution passed 7-1. Alderman Lucas voting no.

Resolution 213-09 as recorded in the office of the City Clerk.

Meeting adjourned at 7:10 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk/Treasurer

Handed out at the
City Council Meeting 10/20/09 Rock Quarries facilities

Farmington Quarry 2009 YTD Blast Summary

Date	Time	Total Wt. of Explosives (lbs.)	lbs/delay	Vibration (ppv)*	Acoustic (dB)*
4/21/2009	9:53	6,108	436.3	0.366	123
5/5/2009	13:30	6,088	434.9	0.373	120
5/19/2009	14:50	10,303	461	0.648	124
6/29/2009	9:17	6,148	439.2	0.191	122
7/10/2009	8:11	6,847	526.7	0.233	125
7/21/2009	11:38	6,214	443.9	0.161	127
7/23/2009	13:45	783	47.6	0.048	101
7/29/2009	14:06	4,724	196.9	0.141	121
8/4/2009	12:14	7,298	405.5	0.196	110
8/4/2009	12:16	296	37	0.031	108
8/18/2009	12:09	6,435	429.1	0.193	125
9/8/2009	11:11	7,686	452.2	0.663	118
9/8/2009	11:12	353	62.4	0.036	112
9/24/2009	13:35	3,154	262.9	0.251	116
10/1/2009	12:21	6,476	404.8	0.158	126
10/7/2009	12:32	5,916	394.5	0.256	122

* All seismic data measured between 700-900 feet from the blast site

 = indicates blast events where media was present

Chart data as of 10/19/09

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

**Tentative Agenda
City of Fayetteville, Arkansas
City Council Meeting
October 20, 2009**

A meeting of the Fayetteville City Council will be held on October 20, 2009 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

Agenda Session Presentations:

1. District Court Building Update – Lynn Hyke

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

A. Consent:

1. Approval of the October 6, 2009 City Council meeting minutes.
2. **Safe Routes To School Program:** A resolution to approve and support a grant application of \$300,800.00 to the Arkansas Highway and Transportation Department for 100% funding for Clabber Creek Trail through the Safe Routes To Schools Program.
3. **2009 COPS Technology Grant:** A resolution to accept the 2009 COPS Technology Grant in the amount of \$500,000.00 and to approve the attached budget adjustment to recognize this revenue.

4. **Baird, Kurtz & Dobson (BKD), LLP:** A resolution to approve an annual contract with BKD, LLP for external auditing services for the 2009 audit in the amount of \$81,000.00.

Agenda Additions:

B. Unfinished Business:

1. **Amend Police Department's Policies, Procedures & Rules Manual:** A resolution approving and adopting amendments to the Fayetteville Police Department's Policies, Procedures & Rules Manual. This resolution was tabled at the October 6, 2009 City Council meeting to the October 20, 2009 City Council meeting.
2. **2009 Millage Levy:** An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2009 fixing the rate thereof at 1.3 mills for General Fund Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mill for the Fayetteville Public Library; and certifying the same to the County Clerk of Washington County, Arkansas. *This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting.*

This Ordinance was left on the Second Reading

3. **Old Wire Annexation Appeal:** An ordinance annexing that property described in annexation petition ANX 09-3409 (CC2009-4), for property located at 3231 North Old Wire Road, the northwest corner of Old Wire Road and Rom Orchard Road, containing approximately 39 acres. *This ordinance was left on the First Reading at the October 6, 2009 City Council meeting.*

This Ordinance was left on the First Reading

4. **Rock Quarries Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting. This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting and Tabled to the October 20, 2009 City Council meeting.*

This Ordinance was left on the Second Reading

5. **Red Dirt Mining Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting. This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting and Tabled to the October 20, 2009 City Council meeting.*

This Ordinance was left on the Second Reading

C. New Business:

1. **Justice Assistance Grant (JAG):** An ordinance to waive competitive bidding and to purchase 45 X-26 Tasers and Taser-Cams for \$69,967.25 from TEECO Safety, Inc.

Announcements:

1. **City Council Tour: October 19, 2009**

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

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

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

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

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

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
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Ward 4 Position 1 – Shirley Lucas
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**City of Fayetteville Arkansas
City Council Meeting Minutes
October 6, 2009**

A meeting of the Fayetteville City Council was held on October 6, 2009 at 6:00 PM 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 Thiel, Cook, Petty, Rhoads, Ferrell, Lucas, Lewis, Gray, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Alderman Rhoads arrived at 6:25 p.m.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan welcomed Troop 116 from Sequoyah United Methodist Church. He stated it is wonderful to have you all here tonight.

Methamphetamine Awareness Month Proclamation.

Mayor Jordan read the proclamation.

Presentations, Reports and Discussion Items:

Newspaper Publishing Discussion: Resolution 77-09 was passed on April 7, 2009 to be revisited in 6 months.

Alderman Cook: We passed this and chose to revisit this in six months to discuss it. I was given some numbers from staff and we had seen some savings from advertising so at this point I am just asking that we continue with the policy unless anyone else has other comments.

Mayor Jordan: What is the wish from the Council, to just continue on?

A discussion followed on if a motion to continue was required.

City Attorney Kit Williams stated to continue on we do not need a motion.

The City Council decided to continue on as is.

Nominating Committee Report:

Alderman Cook stated the Housing Authority has selected Brittany Kendrick to represent them.

Alderman Cook moved to approve the appointment to the Housing Authority Board. Alderman Gray seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

Consent:

Approval of the September 1, 2009 and September 15, 2009 City Council meeting minutes.

Approved

Bid # 09-54 Frost Oil Company: A resolution awarding Bid # 09-54 and approving a contract with Frost Oil Company in the estimated annual amount of \$58,363.06 to supply engine oil and lubricants to the Fleet Operations Division.

Resolution 204-09 as recorded in the office of the City Clerk.

Bid # 09-55 Electronic Video Systems: A resolution awarding Bid # 09-55 and approving the purchase of a video production system and related equipment from Electronic Video Systems in the amount of \$23,183.00 for use in the City Council Chamber.

Resolution 205-09 as recorded in the office of the City Clerk.

Bid # 09-57 Danny Robinson Construction, LLC: A resolution awarding Bid # 09-57 and approving a contract with Danny Robinson Construction, LLC in the amount of \$91,044.00 for the complete installation of two (2) trail bridges for the third phase of Lake Fayetteville Trail; and approving a 15% project contingency in the amount of \$13,656.60.

Resolution 206-09 as recorded in the office of the City Clerk.

Bid # 09-58 Chevy of Fayetteville: A resolution rescinding resolution # 117-09, awarding Bid # 09-58 and approving the purchase of one (1) compact 4 x 4 pickup truck from Chevy of Fayetteville in the amount of \$19,800.00 for use by the Fayetteville Executive Airport.

Resolution 207-09 as recorded in the office of the City Clerk.

Bid # 09-59 Chevy of Fayetteville: A resolution rescinding resolutions # 118-09 and # 122-09 and awarding Bid # 09-59, approving the purchase of two (2) 2 x 4 pickup trucks from Chevy of Fayetteville in the amount of \$33,994.00 for use by the Inspections and Meter Operations Divisions.

Resolution 208-09 as recorded in the office of the City Clerk.

State and Tribal Assistance Grant (STAG): A resolution authorizing the Mayor to accept a State and Tribal Assistance Grant (STAG) in the amount of \$291,000.00 from the U.S. Environmental Protection Agency for sanitary sewer system improvements; and approving a budget adjustment recognizing the grant revenue.

Resolution 209-09 as recorded in the office of the City Clerk.

Insituform Technologies, Inc.: A resolution approving a task order to the contract with Insituform Technologies, Inc. in the amount of \$300,000.00 for cured in-place sanitary sewer main line linings; and approving a contingency in the amount of \$30,000.00.

Resolution 210-09 as recorded in the office of the City Clerk.

Runway 16 Safety Area Improvement Project: A resolution approving offer and acceptance contracts between the City of Fayetteville and the Standard Register Company and Coulson Properties Limited Partnership for the purchase of land needed for the Runway 16 Safety Area Improvement Project; and authorizing the Mayor and City Clerk to execute said agreements.

Resolution 211-09 as recorded in the office of the City Clerk.

2009-2010 Selective Enforcement Program Grant: A resolution accepting the 2009-2010 Selective Traffic Enforcement Program (STEP) grant in the amount of \$108,000.00 for the purpose of paying overtime to officers engaged in the enforcement of DWI/DUI and seatbelt laws and other purposes; and approving a budget adjustment recognizing the grant revenue.

Resolution 212-09 as recorded in the office of the City Clerk.

Amend Police Department's Policies, Procedures & Rules Manual: A resolution approving and adopting amendments to the Fayetteville Police Department's Policies, Procedures & Rules Manual.

Mayor Jordan: The Police Chief asked that Item #11 on the Consent Agenda be tabled.

City Attorney Kit Williams: It will need to be pulled from the Consent Agenda and then tabled to the next meeting.

Alderman Petty moved to remove Item # 11 Amend Police Department's Policies, Procedures & Rules Manual from the Consent Agenda and table it to The October 20, 2009 City Council meeting. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

This resolution was removed from the Consent Agenda.

Alderman Cook moved to approve the Consent Agenda as read with Item # 11 Amend Police Department's Policies, Procedures & Rules Manual removed from the Consent Agenda. Alderman Petty seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

Agenda Additions: None

Unfinished Business:

Rock Quarries Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting.*

Mayor Jordan: This was left on the second reading at the last meeting. There was discussion about sending this to Ordinance Review.

City Attorney Kit Williams handed out the current ordinance that was amended at the last meeting. He stated if you choose to table it tonight that will be what will be considered at Ordinance Review unless you make other changes tonight. I would like to get some input from you on the suggested changes that the Rogers Group submitted to you.

A discussion followed on what steps should be taken in regards to tabling and taking public comment.

City Attorney Kit Williams recommended that it not be read tonight and that it be tabled.

Alderman Thiel: It is going to Ordinance Review Committee meeting tomorrow afternoon at 4:30 PM in Room 326.

Mayor Jordan: So there will be public comment at the Ordinance Review Committee.

Alderman Petty moved to table this ordinance to the October 20, 2009 City Council meeting. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

This ordinance was left on the Second Reading and Tabled to the October 20, 2009 City Council meeting.

Red Dirt Mining Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting.*

Mayor Jordan: Do you all want to do the same thing with this one?

Alderman Lewis: I do want to mention for both of these at the Ordinance Review Committee I would like it to be done in an orderly way that can be addressed on each part of it.

Alderman Thiel: I will certainly try to do that as Chair.

Alderman Lewis: It is a lot of information and to hop around it can be confusing.

Alderman Thiel: Right and have Kit explain it.

City Attorney Kit Williams: Also if any Aldermen want to call me tomorrow and make any suggestions I would be happy to talk with you. Otherwise we will try to do redrafting if any at the Ordinance Review Committee meeting.

Alderman Petty moved to table this ordinance to the October 20, 2009 City Council meeting. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

This ordinance was left on the Second Reading and Tabled to the October 20, 2009 City Council meeting.

New Business:

2009 Sales and Use Tax Bond Ordinance: An ordinance authorizing the issuance and sale of the City's Sales and Use Tax Capital Improvement Bonds, Series 2009, for the purpose of financing a portion of the costs of certain street and trail system improvements; authorizing the execution and delivery of a second supplemental trust indenture pursuant to which the bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

City Attorney Kit Williams read the ordinance.

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

Alderman Petty: Will this issuance of bonds to the trails program affect capital funds that we had allocated in previous years to the trails program?

Paul Becker: We will still allocate additional money to the trails program but this will help supplement it.

Alderman Petty: I just wanted to make sure that it's supplemental as we intended originally.

Alderman Ferrell: As we move forward, with the economy changing, is that going to have a positive impact on our ability to go for more down the road?

Paul Becker: If the sales tax picks up we will be able to pay off the old bonds earlier therefore giving us the capacity to issue new bonds faster. Right now it looks like 2013 or 2014 before we can issue new bonds. However if the economy picks up then we can pay those bonds off earlier and issue the third phase quicker.

Alderman Petty: During the 2008 campaign season we heard a lot about our bond rating. What is our bond rating now and could you explain what that indicator is?

Paul Becker stated these bonds were rated at A+ which in these times is pretty good because that is stable. That indicates how the rating agency perceives the liability or stability of the bond payments. He went on to describe the ratings.

Alderman Petty: How does our bond rating on these bonds compare to ratings on other bonds in your portfolio in this State and maybe in the four state regions?

Dennis Hunt with Stephens Inc. stated keep in mind that these bonds are subordinate from any having a secondary security to the three quarters of pennies that secures the 2005 bonds that the voters originally approved. Those bonds have an AA- rating so it is very typical to see a slight drop if it is a subordinate bond to those. An AA rating in Northwest Arkansas is about as high as any that I have seen associated with issues in the State. This one is slightly below that because it is taking a second position on the three quarters of a penny until those three quarters of a penny pays off all of the 2005 bonds.

Alderman Lewis: I noticed in the memo it says that three out of every four sales tax dollars collected and paid on these bonds will be used to pay off the principal and one is to pay the interest. Can you talk more about that?

City Attorney Kit Williams: We initially start off just paying interest on these bonds but once the earlier bonds are paid off there is an amount of money that comes into these bonds and they are paid off very quickly. Not only because we have low interest rates because they are

municipal bonds that are tax exempt but also because they can be paid off pretty quickly that is why we do not have to pay so much interest compared to the principal payments.

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City Attorney Kit Williams read the ordinance.

Alderman Ferrell: This did not just happen, there was an election passed for sales tax for us to build streets, infrastructure, and trails in the city and it took everyone working together to put this forward to the people for a vote. It has worked out good and is continuing to work good.

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City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: Before you ask for the vote I would like to recognize the Accounting Department who did a lot of work on this. He also thanked Gordon Wilburn of Kutak Rock and Dennis Hunt. They have provided excellent service over the last eight or nine years so I just wanted to recognize them as well as our own Accounting staff.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

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Alderman Thiel: You are looking at this table that we got tonight which shows the total millage for the cities in the surrounding area including the school district millage which we did not have on the report at the agenda meeting. We are not the highest in the region now but I assume you are talking about considering a half mill or a mill for something specific like economic development.

Alderman Petty: Yes, specifically for economic development and if there is something appropriate it has to be over in a year so we restore our capacity to address an emergency with the millage. It has to be something for economic development so it's not just an investment that is going to add more costs that aren't sustainable right now.

Alderman Ferrell: If you want to wait a couple of weeks that is fine but at this particular time I don't think that is constructive from an economic development point of view. If we don't listen to other people's ideas then we won't learn.

Alderman Petty: I am nervous about it too and I feel like I am going out on a limb here even suggesting that we keep it on the table. We did just have the school millage fail but at the same time it seems that the community is ready to make a certain kind of investment in itself.

Alderman Lucas: I don't have a problem with waiting two weeks either but it is going to have to be a pretty good project because once you get it on there it is very hard to take off. Hopefully you will come up with a good one. We have all been working on it and coming up with strategies so two weeks is fine with me.

Alderman Lewis: I am okay with waiting as well. I do like the idea of putting a whole group of people towards trying to find ways to invest in things that might have a return.

Alderman Petty moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

This ordinance was left on the Second Reading.

Amend Chapter 50: An ordinance waiving the automatic annual price increase for residential trash service for Fiscal Year 2010; and amending a portion of Chapter 50: Garbage and Trash of the Fayetteville Code of Ordinances.

City Attorney Kit Williams read the ordinance.

David Jurgens, Utilities Director gave a brief description of the ordinance.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Cook moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5278 as Recorded in the office of the City Clerk.

Old Wire Annexation Appeal: An ordinance annexing that property described in annexation petition ANX 09-3409 (CC2009-4), for property located at 3231 North Old Wire Road, the northwest corner of Old Wire Road and Rom Orchard Road, containing approximately 39 acres.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director: The applicant requested that this item be left on the first reading and not be discussed tonight. I don't believe they are present and they also notified the four members that spoke in opposition at the Planning Commission. I want to say thank you for doing that and for letting the property owners know.

This ordinance was left on the First Reading.

Amend Chapter 166 ADM 09-3435 (1121 N. Mission Boulevard ROW Variance): A resolution approving a variance of §166.18 Master Street Plan setbacks of the Unified Development Code to allow the existing structure located at 1121 N. Mission Boulevard to remain within the Master Street Plan right-of-way setback and to be improved greater than the 10% replacement cost allowed by code.

Jeremy Pate gave a brief description of the resolution. He stated the applicant went before the Board of Adjustments and received a variance and went before the Planning Commission and received a recommendation in favor of this proposal. Staff is also recommending approval.

Alderman Lucas: You said this is a little over half an acre?

Jeremy Pate: I believe that is correct.

Alderman Lucas: So if the porch was taken off then they could work on the house, is that correct?

Jeremy Pate: Yes.

Alderman Lucas: After this is approved that building can actually be torn down and other structures could be put on this lot is that not right? There is no reason why if we grant this variance that house has to be used.

Jeremy Pate: That is correct. If the applicant chose not to utilize this and they redevelop the property then none of these variances would apply because this only applies to this structure.

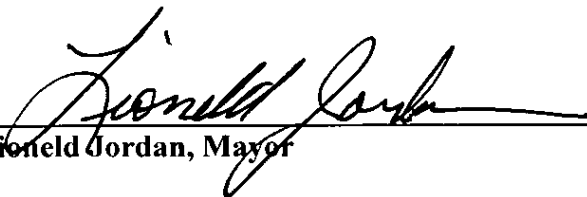
Alderman Lucas: Thank you.

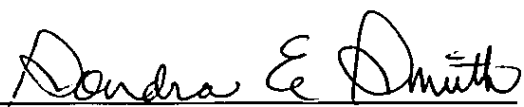
Alderman Petty: It is really encouraging to me when you see homeowners with rock houses from the 1920's pursuing variances to remodel instead of just tearing it down and building a new structure. We need more of that kind of attitude in Fayetteville.

Alderman Thiel moved to approve the resolution. Alderman Petty seconded the motion. Upon roll call the resolution passed 7-1. Alderman Lucas voting no.

Resolution 213-09 as recorded in the office of the City Clerk.

Meeting adjourned at 7:10 p.m.


Lionell Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer

City of Fayetteville Staff Review Form

A. 2
Safe Routes To School Program
Page 1 of 6

City Council Agenda Items
and
Contracts, Leases or Agreements

10/20/2009

City Council Meeting Date
Agenda Items Only

Matt Mihalevich

Submitted By

Engineering

Division

Development Services

Department

Action Required:

Staff requests approval of a resolution with the Arkansas Highway and Transportation Department for the Engineering Division to submit an application through the Safe Routes to Schools Program for a 100% funding award of up to \$300,800.00 to be used for the construction of the Clabber Creek Trail connecting Holt Middle School to Holcomb Elementary School and Gary Hampton Park.

N/A

Cost of this request

N/A

Category / Project Budget

N/A

Program Category / Project Name

N/A

Account Number

N/A

Funds Used to Date

N/A

Program / Project Category Name

N/A

Project Number

N/A

Remaining Balance

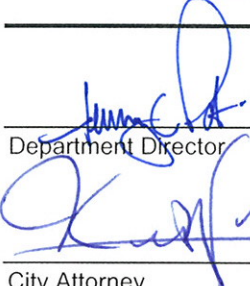
N/A

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

Department Director

10-01-09
Date

Previous Ordinance or Resolution #

Original Contract Date:

City Attorney

10-6-09
Date

Original Contract Number:

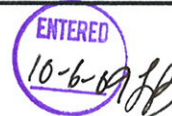
Paul A. Beckman
Finance and Internal Services Director

10-6-2009
Date

 Received in City
Clerk's Office


Chief of Staff

10-6-09
Date

 Received in
Mayor's Office


Mayor

10/6/09
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director
Chris Brown, City Engineer

From: Matt Mihalevich, Trails Coordinator 

Date: October 1st, 2009

Subject: Safe Routes to School Grant Application

RECOMMENDATION:

Staff requests approval of a resolution with the Arkansas Highway and Transportation Department for the Engineering Division to submit an application through the Safe Routes to Schools Program for a 100% funding award of up to \$300,800.00 to be used for the construction of the Clabber Creek Trail connecting Holt Middle School to Holcomb Elementary and Gary Hampton Park.

BACKGROUND:

Phase I of Clabber Creek Trail was built in 2007 connecting 0.65 miles from Hosta Drive east to Ruppel Road. Clabber Creek Trail is shown on the Fayetteville Alternative Transportation and Trails Master Plan connecting east to Scull Creek Trail. The next phase of Clabber Creek Trail will extend 0.75 miles east from Ruppel Road to Holcomb Elementary and Gary Hampton Park. The trail will also connect many adjacent residents through the extensive sidewalk network and provide a safe way for children to walk or ride their bikes to school.

DISCUSSION:

The Safe Routes to Schools Grant Program offers 100% project funding for qualifying projects requiring no matching funds.. Since this segment of Clabber Creek Trail will connect Holt Middle School to Holcomb Elementary School, the trail project fits the goals of the grant very well. A resolution showing support for the project from the City Council is required as part of the grant application.

The Trail will be 12 feet wide and constructed of concrete. Flashing Crossing signals will be included at Salem Road where the trail will cross.

BUDGET IMPACT:

The Safe Routes to Schools Grant is a 100% funding grant so there will be no budget impact, requiring no matching funds. The grant is a reimbursable grant, so funds would need to be set aside to be reimbursed when the project is complete.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE AND SUPPORT A GRANT APPLICATION OF \$300,800.00 TO THE ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT FOR 100 % FUNDING FOR CLABBER CREEK TRAIL THROUGH THE SAFE ROUTES TO SCHOOLS PROGRAM

WHEREAS, the City Council strongly supports the Safe Routes To Schools Program and requests that the Arkansas Highway and Transportation Department approve funding to complete Clabber Creek Trail from Holcomb Elementary to Holt Middle School in the amount of \$300,800.00.

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 approves and supports the City Engineering Division's application to the Arkansas Highway and Transportation Department for a \$300,800.00 grant through the Safe Routes To School Program to fund all of the costs to extend Clabber Creek Trail to connect Holt Middle School and Holcomb Elementary School.

PASSED and APPROVED this 20th day of October, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

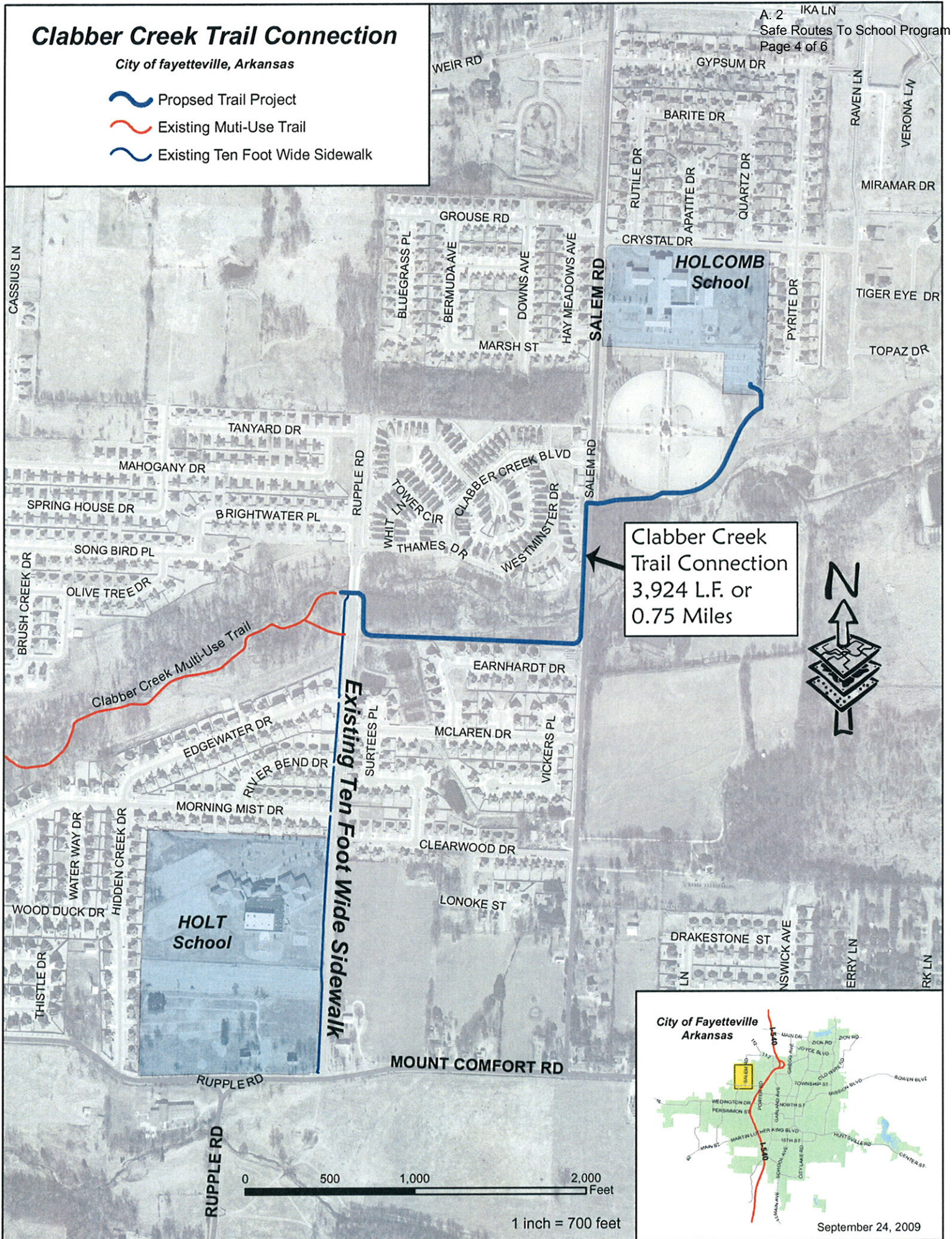
By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Clabber Creek Trail Connection

City of Fayetteville, Arkansas

-  Proposed Trail Project
-  Existing Multi-Use Trail
-  Existing Ten Foot Wide Sidewalk

A: 2 IKA LN
Safe Routes To School Program
Page 4 of 6



September 24, 2009

Clabber Creek Trail Connection - Cost Estimate						
October 1st, 2009						
ITEM #	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	
1	12' Wide Concrete Trail (Includes Base)	3,924	L.F.	\$ 70	\$ 274,680.00	
2	12' Wide ADA ramps with tactile warning domes	6	E.A.	\$ 900	\$ 5,400.00	
3	Thermoplastic Crosswalk Striping at Salem Rd.	30	L.F.	\$ 85	\$ 2,550.00	
4	24" Drainage Pipes	3	E.A.	\$ 1,400	\$ 4,200.00	
5	12' Box Culvert Extension (West side of Salem)	1	E.A.	\$ 6,200	\$ 6,200.00	
6	Center Line Striping	3,924	L.F.	\$ 0.20	\$ 770.00	
7	Flashing Pedestrian Crosswalk Lights (Salem Rd.)	2	E.A.	\$ 3,500	\$ 7,000.00	
Total Estimated Cost					\$300,800.00	

City of Fayetteville Staff Review Form

A. 3
2009 COPS Technology Grant
Page 1 of 12City Council Agenda Items
and
Contracts, Leases or Agreements

10/20/2009

City Council Meeting Date
Agenda Items OnlyG. Tabor
Submitted ByCentral Dispatch
DivisionPolice
Department

Action Required:

Acceptance of the 2009 COPS Technology Grant award and approval of a budget adjustment in the amount of \$500,000.00.

\$ 500,000.00
Cost of this request\$ -
Category / Project BudgetAWIN Communication System
Program Category / Project Name4470-9470-5210.00
Account Number\$ -
Funds Used to DateGrant
Program / Project Category Name08076-0901
Project Number\$ -
Remaining BalanceCapital Improvements
Fund NameBudgeted Item ☐Budget Adjustment Attached ☒

Department Director

Date

Previous Ordinance or Resolution #

City Attorney

Date

Original Contract Date:

Original Contract Number:

Finance and Internal Services Director

Date

Received in City
Clerk's Office

Chief of Staff

Date

Received in
Mayor's Office

Mayor

Date

Comments:

10/10/09
10/10/09

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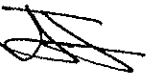
10/10/09
10/10/09

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10/10/09



Departmental Correspondence

TO: Mayor Lioneld Jordan and City Council Members

FROM: Greg Tabor, Police Chief 

DATE: October 2, 2009

SUBJECT: Acceptance of COPS Technology Grant Award in the amount of \$500,000 for the purchase of Radio Equipment

Background

The City of Fayetteville is in the process of replacing and upgrading the citywide radio communications system. This system was originally installed in 1985 with an upgrade in 2000. As our city has grown, our radio communication coverage has declined. Currently we have areas in town such as the NWA Mall, west of I-540 along Wedington Road, Rolling Hills/College Avenue, and Old Wire/Crossover Road where radio coverage is very weak or non-existent. The replacement of our radio communication system has been an unfunded Capital Improvements Project for the last several years.

Discussion

This grant is the second grant funding acquired for this project which is estimated to cost \$8 million dollars. Other funding sources include additional federal grants, impact fees, and enterprise funds contributions. This project will include upgrade to Mount Sequoyah radio tower, additional sites on Dinsmore Trail and Milsap Road area. These tower sites will be simulcast sites and connected to the Arkansas Wireless Information Network (AWIN). We will also replace 236 mobile radios, 351 portable radios, and 46 control stations. The equipment utilized by Central Dispatch will be replaced and/or upgraded as necessary. In 2009, the local government radios were dropped from the maintenance plan and are no longer supported by Motorola.

Recommendation

Staff recommends acceptance of the award from the Department of Justice for a non-matching COPS Technology Grant in the amount of \$500,000.

Budget Impact

This grant award is non-matching, but the maintenance of the new equipment, after one-year warranty expires, could cause a slight increase in maintenance fees.

RESOLUTION NO. _____

A RESOLUTION TO ACCEPT THE 2009 COPS TECHNOLOGY
GRANT IN THE AMOUNT OF \$500,000.00 AND TO APPROVE
THE ATTACHED BUDGET ADJUSTMENT TO RECOGNIZE
THIS REVENUE

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby accepts the
2009 Cops Technology Grant in the amount of \$500,000.00 and approves the attached budget
adjustment recognizing this revenue.

PASSED and **APPROVED** this 20th day of October, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

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

A. 3
2009 COPS Technology Grant
Page 7 of 12

Budget Year	Department: Police Division: Central Dispatch Program: Central Dispatch	Date Requested	Adjustment Number
2009		10/20/2009	

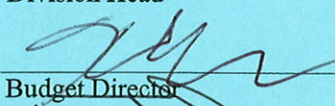
Project or Item Added/Increased: Arkansas Wireless Information Network (AWIN) Communication System	Project or Item Deleted/Reduced: 2009 COPS Technology Grant Award
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Justification of this Increase: Acceptance of non-matching grant award from the Department of Justice's Community Oriented Policing Services (COPS) for replacement and upgrade of our city wide communication.	Justification of this Decrease: Recognize grant revenue from the 2009 COPS Technology Grant Award.
---	--

Account Name		Increase Budget Account Number				Amount	Project Number	
	Minor Equipment	4470	9470	5210	00	500,000	08076	0901

Account Name		Decrease Budget Account Number				Amount	Project Number	
	Federal Grants - Capital	4470	0947	4309	00	500,000	08076	0901

V.090403

Division Head	Date	
	10-20-09	
Budget Director	Date	
	10-20-09	
Department Director	Date	
Finance Director	Date	
Chief of Staff	Date	

Budget & Research Use Only

Type: A B C D E

Requested By _____

General Ledger Date _____

Posted to General Ledger

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



U. S. Department of Justice
Community Oriented Policing Services
Grants Administration Division
Law Enforcement Technology
Treasury Account Symbol (TAS) 15X0406

Grant #: 2009CKWX0372

ORI #: AR07201

Applicant Organization's Legal Name: Fayetteville, City of

OJP Vendor #: 716018462

DUNS#: 075657742

Law Enforcement Executive: Chief Greg Tabor
Address: 100-A West Rock Street
City, State, Zip Code: Fayetteville, AR 72701
Telephone: (479) 587-3500
Fax: (479) 587-3522

Government Executive: Mayor Lioneld Jordan
Address: 113 West Mountain Street
City, State, Zip Code: Fayetteville, AR 72701
Telephone: (479) 575-8330
Fax: (479) 575-8257

Award Start Date: 3/11/2009

Award End Date: 3/10/2012

Award Amount: \$ 500,000.00

SEP 2 2009

David Buchanan
Acting Director

Date

By signing this Award Document, the grantee agrees to abide by all 19 Grant Terms and Conditions on the reverse side of this document and the attached pages:

Signature of Law Enforcement Official with the
Authority to Accept this Grant Award

Greg Tabor, Chief of Police
Typed Name and Title of Law Enforcement
Official

Date
Signature of Government Official with the Authority to
Accept this Grant Award

Lioneld Jordan, Mayor
Typed Name and Title of Government Official

Date

False statements or claims made in connection with COPS grants may result in fines, imprisonment, debarment from participating in federal grants or contracts, and/or any remedy available by law to the Federal Government.

Award ID:
95509

U.S. Department of Justice
Office of Community Oriented Policing Services
Technology Program Grant Terms and Conditions

A. 3
2009 COPS Technology Grant
Page 10 of 12

By signing the Award Document to accept this Technology Program grant, your agency agrees to abide by the following grant conditions:

1. The grantee agrees to comply with the terms and conditions in this 2009 COPS Technology Program Grant Owner's Manual; COPS statute (42 U.S.C. §. 3796dd, et seq.); 28 C.F.R. Part 66 or 28 C.F.R. Part 70 as applicable (governing administrative requirements for grants and cooperative agreements); 2 C.F.R. Part 225 (OMB Circular A-87), 2 C.F.R. Part 220 (OMB Circular A-21), 2 C.F.R. Part 230 (OMB Circular A-122) and 48 C.F.R. Part 31.000 et seq. (FAR 31.2) as applicable (governing cost principles); OMB Circular A-133 (governing audits); representations made in the COPS Technology Program grant application; and all other applicable program requirements, laws, orders, regulations, or circulars.
2. The grantee acknowledges its agreement to comply with the Assurances and Certifications forms that were submitted as part of its Technology Program application.
3. The funding under this project is for the payment of approved costs for the continued development of technologies and automated systems to assist state, local, and tribal law enforcement agencies in investigating, responding to, and preventing crime. The allowable costs for which your agency's grant has been approved are limited to those listed on the Financial Clearance Memorandum, which is included in your agency's award package.

The Financial Clearance Memorandum specifies the costs that your agency is allowed to fund with your Technology grant. It also describes any costs which have been disallowed after review of your proposed budget. **Your agency may not use Technology grant funds for any costs that are not identified as allowable in the Financial Clearance Memorandum.**

4. Travel costs for transportation, lodging and subsistence, and related items are allowable under the Technology Program with prior approval from the COPS Office. Payment for allowable travel costs will be in accordance with 2 C.F.R. Part 225 (OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments), 2 C.F.R. Part 220 (OMB Circular A-21, Cost Principles for Educational Institutions), 2 C.F.R. Part 230 (OMB Circular A-122, Cost Principles for Non-Profit Organizations), and 48 C.F.R. Part 31.000, et seq. (FAR-31.2, Cost Principles for Commercial Organizations), as applicable.
5. When procuring information-sharing services, hardware, software, or other equipment, the grantee agrees to procure and implement those items in accordance with the applicable standards outlined in the terms and conditions of the Grant Owner's Manual.
6. State, local, and tribal governments must use Technology Program grant funds to supplement, and not supplant, state, local, or Bureau of Indian Affairs (BIA) funds that are already committed or otherwise would have been committed for grant purposes (hiring, training, purchases, and/or activities) during the grant period. In other words, grantees may not use COPS funds to supplant (replace) state, local, or Bureau of Indian Affairs funds that would have been dedicated to the COPS-funded item(s) in the absence of the COPS grant.
7. Your agency may request an extension of the grant award period to receive additional time to implement your grant program. Such extensions do not provide additional funding. Only those grantees that can provide a reasonable justification for delays will be granted no-cost extensions. **Extension requests must be received prior to the end date of the award. Any extension requests received after an award has expired will be approved only under very limited circumstances.**
8. Occasionally, a change in an agency's fiscal or law enforcement situation necessitates a change in its Technology Program award. Grant modifications under the Technology Program are evaluated on a case-by-case basis. Movement of dollars between approved budget categories (as reflected in the original Financial Clearance Memorandum provided with the Award Document) or other budget modifications are allowed up to ten percent (10%) of the total award amount as last approved by the COPS Office, provided there is no change in project scope. When any cumulative changes exceed ten percent of the total award amount or change the scope of the project, prior approval from the COPS Office is required. The grantee must promptly notify the COPS Office in writing of proposed changes in excess of ten percent of the total award amount, and must obtain written approval from COPS for these changes before incurring the proposed costs. In addition, please be aware that the COPS Office will not approve any modification request that results in an increase of federal funds.
9. The COPS Office may conduct monitoring or sponsor national evaluations of the COPS Technology Program. The grantee agrees to cooperate with the monitors and evaluators.
10. To assist the COPS Office in the monitoring of your award, your agency will be responsible for submitting periodic programmatic progress reports and quarterly financial reports.
11. Federal law requires that law enforcement agencies receiving federal funding from the COPS Office must be monitored to ensure compliance with their grant conditions and other applicable statutory regulations. The COPS Office is also interested in tracking the progress of our programs and the advancement of community policing. Both aspects of grant implementation—compliance and programmatic benefits—are part of the monitoring process coordinated by the U.S. Department of Justice. Grant monitoring activities conducted by the COPS Office include site visits, office-based grant reviews, alleged noncompliance reviews, financial and program reporting, and audit resolution. As a COPS Technology grantee, you agree to cooperate with and respond to any requests for information pertaining to your grant.
12. All recipients of funding from the COPS Office must comply with the federal regulations pertaining to the development and implementation of an Equal Employment Opportunity Plan (28 C.F.R. Part 42 subpart E).
13. Grantees using Technology Program funds to operate an interjurisdictional criminal intelligence system must comply with operating principles of 28 C.F.R. Part 23. The grantee acknowledges that it has completed, signed and submitted with its grant application the relevant Special Condition certifying its compliance with 28 C.F.R. Part 23.
14. Grantees who have been awarded funding for the procurement of an item (or group of items) or service in excess of \$100,000 and who plan to seek approval for use of a noncompetitive procurement process must provide a written sole source justification to the COPS Office for approval prior to obligating, expending, or drawing down grant funds for that item.
15. The grantee agrees to submit one copy of all reports and proposed publications resulting from this grant 20 days prior to public release. Any publications (including written, software, visual, or sound, but excluding press releases, newsletters, and issue analyses), whether published at the recipient's or government's expense, shall contain the following statement: "This project was supported by Grant # _____, awarded by the U.S. Department of Justice, Office of Community Oriented Policing Services. The opinions contained herein are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice. References to specific companies, products, or services should not be considered an endorsement by the author(s) or the U.S. Department of Justice. Rather, the references are illustrations to supplement discussion of the issues."
16. The grantee agrees to complete and keep on file, as appropriate, a Bureau of Citizenship and Immigration Services Employment Eligibility Verification Form (I-9). This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.

U.S. Department of Justice
Office of Community Oriented Policing Services
Technology Program Grant Terms and Conditions

A. 3
2009 COPS Technology Grant
Page 11 of 12

17. To facilitate communication among local and state governmental agencies regarding various information technology projects, the grantee agrees to notify the appropriate State Information Technology Point of Contact of the receipt of this grant award. For a list of State Information Technology Points of Contact, visit <http://www.it.ojp.gov/default.aspx?area=policyAndPractice&page=1046>.
18. The grantee agrees to comply with 28 C.F.R. Part 61 (Procedures for Implementing the National Environmental Policy Act).
19. False statements or claims made in connection with COPS grants may result in fines, imprisonment, or debarment from participating in federal grants or contracts, and/or any other remedy available by law.

City of Fayetteville Staff Review Form

A. 4
Baird, Kurtz & Dobson (BKD), LLP
Page 1 of 28

City Council Agenda Items
and
Contracts, Leases or Agreements

10-20-09

City Council Meeting Date
Agenda Items Only

Marsha Hertweck Accounting and Audit Finance
Submitted By **Division** **Department**

Action Required:

Approval of a contract with BKD, LLP for the 2009 annual audit.

\$ <u>81,000.00</u> Cost of this request	\$ <u>81,000.00</u> Category / Project Budget	<u>Services and charges</u> Program Category / Project Name
<u>Multiple accounts</u> Account Number	\$ <u>-</u> Funds Used to Date	<u>Audit expense</u> Program / Project Category Name
<u>N/A</u> Project Number	\$ <u>81,000.00</u> Remaining Balance	<u>Multiple funds</u> Fund Name

Budgeted Item ☒ 2010

Budget Adjustment Attached ☐

Paul a. Berber 10-2-2009
Department Director Date

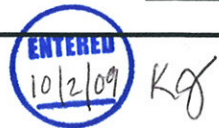
Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

K. Rife 10-6-09
City Attorney Date

Received in City
Clerk's Office



Paul a. Berber 10-6-2009
Finance and Internal Service Director Date

Way Wren 10-6-09
David J. Jones 10/6/09
Mayor Date

Received in
Mayor's Office



Comments:

THE CITY OF FAYETTEVILLE, ARKANSAS

To: Mayor Lioneld Jordan and the Fayetteville City Council

Thru: Paul Becker, Finance Director *P.A.B.*

From: Marsha Hertweck, Accounting Director *MH*

Date: October 1, 2009

Subject: Annual Audit

Recommendation

Approval of a contract with Baird, Kurtz & Dobson (BKD), LLP for the 2009 annual audit.

Discussion

The City is required, under Arkansas statutes and applicable bond issues, to have an annual financial audit conducted by either Legislative Audit or a Certified Public Accounting firm licensed in Arkansas. Because of the requirements of bond indentures, the City has for the past thirty plus years utilized the services of a private CPA firm to perform these mandated financial audits.

BKD was selected by the City following the applicable rules and regulations concerning the procurement of auditing services. The City entered into a five-year agreement in August 2002 and selected BKD for another five years through the RFP process in July 2007. Under this contract BKD will provide an annual audit of the City's financial statements and a review of the City's internal control system as required by state law. In addition to the financial audit, BKD also issues a report on internal control and compliance requirements for major federal award programs as required by the Single Audit Act. The single audit is the primary mechanism used by federal agencies to ensure accountability for federal awards to non-federal entities.

Finally, BKD also provides technical assistance to the City in producing the Comprehensive Annual Financial Report (CAFR). The CAFR includes the City's financial statements as well as statistical information required by the City's bond covenants.

Budget Impact

The cost of the 2009 audit is \$81,000. The audit will be budgeted in General Fund and allocated to the various funds of the City.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE AN ANNUAL CONTRACT WITH
BKD, LLP FOR EXTERNAL AUDITING SERVICES FOR THE 2009
AUDIT IN THE AMOUNT OF \$81,000.00

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves
the attached letter engagement with BKD, LLP for 2009 audit services in the amount of
\$81,000.00.

PASSED and **APPROVED** this 20th day of October, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

September 18, 2009

Audit Committee and City Council
Honorable Lioneld Jordan, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Hertweck, Accounting Director
City of Fayetteville, Arkansas
113 West Mountain St.
Fayetteville, AR 72701

We are pleased to confirm the arrangements of our engagement and the nature of the services we will provide to the City of Fayetteville, Arkansas.

ENGAGEMENT OBJECTIVES

We will audit the basic financial statements of the City of Fayetteville, Arkansas as of and for the year ended December 31, 2009, in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments and Nonprofit Organizations*.

The objectives of our audit are:

- ✓ Expression of an opinion on the conformity of your financial statements, in all material respects, with accounting principles generally accepted in the United States of America.
- ✓ Issuance of a report on your compliance based on the audit of your financial statements.
- ✓ Issuance of a report on your internal control over financial reporting based on the audit of your financial statements.
- ✓ Expression of an opinion on your compliance, in all material respects, with the types of compliance requirements described in the *U. S. Office of Management and Budget Circular A-133 Compliance Supplement* that are applicable to each of your major federal award programs.

City of Fayetteville, Arkansas
Fayetteville, Arkansas

- ✓ Issuance of a report on your internal control over compliance based on the audit of your compliance with the types of compliance requirements that are applicable to each of your major federal award programs.
- ✓ Issuance of a report on your schedule of expenditures of federal awards.

We will also examine the written assertion about the compliance with certain state acts made by the management of the City of Fayetteville, Arkansas as of and for the year ended December 31, 2009, in accordance with attestation standards established by the American Institute of Certified Public Accountants.

The objective of our examination is the expression of an opinion on the conformity of the subject matter of the assertion in all material respects, with the applicable criteria against which it is measured. Our report is intended solely for the information and use of the governing body, management and the State of Arkansas and is not intended to be and should not be used by anyone other than these specified parties.

OUR RESPONSIBILITIES

Auditing standards generally accepted in the United States of America, *Government Auditing Standards* and OMB Circular A-133 require that we plan and perform:

- ✓ The audit of the financial statements to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.
- ✓ The audit of compliance with the types of compliance requirements described in the OMB Circular A-133 Compliance Supplement applicable to each major federal award program to obtain reasonable rather than absolute assurance about whether noncompliance having a direct and material effect on a major federal award program occurred.

Accordingly, a material misstatement or noncompliance having a direct and material effect may remain undetected.

Our audit of the financial statements is designed to detect misstatements and noncompliance that, in our judgment, could have a material effect on the financial statements taken as a whole. Consequently, our audit will not necessarily detect errors or fraud resulting in an immaterial misstatement of the financial statements.

Likewise, our audit of compliance with the types of compliance requirements applicable to each major federal award program is designed to detect noncompliance having a direct and material effect on a major program. Consequently, our audit will not necessarily detect noncompliance having an indirect and material or an immaterial effect on any program.

City of Fayetteville, Arkansas
Fayetteville, Arkansas

An audit also includes obtaining an understanding of the entity and its environment, including internal controls, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing and extent of further audit procedures to be performed. An audit is not designed to provide assurance on internal control over financial reporting or on internal control over compliance or to identify material weaknesses or significant deficiencies. However, we will communicate to you any matter that comes to our attention that we consider a material weakness or significant deficiency. Because of the limits of internal control, errors, fraud, illegal acts or instances of noncompliance may occur and not be detected. Also, in the future, procedures could become inadequate because of changes in conditions or deterioration in design or operation. Two or more people may also circumvent controls, or management may override the system. We are available to perform additional procedures with regard to fraud detection and prevention at your request, subject to completion of our normal engagement acceptance procedures. The actual terms and fees of such an engagement would be documented in a separate letter to be signed by you and BKD.

If, for any reason, we are unable to complete our audit of the financial statements or our audit of compliance with the types of compliance requirements applicable to each major federal award program or are unable to form or have not formed an opinion, we may decline to express an opinion or decline to issue a report as a result of this engagement. If we discover conditions that may prohibit us from issuing a standard report, we will notify you as well. In such circumstances, further arrangements may be necessary to continue our engagement.

YOUR RESPONSIBILITIES

To facilitate our audit, management is responsible for making all financial records documentation and other financial and compliance related information available to us. At the conclusion of our engagement, management will provide to us a letter acknowledging certain responsibilities outlined in this engagement letter and confirming:

- The availability of this information
- Certain representations made during the audits for all periods presented
- The effects of any uncorrected misstatements, if any, resulting from errors or fraud aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole

Management is responsible for fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, for adjusting the financial statements to correct material misstatements and for identifying and ensuring compliance with the laws, regulations, contracts and grants applicable to your activities including your federal award programs. Management is also responsible for establishing and maintaining effective internal control over financial reporting and compliance and setting the proper tone; creating and maintaining a culture of honesty and high ethical standards; and establishing

City of Fayetteville, Arkansas
Fayetteville, Arkansas

appropriate controls to prevent, deter and detect fraud, illegal acts and instances of noncompliance.

The results of our tests of compliance and internal control over financial reporting performed in connection with our audit of the financial statements may not fully meet the reasonable needs of report users. Management is responsible for obtaining audits, examinations, agreed-upon procedures or other engagements that satisfy relevant legal, regulatory or contractual requirements or fully meet other reasonable user needs.

OTHER SERVICES

We may perform other services for you not covered by this engagement letter. You agree to assume full responsibility for the substantive outcomes of the services described above and for any other services that we may provide, including any findings that may result. You also acknowledge that those services are adequate for your purposes and that you will establish and monitor the performance of those services to ensure that they meet management's objectives. Any and all decisions involving management functions related to those services will be made by you, and you accept full responsibility for such decisions. We understand that you will designate a management-level individual to be responsible and accountable for overseeing the performance of those services, and that you will have determined this individual is qualified to conduct such oversight.

ENGAGEMENT FEES

Our fees will be based on time expended plus charges for travel, long-distance telephone, copies, etc. and will not exceed \$81,000.

Our pricing for this engagement and our fee structure is based upon the expectation that our invoices will be paid promptly. We will issue progress billings during the course of our engagement, and payment of our invoices is due upon receipt. Interest will be charged on any unpaid balance after 30 days at the rate of 10% per annum.

Our fees are based upon the understanding that your personnel will be available to assist us. Assistance from your personnel is expected to include:

- Preparing audit schedules to support all significant balance sheet and certain other accounts
- Responding to auditor inquiries
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- Pulling selected invoices and other documents from files
- Helping to resolve any differences or exceptions noted

City of Fayetteville, Arkansas
Fayetteville, Arkansas

We will provide you with a detailed list of assistance needed before the audit begins.

Our timely completion of the audit depends on your timely and accurate schedule and analyses preparation and on the availability of your personnel to provide other assistance. If there are inaccuracies or delays in preparing this material, or if we experience other assistance difficulties that add a significant amount of time to our work, our fees will increase. If these circumstances occur, we will promptly notify you to discuss alternative solutions and the impact on our fees.

The following new accounting standard is effective for your fiscal year ending December 31, 2009. The impact of this standard on your financial statements will depend on your facts and circumstances. You should evaluate the effect of these standards well in advance of your fiscal year to obtain any additional information necessary and effectively implement them. The new standard and their effective dates are as follows:

Years beginning after June 15, 2008:

- Statement of Governmental Accounting Standards No. 52 – *Land and Other Real Estate Held as Investments by Endowments*

In addition, the following new accounting standards are effective for years beginning on or after June 15, 2009:

- Statement of Governmental Accounting Standards No. 51 – *Accounting and Financial Reporting for Intangible Assets*
- Statement of Governmental Accounting Standards No. 53 – *Accounting and Financial Reporting for Derivative Instruments*

Our fees do not include time to assist you with implementing these standards. Should you require assistance, we will bill you at our standard hourly rates.

Our engagement fee does not include any time for post-engagement consultation with your personnel or third parties, consent letters and related procedures for the use of our reports in offering documents, inquiries from regulators or testimony or deposition regarding any subpoena. Charges for such services will be billed separately.

Our fees may also increase if our duties or responsibilities are increased by rulemaking of any regulatory body or any additional new accounting or auditing standards. We will consult with you in the event any other regulations or standards are issued that may impact our fees.

If our invoices for this or any other engagement you may have with BKD are not paid within 30 days, we may suspend or terminate our services for this or any other engagement. In the event our work is suspended or terminated as a result of nonpayment, you agree we will not be responsible for any consequences to you.

City of Fayetteville, Arkansas
Fayetteville, Arkansas

OTHER ENGAGEMENT MATTERS AND LIMITATIONS

Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. We can be compelled to provide information under legal process. In addition, we may be requested by regulatory or enforcement bodies to make certain workpapers available to them pursuant to authority granted by law or regulation. You agree that we have no legal responsibility to you in the event we provide such documents or information.

You agree to indemnify and hold harmless BKD and its personnel from any claims, liabilities, costs and expenses relating to our services under this agreement attributable to false or incomplete representations by management, except to the extent determined to have resulted from the intentional or deliberate misconduct of BKD personnel.

You agree that any dispute regarding this engagement will, prior to resorting to litigation, be submitted to mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. The American Arbitration Association will administer any such mediation in accordance with its Commercial Mediation Rules. The results of the mediation proceeding shall be binding only if each of us agrees to be bound. We will share any costs of mediation proceedings equally.

Either of us may terminate these services at any time. Both of us must agree, in writing, to any future modifications or extensions. If services are terminated, you agree to pay us for time expended to date plus charges for travel, long-distance telephone, copies, etc.

If any provision of this agreement is declared invalid or unenforceable, no other provision of this agreement is affected and all other provisions remain in full force and effect.

This engagement letter represents the entire agreement regarding the services described herein and supersedes all prior negotiations, proposals, representations or agreements, written or oral, regarding these services. It shall be binding on heirs, successors and assigns of you and BKD.

We may from time to time utilize third-party service providers, *e.g.*, domestic software processors or legal counsel, or disclose confidential information about you to third-party service providers in serving your account. We remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures and safeguards to protect the confidentiality of your information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information.

We will, at our discretion or upon your request, deliver financial or other confidential information to you electronically via email or other mechanism. You recognize and accept the risk involved, particularly in email delivery as the Internet is not necessarily a secure medium of communication as messages can be intercepted and read by those determined to do so.

City of Fayetteville, Arkansas
Fayetteville, Arkansas

You agree you will not modify these documents for internal use or for distribution to third parties. You also understand that we may on occasion send you documents marked as draft and understand that those are for your review purpose only, should not be distributed in any way and should be destroyed as soon as possible.

If you intend to include these financial statements and our report in an offering document at some future date, you agree to seek our permission to do so at that time. You agree to provide reasonable notice to allow sufficient time for us to perform certain additional procedures. Any time you intend to publish or otherwise reproduce these financial statements and our report and make reference to our firm name in any manner in connection therewith, you agree to provide us with printers' proofs or masters for our review and approval before printing or other reproduction. You will also provide us with a copy of the final reproduced material for our approval before it is distributed. Our fees for such services are in addition to those discussed elsewhere in this letter.

You agree to notify us if you desire to place these financial statements or our report thereon on an electronic site, such as the World Wide Web. You recognize that we have no responsibility as auditors to review information contained in electronic sites.

BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of **BKD, LLP** have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, unlike the partners in a general partnership, the partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for any debts, obligations or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract or otherwise.

HIPAA BUSINESS ASSOCIATE AGREEMENT

We agree not to use or disclose Protected Health Information of your employees (hereinafter referred to as "PHI") obtained or produced in any form of media during the course of our work, other than for purposes of (a) performing our engagement, (b) management and administration of BKD, or (c) carrying out legal responsibilities of BKD. We represent to you that we have implemented what we consider to be appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of that PHI. With respect to your PHI, we will report to you any material security incident or use or disclosure not authorized by this agreement and, to the extent practical, assist you in mitigating any harmful effects caused by material security incidents or unauthorized uses or disclosures of which we have knowledge. We agree that any material violation of these confidentiality provisions entitles you to terminate this engagement.

City of Fayetteville, Arkansas
Fayetteville, Arkansas

BKD agrees to:

1. Upon their request, make available to the Secretary of Health and Human Services our internal practices and books and records relating to the use and disclosure of PHI for purposes of determining your compliance with the Security and Privacy Rule, subject to any applicable legal privileges.
2. To the extent we maintain information that is part of a Designated Record Set, make available information necessary for you to make an accounting of disclosures of PHI about an individual.
3. To the extent we maintain information that is part of a Designated Record Set, make available information necessary for you to respond to requests by individuals for access to PHI that is not in your possession but is considered part of a Designated Record Set.
4. Upon receipt of a written request from you, incorporate any amendments or corrections to PHI contained in our workpapers in accordance with the Security and Privacy Rule to the extent such PHI is considered part of a Designated Record Set.

For purposes of this agreement, the term "Security and Privacy Rule" refers to the final rules published to implement the Administrative Simplification provisions of the *Health Insurance Portability and Accountability Act of 1996*, specifically 45 CFR Parts 160 and 164. The terms "Protected Health Information" and "Designated Record Set" have the same meaning as defined in the Security and Privacy Rule.

At the conclusion or termination of this engagement, any PHI retained by us will be subject to the same safeguards as for active engagements.

We will obtain from any agents, including subcontractors, to whom we provide PHI received from you, or created or received by us on behalf of you, an agreement to the same restrictions and conditions that apply to us with respect to such PHI.

To the extent that any relevant provision of HIPAA is eliminated or held to be invalid by a court of competent jurisdiction, the corresponding portion of this agreement shall be deemed of no force and effect for any purpose. To the extent that any relevant provision of HIPAA is materially amended in a manner that changes the obligations of business associates or covered entities that are embodied in term(s) of this engagement, the Parties agree to negotiate in good faith appropriate amendment(s) to this engagement to give effect to such revised obligations. In addition, the terms of this engagement should be construed in light of any interpretation and/or guidance on HIPAA issued by HHS from time to time.

City of Fayetteville, Arkansas
Fayetteville, Arkansas

If the above arrangements are acceptable to you, please sign the enclosed copy of this letter and return it to us.

BKD, LLP

A handwritten signature in black ink that reads "BKD, LLP". The letters are stylized and slanted to the right.

The services and arrangements described in this letter are in accordance with our understanding and are acceptable to us.

CITY OF FAYETTEVILLE, ARKANSAS

BY _____

TITLE _____

DATE _____



System Review Report

July 31, 2008

To the Partners of BKD, LLP
and the Center for Public Company
Audit Firms Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of BKD, LLP (the firm) in effect for the year ended May 31, 2008. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under the *Government Auditing Standards*; audits of employee benefit plans, and an audit performed under FDICIA.

In our opinion, the system of quality control for the accounting and auditing practice of BKD, LLP in effect for the year May 31, 2008 has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. BKD, LLP has received a peer review rating of *pass*.

Clifton Gunderson LLP

Attachment to the Peer Review Report of BKD LLP Description of the Peer Review Process

Overview

Firms enrolled in the AICPA Center for Public Company Audit Firms (the Center) Peer Review Program have their system of quality control periodically reviewed by independent peers. These reviews are system and compliance oriented with the objective of evaluating whether:

The reviewed firm's system of quality control for its accounting and auditing practice applicable to non-SEC issuers has been designed to meet the requirements of the Quality Control Standards established by the AICPA.

The reviewed firm's quality control policies and procedures applicable to non-SEC issuers were being complied with to provide the firm with reasonable assurance of complying with professional standards.

A peer review is based on selective tests and directed at assessing whether the design of and compliance with the firm's system of quality control for its accounting and auditing practice applicable to non-SEC issuers provides the firm with reasonable, not absolute, assurance of complying with professional standards. Consequently a peer review on the firm's system of quality control is not intended to, and does not, provide assurance with respect to any individual engagement conducted by the firm or that none of the financial statements audited by the firm should be restated.

The Center's Peer Review Committee (PRC) establishes and maintains peer review standards. At regular meetings and through report evaluation task forces, the PRC considers each peer review, evaluates the reviewer's competence and performance, and examines every report, letter of comments, and accompanying response from the reviewed firm that states its corrective action plan before the peer review is finalized. The Center's staff plays a key role in overseeing the performance of peer reviews working closely with the peer review teams and the PRC.

Once the PRC accepts the peer review reports, letters of comments, and reviewed firms' responses, they are maintained in a file available to the public. In some situations, the public file also includes a signed undertaking by the firm agreeing to specific follow-up action requested by the PRC.

Firms that perform audits or play a substantial role in the audit of one or more SEC issuers, as defined by the Public Company Accounting Oversight Board (PCAOB), are required to be registered with and have their accounting and auditing practice applicable to SEC issuers inspected by the PCAOB. Therefore, we did not review the firm's accounting and auditing practice applicable to SEC issuers.

Planning the Review for the Firm's Accounting and Auditing Practice Applicable to Non-SEC Issuers

To plan the review of BKD LLP, we obtained an understanding of (1) the nature and extent of the firm's accounting and auditing practice, and (2) the design of the firm's system of quality control sufficient to assess the inherent and control risks implicit in its practice. Inherent risks were assessed by obtaining an understanding of the firm's practice, such as the industries of its clients and other factors of complexity in serving those clients, and the organization of the firm's personnel into practice units. Control risks were assessed by obtaining an understanding of the design of the firm's system of quality control, including its audit methodology, and monitoring procedures. Assessing control risk is the process of evaluating the effectiveness of the reviewed firm's system of quality control in preventing the performance of engagements that do not comply with professional standards.

Performing the Review of the Firm's Accounting and Auditing Practice Applicable to Non-SEC Issuers

Based on our assessment of the combined level of inherent and control risks, we identified practice units and selected engagements within those units to test for compliance with the firm's system of quality control. The engagements selected for review included engagements performed under the Government Auditing Standards, audits performed under FDICIA, a multi-office audit, and audits of Employee Benefit Plans. The engagements selected for review represented a cross-section of the firm's accounting and auditing practice with emphasis on higher-risk engagements. The engagement reviews included examining working paper files and reports and interviewing engagement personnel.

The scope of the peer review also included examining selected administrative and personnel files to determine compliance with the firm's policies and procedures for the elements of quality control pertaining to independence, integrity, and objectivity; personnel management; and acceptance and continuance of clients and engagements. Prior to concluding the review, we reassessed the adequacy of scope and conducted a meeting with firm management to discuss our findings and recommendations.

September 18, 2009

Audit Committee and City Council
Honorable Lioneld Jordan, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Hertweck, Accounting Director
City of Fayetteville, Arkansas
113 West Mountain St.
Fayetteville, AR 72701

We are pleased to confirm the arrangements of our engagement and the nature of the services we will provide to the City of Fayetteville, Arkansas.

ENGAGEMENT OBJECTIVES

We will audit the basic financial statements of the City of Fayetteville, Arkansas as of and for the year ended December 31, 2009, in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments and Nonprofit Organizations*.

The objectives of our audit are:

- ✓ Expression of an opinion on the conformity of your financial statements, in all material respects, with accounting principles generally accepted in the United States of America.
- ✓ Issuance of a report on your compliance based on the audit of your financial statements.
- ✓ Issuance of a report on your internal control over financial reporting based on the audit of your financial statements.
- ✓ Expression of an opinion on your compliance, in all material respects, with the types of compliance requirements described in the *U. S. Office of Management and Budget Circular A-133 Compliance Supplement* that are applicable to each of your major federal award programs.

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City of Fayetteville, Arkansas
Fayetteville, Arkansas

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Years beginning after June 15, 2008:

- Statement of Governmental Accounting Standards No. 52 – *Land and Other Real Estate Held as Investments by Endowments*

In addition, the following new accounting standards are effective for years beginning on or after June 15, 2009:

- Statement of Governmental Accounting Standards No. 51 – *Accounting and Financial Reporting for Intangible Assets*
- Statement of Governmental Accounting Standards No. 53 – *Accounting and Financial Reporting for Derivative Instruments*

Our fees do not include time to assist you with implementing these standards. Should you require assistance, we will bill you at our standard hourly rates.

Our engagement fee does not include any time for post-engagement consultation with your personnel or third parties, consent letters and related procedures for the use of our reports in offering documents, inquiries from regulators or testimony or deposition regarding any subpoena. Charges for such services will be billed separately.

Our fees may also increase if our duties or responsibilities are increased by rulemaking of any regulatory body or any additional new accounting or auditing standards. We will consult with you in the event any other regulations or standards are issued that may impact our fees.

If our invoices for this or any other engagement you may have with BKD are not paid within 30 days, we may suspend or terminate our services for this or any other engagement. In the event our work is suspended or terminated as a result of nonpayment, you agree we will not be responsible for any consequences to you.

COPY

City of Fayetteville, Arkansas
Fayetteville, Arkansas

OTHER ENGAGEMENT MATTERS AND LIMITATIONS

Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. We can be compelled to provide information under legal process. In addition, we may be requested by regulatory or enforcement bodies to make certain workpapers available to them pursuant to authority granted by law or regulation. You agree that we have no legal responsibility to you in the event we provide such documents or information.

You agree to indemnify and hold harmless BKD and its personnel from any claims, liabilities, costs and expenses relating to our services under this agreement attributable to false or incomplete representations by management, except to the extent determined to have resulted from the intentional or deliberate misconduct of BKD personnel.

You agree that any dispute regarding this engagement will, prior to resorting to litigation, be submitted to mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. The American Arbitration Association will administer any such mediation in accordance with its Commercial Mediation Rules. The results of the mediation proceeding shall be binding only if each of us agrees to be bound. We will share any costs of mediation proceedings equally.

Either of us may terminate these services at any time. Both of us must agree, in writing, to any future modifications or extensions. If services are terminated, you agree to pay us for time expended to date plus charges for travel, long-distance telephone, copies, etc.

If any provision of this agreement is declared invalid or unenforceable, no other provision of this agreement is affected and all other provisions remain in full force and effect.

This engagement letter represents the entire agreement regarding the services described herein and supersedes all prior negotiations, proposals, representations or agreements, written or oral, regarding these services. It shall be binding on heirs, successors and assigns of you and BKD.

We may from time to time utilize third-party service providers, *e.g.*, domestic software processors or legal counsel, or disclose confidential information about you to third-party service providers in serving your account. We remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures and safeguards to protect the confidentiality of your information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information.

We will, at our discretion or upon your request, deliver financial or other confidential information to you electronically via email or other mechanism. You recognize and accept the risk involved, particularly in email delivery as the Internet is not necessarily a secure medium of communication as messages can be intercepted and read by those determined to do so.

COPY

City of Fayetteville, Arkansas
Fayetteville, Arkansas

You agree you will not modify these documents for internal use or for distribution to third parties. You also understand that we may on occasion send you documents marked as draft and understand that those are for your review purpose only, should not be distributed in any way and should be destroyed as soon as possible.

If you intend to include these financial statements and our report in an offering document at some future date, you agree to seek our permission to do so at that time. You agree to provide reasonable notice to allow sufficient time for us to perform certain additional procedures. Any time you intend to publish or otherwise reproduce these financial statements and our report and make reference to our firm name in any manner in connection therewith, you agree to provide us with printers' proofs or masters for our review and approval before printing or other reproduction. You will also provide us with a copy of the final reproduced material for our approval before it is distributed. Our fees for such services are in addition to those discussed elsewhere in this letter.

You agree to notify us if you desire to place these financial statements or our report thereon on an electronic site, such as the World Wide Web. You recognize that we have no responsibility as auditors to review information contained in electronic sites.

BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of **BKD, LLP** have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, unlike the partners in a general partnership, the partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for any debts, obligations or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract or otherwise.

HIPAA BUSINESS ASSOCIATE AGREEMENT

We agree not to use or disclose Protected Health Information of your employees (hereinafter referred to as "PHI") obtained or produced in any form of media during the course of our work, other than for purposes of (a) performing our engagement, (b) management and administration of BKD, or (c) carrying out legal responsibilities of BKD. We represent to you that we have implemented what we consider to be appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of that PHI. With respect to your PHI, we will report to you any material security incident or use or disclosure not authorized by this agreement and, to the extent practical, assist you in mitigating any harmful effects caused by material security incidents or unauthorized uses or disclosures of which we have knowledge. We agree that any material violation of these confidentiality provisions entitles you to terminate this engagement.

COPY

City of Fayetteville, Arkansas
Fayetteville, Arkansas

BKD agrees to:

1. Upon their request, make available to the Secretary of Health and Human Services our internal practices and books and records relating to the use and disclosure of PHI for purposes of determining your compliance with the Security and Privacy Rule, subject to any applicable legal privileges.
2. To the extent we maintain information that is part of a Designated Record Set, make available information necessary for you to make an accounting of disclosures of PHI about an individual.
3. To the extent we maintain information that is part of a Designated Record Set, make available information necessary for you to respond to requests by individuals for access to PHI that is not in your possession but is considered part of a Designated Record Set.
4. Upon receipt of a written request from you, incorporate any amendments or corrections to PHI contained in our workpapers in accordance with the Security and Privacy Rule to the extent such PHI is considered part of a Designated Record Set.

For purposes of this agreement, the term "Security and Privacy Rule" refers to the final rules published to implement the Administrative Simplification provisions of the *Health Insurance Portability and Accountability Act of 1996*, specifically 45 CFR Parts 160 and 164. The terms "Protected Health Information" and "Designated Record Set" have the same meaning as defined in the Security and Privacy Rule.

At the conclusion or termination of this engagement, any PHI retained by us will be subject to the same safeguards as for active engagements.

We will obtain from any agents, including subcontractors, to whom we provide PHI received from you, or created or received by us on behalf of you, an agreement to the same restrictions and conditions that apply to us with respect to such PHI.

To the extent that any relevant provision of HIPAA is eliminated or held to be invalid by a court of competent jurisdiction, the corresponding portion of this agreement shall be deemed of no force and effect for any purpose. To the extent that any relevant provision of HIPAA is materially amended in a manner that changes the obligations of business associates or covered entities that are embodied in term(s) of this engagement, the Parties agree to negotiate in good faith appropriate amendment(s) to this engagement to give effect to such revised obligations. In addition, the terms of this engagement should be construed in light of any interpretation and/or guidance on HIPAA issued by HHS from time to time.

COPY

-9-

City of Fayetteville, Arkansas
Fayetteville, Arkansas

If the above arrangements are acceptable to you, please sign the enclosed copy of this letter and return it to us.

BKD, LLP
BKD, LLP

The services and arrangements described in this letter are in accordance with our understanding and are acceptable to us.

CITY OF FAYETTEVILLE, ARKANSAS

BY _____

TITLE _____

DATE _____

COPY



System Review Report

July 31, 2008

To the Partners of BKD, LLP
and the Center for Public Company
Audit Firms Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of BKD, LLP (the firm) in effect for the year ended May 31, 2008. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under the *Government Auditing Standards*; audits of employee benefit plans, and an audit performed under FDICIA.

In our opinion, the system of quality control for the accounting and auditing practice of BKD, LLP in effect for the year May 31, 2008 has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. BKD, LLP has received a peer review rating of *pass*.

Clifton Gunderson LLP

COPY

Attachment to the Peer Review Report of BKD LLP Description of the Peer Review Process

Overview

Firms enrolled in the AICPA Center for Public Company Audit Firms (the Center) Peer Review Program have their system of quality control periodically reviewed by independent peers. These reviews are system and compliance oriented with the objective of evaluating whether:

The reviewed firm's system of quality control for its accounting and auditing practice applicable to non-SEC issuers has been designed to meet the requirements of the Quality Control Standards established by the AICPA.

The reviewed firm's quality control policies and procedures applicable to non-SEC issuers were being complied with to provide the firm with reasonable assurance of complying with professional standards.

A peer review is based on selective tests and directed at assessing whether the design of and compliance with the firm's system of quality control for its accounting and auditing practice applicable to non-SEC issuers provides the firm with reasonable, not absolute, assurance of complying with professional standards. Consequently a peer review on the firm's system of quality control is not intended to, and does not, provide assurance with respect to any individual engagement conducted by the firm or that none of the financial statements audited by the firm should be restated.

The Center's Peer Review Committee (PRC) establishes and maintains peer review standards. At regular meetings and through report evaluation task forces, the PRC considers each peer review, evaluates the reviewer's competence and performance, and examines every report, letter of comments, and accompanying response from the reviewed firm that states its corrective action plan before the peer review is finalized. The Center's staff plays a key role in overseeing the performance of peer reviews working closely with the peer review teams and the PRC.

Once the PRC accepts the peer review reports, letters of comments, and reviewed firms' responses, they are maintained in a file available to the public. In some situations, the public file also includes a signed undertaking by the firm agreeing to specific follow-up action requested by the PRC.

Firms that perform audits or play a substantial role in the audit of one or more SEC issuers, as defined by the Public Company Accounting Oversight Board (PCAOB), are required to be registered with and have their accounting and auditing practice applicable to SEC issuers inspected by the PCAOB. Therefore, we did not review the firm's accounting and auditing practice applicable to SEC issuers.

COPY

Planning the Review for the Firm's Accounting and Auditing Practice Applicable to Non-SEC Issuers

To plan the review of BKD LLP, we obtained an understanding of (1) the nature and extent of the firm's accounting and auditing practice, and (2) the design of the firm's system of quality control sufficient to assess the inherent and control risks implicit in its practice. Inherent risks were assessed by obtaining an understanding of the firm's practice, such as the industries of its clients and other factors of complexity in serving those clients, and the organization of the firm's personnel into practice units. Control risks were assessed by obtaining an understanding of the design of the firm's system of quality control, including its audit methodology, and monitoring procedures. Assessing control risk is the process of evaluating the effectiveness of the reviewed firm's system of quality control in preventing the performance of engagements that do not comply with professional standards.

Performing the Review of the Firm's Accounting and Auditing Practice Applicable to Non-SEC Issuers

Based on our assessment of the combined level of inherent and control risks, we identified practice units and selected engagements within those units to test for compliance with the firm's system of quality control. The engagements selected for review included engagements performed under the Government Auditing Standards, audits performed under FDICIA, a multi-office audit, and audits of Employee Benefit Plans. The engagements selected for review represented a cross-section of the firm's accounting and auditing practice with emphasis on higher-risk engagements. The engagement reviews included examining working paper files and reports and interviewing engagement personnel.

The scope of the peer review also included examining selected administrative and personnel files to determine compliance with the firm's policies and procedures for the elements of quality control pertaining to independence, integrity, and objectivity; personnel management; and acceptance and continuance of clients and engagements. Prior to concluding the review, we reassessed the adequacy of scope and conducted a meeting with firm management to discuss our findings and recommendations.

COPY

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

B. 1
Amend Police Department's Policies,
Procedures & Rules Manual
Page 1 of 44

10/6/2009
City Council Meeting Date

Greg Tabor
Submitted By

Police
Division

Police
Department

Action Required:

Council approve a resolution amending the attached Fayetteville Police Department Policies

\$0
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

9-15-09
Date

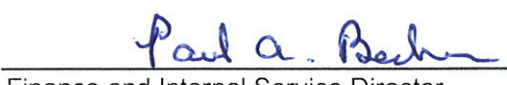
Previous Ordinance or Resolution #

Original Contract Date:


City Attorney

9/18/09
Date

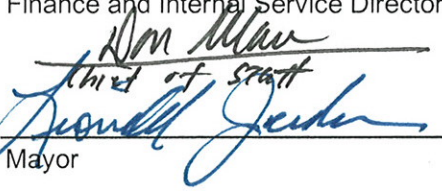
Original Contract Number:


Finance and Internal Service Director

9-18-2009
Date

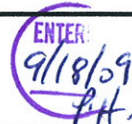
Received in City Clerk's Office




Mayor

9-23-09
7/22/09
Date

Received in Mayor's Office



Comments:

Tabled to 10/20/09 CC mtg. @ 10/6/09 CC mtg.

TO: Mayor Lioneld Jordan and Members of the City Council

FROM: Greg Tabor, Chief of Police

DATE: October 7, 2009

SUBJECT: Policy Amendments

Recommendation: Council approves a resolution amending the following Fayetteville Police Department Policies

- (1) 46.2.1 – “Emergency Response Team”
- (2) 1.3.1 - “Use of Force”
- (3) 1.3.4 - “Less-Lethal Weapons/Defensive Tactics”
- (4) 26.1.1 - “Disciplinary Matters and Award Procedures”
- (5) 26.1.2 - “Harassment and Discrimination in the Workplace”

Background: The current Fayetteville Police Department Policies were approved by council resolution #3-99 on January 5th, 1999.

Discussion: The department is currently in the process of reviewing all policies and updating as necessary to comply with Commission on Accreditation for Law Enforcement Agencies (CALEA) standards, to conform to changes in Federal, State and local law and to match current Fayetteville Police Department practices.

Budget Impact: None

RESOLUTION NO. _____

A RESOLUTION APPROVING AND ADOPTING AMENDMENTS TO
THE FAYETTEVILLE POLICE DEPARTMENT'S POLICIES,
PROCEDURES & RULES MANUAL.

**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 and adopts the following amended sections of the Fayetteville Police
Department's Policies, Procedures & Rules Manual:

- 1.3.1 - "Use of Force"
- 1.3.4 - "Less-Lethal Weapons/Defensive Tactics"
- 26.1.1 - "Disciplinary Matter and Award Procedures"
- 26.1.2 - "Harassment and Discrimination in the Workplace"
- 46.2.1 - "Emergency Response Team"

A copy of these amendments, marked Exhibit "A," is attached hereto and made a
part hereof.

PASSED and APPROVED this 20th day of October, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

FAYETTEVILLE POLICE DEPARTMENT
FAYETTEVILLE, ARKANSAS

POLICIES, PROCEDURES, AND RULES

Effective Date		Number 1.3.1
Subject USE OF FORCE		
Reference 1.3.4, 41.3.5		Special Instructions
Distribution All Personnel	Reevaluation Date 1-Year	No. Pages -9-

Comment: References are new, they refer to the "Less than Lethal" policy (1.3.4) and Uniforms/Equipment (41.3.5)

I. PURPOSE

The purpose of this directive is to state the Fayetteville Police Department policy regarding the use of force, including deadly force, less lethal force and defensive tactics.

II. DISCUSSION

The value of human life is immeasurable in our society. Police officers have been delegated the awesome responsibility to protect life and property and apprehend criminal offenders. The apprehension of criminal offenders and protection must at all times be secondary to the protection of life. The officer's responsibility for protecting life must include his own.

III. DEFINITION

"Deadly Force", as used in this policy is defined as that force which may cause death or grave injury or which creates some specified degree of risk that a reasonable and prudent person would consider likely to cause death or grave injury.

"Physical force", as used in this policy, is defined as any bodily impact, restraint, confinement or the threat thereof.

"Reasonable belief", as used in this policy, is defined as the facts or circumstances the officer knows, or should know, are such

as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

"Serious physical injury", as used in this policy, is defined as a bodily injury that creates a substantial risk of death; causes serious, permanent disfigurement; or results in long-term loss or impairment of the functioning of any bodily member or organ.

Comment: Definitions have been moved from another portion of old policy

IV. POLICY

It shall be the policy of the Fayetteville Police Department that its officers shall not use more force in any situation than is reasonably necessary under the circumstances. [Calea 1.3.1]

Comment: CALEA standard requires a policy statement on Use of Force

A. Use of Deadly Force

1. An officer may use deadly force to protect him or others if he has reasonable belief of immediate threat of death or serious physical injury. [Calea 1.3.2]

2. The use of deadly force should be prohibited in the apprehension of misdemeanants, since the value of human life far outweighs the gravity of a misdemeanor offense.

Comment: "flatly" omitted

3. Deadly force shall never be used on mere suspicion that a crime, no matter how serious, was committed or that the person being pursued committed the crime. An officer shall either have witnessed the crime or have sufficient information to know, as a virtual certainty, that the suspect committed an offense for which the use of deadly force is permissible.

4. Officers shall not be permitted to fire at felony suspects when the officer believes that the suspect can be apprehended reasonably soon thereafter without the use of deadly force or when there is substantial danger to innocent bystanders. Although the requirement of using lesser force, when possible, is a legal rule, the other limitations are based on sound public policy. To risk the life of innocent persons for the purpose of apprehending a felon cannot be justified.

5. Officers shall not discharge a firearm at or from a moving vehicle except as the ultimate measure of self-defense or defense of another person.

6. Officers shall not fire their weapons to kill, but rather to stop and incapacitate an assailant from completing a potentially deadly act. For maximum stopping effectiveness and minimal danger

to innocent bystanders, the officer should shoot at "center body mass."

7. An officer may use deadly force to effect the capture or prevent the escape if the officer reasonably believes that the suspect has committed a felony involving the use or threatened use of deadly force and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

8. In order to protect the community's interest when officers may have exceeded the scope of their authority in the use of deadly force and to shield officers who have not exceeded the scope of their authority from possible confrontations with the community, officers whose use of force results in death or serious physical injury shall be relieved from line-duty assignment pending administrative review.[Calea 1.3.8]

9. The killing of an animal is justified by the following conditions:

- a. For self-defense,
- b. To prevent substantial harm to the officer or another, or
- c. When the animal is so badly injured that humanity requires its relief from further suffering.

A seriously wounded or injured animal may be destroyed upon approval from a supervisor.

Comment: language omitted regarding assistance from other agencies

The destruction of vicious animals should be guided by the same rules set forth for self-defense and the defense and safety of others.

B. Use of Physical Force and Less-lethal Weapons

All commissioned Police Officers of the Fayetteville Police Department are directed to obtain defensive tactics training and certification to carry and use the departmental authorized less-lethal weapons. Officers will be issued copies of 1.3.1 and will be instructed in this policy.[Calea 1.3.12] Defensive tactics and less-lethal weapons provide officers with additional use of force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations that occur in the line of duty.

It shall be the policy of the Fayetteville Police Department that officers use defensive tactics and less-lethal weapons when

warranted, but only in accordance with the guidelines set forth here.

All departmentally approved less lethal devices are deployed as additional police tools and are not intended to replace firearms or self-defense techniques. Officers choosing to use these devices **should not** compromise their safety.

Further reference may be made to section 1.3.4 regarding Less Lethal Weapons and Defensive Tactics.

Comment: language taken from previous document and added

C. Firearms

1. Issuance of "Use of Force" Policy:

All officers of the Fayetteville Police Department shall be issued individual copies of and receive instruction on the department's policy regarding use of deadly force prior to being issued a firearm.[Calea 1.3.12] Officers will receive in-service training on the department's use of force policy on an annual basis.[Calea 1.3.11]

2. Proficiency in Use of Agency-authorized Firearms:

Qualification with the issued service weapon is an essential job function of a police officer with the City of Fayetteville. Failure to qualify may result in the imposition of discipline, up to and including termination of employment. Additionally, failure to qualify with any other department-approved weapon would prohibit that person from being allowed to carry that particular weapon.

Comment: language added

[Calea 1.3.10] A certified weapons instructor shall conduct training and qualification. [Calea 1.3.11 a.]

a. Officers shall qualify with the issued service weapon four times each year, at least one of which will meet the Arkansas Law Enforcement Standards and Training (ALETA) Standard Qualification Course of Fire for one target. [Calea 1.3.11]

b. On all other qualification relays, Officers shall qualify with a score equal to or better than the established standard set by the Chief of Police in consultation with the Firearms Instructors.

c. Officers certified on the department-approved shotgun or rifle shall qualify annually.

d. All firearms training and qualifications scores, including remedial training if necessary, will be documented and maintained

by the firearms division until an officer separates from the department.[Calea 1.3.11 b.]

(1) An officer who fails to qualify with his/her issued service weapon after two consecutive attempts shall be referred for immediate remedial training by a certified firearms instructor.

(2) The firearms instructor providing the remedial training shall notify the officer's immediate supervisor and Chief of Police in the event the officer is still unable to qualify at the conclusion of the extra training session. Upon such notification, the supervisor shall immediately relieve the unqualified officer of the issued service weapon and patrol duty, with pay. The unqualified officer will be directed to report to the training division the next working day for additional remedial training. The officer's authority to carry a firearm shall remain revoked until such time as the officer qualifies or that the determination is made that the officer is not responding to further training.
[Calea 1.3.11.c]

(3) Any officer who fails to qualify and receives remedial training more than twice during a calendar year shall be subject to disciplinary action. If an unqualified officer does not respond satisfactorily to remedial training and remains unqualified, the Chief of Police shall be notified in writing. At such time, the officer will be referred for termination.

Comment: language added to reflect current practice and CALEA standards

d. Officers shall attain and demonstrate knowledge of the laws concerning the use of firearms and be familiar with recognized safe-handling procedures for the use of these weapons.

e. Any officer returning to duty after an absence exceeding three months shall report to the training division for remedial training and requalification prior to being permitted to return to full duty.

3. Except for general maintenance, storage or authorized training, officers shall not draw or exhibit their firearm unless circumstances create strong reasonable cause to believe that it may be necessary to lawfully use the weapon in conformance with other sections of this policy.

4. Warning Shots:

Officers are not justified in using a firearm to fire a warning shot and shall never use warning shots for any purpose. Warning shots endanger the lives of innocent bystanders and may also prompt a suspect to return fire.[Calea 1.3.3]

5. Off-Duty Possession of Weapons:

It shall be the policy of the Fayetteville Police Department to permit full-time sworn members of the department to possess and carry a concealed weapon while off-duty within the corporate limits of Fayetteville. Officers of the Fayetteville Police Department should also be aware that Federal Law known as the Law Enforcement Officers Safety Act of 2004 provides certified law enforcement officers with the right to carry a concealed firearm in any jurisdiction in the United States.

Comment: language added

- a. Officers are not required to carry a weapon while off-duty, but may do so at their option.
- b. Officers exercising the option to carry a weapon while off-duty are authorized to carry their issued weapon.
- c. Authorization for officers to carry weapons while off-duty shall be subject to the following conditions:

- (1) Officers will be required to have in their possession the department-issued badge and official identification card.

- (2) Officers in plain clothes wearing their firearms exposed to the public view shall display their department badge near the firearm in a manner that is clearly visible to the public unless special circumstances exist.

- (3) Officers who choose to carry a weapon other than one issued by the police department, shall qualify to demonstrate proficiency in the use of that weapon on an annual basis at their own expense.

6. Department-issued Weapons and Ammunition:

Reference may be made to Fayetteville Police Department Policy 41.3.5 for department-issued weapons and ammunition.

A. All department-issued firearms will be inspected on an annual basis by a certified armorer and must be approved by the armorer before being issued and/or carried. [Calea 1.3.9 c., d., e.]

- (1) The firearms division will maintain weapons inspections reports.

- (2) Weapons deemed irreparable will be removed from service with a report indicating such status.

- (3) The firearms division will maintain a record on all weapons in service to include inspection date(s) and maintenance.

Comment: language added to reflect current practice and CALEA standards

B. Officer Responsibility for Department-issued Firearm.

(1) Officers must take reasonable and adequate care of any firearm issued to them.

(2) In the event a firearm is lost, damaged, destroyed, or stolen, the officer may be subject to financial liability and/or dismissed if a preponderance of evidence establishes negligence or willful destruction or damage of the firearm by the officer.

(3) In the event of the loss of a department-issued firearm, the officer will immediately notify the shift supervisor who will in turn notify the Chief of Police. The supervisor will also notify local law enforcement authorities of the firearm loss and ensure that the loss is reported through the department's ACIC/NCIC terminal.

(4) Officers may choose to leave their issued weapons in their locked lockers at the department. If officers choose to remove their issued weapon from the department while off duty, it is recommended they be stored in a locked box, separate from the ammunition.[Calea 1.3.9 f.)]

Comment: language added

7. Discharge of Weapon:

If an officer, on or off duty, fires a department-issued weapon (except training purposes such as range qualifications) or in the event of an accidental discharge the officer shall comply with the following:

a. The officer who fired the weapon shall notify the shift supervisor as soon as practicable after the firing has taken place.

b. The supervisor shall make a preliminary investigation each time an officer under his command fires a weapon.

c. The supervisor shall cause a report to be filed immediately with the Chief of Police regarding the firing of any weapon by police personnel.[Calea 1.3.6]

d. If during the performance of duty or on any occasion an officer of the Fayetteville Police Department fires a weapon and in doing so wounds or kills a suspect or perpetrator of a crime, the following procedure is to be followed immediately:

(1) Medical aid, to the extent possible, should be given to anyone injured.[Calea 1.3.5]

(2) The shift supervisor is to be notified immediately.

(3) The shift supervisor will notify the Chief of Police immediately.

(4) A shooting team, the members of which will be designated by the Chief of Police, will be called to the scene immediately.

Comment: language added

(5) This shooting team will be responsible for conducting a thorough investigation into the circumstances surrounding the shooting. The shooting team will, at the conclusion of the investigation, submit a report to the Chief of Police including the relevant facts and circumstances surrounding the incident and a conclusion as to whether the discharge violates departmental policy.

(6) This shooting team will be functioning with the full authority of the Chief of Police. This team will be in complete control of the **internal** investigation. All officers including shift supervisors shall give this team their full cooperation. No one shall interfere with such an investigation.

Comment: language changed
from "entire" to "internal"

(7) If the facts of the incident support a conclusion that the shot was the result of negligence, the officer shall be required to undergo firearms certification training again.

D. Use of Force Reports

The purpose of this section is to establish specific guidelines that define the situations when the Use of Force Report must be completed. Not every touching by an officer requires a report; circumstances that require a report are outlined elsewhere in this order. [Calea 1.3.6]

All commissioned Police Officers of the Fayetteville Police Department are directed to complete the "Use of Force" report when the following criteria is met and turn it in to his supervisor before the end of his shift.

1. Situations that require Supervisor notification and completion of the Use of Force Report: [Calea 1.3.6]

a. An officer exercising police authority uses force which causes any visible or apparent physical injury, or which results in the subject saying that he or she was injured.

b. An officer exercising police authority uses any object, including, but not limited to, a baton, flashlight, hand, fist, or foot to strike a blow to a subject.

c. An officer exercising police authority bodily removes or drags a struggling subject from one place to another, or forcibly places or keeps a person in a prone position.

d. An officer exercising police authority uses force during or after which a subject loses consciousness.

e. An officer uses any aerosol irritant or inflammatory agent (see 1.3.4).

f. An officer uses a Conducted Energy Weapon (see 1.3.4).

g. An officer discharges his or her firearm; regardless of duty status and regardless of whether the discharge was accidental or intentional. (Exceptions: lawful hunting activity, range activity, and other lawful and safe target practice).

h. An officer points a gun at anyone.

2. Use of Force Reports will be submitted by the division supervisor to the department's administration:[Calea 1.3.6]

a. Each Use of Force Report will be reviewed by the division's respective captain and by the Chief's designated head of Office of Professional Standards (OPS).[Calea 1.3.7]

b. The designated head of OPS will conduct an annual review and analysis of all Use of Force Reports and report the analysis to the Chief.[Calea 1.3.13]

Comment: language from Use of Force Reports general order streamlined into this policy

FAYETTEVILLE POLICE DEPARTMENT
FAYETTEVILLE, ARKANSAS

POLICIES, PROCEDURES, AND RULES

Effective Date		Number 1.3.4
Subject Less-Lethal Weapons/Defensive Tactics		
Reference 1.3.1		Special Instructions
Distribution All Personnel	Reevaluation Date 1-Year	No. Pages -13-

Comment: This policy draft streamlined the old "Non Lethal Defensive Tactics" policy with general orders regarding the use of pepper spray and tasers.

I. PURPOSE

The purpose of this directive is to establish specific guidelines for the use of authorized less-lethal weapons and defensive tactics.[Calea 1.3.4]

II. DISCUSSION

All Police Officers of the Fayetteville Police Department are directed to obtain defensive tactics training and certification to carry and use the departmental authorized less-lethal weapons. Defensive tactics and less-lethal weapons provide officers with additional use of force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations that occur in the line of duty.

III. POLICY

It shall be the policy of the Fayetteville Police Department that officers use defensive tactics and less-lethal weapons when warranted, but only in accordance with the guidelines set forth here.

Comment: Language is a combination of text from the above referenced documents, now streamlined into one.

A. Defensive Tactics

The *Use of Force Continuum* is included as a guide in the appropriate use of force. It is recognized that it cannot be rigidly applied in rapidly unfolding and fluid situations. Officers should generally use the level of force that can reasonably be expected to succeed in controlling the situation. Officers are not required to move in a hierarchical fashion through all the levels

of control, but instead, should use that level of force that is appropriate and reasonable under existing circumstances. The Force Continuum contains areas of control, which will be used by an officer, and the levels of resistance, which are used by the offender.

1. Levels of Control:

a. Officer Presence

The professional appearance and uniform of a police officer.

b. Verbal Direction

The appropriate verbal response and commands used to attempt to direct the action of a suspect.

c. Pepper Aerosol Restraint Spray/Conducted Energy Weapon

The OC aerosol spray and Conducted Energy Weapon provides officers with additional use-of-force options against aggressive animals or for gaining compliance of resistant or aggressive individuals during arrest, detention and other enforcement situations that occur in the line of duty.

d. Empty Hand

Soft empty hand techniques are designed to control Passive or Defensive Resistance. They are used when verbal direction/commands are not effective and there is non-compliance with lawful orders. Pressure Point Control Tactics (PPCT) is the department approved defensive tactics system. Soft empty hand control techniques include strength techniques, joint locks, pressure points or distraction techniques, which are hand and leg strikes to specific motor nerve points.

Hard Empty Hand Control techniques are designed to control Active Aggression, but can be used to control Defensive Resistance when lower forms of control have failed or when the officer believes lower forms of control will fail.

e. Intermediate Weapons

An intermediate weapon is any tool used when empty hand control is not enough or would be dangerous for the officers to attempt, and deadly force is not justified. The department issued intermediate weapon, or impact weapon, is the expandable baton. Officers have discretion to use the expandable baton as a defensive tactics tool

to counter resistance and assaultive behavior.

f. Deadly/lethal force

Force likely to cause death or serious physical injury.

2. Levels of Resistance:

a. Psychological Intimidation

The suspect attempts to intimidate the officers psychologically. These are non-verbal cues such as suspect attitude or physical appearance or physical readiness.

b. Verbal Non-Compliance

This includes verbal threats from the suspect towards the officers. A suspect may not be resisting just by threatening the officer but may simply refuse to comply with orders, be unwilling to comply or ignore the officer completely.

c. Passive Resistance

The suspect makes no attempt to fight the officer or even pull away. He simply forces the officer to do all the work. An example would be the protestor who causes the officer to pick him up and carry him from the scene or the drunk driver who will not step from the car but must be physically pulled out.

d. Defensive Resistance

The suspect performs actions that attempt to prevent officers from controlling him, such as pulling away when handcuffing is attempted. He may simply move away from the officer or push the officer's hands away. The suspect makes no attempt to harm the officer, just tries to defeat the arrest.

e. Active Aggression.

The suspect attempts to harm the officer by physical actions such as striking or kicking him.

f. Aggravated Aggression

The suspect is attempting to harm the officer by use of a weapon or empty handed at a deadly force level.

3. De-escalation of Force:

Officers must immediately de-escalate down to empty hands or verbal commands after gaining compliance through the use of an intermediate weapon.

Officers, for their own protection, should understand and comply with the force continuum.

4. Training:

Officers must be certified in the use of the Conducted Energy Weapon (CEW), Pepper Spray and Pressure Point Control Tactics before authorization to use such defensive tactics.

Officers are required to attend refresher training on handgun retention and PPCT Tactics as scheduled by the Training Division.

B. Less-lethal Weapons

All Police Officers of the Fayetteville Police Department are directed to obtain certification to carry and use less lethal weapons as authorized by the Chief of Police. Less lethal weapons provide officers with additional use-of-force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations that occur in the line of duty. It is the policy of this department that officers use less lethal weapons when warranted, but only in accordance with the guidelines of this policy set forth here. Less lethal weapons are not designed to be used in place of deadly force when deadly force is justified. Less lethal weapons are other tools in the use-of-force continuum to assist in preventing injury to officers and others.

Officers will receive in-service refresher training on the use of less lethal weapons on an annual basis. A certified weapons or tactics instructor will conduct refresher training. The training division will maintain documentation of refresher training. Remedial training, if necessary, will be given to any officer who is unable to demonstrate knowledge and proficiency of less lethal weapons prior to resuming official duties.[Calea 1.3.11]

1. Police Baton

a. Authorization

(1) Only certified officers who have successfully completed the PPCT certified Defensive Tactics Course are authorized to carry the police baton.

b. Usage Criteria

(1) The police baton may be used when empty hand control has failed, or the officer believes that empty hand control will be insufficient to establish control.

(2) The use of deadly force is not justified during the normal use of baton; however, during extreme circumstances when a suspect raises his aggression to a deadly force level, officers engaging a suspect with a baton would be permitted to use deadly force.

c. Usage Procedures

(1) Impact weapon strikes to the nerve motor points in the legs and arms are considered to be at the Intermediate Weapon level on the force continuum.

(2) Any impact weapon strikes to the head, throat or clavicle are considered to be deadly force.

(3) The two target areas on the arms for blocking points are:

(a) The Radial nerve motor point on the outside of the upper forearm.

(b) Median nerve motor point on the inside of the forearm.

(4) The three target areas for striking on the legs are:

(a) The Common Peroneal nerve motor point on the outside of the leg.

(b) The Femoral nerve motor point on the inside of the leg.

(c) The Tibial nerve motor point on the top of the calf muscle.

(5) Strikes should be delivered with maximum power in an effort to eliminate the need for multiple strikes, decrease the need to escalate in levels of control, and shorten the time span of the confrontation.

(6) After striking a subject, officers should employ other methods of follow-up control and ensure that the subject receives medical attention. [Calea 1.3.5]

2. Pepper Aerosol Restraint Spray

Oleoresin capsicum (OC) spray is the authorized pepper aerosol restraint spray.

a. Authorization

(1) Only certified officers who have completed the prescribed course of instruction on the use of OC are authorized to carry the device.

(2) Uniformed officers whose normal duties/assignments may require them to make arrests or supervise detainees shall be required to carry departmentally authorized OC while on duty. Plain-clothes officers whose normal duties/assignments may require them to make arrests or supervise detainees shall have available departmentally authorized OC spray.

(3) Uniformed officers shall carry only departmentally authorized OC canisters. Non-uniformed officers may carry OC in alternative devices authorized by the agency.

b. Usage Criteria

(1) OC spray is considered a use of force and shall be employed in a manner consistent with this agency's use-of-force policy. OC is a force option following verbal compliance tactics on the use of force continuum.

(2) OC may be used when:

(a) verbal dialogue has failed to bring about the subject's compliance, and

(b) the subject has signaled his intention to actively resist the officer's efforts to make the arrest.

(c) when confronted with an aggressive animal.

(3) Whenever practical and reasonable, officers should issue a verbal warning prior to using OC against a suspect.

(4) An officer may use deadly force to protect himself from the use or threatened use of OC when the officer reasonably believes that deadly force will be used against him if he becomes incapacitated.

(5) Once a suspect is compliant, the use of OC spray is no longer justified.

c. Usage Procedures

(1) Whenever possible, officers should be upwind from the suspect before using OC and should avoid entering the spray area.

(2) An officer should maintain a safe distance from the suspect of between two and ten feet.

(3) A single spray burst of one second should be directed at the suspect's eyes, nose, and mouth.

(4) Use of OC should be avoided, if possible, under conditions where it may affect innocent bystanders.

d. Effects of OC and Officer Response

(1) Within several seconds of being sprayed by OC, a suspect will normally display symptoms of temporary blindness, have difficulty breathing, burning sensation in the throat, nausea, lung pain and/or impaired thought process.

(2) The effects of OC spray vary among individuals. Therefore, all suspects shall be handcuffed as soon as possible after being sprayed. Officers should also be prepared to employ other means to control the suspect - to include, if necessary, other force options consistent with agency policy-if he does not respond sufficiently to the spray and cannot otherwise be subdued.

(3) Immediately after spraying a suspect, officers shall be alert to any indications that the individual needs medical care. This includes, but is not necessarily limited to, breathing difficulties, gagging, profuse sweating and loss of consciousness. Upon observing these or other medical problems or if the suspect requests medical assistance, the officer shall immediately summon emergency medical aid or transport to a local medical facility.[Calea 1.3.5]

(4) Suspects who have been sprayed shall be monitored continuously for the ill effects of the OC spray. It shall be the responsibility of the officer affecting the arrest to either monitor the suspect or alert detention center personnel the suspect has been sprayed. In the event the officer was injured during the arrest, the supervisor will assign another officer to monitor the suspect.

(5) Officers shall provide assurance to suspects who have been sprayed that the effects are temporary and encourage them to relax.

(6) Air will normally begin reducing the effects of OC spray within fifteen minutes of exposure. However, once the suspect has been restrained, officers shall assist him by rinsing and drying the exposed area to the extent possible.

(7) Assistance shall be offered to any individuals accidentally exposed to OC spray who feel the effects of the agent. All such incidents shall be reported as soon as possible including the recording of the bystanders name, date of birth, and address to the immediate supervisor.

e. Reporting Procedures

(1) Accidental discharges as well as intentional uses of OC spray against an individual in an enforcement capacity shall be reported to the officer's immediate supervisor as soon as possible.

(2) A written report of an accidental discharge, which does not affect an individual, must be completed and turned into the officer's immediate supervisor before the end of shift when accidental discharge occurred.[Calea 1.3.6]

(3) A use-of-force report shall be completed following all discharges of OC spray except during testing, malfunction or accidental discharge and turned into the officer's immediate supervisor before the end of shift in which the spray was used.[Calea 1.3.6]

(4) Off-duty officers discharging OC spray are subject to the same reporting requirements as on-duty officers. The immediate supervisor shall be the shift supervisor at the time of the discharge.[Calea 1.3.6]

f. Replacement

(1) Each officer assigned an OC spray device shall be responsible for maintaining it in an operational and charged state. If an OC device becomes damaged, inoperable, or empty, the assigned officer shall report to their immediate supervisor in writing and request a replacement device.

(2) Replacements of OC spray canisters shall occur when the unit is less than half full, as determined by weighing the canister.

(3) OC canisters shall be inspected and weighed biannually by shift sergeants and maintain a record of this fact.

(4) Unexplained depletion of OC canisters shall require an investigation and written report by the officer's supervisor to the Chief of Police.

3. Conducted Energy Weapon

The Conducted Energy Weapon (CEW) will be used at the same level in the use-of-force continuum as Pepper Aerosol Restraint Spray. It will be the officer's discretion as to which device is used.

a. Authorization

(1) Only certified officers who have completed the prescribed course of instruction on the use of the CEW are authorized to carry or use the device. Officers must demonstrate proficiency in the use of the CEW during the prescribed course of instruction. [Calea 1.3.10] Officers must receive in-service training on the CEW and demonstrate proficiency with the CEW on an annual basis after receiving the initial prescribed course of instruction. [Calea 1.3.11]

(2) Uniformed officers whose normal duties/assignments may require them to make arrests or supervise detainees shall be required to carry authorized CEW units on their duty belts while on duty.

(3) Uniformed officers shall carry only department authorized CEWs in the prescribed manner on their duty belts. Non-uniformed officers may carry the CEW in alternative forms authorized by the agency.

b. Usage Criteria

(1) At the beginning of each shift, before an officer places the CEW on the duty belt, a function test will be completed on each unit. This will be accomplished by turning the safety to the ON position, checking the battery level on the Central Information Display, verifying the laser sight system is operational, and by performing an arc display for a minimum of one second. On any occasion where malfunctions are found, the unit shall be removed from service and forwarded to a CEW instructor for servicing and troubleshooting.

(2) Use of the CEW is considered a use of force and shall be deployed in a manner consistent with this agency's use-of-force policy. The CEW is a force option following verbal direction on the use-of-force continuum.

(3) Whenever practical and reasonable officers should issue a verbal warning prior to using the CEW against a suspect. The CEW will not be used in a punitive or coercive manner. Officers should consider the suspect's age and physical ability to resist arrest in making the decision to use the CEW.

(4) An officer may use deadly force to protect himself or others from the use or threatened use of a CEW when the officer reasonably believes that deadly force will be used against him if he becomes incapacitated.

(5) The CEW is not designed, nor expected, to be used in place of deadly force when deadly force is justified. The CEW is another tool in the use-of-force continuum to assist in preventing injury to officers and others.

(6) Once a suspect is compliant the use of the CEW is no longer justified.

c. Usage Procedures

(1) The CEW operates much like a handgun. It is equipped with standard sights and a laser sight system. The laser dot will be the point of impact for the top probe. The CEW fires probes in line with an eight-degree probe spread. The CEW must be held level on vertical targets. The exception to this rule is on an angled or prone target where the CEW should be tilted to allow the probes to strike the target properly. An example of this would be if the target were lying on the ground or behind some type of barrier. The CEW should be aimed at center mass or the legs. Do not aim at the head or throat of an individual. The CEW may also be applied as a Drive Stun as a distracting or breaking maneuver to gain control and effect compliance of a suspect. In addition, the CEW may be applied as a Drive Stun after the probes have been deployed or a non-deployed cartridge has been removed.

(2) Officers should maintain a safe distance from the suspect. The optimum shot range is seven to fifteen feet. If the suspect is running, the officer must keep pace with the suspect to prevent the CEW wires from breaking.

(3) When the CEW is deployed it should complete the full five-second cycle without interruption. Typically the initial deployment changes the behavior of the suspect. After the CEW is deployed, the officer should assess and evaluate the suspect while giving verbal commands. If the suspect continues to be non-compliant, additional applications may be given. The suspect should be handcuffed as soon as practical while disabled by the CEW to minimize the number of deployment cycles.

(4) The CEW is prohibited from being used:

(a) In a punitive or coercive manner.

(b) On a handcuffed or secured prisoner absent assaultive behavior that cannot be reasonably dealt with.

(c) On any suspect who does not demonstrate his or her overt intention to use violence or force against the officer or another person(s).

(d) In an environment where an officer knows that a potentially flammable, volatile or explosive material is present, including but not limited to OC spray with volatile propellant, gasoline, natural gas, propane or a clandestine laboratory.

(e) In any environment where the subject's fall could reasonably result in death or serious injury (e.g. on an elevated structure or in a location with sharp objects).

(f) On the operator of a moving vehicle.

(5) As soon after deployment as possible, CDC should be notified that the CEW has been deployed.

(6) Deployed cartridges must be submitted to evidence and handled with caution as explained and instructed in the CEW users course. Deployed cartridges are considered to be a biohazard and must be handled with extreme caution.

(7) CEWs equipped with cameras will automatically record a video recording each time the CEW is activated in the field:

(a) After a CEW is deployed, officers are required to provide the CEW to a patrol supervisor in order to preserve the video.

(b) Patrol supervisors, provided with the required passwords, are to create a folder within the network drive and upload the CEW camera video in a space designated by the IT Manager. After the upload, supervisors are restricted by the IT Manager from any actions other than viewing the video.

d. Effects of the CEW

(1) The CEW is a Conducted Energy Weapon that uses propelled wires to conduct energy that affects the sensory and motor functions of the central nervous system resulting in incapacitation and do not rely on pain compliance. The CEW creates Electro-Muscular Disruption and causes the contraction of the muscles and overrides the central nervous system.

(2) After deployment the suspect may fall immediately to the ground, which is the greatest risk of injury to the suspect.

(3) The CEW will cause slight signature marks that resemble surface burns, appear red or may blister.

(4) The CEW does not damage nerve tissue, does not cause serious burns and does not cause electrocution in a wet environment.

e. Reporting Procedures

(1) Every deployment of the CEW will require the officer to complete a use of force report. The only exception to this will be during training classes (and/or inspections). A supplemental page for the CEW must be attached to the use of force report. This page will be for documenting the location on a person's body where the CEW probes made contact.[Calea 1.3.6]

(2) The use of force report must indicate if multiple deployments occurred and the justification for multiple deployments.[Calea 1.3.6]

(3) If an officer performs an "Arc Display" to gain control of a suspect or crowd, a use of force form must be completed explaining the reason for the display.

(4) If an accidental discharge occurs a use of force report must be completed explaining the circumstances of the discharge.

(5) A photograph of the individual and the area or areas where probes penetrated the skin of the individual must be taken of each person on whom a CEW is used. The photos will be submitted to evidence with the used air cartridge and probes.

(6) The CEW has a built in microprocessor that records the date, time, duration of cycle and the battery status of each pull of the trigger for the last 2000 trigger pulls. The supervisor in charge of CEW procedures shall maintain a data download logbook on each CEW. The logbook shall be maintained for quality control purposes.

f. Probe Removal [Calea 1.3.5]

(1) CEW probes should be removed from an individual as soon as possible after the person has been handcuffed or properly restrained.

(2) As soon as possible after the CEW has been deployed on an individual, dispatch will be contacted and request medical services personnel to respond to the scene for probe removal.

[Calea 1.3.5]

(3) If any of the probes are located in the head, neck, breast(females only) or the groin area of an individual and medical services personnel is not able to remove the probes; the individual will be transported to WRMC for probe removal.

(4) After the probes have been removed, the probes and spent cartridge will be turned over to the officer who deployed the cartridge for submission to evidence.

Comment: This section is the combination of the separate general orders on the usage of pepper spray, taser and old policy regarding the police baton.

POLICIES, PROCEDURES, AND RULES

Effective Date		Number 26.1.1
Subject DISCIPLINARY MATTERS & AWARD PROCEDURES		
Reference: See 52.1.1, 1.3.1, 41.1.1, 26.1.2		Special Instructions
Distribution All Personnel	Reevaluation Date 1-Year	No. Pages -8-

I. PURPOSE

Effective discipline is a positive process when its perceived purpose is to train or develop by instruction. Among the programs having an impact on discipline in a law enforcement agency are selection, training, direction, supervision, and accountability. These elements are inter-dependent, and a weakness in any one is damaging to effective discipline. Many standards bearing on a disciplinary system are included in other chapters relating to selection, training, and direction. Therefore, the purpose of this directive is to focus on the accountability component of a disciplinary system.

II. DISCUSSION

It shall be the policy of the Fayetteville Police Department to follow and abide by the disciplinary policies and procedures in effect and addressed in the rules and regulations of the Civil Service Commission of the City of Fayetteville. An employee whose work becomes unsatisfactory should immediately be notified by his/her supervisor in what way the work is deficient and what must be done if work performance is to be judged satisfactory. [Calea 26.1.5] An employee who is suspended or dismissed for unsatisfactory performance of duties should normally have received three warnings:

Supervisor Counseling - an oral warning from the employee's supervisor. The supervisor must record the dates of the discussions with the employee, the performance deficiencies discussed and the corrective actions required. [Calea 26.1.5]

The supervisor should maintain this record for the duration of the employee's performance evaluation period.[Calea 26.1.8]

Written Record of an Oral Reprimand - an oral warning with a follow-up letter to the employee that sets forth the points covered in their discussion. The Chief of Police shall have authorized a written record of an oral reprimand. The supervisor shall keep a record of a written record of an oral reprimand. The supervisor should maintain this record for the duration of the employee's performance evaluation period.[Calea 26.1.8]

Written Reprimand - a written warning from the Department Chief serving notice upon the employee that noted deficiencies must be corrected immediately in order to avoid disciplinary action up to and including dismissal. A written reprimand shall be placed in the employee's personnel file.[Calea 26.1.8]

Comment: Language amended to reflect long standing practices within the department

An employee who is suspended without pay or dismissed for unsatisfactory performance of duties or violations of policy shall receive a letter from the Department Chief outlining the noted performance deficiencies or policy violations, effective date of suspension or dismissal and a statement of the status of the employee's benefits during the suspension or dismissal. A copy of this letter shall be placed in the employee's personnel record.[Calea 26.1.7]

An employee so discharged, reduced in rank, or suspended for three days or more shall have the right, within ten calendar days from the date of such written notice, to request a trial through the Civil Service Commission. Reference should be made to the Civil Service Rules and Regulations. [Calea 26.1.6]

The Administrative Captain should maintain the departmental employee administrative file. It should contain any letters of commendation or appreciation, administrative letters and replies, results of any sustained punitive disciplinary action, as well as other pertinent information. Information in this file will be maintained indefinitely. [Calea 26.1.8]

It is suggested immediate supervisors maintain an employee performance/counseling file for each person under their supervision. This file might contain oral reprimands during the current evaluation period, letters of job related counseling sessions, copies of correspondence between the employee and supervisor, complementary correspondence, and other similar information regarding the performance of the employee. It is suggested this material be kept in a secured location by the immediate supervisor. This information should be purged after one year and after being noted on the employee's performance evaluation. [Calea 26.1.8]

Comment: Language added to reflect long standing practices within the department as well as CALEA standards.

Nothing in this policy shall prohibit the Chief of Police from exercising all authority granted under Civil Service Commission Rules and the Arkansas Code.

A. Compliance With Department Directives

Supervisors are expected to set a proper example to their subordinates in the matter of due respect and regard for the policies, procedures, and rules in all matters pertaining to proper discipline.

1. The primary function of a supervisor is to maintain the day-to-day activities of police operations. Compliance with department directives is an integral part of those operations. Supervisors are authorized to take action when department directives are not being followed. [Calea 26.1.5]

(a) A supervisor may elect to counsel an officer whose performance has been found to be deficient.

(b) A supervisor may refer an officer to the training division to correct deficient performance.

(c) A supervisor may document deficient performance and refer it to the Chief of Police in the form of an official complaint.

(d) In cases of a major infraction of policy or department directive, a supervisor may relieve an officer of patrol duties, with pay, and refer the matter to the Chief of Police.

Comment: Language added to
comply with CALEA standards.

2. In case of alleged unjust treatment in violation of these policies, procedures, and rules, any officer may prefer charges against a superior to the proper authorities. When any member suspects a violation of these policies, procedures, and rules has occurred, they are to notify the Chief of Police for investigation, and may request results of the findings. Reporting a suspected violation confidentially is not a violation of the policies, procedures, and rules.

3. The following acts, infractions, or violations of the policies, procedures, and rules shall be deemed sufficient cause for separation from the department:

(a) Willful disobedience of lawful orders.

(b) Disrespect or insolence toward a superior officer.

(c) Being under the influence of intoxicants or drugs while on duty.

(d) Absence without leave.

Absence without leave is defined as any time a department member is scheduled for work and fails to report for duty without first notifying a supervisor prior to the start of the scheduled shift.

(e) Incompetence.

(f) Driving any machine or apparatus of the department carelessly or maliciously, in such a manner as to collide with, cause personal injury, damage a vehicle or other property, or any other wanton or malicious conduct, which causes injury or damage to a citizen or property.

(g) Neglect or refusal to pay just debts.

(h) Agitating or creating dissension in the department or attempting in any manner to cause ill feeling against any member of the department including civilian personnel working within our facility.

(i) Making any false or unwarranted report, either publicly or otherwise, about a member of this department.

(j) Dishonesty at any time when representing this department.

(k) Lack of Candor under direct questioning, either by any department supervisor or any investigator of the Office of Professional Standards.

4. It shall be the policy of the Fayetteville Police Department that all personnel maintain sufficient competency to properly perform their duties and assume the responsibility of their positions. Personnel shall perform their duties in a manner, which will maintain the highest standards of efficiency in carrying out the functions and objectives of the department. Unsatisfactory performance may be demonstrated by:

(a) A lack of knowledge of the application of laws and ordinances required to be enforced.

(b) An unwillingness or inability to perform assigned tasks.

(c) The failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention.

(e) Absence without leave.

(d) Written record of repeated infractions of policies, procedures, rules, directives, or general orders of the department.

B. Unbecoming Conduct

Officers shall be held responsible at all times for conduct unbecoming an officer of the department, which tends to lower the law enforcement service in the estimation of the public. Officers

should be governed by ordinary rules of good behavior observed by law abiding and self-respecting citizens.

1. Any idle, indiscreet, disrespectful or discriminatory remark(s) or rudeness to citizens or any greeting(s), conversation(s), or remark(s) tending to show undue familiarity with members of the opposite sex while on duty shall subject a member to disciplinary action. (See Harassment and Discrimination Policy 26.1.2)

2. Officers are cautioned that the use of obscene, immoral, profane or disrespectful language, agitating and tending to create dissension in the department or attempts to cause undue or unfavorable reflection(s) upon any member of the department, will not be tolerated. Officers shall not engage in altercations between themselves under any circumstances.

3. All officers when reporting for duty shall be completely attired in the regulation uniform as prescribed by the Chief of Police. (Refer to 41.1.1 for Grooming Requirements) Failure to do so may subject the member to reprimand or suspension.

C. Use of Alcohol & Drugs

1. No employee of the police department shall consume alcoholic beverages while on duty. No officer of the department shall have or allow anyone else to have at any time, wine, beer, liquor or any other intoxicating drinks in or around the police station, except as directly related to a case or as evidence item(s). Officers shall not at any time while on duty be under the influence of any wine, beer, liquor, or other intoxicants of any kind, or under sickness caused or produced by the use of such intoxicants. Any officer absenting themselves from scheduled duty because of intoxicating drink, or reporting to duty under its influence, or in any unfit condition due to intoxicants or drugs will be subject to reprimand, suspension or discharge.

2. When deemed operationally necessary, officers in undercover assignments may consume alcoholic beverages and/or simulate the use of drugs. In doing so, officers shall submit a memo to their supervisor documenting the consumption of alcohol or simulation of the use of drugs.

Comment: Language added.

D. Abuse of Authority

1. No officer (except when assigned desk duties inside the police facility) shall receive or collect any fine or fines for parking tickets, other traffic violations, or any other offenses whatsoever. Members shall courteously advise citizens that all fines are payable at the Fayetteville Police Department.

Comment: This section is a combination of two sections from the previous policy as a means to streamline the document.

2. No officer shall directly or indirectly, except by permission of the Chief of Police, sell tickets, solicit any money, circulate any petitions, subscriptions, or allow the use of the department's name for any fair, exhibition, benefit, or similar project. In deciding whether to grant such permission, the Chief of Police shall not discriminate against any officer of the department. Such permission may be granted if the activity will not adversely affect the administration or management of the department, or decrease the trust or confidence of the public.

3. No officer shall take, solicit, retain, receive, or extort any fee, property, reward, gift, compensation, or thing of value or free service in any form from any person, firm, or corporation for any services rendered in the conduct or performance of the duties as a police officer.

4. It shall be the policy of the Fayetteville Police Department that its officers shall not recommend or suggest in any manner, except in the transaction of personal business, the employment or procurement of a particular product, professional service, or commercial service (such as an attorney, towing firm, bail bondsman, mortician, etc.).

F. Use of Force

1. Refer to Chapter 1.3.1.

G. Proper Care & Maintenance of Equipment

1. Officers positively shall not loan any department equipment or tools, except on permission of the Chief of Police or other supervisor.

2. Officers are required to care for equipment in their possession. Any departmental equipment damaged due to either carelessness or an intentional act on the part of the employee may result in disciplinary action.

H. Employee Awards/Commendations [Calea 26.1.2]

1. It shall be the policy of this department to recognize heroic actions, meritorious service and significant achievements under the provisions of this policy. Facilitation of awards will be made through an Awards Committee. The Awards Committee will be comprised of departmental Captains, as permanent members, and departmental employees as appointed by the Chief of Police. Members of the Awards Committee will serve a period of two years. Nominations to the Awards Committee will be received by way of the departmental award application form. The Awards Committee will review all applications and make recommendations to the Chief of Police

Comment: Employee Awards/Commendations section was not in the old policy. It has been completely added anew.

who has final authority on awards. Awards will be presented at a time designated by the Chief of Police.

2. Classification of Awards

- A. Chief's Award of Valor: Nominated by the Chief of Police, awarded for an act of extraordinary bravery or heroism by an employee who has demonstrated in great degree the characteristics of selflessness, personal courage and devotion to duty.
- B. Exceptional Duty Award: Nominated by departmental supervisors, awarded for exceptional performance, which, in the opinion of the supervisor, is deserving of recognition.
- C. Life Saving Award: Nominated by any employee of the department, awarded for a successful effort in saving a human life which involved exceptional courage or performance.
- D. Unit Meritorious Performance Award: Nominated by any employee, awarded to any individual or unit (sworn or civilian) who has exhibited exceptional professional skill and conduct during a coordinated action.
- E. Fayetteville Police Department Commendation: Nominated by any employee, awarded to any employee for an outstanding act or achievement, which brings great credit to the department and involves performance above and beyond that required by the individual's basic assignment.
- F. Community Service Award: Nominated by any employee, awarded to any employee for involvement both on and off duty in youth activities, work with non-profit organizations, working with the police department on special projects or other activities for the public good.
- G. Outstanding Citizen Award: Nominated by any employee, awarded to a citizen/member of the community who helps the department in apprehension of criminals or any other significant manner.
- H. Police Blue Star Award: Nominated by the Awards Committee, awarded to any sworn employee who has been seriously, critically or fatally injured while in the performance of police duty. This award should be limited to those incidents resulting from attack by an assailant, personal combat or the performance of an act of valor.
- I. Police Blue Shield Award: Nominated by the Awards Committee, awarded to any sworn employee who, as a result of accidental cause, has been seriously, critically or fatally injured while in the performance of police duty. This award should be limited to those cases resulting from an accident.

J. Letters of Commendation: A letter of commendation may be written by the Chief of Police to any employee for job performance that might not meet the criteria for the above listed awards, but merits recognition nonetheless. Any person may recommend an employee of this department receive a letter of commendation by submitting a memorandum to the Chief of Police. A letter of commendation may be given:

- 1) To commend an employee for completing a job task in an exemplary manner.
- 2) To commend an employee for submitting a recommendation which directly contributes to increased department productivity or efficiency.
- 3) For any other reason deemed appropriate by the Chief of Police.

FAYETTEVILLE POLICE DEPARTMENT
FAYETTEVILLE, ARKANSAS

POLICIES, PROCEDURES, AND RULES

Effective Date		Number 26.1.2
Subject HARASSMENT AND DISCRIMINATION IN THE WORKPLACE		
Reference See 26.1.1		Special Instructions
Distribution All Personnel	Reevaluation Date 1 Year	No. Pages -4-

I. PURPOSE

The purpose of this policy is to maintain a healthy work environment in which all individuals are treated with respect and dignity and to provide procedures for reporting, investigating and resolving complaints of harassment and discrimination. Federal law provides for protection of classes of persons based on race, color, sex, religion, age, disability and national origin. [Calea 26.1.3]

II. DISCUSSION

It is the policy of this department that all employees have the right to work in an environment free of **harassment or discrimination**. This department will not tolerate, condone or allow harassment or discrimination by employees, whether sworn, civilian, or other non-employees who conduct business with this agency. This department considers harassment and discrimination of others a form of serious employee misconduct. Therefore, this department shall take direct and immediate action to remedy all reported instances of harassment and discrimination.

Comment: Review/revision of policy revealed the specific mention of prohibiting "discrimination" was not made. This draft includes discrimination, as well as harassment, in the work place as being prohibited.

III. POLICY

A. Prohibited Activity

1. No employee will be given or denied any assignment based only upon age, sex, race, religion, politics, or physical handicap, unless such action would create a hazardous condition for the individual or others.

Comment: Language added upon advice from HR Division.

2. No employee shall harass another employee.

3. Employees shall not make offensive or derogatory comments to any person, either directly or indirectly, based on race, color, sex, religion age, disability, or national origin. Such harassment is a prohibited form of discrimination under state and federal employment law and is misconduct subject to disciplinary action by the department.

4. **Sexual harassment is prohibited.** Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

Comment: Language added upon advice from HR Division.

a. Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

b. Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee;

c. Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment.

5. Individuals covered under this policy include department members defined as employees.

B. Management Responsibilities

1. Each supervisor shall be responsible for preventing acts of harassment and discrimination. This responsibility includes:

a. Monitoring the work environment on a daily basis for signs that harassment or discrimination may be occurring;

b. Counseling all employees on the types of behavior prohibited, and the department's procedures for reporting and resolving complaints of harassment and discrimination;

c. Stopping any observed acts that may be considered harassment or discrimination, and taking appropriate steps to intervene, whether or not the involved employees are within his/her line of supervision; and

d. Taking immediate action to prevent retaliation towards the complaining party and to eliminate the hostile work environment where there has been a complaint of harassment or discrimination, pending investigation:

- If a situation requires separation of the parties, care should be taken to avoid actions that appear to punish the complainant.
- Transfer or reassignment of any of the parties involved should be voluntary if possible and, if non-voluntary, should be temporary pending the outcome of the investigation.

e. Failure to carry out these responsibilities will be considered in any evaluation or promotional decision and may be grounds for discipline.

2. Each supervisor has the responsibility to assist any employee of this agency who comes to that supervisor with a complaint of harassment or discrimination in documenting and filing a complaint with the Chief of Police.

3. Each employee is responsible for assisting in the prevention of harassment through refraining from participation in, or encouragement of, actions that could be perceived as harassment or discrimination.

C. Complaint Procedures

1. Any employee encountering harassment or discrimination is encouraged to inform the person that his or her actions are unwelcome and offensive. The employee is encouraged to document all incidents of this nature in order to provide the fullest basis for investigation.

2. Any employee who believes that he or she is being harassed or discriminated against shall report the incident(s) as soon as possible to an immediate supervisor so that steps may be taken to protect the employee, and so that appropriate investigative and disciplinary measures may be initiated. Where doing so is not practical, the employee may instead file a complaint with another supervisor, the Chief of Police or the Human Resources Division.

Comment: Language amended upon advice from HR Division.

a. The supervisor or other person to whom a complaint is given shall meet with the employee and document the incident(s) complained of, the person(s) performing or participating in the alleged act, any witnesses to the incident(s) and the date(s) on which it occurred.

b. The department employee taking the complaint shall promptly submit a confidential memorandum documenting the complaint to the Chief of Police. The Chief of Police will assign the complaint for investigation.

3. The Office of Professional Standards shall be responsible for investigating any complaint alleging harassment or discrimination.
4. There shall be no retaliation against any employee for filing a harassment or discrimination complaint, or for assisting, testifying or participating in the investigation of such a complaint.
5. The complaining party's confidentiality will be maintained throughout the investigatory process to the extent practical and appropriate under the circumstances.
6. This policy does not preclude any employee from filing a complaint or grievance with an outside agency.

D. Retaliation

1. Retaliation against any employee for filing a harassment or discrimination complaint, or for assisting, testifying or participating in the investigation of such a complaint, is illegal and is prohibited by this agency and by federal statutes.
2. Retaliation is a form of employee misconduct. Any evidence of retaliation shall be considered a separate violation of this policy and shall be handled by the same complaint procedures established for harassment and discrimination complaints.
3. Monitoring to ensure that retaliation does not occur is the responsibility of the Chief of Police or any supervisor within the department.
4. Any employee experiencing retaliation for having brought forth a complaint should report it immediately to his/her supervisor, supervisor's supervisor, the Chief of Police or the Human Resources Division.

Comment: Language added upon advice from HR Division1.

POLICIES, PROCEDURES, AND RULES

Effective Date		Number 46.2.1	
Subject EMERGENCY RESPONSE TEAM			
Reference		Special Instructions	
Distribution All Personnel	Reevaluation Date 1 Year		No. Pages -7-

I. PURPOSE

To establish policies relating to the organization, administration and operation of the Emergency Response Team (E.R.T.). The primary responsibility of the E.R.T. will be the resolution of difficult police situations through the use of special skills and tactics.

II. POLICY

A. ORGANIZATION AND ADMINISTRATION

The number of E.R.T. members will be decided by the Chief of Police. The Chief of Police shall appoint the following:

1. A unit commander (Sergeant or Lieutenant) and;
2. A team leader(s);
3. All team members.

Comment: Plurality added for future use.

The remaining team assignments will be made within the team with the approval of the Chief of Police. The E.R.T. will be under the supervision of a Captain as designated by the Chief of Police.

The Fayetteville Police Department will supply its Emergency Response Team members with the equipment deemed necessary to complete the training and assignments of the team. [Calea 46.2.3]

Comment: Language added to comply with CALEA standard.

B. **PERSONNEL SELECTION**

B. 1

Arkansas Law Enforcement Standards and Training (ALETA) Manual
Arkansas Police Department's Policies, Procedures & Rules Manual
Page 39 of 44
To comply with CALEA standards

Recognizing the nature of Emergency Response Team operations requires disciplined, physically fit, experienced, calm, capable and well trained professionals, team selection will be conducted through a fair, non-discriminatory process that measures the factors deemed to be important to the performance of the team. [Calea 46.2.2]

When opening(s) on the Emergency Response Team occur, tests/tryouts will be conducted to determine, from among the eligible applicants, who will be appointed to the team.

1. Applicant requirements:

An applicant for the Emergency Response Team must meet the following criteria:

- a. Be a full time, sworn member of the department
- b. Have at least 12 months of uniform field experience
- c. Be recommended for the Emergency Response Team by a supervisor
- d. Past disciplinary actions will be taken into consideration.

2. Applicant Testing:

The selection process will consist of the following:

- a. Physical Conditioning Test: Each applicant must successfully pass a conditioning test consisting of the Fayetteville Police Department physical fitness standards for the Emergency Response Team. This standard is set at 20% above required departmental standards plus seven (7) pull-ups.
- b. Firearms Test: Each applicant must successfully pass the Arkansas Law Enforcement Standards and Training (ALETA) Standard Qualification Course of Fire for one target. Marksmanship standards for handgun qualification set for the team is 90%. In addition, the applicants will be put through a minimum of one (1) combat-style shoot course administered by a certified firearms instructor.
- c. Written recommendation: Each applicant must receive a written letter of recommendation from his supervisor. This letter will be forwarded to the Chief of Police.
- d. Oral Interview: Each applicant will be asked to participate in an oral interview in which a series of pre-developed questions will be asked. The Chief of Police or his designee will assign the interview panel.
- e. The Emergency Response Team utilizes alternate team members to cover shortages or loss due to attrition. Alternate team members undergo the same applicant and testing process as listed

above. The Chief of Police chooses alternates. Alternates train with the ERT during scheduled training periods but are not subject to call out unless specifically needed. In addition, alternate team members should be given specialized training outside regularly scheduled ERT training.

Once testing is completed, the interview panel will compile the results with a recommendation to the Chief of Police. Applicants will be appointed to the E.R.T. at the discretion of the Chief of Police.

3. Removal from Team:

Once selected for an opening on the E.R.T., an applicant is placed on probationary status for a period of one (1) year.

All E.R.T. members must maintain their level of individual and team skills. Failure to maintain skill levels and/or stay physically fit is grounds for removal from the team.

The Chief of Police, upon the consensus of the team leadership, may remove any member in the best interests of the team.

- a. Failure to maintain minimum physical fitness and/or skill levels will be dealt with by immediate remedial instruction and re-testing. Failure to reach minimum levels during re-testing will result in the team member being placed in a non-deployable status for a period of thirty (30) days, during which the team member will be required to bring skill levels back up to minimum. Failure to do so will result in removal from the team.
- b. If skill level or physical fitness failure is due to the existence of a valid injury, the team member will begin a rehabilitative process and excused from ERT duties. Once released from medical care, the team member shall pass the skill level or physical fitness test.

A team member may request to be voluntarily withdrawn from assignment to the E.R.T. at any time. The team member must submit a letter of resignation to the Chief of Police, who may grant or deny the request after a review of the circumstances.

C. DUTIES AND RESPONSIBILITIES

1. TEAM COMMANDER

The team commander is directly responsible for the following areas:

- a. Direct supervision of the team members;
- b. Training;
- c. Maintaining an inventory of all team equipment, which includes assignment to individual team members or storage location [Calea 46.2.3];
- d. Maintaining training and call-out files for the team [Calea 33.6.2];
- e. Reporting all training and equipment needs to the designated Captain supervising the Emergency Response Team.

2. TEAM LEADER

In the absence of the Team Commander, the team leader assumes responsibility for the Team Commander's duties.

3. TEAM MEMBERS

Team members are required to comply with the following:

- a. Maintain minimum physical fitness conditioning requirements as established by the Chief of Police;
- b. Maintain familiarity with all equipment used by the E.R.T.;
- c. Maintain minimum marksmanship standards set for the team.
- d. Must be available for call-outs by having their paging device with them at all times;
(* **Exception** - When members are sick or on scheduled leave)
- e. The timely response and completion of all tasks, as well as, demonstration of high standards of performance;
- f. Attend all scheduled training operations unless excused by the Team Commander or Team Leader prior to the assigned training date.
- g. Maintain all assigned equipment in good condition;
- h. Wear approved and appropriate E.R.T. attire on all call-outs and training days;

Comment: Some team commander duties were deleted as they related to personnel selection and physical fitness requirements which are covered elsewhere.

- i. Use departmentally issued or authorized E.R.T. equipment;
- j. Familiarization with basic first aid. (A first aid kit will be maintained and kept with the team during call-outs and training exercises).

D. **TRAINING**

Comment: Training section was revised/amended to reflect long standing practices and to comply with CALEA standards.

1. The Emergency Response Team shall train at least one day per month as set forth by the team commander and team leader.
2. The counter sniper/observer team shall have a training day of at least one day per month aside from the team-training day.
3. The team leadership will delineate the individual, squad and team level skills required for the team to successfully conduct operations. Those skills will create the basis for specific training exercises of the E.R.T. Training exercises will be created by the team leadership. Joint training exercises between the Emergency Operations Team and the Crisis Negotiation Team should be conducted periodically. Any training exercise shall be documented to include the type of training, date, attendance and scores, if applicable. [Calea 33.6.2]
4. Due to the required physical fitness standards for E.R.T. members, they are allotted two (2) hours per week while on duty for physical fitness training. It is the responsibility of the team members to schedule their physical fitness training time with their immediate supervisor. Fitness training hours must be used during the current work period and cannot be carried over to the next work period. The fitness training hours must be used during the scheduled workday. No overtime or compensatory time can be accrued as a result of the use of the fitness training hours.

E. CHEMICAL AGENTS/DISTRACTION DEVICES

Chemical agents and distraction devices require proper training for effective use and shall be used only upon authorization of the team leader or team commander by personnel trained in their use.

F. CALL-OUT NOTIFICATION/DEPLOYMENT

1. In the event of an incident in which the Emergency Response Team might be activated, initial responding patrol officers have an integral role of support. [Calea 46.2.1]
 - a. Patrol officers should contain/secure the scene of an event to the extent possible.
 - b. Officers should locate and interview witnesses if possible.

c. Officers should attempt to secure information as to the lay out of the scene of the incident.

d. Officers should relay any intelligence information regarding the incident to be forwarded to the E.R.T. team leadership.

Comment: Language added to comply with CALEA standards.

2. Any Fayetteville Police Department supervisor may request assistance from the E.R.T. However, a Fayetteville Police Department Captain or personnel of higher rank must authorize all Emergency Response Team call-outs.

Comment: Language was streamlined on authorization.

3. Following authorization for a call-out, the supervisor requesting E.R.T. assistance shall notify the Team Commander or Team Leader of the situation. It is the responsibility of the Team Commander/Leader to see that all team members are contacted and advised of the call-out.

4. In the event of situation requiring immediate activation of the E.R.T., team members can be activated by using the "all-page" function of the pagers.

5. Emergency Response Team members are not to be used in their capacity as tactical officers while on normal patrol duty except under the direct supervision of the team commander or team leader.

6. In the event a team member has consumed any alcoholic beverage or taken prescribed medication it shall be the responsibility of that member to notify either the Team Commander or the Team Leader of their incapacitation. Team members shall not be under the influence of intoxicants or drugs while on duty.

Comment: Language revised to conform with other policy references.

G. PRE-RAID BRIEFING

1. Team members will assemble in a pre-determined location for a briefing of the assignment in question. A member of Central Dispatch and a patrol shift supervisor will be included in the briefing. [Calea 46.2.1]

2. The Team Leader will be responsible for seeing that the following topics are covered during the briefing process:

a. A pre-raid survey (drive-by) of the location in question will be made if time permits and the drive-by will not compromise the mission.

b. The Team Leader will make team assignments and determine what equipment is necessary for the situation.

c. A team member(s) will be assigned the task of completing a pre-raid form, a post-raid diagram of the target location and a post-raid report regarding the E.R.T.'s activities.

d. Other emergency operation teams, i.e. Emergency Medical Services (E.M.S.) or Crisis Negotiation Team (C.N.T.), will be put on stand-by in a location near the target location immediately prior to the mission, when possible. [Calea 46.2.1]

Comment: Language modified to add other special units and comply with CALEA standard.

City Council Agenda Items
and
Contracts, Leases or Agreements

10/6/2009

City Council Meeting Date
Agenda Items Only

Paul A. Becker

Submitted By

Finance & Internal Services

Division

Finance & Internal Services

Department

Action Required:

City Council is requested to adopt real and personal property tax rates for 2009 for the Policemen's Pension & Relief, the Firemen's Pension & Relief Funds, and the Fayetteville Public Library. The rate to be adopted for the Policemen's Pension & Relief Fund and the Firemen's Pension & Relief Fund is 0.4 mils for real property and 0.4 mils for personal property, the millage for the Fayetteville Public Library is 1.0 mil for real property and 1.0 mil for personal property. City Council is also requested to adopt real and personal property tax rates for 2009 for the City's General Fund. The rate requested for the City's General Fund is 1.3 mils for real property and 1.3 mils for personal property.

_____	\$ _____	_____
Cost of this request	Category / Project Budget	Program Category / Project Name
_____	\$ _____	_____
Account Number	Funds Used to Date	Program / Project Category Name
_____	\$ _____	_____
Project Number	Remaining Balance	Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

Paul a. Becker
Department Director

9-17-2009
Date

Previous Ordinance or Resolution # 5178

[Signature]
City Attorney

9-18-09
Date

Original Contract Date: _____

Original Contract Number: _____

Paul a. Becker
Finance and Internal Services Director

9-18-2009
Date

Received in City
Clerk's Office

ENTERED
9-17-09 [Signature]

[Signature]
Chief of Staff

9-19-08
Date

Received in
Mayor's Office

ENTERED
9/18/09
PH

[Signature]
Mayor

9/24/09
Date

Comments:

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Lioneld Jordan and Fayetteville City Council

THRU: Don Marr, Chief of Staff

FROM: Paul A. Becker, Finance & Internal Services Director

DATE: September 16, 2009

SUBJECT: **2009 Millage Levy**

Recommendation:

City staff recommends that City Council approve the millage levy ordinance approving the 0.4 mils for the Policemen's Pension and Relief Fund, 0.4 mils for the Firemen's Pension and Relief Fund, 1.0 mils for the Fayetteville Public Library, and 1.3 mils for 2010 General Fund operations.

Background:

Each year the City must approve an ordinance to renew the levy of ad valorem taxes on real and personal property within the City. This request will provide for such levy on property assessed during 2009.

The total assessed value of real and personal property located within the city limits of Fayetteville, as of August 5, 2009, is approximately \$1.3 billion. The assessed valuation is before the Washington County Board of Equalization has made all the changes to the County Assessors Abstract. Based on the preliminary assessments, the growth in real property assessments is approximately 5.27% as of August 5, 2009.

Discussion:

A millage levy ordinance must be approved by City Council in order for the City to continue to collect property taxes for the Policemen's Pension and Relief Fund and the Firemen's Pension and Relief Fund. The millage levy for the Policemen's Pension and Relief Fund is 0.4 mils for real property and 0.4 mils on personal property. The millage levy for the Firemen's Pension and Relief Fund is 0.4 mils for real property and 0.4 mils on personal property as was approved by referendum.

A millage levy ordinance must be approved for the operation of the Fayetteville Public Library and that was approved by the voters on October 1, 2002. The millage levy for the Fayetteville Public Library is 1.0 mils for real property and 1.0 mils on personal property.

Finally, City staff is requesting that City Council approve a millage levy ordinance for General Fund operations in the amount of 1.3 mils for both real and personal property.

The 2010 proposed property tax revenue amount based on the 1.3 mil levy is estimated to bring in \$1,570,000 in General Fund revenue. The 2010 Proposed General Fund Budget will be distributed to City Council on Tuesday, September 29 at the City Council agenda session. Additional meetings during the months of September and October to discuss the millage levy will be held as needed. A proposed calendar is shown below:

Tuesday, September 29	Agenda Session / 2010 General Fund Budget Distributed
Tuesday, October 6	City Council Meeting
Tuesday, October 13	Agenda Session
Tuesday, October 20	City Council Meeting

Budget Impact:

The 0.4 mils Police and 0.4 mils Fire is needed to fund the Pension plans for both. The 1.0 mils is used to fund the operation of the Fayetteville Public Library. The 1.3 mils will be used to fund General Fund operations.

Conclusion:

The millage levy must be at Washington County in time to be included in their consolidated levy ordinance which will be approved at the November 12, Quorum Court meeting. The deadline for receipt is set by the County. Last year that deadline was October 30. The City levy will be added to the levies by Washington County, the various school districts, improvement districts and other cities within the County when the Washington County Quorum Court adopts its millage levy for 2009.

The administration is requesting the same millage rate as was approved in 2008 as follows:

- 1.3 mils for General Fund Operations
- 1.0 mils for the Fayetteville Public Library
- 0.4 mils for the Police Pension Fund
- 0.4 mils for the Fire Pension Fund

If you have any questions concerning this agenda request please contact me at 575-8330.

City of Fayetteville
Property Tax Revenue per Mil
August 8, 2009

<u>Millage</u>	<u>Approximate Revenue</u>
0.10	\$ 121,000
0.20	\$ 241,000
0.30	\$ 362,000
0.40	\$ 483,000
0.50	\$ 604,000
0.60	\$ 724,000
0.70	\$ 845,000
0.80	\$ 966,000
0.90	\$ 1,087,000
1.00	\$ 1,207,000
1.20	\$ 1,449,000
1.30	\$ 1,570,000
2.00	\$ 2,415,000
2.20	\$ 2,656,000
2.70	\$ 3,260,000
3.20	\$ 3,864,000
3.70	\$ 4,467,000
4.20	\$ 5,071,000
4.70	\$ 5,675,000

The millage revenue reflected above is based on the Washington County Preliminary Summary Report of County Assessments for the Year 2009 dated August 8, 2009 and excludes real and personal property for Utilities. The City Council can approve up to 5.0 mils for operations. The table assumes a 93% collection rate. Total real and personal property assessments for 2009 amount to approximately \$1,261 million excluding real estate and personal property for utilities.

Property Tax Impact Illustration

	<u>Appraised Value</u>	<u>Assessed Value</u>	<u>1 Mil Tax / Year</u>
Single Family Home	\$ 75,000.00	\$ 15,000.00	\$ 15.00
Single Family Home	\$ 100,000.00	\$ 20,000.00	\$ 20.00
Single Family Home	\$ 150,000.00	\$ 30,000.00	\$ 30.00

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



B. 2
2009 Millage Levy
Page 5 of 8

LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor
City Council

FROM: **Kit Williams**, City Attorney

A handwritten signature in blue ink, appearing to be 'Kit Williams', with a long horizontal flourish extending to the right.

DATE: **September 18, 2009**

RE: **Ordinance Levying Millage**

The millage ordinance presented by the City Administration mirrors the millage ordinance passed last year (and previously). The only difference is that this ordinance applies to property assessed in 2009 instead of 2008.

ORDINANCE NO. _____

AN ORDINANCE LEVYING A TAX ON THE REAL AND PERSONAL PROPERTY WITHIN THE CITY OF FAYETTEVILLE, ARKANSAS, FOR THE YEAR 2009 FIXING THE RATE THEREOF AT 1.3 MILLS FOR GENERAL FUND OPERATIONS, 0.4 MILLS FOR THE FIREMEN'S PENSION AND RELIEF FUND, 0.4 MILLS FOR THE POLICEMEN'S PENSION AND RELIEF FUND AND 1.0 MILL FOR THE FAYETTEVILLE PUBLIC LIBRARY; AND CERTIFYING THE SAME TO THE COUNTY CLERK OF WASHINGTON COUNTY, ARKANSAS

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

Section 1: That a tax is hereby levied on the real and personal property within the City of Fayetteville, Arkansas, for the year 2009 to be collected in 2010 for the following purposes at the following rates:

REAL AND PERSONAL PROPERTY

<u>Purpose</u>	<u>Levy</u>
General Fund – Operations	1.3 mills
Fayetteville Public Library	1.0 mills
Policemen's Pension Fund	0.4 mills
Firemen's Pension Fund	<u>0.4 mills</u>
TOTAL	3.1 mills

Section 2: That the real and personal property tax so levied and the rates provided therefore are hereby certified to the Clerk of Washington County, Arkansas, to be placed in the tax book by the County Clerk and collected in the same manner that the county and school district taxes are collected.

Section 3: The City Clerk is hereby authorized and directed to file certified copies of this ordinance in the office of the County Recorder, County Clerk, County Assessor, and the County Tax Collector for Washington County, Arkansas.

PASSED and **APPROVED** this 6th day of October, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



September 17, 2009

Jeremy Pate
Development Services Director
City of Fayetteville
125 West Mountain Street
Fayetteville, Arkansas 72701

Re: Old Wire Annexation - Appeal of Planning Commission denial

Mr. Pate:

On behalf of our client, we wish to appeal the September 14, 2009 City of Fayetteville Planning Commissions decision to deny ANX 09-3409 - Broyles/ 3231 N. Old Wire Road.
We request that this item be place on the next available City Council meeting.

Respectfully,

A handwritten signature in black ink that reads "Todd Jacobs". The signature is written in a cursive, flowing style.

Todd Jacobs
Director of Design
Appian Centre for Design
509 West Sprint Street, Suite 420
Fayetteville, Arkansas 72701
Office: 479-442-1444

Left on First Reading @ 10/6/09 CCmtg.

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Jeremy C. Pate, Development Services Director

From: Andrew Garner, Senior Planner

Date: September 16, 2009

Subject: Annexation for Broyles (ANX 09-3409)

RECOMMENDATION

Staff and the Planning Commission recommend denial of annexing the subject 39.33-acre property, located at the northwest corner of Old Wire Road and Rom Orchard Road. The applicant has appealed the Planning Commission decision to deny this request to the City Council.

BACKGROUND

Most of the property in this annexation request was included in annexation and rezoning requests that were heard by the Planning Commission on October 10, 2005 and again on May 8, 2006. Planning Staff recommended denial of all requests. The Planning Commission denied or tabled both the annexation and rezoning requests in 2005 and 2006, expressing concern about the extension of the city in this area, development patterns, density, and compatibility, and the resulting extension of the boundary. The meeting minutes from these previous Planning Commission meetings are attached to the staff report.

The applicant proposes to annex the subject 39.33 acres into the City. The applicant has stated an intent to propose a 200-acre master plan for a traditional neighborhood development, including the subject property.

DISCUSSION

This item was heard at the regular Planning Commission meeting on September 16, 2009. The Planning Commission voted 5-4-0 (commissioners Winston, Graves, Kennedy, and Trumbo voting "no") to deny this rezoning request. Several neighbors in the area spoke against rezoning the subject property to RSF-4, however, the applicant has withdrawn the rezoning application. Written comments from the neighbors are attached to the staff report.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE ANNEXING THAT PROPERTY DESCRIBED IN ANNEXATION PETITION ANX 09-3409 (CC2009-4), FOR PROPERTY LOCATED AT 3231 NORTH OLD WIRE ROAD, THE NORTHWEST CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD, CONTAINING APPROXIMATELY 39 ACRES.

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

Section 1: That the City Council hereby confirms the annexation to the City of Fayetteville, Arkansas, as shown in Exhibit "A" and depicted in Exhibit "B" attached hereto and made a part hereof.

Section 2: That the official map of the City of Fayetteville, Arkansas, is hereby amended to reflect the change provided in Section 1 above.

Section 3: That the official zoning map of the City of Fayetteville, Arkansas is hereby amended to assign the zoning designation of R-A, Residential Agricultural to the subject property.

Section 4: That the above-described property is hereby assigned to Ward No. Three.

PASSED and **APPROVED** this of , 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk

EXHIBIT "A"

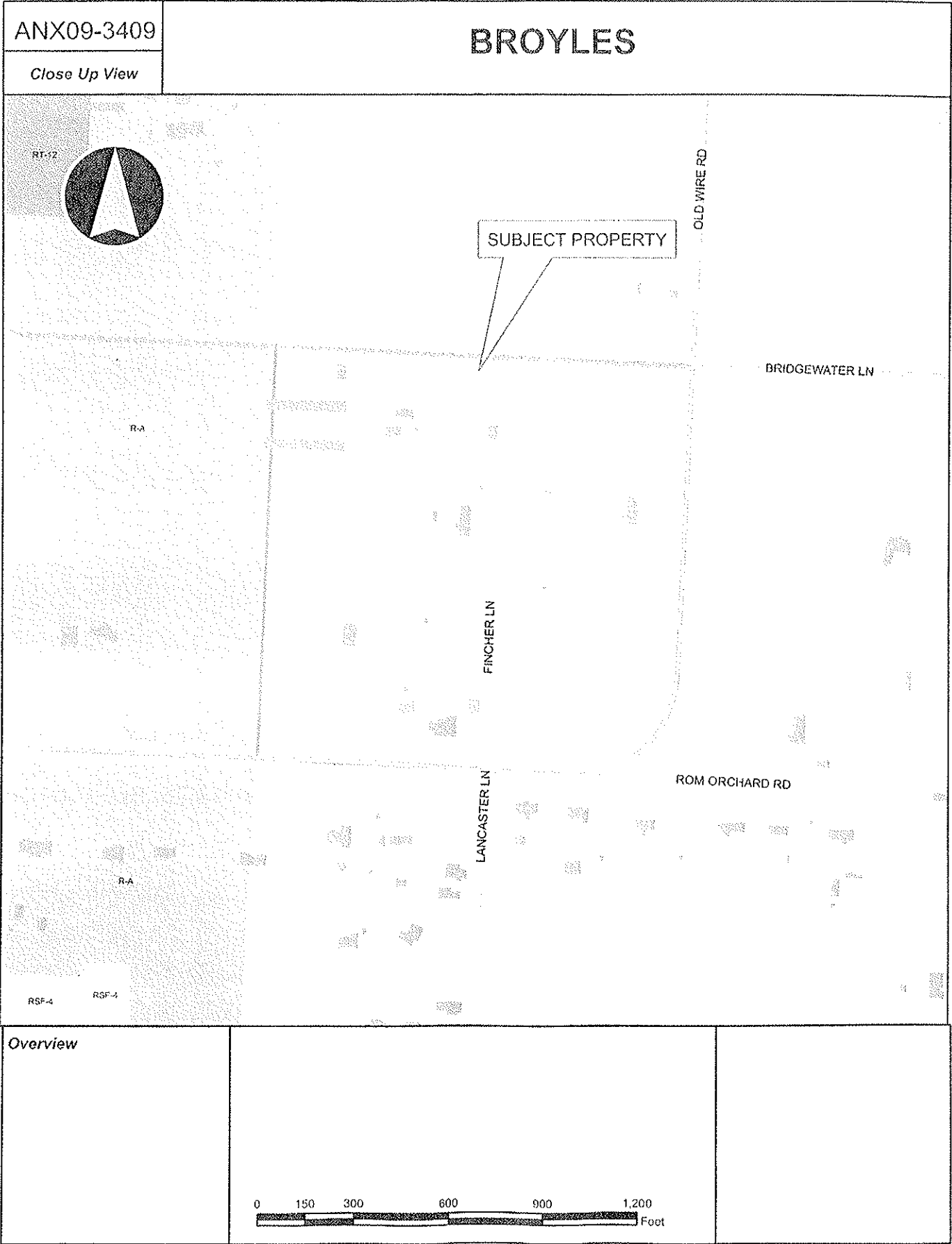


EXHIBIT "B"
ANX 09-3409

DESCRIPTION (PARCEL NOS. 001-15604-000, 001-15605-000, 001-15606-000, 001-15608-000, 001-15608-001, 001-15609-000, AND 001-15610-000)

ALL OF THE LAND DESCRIBED IN THE DEEDS RECORDED AS FILE NUMBERS 93-3908, 2005-18120, 2005-18121, 2005-18122, 2005-18123, 2006-22924, AND 2009-9274 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS RESIDING IN THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 17 NORTH, RANGE 29 WEST OF THE FIFTH PRINCIPAL MERIDIAN BEING ALSO DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE ABOVE SAID SOUTHWEST 1/4; THENCE N02°26'06"E, ALONG THE WEST LINE OF THE ABOVE SAID SOUTHWEST 1/4, A DISTANCE OF 1315.03 FEET TO THE NORTHWEST CORNER OF THE ABOVE SAID SOUTHWEST 1/4; THENCE S87°16'13"E, ALONG THE NORTH LINE OF THE ABOVE SAID SOUTHWEST 1/4, A DISTANCE OF 1319.96 FEET TO THE NORTHEAST CORNER OF THE ABOVE SAID SOUTHWEST 1/4; THENCE S02°29'32"W, ALONG THE EAST LINE OF THE ABOVE SAID SOUTHWEST 1/4, A DISTANCE OF 1016.73 FEET; THENCE S18°21'47"W, LEAVING THE ABOVE SAID EAST LINE, A DISTANCE OF 116.92 FEET; THENCE S34°39'26"W, A DISTANCE OF 96.67 FEET; THENCE S52°01'42"W, A DISTANCE OF 94.13 FEET; THENCE S69°02'13"W, A DISTANCE OF 95.91 FEET; THENCE S86°30'36"W, A DISTANCE OF 46.95 FEET TO A POINT ON THE SOUTH LINE OF THE ABOVE SAID SOUTHWEST 1/4; THENCE N87°11'42"W, ALONG THE ABOVE SAID SOUTH LINE, A DISTANCE OF 1028.91 FEET TO THE POINT OF BEGINNING AND CONTAINING 1,713,107 SQUARE FEET OR 39.33 ACRES, MORE OR LESS.



PC Meeting of September 14, 2009

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
THRU: Jeremy Pate, Development Services Director
DATE: September 8, 2009 Updated September 16, 2009

ANX 09-3409: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by APIAN CENTER FOR DESIGN for property located at 3231 N. OLD WIRE ROAD, NW CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 39.33 acres. The request is to annex the subject property into the City of Fayetteville.

Planner: Andrew Garner

Background: Most of the property in this annexation request was included in annexation and rezoning requests that were heard by the Planning Commission on October 10, 2005 and again on May 8, 2006. Planning Staff recommended denial of all requests. The Planning Commission denied or tabled both the annexation and rezoning requests in 2005 and 2006. The meeting minutes from these previous Planning Commission meetings are attached to the staff report for the associated rezoning (RZN 09-3410 Broyles) also being heard at this planning commission meeting.

Property: The property is located northwest of the intersection of Old Wire Road and Rom Orchard Road. As depicted in *Table 1*, the site is surrounded by rural residential and undeveloped pasture, with unincorporated Washington County to the north, east, and south, and property zoned Residential Agricultural (R-A) in the City of Fayetteville to the west.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Rural residential; pasture	Planning Area
South	Rural residential; pasture	Planning Area
East	Rural residential; pasture	Planning Area
West	Rural residential; pasture	R-A, Residential Agricultural; Planning Area

The nearest developed subdivision is Paradise Valley Estates in the Planning Area, located approximately 1,600 feet east of the subject property and developed for single-family use with a density of approximately 1 unit per two acres.

Proposal: The applicant intends to annex and rezone this property and stated intent to develop a traditional neighborhood. If the annexation for this property is approved, the request is to rezone the property from R-A, Residential Agricultural to RSF-4, Residential Single-family, 4 units per acre. However, the applicant stated intent to propose a 200-acre master plan for a traditional neighborhood

development, including the subject property.

Request: The request is to annex the property into the City of Fayetteville

Public Comment: Staff has received several phone calls, emails, and letters in opposition to the proposed rezoning. The opposition cites concern that a density of four units per acre is not compatible with the surrounding rural residential character and would result in adverse impacts to traffic safety and property values.

INFRASTRUCTURE:

Streets: Currently the site has access to Old Wire Road. With development, road improvements and dedication per the Master Street Plan would be required. Surrounding Master Street Plan Streets are shown on *Table 2*.

Table 2
Surrounding Master Street Plan Streets

Direction from Site	Street Name	Master Street Plan Classification
South	Old Wire Road	Collector Street
East	Old Wire Road	Collector Street
Southeast	Rom Orchard Road	Local Street

Water: Public water is adjacent to the site. There is a four-inch waterline along the south side of Old Wire Road. Public water will need to be upgraded to the property to provide domestic and fire flow for any proposed development.

Sewer: Sanitary sewer is not adjacent to the site. The nearest sewer main an 18-inch public main about 2,500 feet west of the site at the intersection of Old Wire Road/Crossover Road. Public sewer mains may need to be extended to the property to serve any proposed development, depending on the nature and density of the development.

Fire: The subject property is located 1.5 miles from the Fire Station No. 5 at 2979 North Crossover Road. Projected response time at full development of this property is projected at 4 minutes to the beginning of this development.

Police: The Fayetteville Police Department stated concern that this application may cause substantial call volume increase and will effect traffic congestion in the area. The Police Department also commented that this annexation would result in one side of the road inside the city while the other side is outside the city. This may cause confusion among officers and residents living in the area as to which law enforcement agency to call in an emergency.

RECOMMENDATION:

Staff recommends denial of the requested annexation based on the findings included in this report.

PLANNING COMMISSION ACTION:	Required <u>YES</u> ☐ Forwarded ☒ Denied Motion: <u>Myres</u> Second: <u>Zant</u> Vote: <u>5-4-0</u> (Graves, Winston, Kennedy, Trumbo voting "no")
Date: September 14, 2009	
CITY COUNCIL ACTION:	Required <u>YES</u> ☐ Approved ☐ Denied
Date: <u>October 6, 2009 (1st reading if recommended)</u>	

CITY PLAN 2025 FUTURE LAND USE PLAN: City Plan 2025 Future Land Use Plan designates this site as **Rural Area**. Rural Areas consist of land in an open or cultivated state or sparsely settled. These areas only have infrastructure and public services to support low-density zoning. They do not have adequate transportation or public services to support urban development patterns at this time. This area encourages conservation and preservation in any development pattern. The Guiding Policies for Rural Areas also discuss that if developed, these areas should encourage alternative development patterns to achieve compatibility with surrounding rural areas.

This property is also identified as an **Intended Growth Sector** in City Plan 2025. Growth sector areas were initially identified during the City Plan 2025 charrette process by citizens as areas with potential for population growth in the future. After the initial data was compiled and growth sectors were identified, additional input and analysis was completed in order to prepare the future land use map. This involved analysis of the actual development potential and public meetings where desired development patterns were analyzed and discussed. The growth sector map was an aid in preparation of the future land use map, which was ultimately adopted by the City Council. This area was identified as a Rural Area.

FINDINGS:

12.3.4 POTENTIAL ANNEXATION AREAS

The potential annexation areas should be identified by the City using the following criteria:

1. Areas that are already urban in character.

Finding: The subject property is surrounded on all sides by sparsely populated rural residential land uses. This area is not considered urban in character, and has not previously been identified by the City for annexation. The property is within the City's Planning Area.

2. Areas that can be developed at urban densities.

Finding: The subject property cannot be developed at urban densities at this time. The roads accessing the property are two-lane unimproved roads and sewer is not in the immediate vicinity (approximately 2,500 feet to the west). Unless significant improvements occur, the property and surrounding area will likely remain in a relatively low density state for some time, until and unless development occurs along

Crossover Road and moves in an eastern direction.

3. Immediate areas are those that are peninsulas or islands, where municipal services have already been extended.

Finding:

Municipal services that would accommodate future development have not been extended to this area. The proposed annexation would extend a peninsula of property approximately 1,300 feet into the county that is not served by city municipal services. The subject property and surrounding areas do not have adequate water or sewer service. There is an existing four-inch water line available to the subject site on the south side of Old Wire Road, however, the water line would have to be upgraded to provide domestic and fire flow for future development. Sewer service is not available and is located approximately 2,500 feet to the west and would have to be extended to serve development on the site. City police and fire service are provided to areas to the west.

4. Vacant lands that are subject to development pressure.

Finding: This site has been proposed to be annexed approximately three times since 2005 and a conceptual subdivision layout was proposed then withdrawn in that timeframe. These applications and the developer's communication with staff indicate that this area is under development pressure, though this is certainly questionable at this time, given the reduction in building permits and development projects, and vacant subdivisions in the region. The site is less than one mile from Crossover Road (State Highway 265), which is the major north-south transportation corridor on the east side of Fayetteville, also providing connection to Springdale. The site is relatively cleared of vegetation and flat, and is not in a floodplain, without natural constraints to development.

5. Areas where urban services are already provided.

Finding: Water, fire and police protection are currently provided in undeveloped areas to the west but not to the density to the proposed RSF-4 in this area. The subject property is not being served by city utilities that could support an urban development at this time. The level of service for this property may be reduced in comparison to surrounding subdivisions located in closer proximity to the more densely populated areas of the City. Also see Finding 12.3.5.a, and the attached comments from the Police Department expressing concerns with emergency service provision.

6. Areas where urban services are needed.

Finding: As discussed above in Finding No. 5, water, fire, and police service are provided adjacent to the west, however sewer service is unavailable to the subject property and surrounding areas. Sewer service would be needed to serve development on the

subject property. The subject property and surrounding area are largely undeveloped or rural residential, and do not currently need urban service for existing land uses.

12.3.5 ANNEXATION GUIDING POLICIES

BOUNDARIES

12.3.5.a Annex existing islands and peninsulas and do not annex areas that would create an island or peninsula.

Finding: Annexation of the property will not create an island of unincorporated property. However, it will extend a peninsula of incorporated City approximately 1,300 feet. Creating a peninsula will extend the area of city property to which utilities and emergency response personnel must travel to benefit the future residents of the City. The Police Department commented that this annexation would result in one side of the road inside the city while the other side is outside the city. This may cause confusion among officers and residents living in the area as to which law enforcement agency to call in an emergency. Development in this area would also require the extension of sewer service to an area that is undeveloped or developed at low densities on septic systems. Extending sewer service would encourage leap-frog development of this site and the surrounding areas. Staff finds that this proposal is in direct conflict to the annexation policy direction of the City Council, and can therefore not recommend approval of this annexation.

Further, this application is in conflict with two of the primary goals of City Plan 2025 including Goal 1, “*We will make appropriate infill and revitalization our highest priorities.*”, and Goal 2, “*We will discourage suburban sprawl.*” The proposed annexation on the periphery of the City is not infill and would encourage sprawl, by spreading development across the natural landscape, and if this property is developed, making people solely dependent on the automobile, in conflict with these two goals.

12.3.5.b Proposed annexation area must be adjacent, or contiguous, to city limits.

Finding: The proposed annexation area is adjacent to the City Limits to the west.

12.3.5.c Areas should either include or exclude entire subdivisions or neighborhoods, not divide.

Finding: The subject property is not a part of a platted subdivision.

12.3.5.d Boundaries for annexed areas should follow natural corridors.

Finding: Proposed boundaries follow property lines of the existing parcels and right-of-way.

12.3.5.e The provisions of services should be concurrent with development.

Finding: Public services will be required to be provided concurrent with development in accordance with Fayetteville Unified Development Code requirements. Currently adequate public services are not available to support an urban or suburban development.

ENVIRONMENTALLY SENSITIVE AREAS

12.3.5. f Annex environmentally sensitive areas that could be impacted by development and utilize appropriate development regulations to protect those areas.

Finding: There are no known environmentally sensitive areas that could be impacted by development, however, this site has been designated as a Rural Area on the City's Future Land Use Plan. The guiding policies for Rural Areas encourage conservation and preservation that would allow historical agricultural and related uses to continue to occur.

EMERGENCY AND PUBLIC SERVICES

12.3.5.g Public services must be able to be provided efficiently in newly annexed areas.

Finding: Public services are not able to be provided efficiently in the proposed annexation area. The four-inch water line would be required to be upgraded at the time of development and extension of the nearest sewer service is located approximately 2,500 feet west of the property. Response time to this location for emergency personnel is anticipated at four minutes. The Police Department commented that this annexation would result in one side of the road inside the city while the other side is outside the city. This may cause confusion among officers and residents living in the area as to which law enforcement agency to call in an emergency.

12.3.5.h Annexed areas should receive the same level of service of areas already in the city limits.

Finding: Fire and police service will be required to be provided to this area with the same level of response and service as other properties in this area, if annexed in the City of Fayetteville. This property is adjacent to rural residential areas to the west already being served by the city.

12.3.5.i The ability to provide public services should be evaluated in terms of equipment, training of personnel, number of units and response time.

Finding: These factors were taken into consideration in the responses and recommendations included in this report.

INFRASTRUCTURE AND UTILITIES

12.3.5.j Areas currently served by utilities and other public services should be annexed.

Finding: Water, fire and police protection are currently provided in undeveloped areas to the west but not to the density to the proposed RSF-4 in this area. The subject property is not being served by city utilities at this time. The level of service for this property may be reduced in comparison to surrounding subdivisions located in closer proximity to the more densely populated areas of the City.

12.3.5.k Proposed annexation areas should not require the upgrading of utilities to meet the demands of development unless there is a threat to public safety.

Finding: Annexation and future development of this property will result in an increased demand on the existing infrastructure systems. Improvements to sewer and street systems and installation of fire hydrants would be made necessary by the annexation should additional development occur on the subject property.

12.3.5.l Phased annexation should be initiated by the City within active annexation areas based on planned service extensions or availability of services.

Finding: The proposed annexation is not part of a phased annexation initiated by the City.

INTERGOVERNMENTAL RELATIONS

12.3.5.m Promote long-range planning with adjacent jurisdictions.

Finding: N/A

12.3.5.n Establish agreements to address regional concerns, such as water, stormwater and sewer.

Finding: N/A

ADMINISTRATION OF ANNEXATIONS

12.3.5.o Develop a land use plan for annexation initiated by the city.

Finding: N/A

12.3.5.p Designate zoning districts for the property during the annexation process.

Finding: Annexations are automatically zoned R-A, Residential Agricultural. The property owners request annexation and rezoning of this property to RSF-4, Residential single family - 4 units/acre. Increased density on this property will increase the load on public infrastructure in this area and is significantly

different than the surrounding density. The timing of development to urban densities is inconsistent with City policies in this area at this time.

12.3.5.q An annexation study should be completed on all annexation proposals.

Finding: Planning staff has asked the Engineering Division, Fire Department and Police Department to study this annexation request to determine if facilities and services are available to serve this property. Comments from each department have been provided herein.

12.3.5.r Development proposals require a separate review from the annexation proposals.

Finding: Development of this property was proposed within the past few years for a single family residential subdivision in the Planning Area, however that application was withdrawn.

12.3.5.s Residents should be fully informed of annexation activities.

Finding: Adjoining neighbors have been notified of the annexation request and a public notice sign has been placed on the property advertising that this request will be heard at the Planning Commission meeting.

12.3.5.t Encourage larger annexations to create acceptable boundaries.

Finding: Extending the city boundary to the east as proposed will create a peninsula of incorporated land. This is not consistent with the Annexation Policy and may create future problems at the time of development by requiring water, sewer, and street infrastructure upgrades. These upgrades would encourage leap-frog development in an area not suitable for urban or suburban development patterns. Staff does not recommend increasing the size of the proposed annexation by one or two adjacent parcels, but might be supportive of a much larger annexation that would create a more acceptable City boundary.

12.3.5.u Conduct a fiscal impact assessments on large annexations.

Finding: No fiscal impact assessment was conducted for this annexation of 39.33 acres.



The City of Fayetteville Fire Department
303 W. Center St. Fayetteville, AR. 72701
Phone (479) 575-8365 Fax (479) 575-0471

To: Dara Sanders, Andrew Garner, Jeremy Pate, and Jesse Fulcher
From: Mark Stevens
Date: August 26, 2009
Re: ANX 09-3409 and RZN 09-3410 (Broyles / 3231 N. Old Wire Rd, 217)

This development will be protected by Engine 5 located at 2979 North Crossover Road. It is 1.5 miles from the station with an anticipated response time of 4 minutes to the beginning of the development.

The Fire Department anticipates 34 (22 EMS - 12 Fire/Other) calls for service each year after the development is completed and maximum build-out has occurred. Typically, this type of development usually takes 12 - 18 months, after the development is started, before maximum build-out and the service impact to occur.

The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.

At this time there is not a water main near this property of sufficient size for firefighting. The closest fire hydrant is located next to Fire Station 5. Old Wire Road has a 4" PVC main providing water East to Rom Orchard; it is reduced to a 2" PVC line providing water North next to Fincher Lane. A minimum 6" to 8" water main will be required to provide water to fire hydrants for firefighting purposes. Refer to the GIS water system map.

If you have any questions please feel free to contact me.

Captain Mark Stevens
Fayetteville Fire Department

Date 9/01/09

Jeremy Pate
Development Services Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request comments on the proposed ANX 09-3409 and RZN 09-3410: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by APPIAN CENTER FOR DESIGN for property located at 3231 N. OLD WIRE ROAD, NW CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD.

This rezoning, when built out, may cause any substantial call volume increase and will definitely have an effect on the traffic congestion in the area. The road is narrow and could be Improvements to the road

I also have some concern about the peninsula this annexation will cause. One side of the road inside the city while the other side of the road is outside the city may cause confusion among officers and residents living in the area as to which law enforcement agency to call in an emergency. There is a similar situation off Skillern Road almost immediately to the south. This small peninsula extends to Rom Orchard road and places one side of the road in the city and one side outside the city.

Sincerely,

Captain William Brown
Fayetteville Police Department

City Engineering Division Comments

ANX 09-3409: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by APPIAN CENTER FOR DESIGN for property located at 3231 N. OLD WIRE ROAD, NW CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 39.33 acres. The request is to annex the subject property into the City of Fayetteville.

Planner: Andrew Garner

RZN 09-3410: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by TODD JACOBS for property located at 3231 N. OLD WIRE ROAD, NW CORNER OLD WIRE ROAD AND ROM ORCHARD ROAD. The property contains approximately 39.33 acres. The request is to rezone the subject property to RSF-4, RESIDENTIAL SINGLE FAMILY 4 UNITS PER ACRE.

Planner: Andrew Garner

Public water is available to the property. There is a 4" main at on the south side of Old Wire Rd. Public water will need to be upgraded to the property to provide domestic and fire flow for any proposed development.

Sanitary sewer is not available to the site. There is a 18" public main at the intersection of Old Wire Rd. and Crossover about 2500' to the southwest of this property.. Public mains may need to be extended to the property to serve any proposed development.

The site has access to Old Wire Rd. Old Wire Rd. is a two lane paved city street in this location. Street improvements will be evaluated with development submittal.

Standard improvements and requirements for drainage will be required for any development. This property is not affected by the 100-year floodplain.



August 3, 2009

City of Fayetteville
Planning Department
125 West Mountain Street
Fayetteville, AR 72701

RE: Written Statement - Rezoning of 39.33 acres along Old Wire Road

- a. The subject property is located in Intended Growth Sector area by the City Plan 2025. The 2025 Plan describes Intended Growth Sectors as, "areas where new development in the form of Traditional Neighborhood Development (TND) is to be centered." The development team has created a master plan framework in conjunction with the proposed Cambridge traditional neighborhood development that is consistent with land use planning, principles and policies of the 2025 plan. We believe the master plan for the Old Wire area and the TND form of Cambridge match the goals of the City Plan 2025.
- b. The property is currently being annexed. Rezoning the property to RSF-4 would be in line with the City of Fayetteville land use policies for an intended growth sector area.
- c. Old Wire Road is currently a two-way asphalt paved road with approximately nine feet lanes. The level of service along this road is good with few delays expected morning or evening. The primary flow of traffic from this development is expected to take Old Wire Road either north to Joyce Boulevard or south to Crossover Road, which is scheduled to be widened to a four-lane boulevard in the near future. At the intersection of Old Wire Road and Crossover Road, Old Wire is currently a three lane road with a turning lane, curb and gutter and shows an efficient level of service for traffic. The intersection of Joyce Boulevard and Old Wire Road to the north is currently a two lane stop sign intersection. There is a low volume of traffic at the intersection of Joyce and Old Wire and it should not prove to be problematic or affect a delay on travel times.
- d. The proposed rezoning to RSF-4 will not dramatically increase population density. The widening of Hwy 265 to a four-lane boulevard, the subject property and the neighboring properties to the east will see additional homes and businesses in the near future. The master plan shown in conjunction with this neighborhood will provide a structure of planned growth that will include short blocks, ample parkland, trails, sidewalks, and a mix of uses that will inherently provide amenities for the project – all ideals intended through the City's Plan 2025. There is a recently built sewer pump station to the east very near the proposed connection of water and sewer lines that the development will utilize. A newly remodeled elementary school and a recently-built middle school are located very close to the proposed development. There is also a proposed school site in the 200-acre master plan shown in conjunction with this development.
- e. A traditional neighborhood development would not be allowed to occur with a zoning of R-A. Additionally, the subject property has been designated by the City Plan 2025 as an Intended Growth Sector. The 2025 Plan describes Intended Growth Sectors as, "areas where new development in the form of Traditional Neighborhood Development is to be centered." R-A zoning is intended for use by one-acre homes, estate lots, or farmland. The property will be entirely single family to not change the land use in close proximity to the existing neighbors.

Respectfully,

Todd Jacobs

Director of Design



August 5, 2009

City of Fayetteville
Planning Department
125 West Mountain Street
Fayetteville, AR 72701

RE: Rezoning Application - Written Description - 39.33 acres Old Wire Road

Appian Centre for Design is requesting the rezoning of approximately 39.33 acres located on along Old Wire Road to RSF-4.

- a. Currents owners of the property are Hank Broyles (Old Wire Road LLC) and Thomas C. Lee and his wife Barbara Lee.
- b. The subject property is located in the City of Fayetteville planned growth area. It will be proposed as a Traditional Neighborhood Development designed in conjunction with a 200-acre Master Plan that will create a framework to accommodate long term growth in northeast Fayetteville. This framework is designed to preserve open space, tree canopy, stream corridors, create trail corridors, and link neighborhoods on the East side of town. The subject property is located in what the City Plan 2025 refers to as an Intended Growth Sector. City Plan 2025 describes them as, "areas where new development in the form of Traditional Neighborhood Development is to be centered." The development team is dedicated to creating a framework for an Old Wire Neighborhood that matches the city's goals.
- c. The property will be design as a Traditional Neighborhood Development. The surrounding properties are currently R-A with several single family homes to the south, however, a few hundred feet to the west all properties are RSF-4, with a large parcel to the northwest zoned as RT-12. The proposed development will be entirely single family with large green spaces or fields and small parks to blend in with surrounding pasture. Most lots at the proposed subdivision will be larger than typical TND neighborhood lots at seventy to eighty feet in width to better fit in with the surrounding homes. Architectural style will similar to surrounding homes as future elevations will show.

Traffic from the proposed subdivision will initially utilize Old Wire Road to the south and east. The subdivision, however, will build the first extension of Bridgewater Lane, which will eventually connect west to Crossover Road. In the associated master plan this extension is proposed as a boulevard section and should connect well with the existing Crossover Road, slated to be widened to a four lane boulevard in 2011, forming a strong street axis for this section of northeast Fayetteville. Old Wire Road is currently a two-way asphalt paved road with no curb and gutter and approximately nine feet lanes. The level of service along this road is good with few delays expected morning or evening. Traffic from the subdivision is expected to be split north to Joyce Street and south to Crossover Road and not overburden the current system.
- d. Water and sewer lines are each located at the intersection of Old Wire Road and Skillern Road. The lines will be extended to the property where sewer and water will service homes in accordance with Fayetteville UDC.

Respectfully,

A handwritten signature in black ink, appearing to read "Todd Jacobs", written over a horizontal line.

Todd Jacobs
Director of Design

Correspondence Received (Letters of Opposition)

**Colene Gaston and Roger Montgomery
3270 Rom Orchard Road
Fayetteville, Arkansas 72703**

September 9, 2009

Attention: Andrew Garner, Senior Planner: agarner@ci.fayetteville.ar.us

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Annexation and Rezoning at 3231 N. Old Wire Road

Dear City of Fayetteville Planning Commissioners:

We live one house back from the eastern boundary of the Old Wire Road property proposed simultaneously for annexation into the City of Fayetteville and for rezoning to Residential Single-Family, Four Units per Acre (RSF-4). We opposed previous requests to rezone and annex the property that were denied by the City. We also opposed the request for a Conditional Use that was denied by Washington County. Nothing has changed since those previous requests to alter our opposition to the proposal currently before the Planning Commission. If anything, we believe that there is now more reason to deny the requested rezoning as there clearly is no need for an RSF-4 subdivision in this area. There already are several subdivisions on Crossover Road and another on Skillern Road that have completed infrastructure but that remain all or mostly vacant lots.

The proposed rezoning would result in an isolated zone of RSF-4 that is surrounded by property zoned for agricultural or residential development with a maximum density of either one-half or one house per acre. In fact, the single family homes in the area generally are on lots of three to ten acres. Several of the properties have livestock or agricultural uses. Some of the acreage is protected from development in perpetuity by conservation easements held by the Ozark Regional Land Trust. Rezoning the subject property to RSF-4 would be incompatible with the surrounding area.

We recognize that Fayetteville will continue to grow and develop. We support infill in the City core and City policies that discourage sprawl. While some may argue that keeping this area rural supports sprawl, we think that's more the case if an RSF-4 development is permitted in the middle of stable, rural properties. We have lived in our house for fourteen years. In that time very few new homes have been built in the area. Most of our neighbors are committed to maintaining the rural character of the neighborhood. It is very unlikely that their properties would be densely developed, even if zoning restrictions were relaxed. In addition to benefitting our neighborhood (and we do think of it as a neighborhood even though it's rural), we believe that it benefits the entire community if some neighborhoods with a more rural character and open space are preserved. This also is in keeping with the City Plan 2025 for the subject property.

As a practical matter, the roads in the area are not adequate to handle development as intensive as four houses per acre. Old Wire Road has a blind curve just to the west of the development when traveling in either direction. There is a second dangerous curve that borders the subject property to the east. Numerous cars have failed to navigate this curve. Traffic

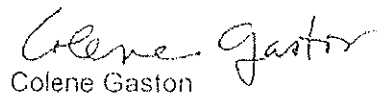
Comment to Fayetteville Planning Commission
Re: Rezoning and Annexation Request for 3231 N. Old Wire Road
September 9, 2009
Page 2

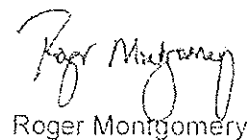
congestion already is significant at the intersections of Old Wire with Skillern Road and with Crossover Road.

We do not feel as strongly about the proposed annexation as we do about the proposed rezoning, so our inclination is to take into account the recommendation of the City's Planning Division before taking a firm position. The report of Planning Division is not yet publicly available. We note, however, that the proposed annexation would create a peninsula of land in the City that juts out into the County. And we do oppose any action that would facilitate or result in higher density development of the subject property.

Thank you for your consideration of these comments.

Sincerely,


Colene Gaston


Roger Montgomery

September 1, 2009

TO: Fayetteville Boards of Annexation and Rezoning
RE: Property at Old Wire and Rom Orchard Rd
Request for Annexation and Rezoning

To Whom it May Concern,

As 23 year residents of 3162 Rom Orchard Rd, Washington Co, Arkansas, we would like to publicly express strong disapproval for the proposed zoning and annexation requests for the above-mentioned property. This letter may be read at the September 14 public input meeting as well as copies given to each relevant board member in our absence. We will be out of state during the time of this hearing.

The following list gives some of the reasons that need to be seriously considered before this annexation and rezoning would ever be approved.

1. The character of this area is primarily rural and agricultural. Most landowners have property of three or more acres. The basic integrity of the area should not be altered to include multi-family use of the density requested.
2. The land is a peninsula jutting out into Old Wire Road for a large portion of its total size. Considering only the Old Wire Road lines of vision, either direction is dangerously blind around this peninsula. The entrance into or from Rom Orchard is a similar hazard. The traffic speed is too fast for safe entry and exit with the addition of the high number of vehicles involved in a large subdivision.
3. At the intersection of Skillern and Old Wire Roads, traffic from the west toward Hwy 265 has the right of way at this time. That is yet another very blind corner for those of us traveling toward that intersection. Traffic speed down Skillern is significantly more than would allow for ample yield time.
4. The morning commuting hours already present a difficult traffic issue with the number of cars continually going toward the light at Old Wire and Crossover Roads. It requires significant time to enter that stream of cars when traveling from the areas going north from the stop sign into Old Wire. A traffic count might be feasible to show how the problem we already face would be compounded many times over by adding ANY extra traffic each morning. It could only be dangerous as well as difficult.
5. To avoid the problem just mentioned, traffic from a new development would almost certainly go down Rom Orchard to get to Skillern to go with the unhindered route. Rom Orchard is quiet, SMALL and constructed of the chip and seal material not meant to withstand heavy traffic. Our road would be ruined.

6. The water treatment facility at the Old Wire/Crossover intersection has resulted in many days of unpleasant odors coming all the way to Rom Orchard and beyond. The area has homes serviced with septic tanks and the additional burden on the city sewer system would provide us with even more foul smelling air.

7. Most of us who oppose this high-density project would not object to housing that fits the area's use. Homes no less than one per acre would still be responsible for a traffic burden as well as difficulties in the previously-mentioned areas. It would be far better than the 3 home per acre ideas presented thus far.

Please add our names to the large number of rural residents of the Rom Orchard area who oppose the development of a small house-large population neighborhood in rural Washington County.

Sincerely,

Larry and Tanya Floyd
3162 Rom Orchard Rd
Fayetteville 72703

From: "Shelley Cassar" <shelley@blisscupcakecafe.com>
To: <agarner@ci.fayetteville.ar.us>
CC: "Stephen Cassar" <stephenc@ticketsage.com>, "Shelley Cassar" <shelley@bl...
Date: 9/9/2009 3:58 PM
Subject: Rezoning and annexation at 3231 N. Old Wire Rd

To Whom it May Concern:

We live at 2990 N. Rom Orchard Rd. We moved in to this house last year because of the quiet, country feel of the street and area. We were disturbed to hear talk of a subdivision being placed on the corner of our street. The roads in our neighborhood are very narrow and windy and not at all conducive to heavy traffic flow. Not to mention my children currently use these roads to ride bikes on and walk the dogs. The additional traffic would cause our kids to not be able to enjoy the country atmosphere we moved here for.

We are opposed to the rezoning and annexation at 3231 N. Old Wire Rd. The additional traffic and noise that a subdivision would create would no longer make our current residence desirable. Most of the homes, including ours are on 2plus acres, most being 4plus acres. A subdivision does not fit into this type environment. Please leave some of Fayetteville untouched by yet another subdivision.

Please consider this seriously as it would effect the lives of many families.

Kind Regards,
Shelley and Stephen Cassar

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Attention: Andrew Garner, Senior Planner: agarner@ci.fayetteville.ar.us

Re: Annexation and Rezoning at 3231 N. Old Wire Road

Dear City of Fayetteville Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows four houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;
4. There is no need for an RSF-4 subdivision in the vicinity; and
5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers, bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Susan Brisiel

Address 3150 N. Rom Orchard Rd

Printed Name Susan Brisiel

Fayetteville AR 72703

The proposed rezoning is so totally opposite the current community of homes.

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Attention: Andrew Garner, Senior Planner: agarner@ci.fayetteville.ar.us

Re: Annexation and Rezoning at 3231 N. Old Wire Road

Dear City of Fayetteville Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows four houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;
4. There is no need for an RSF-4 subdivision in the vicinity; and
5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers, bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature

Sharon Payton

Address

3845 Bridgewater

Printed Name

Sharon Payton

Fay. Ar. 72703

Mr. Garner, I strongly oppose this plan. I feel it will be very detrimental to our neighborhood.

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows 4 houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;
4. There is no need for an RSF-4 subdivision in the vicinity; and
5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers,

bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Paul H. Pannell

Printed Name PAUL H. PANSELL

Address 3287 ROM ORCHARD Rd FAYETTEVILLE

72703

ON 3 ACRE w/1-RESIDENCE

MY INPUT: I'd agree to is one(1)

RESIDENCE PER. 1 1/2 ACRE. RHP

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701
Attention: Andrew Garner, Senior Planner: agarner@ci.fayetteville.ar.us

Re: Annexation and Rezoning at 3231 N. Old Wire Road

Dear City of Fayetteville Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows four houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;
4. There is no need for an RSF-4 subdivision in the vicinity; and
5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers, bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature

Printed Name

Terry Payton
Terry Payton

Address

3845 Bridgewater Lane
Fayetteville, Ar
72703

From: Susan Brisiel <susan.brisiel@fayar.net>
To: <agarner@ci.fayetteville.ar.us>
Date: 9/9/2009 2:47 PM
Subject: Opposition to proposed rezoning on Old Wire Rd

Mr. Garner,

Please allow me to go on record as strongly opposing the proposed rezoning of property located on Old Wire Rd.

I live on Rom Orchard Rd, a nice quiet rural area with all the homes occupying at least 3 acres. The proposed 4 houses per acre is just totally at odds with the existing setting.

Letters in opposition have been faxed from Susan Brisiel and Sharon Payton.

Thank you for considering these letters in your discussion of the area.
Susan Brisiel

~
Please note email change: susan.brisiel@fayar.net
Susan Brisiel
Admin Asst
Vandergriff Elementary
479.527.3600 office
479.527.3603 fax

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

It is our understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4). We own 10 acres located at 3284 Rom Orchard Rd., which is adjacent to the subject property to the east, across Old Wire Rd.. Our property is adjacent to the subject property for 895 feet. We have lived at this location since 2000.

We oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

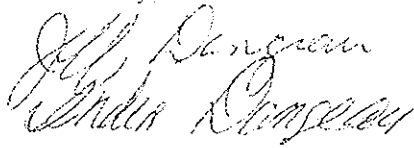
1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows 4 houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;
4. There is no need for an RSF-4 subdivision in the vicinity; and
5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers, bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, we respectfully request that the proposed action be denied.

Sincerely,

Handwritten signatures of Jeff and India Dangeau in cursive script.

Jeff & India Dangeau
3284 Rom Orchard Rd.
Fayetteville, AR 72702
(479) 521-7416

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows 4 houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;
4. There is no need for an RSF-4 subdivision in the vicinity; and
5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers.

RECEIVED

SEP 14 2009

CITY OF FAYETTEVILLE
PLANNING DIVISION

bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Roy C Rom

Printed Name ROY C. ROM

Address 3098 ROM ORCHARD RD 72103
FAYETTEVILLE

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows 4 houses per acre, is not compatible with the surrounding area;
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For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Larry Floyd Tanya Floyd
Printed Name Larry Floyd Tanya Floyd
Address 3162 Rom Orchard Rd

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows 4 houses per acre, is not compatible with the surrounding area;
2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;
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The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

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For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Valerie E Fletcher

Printed Name VALERIE E. FLETCHER

Address 3281 ROM ORCHARD RD, FAYETTEVILLE, AR 72703

Planning Commission Minutes

October 10, 2005 (ANX Denied)

May 08, 2006 (ANX Denied)

September 14, 2009 (ANX Denied)

Planning Commission
October 10, 2005

Page 53

ANX 05-1626: (OLD WIRE INVESTORS, LLC, 217): Submitted by FRIDAY, ELDREDGE & CLARK LLP for property located at THE NW INTERSECTION OF OLD WIRE AND ROM ORCHARD ROADS. The property is in the Planning Area and contains approximately 29.70 acres. The request is to annex the subject property into the City of Fayetteville. Planner:

ANDREW GARNER

RZN 05-1627: (OLD WIRE INVESTORS, LLC, 217): Submitted by FRIDAY, ELDREDGE & CLARK LLP for property located at NW INTERSECTION OF OLD WIRE AND ROM ORCHARD ROADS. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 34.51 acres. The request is to rezone the subject property to RSF-4, Residential Single Family, 4 units per acre.

Ostner: Our next item is another annexation for Old Wire Investors, ANX 05-1626.

Garner: These items, fifteen and sixteen on the agenda are also tandem items for an annexation and a rezoning. The property contains four parcels consisting of approximately 30 acres to be annexed and the applicant is also seeking to rezone approximately 35 acres which includes 5 acres located in the city currently and zoned R-A. The site is located northwest of the intersection of Old Wire Road and Rom Orchard Road. It is surrounded by rural residential and undeveloped pasture with unincorporated Washington County to the north, east and south and property that is zoned R-A and the City of Fayetteville to the west. There is also unincorporated areas of Washington County to the west of some of the property line. Staff has received public comment from adjacent property owners objecting to this annexation and rezoning and has discussed this with the applicant. The applicant has indicated that they have discussed this request with the surrounding property owners and haven't been able to gain support for the annexation and rezoning. Staff finds that annexation of the property will not create an island of unincorporated property but it will extend a peninsula with irregular property lines that contain some out parcels between the proposed annexation area and the city limits. We find that expanding the city limits in this configuration is not in compliance with the policies for annexation and would create undesirable boundaries and problems with creating a peninsula in this manner with regard to extending public services across county and into city boundaries and will create gaps of unincorporated property almost entirely surrounded by city limits. The site is currently utilized for rural residential uses and undeveloped pasture and the applicant anticipates subdividing the property for single family use and proposing a density of four units per acre. Staff finds that this proposed zoning is not compatible with adjacent and nearby agricultural and rural residential uses. The General Plan does designate this area for residential

land uses. However, this designation doesn't specify the density levels. Staff and the Planning Commission and City Council is charged with evaluating the surrounding land uses and this proposal's compatibility with these units. Staff finds that the proposed density is not consistent with density and surrounding zonings and existing land uses currently in this area. Engineering, Fire and Police Departments analyzed this proposed annexation and rezoning request and the Police Department found that the proposed annexation and rezoning would not substantially increase the load on police services. The Fire Department noted an adequate response time of seven minutes as well. The Engineering Division found that public water is adjacent to the site and sanitary sewer is not adjacent to the site with the nearest sewer main being approximately 2,500 feet to the west of this property and an off site sewer main extension would be required to serve the development. In summary, we find that the proposed configuration of this annexation would create an undesirable boundary and would create an undesirable peninsula and we find that rezoning is not compatible with the surrounding area. With that, we are recommending denial of both items.

Earnest: I'm Hugh Earnest representing Old Wire Investors. We find ourselves on the horns of a dilemma tonight. About a month ago after careful consideration of this annexation request with staff we pulled the item from the agenda and have attempted to contact a large number of people generally bounded by Rom Orchard Road. There is a hatched area where we sent out letters to 28 different individuals asking for their support of annexation, the request was not for the land that Old Wire Investors owns but rather, for the property adjacent. What we attempted to do to meet what I believe is a legitimate concern of staff is to bring in something that is larger. However, we were unable to secure unanimous support from those individuals so we have gone back and are now bringing forward to you the original annexation request that we had earlier voluntarily pulled from the agenda in order to try to meet the objections of staff and bring forward a larger piece. Let me also make the point, five acres of the area is already inside the city. This is adjacent, it is a peninsula, the developer is willing to install the 2,500 foot sewer line to the property and the water line also to the property in response to the information that we just received from Colleen Gaston, in the many conversations that I have had with David Jurgens there has never been concern about capacity short fall in this particular part of town with respect to the capacity of the plant. Such is not the case, as you well know, in west Fayetteville. In this particular case there has never been any concern expressed on that. As recently as this morning I had a conversation with Mr. Jurgens because he is a good planner and he was talking about how he would need to wrap the 4" line down Rom Orchard Road to get water pressure into the area. Mr. Jurgens, from his perspective, is certainly thinking about the necessary infrastructure improvements that the area would require for adequate

water in that particular area. The bottom line, and the developers should be commended, Mr. Spradling, as a developer of record, is here with me tonight, the density that is proposed is slightly in excess of two units per acre. That has already been turned into the city. That discussion has already occurred with city staff. The questions that Mrs. Allen continues to ask are valid questions about fire stations. In my time with the city we certainly were aware of the issues in that area. I commend the city for moving forward aggressively and deciding to put Fire Station #5 at the corner of Old Wire Road and Crossover is their first priority. I suspect that since the city has a template for building fire stations that the station will be done well in advance of the development of this area and I think that probably occurs for the other developers in this area because the template that was used in west Fayetteville I'm sure will be essentially the one that is used in this area. I doubt that there is going to be significant changes in the design. I think that pretty much covers the points that we wanted to make and we are certainly responsive to answer any concerns that you may have with respect to this joint request for annexation and rezoning.

Ostner: At this point I will open it up for public comment if anyone would like to speak to this request please introduce yourself and give us your comments.

Parnell: I'm Paul Parnell, I seem to be the one right in the middle of this proposition. I don't necessarily object to the proposition. However, I feel that whoever is gaining from this transaction should defray any costs that we may have in connecting our residences to the sewer that may be established. We presently have perfectly good septic tanks and lateral fields that is not costing us anything to operate and we feel that we should be compensated by whomever is gaining from this endeavor because we don't consider ourselves gaining from this activity. We are very happy with what we have got. However, we are not opposed to developments and appreciate those things. However, fire protection, as just mentioned, is something that should be addressed at this time because we, at this particular month of October are to reconsider our contract with Goshen who has been providing us fire protection for many years. We need to have that addressed. In the event that we are annexed into the city, when does the city assume responsibility for fire protection for this area? Those are things that we feel are very important. Thank you very much. I live at 3287 Rom Orchard Road.

Floyd: My name is Larry Floyd, my wife and I live at 3162 Rom Orchard Road and I didn't get a letter about it but I saw the sign in the field and fixed it up there so everybody could see it and proceeded to see what was going on. The letter that you mentioned earlier is the letter from Colleen Gaston but she really said what we are saying in the neighborhood. I have a number of people here who are opposed to this and who agree with staff

on the recommendation that they made. She was unable to attend but she wrote this letter and she basically says that she is opposed to both annexation and rezoning. They are my neighbors on Rom Orchard Road. She talks about the wastewater treatment plant down at Old Wire and Crossover and the smell is unbelievable. Even when you are in your car with the windows up when you guy by there you can smell what is taking place down there. She says that there have been a number of actions to attempt to address this but it still persists. While there may be a need for additional housing in Fayetteville the question of adequate capacity may apply to development within the existing city limits and it does not seem prudent at this time to expand the land area to which the city must provide sewer service. The proposed rezoning is out of character with our neighborhood. If you have been out on Rom Orchard Road it is the greatest area in Washington County. It is agricultural. There are four of the neighbors that have large horses. I have a miniature horse farm on that road. There is an apple orchard, people stroll up and down it like you are back in the 50's and pick an apple and eat it on the way home. It is unbelievable, it is like going to the Apple Festival every day. It is just a wonderful area. There are people walking their dogs and their horses and everything else along there. Traffic is a big concern for us as well. The character of our neighborhood is 3-10 acre lots and a lot of it is livestock and agricultural use. The other thing, I mentioned the traffic, the blind curves at Old Wire Road, there are a couple of them. People frequently go off of that curve right by this development into the neighbor's fence. Their fence is being fixed all the time because of the traffic there. It is very dangerous. I'm concerned with the stop sign that was placed at Old Wire Road.

?: The tax base unless you are farming it forces you to do something or sell out and you need to take those things into consideration. I happen to farm my five acres and I'm making enough money that it is considered a farm by USDA standards. If I'm taken into the city I plan to try to stay agricultural because I plan to continue farming. I grow vegetables, my wife sells at farmers market. We are pleased with that and we are pleased with where we live. I don't have a great concern about this particular proposal here tonight but I do think that we are sticking our head in the sand when we oppose development because it is going to increase traffic. The main traffic on Old Wire Road is about 200 gravel trucks a day now. We are in between the gravel pit off of 412 and the asphalt pit in Springdale. You people have a difficult job and I appreciate your time. I didn't plan to talk tonight but I wanted you to know that not everybody is opposed to this annexation across the street from me.

Ostner: Is there any further public comment? We will come back to the applicant.

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Dangio: My name is Jeff Dangio, I live at 3284 Rom Orchard Road. I am the guy with the cars going through the fence. We own a 10 acre tract directly east of the subject property and have a wood rail fence around it. There is a sharp curve to the north at the intersection of Rom Orchard Road and Old Wire. I guess more than once a year we have a vehicle come crashing through that fence. If we add a high density development in there you automatically increase the traffic. There is a safety concern that is kind of unique to our property. A lower density development would be better but if you do go with this proposal we would ask that you do something to improve the safety of that curve in some way. The good thing about the cars crashing through the fence is I may never have to pay to replace that fence. The insurance companies pay for a significant portion of it every year. The down side is if there are kids around and they happen to be at the wrong place at the wrong time we could have a bad situation. Thank you for your time.

Payton: My name is Terry Payton and I live on Bridgewater Lane about 600 yards east of the development. I just want to address the traffic concerns and make a couple of points that have not been made. In that section of Fayetteville the traffic from the east funnels to Crossover Road, you either go to Old Wire and Crossover or the Joyce and Crossover intersection. My main concern is the density that is being proposed. Tonight you approved the five acre subdivision that will be on Skillern Road from 11 up to 20. Bridgewater Estates has 22 or 24 lots and all of those lots have sold. There are only three houses there now. That is going to increase the traffic load and then if this subdivision goes in it will further increase by however many homes will end up there. The next time that you are out there and you see the Joyce Street Crossover intersection and the Old Wire Crossover intersection, both of those are backed up in the morning. That is my main point.

Elliot: My name is Don Elliot, I live at 3743 Bridgewater, just east of this development. I don't know much about zoning law. I don't care whether this area is annexed to the city or not, I don't have an objection to it being annexed to the city because I understand that that would give the city more authority to regulate it. I do have a big problem with the zoning. It is totally inconsistent with the lots in that area. The land that Terry and I live on and some of the other people, that started out as a 40 acre tract, and Mr. Stevenson sold it off and in the covenants, private covenants, there can't be any lots sold that are less than five acres. I live on 7 ½ and Terry lives on 8, there are a couple of 10 acre tracts and a 5 acre tract. These are all totally inconsistent with allowing four houses per acre. That is not just true of that land, it is also true of the other houses in there, I would guess that they are all one to five acre lots. To allow four houses on one acre is totally inconsistent with what is out there now. I don't care about the annexing but I do have a big problem with the zoning change. Thank you.

Ostner: If there is no further comment from the public I will close the public comment session and bring it back to the Commission.

Spradling: My name is Marcus Spradling, I am the developer. A couple of things that I ran into on the annexation was the majority of the people I talked to did not want to annex until they saw the sewer and water improvements, which is the same issue you get into with building a fire station or a Wal-Mart Super center where nobody lives, you don't do it. The people come and you bring the infrastructure to them. What we are trying to do is provide infrastructure to the area for water and sewer which eventually will lead to better fire protection for the people out there. You've got Fire Station #5 which is basically ready to go and should be built before we ever get there. The zoning, you have got one unit per acre or you've got four units per acre. There is no middle ground, there is no in between. We have handed in all of the Preliminary Plat information showing that we are just a little bit over two units per acre because we felt like that is what best fit in the neighborhood. We weren't going in there trying to put 65' wide lots with little houses in there and drop it in the middle of that market. It is an upscale subdivision and the houses that will be built in there are in the same area and the same price ranges as what is built out there now so the property values should increase. Our intent is not to devalue the property, it is to increase the value of the property. We are providing the water and sewer extension which will in turn allow people to tie into it. I don't know what other questions you may have. Anything we haven't covered?

Pate: I just want to call your attention to page 13, the citizens that did speak, numbers five, six, 13, 14 and 15 did speak tonight, just so you have an idea of where they were coming from.

Vaught: I guess my problem is as we were speaking of earlier, where the other one was a logical shape and extension, this one seems illogical to me with the chunks missing, the spur out and this one creates more of a peninsula hanging out there by itself. I know Mr. Earnest spoke to bringing a larger tract forward, can you repeat what you said?

Earnest: What we attempted to do at the request of staff, was to bring forward a larger more together area, if you will. There is a map in there that shows a hatched area bounded by Rom Orchard Road going back to the city limits. The hatched area shows the 28 property owners that we sent letters to. The majority of those individuals are in favor of annexation, but not all. One of the burdens that we have is unanimity is required for annexation. I understand that and support it, but that is an effort that we made to accommodate the criticisms that this does not cover a larger area.

- Vaught: It just makes it hard for us and staff to support something like this.
- Spradling: It is not that we have singled out a piece of property out in the middle of nowhere. 25% of this property is already in the city. We are trying to extend what we have in the city. We are already in the city, we are just trying to incorporate the balance of the property into the city. With us putting in the infrastructure the majority of the people that I talked to will come in but they are not going to allow their taxes to be raised and not get any benefits. They aren't buying in to raise my taxes and when you get ready to bring me sewer. They can't get it unless we bring it in there, and they are not willing to do something without seeing that they can tie onto it first. That is where the consumer is today.
- Vaught: My concern is looking at the guiding policies, I counted six out of fifteen that this directly conflicts with. There is a peninsula issue, areas that exclude entire subdivision or neighborhoods or divide areas up, boundaries for annexation follow natural corridors. It doesn't follow natural corridors because there are bits and pieces here and there. You've got a couple of pieces of county that are kind of stuck out there in the middle of the city. It doesn't create islands but it comes close. Areas that are currently served by public services should be annexed. This is a 2,500 foot extension of sewer main, that is a pretty good chunk of sewer main to extend.
- Spradling: That is because it follows the road. As a crow flies we are 1,320 feet from RSF-4.
- Vaught: As for the engineering, I don't know if any additional lift stations would have to be constructed. I assume the one at the corner of Crossover and Old Wire would suffice?
- O'Neal: That one is a substantial lift station, I believe it is a 24" forced main. There is not a capacity issue at that station at this time.
- Vaught: While we are on it, can you address the smell of that lift station?
- O'Neal: Due to the time that the sewer is retained in the station it smells bad. There are a lot of other items that can be done with lift stations, that is something that we can look at.
- Pate: A lot of times when a lift station is large and a forced main is large and is not 50% or closer to capacity it sits there for a longer amount of time so that is why the smell is produced.
- Vaught: So more development would help it. My main issue is about the annexation. I know that we are stuck in that spot where it is really

difficult but it is leaving a lot of gaps and holes in there and it is an area with a lot of development. Typically something like this I would be in support of but this one I'm having a hard time with those boundaries and how you are tying together. I know you are having a hard time with the neighbors and it is a chicken and egg kind of situation, but even if you run the sewer main down that line, they are not automatically connected, they are going to have a substantial expense to connect to it. We are not guaranteeing those people will even connect to it.

Spradling: No, but they will have the ability to connect to it and it increases their property values because now they have access to sewer that they didn't have before.

Vaught: Correct. You think that those people are going to come in and increase this area. That is what I am having trouble with.

Spradling: The consumer is just not willing to bet on the come. They want to see the baby.

Graves: I have the same concerns. If it was one of the guiding policies or two of the guiding policies it would be one thing because they are guiding policies and they are things, that as I said earlier, we use our common sense on. This one conflicts with a number of the guiding policies and just as I said the first one I didn't think was a peninsula, this looks like a peninsula to me. It looks much like the tail that is on the one mile map which is in the city, but I didn't vote for anything like that. This is a peninsula without question, it is long and oddly shaped and doesn't create nice boundaries for the city, it doesn't follow natural corridors and is not an area that is easily serviced in any way and these are some longer response times than what we saw with earlier items as well and I cannot support annexing this property the way it looks right now.

Spradling: I think the long response time was an issue and that is why the city is building a brand new fire station right next to it. Obviously, they know something that we may not know. They have headed off that problem and they are planning on the expansion being on the east side of town.

Graves: I'm not looking to argue with the applicant, I'm discussing with my fellow commissioners this item. If the chair recognizes the applicant, that is fine. I'm not looking to have an argument back and forth, I'm just making my comments to my fellow commissioners.

Spradling: I respect that, thank you.

Clark: The only reason I would be in favor of annexation is we can control how it develops. I'm not in favor of rezoning at all. If we annex it I will vote to

let it sit just like it is. Step systems scare me. Development within the county close to our borders scares me. That puts us on a horn, what do we do? I don't think it is bad to annex it but I think it would be very, very bad to rezone it. I am seeing a very eager developer so I'm more inclined to annex it.

Ostner: Just as a procedural issue, most developers withdraw their annexation requests if their rezonings are denied since they simply don't want to pay more taxes on land that they can't develop. Are there any motions?

Myres: I will make a motion that we deny ANX 05-1626 as recommended by staff.

Graves: I will second.

Ostner: Is there further discussion?

Vaught: My issue is mainly the boundaries and the way that this is drawn up and the gaps that it creates. I agree with staff's findings that we need a more logical boundary to create this annexation. It is an area of development, typically I would like to see this property annexed, because, like you said, there is a fire station coming in here. The way that this is coming in to me is not correct. We don't know when the stuff around it is going to come in. I would like to see a bigger picture in this and that is why I will be voting against it. Not because I don't think this is a right piece, but it just causes too many conflicts.

Ostner: Is there further discussion? Will you call the roll please?

Roll Call: Upon the completion of roll call the motion to deny ANX 05-1626 was approved by a vote of 8-0-0.

Thomas: The motion carries.

Ostner: Mr. Williams, is the same procedure in place to appeal our recommendation?

Williams: That is correct. At this point the petitioner would need to decide whether they want to withdraw the rezoning petition at this point in time or have that acted upon tonight also? You could ask to table the rezoning if you wanted to think about it or you could go ahead and ask for action to go forward.

Earnest: I think it is obvious that we will ask for it to be tabled.

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Ostner: The applicant has requested the next item to be tabled. That is RZN 05-1627.

Clark: So moved.

Myres: Second.

Ostner: Would the applicant like to share anything before we vote? Would anyone from the public like to share anything on the rezoning request before we table it? I will close the public comment session and bring it back to the Commission. Will you call the roll please?

Roll Call: Upon the completion of roll call the motion to table RZN 05-1627 was approved by a vote of 8-0-0.

Thomas: The motion carries.

Announcements

Subdivision Committee Appointment: Commissioner Trumbo to take Commissioner Graves' seat.

Meeting adjourned: 8:45 p.m.

ANX 06-2046: (OLD WIRE INVESTORS, 217): Submitted by RAYMOND SMITH for property located at NW INTERSECTION OF OLD WIRE AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 30.70 acres. The request is to annex the subject property into the City of Fayetteville.

RZN 06-2047: (OLD WIRE INVESTORS, 217): Submitted by RAYMOND SMITH for property located at NW INTERSECTION OF OLD WIRE AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 35.51 acres. The request is to rezone the subject property to RSF-4, Residential Single-Family, 4 units per acre.

Garner: This property is located at the northwest intersection of Old Wire and Rom Orchard Road east of Fayetteville. I will summarize both the annexation and rezoning together and we can answer any specific questions you might have. Subject annexation property was included in an annexation request that came before the Planning Commission on October 2005. Staff recommended denial of the request at that time and annexation was denied unanimously. The applicants included an additional property owner and one acre parcel on the north side of Old Wire Road in the current request for annexation and rezoning. Additional background, in March 2006 the applicant submitted a preliminary plat to the City of Fayetteville for a subdivision with 77 residential single-family lots. This subdivision has been tabled until the type of sewer service can be determined. The property that can be annexed contains five parcels consisting of 31 acres. The rezoning application contains approximately 5 acre parcel as well as that within the city limits. There is a difference in the acres between the annexation and rezoning. The applicant proposes annexation of 31.00 acres into the city and rezone the property if it were annexed from Residential-Agricultural to RSF-4, Residential Single-Family, 4 units per acre. The current site has access to Old Wire Road. The site has water available and sanitary sewer is not adjacent to the site. The nearest sewer main is approximately 2,500' west of the site on Old Wire Road. The fire and police department responded, and did not have any adverse effects on their services noted. Other than that they did acknowledge that it would be a change in the population density in this area. Staff finds annexation of this property would be in contrast to the city's policy not to annex islands or peninsulas. Finding that the configuration of these parcels would create a peninsula that would be undesirable and would have potential to have city services extended to areas where it would provide some potential service problems. Staff has discussed with the applicant that we would be more in support of this request if they were able to get the support of some of the adjacent property owners and provide a more continuous parcel to be annexed in and rezoned. As far as response, they have been unsuccessful in obtaining support from neighbors. Staff finds that this annexation and rezoning in general would not be compatible with

this area. It is largely agricultural, rural residential at this time. The density proposed, 4 units per acre, would not be compatible with these land uses. The closest subdivision is west of Crossover Road or south of Skillern Road. Those are the main reasons why we recommend denial and we would be happy to answer any questions you might have.

Anthes: Would any member of the public would like to address either the annexation or rezoning for Old Wire Investors.

Gaston: Hello, my name is Colleen Gaston at 3270 Rom Orchard Road, which is one of the connector streets to this proposed subdivision. I definitely oppose the proposed rezoning. If you have looked at any of the attached maps to the staff report, you will see surrounding on all sides of this proposed annexation and rezoning land, the houses are on tracts of minimum 2 acres. More often, 3,4,5,6, and 10 acres. This falls completely out of character with this surrounding area. I'm not clear on the staff report on the traffic issue, exactly on what is being said. I guess there is a letter from the police department from Captain William Brown. It stated that the proposal would have negligible impact on the cost from police services and traffic congestion for the area. Elsewhere in the report, it talked about increasing the density of traffic from approximately 170 vehicles per day to 1,380 vehicle trips per day. To me this is not just a negligible increase, particularly at certain times of the day. The intersection of Old Wire and Crossover, at morning rush hour and evening, has traffic backed up at least a mile on Crossover. This will clearly add to that traffic problem, not to mention the fact that there are several blind curves associated with this project. I do, however, have mixed feelings about the annexation. Some of my neighbors share those same concerns. If there is going to be development in this area, and we all know there is going to be more development, we would like to see it on a sewer system. We think that it would be better for the city and those of us in the area. If this was developed with sewer as opposed to septic, if you're looking at 80 houses on 35 acres. Its sort of a catch twenty-two, I understand the staff recommendation for why they oppose the annexation. At the same time, I think there is some value to the city having property come in with sewer. Although, not as densely as proposed. The idea about this would be if this was annexed in as R-A, but allowed to have sewer. I think those are the main points. This did come up before the Planning Commission in October and I know that many of you were here at that time and heard a number of the neighbors talk about how this proposal was not in keeping with the area. This is an area that is going to be developed with a lot of subdivisions. The surrounding properties are pretty stable and are going to stay with very low density housing on it. This would be an island of very dense development and for that reason, I think I support the staff's recommendation that this not be rezoned RSF-4.

Anthes: Thank you Mrs. Gaston, would any other member of the public like to address this item? Seeing none, I will close the public comment section. Oh, in the back.

Elliot: My name is Don Elliot, I live at 3743 Bridgewater and I've spoken here once before, so I don't really want to repeat what I've already said. But I would like to join in with Mrs. Gaston said. The report from the senior planner states, this use is not compatible with adjacent land use or density in the surrounding area. We had to sell a 40 acre tract that had its own covenants and no lots less than 5 acres. That's the 40 acres just across the street, just east of this land. While there are closer houses nearby that are less than 5 acres, they are not even close to this dense. I don't know if you have looked at the traffic, but I've talked with Perry Franklin about this, who I think does a great job. If you are traveling west on Old Wire Road at Crossover, you will sit thru three lights minimum between 7:30am to 8:15 in the morning. Coming back, going east on Old Wire Road and Crossover, I was just there last week sitting there at 6'oclock sitting thru three lights. I don't know how much you look at the traffic, but the traffic at that intersection at those times of day, going those directions, is horrendous. I don't see what you would do, you would have to change the road out there. If you put in 77 units and expect them to get to work on time and get home at a decent hour. Anyway, this project is just not compatible in that area.

Anthes: Anyone else would like to speak on this item? Seeing none, I'll go ahead and close the public comment section and ask for the applicant's presentation.

Sloan: I'm Charlie Sloan, representing the applicant. I'm a developer in Fayetteville, as you know. I do not have any investment or interest in this project. This project came through back in October at a time that I brought a project through. There were three of us, Mark Spradlin, Tim Estes, and myself. The first project that came through was Skillern Drive behind Savanna. It created a peninsula; it stuck out. It wasn't as big as this one. But, then again, it did get passed. My project, second, I was surrounded on three sides by the City of Fayetteville, I was annexed in. Sitting outside, talking to my engineer afterwards, we found out that this project was denied on the annexation. Later on, I read in the paper where this had gone to the county and had taken a conceptual plat only, to the county. It was not a plat to be approved, but it had gone to the county. They did seem to like it, it was in the paper. They acted like they would develop this property. The problem is to me as a private citizen on this, is if there is a project going to happen out there, sewer is available to this property. I've contacted the developers, I didn't know them, but said why not run sewer out there. They said that they would be willing to go back

and run sewer, at least a couple 1000 feet of sewer. We are out the same amount of money whether we put this on the step system or we put it on a sewer system in the City of Fayetteville. That's the issue that got me involved. One of these days, this area will be annexed in out there and the citizens of Fayetteville will be paying for sewer out there. My problem is, why not let private dollars pay for something that will be a public utility, plus they will have to upgrade the sewer water system, if they put the subdivision in. There is a 4 inch water line going out there, they will be putting in an 8, the City will probably want to upgrade that. It will cost-share you to 12. So, those are the issues that got me involved in this, it's strictly not knowing the issues about the compatibility, the rezoning, or the lay out of the subdivision. Five acres of their property is already in the City. The rest of it, they are asking to come in. The big issue, I saw, was whether this comes into the city as an annexation or not, or if this plan is approved on the rezoning. Tell these people what the process is to go forward, to let them spend private dollars to take sewer out to this area, that I've felt like would eventually benefit everybody in that area. Some of the homes though developed on 5 acre lots, have covenants that will not allow them to ever break it down and develop smaller lots out there. Do you have a need for sewer? I don't know. Obviously, if there is a septic system working fine, it's working fine. I just hate to see a subdivision put on a step system that could be put on City sewer, even though it is a big expense to these people. This is a chance for us to let private dollars pay for it. That's the reason I ask to bring this forward, and try one more time. Ask if that is possible or maybe this is not the mechanism to go with it. Maybe they will get approved by the County and then come back in and request to be put on the City sewer system, which is fine with them. 122 lots, I believe is what the calculations are for 4 units per acre. They were proposing around 82-83 lots on their latest thing. We did talk with one of the neighbors for them, that I happen to know. They agreed to sale the one acre lot that was carved out of this, so it really made this an odd shape piece of property. It still creates a peninsula. We talked with the two other land owners, and they request not to come in. Cooper runs a business, landscaping business and he wishes at this time not to be in. He had a letter signed for me and his wife said he lost it. He didn't have it with him the other day when I chased him down. He did say that he did not wish, at this time, to come into the City of Fayetteville, because he is running a landscaping business. That is my two cents.

Clark: I have been told millions of times that not creating a peninsula is just a guideline. So, I'm asking for more clarification. If it's just a guideline, and 5 acres is already in the City, what is staff's rationale that the rest of the utilities are not available? What's unique about this one?

- Pate: With any annexation request, we look at all those guidelines and policies. If we feel it does not create a dangerous situation or there is some reason that, for instance, a request creates an island and we recommend it, the applicant has gone through every possible means to acquire that property or have that property come in. It's something we will evaluate each and every one of them on their own merit with every single request. The City Council has obviously gone against our recommendation, even recently with an annexation request in northwest Fayetteville. This particular request came before us 6-8 months ago, with very little difference. With the exception of the one acre lot, as Mr. Sloan mentioned. We made a recommendation last summer for the applicant to look at properties, look at page 16 and 20, south of this down to Skillern Road. The property owner, that you mention - Mr. Lee, of course did not what to come in, which is a large notch of his property, in an effort to support this application. That has not been able to be done, for whatever reason. Those property owners do not wish to come into the city limits and staff does not feel this particular request was warranted or meet our guiding policies at this time. With regard to the other utilities as part of our finding, are utilities readily available? No. A sewer line is 2500 feet away. The development of this property would be unique with the surrounding properties. As staff mentioned earlier, the closest property developed as RSF-4 is west of Crossover, as you can see on the same page, or south of Skillern. Those properties are developed more around 2 or 2 ½ units per acre. They are rather large lots in the area, even though you can see that they are much smaller than what's surrounding in the County. It was our rationale that it did not meet guiding policies for City Council and annexation.
- Graves: I have a question for staff as well. I'm testing my memory, I remember as Mr. Sloan does, that we saw several of these on one night and that I can see the Skillern Road on our one mile map here. I remember that we approved that one that night and didn't approve the other one. Partly based on staff recommendations, I believe, that staff recommended the one on Skillern Road for some reason. I don't remember what that was at this point.
- Pate: The one on Skillern Road was contiguous to an existing adjacent single family residential subdivision. If you look at that property, which those that were not here don't have the benefit of knowing, if you were on Skillern Road and how Natchez Trace curves around, it's directly to the east of that. It is a small portion of property, about 5 acres, I believe. It is much less and does not extend the city limits any further east of those properties surround that. There is an obvious peninsula zoned R-A [to the north] and within a conservation easement and that is not to be developed. That was annexed a number of years ago. The rest of the property is there,

you see, with the addition of the property just east of Township, which was just annexed in as well. This particular case, the city limit line from Skillern goes directly north without variation until you get quite a ways north and we felt it would not meet our guiding policies for this particular recommendation. As you mentioned, Planning Commission at that time, voted against the request to annex that property. We have found that nothing has changed since that particular request to warrant a recommendation.

Anthes: Any further discussion on the annexation request? A motion?

Clark: I'm kind of at a crossroads because I respect staff recommendations but I also know that with annexation comes development rights for the city. In other words, if somebody's going to develop this and put on a step system, since there is no zoning in the County, they can do that. I'd like some input from my fellow commissioners regarding annexing something that would go ahead and develop and not with a RSF-4 rezoning request. If you think it's too dense, there is no transition... I think its totally out of the norm for this area, but I'm not so sure that annexation is not a wise choice. Opposed to high density and septic system, so I'm interested on the feed back from the commissioners.

Graves: I tend to agree; I don't see anything that's changed from when we saw this in October. We did vote it down last time. By the same token, I understand and appreciate that this could develop that similar density to what's proposed on a step system, if it stays in the county. So, from that stand point, I can see its justification for annexing as requested. I know the density proposed is not appropriate against what's already out there. So, I would not be in favor of RSF-4 on the rezoning request.

Anthes: It seems we have this conversation every time we're looking at one of these rezoning and that is, sort of the threat of development without city streets sections, sewer systems, water sewer, etc...What I have never quite been clear about is whether this body is actually suppose to weigh the threat of what we do as a substandard infrastructure, when we are evaluating an annexation request.

Pate: Really, you should look at it as findings, and part of that are infrastructure and utilities. The findings that are listed there, areas currently served by utilities and other public services should be annexed. Proposed annexation areas should not require the upgrading of utilities to meet the demands of development unless there is a threat to public safety. Phased annexation should be initiated by the City within active annexation areas based on planned service extensions or availability of services. One of those is in the paper right now. I don't believe those services are currently

in this location. The threat of development is before us with every single annexation request we have anymore. There is always a potential to develop something that does not meet these standards. I think that's something that Commission and Council, ultimately the policy making body, has to take in consideration every time they vote on an annexation request.

Graves: I don't believe that this applicant has made a quote threat. I think we've heard some covert comments along those lines from other applicants before. This applicant would prefer be in the City or they wouldn't be here a second time asking to come into the City. They could have gone before us with a step system or whatever, before now, if they wanted to do that. My comment, I used the word threat, but I didn't mean threat by the applicant. I just meant along the lines of the City attaching some more rights on development oversight when it comes in. It's true on all annexations. This one is within shouting distance of existing city boundaries.

Williams: I certainly agree with Jeremy Pate on his analysis of annexation, but I would like to say that annexation is one of those issues where you have - especially City Council - has administrative discretion. The basic question is; do you want this property inside the city? I sure the guide lines will help you make the decision but it no small decision that you make on that level. You can recommend to the City Council an annexation even if maybe wouldn't meet all of the guidelines that we have for the 2020 or 2025 Plan. This is one place where you have tremendous amount of discretion. I just wanted to tell you that, because sometime you don't have any discretion, so this time you have a lot of discretion.

Anthes: Any further discussion?

Ostner: This is complicated and I'm glad I don't have to make the decision. I'm just going to recommend something to the others to make the discussion. The part two that Jeremy read us, 11.6.k: Proposed annexation areas should not require the upgrading of utilities to meet the demands of development unless there is a threat to public safety. To me, that is a one of the statements that I can use. The property that we are considering is a long distance from sewer. 2,500 feet is a long way to go. Sewer mains are expensive and I think that is important. That changes things, the area adjacent to this is in the City, but is not served by sewer to that extent. I'm not sure I'm in favor of this annexation. I'm certainly against the RSF-4, I would see RSF-1 or even R.5 to be possible zoning district if the Council saw to annex this area. I'm not sure either, but I'll be inclined to be against the annexation.

Clark: The sewer was 500 ft?

Anthes: It is showing 2,500 ft.

Clark: Where is the sewer?

Sloan: Somewhere out there....laughter...He is not asking the City for the money, the developer is spending that money himself. They are willing to do that, to bring the sewer to them. They will be paying for that 2,500 ft to have the sewer come to them. It's not something the City would deliver to them, nor would water lines would be on them. All those expenses would be on them. I'm just saying, it's more than a wash for them. They probably will spend more money bringing sewer to them, than they would be putting a step system in. That's all I'm saying, I had a problem to see this go to a step system. Let the developers spend the money. He will bring the public utility out to that part of town. Let him spend the money to do it, he is willing to do that. That's the only reason I got involved with it, was over that issue that one of these days, that area is going to have to have service out there. Why not have private dollars pay for it now, rather than have the City pay for it later? That's the only reason why I got involved in this project, period.

Ostner: Madam Chair, I did not mean to insinuate that the City would have to pay for the 2,500 feet. My point was simply to consider that this piece of property is including in its proposal to extend that as Mr. Sloan stated. I think it changes things; that simply means this piece of property is not only willing to apply for rezoning but is willing to go the long distance. It just makes it clear to me that it's a stretch. That's all I'm saying, I'm not casting judgment, not that it's bad. I'm not trying to say that the City is going to be holding the bag, I'm just saying it's a stretch. Part of our charge is to keep development contiguous I believe. That is why we are only allowed to annex adjacent to the City limits, under the logic of continuity. We are contiguous to the City limits, but not contiguous to the development. It's fairly undeveloped or sparsely developed as evidence by the 2,500 ft link. That's what I'm trying to say, it's a stretch.

Anthes: Question for Mr. Williams, for as I can see here, the extension of the sewer line is a policy issue that an annexation, if we agree to accept property into the City, then we also agree to serve it with city services. What I'm wondering is, if this body recommended an annexation request, would we be requiring that the City would deliver City services to that site? Whereas, if the City Council chose to do so, they can negotiate with the applicant about extending those services...

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- Williams: In reality, there are number of places within Fayetteville that do not have sewer service. You get sewer service if you have a sewer main close enough to your property to access it. If they wanted sewer service inside the City, they would have to extend the main 2,500 ft at the developer's cost, not at the City's cost. The same thing even with the water. We have number of City residences, which I found out at recent City Council meetings, that don't have City water because they are not close enough to a water main and chose not to extend the water main, so they can get City water. So, the city makes available these services but you have to develop or the developer has to extend the sewer main to the corner of your property and you put your own service line to it. So, this would not be guaranteeing them the sewer service, even if they were annexed.
- Harris: I did have a question for the applicant, Charlie, sorry. If we in fact, were to vote to approve the annexation but change the rezoning to a much less dense zone, would the applicant be amendable?
- Sloan: Well, I guess zone it the way you want it and then I'll have to check with them. I will give you my permission. They have numbers they have to run to a certain point on the property. We will have to discuss it with the land owners around there. It would be nice if you could keep everything 5 acres. That's not going to be the reality of it. I don't know if they might not come back with a PZD. The problem of the zoning is the minimums on the widths and stuff like that when you are trying to work a property around. It's almost like you can throw these things away and just say we approve the project or not based on the layout, we like it. Because that gets into a tough situation to make things fit, because you have certain minimums. For instance, my project out there by my house, we did 1 acre estate lots. I asked for RSF-2 and got RSF-1. Ya'll gave me RSF-4, but we did the one acre, because a couple of those lots don't quite make that 50-foot frontage, and didn't have the space to put it in there. So, we asked for RSF-2, still ended up going a little bit deeper, making our lots an acre depth. I can't speak for them; I'm not involved in that part of it. I was just trying to see if we could eliminate a step system out there, that's what I was trying to do with this. Compatibility is still yet another issue. I not sure if they would love to stay where they're at or somewhere in that range. All they can do is take your recommendation, maybe come back and switch it to a PZD. Something to allow them to guarantee to the neighbors what they are going be able to do to get some assurance. You know I'm a big fan of PZD's.
- Anthes: It seems to me that a lot of the discussion seems to be leaning towards possibility recommending annexation, but at a lower density zoning. I'm just looking at refact that this body made a unanimous recommendation awhile back and as staff has reported very little has actually changed in the

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application between that time and now. In the interest of consistency and findings of the staff that the configuration is not in compliance with the policies for annexation, I make a motion to deny annexation request 06-2046.

Trumbo: Second.

Anthes: A motion by Commissioner Anthes and a second by Commissioner Trumbo. Is there further discussion? Will you call the roll?

Pate: What was the motion for?

Anthes: To deny.

Roll Call: The motion to deny 06-2046 carries with a vote of 6-3-0.

Anthes: As far as the rezoning request, it drops right? But do we still need to state our opinions?

Williams: In the past, you have gone ahead and recommended, if the City Council disagrees with you on the zoning. You would recommend what it would be.

Anthes: Well, we have had several Commissioners state that they thought the RSF-4 zoning district is too dense for the area. We have had one Commissioner state that he thought a RSF 0.5 or RSF-1 would be more in keeping in the area. Do we have any others thoughts on that?

Pate: RSF-.5, Residential Single-Family, ½ unit per acre, has a minimum size of two acres, basically 1 unit for every two acres. It just doesn't allow agricultural uses. We have RSF-1, Residential Single-Family, 1 unit per acre which has an 1 acre minimum. RSF-2, Residential Single-Family, 2 units per acre, and then RSF-4 and RSF-7.

Anthes: Mr. Williams, do we need to just state our preference? Or do you want a motion?

Williams: I think in the past, you voted on it. If I'm not mistaken.

Anthes: I'm thinking we did as well.

Williams: Why don't you go ahead? A conditional recommendation, if the City Council disagrees with you, assuming it is appealed, your recommendation would be...

Ostner: I will start with a motion of approving the same piece of property, forwarding it to the City Council as RSF-.05, ½ a unit per acre or 1 unit sitting on 2 acres.

Anthes: I'll second

Trumbo: It seems to me, we will rezone RSF-4, which is pretty much standard in a residential neighborhood. The thing that concerns me is this is pretty close to being in the center of town. It has access to Hwy 265 and Old Wire. Just purely planning, standing back and taking a look at it, it appears to me that RSF-4 would be a more appropriate zone. Just where it's based in the City. Not considering what's already there, but the neighbors to the north and to the south. Everything else is just raw land. I'm not really stuck on RSF-4, but it doesn't seem way on the outskirts; a denser zoning would be appropriate right here, at some point in time. That's my only comments.

Harris: I would agree, and echo Commissioner Trumbo's comments. The applicant may wish that they don't get annexed with this zoning. I'm not entirely sure which one, I'm not married to RSF-4 either, but I would like to think of more dense on what we are currently discussing.

Anthes: Any further discussion? We have a motion by Commissioner Ostner and second by Commissioner Anthes for RSF-.5 as a conditional recommendation to City Council. Will you call roll.

Roll Call: The motion for RSF-.5 as a conditional recommendation to City Council for 06-2047 carries with a vote of 5-4-0.

ANX 09-3409: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by APPIAN CENTER FOR DESIGN for property located at 3231 N. OLD WIRE ROAD, NW CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 39.33 acres. The request is to annex the subject property into the City of Fayetteville.

Andrew Garner, Senior Planner, gave the staff report giving the background for the previous annexation requests for this property. Garner summarized the annexation findings, discussing that this property and the vicinity is not urban in character or able to be developed at urban densities, and would extend a peninsula of City property approximately 1,300 feet into the County. He discussed the public service challenges of this site as it is located approximately 2,500 feet from the nearest sewer line, approximately the same distance for water lines to ensure adequate fire flow for any development, and the configuration of the property line may cause confusion among emergency responders as one side of the road would be in the City and one side would be in the County. He also discussed that this application is in conflict with the two primary goals of City Plan 2025 to make infill and revitalization our highest priorities, and to discourage suburban sprawl. Staff recommends denial of the application.

Hank Broyles, applicant, stated that they are a new applicant. They have taken steps to smooth out the borders of the proposed annexation boundary and added additional property owners to the annexation. He discussed that if this annexation is approved they will propose an R-PZD for development, including a master plan extending all the way to Highway 265. Highway 265 is the major north-south transportation corridor on the east side of Fayetteville. State Highway 265 is only three blocks to the west, the City is investing 7.7 million dollars on State Highway 265 in this vicinity, and we can't expect there not to be any development in this area. Most of the new development in recent years has taken place west of I-540. However, many people work on Joyce, and other major commercial zones are in close proximity. We should have additional housing on the east side of town to have people be able to live closer to where they work. We need additional housing on this side of town. Infill is very difficult to make work. He discussed that City Plan 2025 encourages infill but that according to a search by Bassett-Mix Realty of this area of town, from Joyce to Lafayette, east of College to Highway 265, there were only four listings of two or more acres. Prices ranged from \$110,000 per acre to \$900,000 per acre. This is a piece of property, partially in the City limits, not on a mountain, few adjacent property owners, three blocks from the major north-south transportation corridor on the east side of Fayetteville.

Todd Jacobs, applicant, gave a PowerPoint presentation. He discussed the land use setting, that the areas east of Hwy 265 are rural in nature, but the site is only three blocks from Crossover Road. He discussed the lack of opportunity for infill development in this area, due to existing development patterns and slopes to the west of Hwy 265. He went over historical growth patterns in this area, showing areas of single and multi-family development. Historical development patterns follow transportation corridors. The area east of Hwy 265 has development potential because of lack of slopes and streams, floodplains. This is an opportunity to master plan this area for development. He discussed developable land on this side of town and discussed that the east side of Crossover is more developable than the west side, which has hills, creeks, and existing development. He discussed that this site was identified by citizens as a Growth Sector as part of the City Plan 2025 charettes by citizens. Joyce has started to become a financial center. Development will fill in along the east side of Crossover over time. He showed and discussed various exhibits of developable area including slopes, existing development, and floodplains in the area. This site does not have those constraints. He reviewed the existing City limits and how they feel the area around this site will fill in over time. This area is prime for a City neighborhood area in a traditional town form. He discussed that our vision is a master plan for this area.

Public Comment:

Peggy Hart, representing her parents, Lyle and Charlene Smith who live on Rom Orchard, questioned the rationale behind this. This location is nice because it is out in the country but ten minutes from downtown. Why would you want to add houses on curvy roads with no sidewalks? Houses are generally on three-acre lots. It is already congested in this area at Old Wire/Crossover. We currently have undeveloped subdivisions on Skillern and Township. She is recommending denial.

Colleen Gaston, 3270 Rom Orchard Road, can see the property from her front porch. She is opposed to the rezoning anything less than Residential Agricultural. She thinks the annexation is premature. The comments from the developer about the development along the east side of Crossover are somewhat speculative. The applicant mentioned 200 acres but they are only annexing 40 acres. There is not reason to bring this into the City. There are several subdivisions in the City limits in this area of town that are vacant, very close to this area. Maybe the time will come to master plan for this area; however, this has been a very stable area, stayed rural in nature. From what I know of my neighbors no one is interested in selling or subdividing. I do not see this area being prime for development given the current economy. The annexation seems premature at this time.

Terry Payton, has nine acres, he was concerned with the rezoning application. But he agrees with Colleen's comments on the annexation. We are concerned with what the plans for the area are. He discussed congestion at the intersection of Old Wire Road/Crossover Road. He is opposed to a density of four units per acre.

Jeff Dangeau, 3284 Rom Orchard Road, adjacent neighbor to the east across Old Wire Road. Our main concern was with the rezoning. If this is annexed it would allow one house per two acres, which eases my concerns somewhat. He would feel better if a development plan were shown first.

Public Comment Closed

Commissioner Myres discussed that she agrees with staff's findings to recommend denial.

Commissioner Zant said that in his past experience annexations in other Cities have annex property based on guess of whether or not the annexation would benefit the City. We are fortunate here that the City of Fayetteville has a number of annexation policies and guidelines that are to be analyzed when making a decision. There would be a significant investment to meet the sewer requirement. As discussed by staff this application does not meet the adopted annexation policies and based on those findings he recommends denial.

Commissioner Graves discussed that he was on the planning commission when this application came through in previous years. Things have changed over the past 5-6 years. He looked at the old minutes and would still have concern with RSF-4 zoning today, similar to the past applications. However with the annexation, we previously had concerns with fire response that have been addressed now. The fire department now has a new station with a response time of four minutes to this property. He discussed that he would like to see more acreage involved in this annexation, to clean up the boundary. He mentioned the tail off of Skillern Road, not exactly clear how this came to be. This annexation is perhaps an opportunity to start to even up the eastern City boundary. This would leave a gap between this property and the tail off of Skillern Road. This does create a peninsula, but that is just one guideline, and these are just guidelines. He doesn't have as many qualms with this annexation that he had in previous years, now that the police and fire responses are better as opposed to 2005/2006. Development can make the roads better. I would be supportive of bringing it in and letting it be rezoned R-A, and seeing what the applicant proposes as a later time. He is okay with a Residential/Agricultural zoning on the property at this time.

Commissioner Winston asked about the issue of one side of the road being in the City and one side of the road being in the County.

Jeremy Pate, Development Services Director, discussed the potential problems that may occur if a vehicular accident or other emergency occurred on this road, and issues with which emergency responder should be called, Fayetteville Police versus Washington County Sheriff's, which was cited as a difficulty by the Police Department. He discussed the past annexations when the City annexed islands of unincorporated property that were surrounded by City property to correct this issue.

Commissioner Winston asked about Bridgewater Road, when it would be constructed.

Pate responded that it was just a line on the Master Street Plan map at this point, and would be constructed by the developer at the time of development.

Commissioner Winston asked about the improvements to Crossover Road, and if any improvements would be made to the intersection of Crossover Road/Old Wire Road.

Pate discussed that Crossover is a state highway and the improvements are a state highway project and in our transportation bond program, with the City having committed 7.7 million dollars to the project. However, the costs for the project have risen since the 7.7 million dollars were committed. The project is eminent and right-of-way is being obtained. Pate discussed that he is not sure about detailed of the planned improvements to Crossover Road/Old Wire Road, but anticipates that intersection would be improved.

Commissioner Winston asked about the City's responsibility to this property if it is annexed.

Pate responded that we have to provide emergency response and trash service immediately, and access for connection to City water and sewer. In almost every annexation application, there is some sort of development pressure, and the development would result in the required extensions or improvements to water and sewer.

Commissioner Winston discussed that there is a multi-use trail shown along Skillern Road, although the transportation plans show many trails outside the City. It seems like it may be appropriate now and will be appropriate in the future.

Commissioner Zant normally I wouldn't have any problem with any annexation, but he doesn't see any rationale for the application at this time. Ultimately this property will be annexed. But the findings all lead to a recommendation for denial at this time and I feel strongly that it should be denied at this time.

Motion:

Commissioner Myres made a motion to deny the request. **Commissioner Zant** seconded the motion. **Upon roll call the motion to deny passed with a vote of 5-4-0 (commissioners Graves, Winston, Kennedy, and Trumbo voting "no").**

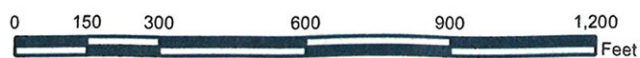
ANX09-3409

Close Up View

BROYLES



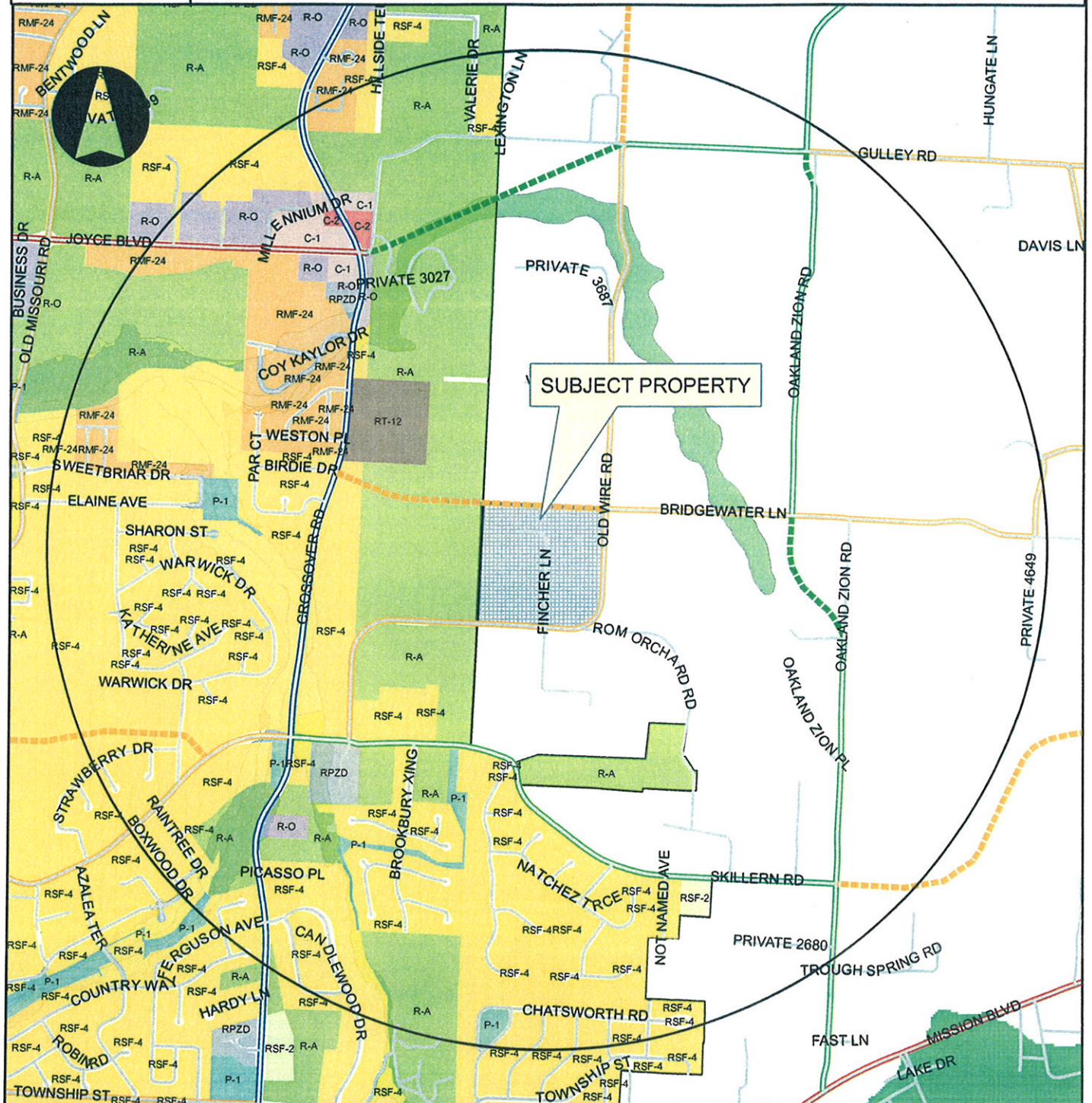
Overview



ANX09-3409

One Mile View

BROYLES



Overview



Legend

Subject Property

ANX09-3409

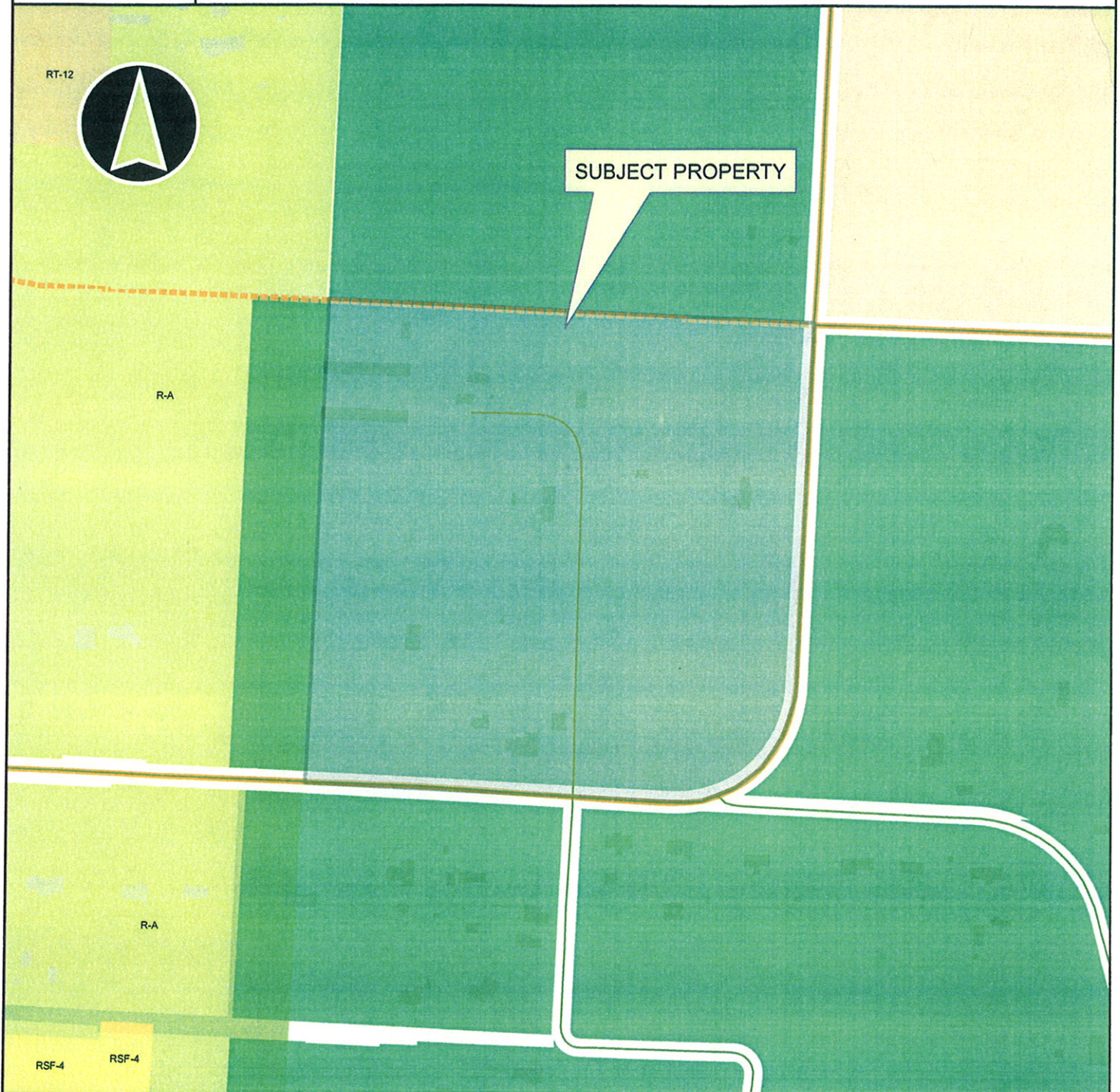
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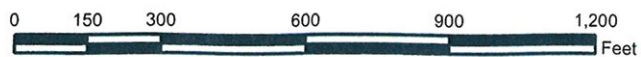
ANX09-3409

Future Land Use

BROYLES



Overview



AGENDA REQUEST

FOR: COUNCIL MEETING OF SEPTEMBER 1, 2009

FROM:

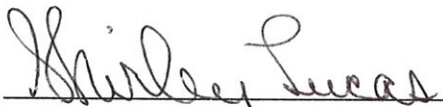
Shirley Lucas, Council Member

Sarah Lewis, Council Member

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

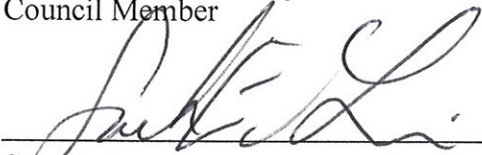
An Ordinance To Prevent Injury Or Annoyance Within The Corporate Limits Of Fayetteville By
Regulating Rock Quarrying Facilities So That These Facilities Will Not Be Nuisances

APPROVED FOR AGENDA:



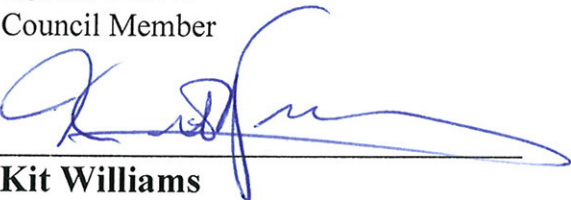
Shirley Lucas
Council Member

8/25/09
Date



Sarah Lewis
Council Member

8/25/09
Date



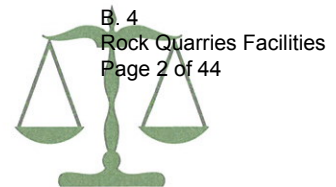
Kit Williams
City Attorney (as to form)

8-10-09
Date

Left on Second Reading at 10/6/09 CCmtg.
Left on Second Reading @ 9-15-09 CC meeting
Left on First Reading @ 9-1-09 CCmtg.

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor
City Council

CC: **Don Marr**, Chief of Staff
Jeremy Pate, Development Services Director

FROM: **Kit Williams**, City Attorney

DATE: **August 19, 2009**

RE: **Proposed Chapter 113 Rock Quarries and Red Dirt Mining Facilities of the Code of Fayetteville**

Several months ago, City Council members Sarah Lewis and Shirley Lucas asked me to attend a meeting of Ward 4 residents who were concerned and unhappy about problems caused to their neighborhood by a Rock Quarry and Red Dirt Mining Facility near their homes. These city residents described regular disturbing activities that operation of the quarry and red dirt mine were inflicting upon them in their homes and on their property. These nuisance type activities included:

- (1) the dust, noise and vibration from frequent blasting of the rock for quarrying;
- (2) the noise, dust and fumes from the machines operating at the quarry and red dirt mine;
- (3) the large number of dump trucks which serviced the quarry and red dirt farm which often immediately entered city streets and caused traffic problems and safety issues during morning and afternoon school rush hours;
- (4) the amount of red dirt and rocks that fell from these dump trucks onto city streets and right-of-way. These trucks were often uncovered with very little freeboard.

The City Council Ordinance Review Committee held several meetings to fine tune the initial ordinances I drafted pursuant to the requests of City Council Members Lucas and Lewis. Neighbors attended these public meetings and also provided input information and suggestions. The owners or managers of the rock quarry and red dirt mining operation did not attend to provide any input. I recommend that the ordinances be left on the first reading so that the rock quarry and red dirt mining owners and operators can review these ordinances for fairness and utility.

These ordinances would mandate that each operator of a rock quarry or red dirt mining facility within the city and within one mile of the city limits must obtain a license from the City to operate their facility. The ordinances prescribe measures that an operator must take to prevent his facility from being a nuisance to Fayetteville residents. These measures restrict:

- (1) the frequency of allowed explosions;
- (2) require dust control measures;
- (3) restrict the days of operation to regular workdays (Monday-Friday);
- (4) restrict the hours of operation with longer hours allowed in the summer when school is out;
- (5) require dump trucks servicing the facility to have their loads covered more frequently than now allowed; and
- (6) require other measures to abate the potential of the facility to be a nuisance to our citizens.

**ORDINANCE AS AMENDED BY THE
CITY COUNCIL ON SEPTEMBER 15, 2009**

B. 4
Rock Quarries Facilities
Page 4 of 44

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE
WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY
REGULATING ROCK QUARRYING FACILITIES SO THAT
THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for rock quarries to supply necessary road building material within and near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has listened to experts and citizens and determined that rock blasting could cause damaging or nuisance effects upon nearby structures (especially homes); and

WHEREAS, the Fayetteville City Council has also learned and determined that an operating rock quarry can cause vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the quarry; and

WHEREAS, the Fayetteville City Council has also heard from citizens living near an existing and operating rock quarry and determined that unregulated rock blasting, rock crushing and other rock quarry activities are offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their property and city streets; and

WHEREAS, unless the frequency of rock blasting, its distance from houses and the hours and days of rock quarry operation near residences is regulated and controlled to prevent noise, dust and fumes (in excess of ADEQ permitted limits) from escaping the quarry, such a rock quarry would constitute a nuisance to Fayetteville residents and citizens and should be abated.

**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 enacts Chapter 113 **Rock Quarries and Red Dirt Mining Facilities** of the Code of Fayetteville, Article I **Rock Quarry Operating License** as shown below:

**ORDINANCE AS AMENDED BY THE
CITY COUNCIL ON SEPTEMBER 15, 2009**

B. 4
Rock Quarries Facilities
Page 5 of 44

“

**ARTICLE I.
Rock Quarry Operating License**

“§113.01. Finding of Nuisance and Need for Abatement.

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a rock quarry is a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.02 and, therefore, should be abated by the reasonable regulations required by this ordinance.

“§113.02. Abatement of Nuisance.

(A) Rock Blasting/Use of Explosives.

(1) No rock blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No rock blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All rock blasting within the permitted quarry shall only be allowed one day per month between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Rock Quarry Operating License.

(B) Operation of Rock Quarry.

(1) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 8:30 a.m. until 3:00 p.m. Monday through Friday from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th. No rock quarry shall be allowed to operate on a federally recognized holiday.

(2) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such quarry has obtained a valid, annual Rock Quarry Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) Dust, Mud and Rock Control Measures.

All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock and gravel, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed rock quarry operator to ensure all of these safeguards, requirements and measures are constantly enforced.

**ORDINANCE AS AMENDED BY THE
CITY COUNCIL ON SEPTEMBER 15, 2009**

(1) *Dust control measures.* Water or other substances or measures must be fully effective during the operation of the rock quarry to ensure the quarry is in full and continual compliance with the requirements of the Arkansas Water and Air Pollution Control Act as administered by the Arkansas Department of Environmental Quality. A violation of the permit conditions required by the Arkansas Department of Environmental Quality can be grounds for a suspension or revocation of the City's Rock Quarry Operating License. (See §133.05)

(2) *Dirt and mud control measures.* The rock quarry operator is required to ensure that any and all vehicles leaving the rock quarry shall have all mud and dirt removed from the tires and exterior parts of the body of the vehicles prior to exiting the site onto public roads.

(3) *Loose rock and gravel.* The rock quarry operator is responsible to ensure that all dump trucks leaving the rock quarry site that may utilize any city street and are carrying more than half a truck load of gravel, rocks or dirt have their load fully and properly covered.

(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the rock quarry, the rock quarry operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The rock quarry operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(5) *Only dump trucks with proper identifying number may be loaded.* The rock quarry operator shall not load or permit to be loaded or permit to exit the rock quarry any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

“§113.03: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all rock quarries located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

“§113.04: Definitions.

(A) “*Rock Quarry*” means any open excavation used for obtaining building stone, slate, limestone or other type of rock used for paving or building purposes.

(B) “*House*” means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

**ORDINANCE AS AMENDED BY THE
CITY COUNCIL ON SEPTEMBER 15, 2009**

(C) *“Operation of Rock Quarry”* means any blasting, operation of any mechanical equipment on the premises of the rock quarry or any operation of dump trucks or other large vehicles on the premises of the rock quarry site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the rock quarry. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the rock quarry to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.

“113.05: Issuance, Suspension or Revocation of License.

(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Rock Quarry Operating License upon proper application of an owner/operator of a rock quarry within the jurisdiction of this ordinance after ensuring the rock quarry operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for rock quarrying operation.

(B) *Suspension.* The Director of Development Services may suspend a Rock Quarry Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Director of Development Services may revoke a Rock Quarry Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Rock Quarry Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the rock quarry operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.

“§113.06: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a rock quarry and any operator, manager, or employee of such rock quarry shall ensure such quarry is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Rock Quarry Operating License may be suspended or revoked by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the rock quarry not in conformity with its Rock Quarry Operating License.

**ORDINANCE AS AMENDED BY THE
CITY COUNCIL ON SEPTEMBER 15, 2009**

B. 4
Rock Quarries Facilities
Page 8 of 44

(C) Any owner, operator, manager, lessee or employee of a rock quarry shall be guilty of a criminal violation if such person operates the rock quarry in violation of any of the terms of this ordinance, without a current and valid Rock Quarry Operating License, or in violation of any of the terms of his Rock Quarry Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any rock blasting of this Ordinance or the applicable Rock Quarry Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to \$500.00.

“§113.07: No reduction in property owner’s right to sue for nuisance.

Nothing in this ordinance removes or reduces a property owner’s right to sue or seek an injunction against any owner or operator of rock quarry if such facility constitutes a private or public nuisance to that property owner.”

PASSED and APPROVED this the 6th day of October, 2009.

APPROVED:

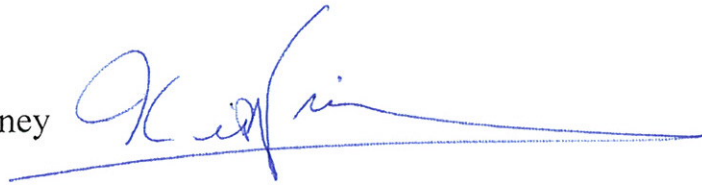
ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

TO: **Lioneld Jordan**, Mayor
City Council

FROM: **Kit Williams**, City Attorney



DATE: **September 23, 2009**

RE: **Rogers Group proposed revisions to
Rock Quarry Operating License Ordinance**

I met for a couple of hours today with representatives of the Rogers Group which operates the rock quarry inside the Stephen's Red Dirt Mining Facility. This is the more distant dirt farm and rock quarry. The Big Red Dirt Farm and quarry is closer to the city limits. We discussed their proposed changes to the ordinance which are explained in the attached Stephen Giles' letter of September 22, 2009, and shown on the ordinance with their revisions (mainly strikethroughs indicating words they would like deleted).

The vast majority of their proposed changes involve policy considerations for your decision rather than legal considerations. However, some do involve legal considerations which I address below.

If this ordinance is to be passed, we need most of the "Whereas" clauses now included in the ordinance. Although a minor change (adding "can" in the second clause) would not be damaging legally, removing the two clauses suggested by Rogers Group is not advisable.

I also oppose changing the title by changing "License" to "Regulations." I believe a license requirement will be much more effective in administering and enforcing this ordinance. Otherwise, the enforcement will primarily be criminal prosecution of a violation which would take a long time to get to District Court, provide a difficult burden of proof (beyond a reasonable doubt) with a defendant's right to remain silent, and allow only a small fine as a sanction. A revocable

license would be much faster, easier to prove and ensure it was the company rather than just a manager or employee being held responsible for violating the ordinance.

I do recommend that a variance be included with §113.02 (A) *Rock Blasting/Use of Explosives* for an emergency situation caused by weather or other circumstances. This would be granted (or denied) by the Director of Development Services or designee if an explosion would need to be delayed beyond 3:00 P.M. for safety reasons. Both Rogers Group and I will work on appropriate language for this variance.

I believe we need to retain all of §113.05 for the *Issuance, Suspension or Revocation of License*. Most of the Penalty section (§113.06) should also remain as is. I will recommend a minor change in subsection (D).

I do not have a problem with their proposed change in §113.07 which is what I believe is already the law.

The Law Firm of
Stephen R. Giles
A Professional Association

Telephone
(501) 687-0836

425 West Capitol Avenue
Suite 3200
Little Rock, Arkansas 72201-3469
E-mail: sgiles@gileslaw.net

Facsimile
(501) 374-5092

September 22, 2009

VIA E-MAIL AND REGULAR MAIL

Kit Williams, Esq.
Fayetteville City Attorney
City of Fayetteville, Arkansas
113 W. Mountain, Suite 302
Fayetteville, AR 72701-6083

RE: Proposed Fayetteville Ordinance to Regulate Rock Quarrying Outside City Limits

Dear Kit:

Upon our review of the rock quarry ordinance to date it is our opinion that the City does not have jurisdiction to impose these regulations on Rogers Group, Inc. ("RGI"). In addition, these ordinances go far beyond any reasonable regulation of the stated objectives of the ordinance and it will cause severe if not fatal economic impact on my client's operations if passed in its current form.

However, as we stated in the City Council meeting last Tuesday night, RGI desires to make a good faith effort to work with the City of Fayetteville to reach reasonable compromise in this matter. As requested, the comments below are an explanation of the changes we have made to the proposed ordinance and a mark-up copy of the quarry ordinance is also attached. Here are our initial comments to the draft.

Section 113.01: RGI objects to the "Finding of Nuisance" because the manner in which RGI operates the quarry does not constitute a nuisance. We suggest changing the heading of §113.02 to "Operating Regulations."

Section 113.02(A)(3): RGI proposes to limit blasting between the hours of 10:00 a.m. and 3:00 p.m. Monday through Friday and on non-holidays. The reason for the change is that it is not possible for RGI to blast a sufficient amount of stone for the entire month's sales in one day without reaching explosive limits in excess of vibration and airblast standards and regulations. RGI will, however, abide by the 5 hour window per weekday of blasting.

Section 113.02(B)(1): RGI proposes to limit its hours of operation between the hours of 7:00 a.m. until 6:00 p.m. Monday through Friday and 7:00 a.m. until noon on Saturday for sales only (no blasting or crushing). The City's proposed 8:30 a.m. to 3:00 p.m. hour limits on operations is unreasonable and is not supported by the information provided to the city council.

Kit Williams, Esq.
Fayetteville City Attorney
September 22, 2009
Page 2

Section 113.02 (B) (2): This section was deleted for the reason that RGI's operations are so heavily regulated by federal, state and county requirements that this additional layer of regulation is unnecessary and would present an enforcement nightmare for the city and for RGI without accomplishing the objectives stated by the City.

Section 113.02(C): We propose to delete the word "constantly" which could be construed to mean 24/7 during hours in which the quarry is closed when it would have no control over the ordinance restrictions. Paragraph 2 has been deleted in its entirety. The reason is that trucks and equipment coming to and from the RGI quarry do not track an unreasonable amount of mud and dirt onto public roads because Rogers Group has paved over 1200 feet of its access to and from Hamstring Road. Most of the dust and mud, if any, is already removed prior to exit from RGI property. RGI does require that trucks taking product from the site are covered with a tarp as required in subsection 3.

Our initial review of subsections 4 and 5 of § 113.02 is that the requirement is unreasonable and unenforceable. RGI does not own any of the dump trucks that pick up stone at the site and some sales of stone go to private citizens and not to job sites to which RGI provides stone. Each truck accessing the site is required to have a DOT number and a state license plate for identification. RGI cannot force truck operators to display the numbers suggested in our ordinance.

Section 113.04: We suggest the addition of the phrase "as of the effective date of this ordinance" in your definition of house in §113.04(C). The reason is that the ordinance as drafted could be construed to mean the construction of a "house" or the movement of a mobile home within the area after the effective date of this ordinance.

RGI proposes the deletions and changes as shown in the attached mark-up of the ordinance because RGI must be able to work on its plant and operate water pumps and maintain equipment, etc. during hours in which it is not allowed to crush stone or sell the product. RGI does agree to limit its hours of operation as stated above.

Section 113.05: RGI has deleted this section entirely for the reason that the proposed licensing procedure is unreasonable and unenforceable.

Section 113.06: Insert the term "subject to prosecution" and delete the term "guilty of a criminal violation" in §113.06(A). The current draft suggests a prior admission of guilt upon the mere finding of a violation by the City. We have deleted subsection (B) entirely as RGI does not agree to any licensing by the City. In subsection (C) we again reiterate that an alleged violation is subject to prosecution. Due process requires that the City meet its burden of proof of violation and prosecution and a court of jurisdiction would determine guilt or innocence. RGI has deleted the words "manager" and "employee" from criminal responsibility for operational problems. RGI takes responsibility for its employees' actions.

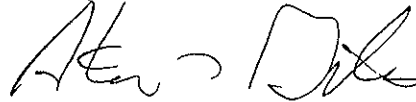
We also question the use of the term "number of" when referring to explosions or explosive force in subsection (D). We have been unable to determine from your draft of this ordinance that the City intends to regulate the number of explosions but merely to time and day of blasting.

Kit Williams, Esq.
Fayetteville City Attorney
September 22, 2009
Page 3

Section 113.07: Finally in §113.07 we inserted "a court of jurisdiction finds that" with reference to a citizen's right to file suit to enjoin a public or private nuisance.

These are my client's initial comments. A more in depth discussion and review may reveal additional suggestions for change or compromise. I look forward to meeting with you in the morning. Mr. Darin Matson of RGI will accompany me at this meeting and we would like to move the meeting forward to 10:00 a.m. if you are available. Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen R. Giles", with a stylized flourish at the end.

Stephen R. Giles

cc: Mr. Dan Rose (via e-mail)
Mr. Darin Matson (via e-mail)

DRAFT

[ROGERS GROUP REVISIONS 091809 -redlined]

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE
WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY
REGULATING ROCK QUARRYING FACILITIES SO THAT
THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for rock quarries to supply necessary road building material within and near the corporate limits of Fayetteville; and

~~**WHEREAS**, the Fayetteville City Council has listened to experts and citizens and determined that rock blasting can causes unavoidably damaging or nuisance effects upon nearby structures (especially homes); and~~

~~**WHEREAS**, the Fayetteville City Council has also learned and determined that an operating rock quarry can cause vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the quarry; and~~

WHEREAS, the Fayetteville City Council has also heard from citizens living near an existing and operating rock quarry and determined that unregulated rock blasting, rock crushing and other rock quarry activities are may become offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their property; and

WHEREAS, unless the frequency of rock blasting, its distance from houses and the hours and days of rock quarry operation near residences is regulated and controlled to prevent noise, dust and fumes (in excess of ADEQ permitted limits) from escaping the quarry, such a rock quarry would constitute a nuisance to Fayetteville residents and citizens and should be abated.

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 enacts Chapter 113 **Rock Quarries and Red Dirt Mining Facilities** of the Code of Fayetteville, Article I **Rock Quarry Operating License Regulations** as shown below:

DRAFT

“
ARTICLE I.
Rock Quarry Operating License Regulations

“§113.01. ~~Finding of Nuisance and Need for Abatement.~~

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a rock quarry is may become a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.02 and, therefore, should be abated by the reasonable regulations required by this ordinance.

“§113.02. ~~Abatement of Nuisance~~ Operating Regulations.

(A) *Rock Blasting/Use of Explosives.*

(1) No rock blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No rock blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All rock blasting within the permitted quarry shall only be allowed ~~one day per month~~ between the hours of 10:00 a.m. and 3:00 p.m. ~~during a single weekday (non-holiday) Monday through Friday (non-holiday) up to a maximum of three (3) times per week pursuant to these Rock Quarry Operating License Regulations.~~

(B) *Operation of Rock Quarry.*

(1) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 8:30 a.m. until 3:00 p.m. 7:00 a.m. until 6:00 p.m. Monday through Friday and for sales only on Saturday from 7:00 a.m. until noon (no blasting or crushing). ~~from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th.~~ No rock quarry shall be allowed to operate on a federally recognized holiday.

(2) ~~All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such quarry has obtained a valid, annual Rock Quarry Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.~~

(C) *Dust, Mud and Rock Control Measures.*

All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock and gravel, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing

duty of the licensed rock quarry operator to ensure all of these safeguards, requirements and measures are constantly enforced.

(1) *Dust control measures.* Water or other substances or measures must be fully effective during the operation of the rock quarry to ensure the quarry is in full and continual compliance with the requirements of the Arkansas Water and Air Pollution Control Act as administered by the Arkansas Department of Environmental Quality. A violation of the permit conditions required by the Arkansas Department of Environmental Quality can be grounds for a suspension or revocation prosecution for violation of the City's Rock Quarry Operating Regulations License. (See §133.05)

~~(2) *Dirt and mud control measures.* The rock quarry operator is required to ensure that any and all vehicles leaving the rock quarry shall have all mud and dirt removed from the tires and exterior parts of the body of the vehicles prior to exiting the site onto public roads.~~

(3) *Loose rock and gravel.* The rock quarry operator is responsible to ensure that all dump trucks leaving the rock quarry site that may utilize any city street and are carrying more than half a truck load of gravel, rocks or dirt have their load fully and properly covered.

~~(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the rock quarry, the rock quarry operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The rock quarry operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.~~

~~(5) *Only dump trucks with proper identifying number may be loaded.* The rock quarry operator shall not load or permit to be loaded or permit to exit the rock quarry any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.~~

“§113.03: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all rock quarries located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

“§113.04: Definitions.

(A) “*Rock Quarry*” means any open excavation used for obtaining building stone, slate, limestone or other type of rock used for paving or building purposes.

DRAFT

(B) “House” means any habitable structure existing and in place on the effective date of this ordinance including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

(C) “Operation of Rock Quarry” means any blasting or crushing of stone and the sale and hauling of the product on site. ~~operation of any mechanical equipment on the premises of the rock quarry or any operation of dump trucks or other large vehicles on the premises of the rock quarry site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the rock quarry. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the rock quarry to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.~~

~~“113.05: Issuance, Suspension or Revocation of License.~~

~~————— (A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Rock Quarry Operating License upon proper application of an owner/operator of a rock quarry within the jurisdiction of this ordinance after ensuring the rock quarry operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for rock quarrying operation.~~

~~————— (B) *Suspension.* The Director of Development Services may suspend a Rock Quarry Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.~~

~~————— (C) *Revocation.* The Director of Development Services may revoke a Rock Quarry Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Rock Quarry Operating License before reissuing another license.~~

~~————— (D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk’s Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the rock quarry operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.~~

~~“§113.06: Penalty.~~

(A) Any owner, lessor or lessee of real property upon which is located a rock quarry and any operator, ~~manager, or employee~~ of such rock quarry shall ensure such quarry is operated within the limits of this ordinance and shall be ~~guilty of a criminal violation~~ subject to prosecution for any violation of the requirements of this ordinance.

DRAFT

(B) ~~The Rock Quarry Operating License may be suspended or revoked by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the rock quarry not in conformity with its Rock Quarry Operating License.~~

(C) Any owner, operator, manager, ~~or employee or lessee~~ of a rock quarry shall be ~~guilty of a criminal subject to prosecution for violation if such person operates the rock quarry in violation of any of the terms of this ordinance. without a current and valid Rock Quarry Operating License, or in violation of any of the terms of his Rock Quarry Operating License.~~

(D) Each violation of the operational hour limitations or the number of ~~explosions or~~ ^{allow by} the explosive force of any rock blasting of this Ordinance ~~or the applicable Rock Quarry Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to \$500.00.~~ ^{blast events}

"§113.07: No reduction in property owner's right to sue for nuisance.

Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of rock quarry if a court of competent jurisdiction finds that such facility constitutes a private or public nuisance to that property owner."

PASSED and APPROVED this the 15th day of September, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Bureau of Mines Report of Investigations/1984

Effects of Repeated Blasting on a Wood-Frame House

By Mark S. Stagg, David E. Siskind,
Michael G. Stevens, and Charles H. Dowding



UNITED STATES DEPARTMENT OF THE INTERIOR

EFFECTS OF REPEATED BLASTING ON A WOOD-FRAME HOUSE

By Mark S. Stagg,¹ David E. Siskind,² Michael G. Stevens,³
and Charles H. Dowding⁴

ABSTRACT

The Bureau of Mines arranged to have a wood-frame test house built in the path of an advancing surface coal mine so it could investigate the effects of repeated blasting on a residential house. Structural fatigue and damage were assessed over a 2-yr period. The house was subjected to vibrations from 587 production blasts with particle velocities that varied from 0.10 to 6.94 in/s. Later, the entire house was shaken mechanically to produce fatigue cracking. Failure strain characteristics of construction materials were evaluated as a basis for comparing strains induced by blasting and shaker loading to those induced by weather and household activities.

Cosmetic or hairline cracks 0.01 to 0.10 mm wide occurred during construction of the house and also during periods when no blasts were detonated. The formation of cosmetic cracks increased from 0.3 to 1.0 cracks per week when ground motions exceeded 1.0 in/s. Human activity and changes in temperature and humidity caused strains in walls that were equivalent to those produced by ground motions up to 1.2 in/s. When the entire structure was mechanically shaken, the first crack appeared after 56,000 cycles, the equivalent of 28 yr of shaking by blast-generated ground motions of 0.5 in/s twice a day.

¹Civil engineer, Twin Cities Research Center, Bureau of Mines, Minneapolis, MN.

²Supervisory geophysicist, Twin Cities Research Center.

³Mining engineer, Twin Cities Research Center (now with Bureau of Land Reclamation, U.S. Department of the Interior, Denver, CO).

⁴Associate professor of civil engineering, Northwestern University, Evanston, IL.

TABLE 6. - Comparison of strain levels induced by daily environmental changes, household activities, and blasting

Loading phenomena	Site ¹	Induced strain, $\mu\text{in/in}$	Corresponding blast vibration level, ² in/s
Daily environmental changes.	K_1	149	1.2
	K_2	385	3.0
Household activities:			
Walking.....	S_2	9.1	.03
Heel drop.....	S_2	20.0	.03
Jumping.....	S_2	37.3	.28
Door slam.....	S_1	48.8	.50
Pounding a nail....	S_{12}	88.7	.88

¹From figure 13.

²Based on envelope line of strain versus ground vibration plot.

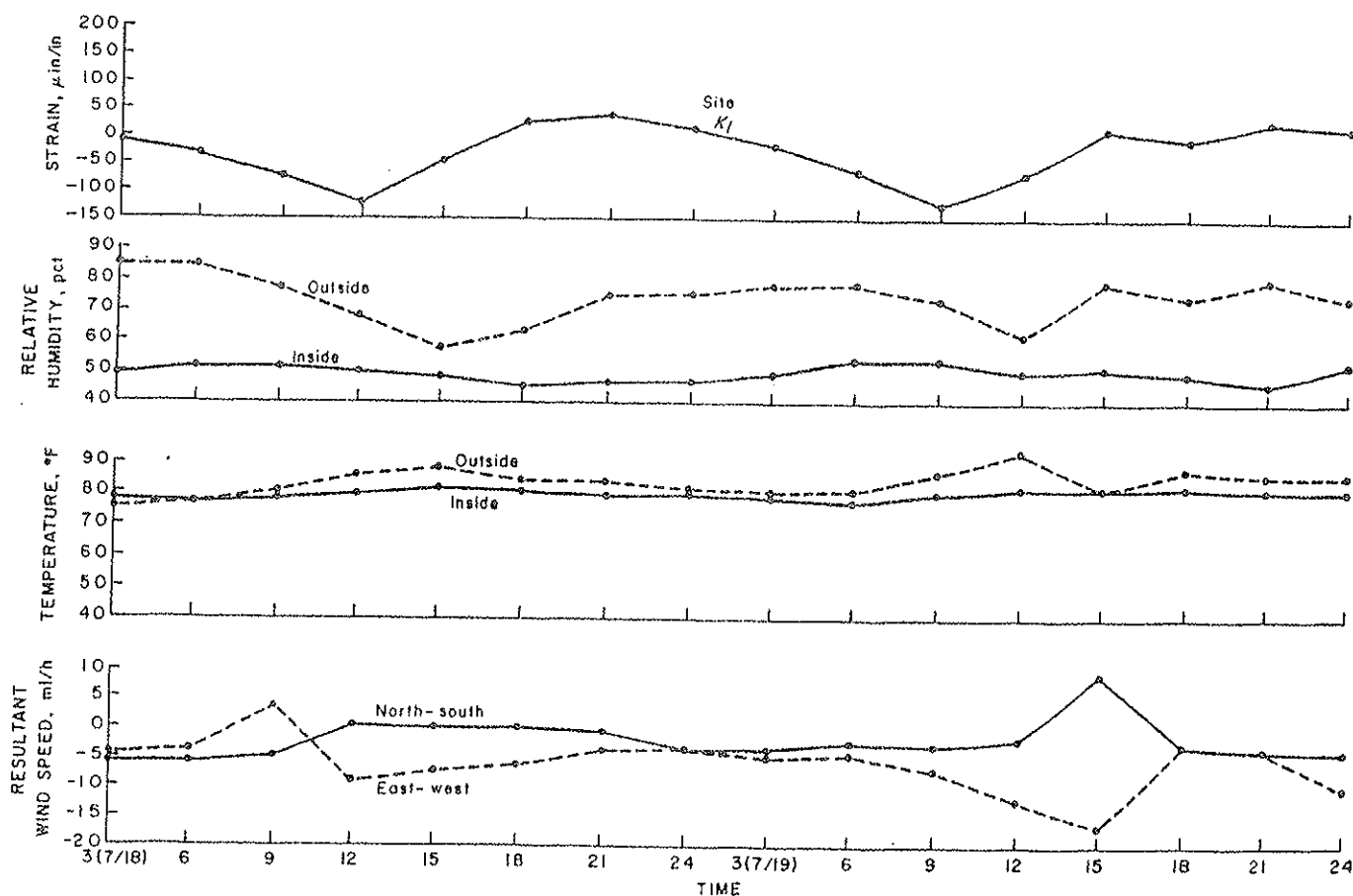


FIGURE 23. - Strain and environmental factors versus time, site K_1 .

TABLE 9. - Human activities and equivalent ground vibration levels

Activity	Location ¹	Induced strain (μ in/in) or structure motion (in/s)	Ground vibration equivalency, in/s	
			Envelope ²	Regression line ³
Walking.....	A ₄ , low corner, south wall.	0.16 in/s.....	0.07	0.29
	A ₄ , low corner, east wall.	0.039 in/s....	.005	.07
Heel drop.....	S ₂	9.1 μ in/in....	.03	.09
	A ₄ , low corner, south wall.	0.14 in/s.....	.06	.24
Low jump.....	A ₂ , Midwall.....	0.65 in/s.....	.06	.17
	S ₂	20 μ in/in.....	.03	.20
High jump.....	A ₄ , low corner, south wall.	0.12 in/s.....	.05	.18
	A ₂ , midwall.....	1.8 in/s.....	.26	.92
Entrance door slam.	A ₄ , low corner, south wall.	0.31 in/s.....	.29	.74
	A ₂ , midwall.....	1.2 in/s.....	.15	.52
Sliding glass door slam.	S ₂	42 μ in/in.....	.28	.62
	A ₄ , low corner, east wall.	0.18 in/s.....	.09	.22
Sinking nails for pictures.	A ₃ , midwall.....	1.3 in/s.....	.13	.52
	S ₈	21 μ in/in.....	.27	.60
	A ₁ , high corner, east wall.	0.87 in/s.....	.51	.90
	S ₁	48.8 μ in/in...	.50	1.40
	A ₄ , low corner, east wall.	0.51 in/s.....	.38	.80
	A ₅ , low corner, west wall.	0.67 in/s.....	.59	.89
	A ₂ , midwall.....	3.9 in/s.....	.92	2.16
	S ₁	21 μ in/in.....	.18	.41
	S ₈	32 μ in/in.....	.38	.87
	S ₁₂	88.7 μ in/in...	.88	1.44

¹From figure 13.²Based on envelope of strain or structure motion versus ground vibration data.³Based on regression line through strain or structure motion versus ground vibration data.

Instrumentation

Our remote series seismic and acoustic recording seismograph is designed for the automatic, unattended field recording of three channels of seismic data and one channel of air overpressure. In automatic operation, the seismic and acoustic data are continuously sensed, amplified and entered into a four-channel memory system. When a seismic event exceeds a predetermined threshold trigger setting, the data storage is activated and the seismic data from the memories are recorded on a non-volatile computer memory.

The full wave form of the earthborne vibrations and the air overpressure signals are recorded and contain three velocity components for each motion (one vertical, two horizontal), air overpressure in pounds per square inch and an automatic internal calibration. The year, date of the year, hour and minute the event occurred, the peak number and instrument identification number are also recorded.

BLASTING LIMITS AND OTHER CRITERIA

Legal Limits

Seismological research during the past fifty years has established criteria relating the occurrence of damage to certain levels of ground motion. An analysis technique designed to accommodate the variable Particle Velocity versus Frequency constraints noted in the U. S. Bureau of Mines Report RI-8507, November, 1980, is presented elsewhere in this book. The State of Arkansas regulates the ground vibration limit at 1.0 inch per second for quarry operation.

Noise levels are usually limited by city and/or county ordinances and will vary by location. The limits are mostly directed to nuisance levels. Recent studies based on criteria stated in the U. S. Bureau of Mines Report of Investigations RI-8485, November, 1980 pertaining to the damage produced by airborne waves, have suggested that the limit of allowable impulsive noise be **133 dBL** peak linear (dBL) for seismographs possessing 2 Hertz, high-pass acoustic response capabilities. This corresponds to an atmospheric overpressure of 0.01295 pounds per square inch (psi).

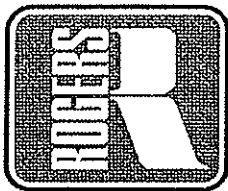
It should be noted that the 133 dBL limit is an annoyance limit at which most people express concern and feel is an unacceptable level of concussion. Actual damage to window glass occurs at overpressure levels of 0.09171 psi, which corresponds to a decibel level of approximately 150 dBL. It should also be understood that the dBL scale is logarithmic in nature, resulting in increasingly noticeable changes in air overpressure as decibel levels increase arithmetically. Therefore, for example, the perceived effect of an increase of 5 dBL from 115 to 120 may seem very great to occupants of surrounding buildings.

Even though extensive research and testing have concluded that a peak particle velocity of 1.0 inches per second should not cause damage (frequency above 40 Hz), it is not unusual for quarries to receive complaints about blasting activity. Close by residents and property owners can become extremely upset, claiming blast damage and threatening legal action.

Ground vibrations are often perceptible, and to most persons, this is an indication that building damage is possible, or even probable. Actually, the human body senses very small vibration levels, velocities as low as 0.03 or 0.04 inches per second. As a result, there is a wide range of motion in which vibration can be felt, or even seem severe and yet be totally incapable of causing structural or cosmetic damage to residential or commercial structures, constructed within accepted standards.

The architects Small House Service Bureau of the United States has listed forty reasons for the existence of cracks in walls and ceilings, and the presence of other defects in buildings. At least some of these conditions can be found in almost any structure. Generally, the building owner or occupant is not aware of the defects until unusual activities draw attention to them. Nearby blasting, sonic boom, accidental explosions and the like focus attention on conditions that would otherwise go unnoticed. As a result, the defects are usually blamed on these unusual activities rather than on the true causes, such as settlement, expansion and contraction of materials with variations in moisture and temperature content and other natural phenomena.

Concussion and noise, transmitted through the air, may also cause complaints. The noise can be startling, especially if not expected. Concussion, or low-frequency airwaves, may not be audible, but can rattle windows and doors, and produce perceptible vibrations within buildings.



MEMORANDUM

TO: Fayetteville City Council

FROM: Rogers Group, Inc.

DATE: September 25, 2009

RE: Resident Complaints Regarding Quarry Operations & Blasting.

It was clear from the comments of Fayetteville residents during the City Council meeting on September 15th that there is great concern over the issue of perceived noise from the quarries, blasting and structural damage reported by residents. We at Rogers Group, Inc. ("Rogers" or "RGI") feel that it is essential to address residents' concerns.

Noise from Quarry Operations / Hours of Operation

Noise from rock quarry operation emanates from several sources, including blasting, crusher operation and trucks, specifically from banging truck tailgates. Based on our initial inquiry, we believe that the primary source of noise and what residents perceive as crusher noise is in fact emanating from truck gates. This is a specific and manageable problem. We intend to immediately implement procedures that restrict truck operators from attempting to clean truck beds by banging them on site. Please keep in mind that RGI is but one of three operators in this quarry and can only restrict gate-banging on trucks hauling stone from its quarry. Rogers is also in the process of installing new back up warning devices on the heavy equipment in the quarry that utilizes a technology which will contain the noise from backup alarms (beeps) within the confines of the immediate machine surroundings.

We believe that much of the noise complained of is not emanating from the RGI operation. Based on our inspection at the residential site nearest to the quarry, noise from the operation of the RGI crusher is not detectible offsite and complaints have been reported during times when the RGI crusher was actually not in operation.

As a result, blanket restrictions on the hours of operation are not necessary if effective controls are implemented to eliminate noise from truck beds. The restrictions as drafted will result in an undue hardship on RGI operations due to the inability to supply haulers, contractors and job sites early enough in the morning to assure that materials are delivered timely to construction sites. Hours of operation restricted to 8:30am to 3:00pm simply do not permit enough time to meet customer demand. In addition, increased activity confined to this restricted window will intensify noise from all sources and increase truck traffic that would otherwise be dispersed throughout a normal work day from 7:00am to 6:00pm.

Blasting

The Department of the Interior has conducted two studies and issued reports entitled *Effects of Repeated Blasting on a Wood Frame House*, and *Structure Response and Damage Produced by Ground Vibration from Surface Mine Blasting*. These are widely viewed by most experts in the blasting field as authoritative. These likely represent the largest collection of blasting data in any study. The studies are extensive and can be provided upon request.

In *Effects of Repeated Blasting on a Wood Frame House*, a wood frame test house was constructed near a surface coal mine and equipped with instrumentation to measure the impact of blasting. A total of 587 coal mine production blasts were conducted over time at various intensities ranging from 0.1 inches per second to 6.94 inches per second. The current maximum intensity permitted by Arkansas law is 1.0 inch per second. RGI's internal guidelines require that blasts not exceed 0.5 inches per second, or stated another way, one-half the state law limit. Because the production blasts yielded fewer cracks than anticipated, the test house was subjected to a shaker and the "equivalent of 28 years of shaking by blast generated ground motions of 0.5 inches per second, twice a day." The experiment indicated that cracks propagated in houses even when no blasting was performed and that human activity in the house, including walking, closing doors, etc. and "changes in temperature and humidity" caused strains and stresses in the house equivalent to blast vibrations of up to 1.2 inches per second. Attached are Tables 6 and 9 from the report which indicate comparison between daily human activities, environmental changes and corresponding blast vibration levels. As the report indicates, environmental changes cause significant structural stress.

In *Structure Response and Damage Produced by Ground Vibration from Surface Mine Blasting* the Bureau of Mines assessed the impact of 219 production blasts on 76 homes which indicated that the impact of the blast is related to the shape of the blasting wave. Low frequency blasts impact structures more than higher frequency blasts. Safe levels of ground vibration from blasting were determined to range from 0.5 to 2.0 inches/second peak particle velocity ("PPV") for residential structures. Most people perceive the noise from blasting as ground motion. Ground motion dissipates so quickly, that it can rarely be detected. Noise from a blast is a sound wave that does no damage unless excessive.

Cracks occur in masonry structures as a result of many causes. Bricks, masonry blocks and poured concrete all expand and contract in response to temperature and moisture variations. In addition, all soils compress to some extent resulting in foundation settlement, unless the footing is resting on bedrock. When a foundation settles unevenly, stresses result that often cause cracks in foundations, walls and ceilings.

Voids between soil particles contain air and water. The principal cause of foundation settlement is changes in these voids and soil supporting the foundation resulting from moisture related expansion and drying related contraction. The amount of organic matter in the soil can determine the degree of variation and cause differential settlement and resulting cracks. Soil containing high clay content can result in swelling and/or shrinkage of up to 50 percent between wet and dry conditions. The soil in the Northwest Arkansas region is known for its high clay content. Average precipitation in Fayetteville during the period from 1961-1990 was 44 inches per year. In 2007, Fayetteville experienced 34.8 inches of precipitation, and in 2008, 55.51 inches. This represents a dry cycle 21% below average followed by a wet cycle 26% above average.

Rogers believes that the process of blasting and its effects are misunderstood. In order for RGI to maintain its conservative policy of keeping blast intensities to less than 0.5 inches/second, smaller more frequent blasts 3 days per week will be necessary to assure that enough material is produced to meet customer demand. Restricting the frequency of blasts to anything less than 3 days per week will require blasting at higher intensities and will most likely still result in the inability of Rogers to provide enough material to effectively supply its customers. Based on existing evidence, Rogers does not believe that blasting at historical levels is the source of excessive noise or damage to local residential structures and that the ordinance as drafted will not effectively mitigate neighborhood concerns.

Rogers Group in the Community

Many residents seem to believe that quarries are mutually exclusive and exist apart from the visible improvements that serve Fayetteville residents. Citizens should understand that roads, sewers, schools, hospitals and libraries are dependent on quarries that produce construction materials that make these community improvements possible.

The ordinance as written leaves Rogers no room to operate its quarry in a competitive manner and effectively serve its customers. Eliminating three producers from the Fayetteville region will only consolidate the materials market and generate higher prices from remaining producers that may have the good fortune of being located 1.01 miles or more outside of the city limits. Costs to transport materials over greater distances to serve City projects will be passed on to the City and its taxpayers and greater haul distances will generate increased diesel emissions plus wear and tear on public streets and highways. *The environmental impact of development is mitigated by locating materials sources closer to project sites.* In the end, activity at surviving regional quarries will certainly increase and concentrate operational concerns to those neighborhoods. By regulating local quarry operators and material providers out of existence, the City Council is only kicking the NIMBY can down the road. This is not a lasting or effective solution.

Rogers Group, Inc. currently operates 63 active quarries in five states and has been in business for over 100 years. This success did not occur by disrespecting the concerns of our neighbors. We seek to listen, respond as any decent corporate citizen should and participate as a member of our communities by routinely donating materials to local projects and sponsoring efforts that improve the regions in which we live and operate.

There are few occasions more emotionally charged than zoning and land use matters. The difficult responsibility of the City Council is to separate fact from emotion and craft parameters that we can all live with. The ordinance as drafted is draconian and won't abate many of the issues raised by residents. We stand ready to address the facts related to issues experienced by residents and find a way to co-exist and serve the City of Fayetteville and surrounding communities. We invite all of the aldermen who can to visit our facility next Thursday, October 1, 2009 at noon, witness a blast from inside our facility or from neighboring residential sites, and assist Rogers in assessing root causes of potential problems reported by residents. With the very existence of three of the region's corporate constituents, the livelihood of dozens of employees and hundreds of their family members that depend on them hanging in the balance, a request for basic and balanced fact finding prior to rendering a decision is not unreasonable.

If you can come to the quarry on October 1, please RSVP to Patty Powell, Office Administrator at our Lowell Quarry, at (479) 751-6343.

TABLE 6. - Comparison of strain levels induced by daily environmental changes, household activities, and blasting

Loading phenomena	Site ¹	Induced strain, $\mu\text{in/in}$	Corresponding blast vibration level, ² in/s
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¹From Figure 13.

²Based on envelope line of strain versus ground vibration plot.

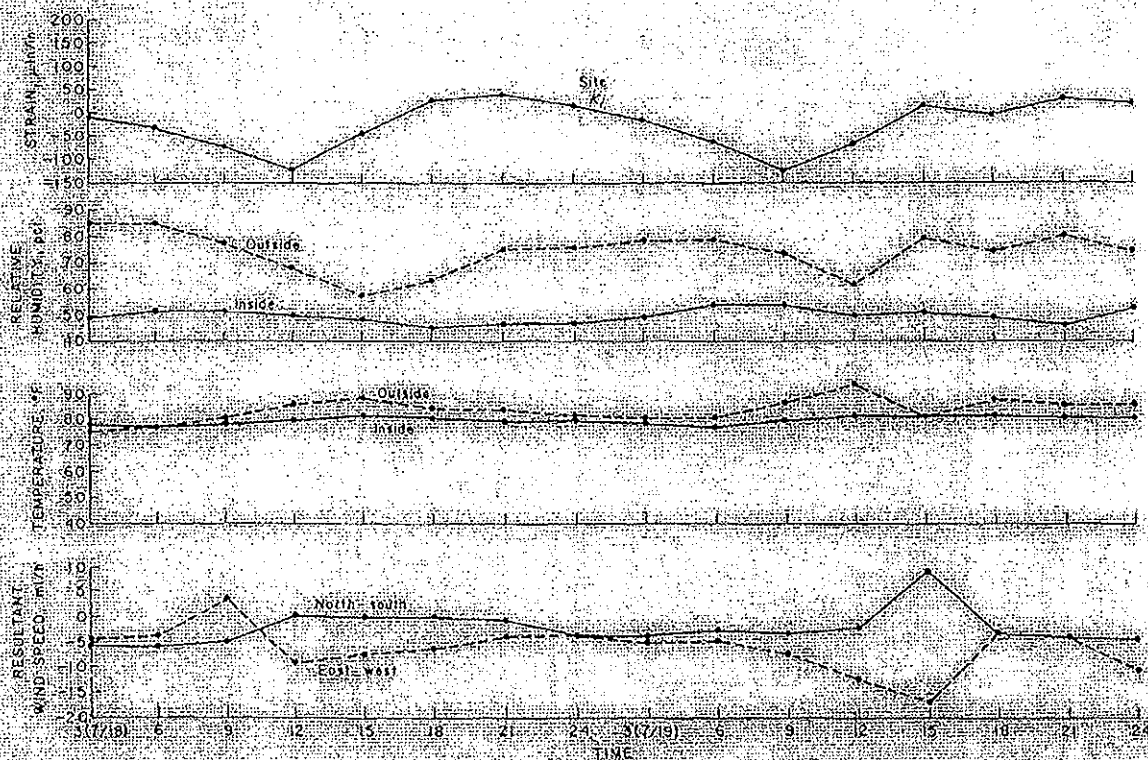


FIGURE 23. - Strain and environmental factors versus time, site K1.

25

TABLE 9. - Human activities and equivalent ground vibration levels

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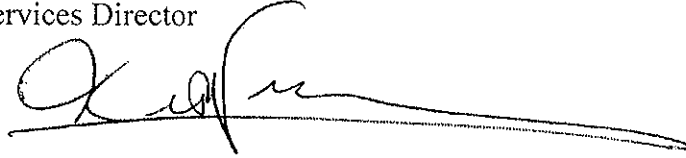
¹From figure 13.

²Based on envelope of strain or structure motion versus ground vibration data.

³Based on regression line through strain or structure motion versus ground vibration data.

TO: **Lioneld Jordan**, Mayor
City Council
Don Marr, Chief of Staff
Jeremy Pate, Development Services Director

FROM: **Kit Williams**, City Attorney



DATE: **September 10, 2009**

RE: **Amendments to Rock Quarry and Red Dirt Mining Facility Ordinances
recommended by City Attorney**

I have some proposed amendments to what I handed out to you. In the **Definitions** section, I mistakenly left in (A) "*Explosive force*" which would have been necessary if we regulated how much explosive force would be allowed for explosions in the quarries and red dirt farms. However, I recommended and the Ordinance Review Committee agreed to remove any such attempted regulation because the state and federal laws and regulations had probably preempted this consideration. Thus, there is no need for the "*Explosive force*" definition which should be deleted from both ordinances and the other definitions renumbered.

I also recommend some modifications relating to dust and dust control measures. The Arkansas Department of Environmental Quality is given the exclusive power to regulate, control and abate "air pollution and contamination." A.C.A. §8-4-306. Although most citizens probably would not consider "dust" as air pollution, the definition of "Air Pollution" in the Water and Air Pollution Control Act (A.C.A. §8-4-301 *et seq.*) is so broad that it probably covers dust.

"'Air pollution' means the presence in the outdoor atmosphere of one (1) or more air contaminants in quantities ... which are materially injurious ..., or which unreasonably interfere with enjoyment of life or use of property"

"'Air contamination' means any solid, liquid, gas or vapor or any combination thereof." A.C.A. §8-4-303

Thus, the Arkansas Department of Environmental Quality has the sole right and power to regulate "dust" (a "solid" air contaminant) through the Water and Air Pollution Control Act. I, therefore, recommend the amendments to §113.02 (C)(1) *Dust Control Measures* which now refer to ADEQ permits, limitations and controls. Please see the attached proposed modified ordinances with this change in place.

As this ordinance may likely be challenged in Court, I considered adding a severability section, but I believe the Unified Development Code's general severability section (**§150.13 Severability**) is sufficient without adding a specific severability section for these ordinances.

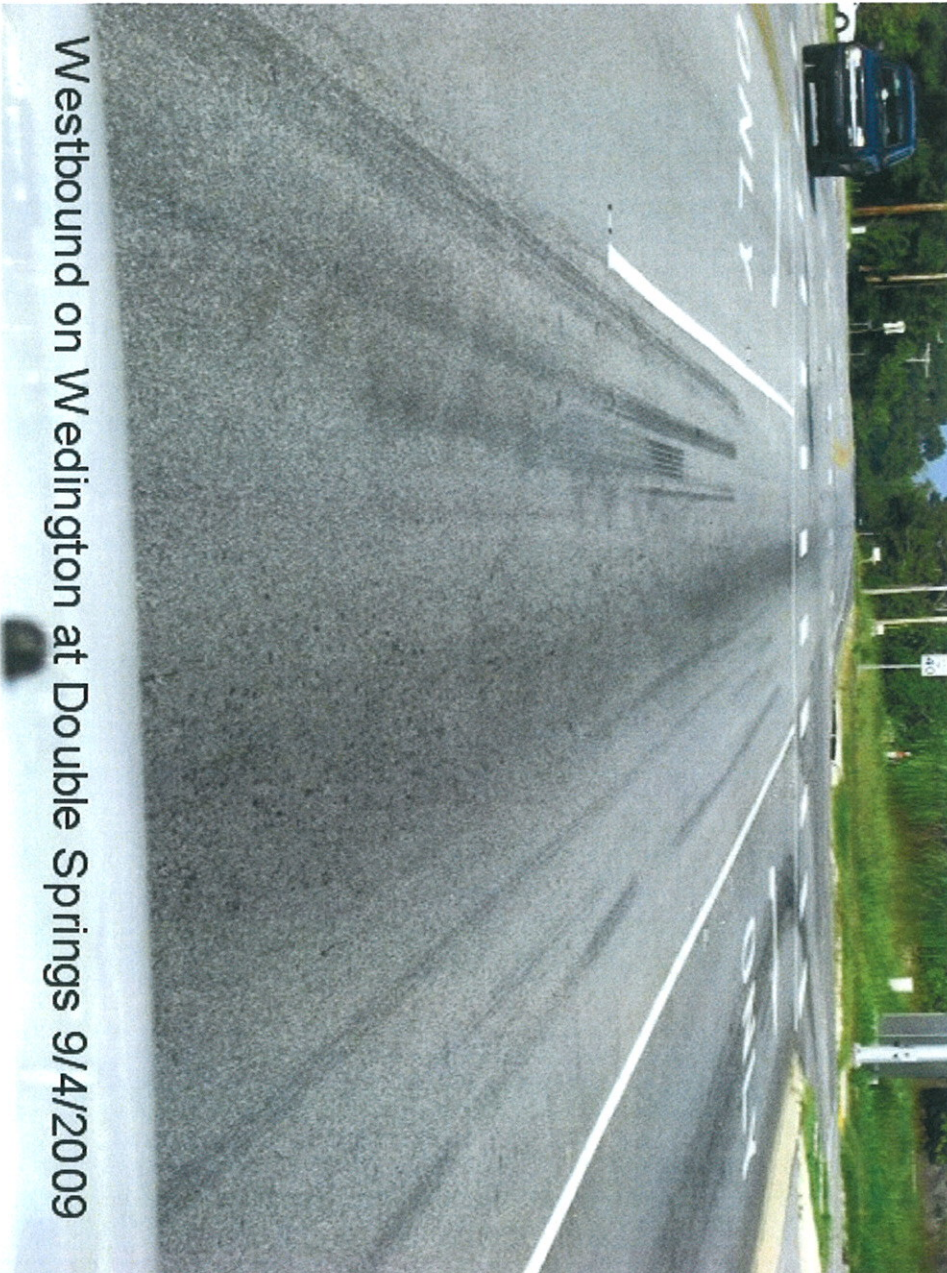
I do recommend some minor changes in the "Whereas" clauses portion. I have removed "Reviewed scientific evidence" as I am unsure if such a review will actually occur and is not necessary for the passage of these ordinances. I have proposed a few other changes ("homes" replaced by "property") (adding "and citizens" after "experts" in the second "Whereas" clause) (inserting "properly" before "regulated and controlled" in the last "Whereas" clause) (adding "in excess of ADEQ permitted limits" in the last "Whereas" clause). I believe that these changes should strengthen these ordinances and so recommend your approval of these amendments.

Finally in §113.12 (A)(3) and §113.02 (A)(3), I replaced "one time" with "one day." Blasting in rock quarries does not happen in one large explosion, but many smaller explosions often only milliseconds apart. It has always been the intent to limit such explosions so that they occur on a single day per month not in a single explosion so that this change clarifies what was intended.

Rock Quarries

9/15/09

Handled out at the City Council meeting 9/15/09



Westbound on Wedington at Double Springs 9/4/2009

Rock Quarries 9/15/09
Handed out at the City Council Meeting 9/15/09



Rock Quarry 9/15/09
Handed out at the City Council Meeting 9/15/09



Dump Truck Eastbound on Wedington at Double Springs 8/31/2009

DRAFT 2

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE
WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY
REGULATING ROCK QUARRYING FACILITIES SO THAT
THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for rock quarries to supply necessary road building material within and near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has reviewed scientific evidence and listened to experts and determined that rock blasting causes unavoidably damaging effects upon nearby structures (especially homes); and

WHEREAS, the Fayetteville City Council has also learned and determined that an operating rock quarry causes vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the quarry; and

WHEREAS, the Fayetteville City Council has also heard from citizens living near an existing and operating rock quarry and determined that unregulated rock blasting, rock crushing and other rock quarry activities are offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their homes; and

WHEREAS, unless the frequency of rock blasting, its distance from houses and the hours and days of rock quarry operation near residences is regulated and controlled to prevent dust, fumes and noise from escaping the quarry, such a rock quarry would constitute a nuisance to Fayetteville residents and citizens and should be abated.

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 enacts Chapter 113 **Rock Quarries and Red Dirt Mining Facilities** of the Code of Fayetteville, Article I **Rock Quarry Operating License** as shown below:

DRAFT 2

**ARTICLE I.
Rock Quarry Operating License**

“§113.01. Finding of Nuisance and Need for Abatement.

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a rock quarry is a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.02 and, therefore, should be abated by the reasonable regulations required by this ordinance.

“§113.02. Abatement of Nuisance.

(A) Rock Blasting/Use of Explosives.

(1) No rock blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No rock blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All rock blasting within the permitted quarry shall only be allowed one time per month between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Rock Quarry Operating License.

(B) Operation of Rock Quarry.

(1) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 8:30 a.m. until 3:00 p.m. Monday through Friday from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th. No rock quarry shall be allowed to operate on a federally recognized holiday.

(2) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such quarry has obtained a valid, annual Rock Quarry Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) Dust, Mud and Rock Control Measures.

All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock and gravel, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed rock quarry operator to ensure all of these safeguards, requirements and measures are constantly enforced.

DRAFT 2

(1) *Dust control measures.* Water or other substances or measures must be fully effective during the operation of the rock quarry to prevent the escape of dust from the rock quarry. During any period of a week or longer when the rock quarry is not operating, the operator shall take all measures necessary to ensure dust does not escape from the rock quarry.

(2) *Dirt and mud control measures.* The rock quarry operator is required to ensure that any and all vehicles leaving the rock quarry shall have all mud and dirt removed from the tires and exterior parts of the body of the vehicles prior to exiting the site onto public roads.

(3) *Loose rock and gravel.* The rock quarry operator is responsible to ensure that all dump trucks leaving the rock quarry site that may utilize any city street and are carrying more than half a truck load of gravel, rocks or dirt have their load fully and properly covered.

(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the rock quarry, the rock quarry operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The rock quarry operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(5) *Only dump trucks with proper identifying number may be loaded.* The rock quarry operator shall not load or permit to be loaded or permit to exit the rock quarry any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

“§113.03: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all rock quarries located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

“§113.04: Definitions.

(A) “*Explosive force*” means the amount of explosive power generated by various types of explosive substances such as dynamite, blasting powder, etc.

(B) “*Rock Quarry*” means any open excavation used for obtaining building stone, slate, limestone or other type of rock used for paving or building purposes.

(C) “*House*” means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

DRAFT *h*

(D) *“Operation of Rock Quarry”* means any blasting, operation of any mechanical equipment on the premises of the rock quarry or any operation of dump trucks or other large vehicles on the premises of the rock quarry site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the rock quarry. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the rock quarry to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.

“113.05: Issuance, Suspension or Revocation of License.

(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Rock Quarry Operating License upon proper application of an owner/operator of a rock quarry within the jurisdiction of this ordinance after ensuring the rock quarry operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for rock quarrying operation.

(B) *Suspension.* The Director of Development Services may suspend a Rock Quarry Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Director of Development Services may revoke a Rock Quarry Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Rock Quarry Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk’s Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the rock quarry operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.

“§113.06: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a rock quarry and any operator, manager, or employee of such rock quarry shall ensure such quarry is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Rock Quarry Operating License may be suspended or revoked by the Director of Development Services after a due process hearing for an owner’s, manager’s, operator’s, employee’s, or lessee’s violation of any terms or limits within this ordinance or for operating the rock quarry not in conformity with its Rock Quarry Operating License.

DRAFT 2

(C) Any owner, operator, manager, lessee or employee of a rock quarry shall be guilty of a criminal violation if such person operates the rock quarry in violation of any of the terms of this ordinance, without a current and valid Rock Quarry Operating License, or in violation of any of the terms of his Rock Quarry Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any rock blasting of this Ordinance or the applicable Rock Quarry Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to \$500.00.

"§113.07: No reduction in property owner's right to sue for nuisance.

Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of rock quarry if such facility constitutes a private or public nuisance to that property owner."

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

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

DRAFT |

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE
WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY
REGULATING ROCK QUARRYING FACILITIES SO THAT
THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for rock quarries to supply necessary road building material within and near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has listened to experts and citizens and determined that rock blasting causes unavoidably damaging or nuisance effects upon nearby structures (especially homes); and

WHEREAS, the Fayetteville City Council has also learned and determined that an operating rock quarry can cause vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the quarry; and

WHEREAS, the Fayetteville City Council has also heard from citizens living near an existing and operating rock quarry and determined that unregulated rock blasting, rock crushing and other rock quarry activities are offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their property; and

WHEREAS, unless the frequency of rock blasting, its distance from houses and the hours and days of rock quarry operation near residences is regulated and controlled to prevent noise, dust and fumes (in excess of ADEQ permitted limits) from escaping the quarry, such a rock quarry would constitute a nuisance to Fayetteville residents and citizens and should be abated.

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 enacts Chapter 113 **Rock Quarries and Red Dirt Mining Facilities** of the Code of Fayetteville, Article I **Rock Quarry Operating License** as shown below:

DRAFT

**ARTICLE I.
Rock Quarry Operating License**

“§113.01. Finding of Nuisance and Need for Abatement.

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a rock quarry is a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.02 and, therefore, should be abated by the reasonable regulations required by this ordinance.

“§113.02. Abatement of Nuisance.

(A) Rock Blasting/Use of Explosives.

(1) No rock blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No rock blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All rock blasting within the permitted quarry shall only be allowed one day per month between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Rock Quarry Operating License.

(B) Operation of Rock Quarry.

(1) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 8:30 a.m. until 3:00 p.m. Monday through Friday from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th. No rock quarry shall be allowed to operate on a federally recognized holiday.

(2) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such quarry has obtained a valid, annual Rock Quarry Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) Dust, Mud and Rock Control Measures.

All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock and gravel, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed rock quarry operator to ensure all of these safeguards, requirements and measures are constantly enforced.

DRAFT |

(1) *Dust control measures.* Water or other substances or measures must be fully effective during the operation of the rock quarry to ensure the quarry is in full and continual compliance with the requirements of the Arkansas Water and Air Pollution Control Act as administered by the Arkansas Department of Environmental Quality. A violation of the permit conditions required by the Arkansas Department of Environmental Quality can be grounds for a suspension or revocation of the City's Rock Quarry Operating License. (See §133.05)

(2) *Dirt and mud control measures.* The rock quarry operator is required to ensure that any and all vehicles leaving the rock quarry shall have all mud and dirt removed from the tires and exterior parts of the body of the vehicles prior to exiting the site onto public roads.

(3) *Loose rock and gravel.* The rock quarry operator is responsible to ensure that all dump trucks leaving the rock quarry site that may utilize any city street and are carrying more than half a truck load of gravel, rocks or dirt have their load fully and properly covered.

(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the rock quarry, the rock quarry operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The rock quarry operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(5) *Only dump trucks with proper identifying number may be loaded.* The rock quarry operator shall not load or permit to be loaded or permit to exit the rock quarry any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

"§113.03: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all rock quarries located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

"§113.04: Definitions.

(A) "*Rock Quarry*" means any open excavation used for obtaining building stone, slate, limestone or other type of rock used for paving or building purposes.

(B) "*House*" means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

DRAFT

(C) "Operation of Rock Quarry" means any blasting, operation of any mechanical equipment on the premises of the rock quarry or any operation of dump trucks or other large vehicles on the premises of the rock quarry site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the rock quarry. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the rock quarry to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.

"113.05: Issuance, Suspension or Revocation of License.

(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Rock Quarry Operating License upon proper application of an owner/operator of a rock quarry within the jurisdiction of this ordinance after ensuring the rock quarry operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for rock quarrying operation.

(B) *Suspension.* The Director of Development Services may suspend a Rock Quarry Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Director of Development Services may revoke a Rock Quarry Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Rock Quarry Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the rock quarry operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.

"§113.06: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a rock quarry and any operator, manager, or employee of such rock quarry shall ensure such quarry is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Rock Quarry Operating License may be suspended or revoked by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the rock quarry not in conformity with its Rock Quarry Operating License.

DRAFT
(C) Any owner, operator, manager, lessee or employee of a rock quarry shall be guilty of a criminal violation if such person operates the rock quarry in violation of any of the terms of this ordinance, without a current and valid Rock Quarry Operating License, or in violation of any of the terms of his Rock Quarry Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any rock blasting of this Ordinance or the applicable Rock Quarry Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to \$500.00.

“§113.07: No reduction in property owner’s right to sue for nuisance.

Nothing in this ordinance removes or reduces a property owner’s right to sue or seek an injunction against any owner or operator of rock quarry if such facility constitutes a private or public nuisance to that property owner.”

PASSED and APPROVED this the 15th day of September, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

AGENDA REQUEST

FOR: COUNCIL MEETING OF SEPTEMBER 1, 2009

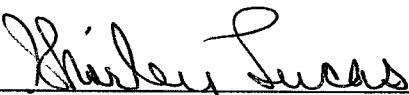
FROM:

Shirley Lucas, Council Member
Sarah Lewis, Council Member

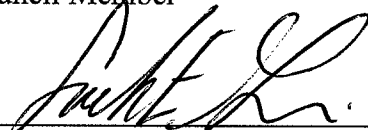
ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Prevent Injury Or Annoyance Within The Corporate Limits Of Fayetteville By
Regulating Red Dirt Mining Facilities So That These Facilities Will Not Be Nuisances

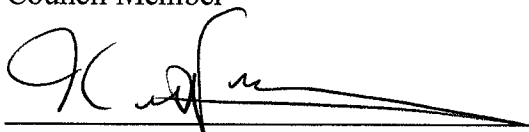
APPROVED FOR AGENDA:


Shirley Lucas
Council Member

8/25/09
Date


Sarah Lewis
Council Member

8/25/09
Date


Kit Williams
City Attorney (as to form)

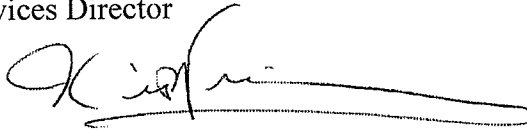
8-10-09
Date

Left on Second Reading @ 10/6/09 CC mtg.
Left on Second Reading @ 9-15-09 Meeting
Left on First Reading @ 9-1-09 mtg.

TO: **Lioneld Jordan**, Mayor
City Council

CC: **Don Marr**, Chief of Staff
Jeremy Pate, Development Services Director

FROM: **Kit Williams**, City Attorney



DATE: **August 19, 2009**

RE: **Proposed Chapter 113 Rock Quarries and Red Dirt Mining Facilities of the Code of Fayetteville**

Several months ago, City Council members Sarah Lewis and Shirley Lucas asked me to attend a meeting of Ward 4 residents who were concerned and unhappy about problems caused to their neighborhood by a Rock Quarry and Red Dirt Mining Facility near their homes. These city residents described regular disturbing activities that operation of the quarry and red dirt mine were inflicting upon them in their homes and on their property. These nuisance type activities included:

- (1) the dust, noise and vibration from frequent blasting of the rock for quarrying;
- (2) the noise, dust and fumes from the machines operating at the quarry and red dirt mine;
- (3) the large number of dump trucks which serviced the quarry and red dirt farm which often immediately entered city streets and caused traffic problems and safety issues during morning and afternoon school rush hours;
- (4) the amount of red dirt and rocks that fell from these dump trucks onto city streets and right-of-way. These trucks were often uncovered with very little freeboard.

The City Council Ordinance Review Committee held several meetings to fine tune the initial ordinances I drafted pursuant to the requests of City Council Members Lucas and Lewis. Neighbors attended these public meetings and also provided input information and suggestions. The owners or managers of the rock quarry and red dirt mining operation did not attend to provide any input. I recommend that the ordinances be left on the first reading so that the rock quarry and red dirt mining owners and operators can review these ordinances for fairness and utility.

These ordinances would mandate that each operator of a rock quarry or red dirt mining facility within the city and within one mile of the city limits must obtain a license from the City to operate their facility. The ordinances prescribe measures that an operator must take to prevent his facility from being a nuisance to Fayetteville residents. These measures restrict:

- (1) the frequency of allowed explosions;
- (2) require dust control measures;
- (3) restrict the days of operation to regular workdays (Monday-Friday);
- (4) restrict the hours of operation with longer hours allowed in the summer when school is out;
- (5) require dump trucks servicing the facility to have their loads covered more frequently than now allowed; and
- (6) require other measures to abate the potential of the facility to be a nuisance to our citizens.

**ORDINANCE AS AMENDED BY THE
CITY COUNCIL ON SEPTEMBER 15, 2009**

B. 5
Red Dirt Mining Facilities
Page 4 of 22

ORDINANCE NO. _____

**AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE
WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY
REGULATING RED DIRT MINING FACILITIES SO THAT
THESE FACILITIES WILL NOT BE NUISANCES**

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for red dirt mining facilities to supply necessary red dirt for building construction, parking lot and road construction within and near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has listened to experts and citizens and determined that any blasting that could be used in red dirt mining could cause unavoidable damaging or nuisance effects upon nearby structures (especially homes); and

WHEREAS, the Fayetteville City Council has also learned and determined that an operating red dirt mining facility can cause vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the red dirt mining facility; and

WHEREAS, the Fayetteville City Council has also heard from citizens living near an existing and operating red dirt mining facility and determined that unregulated blasting, dirt excavating, dump truck loading and other red dirt mining facility activities are offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their property and city streets;

WHEREAS, unless the frequency of blasting, its distance from houses, the hours and days of red dirt mining facility operation near residences to prevent noise, dust and fumes in excess of ADEQ limits from escaping the red dirt farm are properly regulated and controlled, such a red dirt mining facility would constitute a nuisance to Fayetteville residents and citizens and should be abated.

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 enacts Chapter 113 **Rock Quarries and Red Dirt Mining Facilities** of the Code of Fayetteville, Article II **Red Dirt Mining Facility Operating License** as shown on the attached Exhibit A.

PASSED and APPROVED this the 6th day of October, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

EXHIBIT "A"

ARTICLE II.

Red Dirt Mining Facility Operating License

§113.11. Finding of Nuisance and Need for Abatement

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a red dirt mining facility is a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.12 and, therefore, should be abated by the reasonable regulations required by this ordinance.

§113.12. Abatement of Nuisance

(A) Rock Blasting/Use of Explosives.

(1) No blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All blasting within the permitted red dirt mining facility shall only be allowed one day per month between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Red Dirt Mining Operating License.

(B) Operation of Red Dirt Mining Facility.

(1) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 8:30 a.m. until 3:00 p.m. Monday through Friday from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th. No red dirt mining facility shall be allowed to operate on a federally recognized holiday.

(2) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such facility has obtained a valid, annual Red Dirt Mining Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) Dust, Mud and Rock Control Measures.

All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed red dirt mining operator to ensure all of these safeguards, requirements and measures are constantly enforced.

(1) *Dust control measures.* Water or other substances or measures must be fully effective during

the operation of the red dirt mining to ensure the red dirt mining facility is in full and continual compliance with the requirements of the Arkansas Water and Air Pollution Control Act as administered by the Arkansas Department of Environmental Quality. A violation of the permit conditions required by the Arkansas Department of Environmental Quality can be grounds for a suspension or revocation of the City's Red Dirt Mining Facility Operating License. (See §133.15)

(2) *Dirt and mud control measures.* The red dirt mining operator is required to ensure that any and all vehicles leaving the red dirt mining facility shall have all mud and dirt removed from the tires and exterior parts of the body of all vehicles prior to exiting the site onto public roads.

(3) *Red dirt.* The red dirt mining operator is responsible to ensure that all dump trucks leaving the red dirt mining site that may utilize any city street and are carrying more than half a truck load of red dirt have their load fully and properly covered.

(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the red dirt mining facility, the red dirt mining operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The red dirt mining operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(5) *Only dump trucks with proper identifying number may be loaded.* The red dirt mining operator shall not load or permit to be loaded or permit to exit the red dirt mining facility any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

§113.13: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all red dirt mining facilities located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

§113.14: Definitions.

(A) "*Red dirt mining*" means any open excavation used for obtaining red dirt or other type of soil used for paving or building purposes.

(B) "*House*" means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

(C) "*Operation of Red Dirt Mining Facility*" means any blasting, operation of any mechanical equipment on the premises of the red dirt mining facility or any operation of dump trucks or other large vehicles on the premises of the red dirt mining site. Starting, running the

engine or moving any equipment or dump truck on the premises shall constitute operation of the red dirt mining facility. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the red dirt mining facility to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.

113.15: Issuance, Suspension or Revocation of License.

(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Red Dirt Mining Facility Operating License upon proper application of an owner/operator of a red dirt mining facility within the jurisdiction of this ordinance after ensuring the owner/operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for red dirt mining operation.

(B) *Suspension.* The Director of Development Services may suspend a Red Dirt Mining Facility Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Director of Development Services may revoke a Red Dirt Mining Facility Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Red Dirt Mining Facility Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the red dirt mining facility owner/operator violated the requirements of the ordinance and, if so,

whether suspension (up to 30 days) or revocation is appropriate for such violation.

§113.16: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a red dirt mining facility and any operator, manager, or employee of such red dirt mining facility shall ensure such facility is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Red Dirt Mining Facility Operating License may be revoked or suspended by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the red dirt mining facility not in conformity with its Red Dirt Mining Facility Operating License.

(C) Any owner, operator, manager, lessee or employee of a Red Dirt Mining Facility shall be guilty of a criminal violation if such person operates the red dirt mining facility in violation of any of the terms of this ordinance, without a current and valid Red Dirt Mining Facility Operating License, or in violation of any of the terms of his Red Dirt Mining Facility Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any blasting of this Ordinance or the applicable Red Dirt Mining Facility Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to \$500.00.

§113.17: No reduction in property owner's right to sue for nuisance.

Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of a red dirt mining facility if such facility constitutes a private or public nuisance to that property owner.

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY



DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor
City Council
Don Marr, Chief of Staff
Jeremy Pate, Development Services Director

FROM: **Kit Williams**, City Attorney

DATE: **September 10, 2009**

RE: **Amendments to Rock Quarry and Red Dirt Mining Facility Ordinances
recommended by City Attorney**

I have some proposed amendments to what I handed out to you. In the **Definitions** section, I mistakenly left in (A) "*Explosive force*" which would have been necessary if we regulated how much explosive force would be allowed for explosions in the quarries and red dirt farms. However, I recommended and the Ordinance Review Committee agreed to remove any such attempted regulation because the state and federal laws and regulations had probably preempted this consideration. Thus, there is no need for the "*Explosive force*" definition which should be deleted from both ordinances and the other definitions renumbered.

I also recommend some modifications relating to dust and dust control measures. The Arkansas Department of Environmental Quality is given the exclusive power to regulate, control and abate "air pollution and contamination." A.C.A. §8-4-306. Although most citizens probably would not consider "dust" as air pollution, the definition of "Air Pollution" in the Water and Air Pollution Control Act (A.C.A. §8-4-301 *et seq.*) is so broad that it probably covers dust.

"'Air pollution' means the presence in the outdoor atmosphere of one (1) or more air contaminants in quantities ... which are materially injurious ..., or which unreasonably interfere with enjoyment of life or use of property"

"'Air contamination' means any solid, liquid, gas or vapor or any combination thereof." A.C.A. §8-4-303

Thus, the Arkansas Department of Environmental Quality has the sole right and power to regulate "dust" (a "solid" air contaminant) through the Water and Air Pollution Control Act. I, therefore, recommend the amendments to §113.02 (C)(1) *Dust Control Measures* which now refer to ADEQ permits, limitations and controls. Please see the attached proposed modified ordinances with this change in place.

As this ordinance may likely be challenged in Court, I considered adding a severability section, but I believe the Unified Development Code's general severability section (**§150.13 Severability**) is sufficient without adding a specific severability section for these ordinances.

I do recommend some minor changes in the "Whereas" clauses portion. I have removed "Reviewed scientific evidence" as I am unsure if such a review will actually occur and is not necessary for the passage of these ordinances. I have proposed a few other changes ("homes" replaced by "property") (adding "and citizens" after "experts" in the second "Whereas" clause) (inserting "properly" before "regulated and controlled" in the last "Whereas" clause) (adding "in excess of ADEQ permitted limits" in the last "Whereas" clause). I believe that these changes should strengthen these ordinances and so recommend your approval of these amendments.

Finally in §113.12 (A)(3) and §113.02 (A)(3), I replaced "one time" with "one day." Blasting in rock quarries does not happen in one large explosion, but many smaller explosions often only milliseconds apart. It has always been the intent to limit such explosions so that they occur on a single day per month not in a single explosion so that this change clarifies what was intended.

Stephen's Red Dirt Farm
Handed out at
Agenda Session
9-29-09

B.2

DRAFT

ORDINANCE NO. _____

**AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE
WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY
REGULATING CERTAIN FACILITIES SO THAT THESE
FACILITIES WILL NOT BE NUISANCES**

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for certain facilities to supply necessary goods and services near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has determined that blasting, noise, and heavy truck traffic have the potential to cause damaging or nuisance effects upon nearby property; and

WHEREAS, the Fayetteville City Council has also determined that an operating certain facilities has the potential to cause vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects to neighboring landowners of the facilities; and

WHEREAS, the Fayetteville City Council has also determined that unregulated blasting, dump truck loading and other activities have the potential to be offensive to Fayetteville citizens and damaging to their property;

**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 enacts Chapter 113 **Heavy Use Facilities** of the Code of Fayetteville, Article II **Heavy Use Facility Operating License** as shown on the attached Exhibit A.

PASSED and **APPROVED** this the 13th day of October, 2009.

DRAFT

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

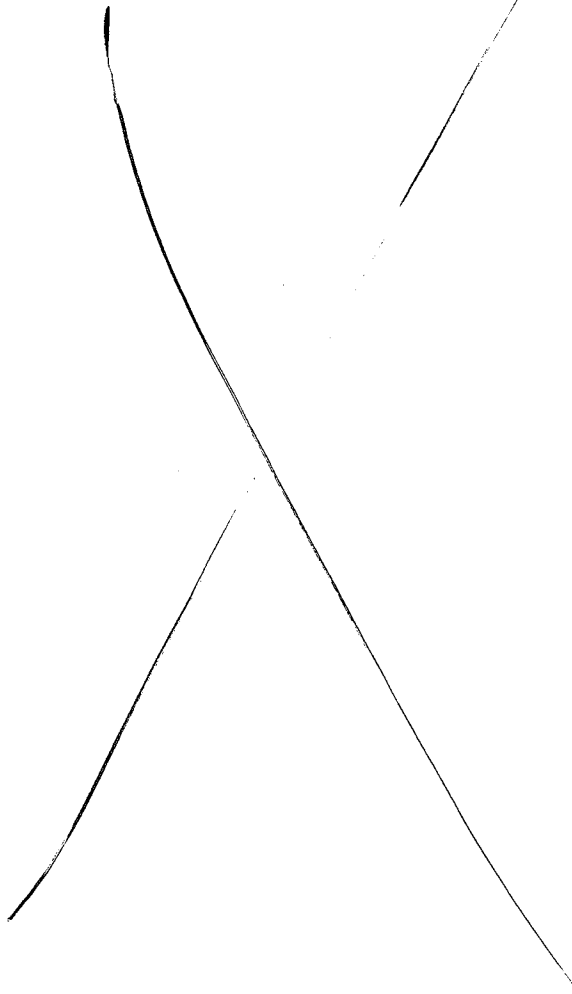


EXHIBIT "A"

ARTICLE II.

Heavy Use Facility Operating License

§113.11. Finding of Nuisance and Need for Abatement

The City Council of the City of Fayetteville, Arkansas finds that the operation of certain activities could potentially become a nuisance to the citizens and City of Fayetteville, Arkansas if performed other than as prescribed in §113.12 and, therefore, should be subject to the reasonable regulations required by this ordinance.

§113.12. Abatement of Nuisance

(A) Rock Blasting/Use of Explosives.

(1) No blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(2) All blasting within the permitted heavy use facility shall only be allowed one day per week between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Heavy Use Operating License.

(B) Operation of Heavy Use Facility.

(1) All heavy use facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 6:00 a.m. until 9:00 p.m. Monday through Saturday.

(2) All heavy use facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such facility has obtained a valid, annual Heavy Use Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(3) All heavy use facilities shall be allowed to work from 6:00 a.m. to 9:00 p.m. for a cumulative 120 hours on Sundays throughout the year for emergency weather related purposes. In the event a Heavy Use Facility Operator works on a Sunday, the immediately following Monday, said operator shall contact the Director of Development Services and report the Sunday activities.

(4) All heavy use facilities shall restrict and prevent all dump trucks operating upon said facility from utilizing the tail gate of the truck from dislodging material from the dump truck bed prior to 9:00 a.m.

(C) Dust, Mud and Rock Control Measures.

All heavy use facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock, and all other possible irritants do not adversely affect Fayetteville residents. It is the express

continuing duty of the licensed heavy use facility operator to ensure all of these safeguards, requirements and measures are constantly enforced.

(1) *Dirt and mud control measures.* The heavy use facility operator is required to comply with all state and federal regulations regarding prevention of material from leaving the heavy use facility.

(2) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the heavy use facility, the heavy use operator shall require any dump truck owned by or working for the heavy use facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The heavy use facility operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(3) *Only dump trucks with proper identifying number may be loaded.* The heavy use facility operator shall not load or permit to be loaded or permit to exit the heavy use facility any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

§113.13: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all heavy use facilities located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

§113.14: Definitions.

(A) *"Heavy Use Facility"* means any location where dump trucks or other heavy trucks are operated, any location where rock blasting may occur, or any location where machinery may be operated.

(B) *"House"* means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

(C) *"Operation of Heavy Use Facility"* means any blasting, or any operation of dump trucks or other large vehicles used for the purpose of loading the dump trucks on the premises of the heavy use site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the heavy use facility.

113.15: Issuance, Suspension or Revocation of License.

(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Heavy Use Facility Operating License upon proper application of an owner/operator of a heavy use facility within

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the jurisdiction of this ordinance after ensuring the owner/operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for heavy use operation. Any Heavy Use Facility currently in operation upon the enactment of this ordinance shall automatically be issued a permit.

(1) Subsequent to the initial license issued to the Heavy Use Facility, said license shall be renewed automatically each year upon the owner/operators presentation to the Director of Development Services valid federal, state, and county permits required for the heavy use operation. No fee shall be required for the renewal of the license.

(2) In the event a complaint is received by the Director of Development Services regarding the operation of a heavy use facility, upon notice, that facility shall have thirty (30) business days to correct any activity which may violate the terms of this ordinance before a hearing to determine a suspension or revocation of the Heavy Use Operator's License may be issued.

(B) *Suspension.* The Fayetteville City Council, after a public hearing where the heavy use operator is allowed to present evidence, may suspend a Heavy Use Facility Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Fayetteville City Council, after a public hearing where the heavy use operator is allowed to present evidence, may revoke a Heavy Use Facility Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Fayetteville City Council may require adequate assurances that any operator whose license has been revoked will fully comply with the Heavy Use Facility Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the Washington County Circuit Court to determine whether suspension (up to 30 days) or revocation is appropriate for such violation. The

Heavy Use operation may continue operations pending appeal of any suspension or revocation.

§113.16: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a heavy use facility and any operator or manager of such heavy use facility shall ensure such facility is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Heavy Use Facility Operating License may be revoked or suspended by the Fayetteville City Council after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the heavy use facility not in conformity with its Heavy Use Facility Operating License.

(C) Any owner, operator, manager or lessee employee of a Heavy Use Facility shall be guilty of a criminal violation if such person operates the heavy use facility in violation of any of the terms of this ordinance, without a current and valid Heavy Use Facility Operating License, or in violation of any of the terms of his Heavy use facility Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any blasting of this Ordinance or the applicable Heavy use facility Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to \$500.00.

§113.17: No reduction in property owner's right to sue for nuisance.

Nothing in this ordinance shall be construed or used in a Court of law as evidence or a standard of conduct to determine if any heavy use facility constitutes a private or public nuisance, and this ordinance shall not act as a bar to a suit by a private citizen concerning the heavy use facility.

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ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE
WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY
REGULATING RED DIRT MINING FACILITIES SO THAT
THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for red dirt mining facilities to supply necessary red dirt for building construction, parking lot and road construction within and near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has reviewed scientific evidence and listened to experts and determined that any blasting that could be used in red dirt mining could cause unavoidable damaging effects upon nearby structures (especially homes); and

WHEREAS, the Fayetteville City Council has also learned and determined that an operating red dirt mining facility causes vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the red dirt mining facility; and

WHEREAS, the Fayetteville City Council has also heard from citizens living near an existing and operating red dirt mining facility and determined that unregulated blasting, dirt excavating, dump truck loading and other red dirt mining facility activities are offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their homes and city streets;

WHEREAS, unless the frequency of blasting, its distance from houses, the hours and days of red dirt mining facility operation near residences and the red dirt mining's dust causing activities are regulated and controlled, such a red dirt mining facility would constitute a nuisance to Fayetteville residents and citizens and should be abated.

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B. 5
Red Dirt Mining Facilities
Page 15 of 22

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 enacts Chapter 113 **Rock Quarries and Red Dirt Mining Facilities** of the Code of Fayetteville, Article II **Red Dirt Mining Facility Operating License** as shown on the attached Exhibit A.

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

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

EXHIBIT "A"

DRAFT

ARTICLE II.

Red Dirt Mining Facility Operating License

§113.11. Finding of Nuisance and Need for Abatement

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a red dirt mining facility is a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.12 and, therefore, should be abated by the reasonable regulations required by this ordinance.

§113.12. Abatement of Nuisance

(A) Rock Blasting/Use of Explosives.

(1) No blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No blasting explosive charge or location shall exceed the most restrictive limitations within federal state and Washington County regulations or laws.

(3) All blasting within the permitted red dirt mining facility shall only be allowed one time per month between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Red Dirt Mining Operating License.

(B) Operation of Red Dirt Mining Facility.

(1) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 8:30 a.m. until 3:00 p.m. Monday through Friday from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th. No red dirt mining facility shall be allowed to operate on a federally recognized holiday.

(2) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such facility has obtained a valid, annual Red Dirt Mining Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) Dust, Mud and Rock Control Measures.

All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed red dirt mining operator to ensure all of these safeguards, requirements and measures are constantly enforced.

(1) *Dust control measures.* Water or other substances or measures must be fully effective during

the operation of the red dirt mining to prevent the escape of dust from the red dirt mining facility. During any period of a week or longer when the red dirt mining facility is not operating, the operator shall take all measures necessary to ensure dust does not escape from the red dirt mining facility.

(2) *Dirt and mud control measures.* The red dirt mining operator is required to ensure that any and all vehicles leaving the red dirt mining facility shall have all mud and dirt removed from the tires and exterior parts of the body of all vehicles prior to exiting the site onto public roads.

(3) *Red dirt.* The red dirt mining operator is responsible to ensure that all dump trucks leaving the red dirt mining site that may utilize any city street and are carrying more than half a truck load of red dirt have their load fully and properly covered.

(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the red dirt mining facility, the red dirt mining operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The red dirt mining operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(5) *Only dump trucks with proper identifying number may be loaded.* The red dirt mining operator shall not load or permit to be loaded or permit to exit the red dirt mining facility any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

§113.13: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all red dirt mining facilities located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

§113.14: Definitions.

(A) "*Explosive force*" means the amount of explosive power generated by various types of explosive substances such as dynamite, blasting powder, etc.

(B) "*Red dirt mining*" means any open excavation used for obtaining red dirt or other type of soil used for paving or building purposes.

(C) "*House*" means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

(D) "*Operation of Red Dirt Mining Facility*" means any blasting, operation of any mechanical equipment on the premises of the red dirt mining facility or any operation of dump trucks or other large vehicles on the premises of the red dirt mining site. Starting, running the

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engine or moving any equipment or dump truck on the premises shall constitute operation of the red dirt mining facility. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the red dirt mining facility to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.

113.15: Issuance, Suspension or Revocation of License.

(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Red Dirt Mining Facility Operating License upon proper application of an owner/operator of a red dirt mining facility within the jurisdiction of this ordinance after ensuring the owner/operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for red dirt mining operation.

(B) *Suspension.* The Director of Development Services may suspend a Red Dirt Mining Facility Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Director of Development Services may revoke a Red Dirt Mining Facility Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Red Dirt Mining Facility Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the red dirt mining facility owner/operator violated the requirements of the ordinance and, if so,

whether suspension (up to 30 days) or revocation is appropriate for such violation.

§113.16: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a red dirt mining facility and any operator, manager, or employee of such red dirt mining facility shall ensure such facility is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Red Dirt Mining Facility Operating License may be revoked or suspended by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the red dirt mining facility not in conformity with its Red Dirt Mining Facility Operating License.

(C) Any owner, operator, manager, lessee or employee of a Red Dirt Mining Facility shall be guilty of a criminal violation if such person operates the red dirt mining facility in violation of any of the terms of this ordinance, without a current and valid Red Dirt Mining Facility Operating License, or in violation of any of the terms of his Red Dirt Mining Facility Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any blasting of this Ordinance or the applicable Red Dirt Mining Facility Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to \$500.00.

§113.17: No reduction in property owner's right to sue for nuisance.

Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of a red dirt mining facility if such facility constitutes a private or public nuisance to that property owner.

DRAFT (2)

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE
WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY
REGULATING RED DIRT MINING FACILITIES SO THAT
THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for red dirt mining facilities to supply necessary red dirt for building construction, parking lot and road construction within and near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has listened to experts and citizens and determined that any blasting that could be used in red dirt mining could cause unavoidable damaging or nuisance effects upon nearby structures (especially homes); and

WHEREAS, the Fayetteville City Council has also learned and determined that an operating red dirt mining facility can cause vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the red dirt mining facility; and

WHEREAS, the Fayetteville City Council has also heard from citizens living near an existing and operating red dirt mining facility and determined that unregulated blasting, dirt excavating, dump truck loading and other red dirt mining facility activities are offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their property and city streets;

WHEREAS, unless the frequency of blasting, its distance from houses, the hours and days of red dirt mining facility operation near residences and the red dirt mining's dust causing activities are properly regulated and controlled, such a red dirt mining facility would constitute a nuisance to Fayetteville residents and citizens and should be abated.

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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 enacts Chapter 113 **Rock Quarries and Red Dirt Mining Facilities** of the Code of Fayetteville, Article II **Red Dirt Mining Facility Operating License** as shown on the attached Exhibit A.

PASSED and APPROVED this the 15th day of September, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

(2)

EXHIBIT "A"**ARTICLE II.****Red Dirt Mining Facility Operating License****§113.11. Finding of Nuisance and Need for Abatement**

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a red dirt mining facility is a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.12 and, therefore, should be abated by the reasonable regulations required by this ordinance.

§113.12. Abatement of Nuisance**(A) Rock Blasting/Use of Explosives.**

(1) No blasting shall be allowed within 80 yards of any house within the city limits of Fayetteville.

(2) No blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All blasting within the permitted red dirt mining facility shall only be allowed one day per month between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Red Dirt Mining Operating License.

(B) Operation of Red Dirt Mining Facility.

(1) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 8:30 a.m. until 3:00 p.m. Monday through Friday from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th. No red dirt mining facility shall be allowed to operate on a federally recognized holiday.

(2) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such facility has obtained a valid, annual Red Dirt Mining Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) Dust, Mud and Rock Control Measures.

All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed red dirt mining operator to ensure all of these safeguards, requirements and measures are constantly enforced.

(1) *Dust control measures.* Water or other substances or measures must be fully effective during

the operation of the red dirt mining to ensure the red dirt mining facility is in full and continual compliance with the requirements of the Arkansas Water and Air Pollution Control Act as administered by the Arkansas Department of Environmental Quality. A violation of the permit conditions required by the Arkansas Department of Environmental Quality can be grounds for a suspension or revocation of the City's Red Dirt Mining Facility Operating License.

(2) *Dirt and mud control measures.* The red dirt mining operator is required to ensure that any and all vehicles leaving the red dirt mining facility shall have all mud and dirt removed from the tires and exterior parts of the body of all vehicles prior to exiting the site onto public roads.

(3) *Red dirt.* The red dirt mining operator is responsible to ensure that all dump trucks leaving the red dirt mining site that may utilize any city street and are carrying more than half a truck load of red dirt have their load fully and properly covered.

(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the red dirt mining facility, the red dirt mining operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The red dirt mining operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(5) *Only dump trucks with proper identifying number may be loaded.* The red dirt mining operator shall not load or permit to be loaded or permit to exit the red dirt mining facility any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

§113.13. Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all red dirt mining facilities located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

§113.14. Definitions.

(A) *"Explosive force"* means the amount of explosive power generated by various types of explosive substances such as dynamite, blasting powder, etc.

(B) *"Red dirt mining"* means any open excavation used for obtaining red dirt or other type of soil used for paving or building purposes.

(C) *"House"* means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

(D) *"Operation of Red Dirt Mining Facility"* means any blasting, operation of any mechanical equipment

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on the premises of the red dirt mining facility or any operation of dump trucks or other large vehicles on the premises of the red dirt mining site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the red dirt mining facility. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the red dirt mining facility to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.

113.15: Issuance, Suspension or Revocation of License.

(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Red Dirt Mining Facility Operating License upon proper application of an owner/operator of a red dirt mining facility within the jurisdiction of this ordinance after ensuring the owner/operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for red dirt mining operation.

(B) *Suspension.* The Director of Development Services may suspend a Red Dirt Mining Facility Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Director of Development Services may revoke a Red Dirt Mining Facility Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Red Dirt Mining Facility Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the red dirt mining facility owner/operator

violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.

§113.16: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a red dirt mining facility and any operator, manager, or employee of such red dirt mining facility shall ensure such facility is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Red Dirt Mining Facility Operating License may be revoked or suspended by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the red dirt mining facility not in conformity with its Red Dirt Mining Facility Operating License.

(C) Any owner, operator, manager, lessee or employee of a Red Dirt Mining Facility shall be guilty of a criminal violation if such person operates the red dirt mining facility in violation of any of the terms of this ordinance, without a current and valid Red Dirt Mining Facility Operating License, or in violation of any of the terms of his Red Dirt Mining Facility Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any blasting of this Ordinance or the applicable Red Dirt Mining Facility Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to \$500.00.

§113.17: No reduction in property owner's right to sue for nuisance.

Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of a red dirt mining facility if such facility constitutes a private or public nuisance to that property owner.

City of Fayetteville Staff Review Form

C. 1
Justice Assistance Grant (JAG)
Page 1 of 8

City Council Agenda Items
and
Contracts, Leases or Agreements

10/20/2009

City Council Meeting Date
Agenda Items Only

Greg Tabor

Patrol

Police

Submitted By

Division

Department

Action Required:

An ordinance to approve a bid waiver allowing funds provided through the Justice Assistance Grant (JAG) - Recovery Act to be used for the purchase of X-26 Tasers and TaserCams, including shipping & handling and taxes in the amount of \$69,967.25 through a sole source justification awarded to TEECO Safety Inc.

\$ 69,967.25
Cost of this request

\$ 456,807.00
Category / Project Budget

Police-JAG Recovery
Program Category / Project Name

1010-2920-5210.00
Account Number

\$ 7,135.00
Funds Used to Date

Grant
Program / Project Category Name

09017-1
Project Number

\$ 449,672.00
Remaining Balance

General
Fund Name

Budgeted Item ☐Budget Adjustment Attached ☐

Tracy Risley
Department Director

Kurt
City Attorney

10-2-09
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

10-6-09
Date

Paul A. Berlin
Finance and Internal Services Director

10-6-2009
Date

Received in City
Clerk's Office



Don
Chief of Staff

10-6-09
Date

Received in
Mayor's Office



David Jordan
Mayor

10/6/09
Date

Comments:



The City of Fayetteville, Arkansas

City Council Agenda Memo

To: Mayor Jordan and Members of the City Council
From: Greg Tabor, Chief of Police
Date: September 29, 2009
Subject: Approve Justice Assistance Grant - Recovery Funds for Purchase of X-26 Tasers & TaserCams

Recommendation:

City Council approves a bid waiver authorizing Mayor Jordan to approve funds awarded through the **Justice Assistance Grant (JAG) - Recovery Act**. The funds awarded to the Fayetteville Police Department are in the amount of \$49,689.25 for the purchase of (45) X-26 Tasers and \$20,433.25 for the purchase of (45) TaserCams. The funds budgeted for these purchases total \$70,122.50. This purchase would be made through TEECO Safety, Inc. The bid from TEECO Safety is \$44,770.50 for the X-26 Taser purchase and \$18,537.75 for the TaserCam purchase, plus shipping and handling of \$735.00. Tax included, brings the cost of this request to \$69,967.25.

Background:

Taser International manufactures the X-26 Taser and TaserCam. Both of these items are used in conjunction with each other. The Taser device uses electrical impulses to temporarily overwhelm the neural communications that are required for a person to perform coordinated actions. The resulting effect of the Taser when utilized on violent or combative persons is that they are unable to inflict harm upon anyone and/or themselves. Numerous law enforcement agencies, including the Fayetteville Police Department, currently use Tasers to improve tactical performance while allowing officers to more safely perform their job while minimizing risk of serious injury to themselves and the people they interact with. The TaserCam device is matched to the Taser device and is a video and audio capture device, which records both the officers actions regarding the use of the Taser as well as the subject(s) actions on whom the Taser is deployed. The intent of the TaserCam is simple: Taser use accountability and evidence collection.

Discussion:

The Fayetteville Police Department has utilized the X-26 Taser and TaserCams since 2004 with remarkable results. As it stands, the department's police officers must sign in and out a Taser/TaserCam at the beginning of every shift. Having far fewer Taser/TaserCams than officers, it is not uncommon for shortages of Tasers/TaserCams to occur. With these JAG-Recovery funds each officer assigned to the patrol division will be equipped with their own Taser and TaserCam. Officers having immediate access to the Taser will afford them with a less lethal option that has been demonstrated nationwide to decrease injuries and save lives. A sole source justification is requested for purchasing this equipment through TEECO Safety Inc. as they are the only regional supplier for Taser International products.

Budget Impact:

The \$70,122.50 for this project has been awarded to the Fayetteville Police Department through the aforementioned JAG – Recovery Act. This expenditure will not have an impact on the police department's budget.

ORDINANCE NO. _____

AN ORDINANCE TO WAIVE COMPETITIVE BIDDING
AND TO PURCHASE 45 X-26 TASERS AND TASER-CAMS
FOR \$69,967.25 FROM TEECO SAFETY, INC.

WHEREAS, Taser International manufactures a unique and effective temporary disabling device known as a taser that can be equipped with a taser cam to document each use of the taser; and

WHEREAS, the Fayetteville Police Department has used and trained with tasers since 2004 and found them effective in preventing injury to both officers and suspects who needed to be taken into custody.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby determines that because tasers are manufactured by a single source, Taser International, and provide a unique and effective way to empower our police officers to take violent or resisting suspects into custody with less chance of injury to the officer and the suspect and therefore determines that competitive bidding is not practical or feasible to obtain this needed tool and so waives the formal requirements of competitive bidding and authorizes the purchase of 45 tasers with attached taser cams in the amount of \$69,967.25 from the Justice Assistance Grant funds of \$70,122.50 awarded for this project.

PASSED and APPROVED this 20th day of October, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

SOLE SOURCE JUSTIFICATION

PURPOSE:

This form, with one or more categories completed, must accompany purchase requisitions for the sole source procurement of equipment, services or supplies exceeding \$1000 (purchased from State Contract vendors excepted). The purpose of sole source justification is to show that competitive bidding is impractical because only one product or service provider can meet a specific need. Therefore, an equitable evaluation of comparable products or services must be made and documented by the requester who shows that rejection of other products or services is based solely on their failure to meet that need. In cases where no other comparable source can be identified, a technical description of the product requested and a listing of those companies which were considered as alternative sources must be provided. Quality can be a subjective evaluation based upon opinion. Municipal (public) procurement law requires price considerations be evaluated via competitive quoting or bidding.

While all sole source justifications are subject to review, sole source justified purchases of \$20,000.00 or more must be publicly bid or a bid waiver approved by Council. Justifications must contain clear, in-depth, and accurate information in order to avoid protests and the possibility of delaying the procurement.

INSTRUCTIONS:

1. Please type or print legible in ink.
2. Complete all categories and sections that apply.
3. Provide full explanation, complete descriptions, and/or list all relevant reasons where space has been provided. Sole Source Justification forms lacking sufficient detail cannot be approved.
4. Sign and date the form in the space provided for "signature".
5. Improperly completed, and/or unsigned forms will be returned to the sender.

TO: Purchasing Division Date: 10/1/2009
FROM: Tad Scott / Greg Tabor Dept: Police
Names of Requisitioner and Dept. Head
SUBJECT: Sole Source Justification
Purchase Requisition No (attached)
Proposed Vendor TEECO Safety
Product Description X-26 Taser, TaserCam

STATEMENT

I am aware that Fayetteville Code of Ordinances, Title III Administration, Chapter 34, Article II mandates that the procurement of services, materials, equipment and supplies be via competitive quotes whenever the amount is over \$1,000.00. However, I am requesting sole source procurement based on the following criteria. (Attach additional sheets as necessary):

1. The requested product is an integral repair part or accessory compatible with existing equipment. (please state the manufacturer and model number of existing equipment):

2. The requested product has special design/performance features which are essential to my needs.

Both A and B portions of this category must be completed.

- A. These features are:

- B. In addition to the product requested, I have contacted other suppliers and considered their product of similar capabilities. I find their product unacceptable for the following reasons (identify companies contacted, individuals contacted, model number and specific technical deficiency).

3. I have standardized the requested product/service; the use of another would require considerable time and money to evaluate.

Explain: _____

4. The requested product is one which I (or my staff) have specialized training and/or extensive experience. Retraining would incur substantial cost in money and/or time.

Explain: _____

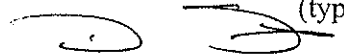
5. Please consider sole source approval for this reason(s) (e.g. trade-in allowance; availability of services, parts and maintenance; product is a prototype; inventory of parts are maintained, etc.):

Taser International, the manufacturer of X-26 Taser and TaserCam,
have a very limited number of distributors for their products.
TEECO Safety is the regional supplier for Taser International.
TEECO Safety has been supplying the police department with Taser
products since the projects inception in 2004.

Authorization:

Full Name and Title of Requisitioner Tad Scott, Lieutenant

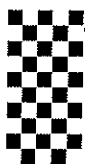
(typed or printed in ink)

Signature  Date 10/1/2009

Full Name of Division Head Michael Reynolds / Greg Tabor

(typed or printed in ink)

Signature  Date 10-1-09



Quotation

Teeco Safety ---
P.O. Box 7784
1360 Grimmert Dr.
Shreveport LA 71107
Ph. 318 424-5176
Fax 318 424-5184

Quote Number:
3264

Quote Date:
Sep 29, 2009

Page:
1

Ship To:
Fayetteville Police Dept.
100-A West Rock
ANNT: Tad Scott
Fayetteville, AR 72701

Quoted to:
City of Fayetteville
Attn: Accounts Payable
113 West Mountain
Fayetteville, AR 72701

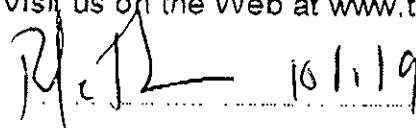
Ph. 479 575-8256
Fax 479 575-8241

Est. Delivery:

Customer ID	Good Thru	Payment Terms	Freight
FayettevilleC	10/29/09	Net 30 Days	PPD/ADD

Quantity	Description	Unit Price	Extension
45.00	TASER #26011 X26 Black DPM	809.95	36,447.75
45.00	TASER #26750 TASERCAM	411.95	18,537.75
45.00	TASER #26744 Extended Warranty (4YR)	184.95	8,322.75
1.00	PLUS Shipping/Handling	735.00	735.00
ATTN: TAD SCOTT			

Visit us on the Web at www.teecosafety.com

Bv: 

Subtotal 64,043.25
Sales Tax
Total 64,043.25

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 #: 13839		Vendor Name: Teeco Safety, Inc		Fob Point:		Requisition No.:		Date: 10/20/2009	
Address:		1360 Grimmer Drive		State: LA		P.O. Number:		Expected Delivery Date:	
City: Shreveport		Zip Code: 71107		Ship to code:		Mail Yes: ☒ X No:		Quotes Attached Yes: No:	
Requester: T. Scott		Requester's Employee #: 908		Account Numbers		Division Head Approval: <i>Sherry Bailey</i>		Extension: <i>41</i>	
Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Project/Subproject #	Inventory #	Fixed Asset #	
1	Taser #26011 X26	45	ea	809.95	\$36,447.75	1010-2920-5210.00	09017-1		
2	Taser #26750 Tasercam	45	ea	411.95	\$18,537.75	1010-2920-5210.00	09017-1		
3	Taser #26744 Extended Warranty	45	ea	184.95	\$8,322.75	1010-2920-5210.00	09017-1		
4					\$0.00				
5					\$0.00				
6					\$0.00				
7					\$0.00				
8					\$0.00				
9					\$0.00				
10					\$0.00				
*	Shipping/Handling	1	Lot	735.00	\$735.00	1010-2920-5210.00	09017-1		

Special Instructions:

EJ Tab 2920, Line 162

Subtotal:	\$64,043.25
Tax:	\$5,924.00
Total:	\$69,967.25

Approvals:

Mayor: _____

Department Director: _____

Finance & Internal Services Director: _____

Budget Manager: _____

Dispatch Manager: _____

Utilities Manager: _____

Purchasing Manager: _____

IT Manager: _____

Other: _____

Agenda Session 10/13/09

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

**Tentative Agenda
City of Fayetteville, Arkansas
City Council Meeting
October 20, 2009**

A meeting of the Fayetteville City Council will be held on October 20, 2009 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

Agenda Session Presentations:

1. District Court Building Update – Lynn Hyke

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

A. Consent:

- ✓ 1. Approval of the October 6, 2009 City Council meeting minutes.
- ✓ 2. **Safe Routes To School Program:** A resolution to approve and support a grant application of \$300,800.00 to the Arkansas Highway and Transportation Department for 100% funding for Clabber Creek Trail through the Safe Routes To Schools Program.
- ✓ 3. **2009 COPS Technology Grant:** A resolution to accept the 2009 COPS Technology Grant in the amount of \$500,000.00 and to approve the attached budget adjustment to recognize this revenue.

4. **Baird, Kurtz & Dobson (BKD), LLP:** A resolution to approve an annual contract with BKD, LLP for external auditing services for the 2009 audit in the amount of \$81,000.00.

Agenda Additions:

B. Unfinished Business:

1. **Amend Police Department's Policies, Procedures & Rules Manual:** A resolution approving and adopting amendments to the Fayetteville Police Department's Policies, Procedures & Rules Manual. This resolution was tabled at the October 6, 2009 City Council meeting to the October 20, 2009 City Council meeting.

2. **2009 Millage Levy:** An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2009 fixing the rate thereof at 1.3 mills for General Fund Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mill for the Fayetteville Public Library; and certifying the same to the County Clerk of Washington County, Arkansas. *This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting.*

This Ordinance was left on the Second Reading

3. **Old Wire Annexation Appeal:** An ordinance annexing that property described in annexation petition ANX 09-3409 (CC2009-4), for property located at 3231 North Old Wire Road, the northwest corner of Old Wire Road and Rom Orchard Road, containing approximately 39 acres. *This ordinance was left on the First Reading at the October 6, 2009 City Council meeting.*

This Ordinance was left on the First Reading

4. **Rock Quarries Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting. This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting and Tabled to the October 20, 2009 City Council meeting.*

This Ordinance was left on the Second Reading

5. **Red Dirt Mining Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting. This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting and Tabled to the October 20, 2009 City Council meeting.*

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C. New Business:

1. **Justice Assistance Grant (JAG):** An ordinance to waive competitive bidding and to purchase 45 X-26 Tasers and Taser-Cams for \$69,967.25 from TEECO Safety, Inc.

Announcements:

1. City Council Tour: ~~October 19, 2009~~ **NONE**

Adjournment:

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Add:

(A.S.) Joe Perme Construction

(C.2) Amend Chapter 35: Taxation

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



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Ward 1 Position 2 – Brenda Thiel
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Consent

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