

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Sarah Marsh
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Martin W. Schoppmeyer, Jr.
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Alan T. Long

**Final Agenda
City of Fayetteville Arkansas
City Council Meeting
October 15, 2013**

A meeting of the Fayetteville City Council will be held on October 15, 2013 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. Approval of the October 01, 2013 City Council meeting minutes.

APPROVED

2. **Bid #13-52 Time Striping, Inc.:** A resolution awarding Bid #13-52 and authorizing the purchase from Time Striping, Inc. of thermal striping, in variable amounts, for the Transportation Division as needed through the end of calendar year 2014.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 205-13

3. **Solid Waste Hauling and Disposal Fees:** A resolution approving a budget adjustment in the total amount of \$269,000.00 to provide funding for solid waste hauling and disposal fees.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 206-13

B. Unfinished Business:

1. **Amend §164.11 Height and Setback Regulations; Exceptions:** An ordinance to Amend §164.11 Height and Setback Regulations; Exceptions to enhance livability through appropriate transitions in building scale and to protect access to air and sunlight and to enact an emergency clause. *This ordinance was left on the First Reading at the September 17, 2013 City Council meeting. This ordinance was left on the Second Reading at the October 01, 2013 City Council meeting.*

THIS ORDINANCE WAS TABLED TO THE NOVEMBER 5, 2013 CITY COUNCIL MEETING AND SENT TO THE PLANNING COMMISSION FOR REVIEW

2. **PPL 13-4404 (Persimmon Street Master Street Plan Right-of-Way/Legacy IV Subdivision):** A resolution to approve the dedication of 70 feet of right of way for Persimmon Street along most of the owner's property as recommended by the Planning Commission. *This resolution was tabled at the October 1, 2013 City Council meeting to the October 15, 2013 City Council meeting.*

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 207-13

3. **RZN 13-4467 (Mount Comfort and Shiloh/Kum & Go):** An ordinance rezoning that property described in rezoning petition RZN 13-4467, for approximately 1.65 acres located at the northwest corner of Mount Comfort Road and Shiloh Drive from R-A, Residential Agricultural and RSF-4, Residential Single-Family, 4 units per acre, to C-1, Neighborhood Commercial. *This ordinance was left on the First Reading at the October 01, 2013 City Council meeting.*

THIS ORDINANCE WAS LEFT ON THE SECOND READING

C. New Business:

1. **VAC 13-4478 (Twin Creeks Village Lot 19B4):** An ordinance approving VAC 13-4478 submitted by McClelland Engineering Consulting for property located at 163 Van Asche Loop, to vacate a portion of a drainage easement, a total of 0.03 acres.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5622

2. **ADM 13-4487 (Links at Fayetteville PZD Modification #3):** An ordinance amending a Residential Planned Zoning District entitled R-PZD 07-2452 Links at Fayetteville to revise the zoning criteria for Planning Area One, to include Use Unit 18, Gasoline Service Stations and Drive-in/Drive Through Restaurants, as a permitted use, and to revise the architectural design standards at the northeast corner of Wedington Drive and Golf Club Drive.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5623

3. **Dickson Street Crossing Safety Improvements:** A resolution expressing the intent of the City of Fayetteville to enter into a cost-share agreement with Arkansas & Missouri Railroad Co. for crossing safety improvements at the Dickson Street Railroad Crossing, contingent upon approval by Arkansas & Missouri Railroad Co. of Amendment No. 1 to the 2008 trail license agreement and not unreasonably withholding assent to future trail easements for the City.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 208-13

4. **Fayetteville Energy Improvement District:** An ordinance creating a Property Assessed Energy Improvement District coextensive with the City of Fayetteville named "Energy Improvement District No. 1" to facilitate a PACE program and adopting certain provisions related thereto.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5624

5. **Amend Chapter §71.052 "U" Turns:** An ordinance to repeal §71.052 "U" Turns and to enact a new §71.052 "U" Turns into the Fayetteville Code to permit "U" Turns on streets with medians.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5625

6. **Amend Chapter 115 Pawnbrokers:** An ordinance amending Chapter 115: Pawnbrokers of the Code of Fayetteville, renaming it to Chapter 115: Pawnbrokers and Secondhand Dealers, requiring licensure of secondhand dealers and requiring electronic reporting of certain items purchased by secondhand dealers.

THIS ORDINANCE WAS LEFT ON THE FIRST READING

7. **Boston Mountain Solid Waste District:** An ordinance waiving the requirements of formal competitive bidding and approving a contract with the Boston Mountain Solid Waste District in the amount of \$25,000.00 for an environmental and recycling education program.

THIS ORDINANCE WAS LEFT ON THE SECOND READING

8. **Amend Rules of Order and Procedure:** A resolution to amend the Rules of Order and Procedure of the Fayetteville City Council A. City Council meetings 7. Presentation of Agenda Items by adding a new subsection a. Agenda items not included within the Tentative Agenda packet.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 209-13

D. City Council Agenda Session Presentations:

E. City Council Tour:

- 1. December 2, 2103 – 4:00 PM – Mt. Kessler**

F. Announcements:

Adjournment: 8:35 p.m.

NOTICE TO MEMBERS OF THE AUDIENCE

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

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

Old business and new business.

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

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

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

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

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

City Council Meeting:

October 15, 2013

Adjourn: 8:35 pm

Subject:	Roll				
<i>Alderman Sennant was Absent</i>	Schoppmeyer	✓			
	Adams	✓			
	Long	✓			
	Gray	✓			
	Marsh	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	<i>Absent</i>			
	Mayor Jordan	✓			

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Schoppmeyer				
	Adams				
	Long				
	Gray				
	Marsh				
	Kinion				
	Petty				
	Tennant				
	Mayor Jordan				

Subject:	Consent				
Motion To:					
Motion By:		<i>Approve</i>			
Seconded:		<i>Gray</i>			
		<i>Long</i>			
<i>minutes</i> <i>Approved</i> <i>Approved</i> 205-13 JMN 200-13	Schoppmeyer	✓			
	Adams	✓			
	Long	✓			
	Gray	✓			
	Marsh	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	<i>Absent</i>			
	Mayor Jordan				

7-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Schoppmeyer				
	Adams				
	Long				
	Gray				
	Marsh				
	Kinion				
	Petty				
	Tennant				
	Mayor Jordan				

Subject:		Amend §164.11 Height and Setback Regulations; Exceptions			
Motion To:		<i>Amend to new Ordinance</i>	<i>3rd Read</i>	<i>Reconsider Motion - 3rd Read</i>	<i>3rd Read</i>
Motion By:		<i>Petty</i>	<i>Long</i>	<i>Adams</i>	<i>Long</i>
Seconded:		<i>Marsh</i>	<i>Marsh</i>	<i>Gray</i>	<i>Marsh</i>
B. 1 Unfinished Business <i>See next page</i>	Schoppmeyer	✓	<i>N</i>	✓	✓
	Adams	✓	<i>N</i>	✓	✓
	Long	✓	✓	✓	✓
	Gray	✓	<i>N</i>	✓	✓
	Marsh	✓	✓	✓	✓
	Kinion	✓	✓	✓	✓
	Petty	✓	✓	✓	✓
	Tennant	<i>Absent</i>	<i>Absent</i>	<i>absent</i>	<i>absent</i>
	Mayor Jordan				
		<i>7-0</i>	<i>4-3</i>	<i>7-0</i>	<i>7-0</i>

Subject:		PPL 13-4404 (Persimmon Street Master Street Plan Right-of-Way/Legacy IV Subdivision)			
Motion To:		<i>Amend</i>	<i>Approve</i>		
Motion By:		<i>Marsh</i>	<i>Gray</i>		
Seconded:		<i>Adams</i>	<i>Long</i>		
B. 2 Unfinished Business <i>Passed</i>	Schoppmeyer	✓	✓		
	Adams	✓	✓		
	Long	✓	✓		
	Gray	✓	✓		
	Marsh	✓	✓		
	Kinion	✓	✓		
	Petty	✓	✓		
	Tennant	<i>Absent</i>	<i>Absent</i>		
	Mayor Jordan				
<i>207-13</i>		<i>7-0</i>	<i>7-0</i>		

Subject:	Amend 164.11 Height and Setback Regulations; Exception				
Motion To:		Table-Send to Planning Commission			
Motion By:		Kinion			
Seconded:		Schoppmeyer			
Tabled to Rev. 5, 2013 City Council meeting & send to the Planning Commission for review	Schoppmeyer	✓			
	Adams	✓			
	Long	N			
	Gray	✓			
	Marsh	N			
	Kinion	✓			
	Petty	✓			
	Tennant	Absent			
	Mayor Jordan				

5-2

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Schoppmeyer				
	Adams				
	Long				
	Gray				
	Marsh				
	Kinion				
	Petty				
	Tennant				
	Mayor Jordan				

Subject:	RZN 13-4467 (Mount Comfort and Shiloh/Kum & Go)				
Motion To:	1. b/	2nd Read			
Motion By:		Gray			
Seconded:		Long			
B. 3 Unfinished Business <i>Left on</i> <i>the Second</i> <i>Reading</i>	Schoppmeyer	✓			
	Adams	✓			
	Long	✓			
	Gray	✓			
	Marsh	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	Absent			
	Mayor Jordan				

7-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Schoppmeyer				
	Adams				
	Long				
	Gray				
	Marsh				
	Kinion				
	Petty				
	Tennant				
	Mayor Jordan				

Subject:		VAC 13-4478 (Twin Creeks Village Lot 19B4)			
Motion To:			2nd Read	3rd Read	Pass
Motion By:			Long	Kinion	
Seconded:			Kinion	Gray	
C. 1 New Business <u>passed</u> 5022	Schoppmeyer	✓	✓	✓	
	Adams	✓	✓	✓	
	Long	✓	✓	✓	
	Gray	✓	✓	✓	
	Marsh	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	absent during the vote	✓	✓	
	Tennant	absent	absent	absent	
	Mayor Jordan				
		6-0	7-0	7-0	

Subject:		ADM 13-4487 (Links at Fayetteville PZD Modification #3)			
Motion To:			2nd Read	3rd Read	Pass
Motion By:			Gray	Petty	
Seconded:			Long	Adams	
C. 2 New Business <u>passed</u> 5023	Schoppmeyer	✓	✓	✓	
	Adams	✓	✓	✓	
	Long	✓	✓	✓	
	Gray	✓	✓	✓	
	Marsh	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	absent	absent	absent	
	Mayor Jordan				
		7-0	7-0	7-0	

Subject:	Dickson Street Crossing Safety Improvements				
Motion To:		<i>Approve</i>			
Motion By:		<i>Petty</i>			
Seconded:		<i>Long</i>			
C. 3 New Business <i>passed</i> <i>208-13</i>	Schoppmeyer	✓			
	Adams	✓			
	Long	✓			
	Gray	✓			
	Marsh	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	<i>absent</i>			
	Mayor Jordan				

7-0

Subject:	Fayetteville Energy Improvement District				
Motion To:		<i>2nd Read</i>	<i>3rd Read</i>	<i>Pass</i>	
Motion By:		<i>Marsh</i>	<i>Adams</i>		
Seconded:		<i>Adams</i>	<i>Long</i>		
C. 4 New Business <i>passed</i> <i>5024</i>	Schoppmeyer	✓	✓	✓	
	Adams	✓	✓	✓	
	Long	✓	✓	✓	
	Gray	✓	✓	✓	
	Marsh	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	<i>absent</i>	<i>absent</i>	<i>absent</i>	
	Mayor Jordan				

7-0

7-0

7-0

Subject:		Amend Chapter §71.052 "U" Turns			
Motion To:			2nd Read	3rd Read	Pass
Motion By:			Kinion	Gray	
Seconded:			Long	Adams	
C. 5 New Business <u>Passed</u> 5625	Schoppmeyer	✓	✓	✓	
	Adams	✓	✓	✓	
	Long	✓	✓	✓	
	Gray	✓	✓	✓	
	Marsh	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	Absent	Absent	Absent	
Mayor Jordan					
		7-0	7-0	7-0	

Subject:		Amend Chapter 115 Pawnbrokers			
Motion To:			Amend to remove costume jewelry		
Motion By:			Long		
Seconded:			Kinion		
C. 6 New Business Left on the First Reading	Schoppmeyer	Withdrawn			
	Adams				
	Long				
	Gray				
	Marsh				
	Kinion				
	Petty				
	Tennant				
Mayor Jordan					

Subject:		Boston Mountain Solid Waste District			
Motion To:					
Motion By:					
Seconded:					
C. 7 New Business Left on the Second Reading	Schoppmeyer	✓	✓		
	Adams	✓	N		
	Long	✓	N		
	Gray	✓	✓		
	Marsh	✓	N		
	Kinion	✓	✓		
	Petty	N	N		
	Tennant	absent	absent		
Mayor Jordan					

6-1

Failed
3-4

Subject:		Amend Rules of Order and Procedure			
Motion To:					
Motion By:					
Seconded:					
C. 8 New Business <u>Passed</u>	Schoppmeyer	✓			
	Adams	✓			
	Long	✓			
	Gray	✓			
	Marsh	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	absent			
Mayor Jordan					

209-13

7-0



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan

THRU: Sondra Smith, City Clerk

FROM: Kit Williams, City Attorney

DATE: October 16, 2013

RE: Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of October 15, 2013

1. **Bid #13-52 Time Striping, Inc.:** A resolution awarding Bid #13-52 and authorizing the purchase from Time Striping, Inc. of thermal striping, in variable amounts, for the Transportation Division as needed through the end of calendar year 2014.
2. **Solid Waste Hauling and Disposal Fees:** A resolution approving a budget adjustment in the total amount of \$269,000.00 to provide funding for solid waste hauling and disposal fees.
3. **PPL 13-4404 (Persimmon Street Master Street Plan Right-of-Way/Legacy IV Subdivision):** A resolution to approve the dedication of 73 feet of right of way for Persimmon Street along most of the owner's property and to reduce the Master Street right of dedication for this portion of Persimmon Street to 73 feet.
4. **VAC 13-4478 (Twin Creeks Village Lot 19B4):** An ordinance approving VAC 13-4478 submitted by McClelland Engineering Consulting for property located at 163 Van Asche Loop, to vacate a portion of a drainage easement, a total of 0.03 acres.
5. **ADM 13-4487 (Links at Fayetteville PZD Modification #3):** An ordinance amending a Residential Planned Zoning District entitled R-PZD 07-2452 Links at Fayetteville to revise the zoning criteria for Planning Area One, to include Use Unit 18, Gasoline Service Stations and Drive-in/Drive Through Restaurants, as a permitted use, and to revise the architectural design standards at the northeast corner of Wedington Drive and Golf Club Drive.

6. **Dickson Street Crossing Safety Improvements:** A resolution expressing the intent of the City of Fayetteville to enter into a cost-share agreement with Arkansas & Missouri Railroad Co. for crossing safety improvements at the Dickson Street Railroad Crossing, contingent upon approval by Arkansas & Missouri Railroad Co. of Amendment No. 1 to the 2008 trail license agreement and not unreasonably withholding assent to future trail easements for the City.
7. **Fayetteville Energy Improvement District:** An ordinance creating a Property Assessed Energy Improvement District coextensive with the City of Fayetteville named "Energy Improvement District No. 1" to facilitate a PACE program and adopting certain provisions related thereto.
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Call to Order

Roll Call

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Left on the Second Reading

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Resolution was Tabled

3. **RZN 13-4467 (Mount Comfort and Shiloh/Kum & Go):** An ordinance rezoning that property described in rezoning petition RZN 13-4467, for approximately 1.65 acres located at the northwest corner of Mount Comfort Road and Shiloh Drive from R-A, Residential Agricultural and RSF-4, Residential Single-Family, 4 units per acre, to C-1, Neighborhood Commercial. *This ordinance was left on the First Reading at the October 01, 2013 City Council meeting.*

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Old business and new business.

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

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

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

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

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



CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff

From: Jeremy Pate, Development Services Director

Date: October 04, 2013

Subject: Building Height Amendments

BACKGROUND

Council member Sarah Marsh has proposed building height amendments for the City Council to consider. The original ordinance created a 15-foot setback from all single family residences, with a series of building height stepbacks to allow for light and air into adjacent residential properties. After significant discussion with Council members Marsh and Matthew Petty, as well as local architects, downtown property owners, downtown residents and members of the development community over the past few weeks, a significantly different proposal has been drafted by Ms. Marsh and is submitted for Council consideration. A rough draft of this proposal was distributed at the previous Council meeting; this draft has been refined with input from various stakeholders and is attached.

PROPOSAL

There is no longer a single family use associated with the side or rear setback and building height amendment proposal, based on the current reasons stated for instituting these regulations, which are to provide transition in building scale to promote compatibility of new development and existing structures, to protect rights to sunlight and room for air and wind, to mitigate harmful effects such as mold and allow for trees and plants to grow, and to allow for solar access for alternative energy purposes. All of these same concerns, it could be argued, apply to office, commercial and other uses in addition to single family homes.

Amend Ch. 161, Zoning Regulations

Setback

All of the following zoning districts with 0-foot side and rear setbacks are proposed to be amended to add a minimum 5-foot side and rear setback. There are a few exceptions to this rule, chiefly 1) if there is no building developed adjacent to the property being developed; 2) if an adjacent building is already within 5 feet of the common property line; and 3) if the same property owner owns the adjacent property on the common boundary line.

C-1 – Neighborhood Commercial
CS - Community Services
C-2 - Thoroughfare Commercial
UT - Urban Thoroughfare

C-3 – Central Commercial
DC – Downtown Core
MSC – Main Street Center
DG – Downtown General

Building Height

At the 5-foot setback from side and rear property lines (or between 0 and 5 feet, if the conditions allow for it), the maximum height is the height of the structure on the adjacent property or 36 feet, whichever is greater. This permits standard 12-foot floor to floor height dimensions utilized in commercial construction. Once the maximum height is achieved, there is a required additional 10-foot setback, for a total setback of 15 feet. This essentially creates an initial maximum height between 5-15 feet from the side/rear property line.

Past the 15-foot setback line, a building may go up to 60 feet in height, again based on typical 12-foot floor to floor heights, which would allow 5 (or 6 smaller) stories. Individual balconies, awnings, overhangs and other similar architectural features that protrude from the building façade are permitted to a depth of 6 feet into setback zones.

The maximum height in all of these above zones is amended to 60 feet. However, a height bonus system has been created; for zones that reference heights above 60 feet, there are supplementary requirements that must be met. In each zone that permits this, there is a reference to §164.11 for the supplementary standards.

Amend Ch. 164.11 Height Regulations; Exceptions

This proposal attempts to regulate building height above the maximum 60 feet, requiring certain additional standards to be met. They include wider sidewalks based on the height of the building, creation of a 30-foot setback above 60 feet from all property lines, the requirement for residential uses, LEED Gold building standards, requirement to cover a parking garage with a liner building at street level, and some architectural embellishment when the side of a building is adjacent to another building.

Amend Ch. 156.02 (F) Variances, Specific tests

A statement has been added that the Planning Division or Board of Adjustment may require the applicant to provide a visual impact analysis and/or a sun/shadow study, as needed, to determine if there is an adverse impact on neighboring properties, if there is a variance requested

DRAFT v.6

10/04/2013

Insert Ordinance here (Kit)

161.16 Neighborhood Services

(A) *Purpose.* The Neighborhood Services district is designed to serve as a mixed use area of low intensity. Neighborhood Services promotes a walkable, pedestrian-oriented neighborhood development form with sustainable and complementary neighborhood businesses that are compatible in scale, aesthetics, and use with surrounding land uses. For the purpose of Chapter 96: Noise Control, the Neighborhood Services district is a residential zone.

(B) *Uses*

(1) *Permitted uses*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 12	Limited Business
Unit 24	Home occupations
Unit 41	Accessory dwelling units

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses*

Unit 2	City-wide uses by conditional use
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government Facilities
Unit 13	Eating places
Unit 15	Neighborhood shopping goods
Unit 19	Commercial recreation, small sites
Unit 25	Offices, studios and related services
Unit 26	Multi-family dwellings
Unit 36	Wireless communication facilities*
Unit 40	Sidewalk cafes

(C) *Density.*

Units per acre	10 or less
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(D) *Bulk and Area*

(1) *Lot width minimum*

Single-family	35 feet
Two-family	70 feet
Three or more	90 feet
All other uses	None

(2) *Lot area minimum.*

Single-family	4,000 sq. ft.
Two-family or more	3,000 sq. ft. of lot area per dwelling unit
All other permitted and conditional uses	None

(E) *Setback regulations*

Front:	A build-to zone that is located between 10 and 25 feet from the front property line.
Side	5 feet
Rear	15 feet

(F) *Building height regulations.*

Building Height Maximum	45 ft.*
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*Any building which exceeds the height of 20 feet shall be set back from a boundary line of any single family residential district a distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of the lot.

161.18 District C-1, Neighborhood Commercial

(A) *Purpose.* The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 5	Government Facilities
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 25	Offices, studios, and related services

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 16	Shopping goods
Unit 34	Liquor stores
Unit 35	Outdoor music establishments*
Unit 36	Wireless communications facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

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

(E) *Setback regulations.*

Front	15 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Side	None 5 feet
Side, when contiguous to a residential district	10 ft.
Rear	20 ft.

(F) *Building height regulations.*

Building Height Maximum	56 60ft.*
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*Any building which exceeds the height of 20 feet shall be setback from any boundary line of any residential district a distance of one

foot for each foot of height in excess of 20 feet.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

161.19 Community Services

(A) *Purpose.* The *Community Services* district is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas and is intended to provide for adaptable mixed use centers located along commercial corridors that connect denser development nodes. There is a mixture of residential and commercial uses in a traditional urban form with buildings addressing the street. For the purposes of Chapter 96: Noise Control, the Community Services district is a commercial zone. The intent of this zoning district is to provide standards that enable development to be approved administratively.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 15	Neighborhood Shopping goods
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 24	Home occupations
Unit 25	Offices, studios and related services
Unit 26	Multi-family dwellings

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation, trades and services
Unit 19	Commercial recreation, small sites
Unit 28	Center for collecting recyclable materials
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Dwelling	18 ft.
All others	None

(2) *Lot area minimum.* None

(E) *Setback regulations.*

Front:	A build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side and rear:	None 5 feet
Side or rear, when contiguous to a single-family residential district:	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	56-60ft.*
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10-15 feet from front property line	Maximum 36 feet
0-15 feet from side and rear property line	Maximum 36 ft. or the height of the adjacent building, whichever is greater ¹
15 feet + from all property lines	Maximum 60 feet ²

(1) The height of an adjacent building may only be utilized for this calculation if it is located on the common side or rear property line being developed.

(2) Individual balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the building façade.

(G) *Minimum buildable street frontage.* 50% of the lot width.

161.20 District C-2, Thoroughfare Commercial

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

(B) *Uses.*

(1) *Permitted uses.*

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

(2) *Conditional uses.*

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

(C) *Density.* None.

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

(E) *Setback regulations.*

Front	15 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Side	None-5 feet
Side, when contiguous to a residential district	15 ft.
Rear	20 ft.
All property lines	30 ft. for portions of a building over 60 ft. in height

(F) *Building height regulations.*

Building Height Maximum	60/75 ft.*
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*Any building which exceeds the height of 20 feet shall be set back from a boundary line of any residential district a distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot.

161.21 Urban Thoroughfare

(A) *Purpose.* The Urban Thoroughfare District is designed to provide goods and services for persons living in the surrounding communities. This district encourages a concentration of commercial and mixed use development that enhances function and appearance along major thoroughfares. Automobile-oriented development is prevalent within this district and a wide range of commercial uses is permitted. For the purposes of Chapter 96: Noise Control, the Urban Thoroughfare district is a commercial zone. The intent of this zoning district is to provide standards that enable development to be approved administratively.

(B) *Uses.*

(1) Permitted uses

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor store
Unit 41	Accessory Dwellings

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) Conditional uses

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 20	Commercial recreation, large sites
Unit 21	Warehousing and wholesale
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
Unit 33	Adult live entertainment club or bar
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities
Unit 38	Mini-storage units

Unit 40	Sidewalk cafes
Unit 42	Clean technologies
Unit 43	Animal boarding and training

(C) *Density.* None

(D) *Bulk and area regulations.*

(1) Lot width minimum

Single-family dwelling	18 feet
All other dwellings	None
Non-residential	None

(2) Lot area minimum. None

(E) *Setback regulations.*

Front:	A build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side and rear:	None 5 feet
Side or rear, when contiguous to a single-family residential district:	15 feet
All property lines	30 ft. for portions of a building over 60 ft. in height

(F) *Building height regulations.*

Building Height Maximum	56-60/84 ft.*
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10-15 feet from front property line	Maximum 60 feet
0-15 feet from side and rear property line	Maximum 36 feet or the height of the adjacent building, whichever is greater ¹
15 feet + from all property lines	Maximum 60 feet ²
Building Height Bonus	84 feet ³

(1) The height of an adjacent building may only be utilized for this calculation if it is located on the common side or rear property line being developed.

(2) Individual balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the building façade.

(3) Building height may be permitted up to 84 feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions.*

~~*A building or a portion of a building that is located between 10 and 15 ft. from the front property line or any master street plan right-of-way line shall have a maximum height of 56 feet. A building or portion of a building that is located greater than 15 feet from the master street plan right-of-way shall have a maximum height of 84 feet.~~

~~Any building that exceeds the height of 20 feet shall be set back from any boundary line of a single family residential district, an additional distance of one foot for each foot of height in excess of 20 feet.~~

- (G) *Minimum buildable street frontage.* 50% of the lot width.

161.22 District C-3, Central Commercial

(A) *Purpose.* The Central Commercial District is designed to accommodate the commercial and related uses commonly found in the central business district, or regional shopping centers which provide a wide range of retail and personal service uses.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 18	Gasoline service stations & drive-in restaurants
Unit 19	Commercial recreation, small sites
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores
Unit 44	Cottage Housing Development

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 17	Transportation trades and services
Unit 28	Center for collecting recyclable materials
Unit 29	Dance Halls
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and area regulations.* None

(E) *Setback regulations.*

	Central Business District	Shopping Center
Front	5 ft.	25 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.	50 ft.
Side	None 5 feet	None 5 feet

Side, when contiguous to a residential district	10 ft.	25 ft.
Rear, without easement or alley	15 ft.	25 ft.
Rear, from center line of a public alley	10 ft.	10 ft.
All property lines	30 ft. for portions of a building over 60 ft. in height	30 ft. for portions of a building over 60 ft. in height

(F) *Building height regulations.*

Building Height Maximum	56 /84 ft.*
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*A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 56 feet. A building or a portion of a building that is located greater than 15 feet from the master street plan right-of-way line shall have a maximum height of 84 feet.

5-15 feet from front property line	Maximum 60 feet
0-15 feet from side and rear property line	Maximum 36 feet or the height of the adjacent building, whichever is greater ¹
15 feet + from all property lines	Maximum 60 feet ²
Building Height Bonus	84 feet ³

(1) The height of an adjacent building may only be utilized for this calculation if it is located on the common side or rear property line being developed.

(2) Individual balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the building façade.

(3) Building height may be permitted up to 84 feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions.*

161.23 Downtown Core

(A) *Purpose.* Development is most intense, and land use is densest in this zone. The downtown core is designed to accommodate the commercial, office, governmental, and related uses commonly found in the central downtown area which provides a wide range of retail, financial, professional office, and governmental office uses. For the purposes of Chapter 96: Noise Control, the Downtown Core district is a commercial zone.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 29	Dance Halls
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

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

(E) *Setback regulations.*

Front	A build-to zone that is located between the front property line and a line 25 ft. from the front property line.
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Side	None 5 feet
Rear	5 ft.
Rear, from center line of an alley	12 ft.
All property lines	30 ft. for portions of a building over 60 ft. in height

(F) *Minimum buildable street frontage.* 80% of lot width.

(G) *Building height regulations.*

Building Height Maximum	56 / 168 ft.*
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*A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 56 feet. A building or portion of a building that is located greater than 15 feet from the master street plan right-of-way shall have a maximum height of 168 feet.

0-15 feet from front property line	Maximum 60 feet
0-15 feet from side and rear property line	Maximum 36 feet or the height of the adjacent building, whichever is greater ¹
15 feet + from all property lines	Maximum 60 feet ²
Building Height Bonus	168 feet ³

(1) The height of an adjacent building may only be utilized for this calculation if it is located on the common side or rear property line being developed.

(2) Individual balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the building façade.

(3) Building height may be permitted up to 168 feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions.*

161.24 Main Street/Center

(A) *Purpose.* A greater range of uses is expected and encouraged in the *Main Street/Center*. The *Center* is more spatially compact and is more likely to have some attached buildings than *Downtown General* or *Neighborhood Conservation*. Multi-story buildings in the *Center* are well-suited to accommodate a mix of uses, such as apartments or offices above shops. Lofts, live/work units, and buildings designed for changing uses over time are appropriate for the *Main Street/Center*. The *Center* is within walking distance of the surrounding, primarily residential areas. For the purposes of Chapter 96: Noise Control, the Main Street/Center district is a commercial zone.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Dwelling (all unit types)	18 ft.
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(2) *Lot area minimum.* None.

(E) *Setback regulations.*

Front	A build-to zone that is located between the front property line and a line 25 ft. from the front property line.
Side	None 5 feet
Rear	5 ft.
Rear, from center line of an alley	12 ft.
All property lines	30 ft. for portions of a building over 60 ft. in height

(F) *Minimum buildable street frontage.* 75% of lot width.

(G) *Building height regulations.*

Building Height Maximum	56 /84 ft.*
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*A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 56 feet. A building or a portion of a building that is located greater than 15 feet from the master street plan right of way line shall have a maximum height of 84 feet.

0-15 feet from front property line	Maximum 60 feet
0-15 feet from side and rear property line	Maximum 36 feet or the height of the adjacent building, whichever is greater ¹
15 feet + from all property lines	Maximum 60 feet ²
Building Height Bonus	84 feet ³

(1) The height of an adjacent building may only be utilized for this calculation if it is located on the common side or rear property line being developed.

(2) Individual balconies, awnings, overhangs and other similar architectural projections 6

feet or less in depth are permitted forward of the building façade.

(3) Building height may be permitted up to 84 feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions*.

161.25 Downtown General

(A) *Purpose.* *Downtown General* is a flexible zone, and it is not limited to the concentrated mix of uses found in the *Downtown Core* or *Main Street / Center*. *Downtown General* includes properties in the neighborhood that are not categorized as identifiable centers, yet are more intense in use than *Neighborhood Conservation*. There is a mixture of single-family homes, rowhouses, apartments, and live/work units. Activities include a flexible and dynamic range of uses, from public open spaces to less intense residential development and businesses. For the purposes of Chapter 96: Noise Control, the *Downtown General* district is a residential zone.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 15	Neighborhood shopping goods
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 28	Center for collecting recyclable materials
Unit 36	Wireless communication facilities
Unit 40	Sidewalk Cafes

(C) *Density.* *None*

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Dwelling (all unit types)	18 ft.
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(2) *Lot area minimum.* *None.*

(E) *Setback regulations.*

Front	A build-to zone that is located between the front property line and a line 25 ft. from the front property line.
Side	None 5 feet
Rear	5 ft.
Rear, from center line of an alley	12 ft.

(F) *Minimum buildable street frontage.* 50% of lot width.

(G) *Building height regulations.*

Building Height Maximum	56 ft.*
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0-15 feet from front property line	Maximum 36 feet
0-15 feet from side and rear property line	Maximum 36 feet or the height of the adjacent building, whichever is greater ¹
15 feet + from all property lines	Maximum 60 feet ²

(1) The height of an adjacent building may only be utilized for this calculation if it is located on the common side or rear property line being developed.

(2) Individual balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the building façade.

164.11 Height or Setback Regulations; Exceptions

- (A) The height limitations contained in the Zoning Regulation, Chapter 161, do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, stair towers, elevator shafts or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.
- (B) **Interior Side Setbacks.** In zoning districts that permit two, three or other multi-family residential uses, side setbacks may be varied to permit common walls between single family attached / townhouse dwellings, subject to all applicable building and fire codes and the following standards:
- (1) The total number of dwelling units on the lot, prior to being subdivided into single family attached / townhouse lots, shall conform to the minimum bulk and area requirements of the underlying zoning district.
 - (2) The townhouse development shall conform to the zoning district density, exterior setback requirements, height regulations and all other applicable city ordinances.
 - (3) There shall be a minimum lot width of 18 feet for each dwelling unit.
 - (4) There shall be no minimum lot area requirement unless otherwise specified by the underlying zoning district.
- (C) **Side and rear setback.** Zoning districts that require a 5-foot side and/or rear setback with an accompanying building height stepback may be permitted to reduce the side and/or rear setback to 0 feet if one or more of the following circumstances exist:
- (1) if there is no principal structure on the property directly adjacent to the common side and/or rear property line;
 - (2) if a principal structure that is adjacent to the common side and/or rear property line is already within 5 feet of said property line; or
 - (3) if the developing property owner owns the adjacent property on the common side and/or rear property line.
- (D) Any building over 36 feet in height utilizing urban streetscapes shall provide for a minimum 10-foot wide sidewalk adjacent to all streets on which a sidewalk is required to be replaced or constructed due to the development proposed.
- (E) **Building Height Bonus.** A building height bonus may be granted, subject to the following requirements. These standards apply to all buildings within a development site.
- (1) A minimum 12-foot wide sidewalk for projects utilizing urban streetscapes shall be constructed adjacent to all streets on which a sidewalk is required to be replaced or constructed. More extensive tree planting areas may be required to help mitigate for loss of greenspace and addition of impervious surface.
 - (2) Any associated parking garage shall be screened from view at the street grade with a liner building.
 - (3) A minimum of 50% of the additional gross floor area of a building above 60 feet in height shall be dedicated to residential use. The residential area, once calculated, may be distributed anywhere throughout the building.
 - (4) Prior to obtaining a building permit, the developer shall submit an energy model and LEED checklist (or approved equivalent) for all buildings in the development indicating which credits are intended to be pursued to achieve USGBC LEED Gold (or approved equivalent) building standards. Proof of LEED Gold certification (or approved equivalent) shall be submitted to the city within 180 days of issuance of a Certificate of Occupancy. All projects shall show effort to achieve the Development Density and Community Connectivity credit, or equivalent.
 - (5) Any side of a building immediately adjoining a principal structure on an adjacent lot shall utilize materials, colors and other architectural features similar to the front façade.

156.02 (F) Specific tests

(F) *Specific Tests.* The Board of Adjustment shall apply specific tests for the following variance requests:

- (1) *Height variances in all districts.* In addition to meeting all other normal requirements for a variance, an applicant seeking a height variance must establish the increased height of the proposed structure will not adversely affect adjoining or neighboring property owners, nor impair the beauty of Old Main, the historical churches on Dickson Street near East Avenue, nor otherwise impair the historic beauty and character of Fayetteville.
- (2) The Planning Division and/or Board of Adjustment may require an applicant to produce a viewshed analysis and/or a Sun/Shadow Study using industry-accepted methodologies to show the impact of a height variance proposal on neighboring streets and properties, in an effort to determine if there is an adverse impact caused by the proposal.



October 7, 2013

Mayor and City Council Members
City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

RE: Proposed Ordinance to Create an Energy Improvement District

Ladies and Gentlemen,

On behalf of the Arkansas Advanced Energy Association (AAEA), I want to express our strong support for your adoption of the proposed ordinance that would create an energy improvement district under terms of the Arkansas Property Assessed Clean Energy Act.

This is an exciting opportunity for the City of Fayetteville to become the first local jurisdiction to take advantage of enabling legislation adopted by the Arkansas General Assembly this year that creates a voluntary financing option for energy improvements to reduce energy costs for commercial property owners and ignite job expansion in the advanced energy sector.

As a strong advocate for adoption of the PACE Act by the General Assembly, AAEA consulted a list of key stakeholders to incorporate their concerns and best practices into the Arkansas law. These included the Association of Arkansas Counties, Arkansas Municipal League, Arkansas County Collectors Association, Arkansas Bankers Association and Arkansas Association of General Contractors.

This resulted in a well-crafted document that protects cities and counties from credit risk while giving them the local option to enable private investment in energy savings that create jobs and increase cash flow for property owners. Eligible projects under the Arkansas PACE law include energy efficiency, renewable energy and water conservation.

Since the first PACE financing mechanism was enacted by the State of California in 2008, 30 states have adopted PACE-enabling legislation with 24 having actually launched programs. AAEA continues to monitor and analyze these programs to create a catalogue of best practices and case studies from participating regions that demonstrate clear advantages for communities, commercial property owners and the energy savings industry.

Here are just some of the conclusions we can draw:

- Interest rates on PACE loans that account for 100 percent of the project cost are averaging between 4.75% and 7% across the country;
- Size of projects range from around \$20,000 for a small business to millions of dollars for large properties like shopping centers or office complexes;
- Business owners are increasing their company's cash flow enabling them to retain jobs and become more competitive in the marketplace;
- Existing mortgage lenders support projects that meet their clients objectives and increase value of their collateral;
- Energy service contractors are generating new sales as a result of PACE programs;
- Local governments like PACE because it creates jobs, generates economic activity with no added credit risk;
- Private market investors like PACE because assessment liens are a proven, strong credit.

PACE addresses one of the largest barriers to energy savings retrofits – up front financing and short-term loans. In testimony before legislative committees during General Assembly consideration of PACE earlier this year, AAEA energy savings company CEOs estimated potential job growth for their companies at 30 percent once PACE is deployed in their respective regions.

Thank you for the opportunity to comment on the Fayetteville City Council's consideration of the proposed ordinance to create the state's first Energy Improvement District. The City of Fayetteville has previously established an exemplary record of promoting sustainable building practices. Adding property assessed clean energy financing to the mix, will unleash the transformational economic power of a vigorous energy savings program for existing buildings throughout your community.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Patterson", with a stylized, cursive script.

Steve Patterson
Executive Director

EXHIBIT A 11.0

CONTRACT FOR SERVICE

The Boston Mountain Regional Solid Waste Management District (District) and the City of Fayetteville, Arkansas agree to enter into the following agreement to provide environmental education and outreach in the City of Fayetteville.

Environmental Education is to be provided by the District. The District has the resources available to provide public education and community outreach relating to solid waste management and waste minimization education in Fayetteville.

It is agreed by the District and the City of Fayetteville as follows:

The District shall:

1. Provide waste reduction and waste minimization education to citizens of the City of Fayetteville.
2. Prepare and present education programs to Fayetteville's citizens on services and programs available to them related to solid waste management, including recycling.
3. Provide an environmental educator that will perform at least 1,040 hours per year on environmental education for the City. For any partial year performance, the District shall provide a prorated number of hours per year at a rate of 86.67 hours per month.
4. The environmental educator will be an employee of Boston Mountain Solid Waste District. The District agrees to indemnify and hold harmless, to the extent such is not in conflict with immunities provided for by state law, the City of Fayetteville and all of its officers and officials from any claims, of whatever nature, relating to the employment of the environmental educator.
5. Provide an annual report to the City of outreach programs and services performed. Said report shall be provided by January 31 of the year for the prior year. The report shall include detailed statistics regarding the number of Fayetteville citizens served by the education services provided by the District pursuant to this agreement, and the nature and content of educational services provided.

The City of Fayetteville shall:

1. Pay for this service the sum of \$25,000 per calendar year. A pro-rated sum shall be paid for any partial year performance for the calendar year of the execution of this agreement (2013).

This contract shall renew automatically on an annual basis unless by December 1st, either party provides written notice to the other of its intention not to renew this agreement.

All provisions of this agreement are contingent on annual budget authority granted by the City Council of the City of Fayetteville, Arkansas.

Signatures:

BOSTON MOUNTAIN REGIONAL SOLID WASTE
MANAGEMENT DISTRICT



HONORABLE FRANK WEAVER
BOARD CHAIRMAN

Oct. 3, 2013
DATE

CITY OF FAYETTEVILLE, ARKANSAS

MAYOR LIONELD JORDAN

DATE

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray

Ward 1 Position 2 – Sarah Marsh

Ward 2 Position 1 – Mark Kinion

Ward 2 Position 2 – Matthew Petty

Ward 3 Position 1 – Justin Tennant

Ward 3 Position 2 – Martin W. Schoppmeyer, Jr.

Ward 4 Position 1 – Rhonda Adams

Ward 4 Position 2 – Alan T. Long

**City of Fayetteville Arkansas
City Council Meeting Minutes
October 01, 2013**

A meeting of the Fayetteville City Council was held on October 01, 2013 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 Adella Gray, Sarah Marsh, Mark Kinion, Matthew Petty, Justin Tennant, Martin Schoppmeyer, Rhonda Adams, Alan Long, Mayor Lioneld Jordan, Assistant City Attorney Jason Kelley, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations, and Recognitions: None

City Council Meeting Presentations, Reports, and Discussion Items: None

Agenda Additions: None

Consent:

Approval of the September 3, 2013 and September 17, 2013 City Council meeting minutes.

Approved

Selective Traffic Enforcement Program Grant: A resolution authorizing acceptance of a 2013-2014 Selective Traffic Enforcement Program (STEP) Grant award in the amount of \$100,500.00, and approving a budget adjustment.

Resolution 200-13 as recorded in the office of the City Clerk

Equipment Resource Management, Inc.: A resolution authorizing the purchase of one (1) Wirtgen W35DC mini milling machine from Equipment Resource Management, Inc. of Little Rock, pursuant to National Joint Powers Alliance Cooperative purchasing agreement, in the amount of \$132,134.00, and approving a budget adjustment.

Resolution 201-13 as recorded in the office of the City Clerk

Community Services Division Budget Adjustment: A resolution approving a budget adjustment in the total amount of \$5,103.00 representing CDBG program income received through a housing program lien payoff.

Resolution 202-13 as recorded in the office of the City Clerk

Trail Naming: A resolution naming Clear Creek Trail and an extension of Scull Creek Trail.

Resolution 203-13 as recorded in the office of the City Clerk

Alderman Tennant moved to approve the Consent Agenda as read. Alderman Adams seconded the motion. Upon roll call the motion passed unanimously.

Unfinished Business:

Fayetteville Government Channel's Mission Statement Amendment: A resolution amending the Fayetteville Government Channel's Mission Statement, Goals Statement and Operating Policies, as approved by Resolution No. 180-10, to prohibit the recording or televising of meetings of the Nominating Committee of the City Council by the Fayetteville Government Channel. ***This resolution was Tabled at the September 03, 2013 City Council meeting to the October 01, 2013 City Council meeting.***

Alderman Gray: I would like to table this resolution indefinitely. It was never intended to be such a divisive issue as it has turned out to be. It is not about transparency, but rather about the citizens of Fayetteville who voluntarily choose to serve on our Boards and Commissions. As the Chair of the Nominating Committee, we have enjoyed getting to know citizens as they apply for the many positions and we do not want anything to discourage them from applying. This process has never been filmed and it never occurred to any of us that anyone would consider it appropriate to film interviews and deliberations. However, the ordinance is in place and we shall follow it and do our best to choose the best applicants for the positions as we have always done.

Alderman Gray moved to table the resolution indefinitely. Alderman Tennant seconded the motion. Upon roll call the motion passed unanimously.

This resolution was Tabled Indefinitely.

2013 Millage Levy: An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2013 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 September 17, 2013 City Council meeting.***

Alderman Long moved to go to the third and final reading. Alderman Gray seconded the motion. Upon roll call the motion passed 7-1. Alderman Marsh voting no.

Assistant City Attorney Jason Kelley read the ordinance.

Paul Becker, Finance Director gave a brief description of the ordinance and stated that it is necessary to continue the millage, but the Mayor does not want to recommend an increase in taxes at this point in time.

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

Ordinance 5621 as recorded in the office of the City Clerk

Amend §164.11 Height and Setback Regulations; Exceptions: An ordinance to Amend §164.11 Height and Setback Regulations; Exceptions to enhance livability through appropriate transitions in building scale and to protect access to air and sunlight and to enact an emergency clause. ***This ordinance was left on the First Reading at the September 17, 2013 City Council meeting.***

Assistant City Attorney Jason Kelley read the ordinance.

Alderman Marsh: I would like to thank our Planning staff for their work on this amendment you have before you tonight. We are not done with it yet and I am not ready to propose the amendment. There are some clarifications and details we are working out, but the major issues have been addressed. Our Planning staff has worked closely with me, but has also met with Alderman Petty and various stakeholders on both sides of the issue in our community. I believe we have crafted a nice proposal that helps balance the needs of existing residents with future development.

Jeremy Pate, Director of Development Services gave a brief description of the proposed amended ordinance and stated that they are continuing to work on it.

Assistant City Attorney Jason Kelley: We have a procedural issue. I read the ordinance before we had a motion and second to go to a second reading. If we could have a motion and a second to suspend the rules and go to second reading that will keep me from having to actually read it again.

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

Assistant City Attorney Jason Kelley read the ordinance.

Nina Shirkey, 229 North Block Street: I would like to thank Mr. Pate and everyone who worked on this. I know it is a difficult process, but it is very important work. I have some concerns with allowing architectural overhangs or balconies within the setback zone which may potentially create another loop hole where you are not protecting access to sunlight and air.

Mayor Jordan: You have concerns about the balcony overhangs?

Nina Shirkey: I do and would like a more specific definition of what an architectural feature is and exactly what percentage of the setback zone it would be allowed to take up. I know you said six feet and essentially you are limiting the setback to less than 15 feet.

Jeremy Pate: The building facade could go to 15 feet. I think you are right and for us to enforce this it needs to be more clearly defined what those are. That is something we will look into.

Fran Alexander: We need an ordinance to address this problem now because it's going to be an ongoing problem Downtown. I think it is time to have some public input to talk about these different districts. We are seeing changes fast in Fayetteville and a lot of us are very concerned about the old part of town. We worry if we will ever be able to see it again and how crowded it could become. I encourage you to think about having some public design meetings to talk about the changing character and look of our town. I hope there is a sponsor for something like that on this council. I support this ordinance.

Terra Stephenson, 16 West Maple Street: I was raised in Fayetteville and I am raising my kids on Maple Street. My husband and I have discussed moving because we are watching student housing developments go up in our neighborhood with dismay. I called Jeremy Pate and he was gracious enough to talk with me because I was so upset about the building going in behind Collier Drug Store. I want you to know there are people in that neighborhood who really care about preserving the single family homes. When I look at the development going on behind Colliers and I am told that it is considered a small development and therefore does not go before the Planning Commission, I am shocked. I am encouraged that we have a City Council that is considering more strict height and setback requirements.

This ordinance was left on the Second Reading.

New Business:

City of Johnson Rezoning: A resolution pursuant to Arkansas Code Annotated § 14-56-306(b) agreeing to a change in zoning from Planned Unit Development to C-1, Light Commercial/Office for property located in the City of Johnson that adjoins the City of Fayetteville.

Jeremy Pate, Director of Development Services gave a brief description of the resolution and stated that the Planning staff recommended approval of the resolution.

Alderman Gray moved to approve the resolution. Alderman Long seconded the motion. Upon roll call the motion passed unanimously.

Resolution 204-13 as recorded in the office of the City Clerk

PPL 13-4404 (Persimmon Street Master Street Plan Right-of-Way/Legacy IV Subdivision):

A resolution to approve the dedication of 70 feet of right of way for Persimmon Street along most of the owner's property as recommended by the Planning Commission.

Mayor Jordan: I understand we have a request to table.

Jeremy Pate: Yes, Mayor. The applicant contacted the City Clerk office just before the meeting tonight and I was informed that they would like to table this. I don't see the applicants in the audience and I request that it be tabled and we can take it up at the next meeting.

Alderman Gray moved to table the resolution to the October 15, 2013 City Council meeting. Alderman Tennant seconded the motion. Upon roll call the motion passed unanimously.

This resolution was Tabled to the October 15, 2013 City Council meeting.

RZN 13-4467 (Mount Comfort and Shiloh/Kum & Go): An ordinance rezoning that property described in rezoning petition RZN 13-4467, for approximately 1.65 acres located at the northwest corner of Mount Comfort Road and Shiloh Drive from R-A, Residential Agricultural and RSF-4, Residential Single-Family, 4 units per acre, to C-1, Neighborhood Commercial.

Assistant City Attorney Jason Kelley read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance and stated that staff is not supporting C-1 that the Planning Commission supported in the application.

Mayor Jordan: They could put the gas station across the street from where they are wanting to build?

Jeremy Pate: In Community Services they could, because that is a use that is allowed within a Community Services District.

Alderman Schoppmeyer: Does staff approve of commercial use of that corner?

Jeremy Pate: Yes

Alderman Schoppmeyer: Doesn't the city plan state that these types of uses should be at high traffic corners and that property is on the future land use map as commercial?

Jeremy Pate: It states that there should be a mixture of high intensity uses which can be high intensity residential or commercial.

Alderman Petty: Would staff support this if it was a request to go to Community Services?

Jeremy Pate: Yes, I believe so.

Alderman Petty: I didn't see it in the Planning Commission minutes, but are you aware if the Planning Commission approached that subject in their meeting?

Jeremy Pate: I am not aware if that specific zoning designation came up. At Agenda Session the two Ward 4 Council members asked me to approach the applicant again about that very possibility and I did. I conferred with my staff and they had discussed that district before the application. It is generally our policy to do so because your policy tells us to do that, to encourage traditional town form and the best tool that we have to accomplish that goal and principle in our future land use plan is to look at our form based districts. That is one of the benchmarks that were set for us to establish and so as a policy we generally encourage that type of form where it is appropriate. There are times when we don't encourage that because it is not the right place or development style. In this particular case we understood what the applicant was proposing and looking at the transition of uses. There are some non residential uses that have historically been on this corner, but very near by there are residential uses. A transition was a key part of what we looked at in our recommendation.

Alderman Marsh: A use such as a gasoline service station or drive through restaurants is permitted in the Community Services, but the form has to be more walkable and compatible with the neighborhood?

Jeremy Pate: Yes to your first question. Secondly, with the form based codes that you all amended several weeks ago, there is a provision that an assessment of certain uses that aren't as traditional town form as we would like for them to be. Drive through restaurants was one, convenience stores and gasoline stations were another. We recognize through multiple applications that the size of the building, relative to the site needed for the function of the development doesn't necessarily produce the form that we are always looking for. What we have attempted to craft were design regulations that would exempt them from many of the standards that traditional town form standards and form based code standards require, but still have supplemental elements that can make up a portion of that and still place the building at least along one of the streets if it is at corner location. To allow for the pump stations, canopy, and drive through area to be off of the street or be out in front as long as the structure is architecturally embellished to match the principle structure. We utilized a number of other cities examples of how they have gone through the exact same exercise

Alderman Adams: If we do vote to rezone this property and if a convenience store with gas pumps came in, is there another process for them to go through for approval of anything?

Jeremy Pate: This is a 23 acre parcel and it is likely they would split out this piece of property to the size that they are looking to develop. I would assume that's 1.6 acres which is what the actual rezoning application legal description is for. Because it is over an acre it would require large scale development and that goes before our Planning Commission. The standards for large scale development are relatively objective so there are very few subjective decisions.

Rob Waddell, Kum & Go: I know this isn't about how Kum & Go can grow with Fayetteville. I understand this is about a land use decision.

Mr. Waddell presented a Power Point presentation explaining why he chose the site and why he believes that C-1 is appropriate. He stated that this business would be less than a quarter of a mile from Interstate 540 and it has thousands of cars traveling on a daily basis. It would not be a destination for people and Kum & Go is just looking for the drive by traffic. He stated that more services are needed on this side of town due to the lack of gas station availability. He said the only thing that he did not like about Community Services is that his building has to be within 20 or 25 feet away from the property line and that would push his building up against the street. He stated if he had to put his gas pumps behind the store where they are not visible to customers, then it would be too large of a risk to take.

He continued to speak about walkability and is supportive of the concept. His business will have bike racks and air stations. He is willing to make the sidewalk wider and make a bench rest area due to a walking trail being nearby.

Alderman Petty: You said your main concern was pushing the building to the street. Is that to any street or just Mount Comfort?

Rob Waddell: Mostly towards Mount Comfort.

Alderman Tennant: I hope someday that we can expand public transportation all over town, but certainly over there. Does Kum & Go ever build bus stops?

Rob Waddell: Yes, there is one in Bentonville that we put up a specific bench and that is a classification for our LEED standards. If you get LEED certified you get points by having public transportation come by.

Alderman Tennant: If we ever expanded public transportation out that way you would be open to that?

Rob Waddell: Yes, we would love it.

Alderman Tennant: When you decide on a location to go after, are the amount of people served per day part of your decision or do you look at car traffic?

Rob Waddell: It is mostly cars and also population.

Alderman Tennant: Do you have any idea how many people you would be serving from that location?

Rob Waddell: We would probably serve over a thousand people a day. This is drive by traffic.

Alderman Long: Some citizens believe that this business will increase the traffic problem by bringing more traffic into the neighborhood. Is your target audience the traffic that is coming in and going out on a normal basis already or are you looking to draw more in?

Rob Waddell: It is only the traffic from Mount Comfort that we are looking at.

Kim Peters, 2807 West Sauter Lane: I have lived in my home for seven years which is right off of Mount Comfort. I respectfully ask you to decline the rezoning request. I visited with city staff and researched the City Plan 2030. I urge you to think back to the efforts you put into designing the plan and to remember your collaborative efforts with residents who voted you on the Council. I ask you to not waiver from the commitments that you made when you developed the plan.

Joan Hays: My late husband's family has owned the property in question for 90 years and has paid taxes and farmed on it. They didn't need a Kum & Go when they first came here. Their transportation was a wagon and a team of horses. The neighborhood kids walked to Meadow Valley School, which is where the Agri Park is now located. The family gardened and raised cattle. I have been in the neighborhood since 1961 and it was a rural area when I came here. I enjoyed a beautiful and big shady yard.

Then the subdivisions began to develop on Mount Comfort Road. We liked the rural atmosphere and we did not solicit the expansion of the city around us, but each year brought more subdivisions and we considered this progress for Fayetteville. I use to back my car out on Mount Comfort Road and I wouldn't dare do that today because of the traffic increase. The widening of the road took away some very dear old landmarks for us, but that was progress. We lost our shady yard and we have not requested our neighbors to not develop their land. I have considered long and hard about selling this corner because our roots are firmly established in that property and in Fayetteville. My neighbors and I need gasoline and sometimes just a gallon of milk. Every one that bought a new home further west has increased our traffic and we haven't been up here saying to them go away. I feel that some of the people complaining about the traffic are the people who are now here and saying to others go away. We have a nice community and I don't think that a convenience store would change that and I urge you to give us services that are needed.

Clinton Bennett, 2270 Thistle voiced his support for the rezoning and would be excited to see a Kum & Go established. He stated that conveniences are needed in that area so that he wouldn't have to drive to a different part of town for basics such as gasoline for his vehicle.

Gaylon Denham: I own several properties in the area. My background is in architecture and I am aware of the ideas behind walkability in a neighborhood and the idea that you need several types of services available. I think this is a good idea and it would be an asset to our community.

I have lived here for 20 years and for the past ten years I've kept two gallons of gas behind my office because so many people stop due to running out of gas. I think this is a good use for this property.

Tracy Hoskins: I am a current resident of Ward 3, but will soon be a resident of Ward 4. As a Planning Commissioner I don't like to speak on various things, especially those that come through the Planning Commission. I am here tonight as a resident, not as a Planning Commissioner.

Mr. Hoskins stated that he dislikes having to get gasoline for his vehicles on Wedington Drive because the traffic is a mess at all times of the day. He stated that when he gets gasoline at a convenience store on Wedington Drive, there are gas pumps on the front and the back of the business. He does not like retrieving gasoline from the back of the store do to the lack of feeling safe. He prefers that Kum & Go have their gas pumps at the front of the store.

He continued to speak about the various mixtures of zonings throughout the City of Fayetteville. He spoke about trails and how they are an alternative form of transportation, not a replacement for transportation. He stated that if you are going to develop trails within an urban environment, then cars and trails are going to meet eventually and compete. He believes this is one of those cases where they have to occupy the same space. He is glad to see something such as Kum & Go that will bring in more property taxes and revenue for the city and conveniences for the neighborhood and is in favor of the rezoning.

Dan Epperly, 2525 West Mount Comfort Road: I have lived here since 1959. We have seen Mount Comfort community come a long way since we moved out there. Mount Comfort was a gravel road on the way to Wheeler. Then it became a two lane black top with a ditch on each side and now look at what we have. This is thanks to you and people like you in the years gone by that have worked so hard to make our city grow. The traffic count on Mount Comfort should show you how a business like Kum & Go is needed in that area.

Alderman Long: I do not want to vote on it tonight.

Mayor Jordan: I understand that.

Alderman Kinion: Leaving it on the First Reading is fine with me.

Alderman Long: We could hold it at this one so that we can talk about it at the Ward 4 meeting.

Mayor Jordan: That will be great and we will hold it on the First Reading and in two weeks we will continue.

This ordinance was left on the First Reading.

City Council Agenda Session Presentations:

City Council Tour:

Announcements:

Don Marr, Chief of Staff: This Saturday, October 5, 2013 we have a Ward 4 cleanup at Owl Creek and Holcomb Elementary from 7:00 a.m. to 2:00 p.m.

We have the Chili Pepper run this Saturday, October 5, 2013.

Adjournment: 7:30 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk/Treasurer



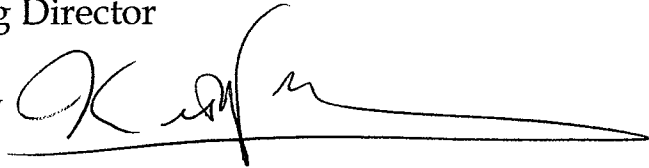
Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Jeremy Pate, Development Services Director
Andrew Garner, City Planning Director

FROM: Kit Williams, City Attorney



DATE: October 11, 2013

RE: Incentive Zoning vs. Light and Air Protection

When our office was presented with the proposed major change to the U.D.C. Zoning criteria sponsored by City Council Member Sarah Marsh that would vary setback requirements for LEED certified gold buildings, I asked Assistant City Attorney Jason Kelley to research the law about the City's power or lack of power to use this type of "incentive" zoning in Arkansas. Attached is his two page memo to me (without his attachments).

As you see, this appears to be a legally untested zoning scheme for Arkansas. The short initial proposed U.D.C. amendment I had drafted for City Council Member Sarah Marsh was narrowly focused to provide some preservation of adequate light and air for single family structures being used as residences. There is strong statutory authority for such regulation to ensure adequate light and air for homes.

"Purpose of plans.

- (a) The plans of the municipality shall be prepared in order to promote...(the) general welfare of the citizens.
- (b) The plans may provide...for:

....

(5) Adequate light and air in the use and occupancy of buildings...."

A.C.A. § 14-56-403 of Chapter 14, **Building and Zoning Regulations - Planning** of the Arkansas Code (emphasis added).

The **Building and Zoning Regulations - Planning** chapter makes no mention of "incentive" zoning. It specifically provides for a setback ordinance (A.C.A. § 14-56-418 **Setback ordinance**). For many decades the Board of Adjustment which is required to be established by A.C.A. § 14-56-416 **Zoning ordinance**, has been empowered and decided all zoning setback variance requests. This appears to be required by that state statute, and the only appeal from the Board of Adjustment's decision is to Circuit Court.

The City Council may not overrule the Board of Adjustment's decision. The City Council may not even be statutorily allowed to erode the Board of Adjustment's statutory power to grant setback or height variances by incorporating a "may be permitted" setback or height variance for certain situations described in the proposed § 164.11 (c). The ordinance is unclear who "may" permit such variances. I assume it must be the Board of Adjustments.

Probably the only entity authorized to grant such setback and height variances is the Board of Adjustments which already has the statutory right to grant variances to prevent "undue hardship" and "protect adjacent

property.” A.C.A. § 14-56-416 (2). However, since having a LEED Certified Gold building is unrelated to air and light protection of adjoining structures, I doubt it could condition any height variance by trying to require LEED Certification.

Another problem with this proposal is that the state enabling statute requires that “(t)he regulations imposed within each district or zone shall be uniform throughout the district or zone.” A.C.A. § 14-56-416 (a)(3)(E)(ii). This incentive zoning proposal would vary the imposed regulations within the zoning district if the building was rated high enough by an outside corporation. I doubt whether our zoning regulations can be varied by U.S. Green Building Council, Inc. without violating this state required uniformity rule.

An opponent of this ordinance could also argue allowing an outside corporation (the U.S. Green Building Council) to determine whether or not to issue the required LEED Gold Certificate (which is required “within 180 days of issuance a Certificate of Occupancy”) is an **unconstitutional delegation of legislative and/or administrative power to an outside corporation**. I also wonder what would the City do if this Green Building Council refuses to issue a LEED Gold Certificate? Must the builder remove the top floors of the building? If the City tried to force such action, I would guarantee a court challenge to this ordinance.

There are certainly ways to improve and clarify the initial setback/stepback protection for single family homes that I initially and quickly drafted for City Council Member Sarah Marsh. Community Services Director Jeremy Pate has great experience and expertise in this area and his recommendations should carry a lot of weight. However, before the City Council considers the significant changes to **over ten pages** of the Unified Development Code now being proposed, I believe that the proposals should go to the Planning Commission for its consideration and suggestions. This is a much more detailed, complex, comprehensive, and substantial proposal than the **single paragraph** I drafted initially. I believe the currently proposed city-wide zoning changes and complex over sixty foot building height regulations need much more study and Planning Commission input before they would be ready for your consideration.

14-56-416. Zoning ordinance.

(a)(1) Following adoption and filing of the land use plan, the commission may prepare for submission to the legislative body a recommended zoning ordinance for the entire area of the municipality.

(2) The ordinance shall consist of both a map and a text.

(3)(A) The ordinance may regulate the location, height, bulk, number of stories, and size of buildings; open space; lot coverage; density and distribution of population; and the uses of land, buildings, and structures.

(B) The ordinance may require off-street parking and loading.

(C) The ordinance may provide for districts, of compatible uses, for large scale unified development, for elimination of uses not in conformance with provisions of the ordinance, and for such other matters as are necessary to the health, safety, and general welfare of the municipality.

(D) The ordinance shall include provisions for administration and enforcement.

(E)(i) The ordinance shall designate districts or zones of such shape, size, or characteristics as deemed advisable.

(ii) The regulations imposed within each district or zone shall be uniform throughout the district or zone.

(b)(1) The ordinance shall provide for a board of zoning adjustment, which may either be composed of at least three (3) members, or the commission as a whole may sit as the board of zoning adjustment.

(2) The board shall have the following functions:

(A) Hear appeals from the decision of the administrative officers in respect to the enforcement and application of the ordinance, and may affirm or reverse, in whole or in part, the decision of the administrative officer;

(B)(i)(a) Hear requests for variances from the literal provisions of the zoning ordinance in instances where strict enforcement of the ordinance would cause undue hardship due to circumstances unique to the individual property under consideration, and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the ordinance.

(b) The board shall not permit, as a variance, any use in a zone that is not permitted under the ordinance.

(c) The board may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

(ii) Decisions of the board in respect to the above shall be subject to appeal only to a court of record having jurisdiction.

(3)(A) The board shall establish regular meeting dates, adopt rules for the conduct of its business, establish a quorum and procedure, and keep a public record of all findings and decisions.

(B) Each session of the board shall be a public meeting with public notice of the meeting and business to be carried on published in a newspaper of general circulation in the city, at least one (1) time seven (7) days prior to the meeting.



To: Kit Williams, City Attorney
From: Jason Kelley, Asst. City Attorney 
Re: Incentive Zoning/Incorporating LEED standards into UDC
Date: October 9, 2013

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

The amendments to be offered to the proposed setback, stepback ordinance consist, in part, of the incorporation of certain LEED certifications as prerequisites to increased building height allowances. This is a form of incentive zoning that, to my knowledge, has not been attempted in the State of Arkansas.

As background, incentive zoning is a method whereby a property developer is allowed to develop in a way that is not permitted in exchange for certain public benefits that are otherwise not required. According to a summary from the American Planning Association, incentive zoning:

allows a city to leverage variations in existing zoning standards and obtain public goods. For example, a developer may provide schools, parks, open space, plazas, low-income housing, or money, in exchange for greater flexibility in required building setbacks, floor heights, lot area, parking requirements, number of dwellings, and other minimum standards. The incentives vary by location, but governments usually calculate the incentives to balance the public advantage with developer's costs and gains.

American Planning Association, Property Topics and Concepts, <http://www.planning.org/divisions/planningandlaw/propertytopics.htm> (last visited Oct. 9, 2013). It is certainly possible that the provision of energy efficient/environmentally sustainable development could be one of the "public goods" envisioned in an incentive zoning program.

The use of incentive zoning is not without controversy. In addition to policy-related objections, legal writers have raised potential issues, particularly relating to applying LEED standards as an incentive in an incentive zoning program. One objection is that LEED standards are privately developed and controlled by the U.S. Green Building Council (USGBC), a private non-profit corporation. LEED standards change. These changes are not subject to any voting or public approval process. Delegating this authority to a private entity could be a violation of the constitution. One potential remedy for this concern would be to "set" the LEED standard as of the date of adoption of the local ordinance. This would not permit future changes (as determined by USGBC) to be included in City requirements without further adoption/amendment by the City Council.

Concerns also arise related to the *Nollan* “substantial nexus” analysis. It has been stated:

There is some logical and legal support for applying *Nollan*’s nexus test to incentive zoning provisions. The *Nollan* Court stated that the evident constitutional propriety of an exaction disappears “if the condition substituted for the prohibition utterly fails to further the end advanced as justification for the prohibition. When that nexus is eliminated, the situation becomes the same as if California law forbade shouting fire in a crowded theater, but granted dispensations to those willing to contribute \$100 to the State Treasury.” Courts have long applied such a nexus test to the grant of variances and special exceptions. It may well be that the public amenities or exactions that may be constitutionally secured through incentive zoning bonuses are no greater than those that could be involuntarily secured through mandated development conditions.

3 Arden H. Rathkopf & Daren A. Rathkopf, *Rathkopf’s The Law of Zoning and Planning* § 52:7.

Here, the proposal is to limit the height and “nearness” of a building to adjoining residential property. However, if a developer builds to a specified LEED standard, the building would be allowed to intrude upon the residential neighbor’s space, air and light. It is difficult to argue a nexus between these two competing interests (the interest in environmental/energy efficient construction and the interest in preserving space, air and light for residential property owners). Stated another way, the energy efficiency or environmental sustainability of a building does not ameliorate the harmful effects the placement of that building near a residence may cause. Likewise, a larger building built to a LEED standard may use more energy than a smaller building on the same site, whether or not the smaller building was built to a LEED standard. More size means more materials are used in construction and more utilities are used during occupancy. These issues may cause a court to find an insufficient “nexus” to support the constitutionality of the regulation.

I have attached an assortment of articles and research touching on these issues. This is a brand new area, and there is simply not that much law on the topic.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §§ 161.16, 161.18, 161.19, 161.20, 161.21, 161.22, 161.23, 161.24, AND 161.25 TO CHANGE SETBACKS AND STEPBACKS FOR ADJOINING PROPERTY AND HEIGHT LIMITATIONS FOR SEVERAL DISTRICTS AND TO AMEND § 164.11 **HEIGHT AND SETBACK REGULATIONS; EXCEPTIONS** TO REDUCE OR ELIMINATE SETBACKS IN CERTAIN CIRCUMSTANCES, TO REQUIRE WIDER SIDEWALKS FOR BUILDINGS HIGHER THAN 36 FEET AND TO PROVIDE A BUILDING HEIGHT VARIANCE FOR BUILDINGS RECEIVING LEED GOLD CERTIFICATION AND MEETING OTHER REQUIREMENTS, AND TO AMEND § 156.02 (F) TO AUTHORIZE A REQUIREMENT FOR A HEIGHT VARIANCE APPLICANT TO PROVIDE A VIEWSHED ANALYSIS OR A SUN/SHADOW STUDY

WHEREAS, appropriate transitions in building scale enhance livability and architectural cohesion in mixed-use areas, helping to enrich our built environment by promoting the compatibility of new development with historic structures; and

WHEREAS, Fayetteville homeowners' rights to adequate sunlight and room for air and wind should be protected; and

WHEREAS, preservation of the many homeowners' single family residences used as homes in the Downtown Master Plan District and other areas with inadequate setback protection from large and tall buildings require that minimum side and rear setbacks and upper story stepbacks be enacted to ensure adequate sunlight, wind and air for these homes to remain attractive and healthful places to live; and

WHEREAS, residential homeowners who wish to install solar panels or passive solar heat collectors, etc. must have enough protected access to sunlight for these ecological and green technology products to work effectively; and

WHEREAS, trees and other plants within the yards of homes also need adequate sunlight that reasonable setback and stepback regulations can ensure; and

WHEREAS, side and rear setbacks should be able to be eliminated under certain circumstances; and

WHEREAS, building height limitations currently allowed by the Unified Development Code should be lowered to 60 feet unless a height variance is allowed under certain circumstances including the attainment of LEED Gold Certification; and

WHEREAS, the Planning Department should be able to require a height variance requestor to provide a viewshed analysis or sun/shadow study of the proposed project.

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 §§ 161.16, 161.18, 161.19, 161.20, 161.21, 161.22, 161.23, 161.24, and 161.25 and enacts these amendments as shown on Exhibit A attached hereto.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby amends § 164.11 **Height of Setback Regulations; Exceptions** by enacting a new (C) *Side and Rear Setback*, (D) *Buildings over Thirty-Six Feet in Height* and (E) *Building Height Bonus* as shown below:

- “(C) *Side and rear setback.* Zoning districts that require a 5-foot side and/or rear setback with an accompanying building height stepback may be permitted to reduce the side and/or rear setback to 0 feet if one or more of the following circumstances exist:
 - (1) if there is no principal structure on the property directly adjacent to the common side and/or rear property line;
 - (2) if a principal structure that is adjacent to the common side and/or rear property line is already within 5 feet of said property line; or
 - (3) if the developing property owner owns the adjacent property on the common side and/or rear property line.
- (D) Any building over 36 feet in height utilizing urban streetscapes shall provide for a minimum 10-foot wide sidewalk adjacent to all streets on which a sidewalk is required to be replaced or constructed due to the development proposed.
- (E) *Building Height Bonus.* A building height bonus may be granted, subject to the following requirement. These standards apply to all buildings within a development site.
 - (1) A minimum 12-foot wide sidewalk for projects utilizing urban streetscapes shall be constructed adjacent to all streets on which a sidewalk is required to be replaced or constructed. More extensive tree planting areas may be required to help mitigate for loss of greenscape and addition of impervious surface.

- (2) Any associated parking garage shall be screened from view at the street grade with a liner building.
- (3) A minimum of 50% of the additional gross floor area of the building about 60 feet in height shall be dedicated to residential use. The residential area, once calculated, may be distributed anywhere throughout the building.
- (4) Prior to obtaining a building permit, the developer shall submit an energy model and LEED checklist (or approved equivalent) for all buildings in the development indicating which credits are intended to be pursued to achieve USGBC LEED Gold (or approved equivalent) building standards. Proof of LEED Gold certification (or approved equivalent) shall be submitted to the city within 180 days of issuance of a Certificate of Occupancy. All projects shall show effort to achieve the Development Density and Community Connectivity credit, or equivalent.
- (5) Any side of a building immediately adjoining a principal structure on an adjacent lot shall utilize materials, colors and other architectural features similar to the front façade.”

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby amends § 156.02 (F) *Specific Tests* by enacting a new (2) as shown below:

- “(2) The Planning Division and/or Board of Adjustment may require an applicant to produce a viewshed analysis and/or a Sun/Shadow Study using industry accepted methodologies to show the impact of a height variance proposal on neighboring streets and properties, in an effort to determine if there is an adverse impact caused by the proposal.”

PASSED and APPROVED this 15th day of October, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

From: Jeremy Pate, Development Services Director 

Date: October 14, 2013

Subject: Persimmon Street Master Street Plan

UPDATE

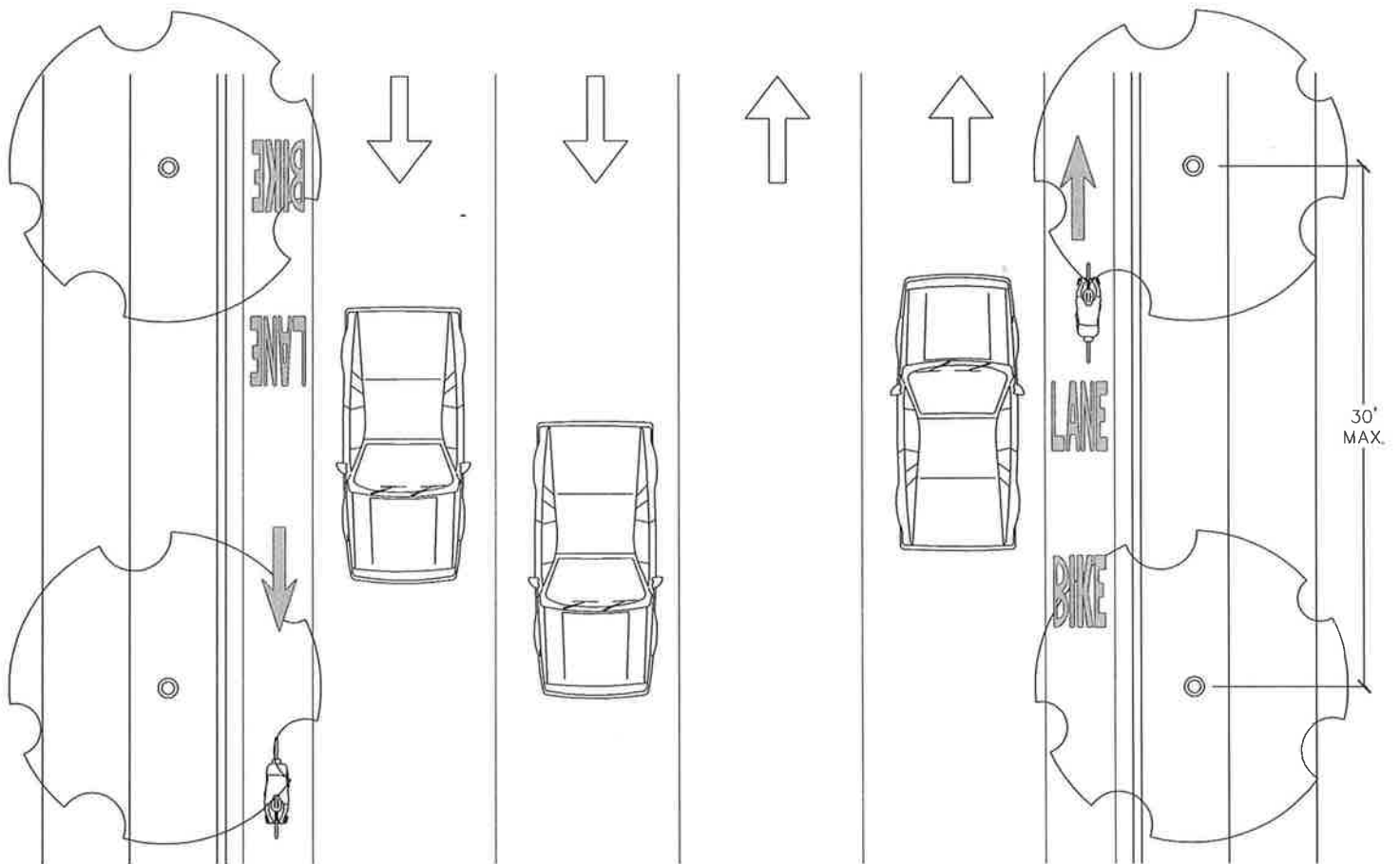
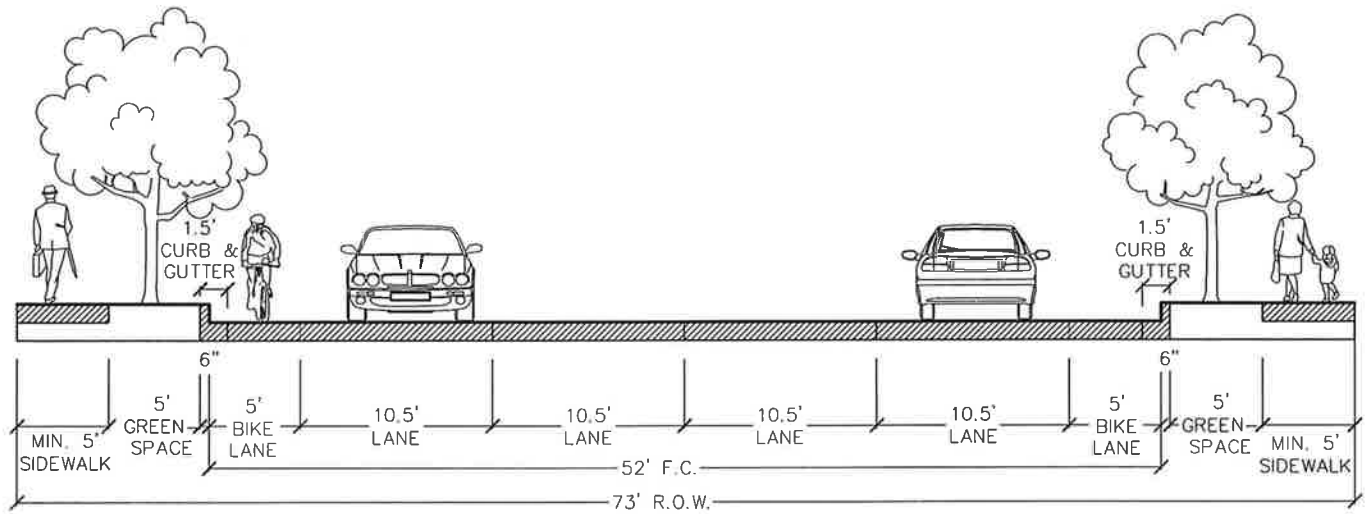
After the agenda session last Tuesday, the Mayor directed staff to engage in further conversations with the applicant for Legacy Subdivision Phase IV on Persimmon Street in an effort to find common ground related to the request on your October 15 agenda to reduce the Master Street Plan right-of-way dedication for a future subdivision along Persimmon Street from 77 feet to 70 feet. Staff did so, and after several conversations has worked out a compromise that achieves the goals of both the developer and the City, which is shown in the attached amended request and diagram.

City staff reviewed the current Minor Arterial cross-section to determine if there were opportunities to reduce the overall right-of-way from the ideal to something that would still function with 4 travel lanes, bike lanes, greenspace and sidewalks, within a reduced width. The evaluation is particularly germane in this area, since as we have noted the right-of-way to the west of this property is only 70 feet in width, dedicated when Persimmon Street was designated a Collector Street. In most cases, when the City is preparing to make improvements within an existing, developed area, we will more closely review the ideal cross-section and determine if it can be modified so as to reduce the impact to adjacent property owners and also to purchase only the property that is absolutely necessary to make the improvement.

In this case, staff feels that with a slight reduction in lane width and greenspace, the overall function of the Minor Arterial will remain. While the actual cross-section design would be reviewed at the time of the street improvement, at this time staff feels that a 73-foot width would be sufficient for the developer to dedicate to accommodate the future expansion in this area, given the factors of this request.

Staff recommends in favor of the applicant's amended request, in accordance with §166.04(B)(3)(a)(i) of the Unified Development Code, to permit a lesser dedication of right-of-way than required by the Master Street Plan for Persimmon Street within the Legacy Phase IV subdivision. This would result in a dedication of 73-feet for the majority of the property, and 54-feet in width at the easternmost section of Persimmon within the subdivision due to different property ownership. The amended request, in staff's opinion, meets the requirements of the Unified Development Code and the test of rough proportionality of the impact of the development upon surrounding infrastructure.

MINOR ARTERIAL
 (Modified with 10.5' lanes
 and 5' greenspace. Total R.O.W. 73')

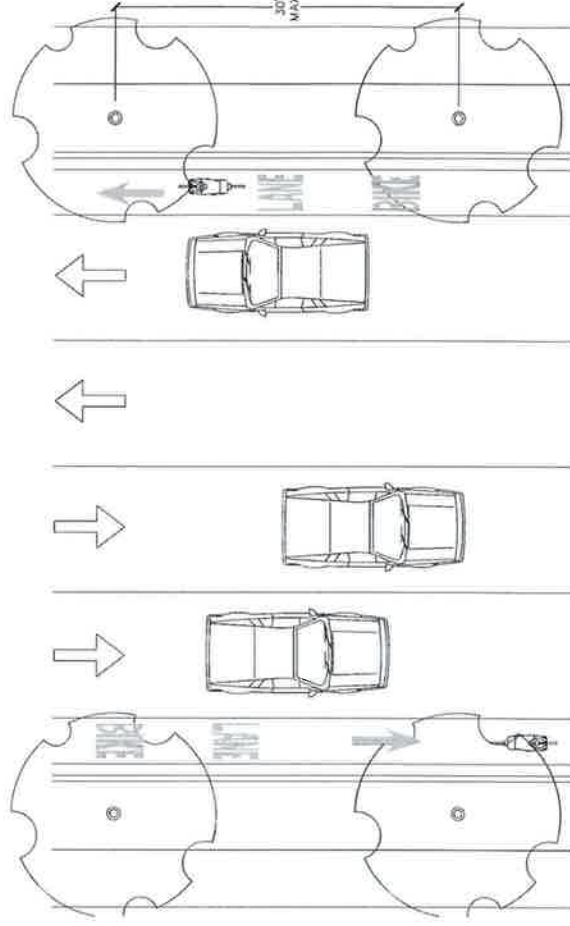
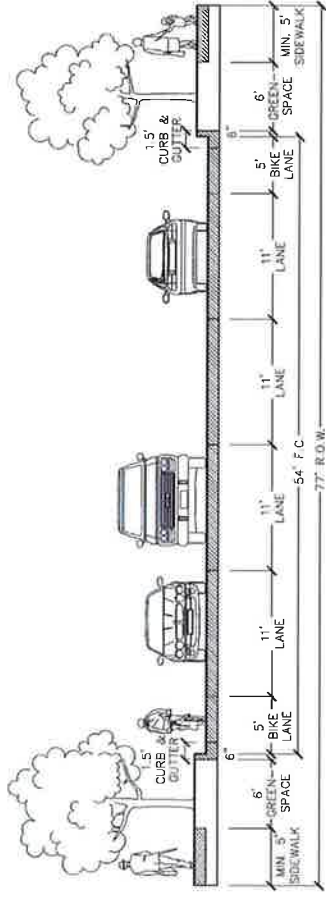


12.2.5 MINOR ARTERIAL STREETS

MINOR ARTERIAL STREETS provide mobility throughout the city, encouraging multiple modes of transportation within the arterial network. Access should be limited to controlled intersections where possible. They have a moderate level of access management.

5 MINOR ARTERIAL:

- Design Service Volume: < 12,200 vpd
- Desired Operating Speed: 30-40 mph
- Travel Lanes: Four 11' lanes
- Bicycle Lanes: 5' wide, both sides of street
- Parking: next to curb
- Paved Width: None
- Right of Way: 54' from face of curb
- Sidewalks: 77'
- Greenspace: Both sides of street, min. 5' wide, located in R.O.W. at R.O.W. line
- Both sides of street, min. 6' wide





**Bates &
Associates, Inc.**

Civil Engineering & Surveying

91 W. Colt Square Dr. Suite 3 / Fayetteville, AR 72703
PH: 479-442-9350 * FAX: 479-521-9350

October 11, 2013

Planning Commissioners and Staff
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

RE: Legacy Subdivision Phase V – Variance Request

Dear Planning Staff,

The developer would like to request the following variances:

1. The existing right-of-way along Persimmon Drive to the west of the subject property is 70'. The existing right-of-way to the east is 65'. The property owner would like to request a variance to allow a 73' right-of-way instead of 77'.

This property was previously approved for a grading permit, and the streets were cut for a 70' right-of-way, so the majority of the initial road grading is complete. In addition, the existing improved Persimmon to the east connecting to the frontage road along I-540 is 70'. Therefore, we think this the best solution is to keep the stretch at 73'.

If you have any questions or require additional information, please feel free to contact me at your convenience.

Sincerely
Bates & Associates, Inc.

Geoffrey H. Bates, P.E.



Washington County Assessor's Office
280 N. College Suite # 250, Fayetteville, AR 72701
Phone: (479)444-1500, Fax: (479)444-1518

October 10th, 2013

The Honorable Mayor and City Council Members
City of Fayetteville, Arkansas

The Washington County Assessor's Office looks forward to working with the Fayetteville Energy Improvement District on the establishment of and implementation of the energy improvement district in the City of Fayetteville.

The responsibilities of the Washington County Assessor's Office as outlined in A.C.A. § 8-15-101 et seq. (the "Property Assessed Clean Energy Act") are easily implemented and would not create any additional burden on my offices operations. In fact as an advocate, from the beginning, of this legislation I look for the creation of the district.

Sincerely,

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

Jeff Williams
Washington County Assessor



Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Sarah Marsh
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Martin W. Schoppmeyer, Jr.
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Alan T. Long

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
October 15, 2013**

A meeting of the Fayetteville City Council will be held on October 15, 2013 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. Approval of the October 01, 2013 City Council meeting minutes.
2. **Bid #13-52 Time Striping, Inc.:** A resolution awarding Bid #13-52 and authorizing the purchase from Time Striping, Inc. of thermal striping, in variable amounts, for the Transportation Division as needed through the end of calendar year 2014.
3. **Solid Waste Hauling and Disposal Fees:** A resolution approving a budget adjustment in the total amount of \$269,000.00 to provide funding for solid waste hauling and disposal fees.

B. Unfinished Business:

1. **Amend §164.11 Height and Setback Regulations; Exceptions:** An ordinance to Amend §164.11 Height and Setback Regulations; Exceptions to enhance livability through appropriate transitions in building scale and to protect access to air and sunlight and to enact an emergency clause. *This ordinance was left on the First Reading at the September 17, 2013 City Council meeting. This ordinance was left on the Second Reading at the October 01, 2013 City Council meeting.*

Left on the Second Reading

2. **PPL 13-4404 (Persimmon Street Master Street Plan Right-of-Way/Legacy IV Subdivision):** A resolution to approve the dedication of 70 feet of right of way for Persimmon Street along most of the owner's property as recommended by the Planning Commission. *This resolution was tabled at the October 1, 2013 City Council meeting to the October 15, 2013 City Council meeting.*
3. **RZN 13-4467 (Mount Comfort and Shiloh/Kum & Go):** An ordinance rezoning that property described in rezoning petition RZN 13-4467, for approximately 1.65 acres located at the northwest corner of Mount Comfort Road and Shiloh Drive from R-A, Residential Agricultural and RSF-4, Residential Single-Family, 4 units per acre, to C-1, Neighborhood Commercial. *This ordinance was left on the First Reading at the October 01, 2013 City Council meeting.*

Left on the First Reading

C. New Business:

1. **VAC 13-4478 (Twin Creeks Village Lot 19B4):** An ordinance approving VAC 13-4478 submitted by McClelland Engineering Consulting for property located at 163 Van Asche Loop, to vacate a portion of a drainage easement, a total of 0.03 acres.
2. **ADM 13-4487 (Links at Fayetteville PZD Modification #3):** An ordinance amending a Residential Planned Zoning District entitled R-PZD 07-2452 Links at Fayetteville to revise the zoning criteria for Planning Area One, to include Use Unit 18, Gasoline Service Stations and Drive-in/Drive Through Restaurants, as a permitted use, and to revise the architectural design standards at the northeast corner of Wedington Drive and Golf Club Drive.
3. **Dickson Street Crossing Safety Improvements:** A resolution expressing the intent of the City of Fayetteville to enter into a cost-share agreement with Arkansas & Missouri Railroad Co. for crossing safety improvements at the Dickson Street Railroad Crossing, contingent upon approval by Arkansas & Missouri Railroad Co. of Amendment No. 1 to the 2008 trail license agreement and not unreasonably withholding assent to future trail easements for the City.
4. **Fayetteville Energy Improvement District:** An ordinance creating a Property Assessed Energy Improvement District coextensive with the City of Fayetteville named "Energy Improvement District No. 1" to facilitate a PACE program and adopting certain provisions related thereto.

5. **Amend Chapter §71.052 “U” Turns:** An ordinance to repeal §71.052 “U” Turns and to enact a new §71.052 “U” Turns into the Fayetteville Code to permit “U” Turns on streets with medians.
6. **Amend Chapter 115 Pawnbrokers:** An ordinance amending Chapter 115: Pawnbrokers of the Code of Fayetteville, renaming it to Chapter 115: Pawnbrokers and Secondhand Dealers, requiring licensure of secondhand dealers and requiring electronic reporting of certain items purchased by secondhand dealers.
7. **Boston Mountain Solid Waste District:** An ordinance waiving the requirements of formal competitive bidding and approving a contract with the Boston Mountain Solid Waste District in the amount of \$25,000.00 for an environmental and recycling education program.
8. **Amend Rules of Order and Procedure:** A resolution to amend the Rules of Order and Procedure of the Fayetteville City Council A. City Council meetings 7. Presentation of Agenda Items by adding a new subsection a. Agenda items not included within the Tentative Agenda packet.

D. City Council Agenda Session Presentations:

E. City Council Tour:

F. Announcements:

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

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

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

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

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

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

Old business and new business.

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

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

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

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

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

City of Fayetteville Staff Review Form

A. 2
 Bid #13-52 Time Striping, Inc.
 Page 1 of 24

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

October 15, 2013

City Council Meeting Date
 Agenda Items Only

Terry Gulley
 Submitted By

Transportation
 Division

Transportation Services
 Department

Action Required:

A resolution awarding Bid 13-52 for and approving the purchase of thermal striping from Time Striping, Inc. in varying unit prices as needed through the end of calendar year 2014.

\$ 49,650.00

Cost of this request

Category / Project Budget

Various Capital Projects

Program Category / Project Name

Transportation Improvements

Trail Improvements

4470.9470.xxxx.xx

Account Number

\$ -

Funds Used to Date

Program / Project Category Name

Various

Project Number

\$ -

Remaining Balance

Sales Tax Capital Improvements

Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐

Terry G. Gulley
 Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

[Signature]
 City Attorney

9-30-13
 Date

Paul A. Butler
 Finance and Internal Services Director

9-30-2013
 Date

Received in City Clerk's Office 09-27-13 P03:07 RCVD
[Signature]

[Signature]
 Chief of Staff

10-1-13
 Date

Received in Mayor's Office

ENTERED
9/30/13
[Signature]

[Signature]
 Mayor

10/1/13
 Date

Comments:



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council
Thru: Don Marr, Chief of Staff
From: Terry Gulley, Transportation Services Director *TG*
Date: October 15, 2013

Subject: A resolution awarding Bid 13-52 for and approving the purchase of thermal striping from Time Striping, Inc. in varying unit prices as needed through the end of calendar year 2014.

PROPOSAL:

The purchase of bulk construction materials and services is necessary to maintain the City's current infrastructure and to implement the Capital Improvement Program projects outlined in the Annual Budget & Work Program and five-year Capital Improvement Program. Sealed formal bids for thermal striping were publicly read and the results are attached to this memo.

RECOMMENDATION:

Staff recommends approval of a resolution awarding Bid 13-52 for and approving the purchase of thermal striping from Time Striping, Inc. in varying unit prices as needed through the end of calendar year 2014.

BUDGET IMPACT:

Funds for the acquisition of these materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #13-52 AND AUTHORIZING THE PURCHASE FROM TIME STRIPING, INC. OF THERMAL STRIPING, IN VARIABLE AMOUNTS, FOR THE TRANSPORTATION DIVISION AS NEEDED THROUGH THE END OF CALENDAR YEAR 2014

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #13-52 and authorizes the purchase from Time Striping, Inc. of thermal striping, in variable amounts, for the Transportation Division as needed through the end of calendar year 2014.

PASSED and APPROVED this 15th day of October, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



BID: 13-52
 DATE: 09/26/13
 TIME: 2:00 PM
 CITY OF FAYETTEVILLE

Bid 13-52, Construction - Thermal Striping Re-Bid

Item #	Description	Estimated Quantity	Unit of Measure	Time Striping, Inc.	
				Unit Price	TOTAL
1	Hot Truck Applied Thermoplastic White Or Yellow (4") - Per Linear Foot	15,000	LF	\$1.25	\$18,750.00
2	Hot Applied Thermoplastic Arrows - Each	6	EA	\$250.00	\$1,500.00
3	Hot Applied Thermoplastic Words - Each	6	EA	\$300.00	\$1,800.00
4	Hot Applied Thermoplastic Railroad Emblems - Each	1	EA	\$400.00	\$400.00
5	Hot Applied Thermoplastic Handicap Emblems - Each (Blue Background With White Emblem)	2	EA	\$250.00	\$500.00
6	Hot Applied Thermoplastic Pre-Form Sharrows - Each (per MUTCD standard)	100	EA	\$250.00	\$25,000.00
7	Hot 4" Hand Applied Thermoplastic For Parking Spaces - Per Linear Foot	100	LF	\$2.00	\$200.00
8	Hot 12" Hand Applied Thermoplastic Stop Bars - Per Linear Foot	100	LF	\$15.00	\$1,500.00
TOTAL BID BASED ON ESTIMATES =					\$49,650.00

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

CERTIFIED: P. Vice

P. VICE, PURCHASING MGR

Julie Paladino
 WITNESS

09/26/13
 DATE



City of Fayetteville, Arkansas
Purchasing Division – Room 306
113 W. Mountain
Fayetteville, AR 72701
Phone: 479.575.8220
TDD (Telecommunication Device for the Deaf): 479.521.1316

INVITATION TO BID

INVITATION TO BID: BID 13-52, Construction – Thermal Striping Re-Bid
DEADLINE: Thursday, September 26, 2013 before 2:00 PM, Local Time
DELIVERY LOCATION: Room 306 – 113 W. Mountain, Fayetteville, AR 72701
PURCHASING AGENT: Andrea Foren, CPPO, CPPB, aforen@fayetteville-ar.gov, 479.575.8220
DATE OF ISSUE AND ADVERTISEMENT: September 09 and September 16, 2013

INVITATION TO BID **Bid 13-52, Construction – Thermal Striping Re-Bid**

No late bids shall be accepted. Bids shall be submitted in sealed envelopes labeled with the name and address of the bidder.

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

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

Name of Firm: Time Striping, Inc.
Contact Person: Grady Gann Title: Project Manager
E-Mail: grady@timestriping.com Phone: 479-841-3305
Business Address: PO Box 1236
City: Van Buren State: AR Zip: 72957
Signature: [Signature] Date: 9/24/13

City of Fayetteville
Bid 13-52, Construction – Thermal Striping Re-Bid
General Terms and Conditions

1. **SUBMISSION OF BID & BID EVALUATION:**

- a. Bids will be reviewed following the stated deadline, as shown on the cover sheet of this document.
- b. Bidders shall submit bids based on documentation published by the Fayetteville Purchasing Division.
- c. Bids shall be enclosed in sealed envelopes or packages addressed to the City of Fayetteville, Purchasing Division, Room 306, 113 W. Mountain, Fayetteville, AR 72701. The name, address of the firm and Bid, RFP, or RFQ number shall be on the outside of the packaging as well as on any packages enclosed in shipping containers or boxes.
- d. The City will not be responsible for misdirected bids. Vendor should call the Purchasing Office at 479.575.8220 to ensure correct receipt of bidding documents prior to opening time and date listed on the bid form.
- e. Bidders must have experience in providing products and/or services of the same or similar nature. Bidders are required to be on jobsite as scheduled and coordinated with the City. **Failure to show up as scheduled will subject bidder to disqualification for the remainder of the contract period.**
- f. Bidder is advised that exceptions to any of the terms contained in this bid must be identified in its response to the bid. Failure to do so may lead the City to declare any such term non-negotiable. Proposer's desire to take exception to a non-negotiable term will not disqualify it from consideration for award.
- g. Local time is defined as the time in Fayetteville, Arkansas on the due date of the deadline. Bids shall be received before the time as shown by the atomic clock located in the Purchasing Division Office.
- h. Bids will be evaluated and awarded based on the best interest of the City of Fayetteville. The City reserves the right to award bids in their entirety, none, or by line item.
- i. **Bid Bond Requirement:** A cashier's check from a bank located in the State of Arkansas or job specific bid bond, payable to the City of Fayetteville, Arkansas in an amount not less than five (5) percent of the project amount is required for ALL bids submitted where total sum base bid is \$20,000 or more.
- j. **Performance and Payment Bond Requirement:** In the event that a single project, as deemed by the City, is \$20,000 or more, the awarded bidder will be responsible for providing the City with a 100% performance and payment bond PRIOR to any work being completed on such project. A 100% performance and payment bond shall be submitted **before** notice to proceed is given or any work is started on the project.
- k. Bids will be evaluated and awarded based on the best interest of the City of Fayetteville. The City reserves the right to award bids in their entirety, none, or by line item.
- l. **All items and services bid shall meet the Arkansas Highway Department specifications for this bid.**

2. **WRITTEN REQUESTS FOR INTERPRETATIONS OR CLARIFICATION:**

No oral interpretations will be made to any firms as to the meaning of specifications or any other contract documents. All questions pertaining to the terms and conditions or scope of work of this bid must be sent in writing via e-mail to the Purchasing Agent. Responses to questions may be handled as an addendum if the response would provide clarification to the requirements of the bid. All such addenda shall become part of the contract documents. The City will not be responsible for any other explanation or interpretation of the proposed bid made or given prior to the award of the contract.

3. **DESCRIPTION OF SUPPLIES AND SERVICES:**

Any reference to a particular brand or manufacturer is done in an effort to establish an acceptable level of quality for this

Project Manual



CITY OF FAYETTEVILLE
ARKANSAS

CONSTRUCTION – THERMAL STRIPING RE-Bid

BID # 13-52
Date: September 2013



Project Check List

Bid 13-52, Construction – Thermal Striping Re-Bid

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

- ☒ 5% Bid Bond of the amount bid accompanied by required documentation (Power of Attorney, etc.)
 - In lieu of a bid bond, the bidder may submit a cashier's check from a bank located in the State of Arkansas for at least five percent (5%) of the amount bid (inclusive of any deductive alternates). Cashiers checks shall be made payable to the City of Fayetteville, AR.
- ☒ All addenda shall be signed, acknowledged, and submitted on the appropriate forms (submitting the actual addendums or marking acknowledgement on other bid pages).
- ☒ All line items shall be appropriately filled out and extended to reveal the line item price as well as the total bid price. Total base bid should be calculated in the provided space.
- ☒ All bidders shall submit the following forms with each bid: Bid Pricing Form, Bid Proposal Form, & Vendor References.
- ☒ All pages provided with signature lines shall be appropriately signed, dated accordingly, and included with submitted bid documents
- ☒ All bid documents shall be delivered in a sealed envelope to the address listed below before the stated deadline on the coversheet of the bid. All bids should be delivered with the name of the bidder (contractor) on the sealed envelope as well as the bidders Arkansas Contractors License Number.

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

CONTRACTOR NAME: Time Striping, Inc.

ARKANSAS CONTRACTORS LICENSE NUMBER: #0017280414

TIME STRIPING, INC.
CREDIT/CONTACT INFORMATION

MAILING ADDRESS:

TIME STRIPING INC.
P.O. BOX 1236
VAN BUREN, AR 72957

PHYSICAL ADDRESS:

TIME STRIPING, INC.
5439 ARKHOLA RD.
VAN BUREN, AR 72956

PHONE: 479-474-0452 FAX: 479-474-0498

A/P CONTACT: PAM MCFARLAND DUNS # 61-177-0413

OWNERSHIP:

CINDY WILLIAMS, PRESIDENT	51%
JOHN TOWNSEND, EXEC VP/SECY-TREAS	49%

TYPE: C CORPORATION STATE: AR

FED ID: 71-0669392 YEAR EST: 1988

BANKING INFO:

FIRST NATIONAL BANK
601 GARRISON AVE.
FT. SMITH, AR 72901

PHONE: 479-788-4228
FAX: 479-788-4602
CONTACT: SAM T. SICARD

CREDIT REFERENCES:

GREGORY INDUSTRIES	PH: 330-477-4800	FAX: 330-477-0626
4100 13TH STREET SW	CONTACT: TOM CLOSE - EXTN 165	
CANTON, OH 44710		

CROWN TECHNOLOGY	PH: 800-457-6267	FAX: 706-553-9501
P.O. BOX 7337	CONTACT: PAM KELLERT	
COLUMBUS, GA 31908		

SHERWIN WILLIAMS	PH: 479-474-9500	FAX: 479-474-8981
122 W. POINTER TRAIL	CONTACT: TRAVIS BALKMAN	
VAN BUREN, AR 72956		

ARROW BOLT & SCREW	PH: 479-646-0540	FAX: 479-474-5278
5424 WHEELER AVE.	CONTACT: TERRI TERRY	
FORT SMITH, AR 72901		

TRAFFIX DEVICES	PH: 949-361-5663	FAX: 949-361-9205
160 AVENIDA LA PATA	CONTACT: LINDA REDDERSON	
SAN CLEMENTE, CA 92673		

YEAGER HARDWARE	PH: 479-474-5278
VAN BUREN, AR	

City of Fayetteville
 Bid 13-52, Construction – Thermal Striping Re-Bid
 Bid Form

Bid 13-52, Construction - Thermal Striping Re-Bid					
A 5% bid bond shall be submitted for all bids exceeding \$20,000					
Bid #	Date Issued:	Date and Time Of Bid Opening & Deadline:			
13-52	Septemeber 09 and 16, 2013	Thursday, September 26, 2013 before 2:00 PM			
Date Required: As Scheduled with Project Manager					
F.O.B		Purchasing Agent Contact Information:			
Fayetteville, Arkansas		Andrea Foren, CPPB, CPPO, (479)575-8220, aforen@fayetteville-ar.gov			
Item #	Description	Estimated Qty.	X	UNIT PRICE	TOTAL
1	HOT TRUCK APPLIED THERMOPLASTIC WHITE OR YELLOW (4") - per linear foot	15,000 LF	X	1.25	\$ 18,750.00
2	HOT APPLIED THERMOPLASTIC ARROWS - EACH	6 EA	X	250.00	\$ 1,500.00
3	HOT APPLIED THERMOPLASTIC WORDS - EACH	6 EA	X	300.00	\$ 1,800.00
4	HOT APPLIED THERMOPLASTIC RAILROAD EMBLEMS - EACH	1 EA	X	400.00	\$ 400.00
5	HOT APPLIED THERMOPLASTIC HANDICAP EMBLEMS - EACH (BLUE BACKGROUND WITH WHITE EMBLEM)	2 EA	X	250.00	\$ 500.00
6	HOT APPLIED THERMOPLASTIC PRE-FORM SHARROWS - EACH (per MUTCD standard)	100 EA	X	250.00	\$ 25,000.00
7	HOT 4" HAND APPLIED THERMOPLASTIC FOR PARKING SPACES - per linear foot	100 LF	X	2.00	\$ 200.00
8	HOT 12" HAND APPLIED THERMOPLASTIC STOP BARS - per linear foot	100 LF	X	15.00	\$ 1,500.00
Total Bid Based on Estimates					\$ 49,450.00
A certified cashier's check or bid bond, payable to the City of Fayetteville, Arkansas in an amount not less than five (5) percent of the project shall be submitted for all bids exceeding \$20,000. If awarded, a 100% performance and payment bond must be submitted for all projects exceeding \$20,000.					
*ALL PAVEMENT MARKING MATERIAL AND LAY DOWN PROCEDURES MUST MEET CURRENT AHTD SPECIFICATIONS.					
RESTRICTIONS OR EXCEPTIONS TO THE BID SHALL BE NOTED BELOW					
EXECUTION OF BID					
UPON SIGNING THIS BID, THE BIDDER CERTIFIES THAT THEY HAVE 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 AGREES TO FURNISH THESE ARTICLES AT THE PRICES STATED.					
ALL UNSIGNED BIDS WILL BE REJECTED					
NAME OF FIRM Time Striping, Inc.					
THIS FORM CONTINUES ON THE NEXT PAGE. . .					

EXECUTION OF BID -

Actual specification of any deficient item shall be noted on the bid sheet or separate attachment. If specifications of item bid differ from provided literature, deviation shall be documented and certified by the manufacturer as a regular production option.

Upon signing this Bid, the bidder certifies that:

1. He/she has read and agrees to the requirements set forth in this proposal, including specifications, terms, standard conditions, and any pertinent information regarding the articles being bid on.
2. Unless otherwise noted and explained, the unit bid and listed meets or exceeds all of these requirements as specified by The City of Fayetteville.
3. The Bidder can and will comply with all specifications and requirements for delivery, documentation and support as specified herein.
4. I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein is accurate and true.
5. Bidder shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment in addition to all federal, state, and local laws.
6. Bidder shall disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Response shall disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official. If no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response.

☒ 1.) NO KNOWN RELATIONSHIP EXISTS

☐ 2.) RELATIONSHIP EXISTS (Please explain): _____

7. Bidder will perform the Work in compliance with all applicable trench safety standards set forth in Occupational Safety and Health Administration (OSHA) Part 1926 – Subpart P – Excavations.
8. As A bidder on this project, you are required to provide debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.
 - a. Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.
 - b. Your signature below certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

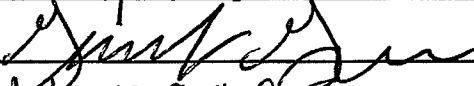
Unsigned bids will be rejected. Items marked * are mandatory for consideration.

*NAME OF FIRM: Time Striping, Inc.
Purchase Order/Payments shall be issued to this name

*BUSINESS ADDRESS: PO BOX 1236

*CITY: Van Buren *STATE: AR *ZIP: 72957

*PHONE: 479-474-0452 FAX: 479-474-0498

*E-MAIL: Grady@timestriping.com
*BY: (PRINTED NAME) Grady Gann
*AUTHORIZED SIGNATURE: 
*TITLE: Project Manager

Acknowledge Addendums:

Addendum No. _____ Dated: _____ Acknowledged by: _____

Addendum No. _____ Dated: _____ Acknowledged by: _____

Addendum No. _____ Dated: _____ Acknowledged by: _____

project. Brands or manufacturers that are included in bid that are of at least equal quality, size, design, and specification as to what has been specified, will be acceptable for consideration only if approved by the City of Fayetteville Purchasing Division. The City of Fayetteville reserves the right to accept or reject any requested equal.

4. RIGHTS OF CITY OF FAYETTEVILLE BID PROCESS:

- a. In addition to all other rights of the City of Fayetteville, under state law, the City specifically reserves the following. The City of Fayetteville reserves the right to select the bid that it believes will serve the best interest of the City.
- b. The City of Fayetteville reserves the right to accept or reject any or all bids.
- c. The City of Fayetteville reserves the right to cancel the entire bid.
- d. The City of Fayetteville reserves the right to remedy or waive technical or immaterial errors in the invitation to bid or in bids submitted.
- e. The City of Fayetteville reserves the right to request any necessary clarifications, additional information, or data without changing the terms of the bid.

5. COSTS INCURRED BY BIDDERS:

All expenses involved with the preparation and submission of bids to the City, or any work performed in connection therewith, shall be borne solely by the bidder(s). No payment will be made for any responses received, or for any other effort required of, or made by, the bidder(s) prior to contract commencement.

6. CONFLICT OF INTEREST:

- a. The bidder represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided in City of Fayetteville Code Section 34.26 titled "Authority of City Employee to Contract With The City".
- b. All bidders shall promptly notify Andrea Foren, City Purchasing Agent, in writing, of all potential conflicts of interest for any prospective business association, interest, or other circumstance which may influence or appear to influence the bidder's judgment or quality of services being provided. Such written notification shall identify the prospective business association, interest or circumstance, the nature of which the bidder may undertake and request an opinion to the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the bidder. The City agrees to communicate with the bidder its opinion via e-mail or first-class mail within thirty days of receipt of notification.

7. WITHDRAWAL OF PROPOSAL:

A bid may be withdrawn prior to the time set for the bid submittal, based on a written request from an authorized representative of the firm; however, a bid shall not be withdrawn after the time set for the bid unless approved by the Purchasing Division.

8. LATE PROPOSAL OR MODIFICATIONS:

Bid modifications received after the time set for the bid submittal shall not be considered. Modifications in writing received prior to the deadline will be accepted. The City will not be responsible for misdirected bids. Bidders should call the Purchasing Division at (479) 575-8220 to verify receipt of their submittal documents prior to opening time and date listed.

9. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS:

- a. The laws of the State of Arkansas apply to any purchase made under this bid. Bidders shall comply with all local, state, and federal directives, orders and laws as applicable to this proposal and subsequent contract(s) including but not limited to Equal Employment Opportunity (EEO), Disadvantaged Business Enterprises (DBE), & OSHA as applicable to this contract.
- b. Pursuant to Arkansas Code Annotated §22-9-203 the City of Fayetteville encourages all *qualified* small, minority and women's business enterprises to bid on and receive contracts for goods, services, and

construction. Also, City of Fayetteville encourages all general contractors to subcontract portions of their contract to *qualified* small, minority and women's business enterprises.

10. **PROVISION FOR OTHER AGENCIES:** N/A

11. **COLLUSION:**

The Proposer, by affixing his or her signature to this proposal, agrees to the following: "bidder certifies that his or her bid is made without previous understanding, agreement, or connection with any person, firm or corporation making a proposal for the same item(s) and/or services and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action."

12. **RIGHT TO AUDIT, FOIA, AND JURISDICTION:**

- a. The City of Fayetteville reserves the privilege of auditing a vendor's records as such records relate to purchases between the City and said vendor.
- b. Freedom of Information Act: City contracts and documents prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the (Contractor) will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.
- c. Legal jurisdiction to resolve any disputes shall be in Washington County, Arkansas with Arkansas law applying to the case.

13. **CITY INDEMNIFICATION:**

The successful bidder(s) agrees to indemnify the City and hold it harmless from and against any and all claims, liability, loss, damage or expense, including but not limited to counsel fees, arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon, with respect to the goods or any part thereof covered by this order, and such obligation shall survive acceptance of the goods and payment thereof by the City.

14. **VARIANCE FROM STANDARD TERMS & CONDITIONS:**

All standard terms and conditions stated in this request for bid apply to this contract except as specifically stated in the subsequent sections of this document, which take precedence, and should be fully understood by bidders prior to submitting a proposal on this requirement.

15. **ADA REQUIREMENT FOR PUBLIC NOTICES & TRANSLATION:**

Persons with disabilities requiring reasonable accommodation to participate in this proceeding/event, should call 479.521.1316 (telecommunications device for the deaf), not later than seven days prior to the deadline. Persons needing translation of this document shall contact the City of Fayetteville, Purchasing Division, immediately.

16. **PROCUREMENT POLICY FOR RECYCLED MATERIALS:**

The City of Fayetteville wishes to encourage its bidders to use recycled products in fulfilling contractual obligations to the City and that such practices will serve as a model for other public entities and private sector companies.

17. **PAYMENTS AND INVOICING:**

The bidder must specify in their bid the exact company name and address which must be the same as invoices submitted for payment as a result of award of this bid. Further, the successful bidder is responsible for immediately notifying the Purchasing Division of any company name change, which would cause invoicing to change from the name used at the time of the original bid. Payment will be made within thirty days of invoice received. The City of Fayetteville is very credit worthy and will not pay any interest, fees, or penalty for untimely payments. **Payments can be processed through bidder's acceptance of Visa at no additional costs to the City for expedited payment processing.** The City will not agree to any nonrefundable deposit or retainer that would remain property of the bidder even if the hourly work actually

performed by the bidder would not justify such fee.

The City will pay the awarded bidder based on unit prices provided on invoicing. Progress payments will be made after approval and acceptance of work and submission of invoice. Payments will be made within 30 days of accepted invoice.

18. CANCELLATION:

- a. The City reserves the right to cancel this contract without cause by giving thirty (30) days prior notice to the Contractor in writing of the intention to cancel or with cause if at any time the Contractor fails to fulfill or abide by any of the terms or conditions specified.
- b. Failure of the contractor to comply with any of the provisions of the contract shall be considered a material breach of contract and shall be cause for immediate termination of the contract at the discretion of the City of Fayetteville.
- c. In addition to all other legal remedies available to the City of Fayetteville, the City reserves the right to cancel and obtain from another source, any items and/or services which have not been delivered within the period of time from the date of order as determined by the City of Fayetteville.
- d. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the vendor of such occurrence and contract shall terminate of the last day of the current fiscal period without penalty or expense to the City

19. ASSIGNMENT, SUBCONTRACTING, CORPORATE ACQUISITIONS AND/OR MERGERS:

- a. The Contractor shall perform this contract. No assignment of subcontracting shall be allowed without prior written consent of the City. If a bidder intends to subcontract a portion of this work, the bidder shall disclose such intent in the bid submitted as a result of this bid.
- b. In the event of a corporate acquisition and/or merger, the Contractor shall provide written notice to the City within thirty (30) calendar days of Contractor's notice of such action or upon the occurrence of said action, whichever occurs first. The right to terminate this contract, which shall not be unreasonably exercised by the City, shall include, but not be limited to, instances in which a corporate acquisition and/or merger represent a conflict of interest or are contrary to any local, state, or federal laws. Action by the City awarding a proposal to a firm that has disclosed its intent to assign or subcontract in its response to the bid, without exception shall constitute approval for purpose of this Agreement.

20. NON-EXCLUSIVE CONTRACT:

Award of this bid shall impose no obligation on the City to utilize the vendor for all work of this type, which may develop during the contract period. This is not an exclusive contract. The City specifically reserves the right to concurrently contract with other companies for similar work if it deems such an action to be in the City's best interest. In the case of multiple-term contracts, this provision shall apply separately to each item.

21. LOBBYING:

Lobbying of selection committee members, City of Fayetteville employees, or elected officials regarding request for proposals, request for qualifications, bids or contracts, during the pendency of bid protest, by the bidder/proposer/protestor or any member of the bidder's/proposer's/protestor's staff, and agent of the bidder/proposer/protestor, or any person employed by any legal entity affiliated with or representing an organization that is responding to the request for proposal, request for qualification, bid or contract, or has a pending bid protest is strictly prohibited either upon advertisement or on a date established by the City of Fayetteville and shall be prohibited until either an award is final or the protest is finally resolved by the City of Fayetteville; provided, however, nothing herein shall prohibit a prospective/bidder/proposer from contacting the Purchasing Division to address situations such as clarification and/or questions related to the procurement process. For purposes of this provision lobbying activities shall include but not be limited to, influencing or attempting to influence action or non-action in connection with any request for proposal, request for qualification, bid or contract through direct or indirect oral or written communication or an attempt to obtain goodwill of persons and/or entities specified in this provision. Such actions may cause any request for proposal, request for qualification, bid or contract to be rejected.

22. ADDITIONAL REQUIREMENTS:

The City reserves the right to request additional services relating to this bid from the bidder. When approved by the City as an amendment to the contract and authorized in writing prior to work, the Contractor shall provide such additional requirements as may become necessary.

23. ADD OR DELETE LOCATIONS OR SERVICES:

The City reserves the right to unilaterally add or delete locations and/or services, either collectively or individually, at the City's sole option, at any time after award has been made as may be deemed necessary or in the best interests of the City. In such case, the Contractor(s) will be required to provide services to this contract in accordance with the terms, conditions, and specifications.

24. INTEGRITY OF BID DOCUMENTS:

Bidders shall use the original bid form(s) provided by the Purchasing Division and enter information only in the spaces where a response is requested. Bidders may use an attachment as an addendum to the bid form(s) if sufficient space is not available on the original form for the bidder to enter a complete response. **Any modifications or alterations to the original documents by the bidder, whether intentional or otherwise, will constitute grounds for rejection of such response.** Any such modifications or alterations a bidder wishes to propose shall be clearly stated in the bidder's response and presented in the form of an addendum to the original bid documents.

25. CERTIFICATE OF INSURANCE:

The successful bidder shall provide a Certificate of Insurance in accordance with specifications listed in this request for proposal, prior to commencement of any work. Such certificate shall list the City of Fayetteville as an additional insured. Insurance shall remain valid, when applicable, throughout project completion.

This bid is considered a public improvement bid. Public improvement bids with a total of \$20,000 or more shall submit certificates of insurance within 10 days of notice of notice to proceed, after City Council approval. Certificates of insurance are to be addressed to the City of Fayetteville, showing that the contractor carries the following insurance which shall be maintained throughout the term of the bid. Any work sublet, the contractor shall require the subcontractor similarly to provide the same insurance coverage. In case any employee engaged in work on the project is not protected under Workers' Compensation, the Contractor shall provide, and shall cause each subcontractor to provide, adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workers' Compensation:	Statutory Amount
Comprehensive General & Automotive Liability:	\$250,000 each person
	\$500,000 aggregate
Property Damage Liability:	\$100,000 aggregate
General Liability:	\$1,000,000 aggregate

26. PRICING:

- a. **Quoted prices shall be valid through December 31, 2014.**
- b. In the event of a general price schedule **decrease** during the contract period, the City shall be guaranteed full benefit of the price reduction for all undelivered orders on the effective date of the decrease and thereafter. Contractor guarantees against increases in quoted price for the first year of the contract period. Thereafter in the event contractor's manufacturer/supplier **increases** the general price schedule, the contractor may submit a price adjustment request to the Purchasing Office (Andrea Foren – aforen@fayetteville-ar.gov). The price adjustment request will be accepted so long as the requested increase in prices does not exceed the direct price increases published in the manufacturer's revised general price schedule (for example if manufacturer's price increases \$.10/unit, he may request an adjustment not to exceed \$.10/unit in the contract award price) The contractor shall submit a letter from

the manufacturer certifying the increased cost with each price adjustment request. All adjusted prices must be competitive with the prevailing market price.

- c. The City reserved the right to reevaluate bidders in their standing in the event of a vendor price increase.

27. OTHER GENERAL CONDITIONS:

- a) Bidder is presumed to be familiar with all federal, state, and city laws, ordinances, and regulations which in any manner affect those engaged or employed in the Work, or the materials or equipment used, or that in any way affect the Work and shall in all respects comply with said laws, ordinances, and regulations. No claim of misunderstanding or ignorance on the part of Bidder or Proposer will in any way serve to modify the provisions of the contract. No representations shall be binding unless embodied in the contract.
- b) Prices shall include all labor, materials, overhead, profit, insurance, shipping, freight, etc., to cover the products and services presented. ***Sales tax shall be included in the bid price.*** Applicable Arkansas sales tax laws will apply to this bid.
- c) Each bidder should state the anticipated number of days from the date of receipt of an order for delivery of services to the City of Fayetteville.
- d) Bidders must provide the City with their bids signed by an employee having legal authority to submit bids on behalf of the bidder. The entire cost of preparing and providing responses shall be borne by the bidder.
- e) The City reserves the right to request any additional information it deems necessary from any or all bidders after the submission deadline.
- f) The request for bid is not to be construed as an offer, a contract, or a commitment of any kind; nor does it commit the City to pay for any costs incurred by bidder in preparation. It shall be clearly understood that any costs incurred by the Proposer in responding to this request for proposal is at the bidder's own risk and expense as a cost of doing business. The City of Fayetteville shall not be liable for reimbursement to the Proposer for any expense so incurred, regardless of whether or not the proposal is accepted.
- g) If products, components, or services other than those described in this bid document are proposed, the bidder must include complete descriptive literature for each. All requests for additional information must be received within five working days following the request.
- h) **NOTE: Any uncertainties shall be brought to the attention to Andrea Foren immediately via telephone (479.575.8220) or e-mail (aforen@fayetteville-ar.gov). It is the intent and goal of the City of Fayetteville Purchasing Division to provide documents providing a clear and accurate understanding of the scope of work to be completed and/or goods to be provided. We encourage all interested parties to ask questions to enable all bidders to be on equal bidding terms.**
- i) Any inquiries or requests for explanation in regard to the City's requirements should be made promptly to Andrea Foren, City of Fayetteville, Purchasing Agent via e-mail (aforen@fayetteville-ar.gov) or telephone (479.575.8220). No oral interpretation or clarifications will be given as to the meaning of any part of this request for proposal. All questions, clarifications, and requests, together with answers, if any, will be provided to all firms via written addendum. Names of firms submitting any questions, clarifications, or requests will not be disclosed until after a contract is in place.
- j) Any information provided herein is intended to assist the bidder in the preparation of proposals necessary to properly respond to this bid. The bid is designed to provide qualified Proposers with sufficient basic information to submit proposals meeting minimum specifications and/or test requirements, but is not intended to limit a bid's content or to exclude any relevant or essential data.
- k) Bidders irrevocably consent that any legal action or proceeding against it under, arising out of, or in any manner relating to this bid, or any contract entered related thereto, shall be governed by Arkansas law without regard to conflicts of law principles. Proposer hereby expressly and irrevocably waives any claim or defense in any action or proceeding based on any alleged lack of jurisdiction or improper venue or any similar basis.

- k) The successful bidder shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of City of Fayetteville. In case the successful bidder assigns all or any part of any monies due or to become due under this Contract, the Instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the successful bidder shall be subject to prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the services called for in this Contract.
- l) The successful bidder's attention is directed to the fact that all applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the services shall apply to the contract throughout, and they will be deemed to be included in the contract as though written out in full herein. The successful bidder shall keep himself/herself fully informed of all laws, ordinances and regulations of the Federal, State, and municipal governments or authorities in any manner affecting those engaged or employed in providing these services or in any way affecting the conduct of the services and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or inconsistency should be discovered in the Contract Documents or in the specifications herein referred to, in relation to any such law, ordinance, regulation, order or decree, s/he shall herewith report the same in writing to City of Fayetteville.

28. ATTACHMENTS TO BID DOCUMENTS:

- a. Bid 13-52, Attachment A – Figure 9C-9

29. INVOICING: All invoices shall be presented to the City with the minimum information listed below.

- a. City Department that ordered the materials or services
- b. Order Date
- c. Delivery date or the date of service
- d. Name of the City Employee that requested or picked up the goods, materials, or service
- e. Bid Number that applies to the purchase and invoice. Amounts in the bid shall match invoicing.

City of Fayetteville
Bid 13-52, Thermal Striping Re-Bid
Specifications: State of Arkansas Specification# 719

719.01 Description. This item shall consist of furnishing and placing thermoplastic or heat-fused, preformed thermoplastic pavement markings, including words, arrows, and emblems, of the color and type specified, and the removal of pavement markings, all according to these specifications and in conformity with the dimensions and at the locations shown on the plans or as directed.

The markings are to be placed under existing traffic conditions. The work shall comply with the MUTCD except as modified by these specifications.

719.02 Materials. The material used shall be a product especially compounded for traffic markings and be listed on the Departments Qualified Products List. Each container shall be clearly and adequately marked to indicate the color, weight, batch or lot number, and type of material.

The material shall meet the requirements of AASHTO M 249. The pigments used for the yellow pavement marking compound shall be heat resistant, silica encapsulated lead chromate yellow and moly oranges, which shall produce a compound meeting the requirements of Fed. 595B Color No. 33538. The yellow marking material shall contain a minimum of 4 percent by weight of the yellow pigment with a minimum lead chromate content of 60 percent.

Heat-fused, pre-formed thermoplastic pavement marking material shall meet the requirements of AASHTO M 249 with the exception of the relevant differences due to the material being pre-formed.

The material shall not break down or deteriorate if held at the plastic temperature for a period of 4 hours nor by reason of 4 re-heatings to the plastic temperature. The temperature-viscosity characteristics of the thermoplastic material shall remain consistent and there shall be no obvious change in the color of the material.

The material shall not deteriorate by contact with sodium chloride, calcium chloride, or other chemical formations on the roadway or streets, or because of the oil contact on pavement material, or from oil droppings from traffic.

After application and proper drying time, material shall show neither appreciable deformation nor discoloration under local traffic conditions and in air or road temperatures ranging from 0° F (-18° C) to 160° F (71° C). The material shall not smear or spread under normal traffic conditions at temperatures below 160° F (71° C).

Under this specification, the term "drying time" shall be defined as the minimum elapsed time after application when the pavement marking shall have and retain the characteristics required in the preceding paragraphs. In addition, the drying time shall be established by the minimum elapsed time after application when traffic will leave no impression or imprint on the applied marking. The drying time shall not exceed a characteristic straight-line curve, the limits of which are 2 minutes at 50° F (10° C) and 15 minutes at 90° F (32° C), measured at a maximum relative humidity of 70%.

The pavement markings shall maintain its original dimension and placement. The exposed surface shall be free of tack. Cold ductility of the material shall be such as to permit normal movement with the road surface without chipping or cracking. The material shall not be slippery when wet and it shall not lift from the pavement in freezing weather. The marking shall have a uniform cross section. The density and character of the material shall be uniform throughout its thickness and shall be completely reflectorized both internally and externally.

The glass beads used for the drop-on application shall meet AASHTO M 247 with a Type I gradation and shall be suitably treated to resist moisture and retain free flow properties. Beads shall not be specially treated to enhance flotation.

719.03 Construction Requirements. The thermoplastic compound shall be screed or ribbon extruded to the pavement surface. Heat-fused, pre-formed pavement markings shall be fusible to asphalt or portland cement concrete surfaces by means of the normal heat of a propane weed-burner type of torch or other

heating device as recommended by the manufacturer.

The equipment used to apply the thermoplastic compound onto the pavement shall be suitably equipped for heating and controlling the flow of the material. The equipment shall be constructed to provide continuous mixing and agitation of the material. The conveying parts of the equipment, between the main material reservoir and applicator, shall be so constructed as to prevent accumulation and clogging. The equipment shall be constructed so that all mixing and conveying parts, up to and including the applicator, maintain the material at the plastic temperature. The thermoplastic material shall be dispensed at a temperature recommended by the manufacturer. The applicator shall include a cutoff device remotely controlled to provide clean, square stripe ends and to provide a method for applying skip lines.

The thermoplastic reservoir shall be insulated and equipped with an automatic thermostatic control to maintain the proper temperature of the material.

The thermoplastic machine shall comply with the requirements of the National Board of Fire Underwriters.

Beads applied to the surface of the completed stripe shall be applied by an automatic bead dispenser attached to the pavement marking equipment in such a manner that the beads are immediately dispensed upon the completed line. The bead dispenser shall be equipped with an automatic cutoff control, synchronized with the cutoff of the pavement marking equipment. The beads shall be automatically applied at a minimum uniform rate of 8 pounds (39 kg) of glass beads to every 100 square feet (100 sq m) of surface.

Heat-fused, pre-formed pavement markings shall be instantly highly reflective without the application of additional glass beads.

Thermoplastic markings shall not be applied to the pavement surface when the pavement surface temperature is less than 50° F (10° C) or when the pavement surface shows evidence of moisture.

On new concrete pavements where no pavement markings exist or on existing concrete or asphalt pavements where the existing pavement markings are paint or thermoplastic and do not conflict with the proposed pavement markings, blasting with water or sand or a combination thereof will be required to remove any curing compound, oxidized paint or thermoplastic, or dirt to ensure a good bond. This blasting is considered surface preparation. On newly constructed asphalt pavements any sand, grit, or other surface contaminants must be removed using compressed air and/or sweeping. Water blasting may be necessary to remove surface contaminants which cannot be removed by the use of compressed air and/or sweeping. This work is considered surface preparation.

Conflicting pavement markings that exist shall be removed by blasting with water and/or sand or by grinding. This blasting or grinding is considered pavement marking removal.

The thickness of thermoplastic markings above the roadway surface shall be 90 mils (2.3 mm) (a minimum of 1584 pounds per mile [446 kg/km] of 4" [100 mm] line). The thickness will be measured by a device supplied by the Contractor during the course of the project capable of measuring the thickness of the marking as installed on the pavement. The minimum thickness, as required above, will be measured in the center of the line when gauged by the equipment described above. The minimum thickness 1/2" (12 mm) from the edges shall not be less than 75% of the thickness required in the center. Maximum thickness of markings is 3/16" (5 mm).

Heat-fused, pre-formed pavement markings shall be supplied with a minimum average thickness of 90 mils (2.3 mm) before application on the roadway surface.

On concrete pavements, paint pavement markings according to Section 718 shall be applied as a primer for the thermoplastic markings, except where thermoplastic markings are to be applied over existing thermoplastic markings. Paint applied to concrete pavement solely as a primer will not be measured or paid for separately, but full compensation there for will be considered included in the contract unit prices bid for the various items of Thermoplastic Pavement Markings. A primer other than paint may be used when recommended by the thermoplastic manufacturer. A primer is not required for asphalt pavements, but paint pavement markings complying with Section 718 may be used by the Contractor as a primer at no cost to the Department. When temperature limitations prohibit placement of thermoplastic markings within the 3 or 14 day limit specified in Section 604, the Contractor shall place painted markings according to Section 718.

Painted markings required due to temperature limitations will be measured and paid for under Section 604. In this case, the Contractor shall maintain the painted markings at no additional cost to the Department until the thermoplastic markings, including primer if required, are installed. Spotting the pavement for center line location on two-way roadways is required. It will be the responsibility of the Contractor to spot using a string line or chain so that spots are placed at intervals not exceeding 10' (3 m). The Department will establish the no passing zones if required. On one-way roadways spotting is required for the initial edge line or lane line placed. Edge lines and/or lane lines may be installed by referencing to center or lane lines. Edge lines shall not be broken for driveways. The trace of the thermoplastic line shall be uniform. The finished lines shall have well defined edges, shall be uniform in thickness, and shall be straight and true. No stripe shall be less than the specified width. Any corrections of variations in width or alignment of the stripes shall not be made abruptly. Lines that cannot be corrected to meet these requirements shall be removed in accordance with Section 604 at the Contractors expense. Line removal as specified on the plans shall be performed in such a manner that no conflicting pavement marking will be left in place. Removal of the pavement marking by a means that will gouge the surface will not be permitted. The Contractor shall use only workers experienced in installing thermoplastic markings.

719.04 Method of Measurement. (a) Thermoplastic Pavement Markings will be measured by the linear foot (meter) of line of the width specified actually placed.

(b) Thermoplastic words and arrows will be measured by the unit.

(c) Thermoplastic railroad emblems will be measured by unit. One unit shall consist of both R's; the X; the transverse lines; and the stop line near the track.

(d) Sand or water blasting in surface preparation will not be paid for separately, but full compensation there for will be considered included in the contract unit price bid for Thermoplastic Pavement Marking.

(e) Removal of pavement markings will be measured and paid for under Section 604.

(f) Thermoplastic bike emblems will be measured by the unit. One unit shall consist of the words BIKE and ONLY, and the diamond emblem as shown in the plan.

719.05 Basis of Payment.

(a) **Thermoplastic Pavement Markings.** Work completed and accepted and measured as provided above will be paid for at the contract unit price bid per linear foot (meter) for Thermoplastic Pavement Markings of the width specified, which price shall be full compensation for furnishing and installing markings; for surface preparation; and for all labor, equipment, tools, furnishing thickness gauge, and incidentals necessary to complete the work.

(b) **Thermoplastic Pavement Marking (Words), (Arrows), (Railroad Emblems), and (Bike Emblems).** Work completed and accepted and measured as provided above will be paid for at the contract unit price bid per each for Thermoplastic Pavement Marking (Words), (Arrows), (Railroad Emblems), and (Bike Emblems) which price shall be full compensation for furnishing and installing Words, Arrows, Railroad Emblems; and Bike Emblems for surface preparation; and for all labor, equipment, tools, and incidentals necessary to complete the work.

City of Fayetteville
Bid 13-52, Construction – Thermal Striping Re-Bid
Attachment A – Figure 9C-9, Shared Lane Marking

Figure 9C-9. Shared Lane Marking





Brown • Hiller • Clark & Associates

5500 Euper Lane
PO Box 3529
Ft. Smith, AR 72913 (479) 452-4000
www.bhca.com

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we
(Here insert full name and address or legal title of Contractor)

Time Striping, Inc.
P. O. Box 1236
Van Buren, AR 72957

as Principal, hereinafter called the Principal, and
(Here insert full name and address or legal title of Surety)

SureTec Insurance Company
1330 Post Oak Boulevard, Suite 1100
Houston, TX 77056

a corporation duly organized under the laws of the State of Texas
as Surety, hereinafter called the Surety, are held and firmly bound unto
(Here insert full name and address or legal title of Owner)

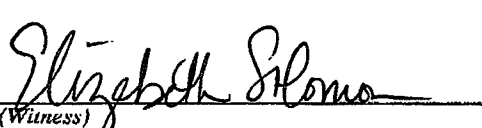
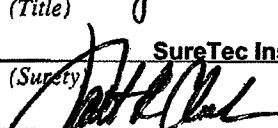
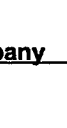
City of Fayetteville
113 W. Mountain Street
Fayetteville, AR 72701

as Oblige, hereinafter called the Oblige, in the sum of **FIVE PERCENT OF THE TOTAL AMOUNT BID**
Dollars (\$ **5%**), for the payment
of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for **Bid 13-52, Construction - Thermal Striping Re-Bid**
(Here insert full name, address and description of project)

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

Signed and sealed this **26th** day of **September** **2013**

 (Witness)	 (Principal)	 (Seal)
 (Witness)	 (Surety)	 (Seal)
	Scott R. Clark, Attorney-in-Fact	

POA #: 410013

SureTec Insurance Company LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Elizabeth Solomon, Janice A. Butler, Marty C. Clark, Scott R. Clark, Shannon C. Schmidly, Sarah K. Day, Sarah Brownfield

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for:

Three Million and 00/100 Dollars (\$3,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment shall continue in force until 12/31/2015 and is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 21st day of March, A.D. 2013.

SURETEC INSURANCE COMPANY

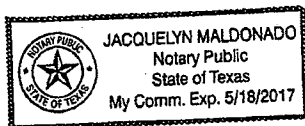
By: John Knox Jr., President

State of Texas
County of Harris

SS:



On this 21st day of March, A.D. 2013 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



Jacquelyn Maldonado, Notary Public
My commission expires May 18, 2017

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 26th day of September, 2013, A.D.

M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:00 am and 5:30 pm CST.

City Council Agenda Items
and
Contracts, Leases or Agreements

10/15/2013

City Council Meeting Date
Agenda Items OnlyJason Drummond
Submitted BySolid Waste
DivisionTransportation Services
Department

Action Required:

Approval of a budget adjustment in the amount of \$269,000 to provide funding for solid waste hauling and disposal fees.

\$ 269,000.00
Cost of this request\$ -
Category / Project BudgetVarious
Program Category / Project NameVarious
Account Number\$ -
Funds Used to DateVarious
Program / Project Category Name

Project Number

\$ -
Remaining BalanceSolid Waste
Fund NameBudgeted Item ☐Budget Adjustment Attached ☒Terry J. Gully
Department Director9-23-13
Date

Previous Ordinance or Resolution #

Original Contract Date:

C. Kelly
City Attorney9-24-13
Date

Original Contract Number:

Paul A. Butler
Finance and Internal Services Director10-2-2013
Date

Received in City Clerk's Office 10-24-13 P04:21 RCVD

Don Mann
Chief of Staff10-2-13
Date

Received in Mayor's Office

Don Mann per OK by Mayor Jordan
Mayor10-3-13
Date

Comments:

To: Mayor Lioneld Jordan and Fayetteville City Council

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

From: Jason Drummond, Commercial Sales Representative

Date: September 16, 2013

Subject: Solid Waste Hauling and Disposal Fees

RECOMMENDATION

A resolution approving a budget adjustment in the amount of \$269,000 to provide funding for Solid Waste hauling and disposal fees.

BACKGROUND

Disposal and hauling fees for apartments, businesses, residential customers, and the transfer station based on actual yearly costs with an additional 3% increase each December for the Waste Management contract.

DISCUSSION

Due to increases in construction of apartments and businesses throughout Fayetteville, a steady growth of the commercial drop box program has occurred. Funds for the purchase of additional containers for the drop box program to meet these demands were previously approved.

These funds will be offset by the increased revenue collected for disposal fees.

BUDGET IMPACT

The increase in expenditures will be directly offset by revenues.

RESOLUTION NO. _____

A RESOLUTION APPROVING A BUDGET ADJUSTMENT IN THE TOTAL
AMOUNT OF \$269,000.00 TO PROVIDE FUNDING FOR SOLID WASTE
HAULING AND DISPOSAL FEES

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves a
budget adjustment, a copy of which is attached as Exhibit "A", in the total amount of
\$269,000.00 to provide funding for solid waste hauling and disposal fees.

PASSED and APPROVED this 15th day of October, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

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

V12.0724 A. 3
Solid Waste Hauling
and Disposal Fees
Page 4 of 4

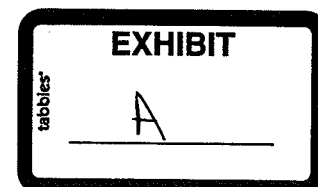
Budget Year 2013	Division: Solid Waste & Recycling Department: Transportation Services	Request Date 9/16/2013	Adjustment Number
--------------------------------	--	--------------------------------------	--------------------------

BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION

\$269,000 in funds are requested in various Solid Waste Fund accounts to adjust budget line items. Due to increased volumes of trash collected at construction sites, apartments and businesses additional funding is needed for the disposal and hauling of trash.

Division Head Budget Director Department Director Finance Director Chief of Staff Mayor <i>OK Per</i> 	Date 10-2-2013 Date 10-2-13 Date 10-2-2013 Date 10-2-2013 Date 10-3-2013	Prepared By: <u>Glenda Eden</u> Reference: _____ _____ Budget & Research Use Only Type: A B C D E P General Ledger Date _____ Posted to General Ledger _____ <u>Initial</u> <u>Date</u> Checked / Verified _____ <u>Initial</u> <u>Date</u>
--	--	--

TOTAL BUDGET ADJUSTMENT			269,000	269,000	Project.Sub Number
			Increase / (Decrease)		
Account Name	Account Number		Expense	Revenue	
Solid waste disposal	5500.5010.5316.00	37	27,000	-	.
Solid waste disposal	5500.5020.5316.00	37	26,000		.
Solid waste disposal	5500.5030.5316.00	37	134,000		.
Solid waste disposal	5500.5040.5316.00	37	52,000		.
Contract services	5500.5040.5315.00	37	30,000		.
Pull Charges	5500.0950.4435.01	RI		84,500	.
Disposal Fee	5500.0950.4435.03	RI		113,500	.
Transfer Station Revenue	5500.0950.4435.04	RI		71,000	.
					.
					.



AGENDA REQUEST

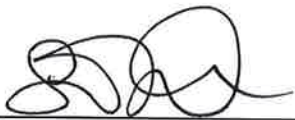
FOR: COUNCIL MEETING OF September 17, 2013

FROM:
CITY COUNCIL MEMBER SARAH MARSH

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An ordinance to amend § 164.11 **Height and Setback Regulations; Exceptions** to enhance livability through appropriate transitions in building scale and to protect access to air and sunlight and to enact an emergency clause

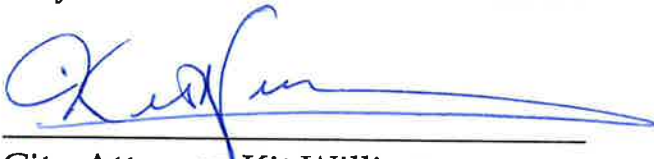
APPROVED FOR AGENDA:



City Council Member Sarah Marsh

9/4/2013

Date



City Attorney Kit Williams
(as to form)

9-3-13

Date

This Ordinance was left on the 2nd Reading at the 10/1/13 CC mtg.
This Ordinance was left on the 1st Reading at the 9/17/13 CC mtg.



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director
Andrew Garner, Senior Planner-Current Planning

FROM: Kit Williams, City Attorney

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

DATE: August 28, 2013

RE: Preservation of homeowners' rights to sunlight and air

City Council Member Sarah Marsh has asked me to draft an amendment to § 164.11 **Height or Setback Regulations; Exceptions** within the **Supplementary Zoning Regulations** Chapter of the Unified Development Code to help preserve and protect historic homes and the historic nature of the Downtown and Entertainment areas of Fayetteville.

As many remember, the Downtown Master Plan recognized and sought to protect the livability of the single family homes within the Downtown Master Plan. The Mayor and City Council have sought to ensure the mixed use and walkable nature of the Downtown and Entertainment District by fostering the preservation of the many historic single family homes still used as residences. Unfortunately, the zero side setback and immediate 84 foot height of the building's wall which is permitted in Main Street Center threatens the livability of adjoining single family homes in our downtown area.

In order that homeowners be ensured sufficient sunlight and air for their homes to be livable and for homeowners to utilize solar energy, a minimum side and rear setback from new large and tall multifamily, commercial and mixed use buildings should be required. Preserving some sunlight is also necessary to protect existing trees and other plants to preserve the historic residential landscape within a more urban architectural setting.

I suggest a minimum side and rear setback of 15 feet which is not dissimilar to setbacks in traditional residential zoning districts and currently required in the Community Services Zoning District (copy attached). I further suggest an initial building height limitation of 30 feet at this setback location which is what is currently required in Residential Multifamily Districts (RMF-6, RMF-12, RMF-18 and RMF-24) for an additional 15 foot stepback (copy attached). At thirty (30) feet from the single family residence's property line, the new multifamily and commercial construction in Main Street Center and Urban Thoroughfare could jump to 84 feet and in Downtown General and Community Services could go up to its maximum of 56 feet.

Without such modest setback and stepback requirements, a developer could build an 84 foot wall for his building on the single family home's property line. A Downtown and Entertainment District homeowner who wanted to live in their home could find herself or himself surrounded by 84 foot high walls on both side property lines and on the rear property line. The home would then be stuck within a 84 foot deep cave without adequate sunlight for solar energy, trees and plants. Indeed, this walled in and almost constantly shaded house would be thrust into an unhealthy environment of mold and mildew.

These modest setbacks and stepbacks would at least provide some sunlight and air protection for existing homeowners without substantial loss of density for the developers. When these homes were built and zoned residential, they had substantial sunlight protection not only from setbacks, but because an adjoining house could only occupy less than half of the lot's area. There are no such protections in Main Street/Center, Downtown Core, or Downtown General. This ordinance would reinstate some sunlight protection and give the homeowner some protection from the 84 foot deep cave.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND § 164.11 HEIGHT AND SETBACK REGULATIONS; EXCEPTIONS TO ENHANCE LIVABILITY THROUGH APPROPRIATE TRANSITIONS IN BUILDING SCALE AND TO PROTECT ACCESS TO AIR AND SUNLIGHT AND TO ENACT AN EMERGENCY CLAUSE

WHEREAS, appropriate transitions in building scale enhance livability and architectural cohesion in mixed-use areas, helping to enrich our built environment by promoting the compatibility of new development with historic structures; and

WHEREAS, Fayetteville homeowners' rights to adequate sunlight and room for air and wind should be protected; and

WHEREAS, preservation of the many homeowners' single family residences used as homes in the Downtown Master Plan District and other areas with inadequate setback protection from large and tall buildings require that minimum side and rear setbacks and upper story setbacks be enacted to ensure adequate sunlight, wind and air for these homes to remain attractive and healthful places to live; and

WHEREAS, residential homeowners who wish to install solar panels or passive solar heat collectors, etc. must have enough protected access to sunlight for these ecological and green technology products to work effectively; and

WHEREAS, trees and other plants within the yards of homes also need adequate sunlight that reasonable setback and setback regulations can ensure.

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 § 164.11 **Height of Setback Regulations; Exceptions** by amending its title to be: "**Height of Setback Regulations; Exceptions and Home Protection Requirements**" and by enacting a new (C) *Home Protection Requirements* as shown below:

Page 2
Ordinance No.

“(C) Home Protection Requirements.

Regardless of any other setback or build-to zone regulations, new multifamily, commercial, or mixed use construction which adjoins or abuts a single family home being used as a residence must at a minimum be set back from the side or rear adjoining property line at least fifteen (15) feet. The maximum height of the new building from the fifteen foot setback shall be thirty (30) feet for an additional fifteen (15) foot stepback from the residence’s property line. These setback and stepback requirements are minimums so that, if larger setbacks or stepbacks are required by other zoning laws, the larger setback/stepbacks are controlling.”

Section 2. Emergency Clause. That the City Council of the City of Fayetteville, Arkansas hereby determines that preservation of access and right to sunlight and adequate room for air and wind are vital necessities for houses used for residential purposes and that large multifamily, commercial, or mixed use development projects planned or proposed to be built with zero setbacks next to existing homes threaten the peace, health and safety of Fayetteville citizens such that it is necessary for the public peace, health and safety that this ordinance shall become effective without delay.

PASSED and APPROVED this 17th day of September, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Fayetteville Code of Ordinances

following the sale. Any such signs not so removed the following day, or located in public rights-of-way may be removed by city staff and for any such sign removed a collection fee shall be imposed.

(Code 1991, §160.103; Ord. No. 3970, § 3, 5-7-96; Ord. No. 4100, §2 (Ex. A), 6-16-98)

Cross-reference(s)--Signs, Ch. 174.

164.11 Height or Setback Regulations; Exceptions

(A) The height limitations contained in the Zoning Regulation, Chapter 161, do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

(B) *Side Setbacks.* In zoning districts that permit two, three or other multi-family residential uses, side setbacks may be varied to permit common walls between single family attached / townhouse dwellings, subject to all applicable building and fire codes and the following standards:

(1) The total number of dwelling units on the lot, prior to being subdivided into single family attached / townhouse lots, shall conform to the minimum bulk and area requirements of the underlying zoning district.

(2) The townhouse development shall conform to the zoning district density, exterior setback requirements, height regulations and all other applicable city ordinances.

(3) There shall be a minimum lot width of 18 feet for each dwelling unit.

(4) There shall be no minimum lot area requirement unless otherwise specified by the underlying zoning district.

(Code 1965, App. A., Art. 8(6); Ord. No 1747, 6-29-70; Ord. No. 2555, 8-21-79; Code 1991, §160.113; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 5225, 3-3-09; Ord. 5327, 6-1-10)

164.12 Nonconforming Structures, Uses And Lots

It is the intent of this section to regulate nonconforming structures, uses or lots that are created when zoning designations or regulations are created or changed such that an existing lawfully established structure, use, or lot no longer conforms

to the regulations of the Unified Development Code. It is also the intent of this section to permit nonconformities to continue as they exist presently and to guide future uses and development to be consistent with the City's planning policy and regulations.

(A) *Nonconforming structures.*

(1) Nonconforming structures are permitted to exist for continued and creative reuse to contribute to the surrounding character, diversity, and services in the neighborhood until such structures are removed.

(2) Repairs to nonconforming structures or portions thereof are permitted, so long as the nonconforming portion of the structure is not enlarged in volume, area or footprint.

(3) Reconstruction of nonconforming structures or portions thereof amounting to less than 50% of the existing square feet are permitted so long as the nonconforming portion of the structure is not enlarged in volume, area or footprint.

(4) Voluntary removal, damage or destruction of a nonconforming structure or portion thereof amounting to 50% or more of the existing square feet shall require either complete removal of the structure or its reconstruction in conformance with existing regulations.

(5) Involuntary damage to or destruction of a nonconforming structure (from fire, winds or other calamity) shall permit the owner to rebuild, reconstruct or restore the structure on the same footprint of the original structure plus any addition or expansion that is allowed by the underlying zoning district. Such reconstruction is permitted as long as it begins within 18 months of the loss and complies with all other applicable zoning, development and building codes.

(6) For nonconforming structures located in a zoning district utilizing conventional building setbacks, building additions/expansions are permitted so long as the addition is in compliance with all current setbacks, building area and building height requirements of the underlying zoning district, along with all other applicable zoning and development ordinances.

(7) For nonconforming structures located in zoning districts utilizing build-to zones and requirements for a minimum buildable street frontage, all new construction that increases the existing building(s) footprint or volume of habitable space by 50% or more shall

Add
(C) →

Manufactured home park	3 acres
Lot within a manufactured home park	4,200 sq. ft.
Townhouse: Development	10,000 sq. ft.
Individual lot	2,500 sq. ft.
Single-family	6,000 sq. ft.
Two-family	7,000 sq. ft.
Three or more	9,000 sq. ft.
Fraternity or Sorority	2 acres
Professional offices	1 acre

(3) Land area per dwelling unit.

Manufactured Home	3,000 sq. ft.
Apartments: No bedrooms	1,700 sq. ft.
One bedroom	1,700 sq. ft.
Two or more bedrooms	2,000 sq. ft.
Fraternity or Sorority	1,000 sq. ft. per resident

(E) Setback requirements.

Front	Side	Rear
A build-to zone that is located between the front property line and a line 25 feet from the front property line.	8 ft.	25 ft.

Cross reference(s) --Variances, Ch. 156.

(F) Building height regulations.

Building Height Maximum	30/45 ft.*
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*A building or a portion of a building that is located between 0 and 10 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 30 feet. Buildings or portions of the building set back greater than 10 feet from the master street plan right-of-way shall have a maximum height of 45 feet.

Any building which exceeds the height of 20 feet shall be set back from any side boundary line of an adjacent single family district, an additional distance of one foot for each foot of height in excess of 20 feet.

(G) Building area. None.

(H) Minimum buildable street frontage. 50% of the lot width.

(Ord. No. 4325, 7-3-01; Ord. 5028, 6-19-07; Ord. 5224, 3-3-09; Ord. 5262, 8-4-09; Ord. 5312, 4-20-10; Ord. 5462, 12-6-11; Ord. 5592, 06-18-13)

161.14 District RMF-24, Residential Multi-Family – Twenty-Four Units Per Acre

(A) Purpose. The RMF-24 Multi-family Residential District is designed to permit and encourage the developing of a variety of dwelling types in suitable environments in a variety of densities.

(B) Uses.

(1) Permitted uses.

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 26	Multi-family dwellings

(2) Conditional uses.

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 11	Manufactured home park
Unit 12	Limited business
Unit 25	Professional offices
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) Density.

Units per acre	24 or less
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(D) Bulk and area regulations.

(1) Lot width minimum.

Manufactured home park	100 ft.
Lot within a Manufactured home park	50 ft.
Single-family	60 ft.
Two-family	60 ft.
Three or more	90 ft.
Professional offices	100 ft.

(2) Lot area minimum.

Manufactured home park	3 acres
Lot within a mobile home park	4,200 sq. ft.
Townhouses: Development	10,000 sq. ft.
Individual lot	2,500 sq. ft.

area, and any lot, the area occupied by
buildings shall not exceed 60% of the total
lot area.

tribut C-1, Neighborhood

mitted uses.

City-wide uses by right
Government facilities
Eating places
Neighborhood shopping
Gasoline service stations and drive-in/drive through restaurants
Offices, studios, and related services

ditional uses.

City-wide uses by conditional use permit
Public protection and utility facilities
Cultural and recreational facilities
Shopping goods
Liquor stores
Outdoor music establishments*
Wireless communications facilities*
Sidewalk Cafes
Clean technologies

jone.

area regulations. None.

regulations.

between the right-of-way and the building	
Side	None
Side, when contiguous to a residential district	10 ft.
Rear	20 ft.

(F) *Building height regulations.*

Building Height Maximum	56 ft.*
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Any building which exceeds the height of 20 feet shall be setback from any boundary line of any residential district a distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

(Code 1947, 6-29-70; Code 1991, §160.035; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 5028, 6-19-07; Ord. 5195, 11-6-08; Ord. 5312, 4-20-10; Ord. 5339, 8-31-10; Ord. 5462, 12-6-11; Ord. 5592, 06-18-13)

161.19 Community Services

(A) *Purpose.* The *Community Services* district is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas and is intended to provide for adaptable mixed use centers located along commercial corridors that connect denser development nodes. There is a mixture of residential and commercial uses in a traditional urban form with buildings addressing the street. For the purposes of Chapter 96: Noise Control, the *Community Services* district is a commercial zone. The intent of this zoning district is to provide standards that enable development to be approved administratively.

(B) Uses.

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 15	Neighborhood Shopping goods
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 24	Home occupations

Set back $\checkmark$
Adjoining
when residence $\rightarrow$

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation, trades and services
Unit 19	Commercial recreation, small sites
Unit 28	Center for collecting recyclable materials
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(2) *Conditional uses*

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(C) *Density. None*

(D) Bulk and area regulations.

(1) Lot width minimum.

Dwelling	18 ft.
All others	None

(2) Lot area minimum. None

(E) *Setback regulations.*

Front:	A build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side and rear:	None
Side or rear, when contiguous to a single-family residential district:	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	56 ft.
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(5) *Minimum buildable street frontage.* 50% of the lot width.

(Ord. 5312, 4-20-10; Ord. 5339, 8-3-10; Ord. 5462, 12-6-11;
Ord. 5592, 06-18-13)

161.20 District C-2, Thoroughfare

Commercial

(A) P_{pur}

is
func
ente
trav

(B) Use

(1)

Unit 1
Unit 4
Unit 5
Unit 13
Unit 14
Unit 16
Unit 17
Unit 18
Unit 19
Unit 20
Unit 25
Unit 33
Unit 34

(2)

Unit 2
Unit 3
Unit 21
Unit 28
Unit 29
Unit 32
Unit 35
Unit 36
Unit 38
Unit 40
Unit 42
Unit 43

(c) *Dens*

(D) Bulk.

(E) Selbe

Front
Front, if pass between the building
Side
Side, where a resident
Rear

(F) Buildi

DRAFT v.4

Building Height Amendment - General Description

There is no longer a single family use associated with the side or rear setback and building height amendment proposal, based on the current reasons stated for instituting these regulations, which are to provide transition in building scale to promote compatibility of new development and existing structures, to protect rights to sunlight and room for air and wind, to mitigate harmful effects such as mold and allow for trees and plants to grow, and to allow for solar access for alternative energy purposes. All of these same concerns, it could be argued, apply to office, commercial and other uses in addition to single family homes.

Amend Ch. 161, Zoning Regulations

Setback

All of the following zoning districts with 0-foot side and rear setbacks are proposed to be amended to add a minimum 5-foot side and rear setback. There are a few exceptions to this rule, chiefly 1) if there is no building developed adjacent to the property being developed; 2) if an adjacent building is already within 5 feet of the common property line; and 3) if the same property owner owns the adjacent property on the common boundary line.

C-1 – Neighborhood Commercial
CS - Community Services
C-2 - Thoroughfare Commercial
UT - Urban Thoroughfare
C-3 – Central Commercial
DC – Downtown Core
MSC – Main Street Center
DG – Downtown General

Building Height

At the 5-foot setback from side and rear property lines (or between 0 and 5 feet, if the conditions allow for it), the maximum height is the height of the structure on the adjacent property or 36 feet, whichever is greater. This permits standard 12-foot floor to floor height dimensions utilized in commercial construction. Once the maximum height is achieved, there is a required additional 10-foot setback, for a total setback of 15 feet. This essentially creates an initial maximum height between 5-15 feet from the side/rear property line.

Past the 15-foot setback line, a building may go up to 60 feet in height, again based on 12-foot floor to floor heights that would allow 5 stories. Balconies, awnings, overhangs and other similar architectural features that protrude from the building façade are permitted to a depth of 6 feet into the side and rear setback zones.

The maximum height in all of these above zones is amended to 60 feet, with a caveat. For zones that reference heights above 60 feet, there are supplementary requirements that must be met. In each zone that permits this, there is a reference to §164.11 for the supplementary standards.

Amend Ch. 164.11 Height Regulations; Exceptions

This proposal attempts to regulate building height above the maximum 56 feet, requiring certain additional standards to be met. They include wider sidewalks based on the height of the building, creation of a 30-foot setback above 60 feet from all property lines, the provision of mixed-use,

requirement to build to LEED Gold, requirement to cover a parking garage with a liner building at street level, and some architectural embellishment when the side of a building is adjacent to a residence.

Amend Ch. 156.02 (F) Variances, Specific tests

A statement has been added that the Planning Division or Board of Adjustment may require the applicant to provide a visual impact analysis and/or a sun/shadow study, as needed, to determine if there is an adverse impact on neighboring properties, if there is a variance requested.

161.16 Neighborhood Services

(A) *Purpose.* The Neighborhood Services district is designed to serve as a mixed use area of low intensity. Neighborhood Services promotes a walkable, pedestrian-oriented neighborhood development form with sustainable and complementary neighborhood businesses that are compatible in scale, aesthetics, and use with surrounding land uses. For the purpose of Chapter 96: Noise Control, the Neighborhood Services district is a residential zone.

(B) *Uses*

(1) *Permitted uses*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 12	Limited Business
Unit 24	Home occupations
Unit 41	Accessory dwelling units

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses*

Unit 2	City-wide uses by conditional use
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government Facilities
Unit 13	Eating places
Unit 15	Neighborhood shopping goods
Unit 19	Commercial recreation, small sites
Unit 25	Offices, studios and related services
Unit 26	Multi-family dwellings
Unit 36	Wireless communication facilities*
Unit 40	Sidewalk cafes

(C) *Density.*

Units per acre	10 or less
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(D) *Bulk and Area*

(1) *Lot width minimum*

Single-family	35 feet
Two-family	70 feet
Three or more	90 feet
All other uses	None

(2) *Lot area minimum.*

Single-family	4,000 sq. ft.
Two-family or more	3,000 sq. ft. of lot area per dwelling unit
All other permitted and conditional uses	None

(E) *Setback regulations*

Front:	A build-to zone that is located between 10 and 25 feet from the front property line.
Side	5 feet
Rear	15 feet

(F) *Building height regulations.*

Building Height Maximum	45 ft.
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*Any building which exceeds the height of 20 feet shall be set back from a boundary line of any single family residential district a distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of the lot.

161.18 District C-1, Neighborhood Commercial

(A) *Purpose.* The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 5	Government Facilities
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 25	Offices, studios, and related services

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 16	Shopping goods
Unit 34	Liquor stores
Unit 35	Outdoor music establishments*
Unit 36	Wireless communications facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

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

(E) *Setback regulations.*

Front	15 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Side	None 5 feet
Side, when contiguous to a residential district	10 ft.
Rear	20 ft.

(F) *Building height regulations.*

Building Height Maximum	56 60ft.*
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*Any building which exceeds the height of 20 feet shall be setback from any boundary line of any residential district a distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

161.19 Community Services

(A) *Purpose.* The *Community Services* district is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas and is intended to provide for adaptable mixed use centers located along commercial corridors that connect denser development nodes. There is a mixture of residential and commercial uses in a traditional urban form with buildings addressing the street. For the purposes of Chapter 96: Noise Control, the *Community Services* district is a commercial zone. The intent of this zoning district is to provide standards that enable development to be approved administratively.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 15	Neighborhood Shopping goods
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 24	Home occupations
Unit 25	Offices, studios and related services
Unit 26	Multi-family dwellings

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation, trades and services
Unit 19	Commercial recreation, small sites
Unit 28	Center for collecting recyclable materials
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Dwelling	18 ft.
All others	None

(2) *Lot area minimum.* None

(E) *Setback regulations.*

Front:	A build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side and rear:	None 5 feet
Side or rear, when contiguous to a single-family residential district:	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	56 60 ft.
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A new building or portion of a building that is located between 5 and 15 feet from the side and rear property line shall have a maximum height of 36 feet or the height of the adjacent building, whichever is greater. This measurement shall be calculated parallel to each side and rear property line.

A new building or portion of a building that is constructed greater than 15 feet from the side or rear property line shall have a maximum height of 60 feet. Balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the side and rear building façade.

(G) *Minimum buildable street frontage.* 50% of the lot width.

161.20 District C-2, Thoroughfare Commercial

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

(B) *Uses.*

(1) *Permitted uses.*

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

(2) *Conditional uses.*

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

(C) *Density.* None.

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

(E) *Setback regulations.*

Front	15 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Side	None 5 feet
Side, when contiguous to a residential district	15 ft.
Rear	20 ft.
All property lines	30 ft. for buildings over 60 ft. in height*

(F) *Building height regulations.*

Building Height Maximum	60/75 ft.*
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The maximum building height is 60 feet. Building height may be permitted up to 75 feet, pursuant to §164.11 Height or Setback Regulations and Exceptions.

*Any building which exceeds the height of 20 feet shall be set back from a boundary line of any residential district a distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot.

161.21 Urban Thoroughfare

(A) *Purpose.* The Urban Thoroughfare District is designed to provide goods and services for persons living in the surrounding communities. This district encourages a concentration of commercial and mixed use development that enhances function and appearance along major thoroughfares. Automobile-oriented development is prevalent within this district and a wide range of commercial uses is permitted. For the purposes of Chapter 96: Noise Control, the Urban Thoroughfare district is a commercial zone. The intent of this zoning district is to provide standards that enable development to be approved administratively.

(B) *Uses.*

(1) Permitted uses

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor store
Unit 41	Accessory Dwellings

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) Conditional uses

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 20	Commercial recreation, large sites
Unit 21	Warehousing and wholesale
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
Unit 33	Adult live entertainment club or bar
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities
Unit 38	Mini-storage units

Unit 40	Sidewalk cafes
Unit 42	Clean technologies
Unit 43	Animal boarding and training

(C) *Density.* None

(D) *Bulk and area regulations.*

(1) Lot width minimum

Single-family dwelling	18 feet
All other dwellings	None
Non-residential	None

(2) Lot area minimum. None

(E) *Setback regulations.*

Front:	A build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side and rear:	None 5 feet
Side or rear, when contiguous to a single-family residential district:	15 feet
All property lines	30 ft. for buildings over 60 ft. in height*

(F) *Building height regulations.*

Building Height Maximum	56 60/84 ft.*
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*A building or a portion of a building that is located between 10 and 15 ft. from the front property line or any master street plan right-of-way line shall have a maximum height of 56 feet. A building or portion of a building that is located greater than 15 feet from the master street plan right-of-way shall have a maximum height of 84 feet.

A new building or portion of a building that is located between 5 and 15 feet from the side and rear property line shall have a maximum height of 36 feet or the height of the adjacent building, whichever is greater. This measurement shall be calculated parallel to each side and rear property line.

A new building or portion of a building that is constructed greater than 15 feet from the side or rear property line shall have a maximum height of 60 feet. Balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the side and rear building façade.

The maximum building height is 60 feet. Building height may be permitted up to 84 feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions*.

~~Any building that exceeds the height of 20 feet shall be set back from any boundary line of a single-family residential district, an additional distance of one foot for each foot of height in excess of 20 feet.~~

- (G) *Minimum buildable street frontage.* 50% of the lot width.

161.22 District C-3, Central Commercial

(A) *Purpose.* The Central Commercial District is designed to accommodate the commercial and related uses commonly found in the central business district, or regional shopping centers which provide a wide range of retail and personal service uses.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 18	Gasoline service stations & drive-in restaurants
Unit 19	Commercial recreation, small sites
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores
Unit 44	Cottage Housing Development

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 17	Transportation trades and services
Unit 28	Center for collecting recyclable materials
Unit 29	Dance Halls
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and area regulations.* None

(E) *Setback regulations.*

	Central Business District	Shopping Center
Front	5 ft.	25 ft.
Front, if parking is allowed between the right-of-way and the	50 ft.	50 ft.

building		
Side	None 5 feet	None
Side, when contiguous to a residential district	10 ft.	25 ft.
Rear, without easement or alley	15 ft.	25 ft.
Rear, from center line of a public alley	10 ft.	10 ft.
All property lines	30 ft. for buildings over 60 ft. in height*	30 ft. for buildings over 60 ft. in height*

(F) *Building height regulations.*

Building Height Maximum	56 60/84 ft.*
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*A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 56 60 feet. A building or a portion of a building that is located greater than 15 feet from the master street plan right-of-way line shall have a maximum height of 84 feet.

A new building or portion of a building that is located between 5 and 15 feet from the side and rear property line shall have a maximum height of 36 feet or the height of the adjacent building, whichever is greater. This measurement shall be calculated parallel to each side and rear property line.

A new building or portion of a building that is constructed greater than 15 feet from the side or rear property line shall have a maximum height of 60 feet. Balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the side and rear building façade.

The maximum building height is 60 feet. Building height may be permitted up to 84 feet, pursuant to §164.11 Height or Setback Regulations and Exceptions.

161.23 Downtown Core

(A) *Purpose.* Development is most intense, and land use is densest in this zone. The downtown core is designed to accommodate the commercial, office, governmental, and related uses commonly found in the central downtown area which provides a wide range of retail, financial, professional office, and governmental office uses. For the purposes of Chapter 96: Noise Control, the Downtown Core district is a commercial zone.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 29	Dance Halls
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

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

(E) *Setback regulations.*

Front	A build-to zone that is located between the front property line and a line 25 ft. from the front property line.
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Side	None 5 feet
Rear	5 ft.
Rear, from center line of an alley	12 ft.
All property lines	30 ft. for buildings over 60 ft. in height*

(F) *Minimum buildable street frontage.* 80% of lot width.

(G) *Building height regulations.*

Building Height Maximum	56-60/ 168 ft.*
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*A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 56-60 feet. A building or portion of a building that is located greater than 15 feet from the master street plan right-of-way shall have a maximum height of 168 feet.

A new building or portion of a building that is located between 5 and 15 feet from the side and rear property line shall have a maximum height of 36 feet or the height of the adjacent building, whichever is greater. This measurement shall be calculated parallel to each side and rear property line.

A new building or portion of a building that is constructed greater than 15 feet from the side or rear property line shall have a maximum height of 60 feet. Balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the side and rear building façade.

The maximum building height is 60 feet. Building height may be permitted up to 168 feet, pursuant to §164.11 Height or Setback Regulations and Exceptions.

161.24 Main Street/Center

(A) *Purpose.* A greater range of uses is expected and encouraged in the *Main Street/Center*. The *Center* is more spatially compact and is more likely to have some attached buildings than *Downtown General* or *Neighborhood Conservation*. Multi-story buildings in the *Center* are well-suited to accommodate a mix of uses, such as apartments or offices above shops. Lofts, live/work units, and buildings designed for changing uses over time are appropriate for the *Main Street/Center*. The *Center* is within walking distance of the surrounding, primarily residential areas. For the purposes of Chapter 96: Noise Control, the Main Street/Center district is a commercial zone.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Dwelling (all unit types)	18 ft.
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(2) *Lot area minimum.* None.

(E) *Setback regulations.*

Front	A build-to zone that is located between the front property line and a line 25 ft. from the front property line.
Side	None 5 feet
Rear	5 ft.
Rear, from center line of an alley	12 ft.
All property lines	30 ft. for buildings over 60 ft. in height*

(F) *Minimum buildable street frontage.* 75% of lot width.

(G) *Building height regulations.*

Building Height Maximum	56 60/84 ft.*
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*A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 56 60 feet. A building or a portion of a building that is located greater than 15 feet from the master street plan right-of-way line shall have a maximum height of 84 feet.

A new building or portion of a building that is located between 5 and 15 feet from the side and rear property line shall have a maximum height of 36 feet or the height of the adjacent building, whichever is greater. This measurement shall be calculated parallel to each side and rear property line.

A new building or portion of a building that is constructed greater than 15 feet from the side or rear property line shall have a maximum height of 60 feet. Balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the side and rear building façade.

The maximum building height is 60 feet. Building height may be permitted up to 84

feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions*.

161.25 Downtown General

(A) *Purpose.* *Downtown General* is a flexible zone, and it is not limited to the concentrated mix of uses found in the *Downtown Core* or *Main Street / Center*. *Downtown General* includes properties in the neighborhood that are not categorized as identifiable centers, yet are more intense in use than *Neighborhood Conservation*. There is a mixture of single-family homes, rowhouses, apartments, and live/work units. Activities include a flexible and dynamic range of uses, from public open spaces to less intense residential development and businesses. For the purposes of Chapter 96: Noise Control, the *Downtown General* district is a residential zone.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 15	Neighborhood shopping goods
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 28	Center for collecting recyclable materials
Unit 36	Wireless communication facilities
Unit 40	Sidewalk Cafes

(C) *Density.* None

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Dwelling (all unit types)	18 ft.
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(2) *Lot area minimum.* None.

(E) *Setback regulations.*

Front	A build-to zone that is located between the front property line and a line 25 ft. from the front property line.
Side	None 5 feet
Rear	5 ft.
Rear, from center line of an alley	12 ft.

(F) *Minimum buildable street frontage.* 50% of lot width.

(G) *Building height regulations.*

Building Height Maximum	56 60 ft.*
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A new building or portion of a building that is located between 5 and 15 feet from the side and rear property line shall have a maximum height of 36 feet or the height of the adjacent building, whichever is greater. This measurement shall be calculated parallel to each side and rear property line.

A new building or portion of a building that is constructed greater than 15 feet from the side or rear property line shall have a maximum height of 60 feet. Balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the side and rear building façade.

164.11 Height or Setback Regulations; Exceptions

- (A) The height limitations contained in the Zoning Regulation, Chapter 161, do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, stair towers, elevator shafts or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.
- (B) *Side Setbacks.* In zoning districts that permit two, three or other multi-family residential uses, side setbacks may be varied to permit common walls between single family attached / townhouse dwellings, subject to all applicable building and fire codes and the following standards:
- (1) The total number of dwelling units on the lot, prior to being subdivided into single family attached / townhouse lots, shall conform to the minimum bulk and area requirements of the underlying zoning district.
 - (2) The townhouse development shall conform to the zoning district density, exterior setback requirements, height regulations and all other applicable city ordinances.
 - (3) There shall be a minimum lot width of 18 feet for each dwelling unit.
 - (4) There shall be no minimum lot area requirement unless otherwise specified by the underlying zoning district.
- (C) *Side and rear setback.* All developments within zoning districts that require a 5-foot side and rear setback and an accompanying building height stepback may be permitted to reduce the side and/or rear setback to 0 feet in the following instances:
- (1) if there is no principal structure on the property directly adjacent to the common side and/or rear property line;
 - (2) if a principal structure that is adjacent to the common side and/or rear property line is already within 5 feet of said property line; or
 - (3) if the developing property owner owns the adjacent property on the common side and/or rear property line.
- (D) Any building over 36 feet in height utilizing urban streetscapes shall provide for a minimum 10-foot wide sidewalk adjacent to all streets on which a sidewalk is required to be replaced or constructed due to the development proposed.
- (E) The maximum building height for new construction in all zones in the city is 60 feet. For zones that refer to a higher building height potential than 60 feet, the following supplemental standards must be met for any building between 60 feet and the maximum height of the underlying zoning district to be considered for approval:
- (1) A minimum 12-foot wide sidewalk for projects utilizing urban streetscapes shall be constructed adjacent to all streets on which a sidewalk is required to be replaced or constructed.
 - (2) Any associated parking garage shall be screened from view at the street grade with a liner building.
 - (3) A mixture of commercial and residential uses shall be incorporated into any building that is permitted to be over 56 feet in height.
 - (4) Developers of buildings over 56 feet in height shall submit performance models and other applicable information, prior to obtaining a building permit, to indicate compliance with achieving USGBC LEED Gold or equivalent building standards. All projects shall show effort to achieve the Development Density and Community Connectivity credit, or equivalent.
 - (5) Any side of a building immediately adjoining a principal structure on an adjacent lot shall utilize materials, colors and other architectural features to provide relief, scale, and transition to the wall, similar to the front façade.

156.02 (F) Specific tests

(F) *Specific Tests.* The Board of Adjustment shall apply specific tests for the following variance requests:

- (1) *Height variances in all districts.* In addition to meeting all other normal requirements for a variance, an applicant seeking a height variance must establish the increased height of the proposed structure will not adversely affect adjoining or neighboring property owners, nor impair the beauty of Old Main, the historical churches on Dickson Street near East Avenue, nor otherwise impair the historic beauty and character of Fayetteville.
- (2) The Planning Division and/or Board of Adjustment may require an applicant to produce a viewshed analysis and/or a Sun/Shadow Study using industry-accepted methodologies to show the impact of a height variance proposal on neighboring streets and properties, in an effort to determine if there is an adverse impact caused by the proposal.

City of Fayetteville Staff Review Form

B. 2

PPL 13-4404 (Persimmon Street Master
Street Plan Right-of-Way/Legacy IV Subdivision)
Page 1 of 30

City Council Agenda Items
and
Contracts, Leases or Agreements

10/1/2013

City Council Meeting Date
Agenda Items Only

Andrew Garner

Submitted By

Planning

Division

Development Services

Department

Action Required:

PPL 13-4404: PRELIMINARY PLAT (PERSIMMON STREET MASTER STREET PLAN RIGHT-OF-WAY/LEGACY IV SUBDIVISION, 475): Submitted by BATES AND ASSOCIATES for property located WEST OF 54TH STREET. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE and contains approximately 108 acres. The request is for a lesser dedication of right-of-way for Persimmon Street within the Legacy IV subdivision.

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

09.11.2013

Date

Previous Ordinance or Resolution #

City Attorney

9.16.13

Date

Original Contract Date:

Original Contract Number:

Finance and Internal Services Director

9/17/13

Date

Received in City Clerk's Office 9-13-13A03:27 RCVD

Chief of Staff

9/18/13

Date

Received in
Mayor's Office

Mayor

9/18/13

Date



Comments:

This item was Tabled to the 10/15/13 CC mtg. at the 10/1/13 CC mtg.

Revised January 15, 2009



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director 

From: Andrew Garner, Senior Planner

Date: September 10, 2013

Subject: PPL 13-4404 (Persimmon Street Master Street Plan Right-of-way Dedication)

RECOMMENDATION

The Planning Commission recommends approval of a resolution for a reduced right-of-way dedication for Persimmon Street through the Legacy IV Subdivision (PPL 13-4404). Planning Division staff recommends denial of the request.

BACKGROUND

The property is zoned RSF-4, Residential Single Family Four Units per Acre and contains 108 acres located in west Fayetteville, adjacent to 54th Street. The site was approved for a subdivision several years ago and portions of the streets were graded and some infrastructure installed. The property is designated as a Rural Residential Area on the Future Land Use Plan, and a portion of this site is located within the Enduring Green Network identified in City Plan 2030. The property has a relatively unusual configuration with access to 54th Street through narrow strips of land surrounded by existing single family homes not a part of the development. The applicant proposes a preliminary plat with 108 residential lots.

Persimmon Street is a Minor Arterial on the Master Street Plan and traverses east west through the property. This will provide the final linkage for Persimmon between the Legacy subdivision adjacent to the west and the existing street network to the east. 54th Street is a Collector Street adjacent to the eastern property line. Persimmon Street requires 77 feet of right-of-way in accordance with the Master Street Plan. This right-of-way is required to be dedicated with this subdivision pursuant to Fayetteville Unified Development Code Section 166.04(B)(3)(a).

REQUEST

The applicant requests a lesser dedication of the Master Street Plan right-of-way for Persimmon Street. The Master Street Plan requires 77 feet of right-of-way and the applicant proposes 70 feet. The applicant's justification for the request is provided in a letter attached to this packet, discussing they would match the right-of-way width for Persimmon Street in the adjacent subdivision to the west.

STAFF DISCUSSION

Staff does not recommend in favor of the request finding that there is not adequate justification. While Persimmon Street was constructed with a 70-foot right-of-way adjacent to the west, with the most recent update of the Master Street Plan in 2011 Persimmon was upgraded from a Collector to a Minor Arterial. There is still a long undeveloped stretch of Persimmon that would be extended another approximately 0.5-mile beyond the subject property and connecting to the existing improved section of Persimmon Street near the intersection of Broyles Avenue. Persimmon will provide a major east-west connection to this area of the city and, an alternative route to Wedington Drive upon its eventual completion. There are numerous homes west and southwest of this area that will likely use this roadway and staff feels the classification of Persimmon as a Minor Arterial and the 77 feet of right-of-way is the best plan for the ultimate build-out of the street in order to function as intended with four lanes of vehicles, bike lanes on both sides, greenspace, and sidewalks on both sides of the street. While the entire stretch of Persimmon will not be a consistent 77 feet of right-of-way, because of the large amount of undeveloped area to the east, staff feels it is important to maintain the integrity of the Master Street Plan cross section in this instance. It should be noted that staff supports a lesser dedication of right-of-way for the very easternmost section of Persimmon in this subdivision simply because the applicant's property is only approximately 54 feet wide at its narrowest point and staff does not feel that it would meet the rough proportionality test to require the applicant to acquire off-site right-of-way to meet the standard. This additional right-of-way would be dedicated at the time the adjacent property is developed or acquired by the city as part of a street improvement project. It should also be noted that the applicant proposes, and staff agrees, not to have the applicant construct the full Minor Arterial street section at this time with four lanes, and instead construct a cross section with two vehicular lanes and bike lanes, similar in width to a standard street.

DISCUSSION

On September 9, 2013, the Planning Commission approved preliminary plat (PPL 13-4404) with a condition of approval regarding the right-of-way for Persimmon Street. The Planning Commission recommended in favor of the applicant's request for a lesser dedication of right-of-way with a vote of 8-1-0 (Commissioner Chessser voted 'no'). There was no public comment.

BUDGET IMPACT

None.



12.2.5 MINOR ARTERIAL STREETS

MINOR ARTERIAL STREETS provide mobility throughout the city, encouraging multiple modes of transportation within the arterial network. Access should be limited to controlled intersections where possible. They have a moderate level of access management.

5 MINOR ARTERIAL:

Design Service Volume:

Desired Operating Speed:

Travel Lanes:

Bicycle Lanes:

< 12,200 vpd
30-40 mph
Four 11' lanes
5' wide, both
sides of street
next to curb
None
54' from face
of curb

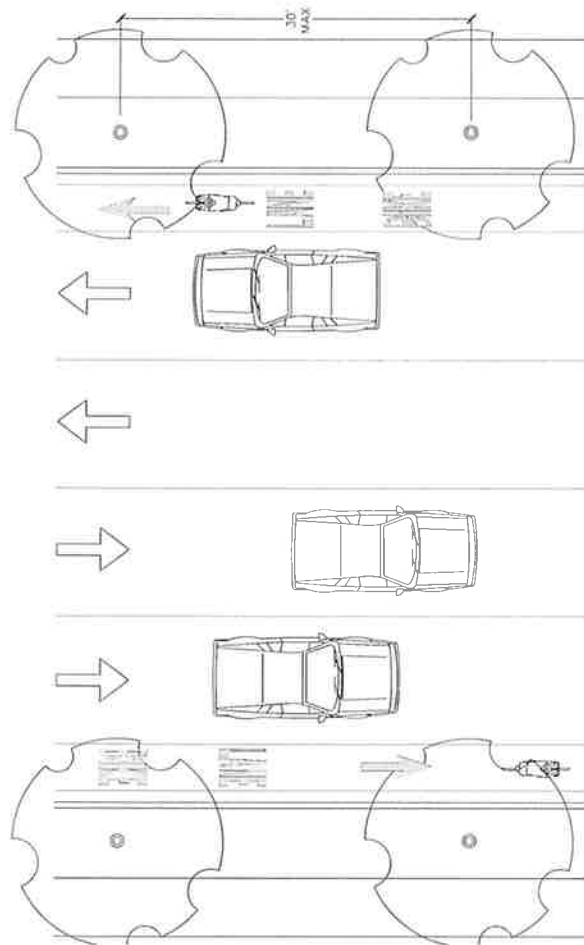
Parking:

Paved Width:

Right of Way:

Sidewalks:

Greenspace:





Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director
Andrew Garner, Senior Planner-Current Planning
Jesse Fulcher, Planner-Current Planning
Quin Thompson, Planner-Current Planning

FROM: Kit Williams, City Attorney

DATE: September 16, 2013

RE: 70' rather than 77' dedication for Persimmon Street

The City of Fayetteville has for decades had a Master Street Plan (frequently amended and altered to meet changing needs) which not only includes existing streets, but the proposed general placement of future streets or extensions of existing, but incomplete streets. The Master Street Plan also includes changing right of way cross sections for streets and sometimes changes the classification for streets. For example, Persimmon was changed from collector to minor arterial. When a proposed collector or arterial street runs through a piece of developing property, the City needs to attempt to ensure such development does not block, but incorporates as much as feasible, the proposed collector or arterial. Indeed, our Unified Development Code requests such right of way dedication unless the Planning Commission recommends a "lesser dedication in the event of undue hardship or practical difficulties." § 166.4 (B)(3)(a) of the U.D.C.

The Planning Commission did recommend almost unanimously (Commissioner Chesser was the lone dissenter) the dedication of 70' instead of the Master Street Plan recommended 77' right of way for Persimmon as it runs through the development. "Such lesser dedication shall be subject to approval by the City Council." *Id.* This is the reason for this agenda item.

Please keep in mind that the City of Fayetteville can only require a developer/land owner to pay money, build infrastructure or dedicate land or right of way to the City if such exactions "**are roughly proportioned and bear a rational nexus to the impact of the development**" upon the City's infrastructure needs. § 166.04 (A)(3) of the U.D.C.

"The exaction is the concession sought by the government, or the condition upon which granting the permit depends. The government may seek land, money, or other concessions in return for the permit." *Garneau v. City of Seattle*, 147 F.3d 802, 809 (9th Cir. 1998).

This "rough proportionality" and "rational nexus" test would limit the City of Fayetteville's power to demand dedication of street right of way, construction of streets, sidewalks, water and sewer mains, etc. even if our Unified Development Code did not include such limitation. This is a **Constitutional limitation** upon our government's power based upon the Fifth Amendment of the United States Constitution as held by the United States Supreme Court.

"In addition to the requisite nexus, the (Supreme) Court went on to require that the city demonstrate that the degree of the exactions demanded in the condition bears "rough proportionality" to the projected impact of the applicant's request. This requirement ensures that the conditioning of a discretionary benefit does not force "some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole" in violation of the Just Compensation Clause." *Pennell v. City of San Jose*, 485 U.S. 1, 9 (1998) (citations omitted).

“According to the controlling Supreme Court decisions, the City can only require an owner to dedicate land or pay money in “rough proportionality” to the impact that construction of his project causes the City. *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 2320 (1994) (emphasis added).

“We think a term such as “rough proportionality” best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.” *Id.*

I believe that there is no question that the requested Master Street Plan dedication is related “in nature” to this development which shall certainly use Persimmon as a primary connector to Fayetteville’s street network. **The “extent” of (or how much) dedication that the City can require to be dedicated is the issue.** The developer is already offering to dedicate 70 feet of right of way which is wider than a normal local street or even collector and is equal to the width of Persimmon to the West of this development.

When this land had been approved for development earlier and some street grading accomplished, Persimmon had been designated as the more narrow collector. After that initial development failed, Persimmon was upgraded to minor arterial which bumped up the desired right of way to 77 feet. When Persimmon is extended toward the East from this development, it is anticipated to have 77’ right of way.

The engineer for the developer informed the Planning Commission that increasing the right of way from 70 feet to 77 feet through the development would cost the developer several home building lots, an obviously large burden upon the owner.

The question is not whether the City would prefer a 77 foot wide right of way dedication so the desired minor arterial with four car lanes of travel, two bike lanes of travel, and green space and sidewalks on both sides of the street can be constructed. Of course, this is the preferred right of way width. **The question is whether this developer can be forced to give up this**

full 77 feet right of way width to the City for nothing and so bear the whole burden for a minor arterial's right of way which will obviously serve far more citizens than his future homeowners.

“The Fifth Amendment’s guarantee...was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *City of Monterey v. Del Monte Dunes*, 526 US 687, 703, 119 S.Ct. 1624 (1999); quoting *Armstrong v. United States*, 364 US. 40, 49 (1968).

The Constitution thus limits the amount of exactions that any government can demand for the issuance of a development permit. The Planning Commission and City Council should look at the total amount of street exactions being required to determine whether or not the right of way dedication and on and offsite street construction being demanded exceeds the rough proportionality of this development’s impact upon Fayetteville’s street infrastructure.

CONCLUSION

The need to build the internal residential streets within the subdivision is wholly caused by the development itself and will service primarily the new homeowners and their visitors. Therefore, their right of way dedication and street construction is properly the sole responsibility of the developer.

Persimmon’s much larger right of way and the offsite street improvements on 54th will certainly also serve this development. However, these exactions (whether the right of way is 77 feet or 70 feet) will also serve many others as part of Fayetteville’s backbone of arterial and collector streets.

Planning has properly not sought to require the developer to build Persimmon for a full minor arterial. Planning did recommend pursuant to a U.D.C. section to have the full 77’ right of way now shown for minor arterials to be dedicated. The Planning Commission listened to Planning and the developer and decided that the offered 70 foot of right of way would be as much as could be demanded. Now it is the City Council’s final decision.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE THE DEDICATION OF 70 FEET OF RIGHT OF WAY FOR PERSIMMON STREET ALONG MOST OF THE OWNER'S PROPERTY AS RECOMMENDED BY THE PLANNING COMMISSION

WHEREAS, "On and off-site improvements that are roughly proportional and bear a rational nexus to the impact of the development are required for all development" by § 166.04 (A)(3); and

WHEREAS, the Planning Commission voted 8-1 to recommend to the City Council that a lesser dedication of 70 feet instead of 77 feet be allowed to the owner/developer of Legacy Phase V if the developer also paid for improvements to 54th Street between Persimmon and a street to be built by the developer; and

WHEREAS, the City Council has determined that the dedication of 70 feet for Persimmon and the other on and off-site required street improvements are roughly proportional to the impact that construction of the development will cause Fayetteville.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby confirms and adopts the Planning Commission's recommendation to accept the offered 70 feet of right of way dedication along most of Persimmon through the Legacy Phase V along with all other on and off-site street improvements required of the owner/developer.

PASSED and APPROVED this 1st day of October 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

RESOLUTION NO. _____

A RESOLUTION TO DISAPPROVE THE RECOMMENDATION OF THE PLANNING COMMISSION TO ALLOW THE DEDICATION OF 70 FEET OF RIGHT OF WAY FOR PERSIMMON STREET ALONG MOST OF THE OWNER'S PROPERTY AND REQUIRE DEDICATION OF 77 FEET

WHEREAS, "On and off-site improvements that are roughly proportional and bear a rational nexus to the impact of the development are required for all development" by § 166.04 (A)(3); and

WHEREAS, the Planning Commission voted 8-1 to recommend to the City Council that a lesser dedication of 70 feet instead of 77 feet be allowed to the owner/developer of Legacy Phase V if the developer also paid for improvements to 54th Street between Persimmon and a street to be built by the developer; and

WHEREAS, the City Council has determined that the dedication of 77 feet for Persimmon and the other on and off-site required street improvements are roughly proportional to the impact that construction of the development will cause Fayetteville.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby rejects the Planning Commission's recommendation to accept the offered 70 feet of right of way dedication along most of Persimmon through the Legacy Phase V and instead requires the owner/developer to dedicate 77 feet of right of way for Persimmon along with all other on and off-site street improvements required of the owner/developer.

PASSED and APPROVED this 1st day of October 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Fayetteville Code of Ordinances

district an easement plat shall be filed of record in the office of the circuit clerk dedicating all required easements and rights-of- way.							
--	--	--	--	--	--	--	--

*All plats should meet or exceed the most current
State of Arkansas Standards of Practice for Property
Boundary Surveys and Plats.

**SIP = Large or Small Site Improvement Plan

***PZD = Planned Zoning District

(C) *Signatures required.* The final plat or concurrent
plat may be signed by any officer of the Planning
Commission.

(D) *Number of plats.* The Planning Division may
require additional copies of plats if the amount
required by this chapter is not sufficient for
distribution to the various committee members.

(Code 1965, App. C., Art. III, §A(1); Ord. No. 2695, 1-20-81;
Ord. No. 3080, 4-2-85; Ord. No. 3201, 8-5-86; Ord. No.
3315, 11-17-87; Code 1991, §§159.05, 159.30k.; Ord. No.
3578, 11-19-91; Ord. No. 3615, §1, 6-2-92; Ord. No. 3738,
§1, 11-16-93; Ord. No. 3793, §1, 5-17-94; Ord. No. 3797, §1,
5-17-94; Ord. No. 4068, §1, 11-4-97; Ord. No. 4100, §2 (Ex.
A), 6-16-98; Ord. No. 4199, 11-2-99; Ord. No. 4454, 01-07-
03; Ord. No. 4545, 02-17-04; Ord. 4725, 7-19-05; Ord. 4864,
05-02-06; Ord. 5152, 7-15-08; Ord. 5215, 1-20-09; Ord.
5271, 9-1-09; Ord. 5296, 12-15-09)

166.04 Required Infrastructure Improvements – Development in City Limits

(A) *Generally.* Required of developer.

(1) *On and off-site improvements.* On-site
improvements are adjacent to or within a
project site; such as widening the street
along the project street frontage,
constructing interior streets and utilities, etc.
Off-site improvements are not adjacent to a
project; such as the extension of an off-site
sewer line to the property boundary, off-site
storm drainage improvements, or an off-site
intersection improvement, etc.

(2) *Standards applicable.* Any required on or off-
site improvements in the city and within one
mile of the city limits shall be installed
according to the city's standards; provided
on or off-site improvements to roads located
outside one mile of the city limits shall be
installed to the county's standards. The

developer shall be required to bear that
portion of the cost of off-site improvements
which bears a rational nexus to the needs
created by the development.

(3) *Required Infrastructure Improvements.* On
and off-site improvements that are roughly
proportional and bear a rational nexus to the
impact of the development are required for
all development within the City of
Fayetteville. The developer shall be required
to install on and off-site improvements where
the need for such improvements is created in
whole or in part by the proposed
development.

(4) *Planning Commission and Planning Division.*
At the time the Planning Commission or
Planning Division (where applicable for
administrative approval) grants development
approval, the Planning Commission or
Planning Division shall determine whether
the proposed development creates a need
for off-site improvements and the portion of
the cost of any needed off-site improvements
which the developer shall be required to
bear; provided, that portion of the cost of off-
site improvements to roads located outside
the city's corporate limits but within the city's
planning area shall be determined by the
county. In determining that portion of the
cost of off-site improvements which the
developer shall be required to bear, the
Planning Commission or Planning Division
(where applicable for administrative
approval) shall consider the acreage within
the proposed development as a percentage
of all the acreage which, when fully
developed, will benefit from the off-site
improvements; provided, the Planning
Commission or Planning Division may use a
different method of measurement if it
determines that use of the acreage standard
will not result in the developer bearing that
portion of the cost which bears a rational
nexus to the needs created by the
development.

(5) *Determining necessity for off-site
improvements.*

(a) When a proposed development has
access to paved streets or roads only by
way of substandard or unimproved
roads or streets leading from the
development to the paved streets or
roads, the developer shall be
responsible for contributing this
proportionate share of the cost of
improving the substandard access roads
or streets to existing city or county
standards. The developer's

TITLE XV UNIFIED DEVELOPMENT CODE

proportionate share of said costs shall be determined by the Planning Commission or Planning Division (where applicable for administrative approval) in accordance with the provisions of 166.04 (A) above.

- (b) When a proposed development has direct access to, or fronts on an existing road or street, which is below current standards, the developer shall be responsible for contributing his/her proportionate share of the cost of improving said street or road to existing city or county standards. The Planning Commission or Planning Division (where applicable for administrative approval) shall determine the developer's proportionate share of said costs in accordance with the provisions of 166.04 (A) above.
- (c) Off-site drainage improvements shall be required whenever a proposed development causes the need for such improvements.
- (6) *Delayed Improvements.* The Planning Commission or Planning Division may determine a required on-site or off-site improvement shall be delayed or payment-in-lieu contributed instead in accordance with Chapter 158 of the UDC. **Cross reference(s)**—Bonds and Guarantees, Ch. 158.
- (7) *Variances.* A variance of off-site improvements may be granted in accordance with Chapter 156 Variances.
- (8) *State highways.* The developer shall be required to dedicate sufficient right-of-way to bring those state highways which the Master Street Plan shows to abut or intersect the proposed subdivision into conformance with the right-of-way requirements of the Master Street Plan. The developer shall be required to install a sidewalk adjacent to that portion of a state highway abutting the proposed development; and provided that the Planning Commission or Engineering Division (where applicable for administrative approval) may waive the sidewalk requirement prescribed by this subsection upon application by the developer and a determination by the Planning Commission or Engineering Division (where applicable for administrative approval) that the topography of the proposed development where it abuts a state highway is such that installation of a sidewalk is not practical. Any other improvements required of the developer by

the Planning Commission or Engineering Division (where applicable for administrative approval) shall be coordinated with the Arkansas Highway and Transportation Department.

- (B) *Minimum improvements by application type.* The property owner/developer shall be responsible for constructing the following minimum improvements.
- (1) *Property Line Adjustment.* No improvements are required unless the action would create or exacerbate a nonconforming infrastructure situation such as cutting off a lot from public water, sewer, or street frontage. In such case the property line adjustment may not be filed of record until the required infrastructure is first constructed to City specifications, or a variance or waiver is granted by the Planning Commission.
- (2) *Lot Split.*
- (a) *Dedication of right-of-way.* Sufficient right-of-way dedication, to bring those streets which the Master Street Plan shows to abut or intersect the property into conformance with the right-of-way requirements of the Master Street Plan for said streets; provided, the Subdivision Committee or Planning Commission may recommend a lesser dedication in the event of undue hardship or practical difficulties. Such lesser dedication shall be subject to approval by the City Council.
- (i) *Dedications.* The City Council accepts all streets and alleys located in Fayetteville that have been previously approved and accepted as dedications by the Fayetteville Planning Commission/Subdivision Committee. The City Council confirms the acceptance of all such streets and alleys dedicated by developers/owners to the city which have been approved by the Fayetteville Planning Commission/Subdivision Committee.
- (b) *Monuments and lot stakes.* The surveyor shall cause, preserve, and/or replace monuments and/or lot stakes marking the corners of a parcel to be set in accordance with Section 3.2, general procedures, of the Arkansas Minimum Standards for Property Boundary Surveys and Plats.

Fayetteville Code of Ordinances

- (c) *Water, sewer, or street frontage.* Any lot that is created shall have adequate street frontage or street access that meets the minimum requirements of the zoning code, and access to public water and sewer as required by city and state code. If a lot split would create or exacerbate a nonconforming situation (such as cutting off a lot from public water, sewer, street frontage, or street access), the lot split may not be filed of record until the required easement is dedicated and/or the infrastructure is first constructed to City specifications, or a variance or waiver is granted by the Planning Commission.
- (d) *Parkland dedication.* Parks fees shall be assessed for each new residential unit that is constructed on the additional lot(s) in accordance with the parkland dedication requirements outlined in Fayetteville Unified Development Code Chapter 166. Said fees shall be paid prior to issuance of a building permit for construction on the new lot.
- (3) *Preliminary/Final/Concurrent Plat; Large Scale Development; Large or Small Site Improvement Plan.*
- (a) *Dedication of right-of-way.*
- (i) *On-site.* Sufficient right-of-way dedication, to bring those streets which the Master Street Plan shows to abut or intersect the property and new streets proposed interior to the property, into conformance with the right-of-way requirements of the Master Street Plan for said streets, shall be approved by the Planning Commission or Subdivision Committee; provided, the Planning Commission or Subdivision Committee may recommend a lesser dedication in the event of undue hardship or practical difficulties. Such lesser dedication shall be subject to approval by the City Council.
- a. *Exemption.* Small Site Improvement Plan applications are exempt from this requirement.
- (ii) *Off-site.* Off-site right-of-way dedication may be required as needed to construct off-site street improvements that are required based on the rough proportionality and rational nexus of the impacts of the project.
- (iii) *Dedications.* The City Council accepts all streets and alleys located in Fayetteville that have been previously approved and accepted as dedications by the Fayetteville Planning Commission/Subdivision Committee. The City Council confirms the acceptance of all such streets and alleys dedicated by developers/owners to the city which have been approved by the Fayetteville Planning Commission/Subdivision Committee.
- (b) *Monuments and lot stakes.* The surveyor shall cause, preserve, and/or replace monuments and/or lot stakes marking the corners of a parcel to be set in accordance with Section 3.2, general procedures, of the Arkansas Minimum Standards for Property Boundary Surveys and Plats.
- (c) *Streets.*
- (i) *On-site.* Widening the street adjacent to the project frontage and construction of all interior streets to meet Master Street Plan standards. Street grading, base, and paving according to existing city standards and specifications as adopted by the City Council.
- (ii) *Off-site.* Street widening and/or new street construction off-site may be required to address traffic impacts based on the rough proportion and rational nexus of the impacts of the project. Street grading, base, and paving according to existing city standards and specifications as adopted by the City Council.
- (iii) *Private street name signs.* Where a structure is addressed on a private street or drive, the developer or property owner(s) shall be required to install, maintain, repair and replace all private street name signs. Any private street name sign existing at the time of passage of this ordinance shall be maintained, repaired and replaced as required by this section. Signs shall meet the standards of the Manual on Uniform



PC Meeting of September 9, 2013

THE CITY OF FAYETTEVILLE, ARKANSAS
PLANNING DIVISION CORRESPONDENCE

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

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
Glenn Newman, Staff Engineer
THRU: Jeremy Pate, Development Services Director
DATE: ~~September 4, 2013~~ *Updated September 10, 2013*

PPL 13-4404: Preliminary Plat (W. OF N. 54TH ST. AND E. OF W. PERSIMMON ST./LEGACY PH V, 475): Submitted by BATES AND ASSOCIATES for property located WEST OF NORTH 54TH STREET AND EAST OF WEST PERSIMMON STREET. The property is zoned RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE and contains approximately 32.83 acres. The request is for a residential subdivision with 108 single family lots.
Planner: Andrew Garner

Findings:

Background: The property is zoned RSF-4, Residential Single Family Four Units per Acre and contains 108 acres located in west Fayetteville, adjacent to 54th Street. The site was approved for a subdivision several years ago and portions of the streets were graded and some infrastructure installed. A portion of this site is located within the Enduring Green Network identified in City Plan 2030. The property has a relatively unusual configuration with access to 54th Street through narrow strips of land surrounded by existing single family homes not a part of the development. The surrounding zoning and land uses are depicted in *Table 1*.

Table 1

Surrounding Zoning and Land Use

Direction from Site	Land Use	Zoning
North	Single family and undeveloped pasture	RSF-4, Residential Single-Family Four Units Per Acre
South	Single family and undeveloped pasture	RSF-1, Residential Single-Family One Unit Per Acre
East	Undeveloped pasture	RSF-8, Residential Single-Family Eight Units Per Acre
West	Single family residential (Legacy Heights subdivision)	RSF-4

Adjacent Master Street Plan Streets: Persimmon Street is a Minor Arterial on the Master Street Plan and traverses east west through the property, providing the final linkage for Persimmon between the Legacy subdivision adjacent to the west and the existing street network to the east. 54th Street is a Collector Street adjacent to the eastern property line.

Right-of-way to be dedicated: Right-of-way will be dedicated for the internal Local and Residential streets in the amount of 50 feet and 43 feet, respectively, as listed on the street table and indicated on the plat. Persimmon Street is a Minor Arterial traversing through the neighborhood and requires 77 feet of right-of-way in accordance with the Master Street Plan. The applicant requests a variance of the Master Street plan to dedicate 70 feet of right-of-way for Persimmon through the subdivision. Right-of-way shall be dedicated in the amount of 29.5 feet from centerline along the site's 54th Street frontage, a Collector Street.

Proposal: The applicant proposes a preliminary plat with 108 residential lots. The subdivision is proposed in four phases starting at the western side of subdivision and moving east as depicted on the phasing plan:

Phase A	26 lots
Phase B	22 lots
Phase C	22 lots
Phase D	29 lots

Variance Requests:

- Unified Development Code (UDC) Section 166.04(B)(3)(a). The applicant requests a lesser dedication of the Master Street Plan right-of-way for Persimmon Street. The Master Street Plan requires 77 feet of right-of-way and the applicant proposes 70 feet. The applicant's justification for the request is provided in a letter attached to this packet, discussing they would match the right-of-way width for Persimmon Street in the adjacent subdivision to the west. *Staff does not recommend in favor of the request finding that there is not adequate justification for the request. While Persimmon Street was constructed with a 70-foot right-of-way adjacent to the west, with the most recent update of the Master Street Plan in 2011 Persimmon was upgraded from a Collector to a Minor Arterial. There is still a long undeveloped stretch of Persimmon that would be extended another approximately 0.5-mile beyond the subject property and connecting to the existing improved section of Persimmon Street near the intersection of Broyles Avenue. Persimmon will provide a major east-west connection to this area of the city and, an alternative route to Wedington Drive upon its eventual completion. There are numerous homes west and southwest of this area that will likely use this roadway and staff feels the classification of Persimmon as a Minor Arterial and the 77 feet of right-of-way is the best plan for the ultimate build-out of the street in order to function as intended with four lanes of vehicles, bike lanes on both sides, greenspace, and sidewalks on both sides of the street. While the entire stretch of Persimmon will not be a consistent 77 feet of right-of-way, because of the large amount of undeveloped area to the east, staff feels it is important to maintain the integrity of the Master Street Plan cross section in this instance. It should be noted that staff supports a lesser dedication of right-of-way for the very easternmost section of Persimmon in this subdivision simply because the applicant's property is only approximately 54 feet wide at its narrowest point and staff does not feel that it would meet the rough proportionality test to require the applicant to acquire off-site right-of-way to meet the standard. This additional right-of-way would be dedicated at the time the adjacent property is developed or acquired by the city as part of a street improvement project.*

Access Management and Connectivity: The proposed subdivision meets the access management requirements for block length and connectivity. The development provides street connections in all four directions to 54th Street to the east, Persimmon Street to the west, and street stub-outs to the north and south.

Street improvements: Internal streets shall be constructed as indicated on the proposed site plan. Off-site street improvements shall be completed as follows prior to approval of final plat for Phase II:

- Because of the existing sight distance and traffic safety problems at the intersection of 54th Street and Persimmon that will be exacerbated by traffic from this development, the developer shall install signage converting the intersection into a three-way stop. This will likely include additional warning signage and pavement striping, the exact details to be approved by the City Engineering Division.
- Based on the impacts that this development will have to 54th Street, the western half of 54th Street shall be improved from Persimmon Street to the south property line as indicated on the preliminary plat with: 14 feet pavement from centerline, curb, gutter, storm drains, sidewalks, and streetlights.

Water and Sewer System: Water and sewer lines shall be extended through the development as required by the City Engineering Division.

Parks: On April 1, 2013, the Park and Recreation Advisory Board (PRAB) reviewed the project and recommended accepting money lieu because of the project's proximity to Harmony Pointe Park and Bundrick Park. Fees in the amount of \$99,360.00 are due for the proposed 108 single-family units and shall be paid prior to final plat. The fees may be phased as specified in the UDC.

Tree Preservation: Existing: 2.5%
Proposed: 1.3%
Required: 25%
Mitigation: 88 trees on-site mitigation

Public Comment: Staff has not received public comment.

Recommendation: Staff recommends approval of PPL 13-4404 subject to the following conditions:

Conditions of Approval:

1. Planning Commission recommendation to the City Council of a lesser dedication of right-of-way pursuant to UDC Section 166.04(B)(3)(a). The applicant requests a lesser dedication of the Master Street Plan right-of-way for Persimmon Street. The Master Street Plan requires 77 feet of right-of-way and the applicant proposes 70 feet. The applicant's justification for the request is provided in a letter attached to this packet. *Staff does not recommend in favor of the request for a majority of the street based on the*

findings included earlier in this report. Staff supports a lesser dedication of right-of-way for the very easternmost section of Persimmon in this subdivision simply because the applicant's property is only approximately 54 feet wide at its narrowest point and staff does not feel that it would meet the rough proportionality test to require the applicant to acquire off-site right-of-way to meet the standard.

PLANNING COMMISSION RECOMMENDED IN FAVOR OF THE APPLICANT'S REQUEST FOR A LESSER DEDICATION OF RIGHT-OF-WAY (09-09-2013).

2. Planning Commission determination of street improvements. *Staff recommends the following:*
 - a. *All interior streets shall be constructed in conformance with the Master Street Plan requirements with the exception of Persimmon Street.*
 - b. *Persimmon Street through the neighborhood shall be constructed as a fully improved street as indicated on the preliminary plat with a 30-foot wide street, bike lanes and sidewalk on both sides. Staff does not feel that it meets the rough proportionality test for this development to construct the full Minor Arterial street section at this time with four vehicular travel lanes.*
 - c. *Street lights shall be installed at every intersection and with a maximum separation of 300 feet.*
 - d. *Sidewalks shall be constructed or guaranteed prior to final plat approval. Sidewalks along all commonly owned lots, and the off-site sidewalk connections to adjacent surrounding streets shall be constructed prior to final plat.*
 - e. *Off-site street improvements shall be completed as follows prior to approval of the final plat for Phase II:*
 - *Based on the impacts that this development will have to 54th Street, the western half of 54th Street shall be improved from Persimmon Street to the south property line as indicated on the preliminary plat with: 14 feet pavement, curb, gutter, storm drains, sidewalks, and streetlights. Because of a lack of existing right-of-way to complete these improvements, an assessment shall be paid for these improvements, the amount to be agreed upon with City Engineering staff and the applicant. If there is a disagreement on the assessment amount, this issue may be brought back before the Planning Commission for final determination.*
 - *Because of the existing site distance and traffic safety problems at the intersection of 54th Street and Persimmon that will be exacerbated by traffic from this development, the developer shall install signage converting the intersection into a three-way stop. This will likely include additional warning signage and pavement striping, the exact details to be approved by the City Engineering Division.*

PLANNING COMMISSION DETERMINED IN FAVOR OF THE STREET IMPROVEMENTS AS RECOMMENDED BY STAFF, MODIFYING THE OFF-SITE IMPROVEMENTS AS NOTED ABOVE TO ACCEPT MONEY-IN-LIEU (09-09-2013).

3. Right-of-way shall be dedicated for the internal streets in the amounts as listed on the street table and indicated on the plat. Right-of-way shall be dedicated in the amount of

29.5 feet from centerline along the site's 54th Street frontage.

4. On April 1, 2013, the Park and Recreation Advisory Board (PRAB) reviewed the project and recommended accepting money lieu because of the project's proximity to Harmony Pointe Park and Bundrick Park. Fees in the amount of \$99,360.00 are due for the proposed 108 single-family units and shall be paid prior to final plat. The fees may be phased as specified in the UDC. The applicant shall remove the designation of Lot 33 as parkland from the plat.

THE PLANNING COMMISSION MODIFIED AND APPROVED THIS CONDITION AS NOTED (09/09/2013).

5. Conditions of approval from Engineering, Solid Waste, Urban Forester, and the Parks Departments are included in the official conditions of approval, attached herein.
6. Future street extensions signs shall be installed at all street stub-outs.
7. Any community club house or recreational facility requires approval by the Planning Commission as a conditional use permit.
8. An assessment shall be paid prior to final plat for the removal of temporary hammerheads. The applicant should provide a cost estimate for this assessment.
9. Comments from the 911 Coordinator on street names, attached herein, shall be addressed.
10. 'No Parking' areas will be identified with signage at the time of final plat as required by the City Fire Marshall, but the parallel parking spaces will not be striped.
11. Identify the offsite signage improvements at 54th and Persimmon.
12. Show the bike lane striping on Persimmon Street through the subdivision.

Standard Conditions of Approval:

13. All signage shall be reviewed and approved by the Planning Department prior to installation. Freestanding signage is not permitted within utility easements, unless otherwise approved by all utility companies.
14. All street names and addresses shall be approved by the 911 coordinator.
15. Plat Review and Subdivision comments (to include written staff comments provided to the applicant or his representative, and all comments from utility representatives - AR Western Gas, SWBT, Ozarks, SWEPCO, Cox Communications).
16. Preliminary plat approval is valid for one year. All permits to complete construction of this preliminary plat are required to be obtained within one year, subject to extensions in accordance with the Unified Development Code.

17. Staff approval of final detailed plans, specifications and calculations (where applicable) for grading, drainage, water, sewer, fire protection, streets (public and private), sidewalks, parking lot(s) and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with City's current requirements.
18. All overhead electric lines under 12Kv shall be relocated underground. All proposed utilities shall be located underground.
19. Street lights shall be installed adjacent to all public and private streets (not alleys), with a separation of no greater than 300 feet.
20. Impact fees for fire, police, water, and sewer shall be paid in accordance with City ordinance.

Subdivision Committee Action: ☒ **Forwarded** ☐ **Denied** ☐ **Tabled**
Motion: Winston
Second: Autry
Vote: 3-0-0
Meeting Date: August 29, 2013
Note: Recommendation for approval

Planning Commission Action: ☒ **Approved** ☐ **Denied** ☐ **Tabled**
Motion: Winston
Second: Pennington
Vote: 8-1-0 (Commissioner Chessser voted 'no')
Meeting Date: September 9, 2013
Note:



**Bates &
Associates, Inc.**

Civil Engineering & Surveying

91 W. Colt Square Dr. Suite 3 / Fayetteville, AR 72703
PH: 479-442-9350 * FAX: 479-521-9350

September 3, 2013

Planning Commissioners and Staff
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

RE: Legacy Subdivision Phase V – Variance Request

Dear Planning Staff,

The developer would like to request the following variances:

1. The existing right-of-way along Persimmon Drive to the west of the subject property is 70'. The existing right-of-way to the east is 65'. The property owner would like to request a variance to allow a 70' right-of-way in order that we are consistent with the property to the west and the majority of properties to the east. This property was previously approved for a grading permit, and the streets were cut for a 70' right-of-way, so much of this initial road grading is complete. In addition, the existing improved Persimmon to the east connecting to the frontage road along I-540 is 70'. It seems less useful to make this short stretch 77'. Naturally, we think this the best solution is to keep the stretch at 70'

If you have any questions or require additional information, please feel free to contact me at your convenience.

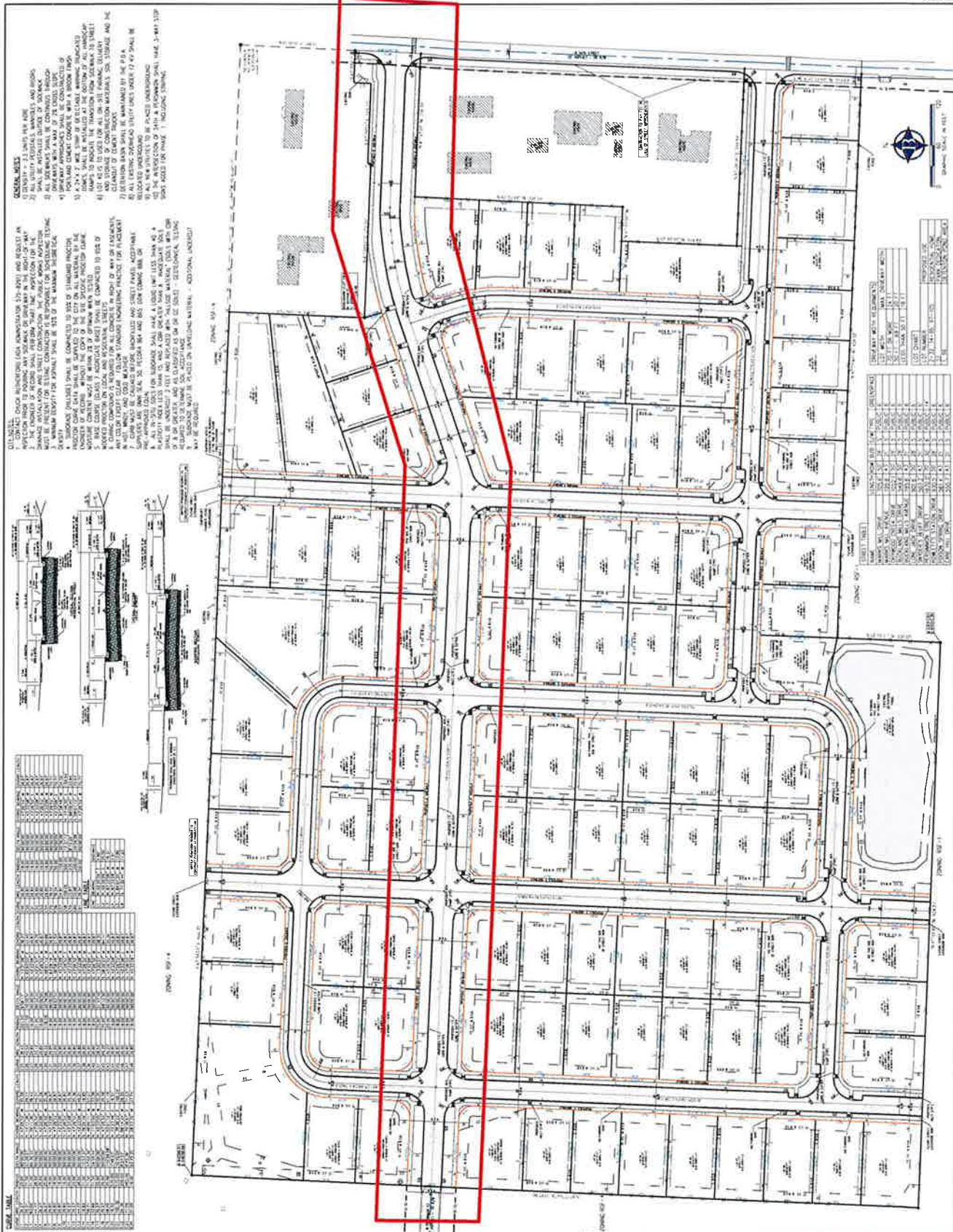
Sincerely
Bates & Associates, Inc.

Geoffrey H. Bates, P.E.



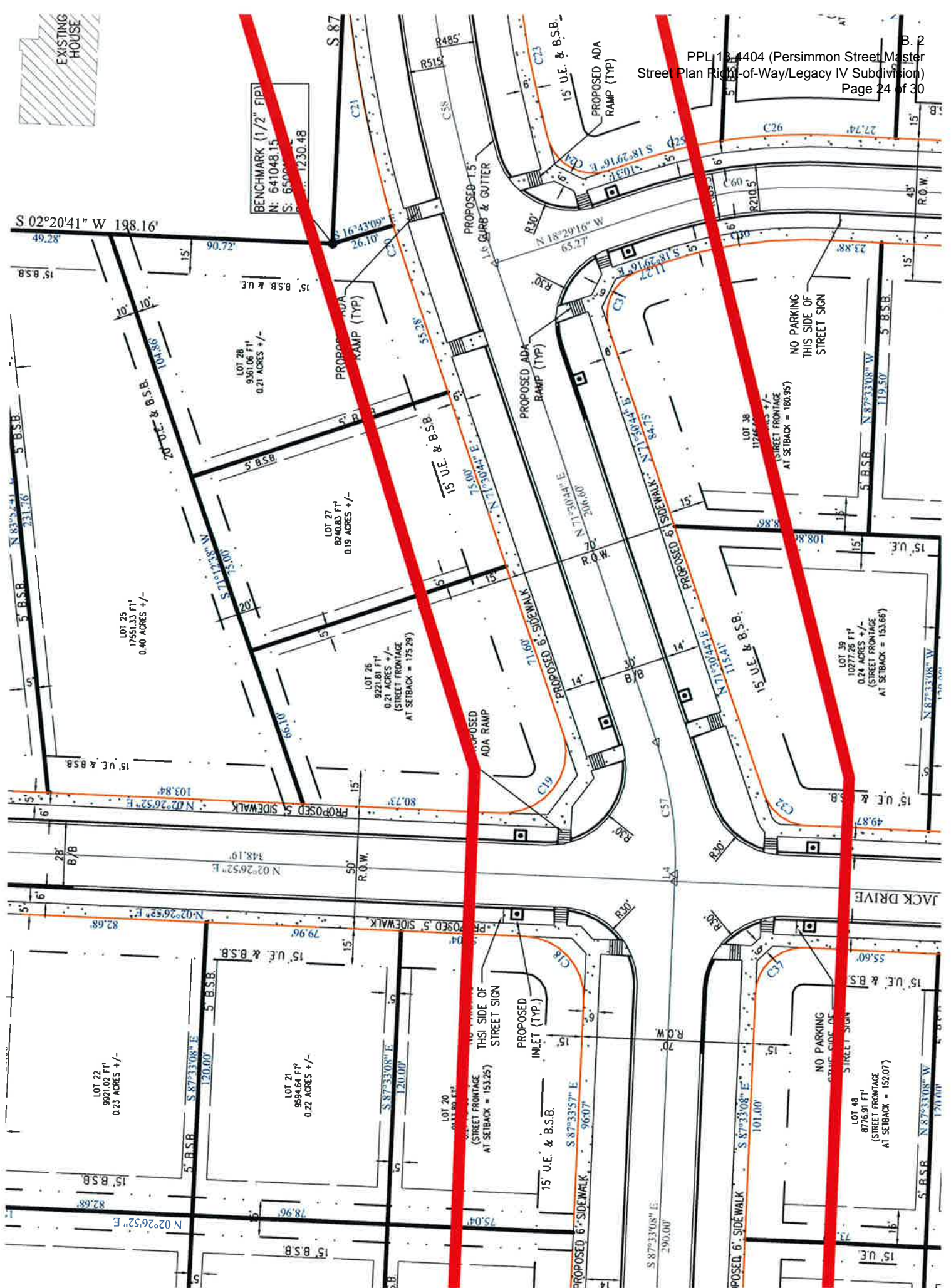
Bates & Associates, Inc.
Civil Engineering & Surveying
10000 Highway 100, Suite 100, Houston, TX 77036
713.464.0000 • Fax 713.523.0200
www.batesassoc.com • info@batesassoc.com

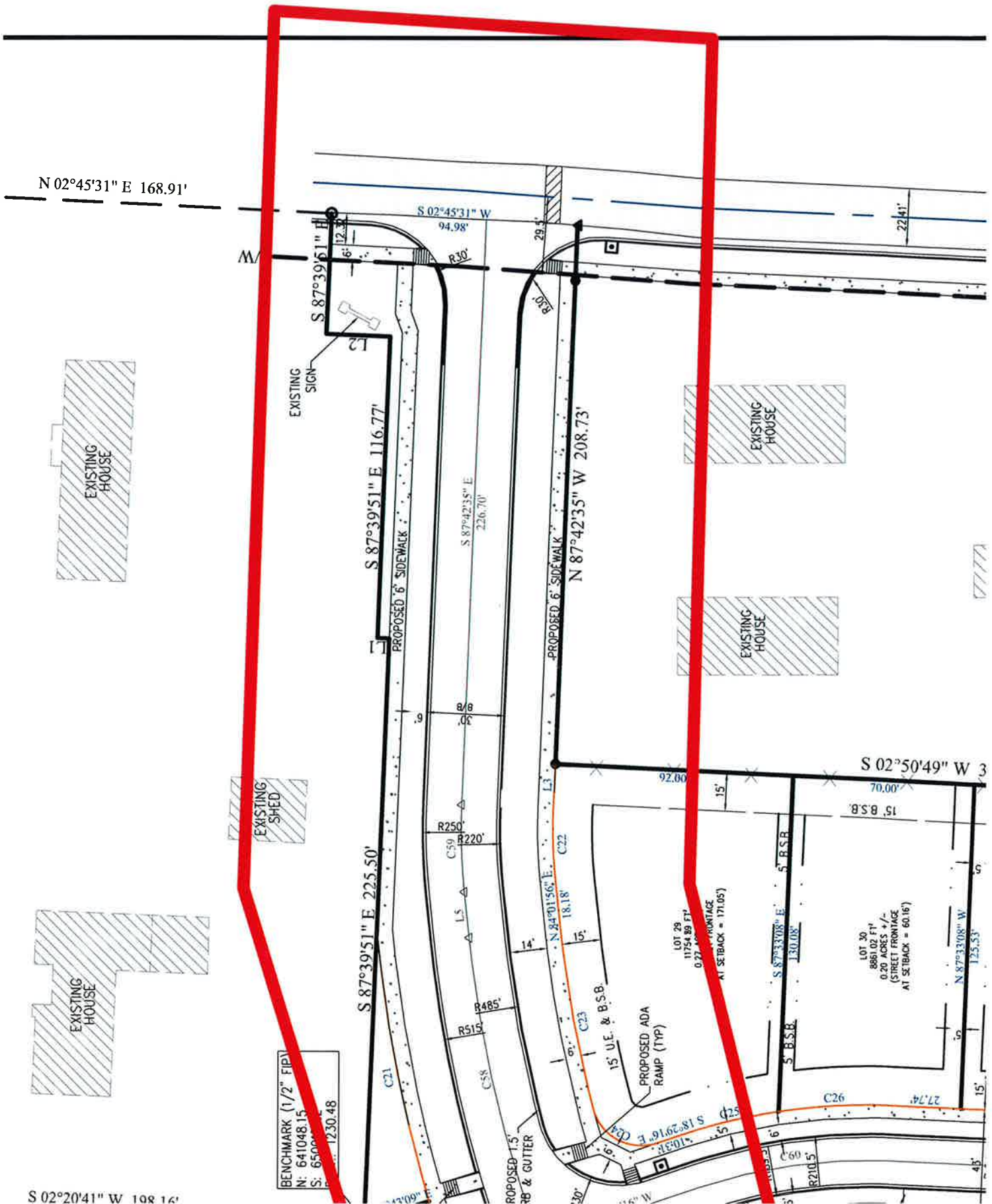
LEGACY POINTE PHASE V
PRELIMINARY PLAT
SITE PLAN

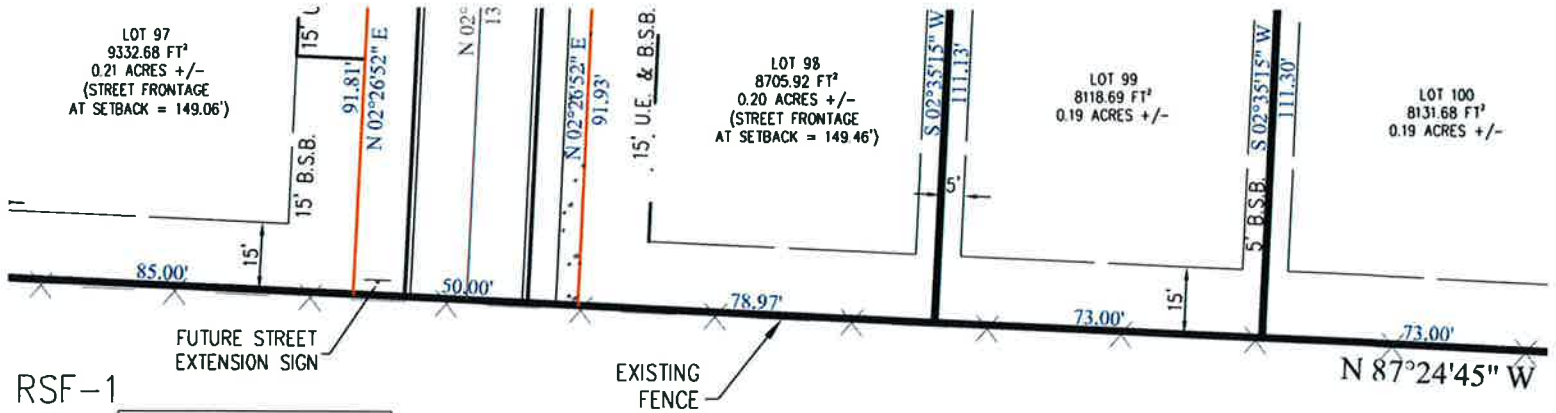
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RSF-1

STREET TABLE

NAME	LENGTH	ROW	B/B	S/W	TYPE	GREENSPACE
MARKS MILL DRIVE	705.6'	50'	28'	5'	PUBLIC	6'
MARKS MILL AVENUE	195.8'	43'	21'	5'	PUBLIC	6'
DRYWOOD CREEK DRIVE	1052.1'	50'	28'	5'	PUBLIC	6'
BUCKLAND MILLS DRIVE	549.8'	50'	28'	5'	PUBLIC	6'
BUCKLAND MILLS AVENUE	195.8'	43'	21'	5'	PUBLIC	6'
LONE JACK DRIVE	901.6'	50'	28'	5'	PUBLIC	6'
SNYDER'S BLUFF DRIVE	507.2'	43'	21'	5'	PUBLIC	6'
PERSIMMON STREET	1670.0'	70'	30'	6'	PUBLIC	14'
ROWLETT'S STATION DRIVE	930.5'	50'	28'	5'	PUBLIC	6'
POISON SPRING DRIVE	561.4'	43'	21'	5'	PUBLIC	6'
CANE HILL DRIVE	550.7'	43'	21'	5'	PUBLIC	6'

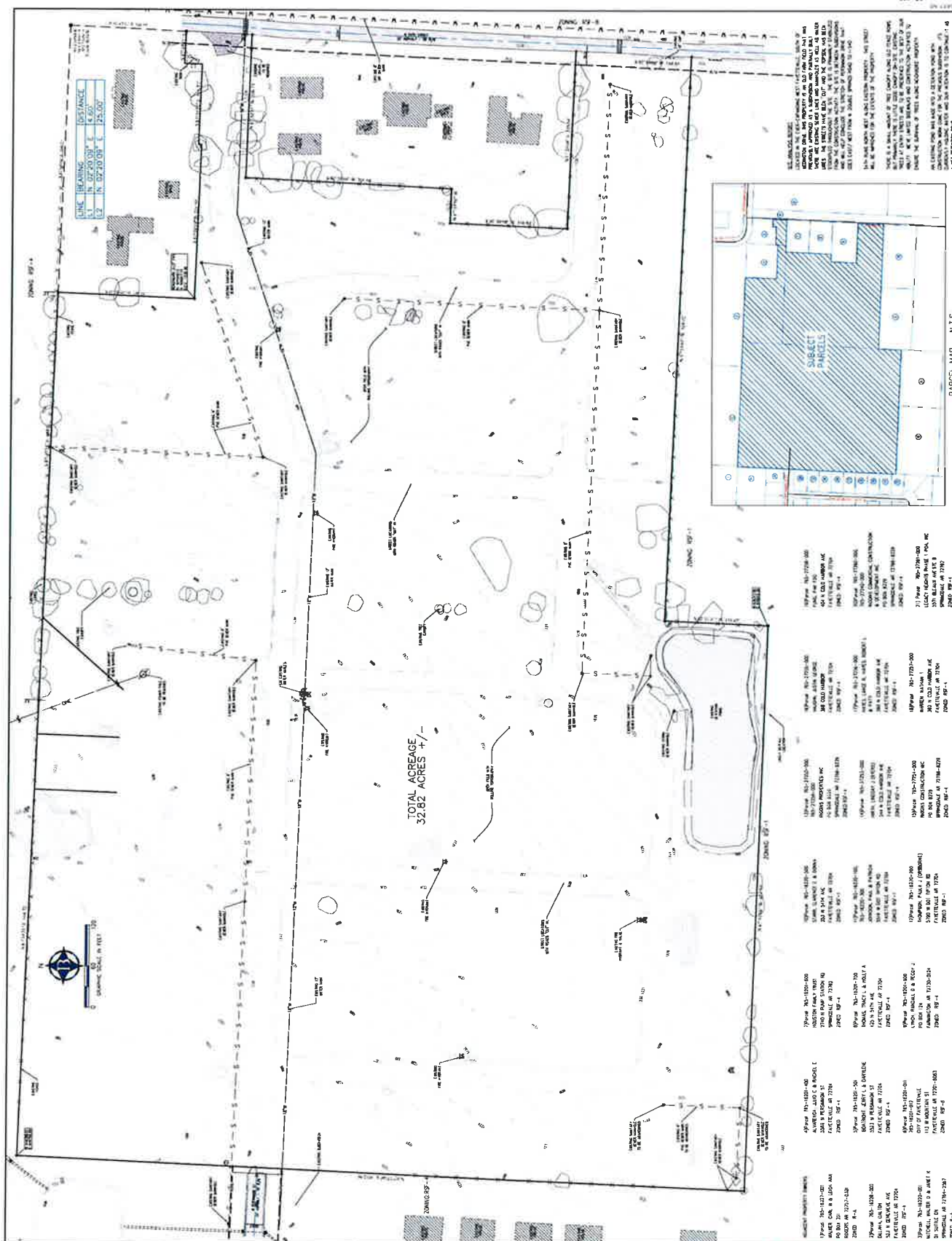
DRIVE
LOT W
70 FT
50 FT
LESS

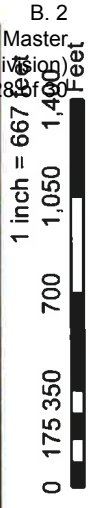
LOT C
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2-32,
33
1, 96



Bates & Associates, Inc.
Civil Engineering & Surveying

LEGACY POINTE PHASE V
PRELIMINARY PLAT
EXISTING SITE & DEMOLITION PLAN
& ANALYSIS REPORT
FAYETTEVILLE, ARKANSAS

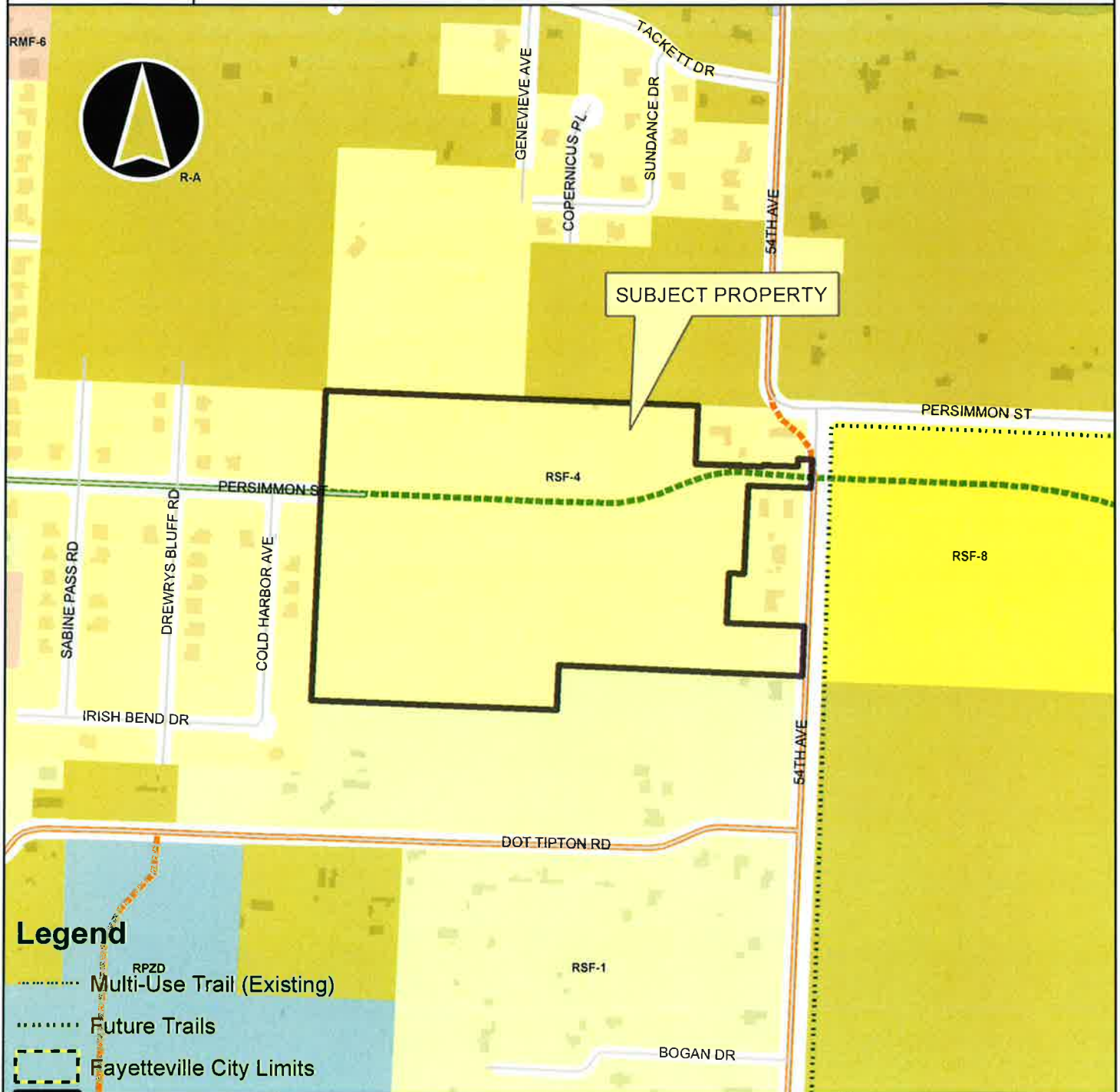




PPL13-4404

LEGACY PHASE V

Close Up View



Overview PPL13-4404

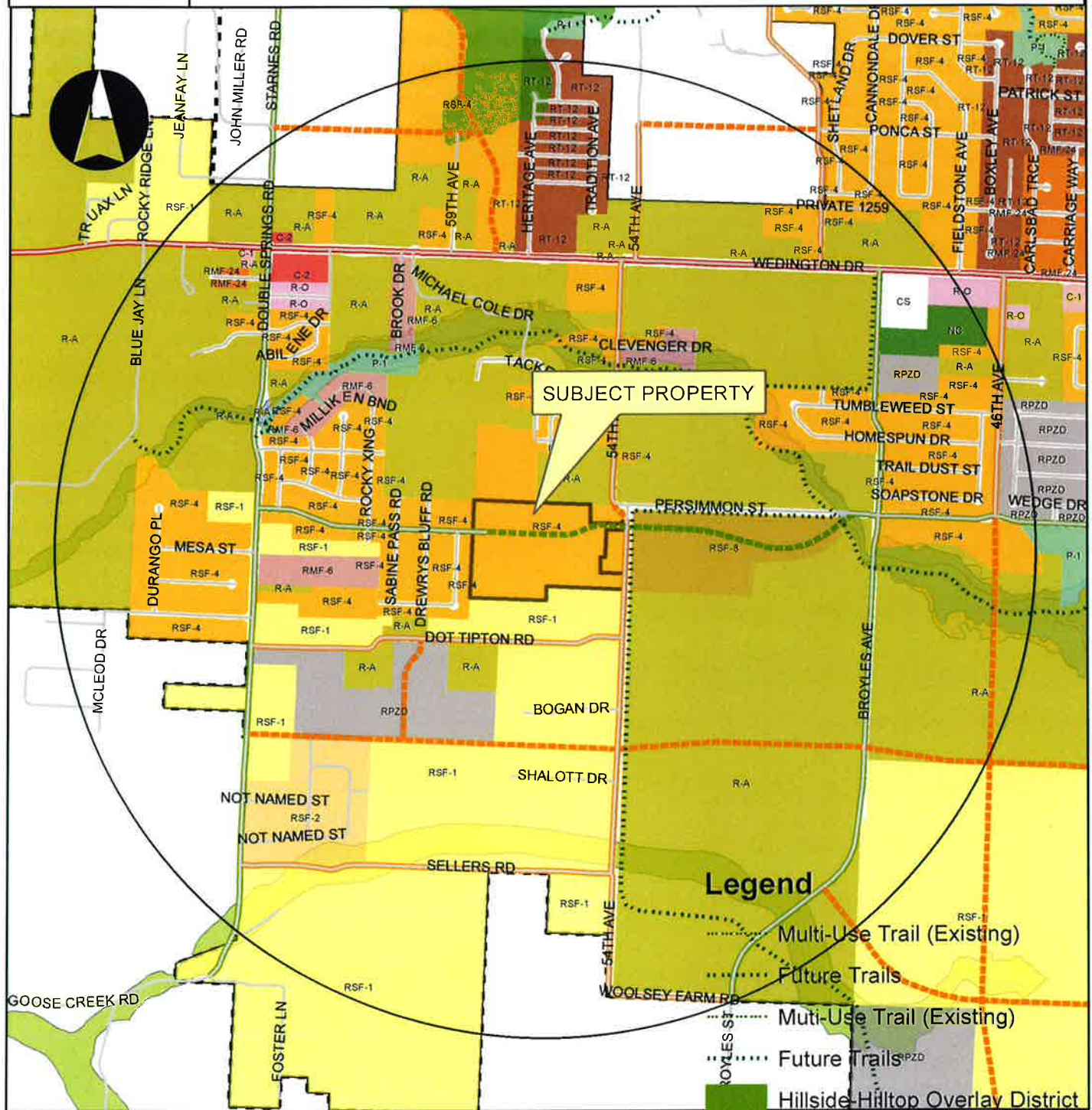
- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Design Overlay District
- Planning Area

0 200 400 800 1,200 1,600 Feet

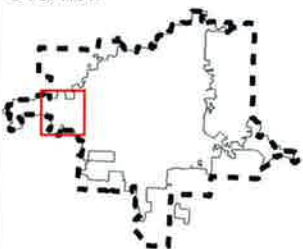
PPL13-4404

LEGACY PHASE V

One Mile View



Overview



Legend

Subject Property
PPL13-4404

Boundary

0 0.25 0.5

1 Miles

PPL13-4404
Design Overlay District
Planning Area
Fayetteville

City of Fayetteville Staff Review Form

B. 3
RZN 13-4467 (Mount
Comfort and Shiloh/Kum & Go)
Page 1 of 24

City Council Agenda Items
and
Contracts, Leases or Agreements

10/1/2013

City Council Meeting Date
Agenda Items Only

Jesse Fulcher
Submitted By

Planning
Division

Development Services
Department

Action Required:

RZN 13-4467: Rezone (MOUNT COMFORT AND SHILOH/KUM & GO, 324): Submitted by CEI ENGINEERING for property located at THE NORTHWEST CORNER OF MOUNT COMFORT AND SHILOH. The property is zoned R-A, RESIDENTIAL AGRICULTURAL AND RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS/ACRE. and contains approximately 1.65 acres. The request is rezone the property to C-1, NEIGHBORHOOD COMMERCIAL.

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

9/11/2013
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

9-16-13
Date

Finance and Internal Services Director

9/17/13
Date

Received in City Clerk's Office

Chief of Staff

9/18/13
Date

Received in Mayor's Office

Mayor

9/18/13
Date

Comments:

This item was left on the 1st Reading at the 10/1/13 CC mtg.



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director 

From: Jesse Fulcher, Current Planner

Date: September 13, 2013

Subject: RZN 13-4467 (Mount Comfort and Shiloh/Kum & Go)

RECOMMENDATION

The Planning Commission recommends approval of an ordinance to rezone the property to C-1, Neighborhood Commercial. Planning Division staff recommends denial of the request.

BACKGROUND

The subject property is located at the northwest corner of Mount Comfort Road and Shiloh Drive. The overall property contains approximately 23.50 acres, with 0.30 acres zoned RSF-4, Residential Single-family and 23.20 acres zoned Residential Agricultural. The property is developed with a single-family home and some type of vehicle and trailer storage yard.

The applicant has submitted an application to rezone 1.65 acres of the property from R-A, Residential Agricultural and RSF-4, Residential Single-family to C1, Neighborhood Commercial. The property is under contract by Kum & Go L.C., according to the applicant.

CITY PLAN 2030 FUTURE LAND USE MAP: *City Plan 2030 Future Land Use Plan designates this site as City Neighborhood Area.* These areas are more densely developed than residential neighborhood areas and provide a varying mix of nonresidential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types. Non-residential uses range in size, variety and intensity from grocery stores and offices to churches, and are typically located at corners and along connecting corridors.

COMPATIBILITY: This property serves as a transition from the sounds and traffic volumes of I-540 and the residential characteristics of the Mount Comfort Road corridor. The C-1 development pattern, in staff's opinion, does not support an appropriate transition into a neighborhood, but rather extends a highway commercial form along the corridor. Further, the C-1 zoning district does not support the guiding policies of the City Neighborhood Area designation, including: protecting adjoining properties from the potential adverse impacts associated with non-residential uses adjacent to and within residential areas with proper mitigation measures that address scale, massing, traffic, noise, appearance, lighting, drainage, and effects on property values; encourage walkability as part of the street function; encourage pedestrian friendly, mixed-use buildings through the use of transparent glass and building entrances that address the street; and encourage properties to develop in an urban form.

DISCUSSION

On September 9, 2013, the Planning Commission forwarded this item to the City Council with a recommendation of approval with a vote of 8-1-0 (Commissioner Chesser voted 'no').

BUDGET IMPACT

None.



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director

FROM: Kit Williams, City Attorney

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

DATE: September 16, 2013

**RE: Rezoning request of Kum & Go for Neighborhood Commercial of
the corner of Mount Comfort and Shiloh**

The Planning Commission almost unanimously (Commissioner Chesser being the sole dissenter) recommended that the City Council approve Kum & Go's request for Neighborhood Commercial for a 1.65 acre parcel on the corner of Mount Comfort Road and Shiloh Drive which is primarily zoned Residential Agriculture (R-A) now. The Planning Commission rejected the Planning Department's advice to deny Kum & Go's request and just leave this parcel primarily R-A.

R-A zones may be used for:

(1) "Agriculture" which includes egg and truck farms, and smoking, curing and selling poultry and livestock;

(2) "Animal husbandry" which includes animal breeding farms, farms with livestock, animal hospitals, rodeo grounds, and rifle ranges;

- (3) "Manufactured homes"; and
- (4) "Animal boarding and training."

The first purpose of Residential-Agricultural pursuant to the U.D.C. is "to protect agricultural land until an orderly transition to urban development has been accomplished...."

Kum & Go's requested zoning district is Neighborhood Commercial whose purpose "is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas."

The Planning Commissioners pointed out that Kum & Go's convenience store/gas station would be the first place where the surrounding neighborhoods on Mount Comfort could purchase groceries and convenience goods or buy gas. Kum & Go's convenience store seems designed "to provide convenience goods . . . for person living in the surrounding neighborhoods."

The 2030 Future Land Use Map shows this area to be a City Neighborhood Area which the Planning Division writes should supply a mix of nonresident uses including grocery stores "typically located at corners and along connecting corridors." Grocery stores are not allowed in R-A, but they are allowed in Neighborhood Commercial as requested by Kum & Go for its proposed corner lot on the Mount Comfort corridor which the City has just improved to four lanes.

The City Council has wide discretion about whether or not to rezone property. However, before the City Council would vote not to approve the rezoning almost unanimously recommended by your Planning Commission, you should be able to articulate specific reasons why the uses allowed in R-A will better protect adjoining properties and property values than the recommended Neighborhood Commercial which allows the types of services that the Planning Department affirms that the City Neighborhood Area of Mount Comfort in the 2030 Plan calls for and which are not allowed in the current R-A.

ORDINANCE NO.

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 13-4467, FOR APPROXIMATELY 1.65 ACRES LOCATED AT THE NORTHWEST CORNER OF MOUNT COMFORT ROAD AND SHILOH DRIVE FROM R-A, RESIDENTIAL AGRICULTURAL AND RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE, TO C-1, NEIGHBORHOOD COMMERCIAL.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby changes the zone classification of the following described property from R-A, Residential Agricultural and RSF-4, Residential Single-Family, 4 units per acre to C-1, Neighborhood Commercial, as shown on Exhibits "A" and "B" attached hereto and made a part hereof.

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

PASSED and APPROVED this day of , 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

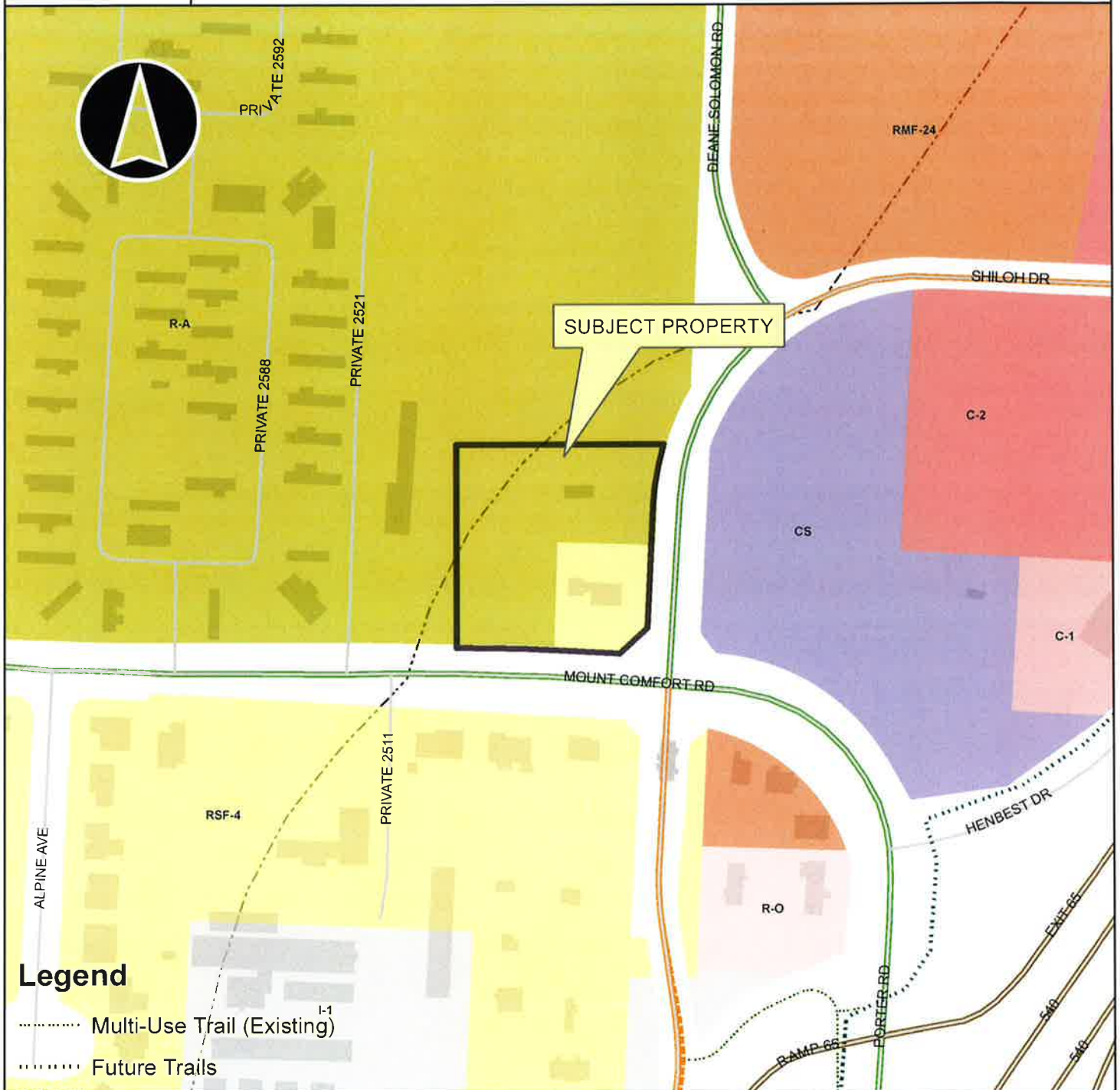
By: _____
SONDRA E. SMITH, City Clerk/Treasurer

EXHIBIT 'A'

RZN13-4467

KUM AND GO

Close Up View



Legend

- Multi-Use Trail (Existing)
- Future Trails

- Overview Fayetteville City Limits
- RZN13-4467
- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Planning Area

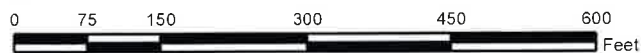


EXHIBIT "B"
RZN 13-4467

A TRACT OF LAND BEING A PORTION OF INSTRUMENT NO. 2005-45625 AMONG THE PUBLIC RECORDS OF WASHINGTON COUNTY, ARKANSAS, LAYING IN THE FRACTIONAL NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 16 NORTH, RANGE 30 WEST, FIFTH PRINCIPAL MERIDIAN, AND BEING DESCRIBED MORE PARTICULARLY BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A FOUND 3" BRASS CAP AT THE SOUTHEAST CORNER OF SAID QUARTER PER CERTIFIED LAND CORNER RESTORATION – PERPETUATION AND RESTORATION RECORD BOOK CRI, PAGE 333 FILED AT ARKANSAS STATE SURVEYORS OFFICE; THENCE ALONG THE SOUTH LINE OF SAID QUARTER, NORTH 87°07'17" WEST, A DISTANCE OF 368.01 FEET; THENCE DEPARTING SAID LINE, NORTH 2°35'29" EAST, A DISTANCE OF 55.29 FEET TO THE EXISTING NORTH RIGHT-OF-WAY OF WEST MOUNT COMFORT ROAD PER INSTRUMENT NO. 2009-15429 AND THE **POINT OF BEGINNING**;

THENCE ALONG SAID RIGHT-OF-WAY, NORTH 86°51'55" WEST, A DISTANCE OF 88.00 FEET TO THE NORTHWEST CORNER OF SAID INSTRUMENT NO. 2009-15429, BEING ALSO THE NORTHEAST CORNER OF INSTRUMENT NO. 2009-15427; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, THE FOLLOWING TWO (2) COURSES:

- 1.) NORTH 86°51'55" WEST, A DISTANCE OF 41.86 FEET;
- 2.) NORTH 89°07'24" WEST, A DISTANCE OF 88.48 FEET;

THENCE DEPARTING SAID RIGHT-OF-WAY, NORTH 00°00'00" EAST, A DISTANCE OF 275.59 FEET;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 282.20 FEET TO THE WEST RIGHT-OF-WAY OF SHILOH DRIVE PER INSTRUMENT NO. 2009-15427;

THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING FOUR (4) COURSES:

- 1.) 86.33 FEET ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 14°07'57", A RADIUS OF 350.00 FEET, A LONG CHORD THAT BEARS SOUTH 09°56'14" WEST, AND A CHORD DISTANCE OF 86.11 FEET;
- 2.) SOUTH 02°52'18" WEST, A DISTANCE OF 164.52 FEET;



PC Meeting of September 9, 2013

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Jesse Fulcher, Current Planner
Matt Casey, Assistant City Engineer
THRU: Jeremy Pate, Development Services Director
DATE: September 4, 2013 Updated September 13, 2013

RZN 13-4467: Rezone (MOUNT COMFORT AND SHILOH/KUM & GO, 324): Submitted by CEI ENGINEERING for property located at THE NORTHWEST CORNER OF MOUNT COMFORT AND SHILOH. The property is zoned R-A, RESIDENTIAL AGRICULTURAL AND RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS/ACRE. and contains approximately 1.65 acres. The request is rezone the property to C-1, NEIGHBORHOOD COMMERCIAL.

Planner: Jesse Fulcher

BACKGROUND:

The subject property is located at the northwest corner of Mount Comfort Road and Shiloh Drive. The overall property contains approximately 23.50 acres, with 0.30 acres zoned RSF-4, Residential Single-family and 23.20 acres zoned Residential Agricultural. The property is developed with a single-family home and some type of vehicle and trailer storage yard. Surrounding land uses are shown in Table 1.

Table 1: Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Undeveloped	R-A, Residential Agricultural
South	Single-family residential	RSF-4, Residential Single-family 4 Units/ Acre
East	Undeveloped	CS, Community Services
West	Single-family residential	R-A, Residential Agricultural

Proposal: The applicant has submitted an application to rezone 1.65 acres of the property from R-A, Residential Agricultural and RSF-4, Residential Single-family to C1, Neighborhood Commercial. The property is under contract by Kum & Go L.C., according to the applicant.

Public Comment: Staff received a phone call inquiring about this rezoning from a resident in the area concerned with commercial development encroaching down the more residential areas of Mount Comfort Road.

PLANNING COMMISSION ACTION:

Date: September 9, 2013 ☐ Tabled ☒ Forwarded ☐ Denied

Motion: Winston **Second:** Hoskins **Vote:** 8-1-0 (Chesser voting 'no')

CITY COUNCIL ACTION:

Date: October 1, 2013 ☐ Approved ☐ Denied

RECOMMENDATION:

Staff recommends **denial** of **RZN 13-4467**. It is staff's opinion that development under the C-1 zoning district will result in a conventional commercial development pattern with design components that promote vehicle/pedestrian conflicts that ultimately discourage pedestrian activities. This development pattern does not encourage walkability or accessibility for residents in surrounding neighborhoods. Furthermore, the proposed zoning does not support the land use policies adopted with City Plan 2030, including Goal 3: We will make traditional town form the standard, or the policies of the City Neighborhood Area designation. City Neighborhood Areas encourage design elements that support pedestrian friendly, mixed-use developments that are sensitive to surrounding residential uses and utilize principals of traditional urban design.

INFRASTRUCTURE:

Streets: The site has access to Mount Comfort Road and Shiloh Drive. Both streets were improved by the City of Fayetteville. Any remaining street improvements will be evaluated at the time of development.

Water: Public water is available to the property. There is a 12" water main along Mount Comfort Road.

Sewer: Sanitary sewer is available to the site. There is an 8" sewer main along Mount Comfort Road. The capacity of the existing main will need to be evaluated at the time of development of this property.

Drainage: Standard improvements and requirements for drainage will be required for any development. This property is not affected by the 100-year floodplain or the Streamside Protection Zone.

Police: The Fayetteville Police Department has not objected to this request.

Fire: This development will be protected by Fire Station 7 located at 835 N Ruppel Road. It is 3 miles from the station with an anticipated response time of 4 minutes to this location. The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.

CITY PLAN 2030 FUTURE LAND USE PLAN: *City Plan 2030 Future Land Use Plan* designates this site as **City Neighborhood Area**. These areas are more densely developed than residential neighborhood areas and provide a varying mix of nonresidential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types. Non-residential uses range in size, variety and intensity from grocery stores and offices to churches, and are typically located at corners and along connecting corridors.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed rezoning to C-1 is not consistent with land use planning objectives, principles, and policies. The Future Land Use Map designation for the property is City Neighborhood Area. These areas support a wide variety of land uses and densities depending on the context of each property. This particular property serves as a transition from the sounds and traffic volumes of I-540 and the residential characteristics of the Mount Comfort Road corridor. The C-1 development pattern, in staff's opinion, does not support an appropriate transition into a neighborhood, but rather extends highway commercial form along the corridor. Further, the C-1 zoning district does not support the guiding policies of the City Neighborhood Area designation, including: protecting adjoining properties from the potential adverse impacts associated with non-residential uses adjacent to and within residential areas with proper mitigation measures that address scale, massing, traffic, noise, appearance, lighting, drainage, and effects on property values; encourage walkability as part of the street function; encourage pedestrian friendly, mixed-use buildings through the use of transparent glass and building entrances that address the street; and encourage properties to develop in an urban form.

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

Finding: In staff's opinion, the C-1 zoning district is not justified as this time. This zoning district does not fulfill or support many of the policies of the City Neighborhood Area designation, nor does it provide an appropriate transition into a residential district. The importance of a transition is even more evident, since the property to the east was recently rezoned to CS, Community Services. This form-based commercial zoning district allows a wide variety of residential and commercial uses, including all uses permitted in the C-1 zoning district, but prescribes a traditional development pattern, encouraged by the City Neighborhood Designation. Rezoning the subject property to C-1, when it is nearer to the residential districts along Mount Comfort, would create an incompatible development pattern in close proximity to residences, and diminish a necessary

transition between commercial and residential districts.

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

Finding: **Rezoning the property to C-1 will increase traffic volumes over existing conditions. In staff's experience, high traffic generators along busy street corridors can create increased congestion and traffic danger if improperly designed. The Unified Development Code contains a number of access management requirements that can mitigate traffic conflicts, if they are implemented in the site design.**

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: **The proposed zoning should not substantially alter the population density in the area. Increased load on public services were taken into consideration and recommendations from Engineering, Fire, and Police Departments are included in this report. Staff does not anticipate any adverse impacts to provision of public services that would result from this rezoning.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

Finding: **N/A**

- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **N/A**

161.03 District R-A, Residential-Agricultural

- (A) *Purposes.* The regulations of the agricultural district are designed to protect agricultural land until an orderly transition to urban development has been accomplished; prevent wasteful scattering of development in rural areas; obtain economy of public funds in the providing of public improvements and services of orderly growth; conserve the tax base; provide opportunity for affordable housing, increase scenic attractiveness; and conserve open space.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 3	Public protection and utility facilities
Unit 6	Agriculture
Unit 7	Animal husbandry
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 37	Manufactured homes
Unit 41	Accessory dwellings
Unit 43	Animal boarding and training

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 20	Commercial recreation, large sites
Unit 24	Home occupations
Unit 35	Outdoor Music Establishments
Unit 36	Wireless communications facilities
Unit 42	Clean technologies

(C) *Density.*

Units per acre	One-half
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(D) *Bulk and area regulations.*

Lot width minimum	200 ft.
Lot Area Minimum:	
Residential:	2 acres
Nonresidential:	2 acres
Lot area per dwelling unit	2 acres

E) *Setback requirements.*

Front	Side	Rear
35 ft.	20 ft.	35 ft.

- (F) *Height requirements.* There shall be no maximum height limits in the A-1 District,

provided, however, that any building which exceeds the height of 15 feet shall be setback from any boundary line of any residential district a distance of 1.0 foot for each foot of height in excess of 15 feet. Such setbacks shall be measured from the required setback lines.

- (G) *Building area.* None.

(Code 1965, App. A., Art. 5(1); Ord. No. 1747, 6-29-70; Code 1991, §160.030; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 5028, 6-19-07; Ord. 5128, 4-15-08; Ord. 5195, 11-6-08; Ord. 5238, 5-5-09; Ord. 5479, 2-7-12)

161.07 District RSF-4, Residential Single-Family – Four Units Per Acre

(A) *Purpose.* The RSF-4 Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 41	Accessory dwellings

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 9	Two-family dwellings
Unit 12	Limited business
Unit 24	Home occupations
Unit 36	Wireless communications facilities
Unit 44	Cottage Housing Development

(C) *Density.*

	Single-family dwellings	Two-family dwellings
Units per acre	4 or less	7 or less

(D) *Bulk and area regulations.*

	Single-family dwellings	Two-family dwellings
Lot minimum width	70 ft.	80 ft.
Lot area minimum	8,000 sq. ft.	12,000 sq.-ft.
Land area per dwelling unit	8,000 sq. ft.	6,000 sq. ft.
Hillside Overlay District Lot minimum width	60 ft.	70 ft.
Hillside Overlay District Lot area minimum	8,000 sq. ft.	12,000 sq.-ft.
Land area per dwelling unit	8,000 sq. ft.	6,000 sq. ft.

(E) *Setback requirements.*

Front	Side	Rear
-------	------	------

15 ft.	5 ft.	15 ft.
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(F) *Building height regulations.*

Building Height Maximum	45 ft.
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Height regulations. Structures in this District are limited to a building height of 45 feet. Existing structures that exceed 45 feet in height shall be grandfathered in, and not considered nonconforming uses, (ord. # 4858).

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

(Code 1991, §160.031; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 4858, 4-18-06; Ord. 5028, 6-19-07; Ord. 5128, 4-15-08; Ord. 5224, 3-3-09; Ord. 5312, 4-20-10; Ord. 5462, 12-6-11)

161.18 District C-1, Neighborhood Commercial

(A) *Purpose.* The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 5	Government Facilities
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 25	Offices, studios, and related services

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 16	Shopping goods
Unit 34	Liquor stores
Unit 35	Outdoor music establishments*
Unit 36	Wireless communications facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

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

(E) *Setback regulations.*

Front	15 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Side	None
Side, when contiguous to a residential district	10 ft.
Rear	20 ft.

(F) *Building height regulations.*

Building Height Maximum	56 ft.*
-------------------------	---------

*Any building which exceeds the height of 20 feet shall be setback from any boundary line of any residential district a distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

(Code 1965, App. A., Art. 5(V); Ord. No. 2603, 2-19-80; Ord. No. 1747, 6-29-70; Code 1991, §160.035; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 5028, 6-19-07; Ord. 5195, 11-6-08; Ord. 5312, 4-20-10; Ord. 5339, 8-3-10; Ord. 5462, 12-6-11; Ord. 5592, 06-18-13)

www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS

FIRE DEPARTMENT
303 West Center Street
Fayetteville, AR 72701
P (479) 575-8365 F (479) 575-0471**OFFICE OF THE FIRE MARSHAL**

Zoning Review

To: Jesse Fulcher
From: Battalion Chief H. Hunt
Date: August 12, 2013
Re: RZN 13-4467 (Mount Comfort and Shiloh/Kum & Go)

This development will be protected by Fire Station 7 located at 835 N. Ruppel.
It is 3 miles from the station with an anticipated response time of 4 minutes to this location.

The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.

If you have any questions please feel free to contact me.

Battalion Chief H. Hunt
Fire Marshal
479-718-7639



ENGINEERS ■ SURVEYORS ■ PLANNERS
LANDSCAPE ARCHITECTS ■ ENVIRONMENTAL SCIENTISTS

3108 SW Regency Parkway, Suite 2
Bentonville, AR 72712
(479) 273-9472 Fax (479) 273-0844

www.ceieng.com

July 29, 2013

Development Services Department
City of Fayetteville
125 W. Mountain Street
Fayetteville, AR 72701

RE: Request for Rezoning: Kum & Go #419, NWC of Mt. Comfort Rd & Shiloh Dr.

Dear Development Services,

Pursuant to the City of Fayetteville's Rezoning Application, the following information is provided to satisfy Item 5, sub-items a through I of the Rezoning Checklist.

5a. Current ownership information and any proposed or pending property sales.

The current owner of the land is Joan C. Hays, 2556 Mt. Comfort Rd #29, Fayetteville, AR 72704. The land is under contract by Kum & Go L.C., 6400 Westown Parkway, West Des Moines, IA 50266. Successful rezoning of the property is a contract contingency.

5b. Reason (need) for requesting zoning change.

The current zoning is RA (Residential Agriculture) which does not allow for the proposed use of a convenience store. A zoning change to C1 (Neighborhood Commercial) is requested to accommodate the applicant's land use.

5c. Statement of how the proposed rezoning will relate to surrounding properties in terms of land use, traffic, appearance, and signage.

The site is on the northwest corner of the signalized intersection of Mt. Comfort Rd. and Shiloh Dr. Both roads have recently been upgraded to create the 4 travel lanes on Mt. Comfort and the new traffic signal at the intersection with Shiloh Dr. The proposed land use is in compliance with the land use patterns as prescribed by the Future Land Use Map. Being that Kum & Go generally utilizes "pass-by" traffic for its customer base, and is not a "destination" land use, the proposed use will not generate an increase in traffic to the corridor. The site has adequate frontage on both Mt. Comfort Rd. and Shiloh Dr. to safely accommodate ingress and egress from the adjacent roadways. Kum & Go has developed an aesthetic brand for both the appearance and signage for their stores, and their brand will not be a visual distraction along the Mt. Comfort corridor.

5d. Availability of water and sewer (state size of lines).

Water – A 12" line exists on the south side of the property (north side of Mt. Comfort).
Sewer – An 8" line exists on the south side of the property (north side of Mt. Comfort).

5e. The degree to which the proposed zoning is consistent with the land use planning objectives, principles and policies, and with land use and zoning plans.

Providing Consolidated Land Development Services

CALIFORNIA ■ TEXAS ■ ARKANSAS ■ MINNESOTA ■ GEORGIA ■ PENNSYLVANIA

The proposed zoning is consistent with the City Plan 2030 and the guiding policies of the City Neighborhood Areas in that the proposed use would serve the residents of Fayetteville rather than a regional population. Additionally it would provide a use that is accessible for the convenience of residents living in the adjacent residential districts.

5f. Whether the proposed zoning is justified and/or needed at the time of the request.

The proposed zoning is justified by the locations viability as a convenience store on the corner of two connecting corridors. The location would be utilized to provide convenience goods to residents that would reduce the length and number of vehicular trips generated by residents living to the west and south of the site; a large residential area which is devoid of commercial services.

5g. Whether the proposed zoning will alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

The proposed zoning should not create, or considerably increase, traffic danger and congestion since the site has frontage on both Mt. Comfort Rd. and Shiloh Dr., both of which have been recently upgraded to the city's master street plan. This section of the corridor has good site distances and is not developed with regional destination type of land uses.

5h. Whether the proposed zoning will alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

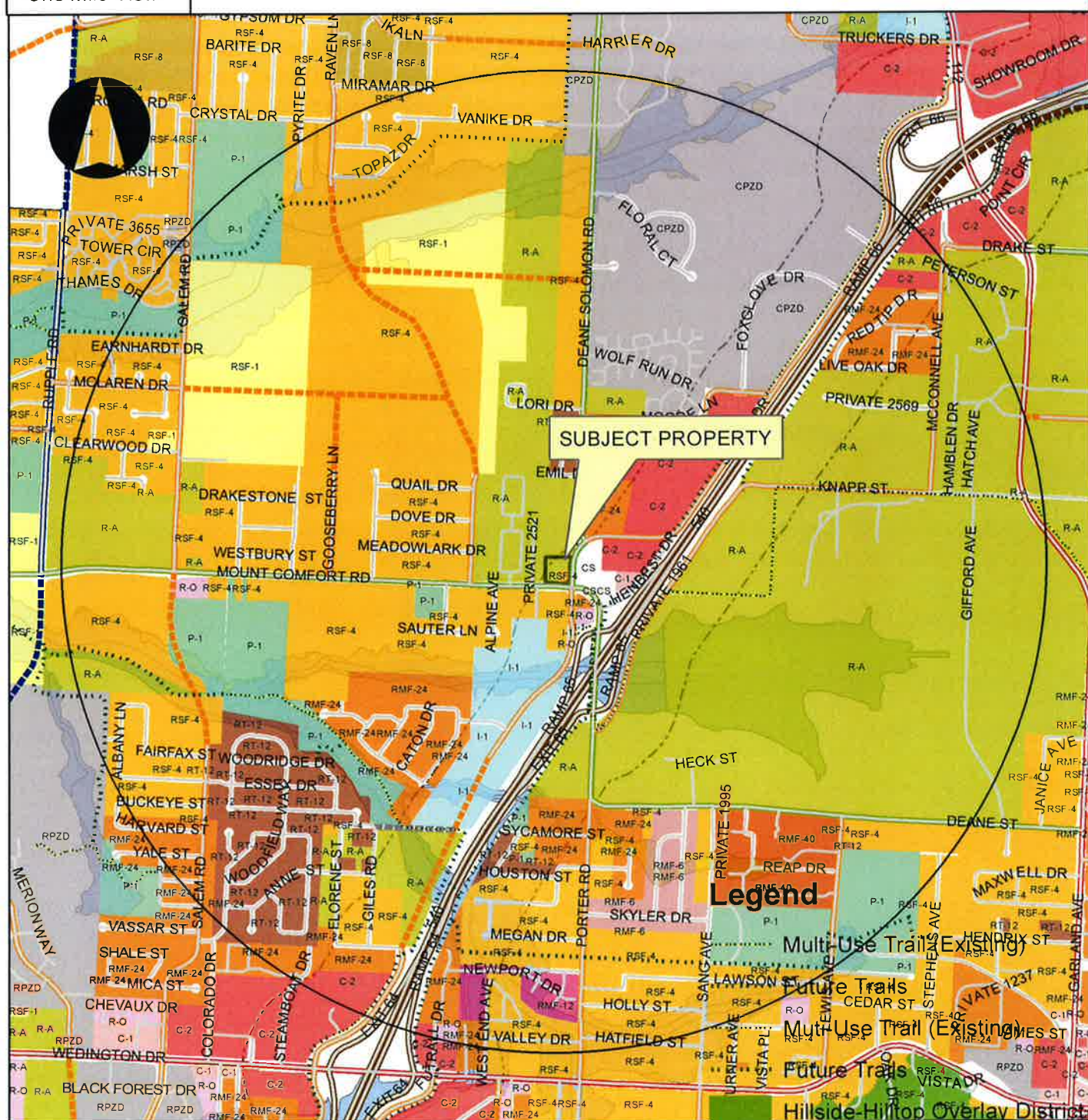
The proposed zoning should not alter the population density. It is a commercial land use, and as such will not foster any population increase.

5i. Why it would be impractical to use the land for any of the uses permitted under its existing zoning classification.

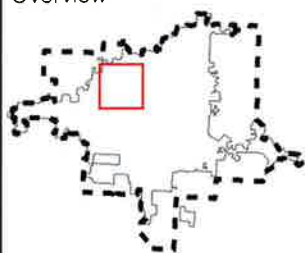
The area surrounding this property that is currently zoned Residential Agriculture is transitioning to urban development. Rezoning the property would help prevent urban sprawl. The proposed land use would help to fill a need for commercial/retail services in the corridor. The closest commercial services are located 1.5 miles to the north at the I-540 and Garland Ave intersection, and 1.3 miles to the south at the I-540 and Weddington Dr. intersection.

One Mile View

KUM AND GO



Overview



Legend

Subject Property

RZN13-4467

Boundary

0 0.25 0.5

RZN13-4467

Design Overlay District

Planning Area

Fayetteville

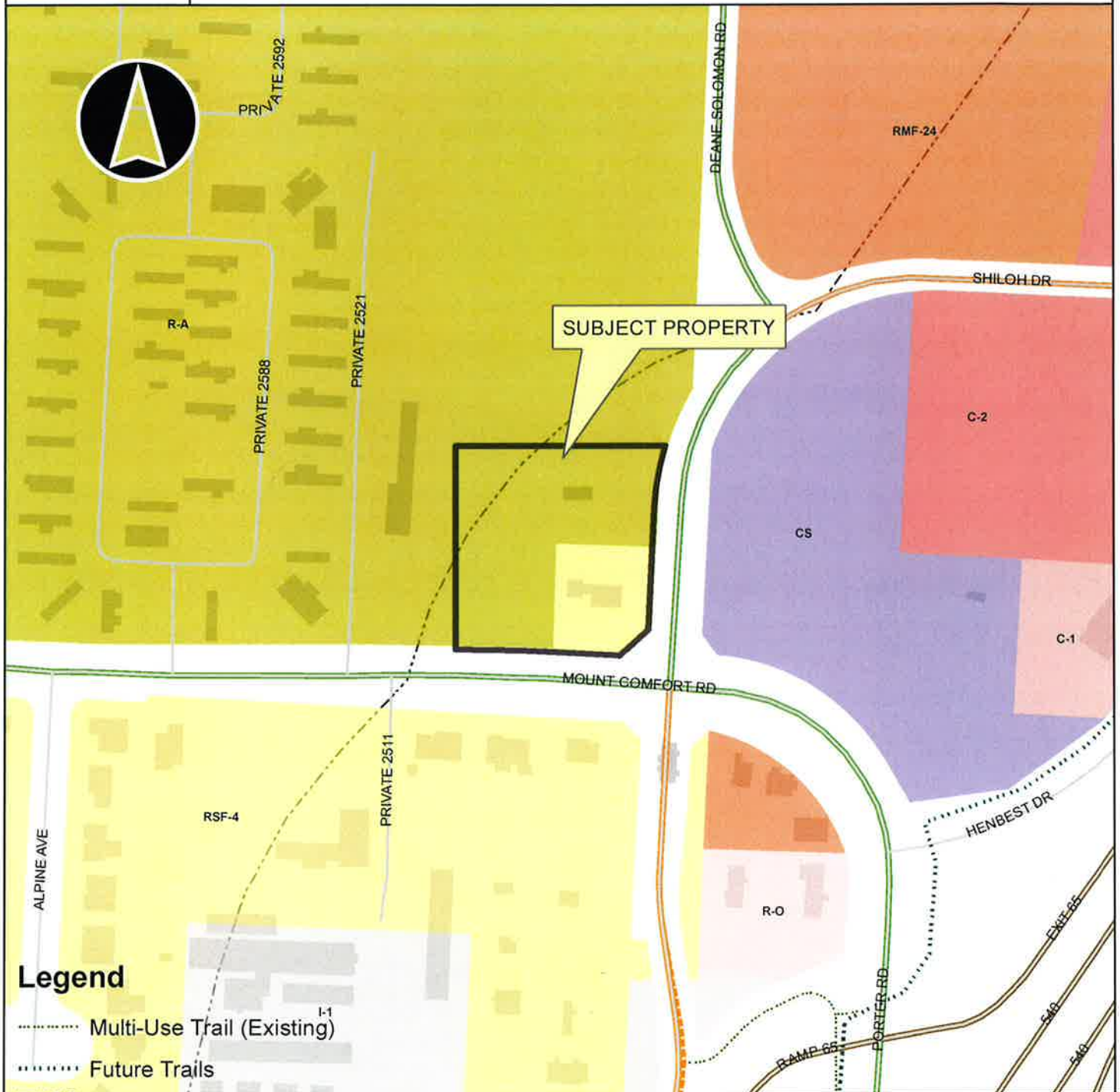
1

Miles

RZN13-4467

KUM AND GO

Close Up View



Legend

- Multi-Use Trail (Existing)
- Future Trails

Overview Fayetteville City Limits

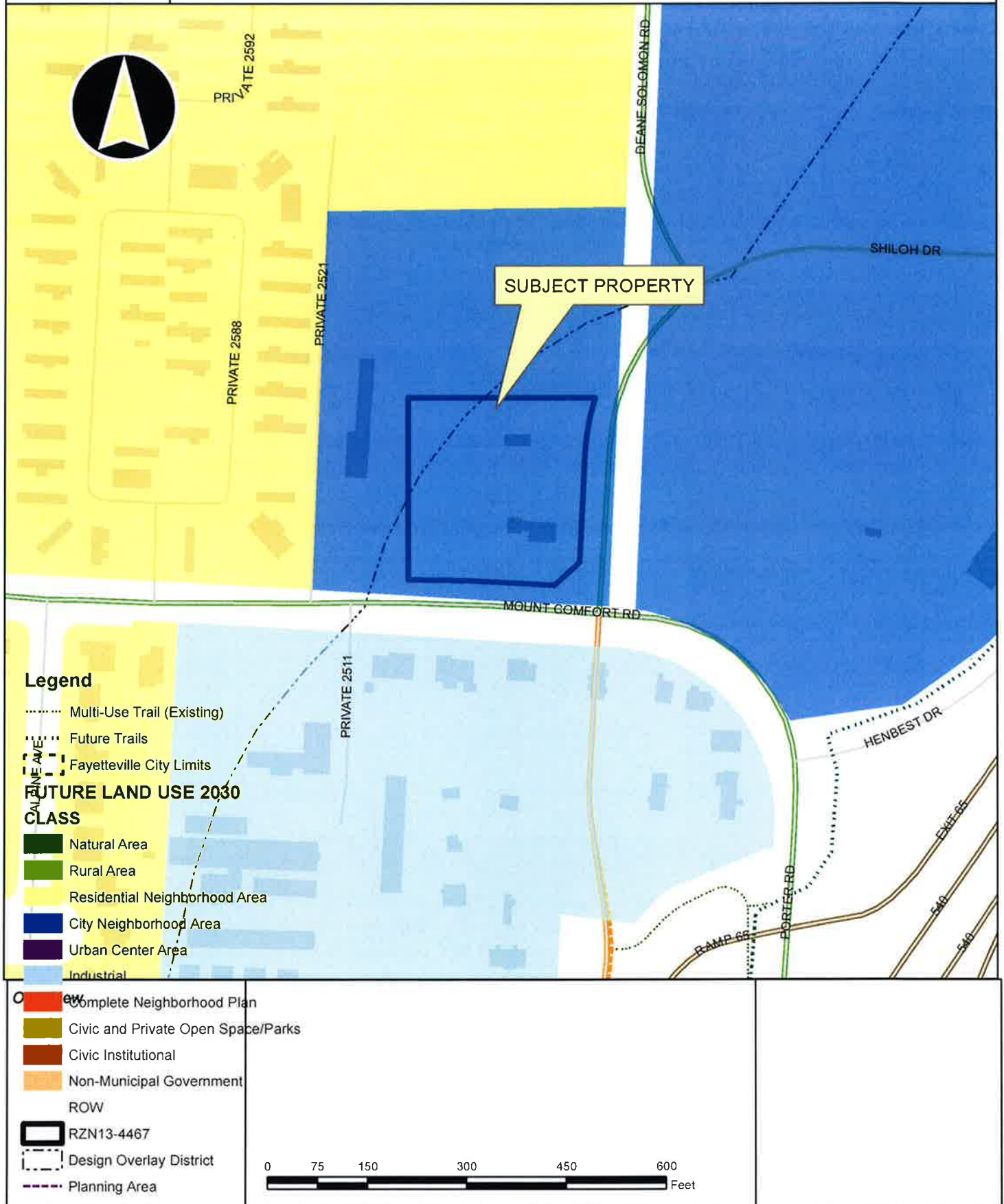
- RZN13-4467
- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Planning Area

0 75 150 300 450 600 Feet

RZN13-4467

KUM AND GO

Future Land Use



RZN13-4467

Current Land Use

KUM AND GO



Legend

- Multi-Use Trail (Existing)
- Future Trails

Overview Fayetteville City Limits

- RZN13-4467
- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Planning Area

0 75 150 300 450 600 Feet

emailed to aldermen 10/1/13

B. 3
RZN 13-4467 (Mount
Comfort and Shiloh/Kum & Go)
Page 23 of 24

From: "Parker, William A" <william.parker@zoetis.com>
To: "city_clerk@ci.fayetteville.ar.us" <city_clerk@ci.fayetteville.ar.us>
CC: "ward4_pos1@ci.fayetteville.ar.us" <ward4_pos1@ci.fayetteville.ar.us>, "...
Date: 10/1/2013 12:53 PM
Subject: Rezoning Mt. Comfort and Shiloh

I am in favor of the rezoning.

Drew Parker
884 N. Meadowlands Drive
Fayetteville, AR 72704

City of Fayetteville Staff Review Form

C. 1
 VAC 13-4478 (Twin Creeks
 Village Lot 19B4)
 Page 1 of 14

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

10/15/2013

City Council Meeting Date
 Agenda Items Only

Quin Thompson
 Submitted By

Planning
 Division

Development Services
 Department

Action Required:

VAC 13-4478: Vacation (TWIN CREEKS VILLAGE LOT 19B4, 211): Submitted by MCCLELLAND CONSULTING for property located at 163 VAN ASCHE LOOP. The property is zoned C-1, NEIGHBORHOOD COMMERCIAL and contains approximately 1.18 acres. The request is to vacate a portion of a drainage easement on 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

☐

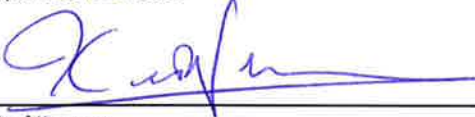
Budget Adjustment Attached

☐


 Department Director

Date

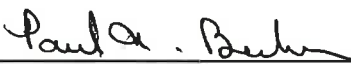
Previous Ordinance or Resolution #


 City Attorney

Date

Original Contract Date:

Original Contract Number:


 Finance and Internal Services Director

Date

Received in City
 Clerk's Office

09-27-13 P02:52 RCVD


 Chief of Staff

Date

Received in
 Mayor's Office


 Mayor

Date

ENTERED
 9/27/13
 PH

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director 

From: Quin Thompson, Current Planner

Date: September 25, 2013

Subject: VAC 13-4478 (TWIN CREEKS VILLAGE)

RECOMMENDATION

The Planning Commission and staff recommend approval of an ordinance to vacate a portion of a drainage easement.

BACKGROUND

The subject property is located south of Van Asche Loop, a private street. The property is a part of Twin Creeks Village (PPL 09-3265,) a commercial sub-division approved in 2009. The original project included an open drainage and associated easements. A revised design has been constructed, which routes all storm water through an underground system, makes the original open drainage easement unnecessary.

The applicant's request is to vacate the drainage easement as indicated in "Exhibit A."

The City Transportation Department, has approved the request. No other approvals are required for a drainage easement.

DISCUSSION

On September 23, 2013, the Planning Commission forwarded this item to the City Council with a recommendation of approval with a vote of 7-0-0.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE APPROVING VAC 13-4478 SUBMITTED BY MCCLELLAND ENGINEERING CONSULTING FOR PROPERTY LOCATED AT 163 VAN ASCHE LOOP, TO VACATE A PORTION OF A DRAINAGE EASEMENT, A TOTAL OF 0.03 ACRES.

WHEREAS, the City Council has the authority under A.C.A. § 14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes; and

WHEREAS, the City Council has determined that the following described portion of the platted drainage easement is not required for corporate purposes;

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby vacates and abandons the following described drainage easement in Exhibit B (attached).

Section 2: That a copy of this Ordinance duly certified by the City Clerk along with the map attached and labeled Exhibit A shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 3: That this vacation approval is subject to the Condition of Approval and shall not be in effect until the condition is met.

“Any relocation of existing utilities shall be at the owner/developer’s expense.”

PASSED and **APPROVED** this day of , 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

EXHIBIT "A"



EXHIBIT "B"
VAC 13-4478

A PART OF LOT 19B-4, OF TWIN CREEKS VILLAGE, A SUBDIVISION TO THE CITY OF FAYETTEVILLE, ARKANSAS PER THE PLAT OF SAID SUBDIVISION ON FILE IN THE OFFICE OF THE CIRCUIT CLERK AND EXOFFICIO RECORDER OF WASHINGTON COUNTY, ARKANSAS, AND SAID PART BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST COMER OF SAID LOT 19B-4, THENCE ALONG THE WEST LINE OF SAID LOT NORTH 07 DEGREES 46 MINUTES 14 SECONDS EAST A DISTANCE OF 70.49 FEET; THENCE LEAVING SAID WEST LOT LINE SOUTH 87 DEGREES 21 MINUTES 55 SECONDS EAST A DISTANCE OF 55.32 FEET TO THE POINT OF BEGINNING (P.O.B.); THENCE NORTH 48 DEGREES 05 MINUTES 32 SECONDS EAST A DISTANCE OF 43.28 FEET; THENCE SOUTH 41 DEGREES 54 MINUTES 28 SECONDS EAST A DISTANCE OF 79.53 FEET; THENCE NORTH 86 DEGREES 54 MINUTES 28 SECONDS WEST A DISTANCE OF 9.50 FEET; THENCE NORTH 49 DEGREES 29 MINUTES 47 SECONDS WEST A DISTANCE OF 46.78 FEET; THENCE SOUTH 89 DEGREES 07 MINUTES 43 SECONDS WEST A DISTANCE OF 40.27 FEET TO THE POINT OF BEGINNING (P.O.B.), CONTAINING 1219.94 SQUARE FEET, 0.03 ACRES.



PC Meeting of September 23, 2013

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 16, 2013~~ UPDATED SEPTEMBER 24, 2013

VAC 13-4478: Vacation (TWIN CREEKS VILLAGE LOT 19B4, 211): Submitted by MCCLELLAND CONSULTING for property located at 163 VAN ASCHE LOOP. The property is zoned C-1, NEIGHBORHOOD COMMERCIAL and contains approximately 1.18 acres. The request is to vacate a portion of a drainage easement on property.

Planner: Quin Thompson

Findings:

Property and Background: The subject property is located south of Van Asche Loop, a private street. The property is a part of Twin Creeks Village (PPL 09-3265,) a commercial sub-division approved in 2009. The original project included an open drainage and associated easements. This design was later revised and a new easement platted with PPL 09-3265. the revised design routes all stormwater into an underground system, where previously it flowed in an open ditch across the site. The revised design has been constructed, making the original open drainage easement redundant.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Professional Office/Undeveloped	C-1, Neighborhood Commercial
South	Single family residential	RSF-4, Residential Multi-family
East	Professional Office/Undeveloped	C-1, Neighborhood Commercial
West	Professional Office/Undeveloped	C-1, Neighborhood Commercial

Request: The applicant requests a vacation of a drainage easement as indicated on the submitted exhibit.

Easement Vacation Approval: As this is an easement exclusively for drainage, which is under the jurisdiction of the City of Fayetteville Transportation Department. Permissions from the franchise utilities and City utility departments are not needed.

Public Comment: No public comment has been received.

Recommendation: The subject drainage easement is not necessary any longer, as the original design

has been revised and constructed to pipe stormwater underground. Staff recommends forwarding VAC 13-4478 to the City Council with a recommendation for approval.

CITY COUNCIL ACTION: Required

PLANNING COMMISSION ACTION: Required

Planning Commission Action: X Forwarded ☐ Denied ☐ Tabled

Date: September 23, 2013

Motion: Winston

Second: Pennington

Vote: 4-0-1

Notes: CONSENT AGENDA, HOSKINS ABSTAINED

August 6, 2013

RE: Vacating a portion of a drainage easement at proposed project # 13-4425, 163 W. Van Asche Loop

Dear Planning Commission, and City Council,

Northwest Arkansas Oral & Maxillofacial Surgery and McClelland Consulting Engineers, Inc., are requesting the abandonment of a portion of a drainage easement located in the CMN business park.

The easement is no longer needed as the drainage path was contained in an enclosed box culvert as part of a previous improvement. A sufficient easement will remain to service the drainage culvert.

Please don't hesitate to contact me if you should have any questions or concerns regarding this notification.

Sincerely,



Ryan Gill, P.E.
rgill@mcclelland-engrs.com



Description of part of drainage easement to be vacated:

A part of Lot 19B-4, of Twin Creeks Village, a subdivision to the City of Fayetteville, Arkansas per the plat of said subdivision on file in the office of the circuit clerk and Ex-Officio Recorder of Washington County, Arkansas, and said part being more particularly described as follows:

Commencing at the southwest corner of said Lot 19B-4,
thence along the west line of said Lot
North 07 degrees 46 minutes 14 seconds East a distance of 70.49 feet;
thence leaving said west lot line
South 87 degrees 21 minutes 55 seconds East a distance of 55.32 feet
to the POINT OF BEGINNING (P.O.B.);
thence North 48 degrees 05 minutes 32 seconds East a distance of 43.28 feet;
thence South 41 degrees 54 minutes 28 seconds East a distance of 79.53 feet;
thence North 86 degrees 54 minutes 28 seconds West a distance of 9.50 feet;
thence North 49 degrees 29 minutes 47 seconds West a distance of 46.78 feet;
thence South 89 degrees 07 minutes 43 seconds West a distance of 40.27 feet to the
POINT OF BEGINNING (P.O.B.), containing 1219.94 square feet, 0.03 acres.

August 1, 2013

K:\2013\132117 - Lot 19B-4 Dr Cross Office\Drainage Easement Vacation\Drainage
easement vacation description.docx

UTILITY APPROVAL FORM
FOR DRAINAGE EASEMENT VACATION

DATE: 8-7-13

UTILITY COMPANY: Fayetteville Transportation Department

APPLICANT NAME: NWA Oral & Maxillofacial Surgery

APPLICANT PHONE: 479-966-4004

REQUESTED VACATION (*applicant must check all that apply*):

- ☐ Utility Easement
☐ Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.
☐ Alley
☐ Street right-of-way
☒ OTHER: (Drainage Easement)

I have been notified of the petition to vacate the following *drainage easement*, described as follows:

General Location / Address: Fayetteville Project # 13-4425, 163 W. Van Asche Loop
(see ATTACHED legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- ☒ No objections to the vacation(s) described above.
☐ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

☐ No objections provided the following conditions are met:

Terry L. Gully
Signature of Utility Company Representative

Transportation Services Director
Title

TWIN CREEKS VILLAGE LOT 19B4



Legend

Multi-Use Trail (Existing)

Future Trails

Multi-Use Trail (Existing)

C-2 Future Trails

Hillside-Hilltop Overlay District

Subject Property

☐ VAC13-4478

Boundary

0 0.25 0.5

VAC13-4478

Design Overlay District

100 100 100 100

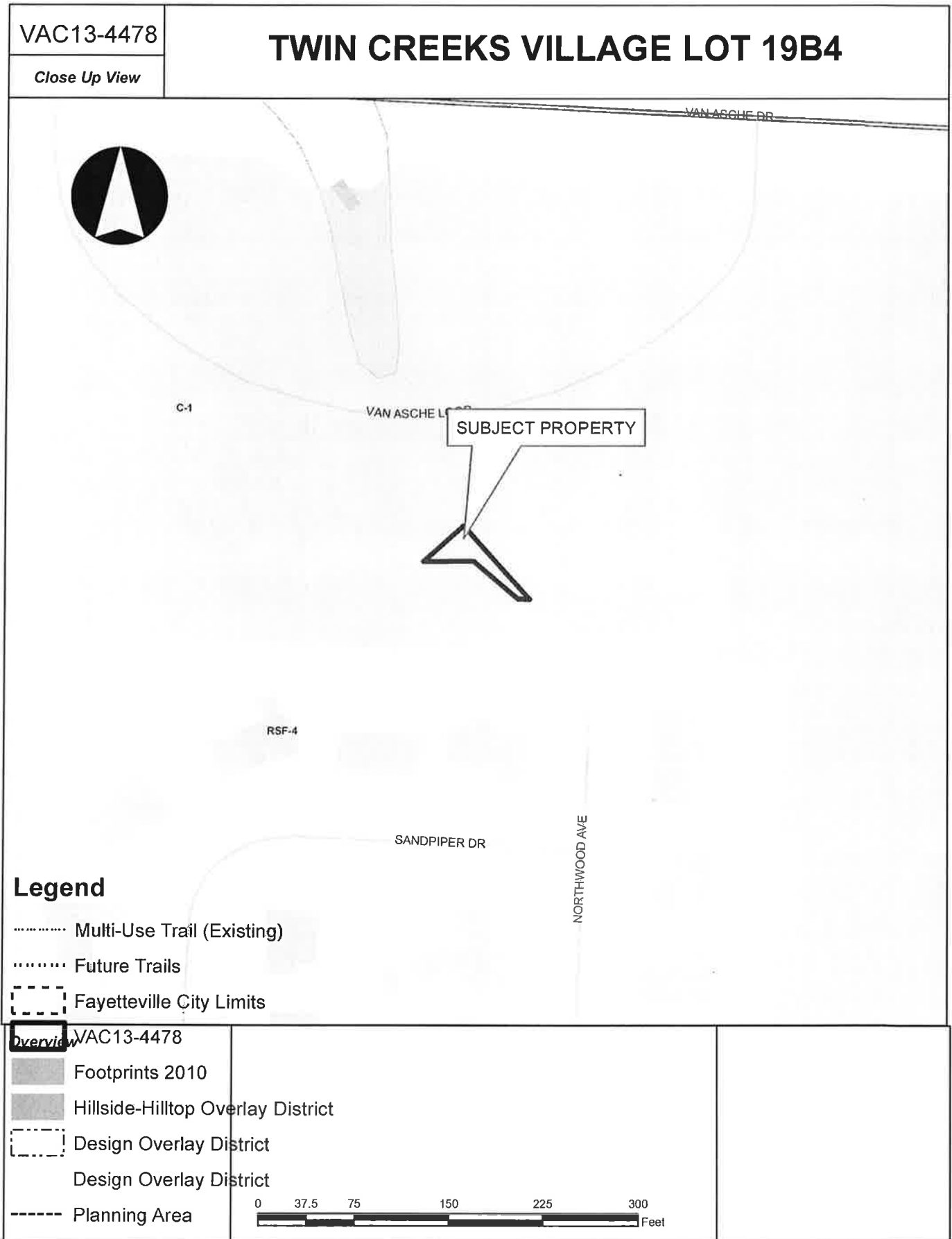
Planning Area

11

Fayetteville

11

1
■ Miles



City of Fayetteville Staff Review Form

C. 2

ADM 13-4487 (Links at
Fayetteville PZD Modification #3)
Page 1 of 22

City Council Agenda Items
and
Contracts, Leases or Agreements

10/15/2013

City Council Meeting Date
Agenda Items Only

Andrew Garner
Submitted By

Planning
Division

Development Services
Department

Action Required:

ADM 13-4487 (Links at Fayetteville PZD Modification #3). Submitted by Jorgensen and Associates, Inc. for property located on the north side of Wedington drive and east of Ruppel Road. The property is zoned R-PZD 07-2452 and contains approximately 152.23 acres. The request is to modify the zoning criteria for Planning Area 1 to allow a drive-thru restaurant at the northeast corner of Wedington Drive and Golf Club Drive and to modify the architectural design requirements.

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

Jeffery Cox
Department Director

11-27-2013
Date

Previous Ordinance or Resolution #

K. K. K.
City Attorney

9-27-2013
Date

Original Contract Date:

Original Contract Number:

Paul A. Butler
Finance and Internal Services Director

9-27-2013
Date

Received in City
Clerk's Office

Jim Mann
Chief of Staff

9-30-13
Date

Received in
Mayor's Office

Lionel Jordan
Mayor

10/1/13
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Jeremy Pate, Development Services Director

From: Andrew Garner, Senior Planner

Date: September 25, 2013

Subject: ADM 13-4487 Links at Fayetteville PZD Modification No. 3

RECOMMENDATION

Staff and Planning Commission recommend approval of an ordinance to amend the zoning criteria for the Links at Fayetteville Planned Zoning District to modify the zoning criteria for Planning Area 1 to allow a drive-thru restaurant at the northeast corner of Wedington Drive and Golf Club Drive and to modify the architectural design requirements.

BACKGROUND

The property contains 152.23 acres and is located on the north side of Wedington Drive and east of Ruppel Road, with frontage on both of those streets. The property is developed with the Links at Fayetteville apartment complex and golf course. Bryce Davis Park is located directly adjacent to the east, as well as some single family subdivisions and multi-family development. The applicant proposes a restaurant with a drive-thru at the northeast corner of Wedington Drive and Golf Club Drive.

This portion of the Links at Fayetteville PZD is within Planning Area 1, Market District, which allows a restaurant, but does not allow a drive-thru. The proposal requires a change in the zoning criteria for Planning Area 1 to include Use Unit 18, Gasoline service station and drive-in/drive through restaurants as a permitted use at the northeast corner of Wedington Drive and Golf Club Drive. The applicant also proposes a slight modification to the architectural design standards in the zoning criteria for the specific design of this restaurant. These changes to the PZD would only affect the portion of the Links property for this one restaurant. A copy of the PZD booklet with the revised zoning criteria for Planning Area 1, along with a conceptual site plan and architectural renderings has been submitted indicating the proposed changes.

DISCUSSION

On September 23, 2013 the Planning Commission forwarded this request to the City Council with a recommendation for approval with a vote of 6-0-0. At the Planning Commission meeting one member of the public from the Chevaux Condominiums to the northeast expressed concerns with noise from a drive-thru restaurant and the impact of vehicular traffic and cross access at the adjacent Cross Church. In response to these comments the Planning Commission added conditions of approval to the request including that the applicant should meet with the concerned

neighborhood and recommendation that the City Council be sensitive to the neighborhood concerns, in particular, the location of the speaker of the drive-thru window.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE AMENDING A RESIDENTIAL PLANNED ZONING DISTRICT ENTITLED R-PZD 07-2452 LINKS AT FAYETTEVILLE TO REVISE THE ZONING CRITERIA FOR PLANNING AREA ONE, TO INCLUDE USE UNIT 18, GASOLINE SERVICE STATIONS AND DRIVE-IN/DRIVE THROUGH RESTAURANTS, AS A PERMITTED USE, AND TO REVISE THE ARCHITECTURAL DESIGN STANDARDS AT THE NORTHEAST CORNER OF WEDINGTON DRIVE AND GOLF CLUB DRIVE.

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

Section 1. That the zoning criteria booklet for R-PZD 07-2452 Links at Fayetteville are hereby amended to reflect modified zoning criteria in Planning Area One for one development site at the northeast corner of Wedington Drive and Golf Club Drive to include Use Unit 18, Gasoline Service Stations and Drive-in/Drive Through Restaurants, and to slightly modify the architectural design standards to require a minimum of 25% brick or painted brick, as described and depicted herein (Exhibit "A").

Section 2. That the Planned Zoning District ordinance and official zoning map of the City of Fayetteville, Arkansas, are hereby amended to reflect the zoning criteria change provided in Section 1 above.

PASSED and APPROVED this day of , 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



Exhibit "A"
ADM 13-4487
pg. 2 of 5

Planning Area I - Market District

The Market Area is designed to encourage the functional grouping of these commercial and retail enterprises catering to the residents of the surrounding area. Banks and restaurants will be located within easy walking distance of the residents not only of The Links at Fayetteville, but also within walking or short commute distance for the surrounding area. This area is strategically positioned along the Arterial corridor of Weddington Road and Ruppel Road, so this it may provide visibility and accessibility to the surrounding area. Additionally, there will be limited access to Weddington Road and Ruppel Road.

(a) Permitted Uses

Unit 1 City wide uses
Unit 5 Government facilities
Unit 12 Offices, studios and related services
Unit 13 Eating places
Unit 15 Neighborhood shopping goods
Unit 16 Shopping goods
Unit 19 Commercial recreation, small sites
Unit 25 Professional offices

Amend PZD to:
Allow Use Unit 18
Gasoline service
stations & drive-in/
drive-thru
restaurants

(b) Conditional Uses

Unit 2 City wide uses by conditional use permit
Unit 14 Hotel, Motel, and amusement facilities
Unit 17 Trades and Services
Unit 24 Home Occupation
Unit 34 Liquor store
Unit 35 Outdoor music establishment

* This is only to change the
PZD Development standards at
the northeast corner of
Wedington & Golf Club Drive.

(c) Residential Density and Non-residential Intensity

Planning area acreage: 7.82 acres
Number of Dwelling Units: None
Non-Residential square feet: 78,200
Residential Density: NA
Non-residential Intensity (square feet/acre): 10,000

Bulk and Area Regulations

- | | | | |
|-----|------------------------------|------|------|
| (d) | Min Lot width | none | |
| (e) | Min Lot area | none | |
| (f) | Land Area per dwelling unit: | NA | |
| (g) | Min Front Setback | 20 | feet |
| | Min Side Setback | 10 | feet |

- Min Rear Setback 20 feet
- (h) The maximum building height shall be 50 feet.
 - (i) On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot.

Site Planning

- (j) Landscaping – In accordance to the Fayetteville Landscape Ordinance
- (k) Parking will be in accordance with the Unified Development Code
- (l) Architectural Design standards shall be in accordance with the attached building elevations that follow this planning area description. They shall also be consistent with the description of buildings as identified on page 6 of the PZD booklet. All buildings are to be 70% brick/masonry.
- (m) Signage shall be in accordance with the Unified Development Code

Lot at the NE corner of Wedington & N Golf Club Dr

- (n) Architectural Design shall be generally consistent with the attached building elevations that follow this description. Building will have a minimum of 25% brick or painted brick. All other items will meet the requirements of this section "Planning Area I - Market District".

PROPOSED BUILDING ELEVATIONS

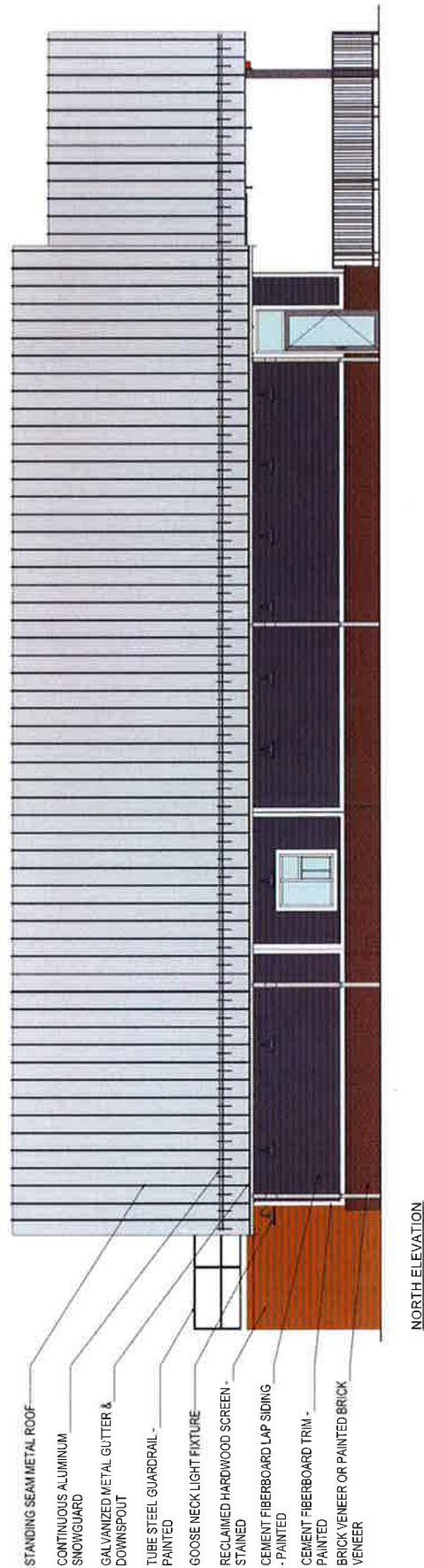
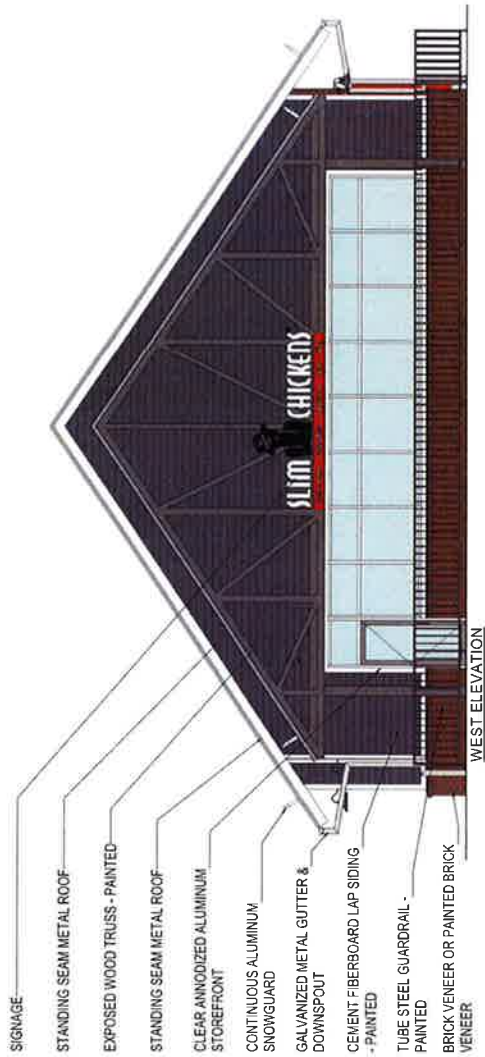
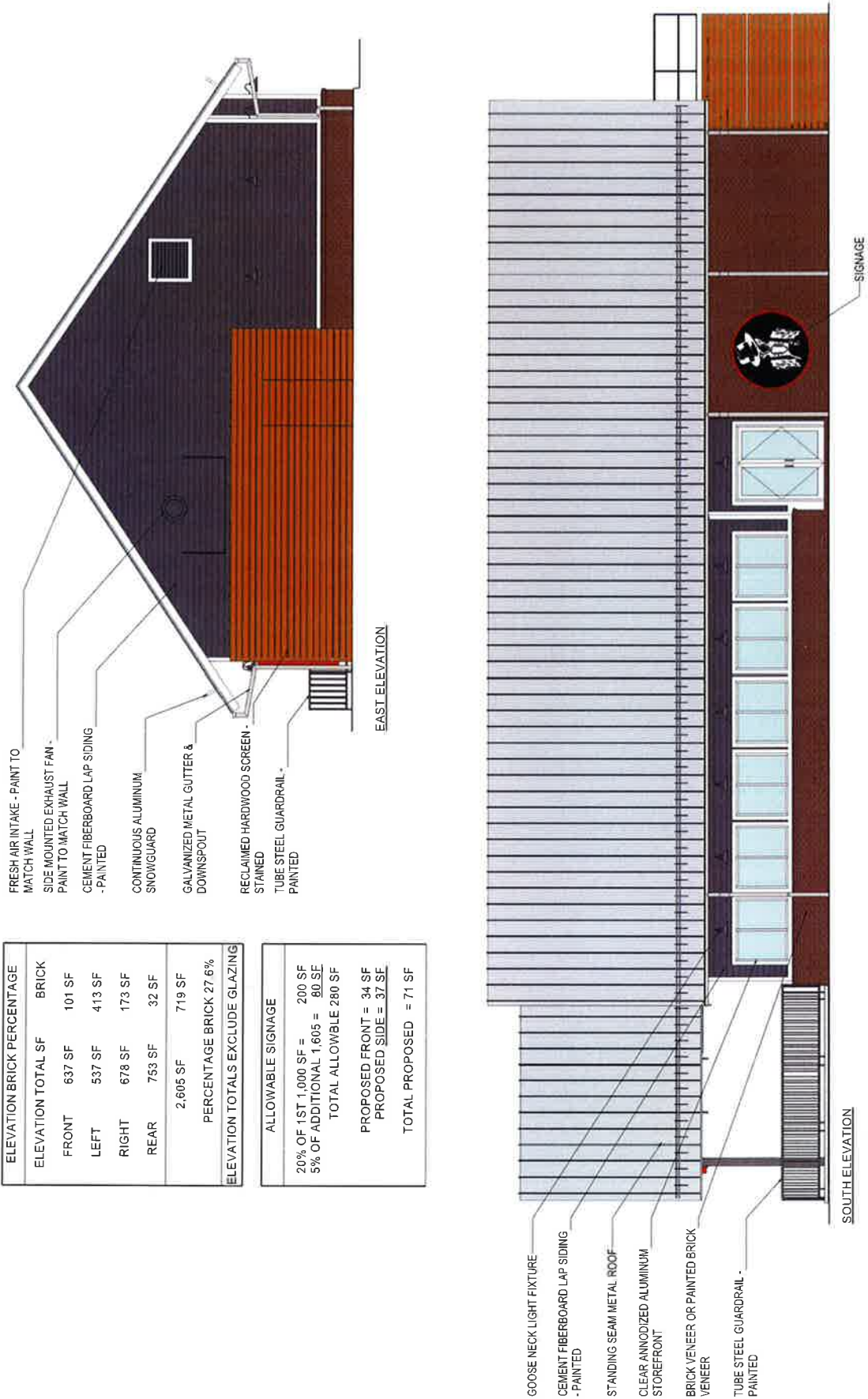


Exhibit "A"

ADM 13-4487

pg. 5 of 5





PC Meeting of September 23, 2013

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Planning Commission Members
FROM: Andrew Garner, Senior Planner
THRU: Jeremy Pate, Development Services Director
DATE: September 13, 2013 *Updated September 25, 2013*

ADM 13-4487 (Links at Fayetteville PZD Modification #3). Submitted by Jorgensen and Associates, Inc. for property located on the north side of Wedington drive and east of Ruppel Road. The property is zoned R-PZD 07-2452 and contains approximately 152.23 acres. The request is to modify the zoning criteria for Planning Area 1 to allow a drive-thru restaurant at the northeast corner of Wedington Drive and Golf Club Drive and to modify the architectural design requirements.

Planner: Andrew Garner

BACKGROUND

Property: The property contains 152.23 acres and is located on the north side of Wedington Drive and east of Ruppel Road, with frontage on both of those streets. The property is developed with the Links at Fayetteville apartment complex and golf course. Bryce Davis Park is located directly adjacent to the east, as well as some single family subdivisions and multi-family development. To the north is undeveloped farmland. Surrounding land use and zoning are listed in *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction	Land Use	Zoning
North	Largely agricultural	RSF-1, RSF-4, R-A
South	Commercial strip center, mini-storage	C-2, R-A
East	Single family, multi-family homes, church	RSF-4, R-O, C-1
West	Developing subdivisions and single family homes	RSF-4, RSF-1

Approval Schedule:

- On May 15, 2007 the City Council approved R-PZD 07-2452 (Links at Fayetteville). The approval granted zoning and land use approval for development of 1,221 residential dwelling units, 91,800 square feet of non-residential/commercial space, and 16,388 square feet of recreational buildings.
- On July 23, 2007 the Planning Commission approved the large scale development for the Links at Fayetteville.
- On August 24, 2007 the City Council approved a modification to the building height in the PZD zoning criteria to correct an error in the zoning booklet.
- On August 18, 2009 the City Council approved a modification to the zoning criteria in the

PZD to allow Use Unit #14 for hotel use in 50 of the units.

Proposal: The applicant proposes a restaurant with a drive-thru at the northeast corner of Wedington Drive and Golf Club Drive. This portion of the Links at Fayetteville PZD is within Planning Area I, Market District, which allows a restaurant, but does not allow a drive-thru. The proposal requires a change in the zoning criteria for Planning Area I to include Use Unit 18, Gasoline service station and drive-in/drive through restaurants as a permitted use at the northeast corner of Wedington Drive and Golf Club Drive. The applicant also proposes a slight modification to the architectural design standards in the zoning criteria for the specific design of this restaurant. These changes to the PZD would only affect the portion of the Links property for this one restaurant. A copy of the PZD booklet with the revised zoning criteria for Planning Area I, along with a conceptual site plan and architectural renderings has been submitted indicating the proposed changes.

Public Comment: The applicant notified all property owners in writing within 100 feet of the Links PZD and also posted a public notice sign on the property. No public comment has been provided.

RECOMMENDATION

The subject property is a corner location at the entrance to the Links development off of Wedington Drive. Staff finds that permitting Use Unit 18 and modifying the architectural design standards to permit a restaurant with a drive-thru as proposed at this location is consistent with the City's planning policies and City Plan 2030 to promote complete neighborhoods with higher-intensity nonresidential uses at corner locations. It would also be consistent with the recently adopted Wedington Plan that identified higher-intensity commercial uses in this area. The restaurant will be accessed only off of Golf Club Drive in a configuration consistent with the approved PZD and with the City's Access Management Ordinance. Staff finds that this is an appropriate location for a restaurant with drive-thru that would be compatible with the surrounding non-residential uses along the Wedington corridor. The conceptual design of the building meets the minimum requirements of the City's commercial design standards with entrances and front facades facing both streets, and an outdoor eating area on the west side of the building facing Golf Club Drive.

Recommended Motion: Staff recommends forwarding **ADM 13-4487 Links at Fayetteville R-PZD Modification No. 3** to the City Council for approval with the following conditions:

1. All conditions of approval from the previously approved R-PZD 07-2452 Links at Fayetteville shall apply.
2. Approval of this PZD modification does not grant approval of the development details for the project. The proposed restaurant will be required to be reviewed for compliance with all Unified Development Code requirements as part of the standard development review process.
3. *The applicant should meet with the concerned neighborhood that spoke at the Planning Commission meeting. THE PLANNING COMMISSION ADDED THIS CONDITION (09-23-13).*

4. The Commission recommends that the City Council be sensitive to the neighborhood concerns, in particular, the location of the speaker for the drive-thru window.
THE PLANNING COMMISSION ADDED THIS CONDITION (09-23-13).
-

Planning Commission Action: ☒ Forwarded ☐ Denied

Motion: Winston

Second: Cook

Vote: 6-0-0

Meeting Date: September 23, 2013

Fayetteville Unified Development Code Chapter 162

(R) *Unit 18.* Gasoline service stations and drive-in/drive through restaurants

(1) *Description.* Gasoline service stations and drive-in restaurants can be significantly objectionable to nearby uses, so, therefore, have been allowed only in districts where necessary to provide this use.

(2) *Included uses.*

Gasoline service station *
Self-service auto wash (in conjunction with a gasoline service station) *
Drive-in /drive through restaurant *



JORGENSEN & ASSOCIATES

CIVIL ENGINEERS • SURVEYORS

124 WEST SUNBRIDGE, SUITE 5 • FAYETTEVILLE, ARKANSAS 72703 • (479) 442-9127 • FAX (479) 582-4807

DAVID L. JORGENSEN, P.E., P.L.S.
JUSTIN L. JORGENSEN, P.E.
BLAKE E. JORGENSEN, P.E.

August 26, 2013

City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

Attn: Development Services
Re: Administrative Item: Amending the Links PZD Packet

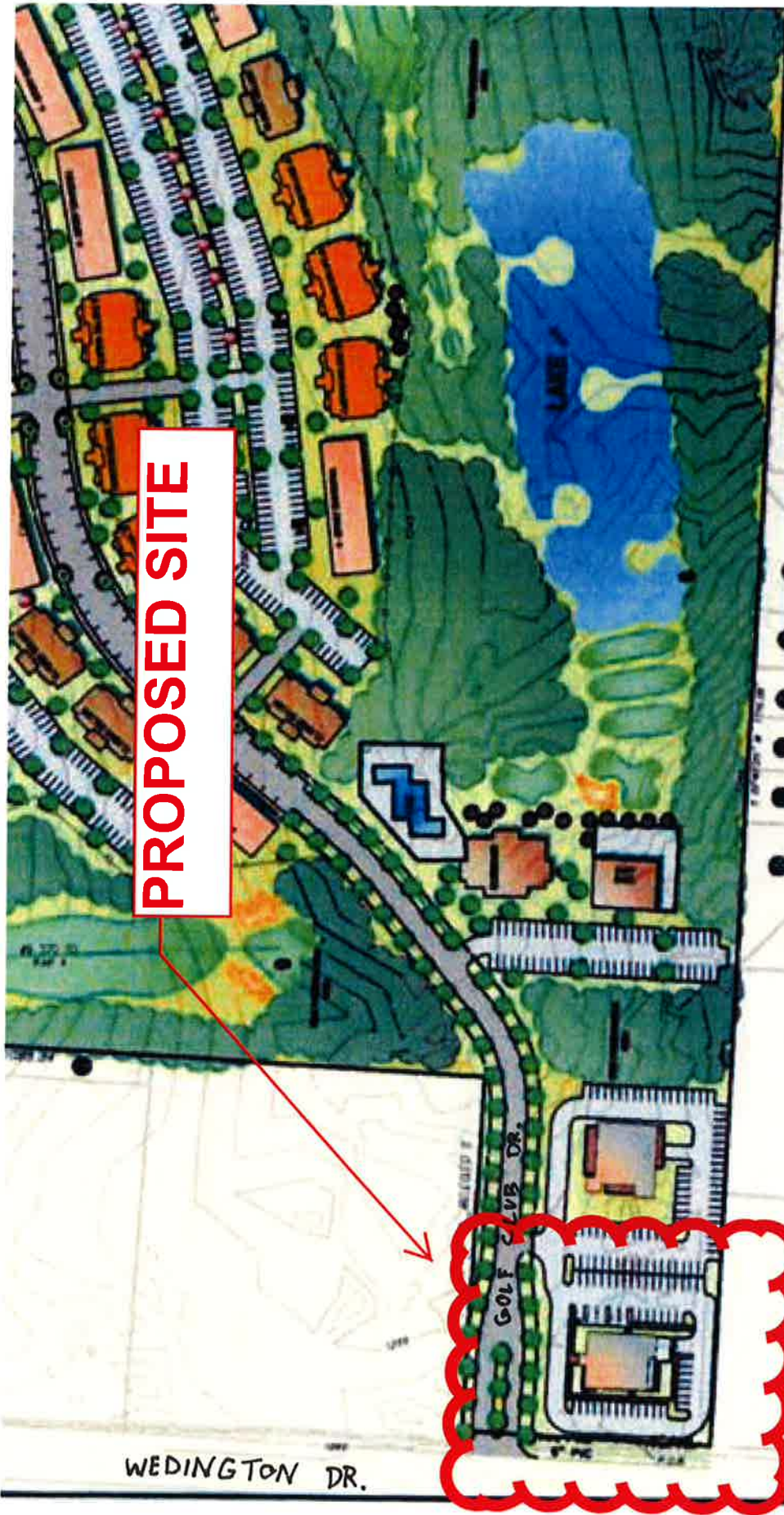
The purpose of this letter is to request an amendment to the current PZD for The Links to allow Use Unit 18 - a drive-thru for a proposed restaurant at the north east corner of Wedington and Golf Club Drive. This can be found on page 9 of the Links PZD under Planning Area I – Market District. This particular piece of property is in Planning Area I of the PZD which allows Use Unit 13 – Eating places but not Use Unit 18- gasoline service stations & drive-in/drive thru restaurants. The intent is to only change the use unit to allow a drive thru not a gas station & only specific to the site at the corner of Wedington and Golf Club Dr., not the entire Planning Area I. This is a common use in the near vicinity to the west, east and across Wedington to the south. We do not feel this use will cause any unwarranted traffic issues in this area and all ingress & egress will be per city ordinance when the Site Improvement Plan is submitted. We are submitting this administrative item in order to get on the September 23 Planning Commission Meeting. We understand the correct notifications have to be mailed out 15 days prior to the meeting and have everything ready to mail out in order to meet the 15 day deadline.

We thank you for your consideration of this proposal and please call with any questions,

Thank you.

Sincerely;

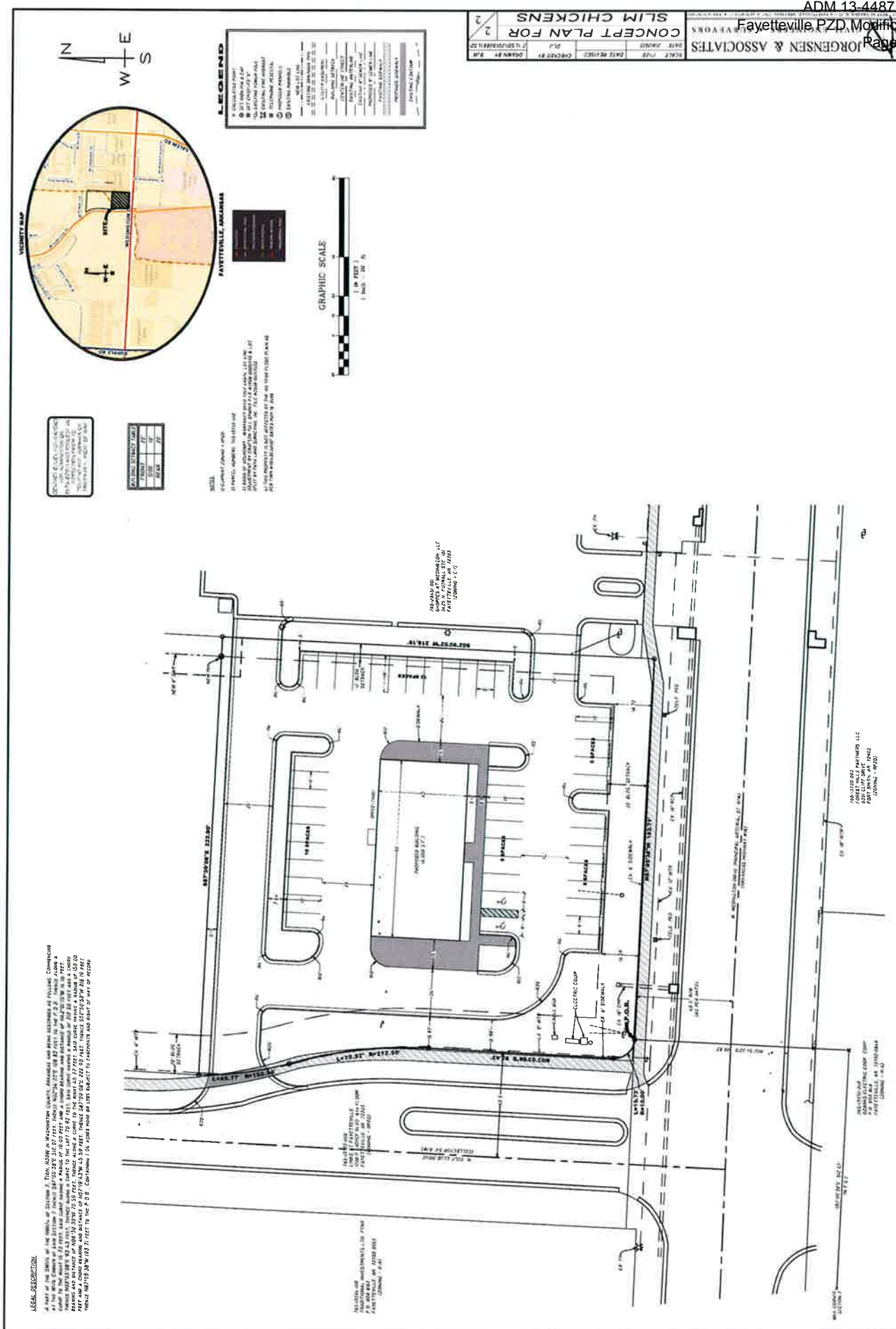
Justin L. Jorgensen, P.E.



PROPOSED SITE

THE LINKS @ FAYETTEVILLE, ARKANSAS





Planning Area I - Market District Architectural Elevations pg. 1 of 2



RETAIL BUILDING - william kim fugitt, aia

Planning Area I - Market District Architectural Elevations pg. 2 of 2



RETAIL BUILDING - william kim fugitt, aia

ADM13-4487

LINKS PZD MODIFICATION

Current Land Use



OVERVIEW

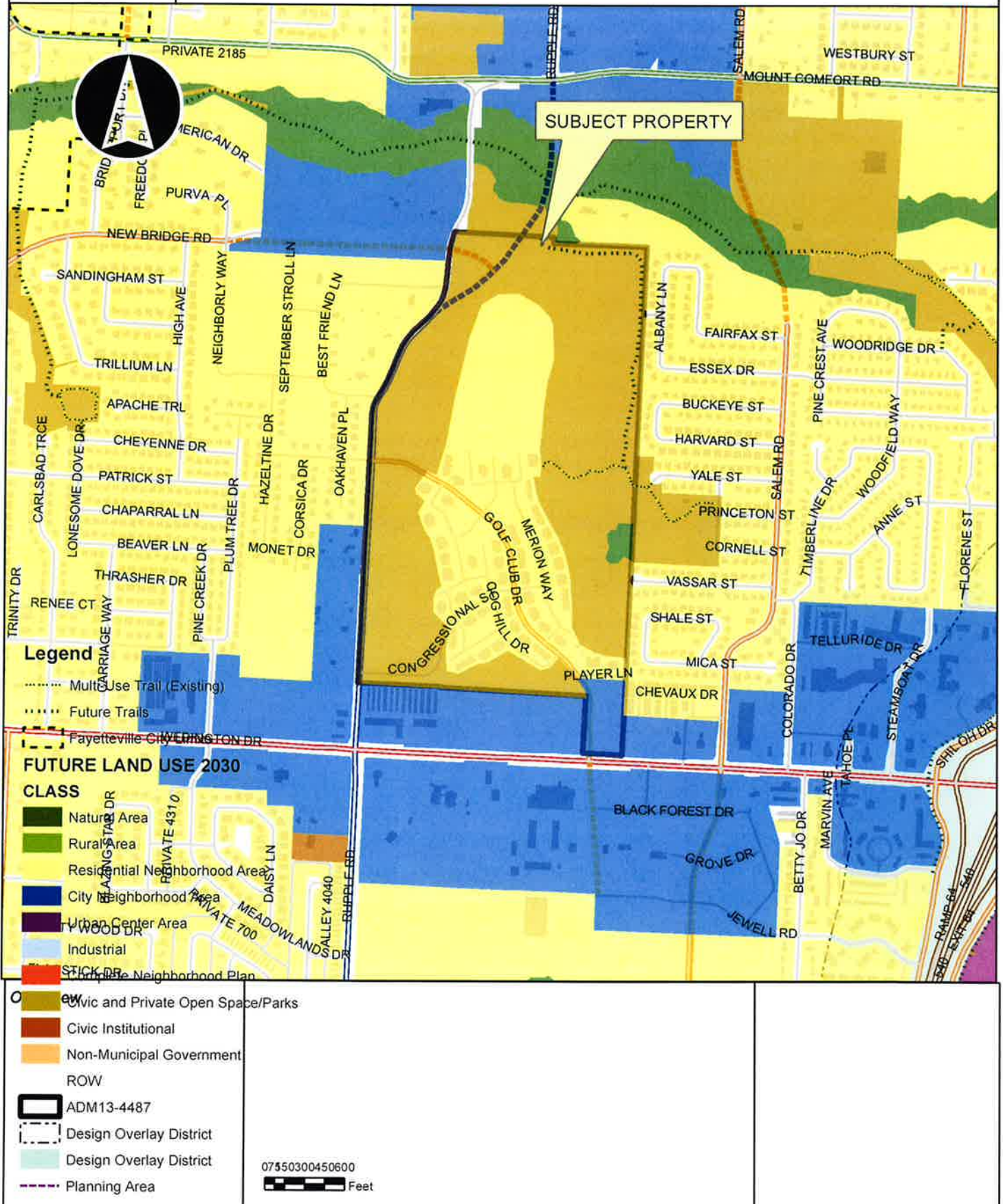
- ADM13-4487
- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Planning Area

0 500 1,000 2,000 3,000 4,000 Feet

ADM13-4487

THE LINKS PZD MODIFICATION

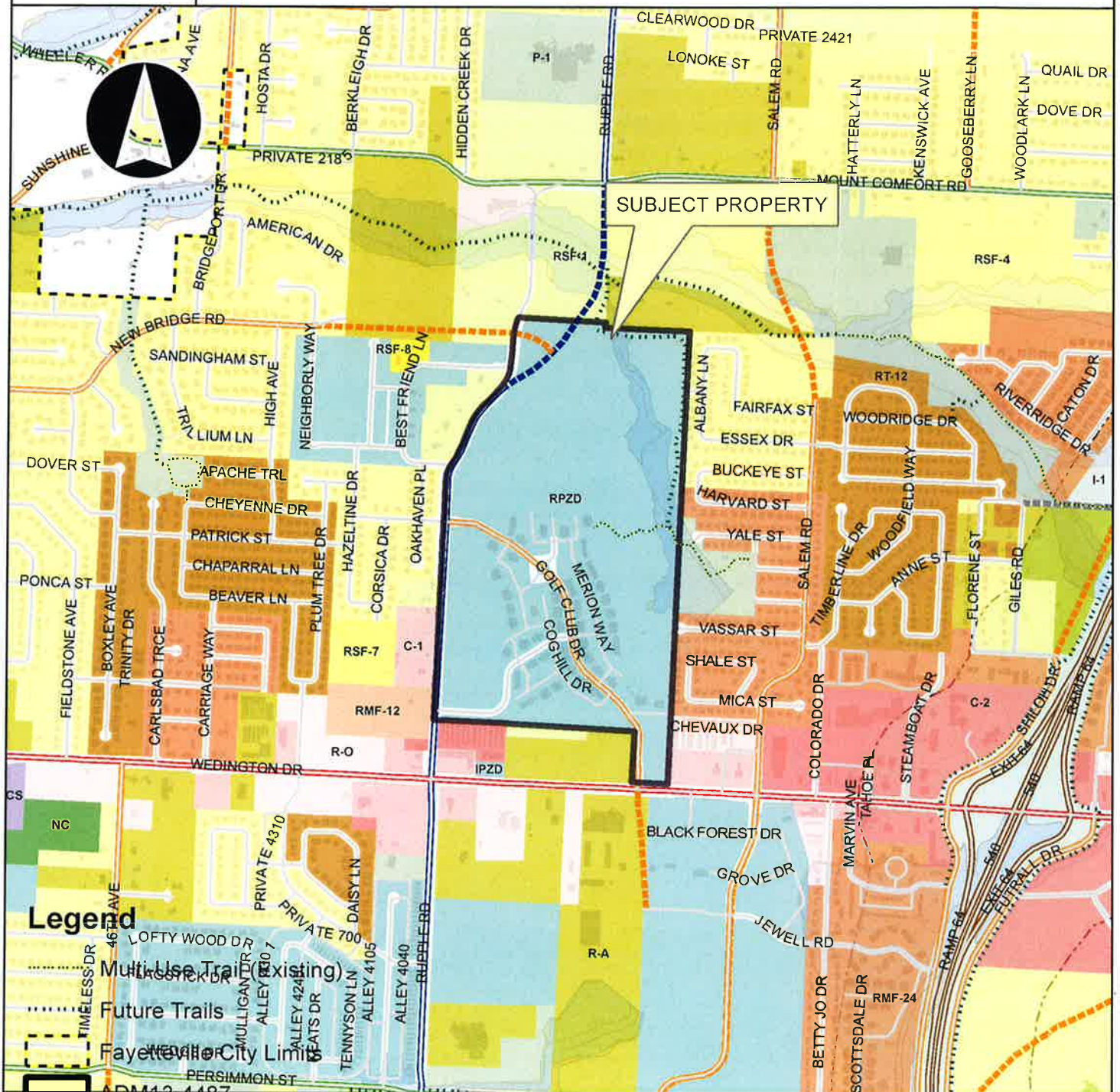
Future Land Use



ADM13-4487

LINKS PZD MODIFICATION

Close Up View



Legend

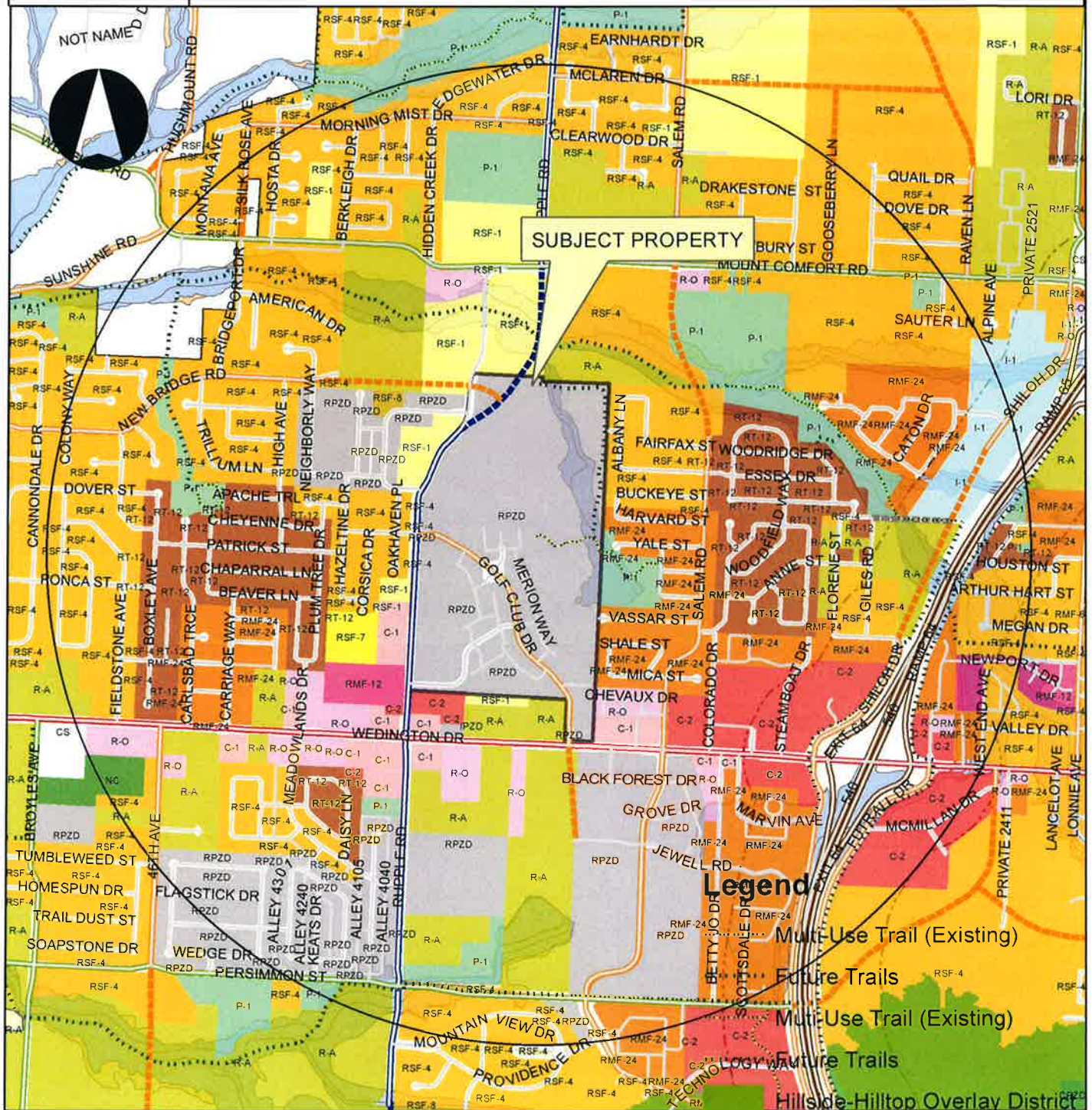
- Multi-Use Trails (Existing)
- Future Trails
- Fayetteville City Limits
- ADM13-4487
- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Design Overlay District
- Planning Area

0 500 1,000 2,000 3,000 4,000 Feet

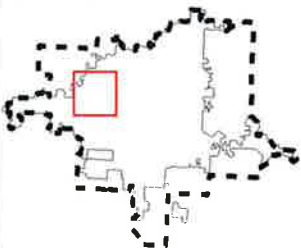
ADM13-4487

One Mile View

LINKS PZD MODIFICATION



Overview



Legend

Subject Property

ADM13-4487

Boundary

0 0.25 0.5

ADM13-4487

Design Overlay District

Planning Area

Fayetteville

1

Miles

City of Fayetteville Staff Review Form

C. 3
Dickson Street Crossing
Safety Improvements
Page 1 of 30

City Council Agenda Items
and
Contracts, Leases or Agreements

October ^{15th} 1st 2013
City Council Meeting Date
Agenda Items Only

Matt Mihalevich
Submitted By

Engineering
Division

Development Services
Department

Action Required:

Staff requests approval of an intent to cost share with the Arkansas & Missouri Railroad for crossing safety improvements at the railroad intersection with Dickson Street contingent on the Arkansas & Missouri Railroad executing Amendment No. 1 to the 2008 License and Agreement and not reasonably withholding of future easements with the City of Fayetteville

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

9-27-2013
Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____


City Attorney

9-27-13
Date

Original Contract Number: _____


Finance and Internal Services Director

9-27-2013
Date

Received in City Clerk's Office 9-27-13 10:00:00 RCVD



Chief of Staff

9-30-13
Date

Received in
Mayor's Office


Mayor

9/30/13
Date

ENTERED
9/27/13
PH

Comments:

MEMO

To: Transportation Committee

Thru: Chris Brown, City Engineer *CB*

From: Matt Mihalevich, Trails Coordinator *mm*

Date: September 11th, 2013

Subject: Intent to Cost Share with the Arkansas & Missouri Railroad for Dickson St. Crossing Safety Improvements

RECOMMENDATION:

Approval of an intent to cost share with the Arkansas & Missouri Railroad for crossing safety improvements at the railroad intersection with Dickson Street contingent on the Arkansas & Missouri Railroad executing Amendment No. 1 to the 2008 License and Agreement and not reasonably withholding of future easements with the City of Fayetteville.

PROPOSAL:

There have been three crashes between vehicles and trains at the Dickson Street crossing of the Arkansas & Missouri Railroad (AMRR) since 1999 including one in September of 2012 that destroyed the fence along Frisco Trail. In addition, a 21-year old University of Arkansas student was hit by a train in March of 2009 and lost his left arm. Due to these accidents and the high number of pedestrians crossing the railroad tracks at this location, the AMRR has requested the City enter into a 50/50 cost share to upgrade the crossing signals to current standards including gate arms for both the sidewalks and roadway.

On July, 15th 2008 the City of Fayetteville entered into a License and Agreement with the AMRR to enable the construction of sections of Scull Creek Trail and Frisco Trail along the railroad. As we continue to expand the trail system there are four additional areas that were not included in the original License and Agreement and are now necessary to construct a trail across property owned by the AMRR. These areas are along the Town Branch, Cato Springs and Tsa La Gi Trails as described in Exhibits G, H, J, and K of Amendment No. 1. Acquisition of these areas will provide all of the easements on Railroad property necessary to complete the current Master Trail Plan. Two of these easements are necessary for the Tsa La Gi Trail which is currently under construction by the in-house trail construction crew.

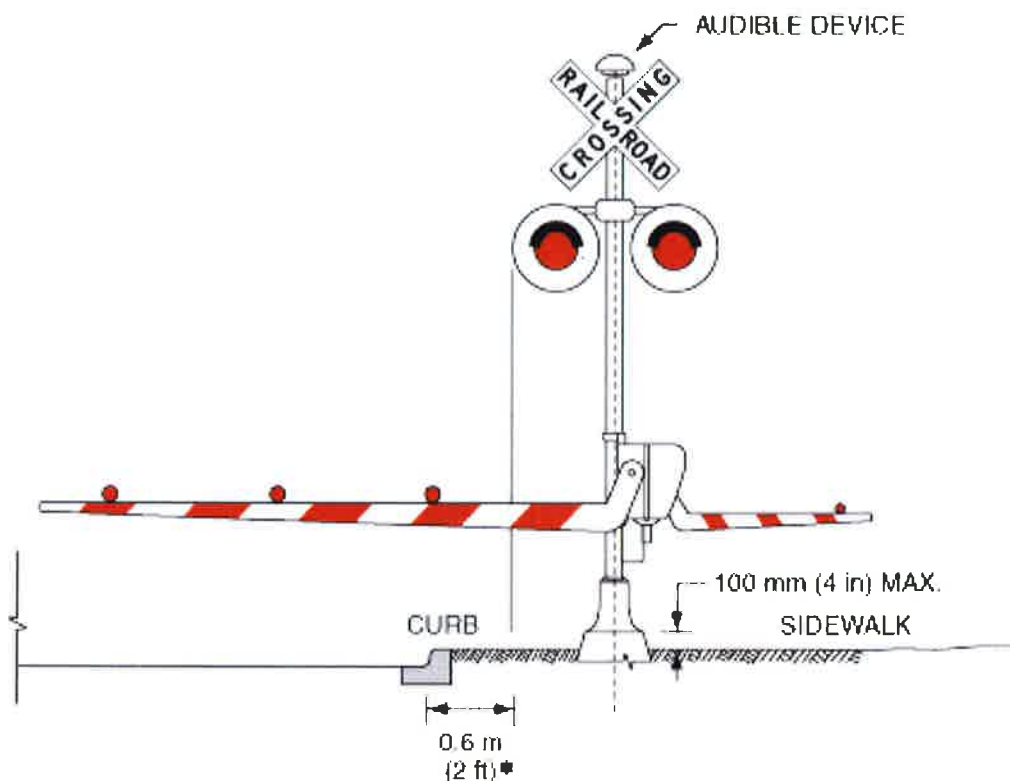
The City and AMRR have enjoyed an excellent partnership in developing the trail system on railroad property. In the spirit of this partnership, the proposed cost share will improve public safety at Dickson Street. While the letter from AMRR does not specifically mention the request for the City to extend our license agreement and add the additional four easement areas, staff recommends that the resolution of intent to cost share be contingent

on the AMRR executing Agreement No. 1. Although the value of the easements is less than the expense of the cost share, the value of the public safety improvement at this busy intersection is a strong factor in the staff recommendation to participate in the cost share.

BUDGET IMPACT:

The estimated cost for the crossing signal safety improvements is \$500,000 therefore the City's share would be \$250,000 plus any cost necessary to adjust the street, trail, lighting and landscape areas to accommodate the new crossing equipment. There is potential grant funding through the Arkansas State Highway and Transportation Department Railroad Safety Crossing program. This program favors projects with a cost share involved and where there are high numbers of pedestrians crossing. The AMRR plans to build the proposed safety improvements by the end of the year 2015, so there will be time for staff to apply for grant funding to cover the City portion of the cost share. This item will be brought back before the City Council for approval once a funding source is identified.

**Figure 10D-4. Example of Pedestrian Gate Placement
with Pedestrian Gate Arm**



* For locating this reference line at other than curb section installation, see Section 8D.01.

RESOLUTION NO. _____

A RESOLUTION EXPRESSING THE INTENT OF THE CITY OF FAYETTEVILLE TO ENTER INTO A COST-SHARE AGREEMENT WITH ARKANSAS & MISSOURI RAILROAD CO. FOR CROSSING SAFETY IMPROVEMENTS AT THE DICKSON STREET RAILROAD CROSSING, CONTINGENT UPON APPROVAL BY ARKANSAS & MISSOURI RAILROAD CO. OF AMENDMENT NO. 1 TO THE 2008 TRAIL LICENSE AGREEMENT AND NOT UNREASONABLY WITHHOLDING ASSENT TO FUTURE TRAIL EASEMENTS FOR THE CITY

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 expresses the intent of the City of Fayetteville to enter into a cost-share agreement with Arkansas & Missouri Railroad Co. for crossing safety improvements at the Dickson Street railroad crossing, contingent upon approval by Arkansas & Missouri Railroad Co. of Amendment No. 1 to the 2008 trail license agreement and not unreasonably withholding assent to future trail easements for the City.

PASSED and APPROVED this 15th day of August, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



ARKANSAS & MISSOURI RAILROAD

306 East Emma • Springdale, AR 72764

(479) 751-8600 • Fax (479) 751-2225

www.amrailroad.com

C. 3
Dickson Street Crossing
Safety Improvements
Page 5 of 30

August 8, 2013

Honorable Mayor Lioneld Jordan
City of Fayetteville
125 West Mountain St.
Fayetteville, Arkansas

Re: Dickson Street Rail Crossings

Dear Mr. Jordan:

I appreciate your June 18, 2013 letter and the spirit of cooperation between the Arkansas Missouri Railroad (AMRR) and the City of Fayetteville. The City of Fayetteville's leadership is the catalyst for the multi-use trail construction within our region. Thank you for continued compliance regarding our current License and Agreement. This compliance helps ensure safety for all enjoying the trails near the railroad.

The AMRR is investigating upgrading the safety equipment at the Dickson Street crossing. As you know both pedestrian and vehicular traffic continues to increase near and at this crossing. It is regarding this higher traffic and increased speed and train traffic we are considering this safety upgrade. While the full extent of the upgrade is still being considered, we know that it will impact the location and possible width of the trail paralleling the railroad at the crossing.

Our preliminary investigation has determined that the upgrades will cost approximately \$500,000 for the safety improvements. To construct these improvements specific street, trail and landscape areas within and parallel to the AMRR right-of-way will be disturbed.

The AMRR is requesting the City commit to cost sharing in these safety improvements up to \$250,000 and for the City to commit to reconstruct the street, trail and landscape areas disturbed by this construction. Once the final improvements have been identified we will rely on the City's engineering department and City land agents to secure any additional right-of-way that may be needed for any trail relocation or widening.

As the City continues to expand its trail system near our facilities we are confident safety will be priority.

If the City agrees to participate in this cost share and the items mentioned above, please confirm this commitment with a resolution approved by City Council.

The AMRR agrees to build the proposed safety improvements by end of year 2015.

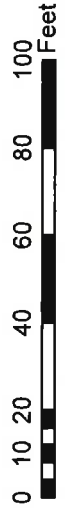
Please call me with any questions.

Sincerely,


Brent G. McCready
President



Dickson Street Railroad Crossing Safety Improvements





www.accessfayetteville.org

June 18, 2013

Mr. Brent McCready
President
Arkansas & Missouri Railroad Company
306 East Emma
Springdale, AR 72764
(479) 751-8600

Dear Mr. McCready:

We appreciate your support of the growing system of multi-use trails in Fayetteville and throughout the region. The original License and Agreement from July 15th, 2008 has enabled the City of Fayetteville to construct the backbone of the trail system, Scull Creek Trail which experiences an average of over 600 people daily. This partnership has worked well by limiting the access for people to walk the railroad tracks and instead giving a safe well lighted place to travel by foot or bicycle. The City has complied with every item in the License and Agreement including keeping the required insurance policy up to date and current.

The City of Fayetteville is continuing to expand the trail system and would like to request the addition of four new exhibit areas to the original License and Agreement. Based on our current trail master plan, these will be the final remaining areas where the trail will cross Arkansas & Missouri Railroad property. Please find the attached Amendment to the License and Agreement for the addition of the four areas to be used for multi-use trail construction as described in Exhibits G,H,J & K. All terms and conditions of the original License and Agreement would apply to the new areas described.

We look forward to continuing this positive partnership and hope we have your support to continue to expand the system of trails in Fayetteville.

Lioneld Jordan
City of Fayetteville, Mayor

AMENDMENT TO LICENSE AND AGREEMENT

AMENDMENT NO. 1

This Amendment No. 1, dated _____, 2013 shall amend the original LICENSE AND AGREEMENT between the ARKANSAS & MISSOURI RAILROAD COMPANY, a Virginia Corporation, whose local address is 306 East Emma, Springdale, Arkansas 72764, and the CITY OF FAYETTEVILLE, ARKANSAS, a Municipal Corporation, whose address is 113 W. Mountain St., Fayetteville Arkansas 72701 dated July 15th, 2008 for the installation and maintenance of a multi-use trail along and across the ARKANSAS & MISSOURI RAILROAD COMPANY'S right-of way in the City of Fayetteville, County of Washington, State of Arkansas.

WHEREAS, The LICENSE AND AGREEMENT is hereby modified to include Exhibits G, H, J & K as described and attached hereto and made a part here of, said multi-use trail to be installed and maintained at the sole cost and expense of the CITY OF FAYETTEVILLE.

WHEREAS, At any point where the trail is to cross any existing tracks within the exhibited areas, it shall only pass under existing tracks and not across the top of them. All plans for the trail, including protection for the users of the trail, where it passes beside, along, over, or under any existing railroad tracks or existing operations, shall be subject to the approval of the ARKANSAS & MISSOURI RAILROAD COMPANY, which approval will not be unreasonably withheld. No work shall be performed upon any part of the trail on ARKANSAS & MISSOURI RAILROAD COMPANY right of way, including but not limited to the those portions of the trail as described in the original Memorandum of License and Agreement dated July 15, 2008, until after obtaining a work permit from the ARKANSAS & MISSOURI RAILROAD COMPANY and only if the permittee complies with any and all conditions of such work permit.

WHEREAS, the ARKANSAS & MISSOURI RAILROAD COMPANY is agreeable to the installation and use by the CITY OF FAYETTEVILLE, its agents, servants, employees, guests and the public generally of said multi-use trail over the property of the ARKANSAS & MISSOURI RAILROAD COMPANY as described in Exhibits G, H, J, & K over the property of the ARKANSAS & MISSOURI RAILROAD COMPANY at the City of Fayetteville, Arkansas at the sole cost and expense of the CITY OF FAYETTEVILLE, and according to the terms and conditions hereinafter set forth in the original LICENSE AND AGREEMENT dated July, 15th 2008

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

City of Fayetteville, Arkansas

Arkansas & Missouri Railroad Co.

By: _____
LIONELD JORDAN, Mayor

By: _____
BRENT McCREADY, President

ATTEST:

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

By: _____, Secretary

Between Government and Hill Avenue (As shown on Exhibit G)

Arkansas & Missouri Railroad Company
No Parcel Number
Instrument No. 2001-28071, Exhibit "A", Page 6

Description:

A part of the old Pacific & Great Eastern right-of-way upon, over, and across the Northeast Quarter (NE ¼) of the Northwest Quarter (NW ¼) of Section Twenty-one (21), Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas, being more particularly described as follows:

The forty foot (40') strip described in Instrument Number 2001-28071, Exhibit "A", Page 6, second tract description, said document filed with the Circuit Clerk of said county, being of equal and uniform width, the Northerly line of said strip being adjacent and parallel to the Southerly lines of those properties described in Instrument No. 2007-16543 and Instrument No. 2012-36003 (Tract B) both being filed with said Circuit Clerk; the Southerly line of said strip being adjacent and parallel to those properties described in Instrument No. 2004-4951 and in said Instrument 2012-36003 (5th description, Tract A) both being filed with said Circuit Clerk, the sidelines of said strip being prolonged or shortened to terminate at the Easterly right-of-way of Hill Avenue and at the Westerly right-of-way of Government Avenue, containing 24,866 square feet, more or less.

A portion of the Arkansas and Missouri Railroad Co. property.

At Beechwood Avenue (As shown on Exhibit H)

Arkansas & Missouri Railroad Company
Parcel No. 765-14843-000
Instrument No. 2001-28071

Description:

A part of the Northwest Quarter (NW ¼) of the Northeast Quarter (NE ¼) of Section Twenty (20), Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas, being more particularly described as follows:

A twenty-five (25) foot wide proposed multi-purpose trail easement being twelve and one half feet (12.5') either side of a centerline with sidelines of said easement to be extended or shortened to terminate at the Easterly right-of-way of Beechwood Avenue and the Easterly property line of the Arkansas and Missouri Railroad Co., said centerline being described as follows:

Commencing at a set brass cap (P.S. 1514) at the Northwest Corner of said forty (40) acre tract; thence along the Westerly line of said tract South 02°18'47" West 217.68 feet; thence leaving said Westerly line South 87°41'13" East 21.15 feet to the Easterly right-of-way line of said Beechwood Avenue, being the Point of Beginning; thence leaving said right-of-way North 41°18'55" East 29.29 feet to the beginning of a curve to the right having a radius of 50.00 feet and a delta of 47°39'01"; thence along said curve an arc length of 41.58 feet and a chord bearing and distance of North 61°50'32" East 40.39 feet; thence North 85°40'03 East 161.56 feet; thence South 88°14'58" East 96.76 feet; thence North 85°42'57" East 111.70 feet to the centerline terminus being on the Westerly line of a property described in Instrument No. 2008-22052 as filed with the Circuit Clerk of said county said centerline terminus being North 04°16'41" West 7.50 feet from the Southwest corner of said property, containing 11,073 square feet, more or less.

At Town Branch (As shown on Exhibit J)

A portion of the Arkansas and Missouri Railroad Co. property.

Description:

A part of the North Half (N ½) of the Southeast Quarter (SE ¼) of Section Twenty (20) in Township Sixteen (16) North, Range Thirty (30) West, Washington County Arkansas, being more particularly described as follows:

A fifty foot (50') wide multi-use trail easement being a portion of the Arkansas and Missouri Railroad Company's Monett to Fort Smith Main Track fifty foot (50') right-of-way as shown on Frisco Lines Yard Plat for Fayette Junction dated December 28, 1916 (correction date of June 7, 1916) and being described in Deed Bk. 1206, Pg. 317 and Instrument No. 2001-28071 as filed with the Circuit Clerk, Washington County, Arkansas, said right-of-way being twenty-five feet (25') either side of said Main Track centerline also being the centerline of said trail easement, said centerline being described as follows:

Commencing at a found iron pin being the Southwest Corner of the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼) of said Section Twenty (20); thence along the Westerly line of said forty (40) acre tract North 03°17'44" East 374.73 feet; thence North 79°55'28" West 12.49 feet to Station 4034 + 01.15 of said Main Track centerline as per said Frisco Lines Yard Plat being the POINT OF BEGINNING, being the beginning of a curve to the right having a delta angle of 00°20'29" and a radius of 6712.49 feet; thence along said centerline an arc length of forty feet (40') and a chord bearing and distance of North 09°54'18" East 40.00 feet to Station 4033 + 81.15 of said Main Track centerline being the terminus, containing 2,000 square feet, more or less.

At Town Branch (As shown on Exhibit K)

A portion of the Arkansas and Missouri Railroad Co. property.

Description:

A part of the Southeast Quarter (SE ¼) of the Northeast Quarter (NE ¼) of Section Twenty-nine (29) in Township Sixteen (16) North, Range Thirty (30) West, Washington County Arkansas, being more particularly described as follows:

A one hundred foot (100') wide multi-use trail easement being a portion of the Arkansas and Missouri Railroad Company's Monett to Fort Smith Branch Line right-of-way as shown on Frisco Lines Yard Plat for Fayette Junction dated December 28, 1916 (correction date of June 7, 1916) and being described in Deed Bk. 1206, Pg. 317 as filed with the Circuit Clerk, Washington County, Arkansas, said right-of-way being fifty feet (50') either side of the Main Track centerline also being the centerline of said trail easement, said centerline being described as follows:

Commencing at the Northwest Corner of said forty (40) acre tract; thence along the Northerly line of said tract South 87°03'43" East 281.03 feet to Station 4064 + 79.68 (±) of said Main Track centerline as per said Frisco Lines Yard Plat; thence along said centerline South 08°12'00" East 166.72 feet to Station 4066 + 46.40 (±), being the POINT OF BEGINNING; thence continuing along said centerline South 08°12'00" East 130.00 feet to Station 4067 + 76.40 (±) being the terminus, containing 13,000 square feet, more or less.



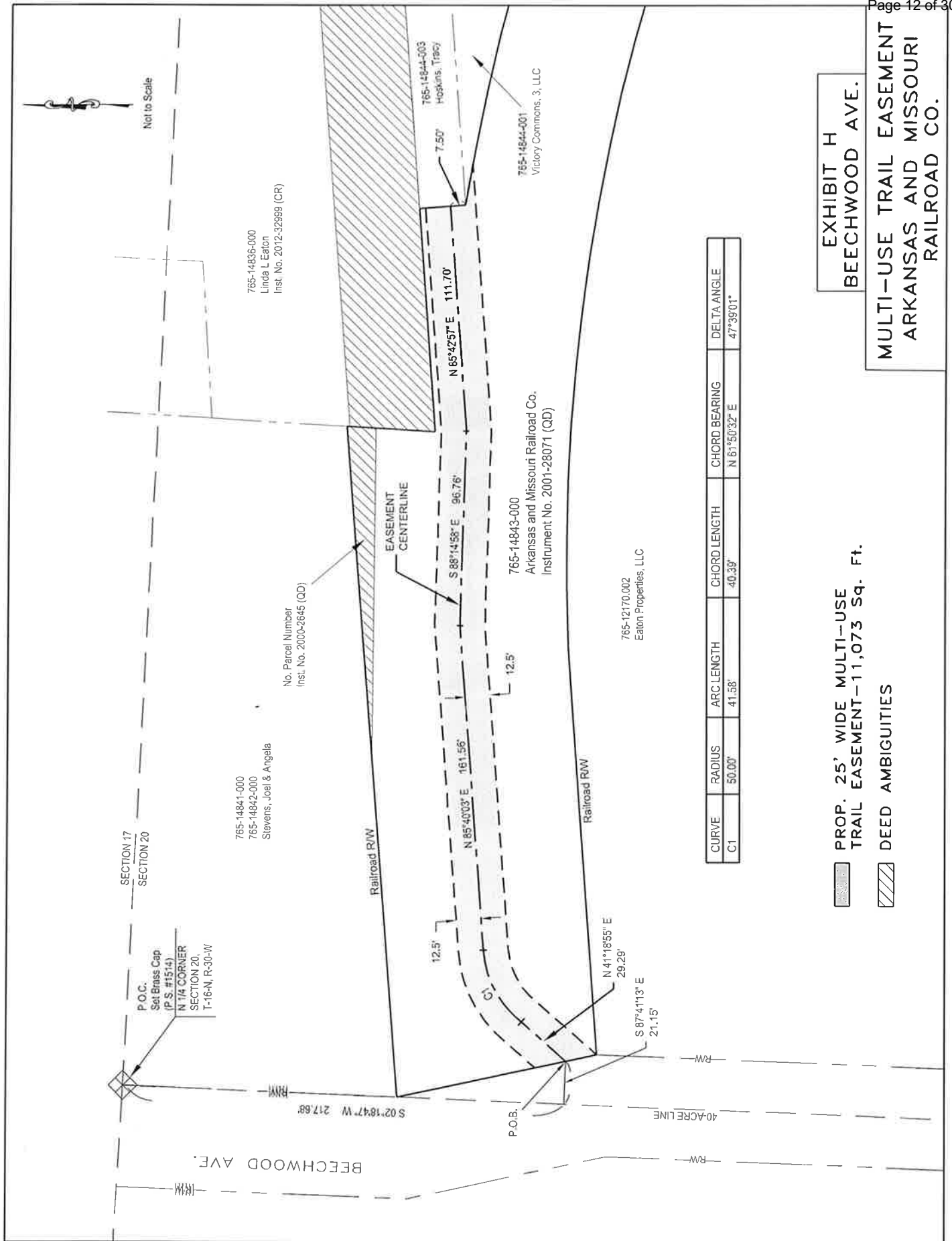
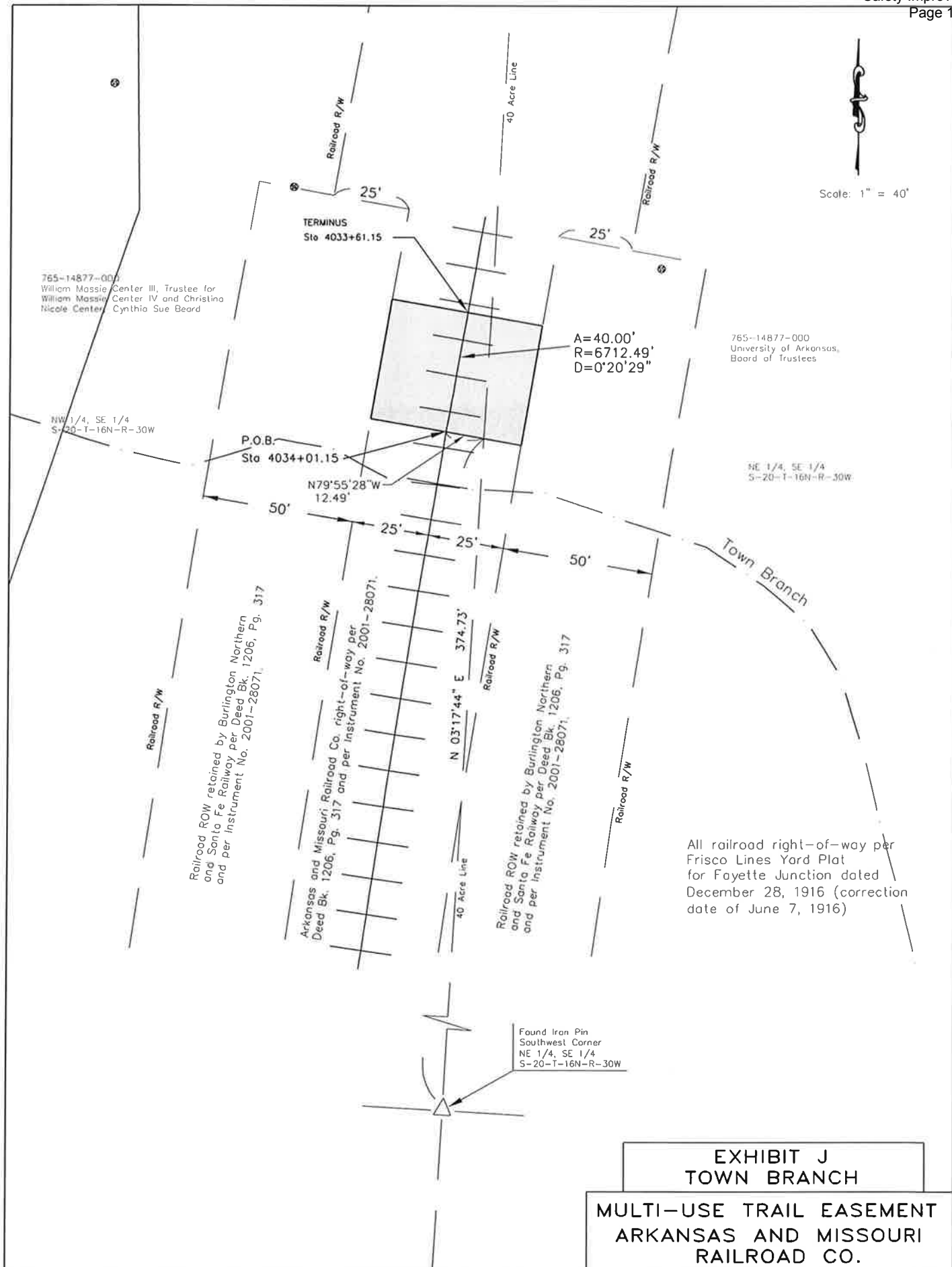
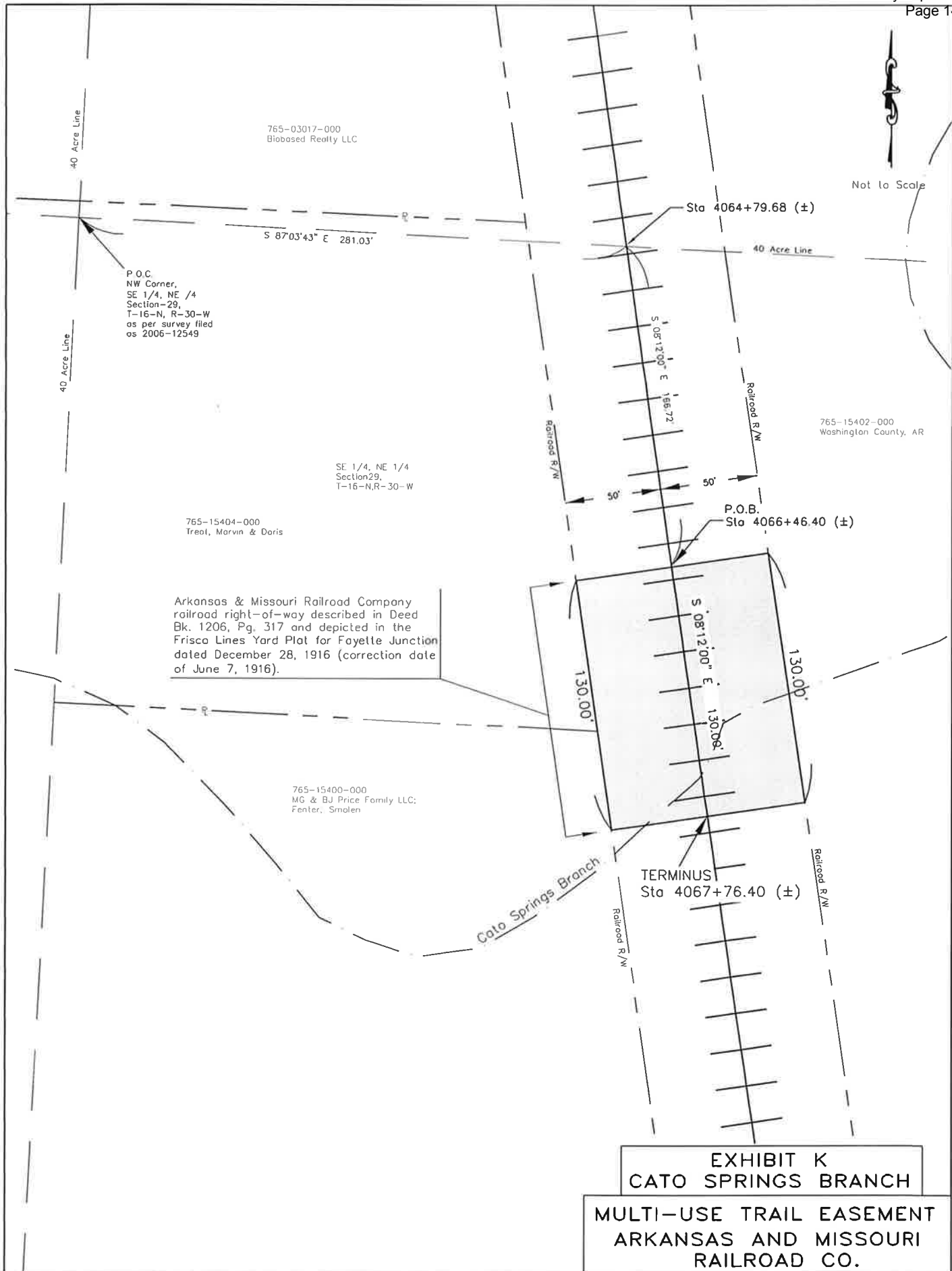


EXHIBIT H
BEECHWOOD AVE.

MULTI-USE TRAIL EASEMENT
ARKANSAS AND MISSOURI
RAILROAD CO.

PROP. 25' WIDE MULTI-USE
TRAIL EASEMENT-11,073 Sq. Ft.
DEED AMBIGUITIES







Doc ID: 014770230014 Type: REL
Kind: AGREEMENTS
Recorded: 08/30/2012 at 02:03:19 PM
Fee Amt: \$80.00 Page 1 of 14
Washington County, AR
Bette Stamps Circuit Clerk

File **2012-00026010**

**LICENSE AND
AGREEMENT**

C. 3
Dickson Street Crossing
Safety Improvements
Page 15 of 30

MEMORANDUM OF LICENSE AND AGREEMENT, effective the 15th day of July, 2008, by and between the ARKANSAS & MISSOURI RAILROAD COMPANY, a Virginia Corporation, whose local address is 306 East Emma, Springdale, Arkansas 72764, and the CITY OF FAYETTEVILLE, ARKANSAS, a Municipal Corporation, whose address is 113 W. Mountain St., Fayetteville, Arkansas 72701,

WHEREAS, the CITY OF FAYETTEVILLE has requested to install and maintain for the use of CITY OF FAYETTEVILLE and the public generally, a multi-use trail along and across the ARKANSAS & MISSOURI RAILROAD COMPANY's right-of way in the City of Fayetteville, County of Washington, State of Arkansas substantially as shown on and more particularly described the Exhibits attached hereto and made a part hereof, said multi-use trail to be installed and maintained at the sole cost and expense of the CITY OF FAYETTEVILLE; and

WHEREAS, the ARKANSAS & MISSOURI RAILROAD COMPANY is agreeable to the installation and use by CITY OF FAYETTEVILLE, its agents, servants, employees, guests and the public generally of said multi-use trail over the property of the ARKANSAS & MISSOURI RAILROAD COMPANY at the City of Fayetteville, Arkansas at the sole cost and expense of the CITY OF FAYETTEVILLE, but only on the terms and conditions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. The CITY OF FAYETTEVILLE will furnish the labor and materials necessary to install and maintain said multi-use trail over the property of the ARKANSAS & MISSOURI RAILROAD COMPANY at City of Fayetteville, Arkansas.
2. The ARKANSAS & MISSOURI RAILROAD COMPANY hereby grants license unto the CITY OF FAYETTEVILLE to install and maintain said multi-use trail over the property of the ARKANSAS & MISSOURI RAILROAD COMPANY at the locations described on Exhibit "1" and as diagramed on Exhibits "A-F" attached hereto, and permission to use said multi-use trail during the continuance hereof, together with the agents, servants, employees, guests and invitees of CITY OF FAYETTEVILLE, and the public generally.
3. Should any changes be required in the location, construction, reconstruction or protection of the multi-use trail, due to ARKANSAS & MISSOURI RAILROAD COMPANY's use of its property and facilities, including changes to or installation of ARKANSAS & MISSOURI RAILROAD COMPANY's track at the locations of the multi-use trail, or due to the requirements of any Local, State or Federal regulations, the CITY OF FAYETTEVILLE at its sole cost and expense shall make changes required to the multi-use trail, or the ARKANSAS & MISSOURI RAILROAD COMPANY will make the changes, additions or modifications to the multi-use trail, at the sole cost and expense of the CITY OF FAYETTEVILLE.
4. The CITY OF FAYETTEVILLE shall not create or permit to be created or to exist upon said multi-use trail any nuisance, public or private, during the continuance of this License.

5. The term of this Agreement and License shall continue in full force and effect for a term of Ninety-Nine (99) years unless it shall become necessary for the ARKANSAS & MISSOURI RAILROAD COMPANY to construct a second set of tracks or other improvements for its operation, at which time the ARKANSAS & MISSOURI RAILROAD COMPANY shall give the CITY OF FAYETTEVILLE One Hundred Eighty (180) days notice in writing of its intention so to do. The ARKANSAS & MISSOURI RAILROAD COMPANY can also terminate this License for cause if after written notice to the CITY OF FAYETTEVILLE it has not cured a breach of its obligations within thirty (30) days notice to do so. Upon termination or expiration of this agreement, the CITY OF FAYETTEVILLE shall, at the sole cost and expense of the CITY OF FAYETTEVILLE, remove the multi-use trail described herein and restore the portion of ARKANSAS & MISSOURI RAILROAD COMPANY's property used for the multi-use trail to its former condition. If the improvements are not removed within 30 days of the termination, the ARKANSAS & MISSOURI RAILROAD COMPANY shall remove or cause to be removed the multi-use trail, of which reasonable cost and expense shall be paid by the CITY OF FAYETTEVILLE.

6. As consideration for the privileges herein contained the CITY OF FAYETTEVILLE agrees, at the sole cost and expense of the CITY OF FAYETTEVILLE, to erect, own, and maintain a 6' black vinyl coated chain link fence to be located between the trail and the tracks to discourage pedestrian access to the multi-use trail; to install signage at every point where it is possible for the public to access the right-of-way, warning that trespassing upon railroad tracks and right-of-way is both illegal and dangerous; and to construct and maintain freestanding roof structures at those points where the multi-use trail passes under the trestles of the ARKANSAS & MISSOURI RAILROAD COMPANY. The freestanding roof structures shall extend to the right-of-way of the ARKANSAS & MISSOURI RAILROAD COMPANY, and be constructed in such a manner as to deter the users of the multi-use trail from using them as leverage to access the trestles or other railroad structures.

7. Notwithstanding anything above to the contrary, CITY OF FAYETTEVILLE, its successors and assigns, including any contractors or subcontractors providing work for it, shall not perform any construction or any significant maintenance other than mowing, weed-eating, trash pick up, and the like, within Exhibit "A" without first obtaining a work permit from ARKANSAS & MISSOURI RAILROAD COMPANY and shall comply with all conditions of such work permit, including the furnishing of a railroad protected insurance policy.

8. The CITY OF FAYETTEVILLE shall cause any contractor engaged by it to obtain and furnish to the ARKANSAS & MISSOURI RAILROAD COMPANY a policy of public liability and property damage insurance in an amount of not less than \$5,000,000.00. Such policy shall name the ARKANSAS & MISSOURI RAILROAD COMPANY as an additional insured and shall provide that notice shall be given to the ARKANSAS & MISSOURI RAILROAD COMPANY not less than thirty (30) days prior to the cancellation of such policy. Such policy shall be subject to the approval of the ARKANSAS & MISSOURI RAILROAD COMPANY and shall remain in effect during the construction of the improvements contemplated by this agreement.

9. The CITY OF FAYETTEVILLE shall, at its sole cost and expense, reimburse for any delays to train operations, and repair any and all damage to the ARKANSAS & MISSOURI RAILROAD COMPANY'S property, any property within its possession as a bailee or lessee, trackage, and other facilities, which delays or damage are caused by the installation, repair and maintenance of the improvements contemplated this agreement and shall, to the reasonable

satisfaction of the ARKANSAS & MISSOURI RAILROAD COMPANY, restore such property, trackage and other facilities to their original condition. The CITY OF FAYETTEVILLE shall cause the contractor, if any, to be bound by this provision.

10. The CITY OF FAYETTEVILLE shall cause any contractor employed by it or engaged by it to construct the improvements contemplated by this agreement to assume any and all liability for injury to or death of persons, all loss or damage to property, in any manner arising from or during the construction of the improvements contemplated by this agreement, however, such injury, death, loss, damage or destruction as aforesaid may occur or be caused. The CITY OF FAYETTEVILLE shall further cause any contractor engaged by it to construct the improvements contemplated by this agreement to indemnify and save and hold harmless the ARKANSAS & MISSOURI RAILROAD COMPANY from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs and expenses arising or growing out of or in connection with such injury, death, loss, damage, or destruction as aforesaid, which expense shall include the cost ARKANSAS & MISSOURI RAILROAD COMPANY incurs defending itself, including attorney fees and expenses.

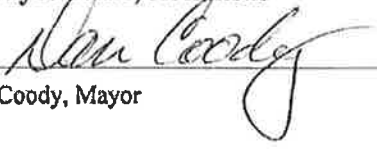
11. In consideration of the grant of this License, the CITY OF FAYETTEVILLE shall purchase a policy of liability insurance which shall insure the ARKANSAS & MISSOURI RAILROAD COMPANY in the amount of \$5,000,000.00 from liability for injury or death to persons or damage to property arising from persons using the trail described on Exhibit "A," including persons who are injured at any place upon the right of way of the ARKANSAS & MISSOURI RAILROAD COMPANY adjacent to such trail, whether injuries are caused by the operation of trains by the ARKANSAS & MISSOURI RAILROAD COMPANY or otherwise. At the option of the ARKANSAS & MISSOURI RAILROAD COMPANY such policy shall either name the ARKANSAS & MISSOURI RAILROAD COMPANY as a named insured of such policy or an additional insured. Such policy shall be kept in full force and effect during the existence of this License and shall continue to insure the ARKANSAS & MISSOURI RAILROAD COMPANY for incidents arising during the existence of this License and until such trail and any improvements installed by the CITY OF FAYETTEVILLE are removed in accordance with the provisions of paragraph 5 above, regardless of when the claim is made. Such policy shall be subject to the approval of the ARKANSAS & MISSOURI RAILROAD COMPANY and shall provide notice to the ARKANSAS & MISSOURI RAILROAD COMPANY not less than thirty (30) days of cancellation of such policy. If the CITY OF FAYETTEVILLE engages a contractor to construct such trail and such policy acquired by the contractor pursuant to paragraph 8 would cover the same potential liability of the ARKANSAS & MISSOURI RAILROAD COMPANY as the policy to be acquired by the CITY OF FAYETTEVILLE as required above, then the CITY OF FAYETTEVILLE shall not be required to provide the insurance required herein above until the construction of such trail is complete (so long as there is no lapse of coverage). Otherwise, such policy required of the CITY OF FAYETTEVILLE shall be acquired and made effective prior to the commencement of any construction of such trail.

12. This Agreement shall not be assigned or in any manner transferred without the express written consent of the President of the ARKANSAS & MISSOURI RAILROAD COMPANY, or his duly authorized representative.

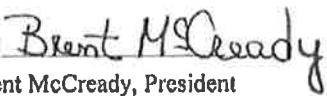
Until terminated as herein provided, this Agreement shall inure to the benefit of and be binding upon the legal representative and successors of the parties respectively.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate
the day and year first above written.

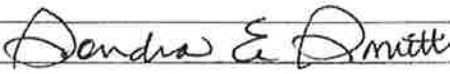
City of Fayetteville, Arkansas

By: 
Dan Coody, Mayor

Arkansas & Missouri Railroad Co.

By: 
Brent McCready, President

ATTEST:

By: 
SONDRA E. SMITH, City Clerk/Treasurer



ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Dan Coody** and **Sondra Smith**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the **Mayor** and **City Clerk** of the **City of Fayetteville, Arkansas, a municipal corporation**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said municipal corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 15TH day of July, 2008.

MY COMMISSION EXPIRES:

09-18-2017

Jill S. Goddard
Notary Public



ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss.
COUNTY OF WASHINGTON)

On this the 7th day of August, 2012, before me, the undersigned officer, personally appeared Brent McCready, who acknowledged himself to be the President of the Arkansas & Missouri Railroad Co., a corporation, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:
5-2-2013



Notary Public



ARKANSAS AND MISSOURI RAILROAD COMPANY, INC.

As shown on Exhibit "A":

Part of the Southwest Quarter (SW¼) of the Northeast Quarter (NE¼) Section Sixteen (16), Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas and all within the Arkansas and Missouri Railroad right-of-way being more particularly described as follows: Beginning at the intersection of the Southerly right-of-way Dickson Street and a point eight (8) feet easterly of the existing centerline main track Arkansas and Missouri Railroad; thence along the said Southerly right-of-way of Dickson Street South 87°10'56" East 17.00 feet to a point twenty-five (25) feet Easterly of and parallel to said existing centerline main track; thence leaving said Southerly right-of-way Dickson Street parallel to said existing centerline main track South 02°43'39" West 45.00 feet to the beginning of a curve to the right, said curve having a central angle of 23°22'50" and a radius of 980.37 feet; thence along said curve concentric to said existing centerline main track an arc length of 400.05 feet; thence parallel to said existing centerline main track South 27°19'38" West 87.88 feet; thence North 62°40'22" West 17.00 feet to a point perpendicular and parallel to eight (8) feet easterly of said existing centerline main track; thence parallel to said existing main track North 27°19'38" East 87.88 feet to the beginning of a curve to the left, said curve having a central angle of 23°22'11" and a radius of 963.37 feet; thence concentric to said existing main track along said curve an arc length of 392.94 feet; thence continuing parallel to said existing main track North 02°43'39" East 44.85 feet to the Point of Beginning, containing 8998 square feet, more or less.

As shown on Exhibit "B":

Part of the Northwest Quarter (NW¼) of the Northeast Quarter (NE¼) Section Sixteen (16), Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas and all within the Arkansas and Missouri Railroad right-of-way being more particularly described as follows: Beginning at the intersection of the Northerly right-of-way Dickson Street and a point eight (8) feet easterly of the existing centerline main track Arkansas and Missouri Railroad; thence parallel to said existing main track North 02°43'39" East 415.61 feet to the beginning of a curve to the left, said curve having a central angle of 12°45'24" and a radius of 1335.51 feet; thence concentric to said existing main track along said curve an arc length of 297.35 feet to the Southerly right-of-way Lafayette Street; thence along said Southerly right-of-way Lafayette Street North 74°24'22" East 17.08 feet to the beginning of a non-tangent curve to the right; thence leaving said Southerly right-of-way Lafayette Street along said curve, said curve having a central angle of 12°49'37" and a radius of 1352.51 feet, an arc length of 302.79 feet to a point, said point having a chord bearing and distance from said beginning of curve of South 03°41'10" East 302.16 feet; thence South 02°43'39" West 415.61 feet to the said Northerly right-of-way Dickson Street; thence along said Northerly right-of-way Dickson Street North 87°16'21" West 17.00 feet the Point of Beginning, containing 12167 square feet, more or less.

As shown on Exhibit "C":

Part of the Northwest Quarter (NW¼) of the Northeast Quarter (NE¼) and part of the Northeast Quarter (NE¼) of the Northwest Quarter (NW¼) Section Sixteen (16), Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas and all within the Arkansas and Missouri Railroad right-of-way being more particularly described as follows: Beginning at the intersection of the Southerly right-of-way of Maple Street and a point eight (8) feet easterly and radial of the existing centerline main track of the Arkansas and Missouri Railroad; thence along said Southerly right-of-way of Maple Street South 81°39'25" East 18.71 feet to a point twenty-five (25) feet Easterly of and concentric to said existing centerline main track; thence leaving said Southerly right-of-way of Maple Street along a curve concave Northeasterly concentric to said existing centerline main track an arc length of 206.26 feet through a central angle 03°06'51", said curve having a radius of 3794.83 feet to the West line of Lot 1, Frisco Addition to the City of Fayetteville; thence along said West line South 02°46'46" West 15.67 feet to the Southwest corner of said Lot 1; thence along the South line of said Lot 1 South 87°34'14" East 6.44 feet to a point 25' feet Easterly of and concentric to said existing centerline main track; thence along a curve concave Northeasterly concentric to said existing centerline main track an arc length of 74.61 feet through a central angle 01°07'35", said curve having a radius of 3794.83 feet; parallel to said existing centerline main track South 20°52'25" East 37.70 feet to the beginning of a curve to the right, said curve having a central angle of 08°38'58" and a radius of 1352.51 feet; thence along said curve an arc length of 204.17 feet to the North right-of-way of Lafayette Street; thence along said North right-of-way of Lafayette Street South 74°24'21" West 17.03 feet; thence leaving said Northerly right-of-way of Lafayette Street along a curve concave Southwesterly, eight (8) feet Easterly of and concentric to said existing centerline main track an arc length of 202.61 feet through a central angle 08°41'32", said curve having a radius of 1335.51 feet; thence parallel to said existing centerline main track North 20°52'25" West 37.70 feet to the beginning of a curve to the right, said curve having a central angle of 04°36'49" and a radius of 3811.83 feet; thence along said curve concentric to said existing centerline main track an arc length of 306.94 feet to the point of beginning, containing 9188 square feet, more or less.



As shown on Exhibit "D":

Part of the Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) and part of Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Nine (9), Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas and all within the Arkansas and Missouri Railroad right-of-way being more particularly described as follows: Beginning at the intersection of the Northerly right-of-way of Maple Street and a point eight (8) feet easterly and radial of the existing centerline main track of the Arkansas and Missouri Railroad; thence concentric to said existing centerline main track along a curve through a central angle of 8°16'43" and a radius of 3811.83 feet an arc length of 550.77 feet; thence parallel with said existing centerline main track North 07°19'18" West 665.64 feet; thence South 82°40'14" West 33.00 feet to a point twenty-five (25) feet westerly and parallel of the said existing centerline main track; thence parallel with said existing centerline main track North 07°19'18" West 424.85 feet; thence South 25°50'26" East 53.52 feet a point eight (8) feet westerly and parallel of the said existing centerline main track; thence parallel with said existing centerline main track South 07°19'18" East 316.66 feet; thence North 82°38'56" East 16.00 feet to a point eight (8) feet easterly and parallel of the said existing centerline main track; thence parallel with said existing centerline main track North 07°19'18" West 151.90 feet; thence North 82°40'14" East 17.00 feet to a point twenty-five (25) feet easterly and parallel of the said existing centerline main track; thence parallel with said existing centerline main track South 07°19'18" East 874.98 feet to the beginning of a curve to the left said curve having a central angle of 8°23'33" and a radius of 3794.83 feet; thence along said curve, concentric to said existing centerline main track an arc length 555.86 feet to the said Northerly right-of-way of Maple Street, thence along said Northerly right-of-way of Maple Street North 81°39'25" West 18.61 feet to the point of beginning containing 31991 square feet, more or less.

At Drake Street (as shown on Exhibit) E:

Part of the Southeast Quarter (SE $\frac{1}{4}$) of Section Thirty-Four (34), Township Seventeen (17) North, Range Thirty (30) West, Washington County, Arkansas being more particularly described as follows: Commencing at the Northwest (NW) Corner of the Northwest Quarter (NW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of said Section; thence South 87°24'44" East 694.98 feet; thence South 02°35'16" West 845.46 feet; thence South 87°24'44" East 596.01 feet to the POINT OF BEGINNING, said point being the Southeast property corner for a property described in Instrument Number 2007-5939 with the Circuit Clerk of Washington County, Arkansas; thence along the Easterly line of said property North 20°44'51" West 13.90 feet; thence leaving said Easterly line North 69°24'43" East 106.41 feet to the Easterly right-of-way line of the Arkansas & Missouri Railroad, said line also being the Westerly line of a property described in Instrument Number 2001-172188 recorded with said Circuit Clerk; thence Southeasterly along said right-of-way South 21°08'15" East 60.03 feet; thence leaving said right-of-way South 69°24'43" West 74.41 feet to the Westerly right-of-way of said railroad; thence Northeasterly along said right-of-way North 23°06'44" West 32.83 feet; thence leaving said right-of-way North 87°24'44" West 33.82 feet to the Point of Beginning, containing 5150 square feet, more or less.

At Aspen Ridge (as shown on Exhibit) F:

A part of the Southwest Quarter (SW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) Section Sixteen (16), And a part of the Northwest Quarter (NW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) Section Twenty-One (21), all in Township Sixteen (16) North, Range Thirty (30) West, Washington County Arkansas, that portion of Arkansas and Missouri Rail Road right-of-way being more particularly described as follows: Commencing at the Northwest (NW) Corner of said Northwest Quarter (NW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) Section Twenty-One (21); thence South 86° 14' 58" East 227.88 feet; thence North 03°45'07" East 73.83 feet to the intersection of the Easterly right-of-way South Paris Avenue and the Southerly right-of-way Arkansas and Missouri Rail Road and the **Point of Beginning**; thence along said Easterly right-of-way South Paris Avenue North 00°34'41" West 101.51 feet to a point on a curve on the Northerly right-of-way Arkansas and Missouri Rail Road said curve having a central angle of 25°42'31" and a radius of 1195.92 feet concave southwesterly; thence along said Northerly right-of-way Arkansas and Missouri Rail Road an arc length of 536.61 also having a chord bearing and distance of South 68°16'05" East 532.12 feet; thence South 55°24'50" East 148.23 feet to a point on a curve on the Easterly right-of-way Arkansas and Missouri Rail Road said curve having a central angle of 04°16'32" and a radius of 1340.84 feet concave southeasterly; thence along said Easterly right-of-way Arkansas and Missouri Rail Road an arc length of 100.07 also having a chord bearing and distance of South 36°23'18" West 100.05 feet; thence leaving said Easterly right-of-way North 55°24'50" West 145.08 feet a point on the said Southerly right-of-way Arkansas and Missouri Rail Road and the beginning of a curve to the left, said curve having a central angle of 24°50'12" and a radius of 1095.92 feet; thence along said curve an arc length of 475.06 feet to the Point of Beginning; and containing 1.496 acres more or less.

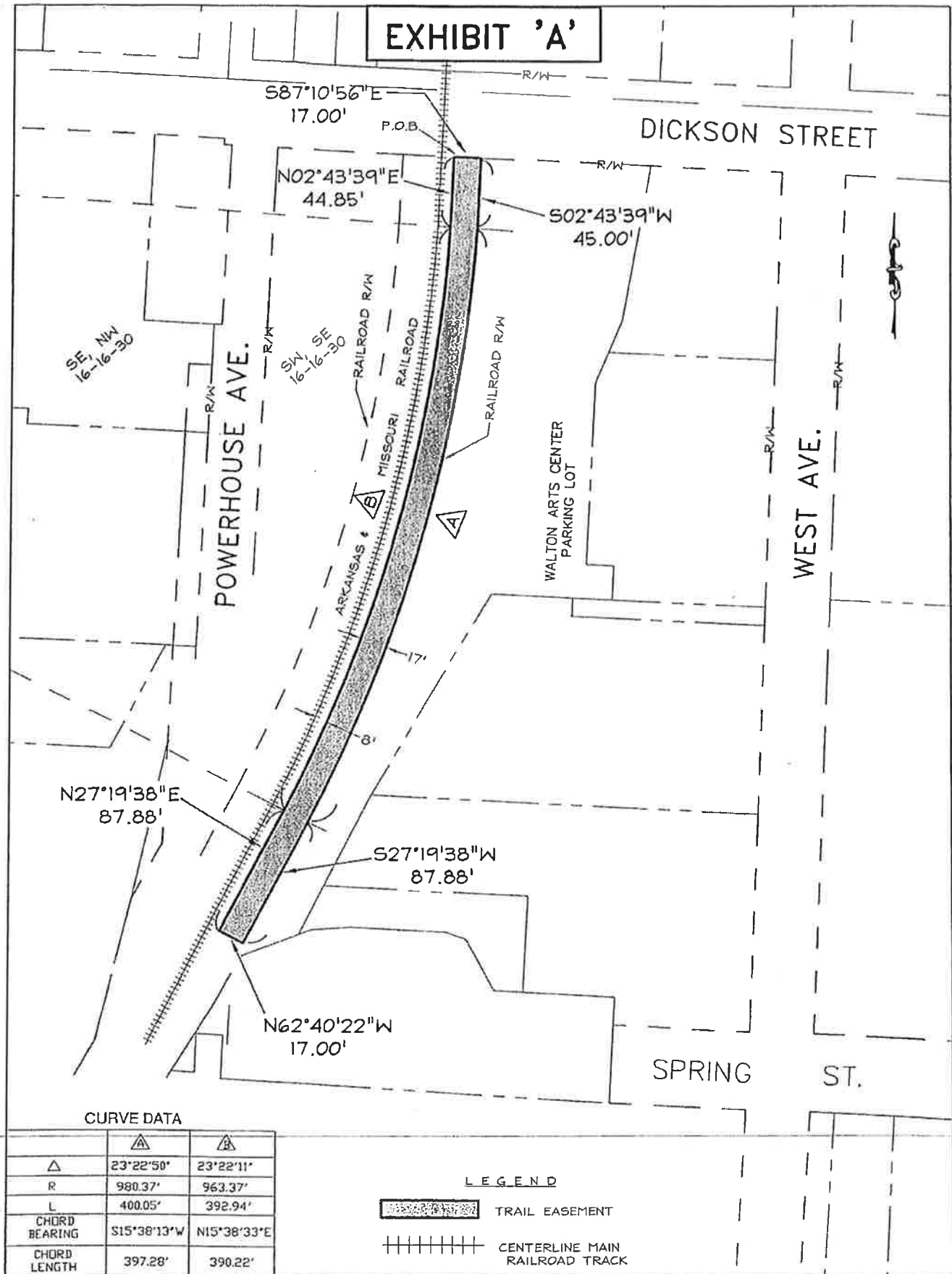
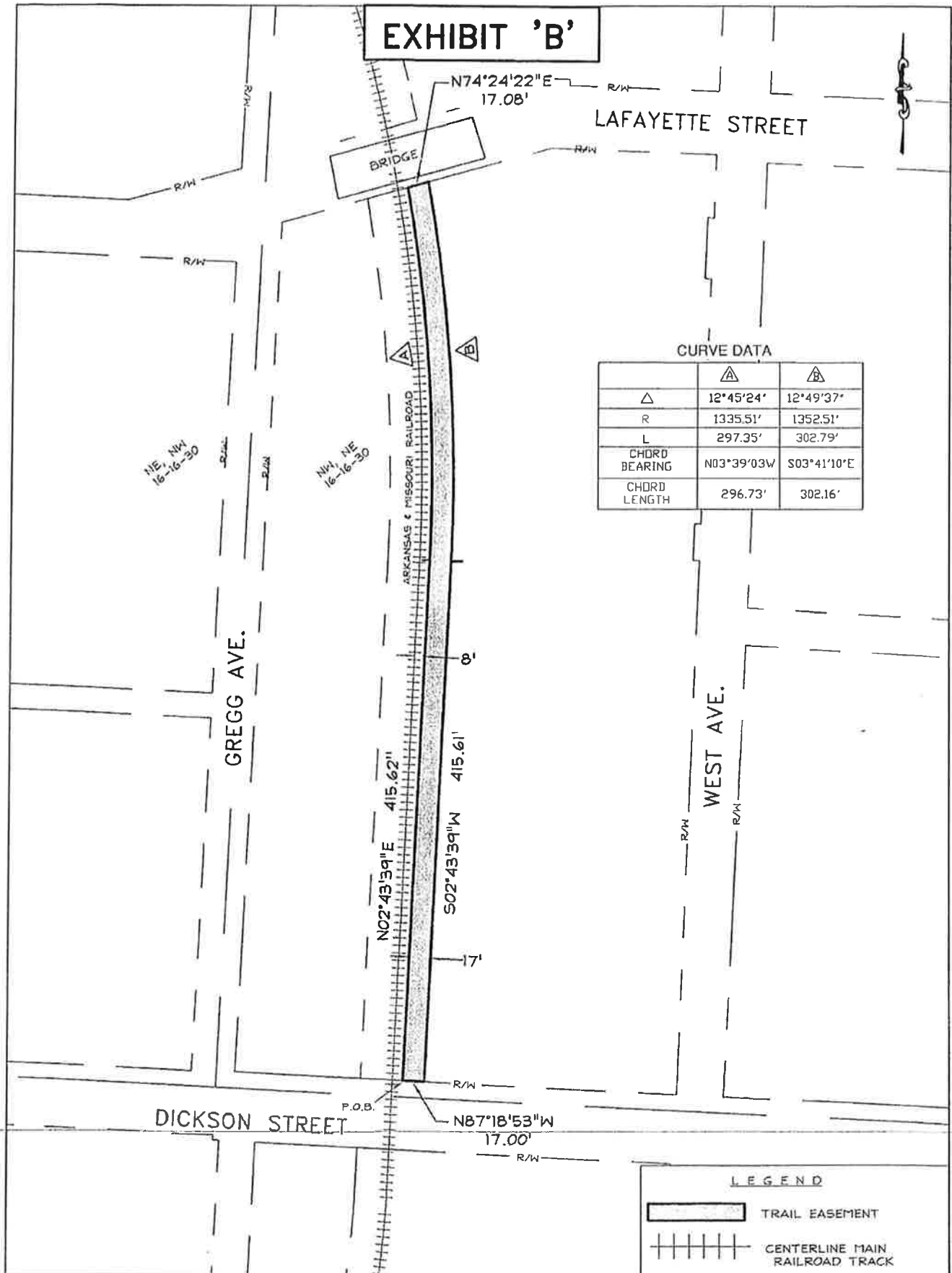


EXHIBIT 'B'



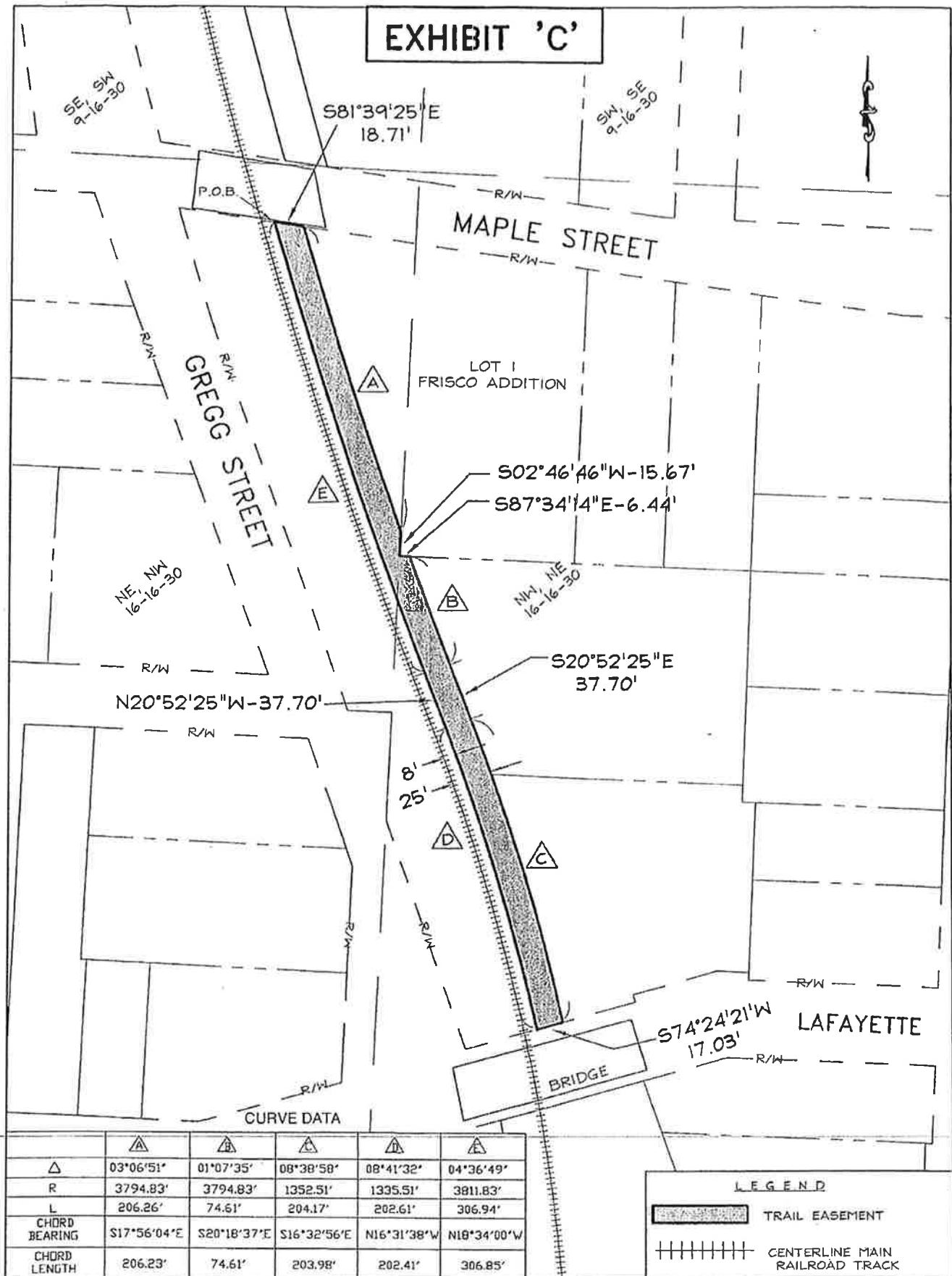
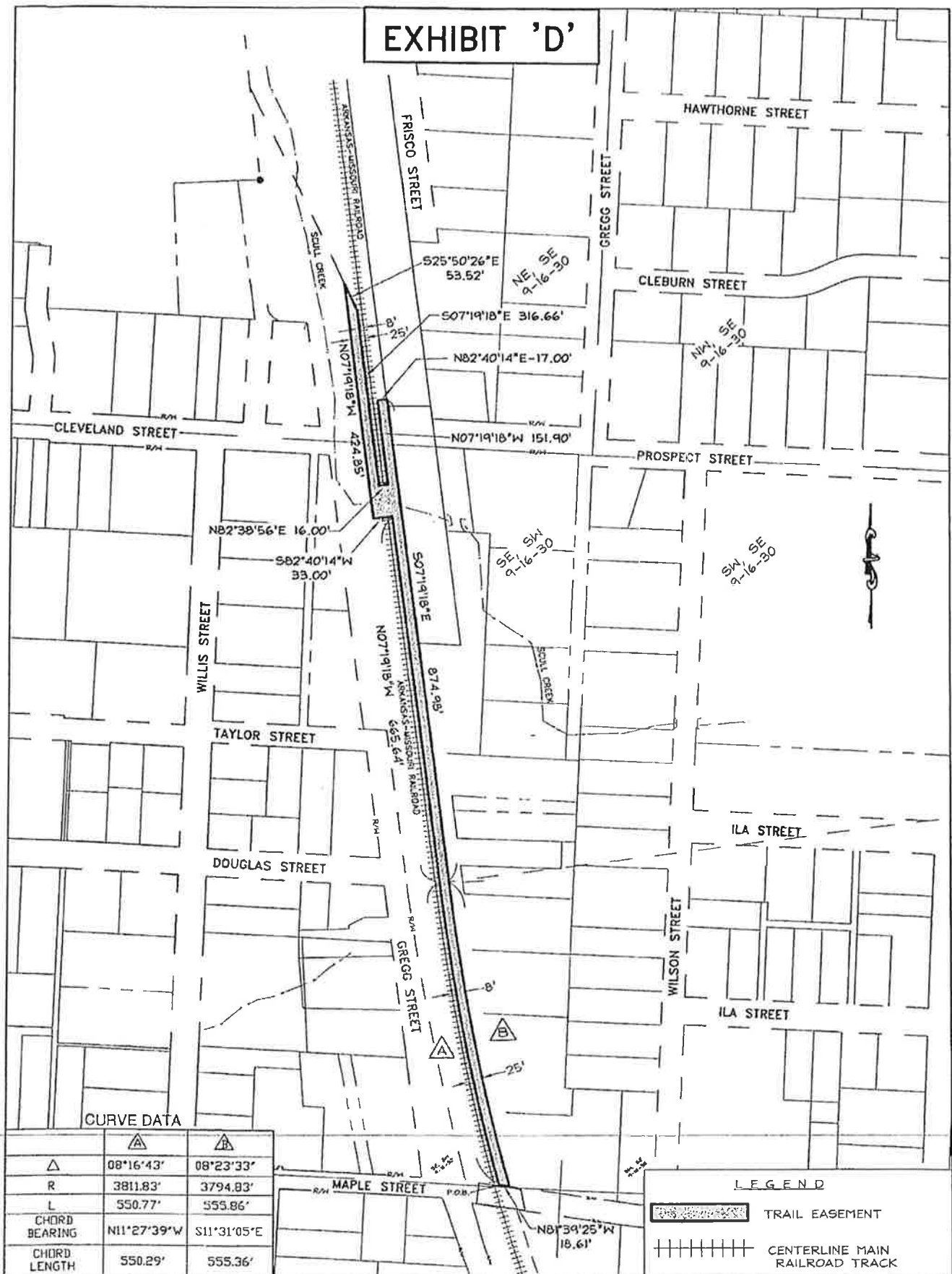
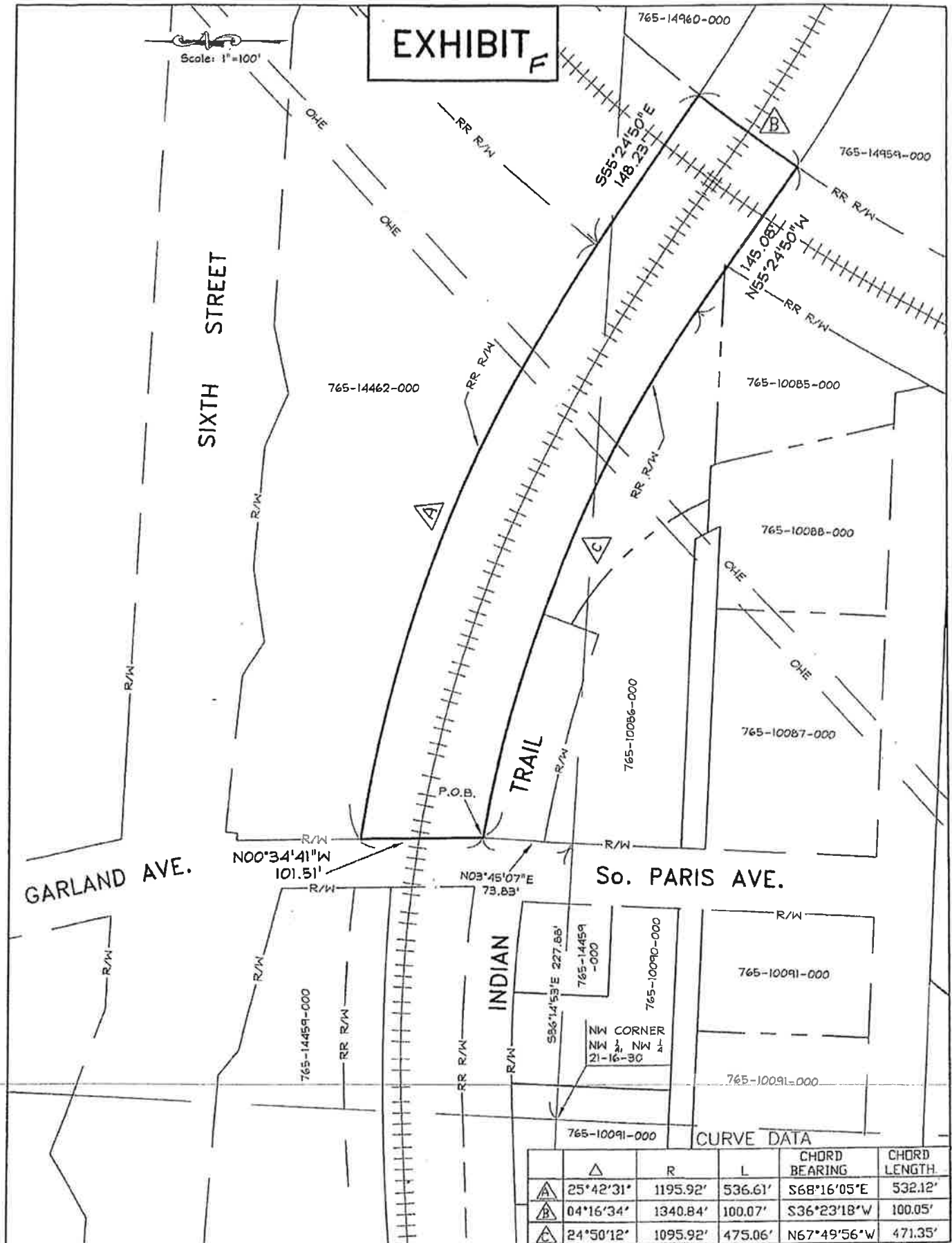


EXHIBIT 'D'



25



CYPERT, CROUCH, CLARK & HARWELL, PLLC
Attorneys at Law

COURTNEY C. CROUCH (1912-1975)

Established 1947

JAMES D. CYPERT
OF COUNSEL

JAMES E. CROUCH
WILLIAM M. CLARK, JR.
CHARLES L. HARWELL

P.O. Box 1400
111 Holcomb Street
Springdale, AR 72765-1400
Firm: 479-751-5222
Fax: 479-751-5777
www.ccchlaw.com

R. JEFFREY REYNERSON ◊
MATTHEW L. FRYAR

WRITER'S EMAIL:
jcrouch@ccchlaw.com

◊ LICENSED IN AR AND MO

August 8, 2012

Matt Mihalevich
Trails Coordinator
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

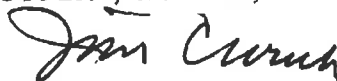
Re: A&M Railroad/City of Fayetteville

Dear Matt:

Enclosed please find an Acknowledgment of the trail license agreement of the signature of Brent McCready.

Kindest regards.

Sincerely,
CYPERT, CROUCH, CLARK & HARWELL, PLLC



James E. Crouch

JEC/td
Enclosure

City of Fayetteville Staff Review Form

C. 4
Fayetteville Energy
Improvement District
Page 1 of 24

City Council Agenda Items
and
Contracts, Leases or Agreements

10/15/2013

City Council Meeting Date
Agenda Items Only

Peter Nierengarten

Submitted By

Division

Sustainability & Strategic Planning

Department

Action Required:

An ordinance that creates an Energy Improvement District for the City of Fayetteville that manages innovative financing programs for renewable energy, energy efficiency and water conservation improvements on residential, commercial, industrial and other real properties at the request of the owner. This financing program includes property assessed clean energy (PACE) as a financing option.

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

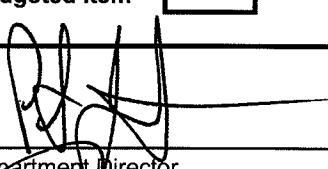
N/A

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

Department Director

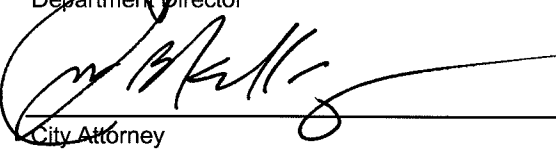
Date

9/25/13

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:


City Attorney

Date

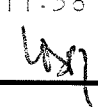
9/30/13


Finance and Internal Services Director

Date

10-1-2013

Received in City Clerk's Office 09-25-13 A11:38 RCVD

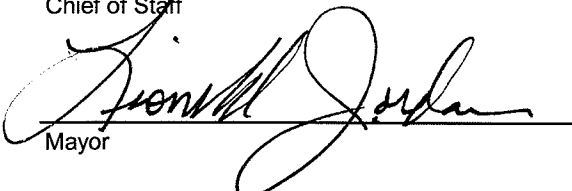


Chief of Staff

Date

10-1-13

Received in
Mayor's Office


Mayor

Date

10/1/13

ENTERED
9/30/13

Comments:

ORDINANCE NO. _____

AN ORDINANCE CREATING A PROPERTY ASSESSED ENERGY IMPROVEMENT DISTRICT COEXTENSIVE WITH THE CITY OF FAYETTEVILLE NAMED "ENERGY IMPROVEMENT DISTRICT NO. 1" TO FACILITATE A PACE PROGRAM AND ADOPTING CERTAIN PROVISIONS RELATED THERETO

WHEREAS, pursuant to the authority granted by Arkansas Code Annotated § 8-15-101 *et seq.* (the "Property Assessed Clean Energy Act"), the City of Fayetteville may create a Property Assessed Energy Improvement District, either solely or in combination with one or more other governmental entities; and

WHEREAS, such a district, once created, has independent legal and financial authority, including the authority to issue bonds; and

WHEREAS, such districts were authorized to permit the creation and implementation of, among other things, a property assessed clean energy (PACE) program under which a real property owner may finance an energy efficiency improvement, a renewable energy project, or a water conservation improvement for their property on a voluntary basis, with loan repayment tied to collection of real property taxes,

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 ARTICLE XXVI ENERGY IMPROVEMENT DISTRICT NO. 1 to the Code of Fayetteville, which shall read as follows:

"ARTICLE XXVI ENERGY IMPROVEMENT DISTRICT NO. 1

33.380 Establishment and Purpose

There is hereby created an Energy Improvement District No. 1 which territorial jurisdiction shall be coextensive with the City of Fayetteville and the territory of any other agreeing and participating governmental entity that may hereafter join. Energy Improvement District No. 1 shall exercise such authority and power as

granted by the Property Assessed Clean Energy Act, Ark. Code Ann. § 8-15-101, *et seq.* within the boundaries of the District.

33.381 Board of Directors, Membership, Terms of Office

- (A) Energy Improvement District No. 1 shall be governed by a Board of Directors consisting of seven (7) members. One member shall be the Mayor or the Mayor's designee. Should the Mayor designate a member, said member shall serve at the pleasure of the Mayor. The remaining six (6) members shall be qualified electors of the District chosen by the Fayetteville City Council, each to serve a term of two (2) years. In making its Board appointments, the City Council shall give due consideration to candidates with connections to or relations with local utility companies, lending or bonding institutions and the advanced energy industry. City Council appointed members shall be subject to the term limit provisions of Section 33.329(B).
- (B) Should additional governmental entities enter into an agreement with the City of Fayetteville for participation in and addition to Energy Improvement District No. 1, the composition and terms of members of the Board of Directors shall be as agreed between the City of Fayetteville and other participating and agreeing governmental entities.

33.382 Legal and Financial Independence

In the operation of its business, Energy Improvement District No. 1 is legally and financially independent of the City of Fayetteville. No debt entered into by the District shall ever be construed as an obligation of the City of Fayetteville or of any other governmental entity which may participate in the District."

PASSED and APPROVED this 15th day of October, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

www.accessfayetteville.orgTHE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE**CITY COUNCIL AGENDA MEMO**

To: Mayor Lioneld Jordan**Thru:** Don Marr, Chief of Staff**From:** Peter Nierengarten, Sustainability & Strategic Planning Director *PW***Date:** September 25, 2013**Subject:** Fayetteville Energy Improvement District

RECOMMENDATION

Staff recommends adoption of an ordinance that creates an Energy Improvement District for the City of Fayetteville that manages innovative financing programs for renewable energy, energy efficiency and water conservation improvements on residential, commercial, industrial and other real properties at the request of the owner. This financing program includes property assessed clean energy (PACE) as a financing option.

BACKGROUND

PACE is a creative financing mechanism that allows property owners to borrow money for weatherization, energy efficiency, renewable energy or water conservation improvements to their property. The security of tying the repayment of loans to property tax assessments combined with low default rates allow PACE to offer very low and extremely attractive interest rates for these improvement loans. PACE is a completely voluntary program that enables private investment for the purpose of energy savings.

PACE enabling legislation was passed by the Arkansas Legislature in the 2013 session and signed by the Governor in April 2013. That legislation allows Cities, Counties or the State to create Energy Improvement Districts within the State of Arkansas. The Arkansas Legislature noted that Energy Improvement Districts would benefit Arkansas by:

- Creating jobs and stimulating the economy
- Generating significant economic development
- Protecting citizens from the rising cost of electricity and non-renewable fuels
- Providing citizens with options for financing improvements that are otherwise not available
- Providing a positive cash flow on energy improvements
- Increasing the value of real property
- Improving the state's air quality and conserving natural resources
- Promoting energy independence and security for the nation and state

ENERGY IMPROVEMENT DISTRICT

The Energy Improvement District should manage innovative financing programs for renewable energy, energy efficiency and water conservation improvements on residential, commercial, industrial and other real properties at the request of the owner. This financing program includes property assessed clean energy (PACE) as a financing option.

According to Arkansas' PACE enabling legislation the district should be managed and controlled by a board of directors. The board should be composed of a minimum of seven directors and should at a minimum meet quarterly. The board must

have one member appointed by the Mayor. Staff recommends that the remaining six at-large members be appointed by the City Council and be made up of representatives of local utility companies, lending or bonding institutions and the advanced energy industry.

The district board will establish procedures by which they will operate and may work with a third-party administrator to create program guidelines. The board should have all other powers and duties granted in Arkansas' PACE enabling legislation and should meet annual reporting requirements.

DISCUSSION

Staff recommends that the Energy Improvement District develop a third party administered program that manages innovative financing for renewable energy, energy efficiency and water conservation projects in the City of Fayetteville. This program could manage multiple types of renewable energy, energy efficiency and water conservation financing mechanisms including PACE, and would allow flexible financing options for the greatest number of improvement projects in Fayetteville. Third party administration of the program provides a replicable model for other municipalities in Arkansas and the most long-term sustainable financing program for Fayetteville due to the reduced municipal program development and operational cost and the reduced workload for City Staff in managing the program. Steps necessary for the Energy Improvement District Board to implement a third party administered program include:

1. Advertise a Request for Proposals (RFP) for third party program development and administration of the Energy Improvement District.
2. District board evaluates RFP's and selects the program administrator.
3. Work with selected program administrator to create clean energy, energy efficiency and water conservation financing programs, which would include PACE as a financing option.

BUDGET IMPACT

Under this recommended program there is no budget impact to establish the Energy Improvement District.



PACE ARKANSAS INITIATIVE (SB 640)

What is PACE?

A Property Assessed Clean Energy (PACE) bond or lien is a debt device where proceeds are lent to interested property owners to finance energy efficiency improvements, water conservation improvements, and renewable energy projects that reduce their energy costs.

Why do Arkansans need access to PACE loans?

- Property owners can finance for up to 20 years the costs of energy and water efficiency improvements and renewable energy projects. There are no upfront costs.
- Energy cost savings from PACE-eligible improvements exceed the loan payments which are assessed annually on the property owner's property tax bill. For business owners, this means that PACE improvements increase their company's cash flow.
- Cities, counties, and even the state have the opportunity to create jobs with no added credit risk.
- PACE improvements increase property values.

How does a PACE program work?

- PACE legislation authorizes voluntary creation of energy improvement districts which will be certified to issue general revenue bonds. Proceeds from these bonds will fund loans to interested property owners for energy efficiency improvements, water conservation improvements, and renewable energy projects.
- Energy Improvement Districts may consist of individual cities and counties, or a combination of the various jurisdictions. A district could be organized statewide.
- PACE program assessments only affect property owners who obtain loans for energy improvements.
- Loans or liens stay attached to the property until the loan/lien is repaid.
- Energy and water improvement work must be performed by qualified and certified providers thus protecting property owners and PACE districts.

Why does the AAEA endorse the PACE Initiative?

- An effective PACE program can be an economic boost for the entire state. PACE will reduce energy costs for participating consumers and create jobs in the energy efficiency and renewable energy sectors.

March 2013

Stricken language would be deleted from and underlined language would be added to present law.
Act 1074 of the Regular Session

State of Arkansas *As Engrossed: S3/5/13 S3/14/13 S3/20/13*

89th General Assembly

A Bill

Regular Session, 2013

SENATE BILL 640

By: Senators D. Johnson, J. Woods

By: Representatives Leding, Barnett, C. Armstrong, Hawthorne, McGill, B. Overbey, T. Thompson, Sabin,
D. Whitaker

For An Act To Be Entitled

AN ACT TO CREATE JOBS, RETAIN WEALTH, AND GROW
ARKANSAS'S ECONOMY BY ENABLING PROPERTY ASSESSED
CLEAN ENERGY FINANCING; TO AUTHORIZE THE
ESTABLISHMENT OF ENERGY IMPROVEMENT DISTRICTS TO FUND
LOANS FOR ENERGY EFFICIENCY IMPROVEMENTS, RENEWABLE
ENERGY PROJECTS, AND WATER CONSERVATION IMPROVEMENTS;
AND FOR OTHER PURPOSES.

Subtitle

TO AUTHORIZE THE ESTABLISHMENT OF ENERGY
IMPROVEMENT DISTRICTS TO FUND LOANS FOR
ENERGY EFFICIENCY IMPROVEMENTS, RENEWABLE
ENERGY PROJECTS, AND WATER CONSERVATION
IMPROVEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Title 8 is amended to add a new chapter to read as
follows:

Chapter 15 – Energy Efficient Facilities

8-15-101. Title.

This chapter shall be known and may be cited as the “Property Assessed
Clean Energy Act”.



As Engrossed: S3/5/13 S3/14/13 S3/20/13

SB640

1 8-15-102. Definitions.

2 As used in this chapter:

3 (1)(A) "Bond" means a revenue bond or note issued under this
4 chapter.

5 (B) "Bond" includes any other financial obligation
6 authorized by this chapter, the laws of this state, or the Arkansas
7 Constitution;

8 (2) "District" means a property assessed energy improvement
9 district established in this state by law for the express purpose of managing
10 the PACE program;

11 (3) "Governmental entity" means a municipality, county,
12 combination of cities or counties or both, or statewide district;

13 (4) "Owner" means an individual, partnership, association,
14 corporation, or other legal entity that is recognized by law and has title or
15 interest in any real property;

16 (5) "PACE program" means a property assessed clean energy
17 program under which a real property owner can finance an energy efficiency
18 improvement, a renewable energy project, and a water conservation improvement
19 on the real property; and

20 (6) "Person" means an individual, partnership, association,
21 corporation, or other legal entity recognized by law as having the power to
22 contract.

23
24 8-15-103. Legislative findings.

25 The General Assembly finds that:

26 (1) It is in the best interests of the state to authorize
27 districts that make available to citizens one (1) or more financing programs,
28 including without limitation a PACE program, to fund energy efficiency
29 improvements, renewable energy projects, and water conservation improvements
30 on residential, commercial, industrial, and other real properties at the
31 request of the owner;

32 (2) The programs described in subdivision (1) of this section
33 will benefit the citizens of this state by:

34 (A) Decreasing the cost of providing funds to
35 participating citizens and lowering the aggregate issuance and servicing
36 costs of loans; and

As Engrossed: S3/5/13 S3/14/13 S3/20/13

SB640

1 (B) Making funds available to rural communities throughout
2 the state that might not otherwise create and finance the programs described
3 in subdivision (1) of this section; and

4 (3) The programs described in subdivision (1) of this section
5 will further the public purpose of:

6 (A) Creating jobs and stimulating the state's economy;

7 (B) Generating significant economic development through
8 the investment of the proceeds of loans in local communities, including
9 increased sales tax revenue;

10 (C) Protecting participating citizens from the financial
11 impact of the rising cost of electricity produced from nonrenewable fuels;

12 (D) Providing positive cash flow in which the costs of the
13 improvements are lower than the energy savings on an average monthly basis;

14 (E) Providing the citizens of this state with informed
15 choices and additional options for financing improvements that may not
16 otherwise be available;

17 (F) Increasing the value of the improved real property for
18 participating citizens;

19 (G) Improving the state's air quality and conserving
20 natural resources, including water;

21 (H) Attracting manufacturing facilities and related jobs
22 to the state; and -

23 (I) Promoting energy independence and security for the
24 state and the nation.

25
26 8-15-104. Immunity.

27 (a) The powers and duties of a district conferred by this chapter are
28 public and governmental functions exercised for a public purpose and for
29 matters of public necessity.

30 (b) The district and its personnel are immune from suit in tort for
31 the performance of its duties under this chapter unless immunity from tort is
32 expressly waived in writing.

33
34 8-15-105. Authority to create.

35 (a) A governmental entity legally authorized to issue general revenue
36 bonds may create a district by adoption of an ordinance.

As Engrossed: S3/5/13 S3/14/13 S3/20/13

SB640

1 (b) A combination of governmental entities may create a district by
2 each governmental entity:

3 (1) Adopting an ordinance that provides for the governmental
4 entity's participation in the district; and

5 (2) Entering into a joint agreement with one (1) or more other
6 participating governmental entities.

7 (c) This section shall not limit additional governmental entities from
8 becoming members of the district under § 8-15-106.

9

10 8-15-106. Membership in an existing district.

11 (a) To become a member of an existing district, the governing body of
12 a governmental entity shall:

13 (1) Adopt an ordinance that provides for the participation of
14 the governmental entity in the district; and

15 (2) Enter into an agreement with the other participating members
16 of the district.

17 (b) The agreement between members of a district shall establish the
18 terms and conditions of the operation of the district with the limitations
19 provided in this chapter.

20

21 8-15-107. Board of directors.

22 (a) A district created under this chapter shall be operated and
23 controlled by a board of directors.

24 (b) The board of directors shall manage and control each district,
25 including without limitation the operations, business, and affairs of the
26 district.

27 (c) The board of directors shall be solely responsible for selecting
28 the chair of the board of directors and establishing the procedures by which
29 the board of directors shall operate.

30 (d) A director shall not receive compensation in any form for his or
31 her services as a director.

32 (e) Each director shall be entitled to reimbursement by the district
33 for any necessary expenditures incurred in connection with the performance of
34 his or her general duties as a director.

35

36 8-15-108. Membership on the board of directors.

As Engrossed: S3/5/13 S3/14/13 S3/20/13

SB640

1 (a) The board of directors of a district shall consist of at least
2 seven (7) directors.

3 (b) The board of directors shall include:

4 (1) For a statewide district, the members specified in the
5 agreement establishing the district;

6 (2) For a district composed of a combination of one (1) or more
7 counties and one (1) or more cities:

8 (A) The county judge or his or her designated
9 representative of each county that is a member of the district;

10 (B) The mayor or his or her designated representative of
11 each city that is a member of the district; and

12 (C) If the number of directors is fewer than seven (7)
13 after fulfilling the requirements of subdivisions (b)(2)(A) and (B) of this
14 section, additional members shall be appointed as specified in the agreement
15 establishing the district until a total of seven (7) directors has been
16 appointed;

17 (3) For a district composed of one (1) or more counties:

18 (A) The county judge or his or her designated
19 representative of each county that is a member of the district; and

20 (B) If the number of directors is fewer than seven (7)
21 after fulfilling the requirements of subdivision (b)(3)(A) of this section,
22 additional members shall be appointed as specified in the agreement
23 establishing the district until a total of seven (7) directors has been
24 appointed; and

25 (4) For a district composed of one (1) or more cities:

26 (A) The mayor or his or her designated representative of
27 each city that is a member of the district; and

28 (B) If the number of directors is fewer than seven (7)
29 after fulfilling the requirements of subdivision (b)(4)(A) of this section,
30 additional members shall be appointed as specified in the agreement
31 establishing the district until a total of seven (7) directors has been
32 appointed.

33 (c) The designated representative of a county judge or mayor under
34 subsection (b) of this section shall be a qualified elector of the
35 jurisdiction that the designated representative is appointed to represent.
36

As Engrossed: S3/5/13 S3/14/13 S3/20/13

SB640

1 8-15-109. Terms of directors.

2 (a) A director who is a public official may serve on the board of
3 directors of a district during his or her term of office as the county judge
4 or mayor of a member of a district.

5 (b) A director who is the designated representative of the mayor or
6 county judge of a member of the district serves at the pleasure of the mayor
7 of the city or the county judge of the county that is a member of the
8 district.

9

10 8-15-110. District boards of directors – Meetings.

11 (a) The board of directors of a district shall hold quarterly meetings
12 and special meetings, as needed, in the courthouse or other location within
13 the district.

14 (b) The time and place of the quarterly meetings shall be on file in
15 the office of the district board of directors.

16

17 8-15-111. District boards of directors – Powers and duties.

18 (a) The board of directors of a district may:

19 (1) Issue revenue bonds on behalf of the district;

20 (2) Make and adopt all necessary bylaws for its organization and
21 operation;

22 (3) Elect officers and employ personnel necessary for its
23 operation;

24 (4) Operate, maintain, expand, and fund a PACE project;

25 (5) Apply for, receive, and spend grants for any purpose under
26 this chapter;

27 (6) Enter into agreements and contracts on behalf of the
28 district;

29 (7) Receive property or funds by gift or donation for the
30 finance and support of the district;

31 (8) Reimburse a governmental entity for expenses incurred in
32 performing a service for the district;

33 (9) Assign assessments to a private lending institution; and

34 (10) Do all things necessary or appropriate to carry out the
35 powers expressly granted or duties expressly imposed under this chapter.

36 (b) The board of directors shall:

As Engrossed: S3/5/13 S3/14/13 S3/20/13

SB640

1 (1) Allow a commission of:

2 (A) One and five-tenths percent (1.5%) for the extension
3 of district assessments by the county assessor or county clerk;

4 (B) One and five-tenths percent (1.5%) for the collection
5 of district assessments by the county collector; and

6 (C) One-eighth percent (0.125%) for services of a county
7 treasurer in disbursing the moneys collected for district assessments; and

8 (2) Adopt rules consistent with this chapter or with other
9 legislation that in its judgment may be necessary for the property
10 enforcement of this chapter.

11
12 8-15-112. Reporting requirement – Collection of assessments.

13 (a)(1)(A) By March 1 of each year or upon the creation of a district
14 that uses or intends to use the county collector for collection of district
15 assessments shall file an annual report with the county clerk in any county
16 in which a portion of the district is located.

17 (B) The annual report required under this section shall be
18 available for inspection and copying by assessed landowners in the district.

19 (C) The county clerk shall not charge any costs or fees
20 for filing the annual report required under this section.

21 (D) The district shall deliver a filed copy of the annual
22 report required under this section to the county collector within five (5)
23 days of filing.

24 (2) The annual report required under this section shall contain
25 the following information as of December 31 of the current calendar year:

26 (A) A list of contracts, identity of the parties to the
27 contracts, and obligations of the district;

28 (B) Any indebtedness, including bonded indebtedness, and
29 the reason for the indebtedness, including the following:

30 (i) The stated payout or maturity date of the
31 indebtedness, if any; and

32 (ii) The total existing delinquent assessments and
33 the party responsible for the collection;

34 (C) Identification of each member of the board of
35 directors of the district and each member's contact information;

36 (D) The date, time, and location for any scheduled meeting

As Engrossed: S3/5/13 S3/14/13 S3/20/13

SB640

1 of the district for the following year;

2 (E) The contact information for the district assessor;

3 (F) Information concerning to whom the county treasurer is
4 to pay district assessments;

5 (G) An explanation of the applicable statutory penalties,
6 interest, and costs;

7 (H) The method used to compute district assessments; and

8 (I) A statement itemizing the income and expenditures of
9 the district, including a statement of fund and account activity for the
10 district.

11 (b)(1) A district that does not comply with subsection (a) of this
12 section commits a violation punishable by a fine of not less than one hundred
13 dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense.

14 (2) A fine recovered under subdivision (b)(1) of this section
15 shall be deposited into the county clerk's cost fund.

16 (c)(1) On or before December 31, the district shall file its list of
17 special assessments for the following calendar year with the county clerk.

18 (2)(A) After filing the list of special assessments under
19 subdivision (c)(1) of this section, the district shall deliver a copy of the
20 filed list of special assessments to the preparer of the tax books.

21 (B) If the county collector is not the designated preparer
22 of the tax books, the district shall deliver a copy of the filed list of
23 special assessments to the county collector.

24 (3) The list of special assessments required under subdivision
25 (c)(1) of this section shall contain:

26 (A) A list of each parcel with an assessment levied
27 against it within the district; and

28 (B) The contact information for the district assessor.

29 (4) The list of special assessments required under subdivision
30 (c)(1) of this section shall not include assessments on parcels that
31 otherwise would not appear on the tax books for the following year.

32 (5) After the December 31 deadline to file the list of special
33 assessments required under subdivision (c)(1) of this section, the county
34 collector may reject an assessment submitted by the district for inclusion in
35 the list of special assessments.

36 (d)(1) After the district files the list of special assessments

As Engrossed: S3/5/13 S3/14/13 S3/20/13

SB640

1 required under subsection (c), the county collector shall collect the
2 assessments at the same time the county collector collects the other taxes on
3 the property.

4 (2) The county collector shall pay the funds collected under
5 subdivision (d)(1) of this section to the county treasurer at the same time
6 that the county collector pays all other taxes to the county treasurer.

7 (3) The county treasurer shall distribute the funds received
8 under subdivision (d)(2) of this section to the district in the same manner
9 as he or she distributes funds to other tax entities.

10
11 8-15-113. Financing projects.

12 (a) A district may establish a PACE program to provide loans for the
13 initial acquisition and installation of energy efficiency improvements,
14 renewable energy projects, and water conservation improvements with
15 consenting real property owners of existing real property and new
16 construction.

17 (b)(1) The district may authorize by resolution the issuance of bonds
18 or the execution of a contract with a governmental entity or a private entity
19 to provide the loans under subsection (a) of this section.

20 (2) The resolution shall include without limitation the
21 following:

22 (A) The type of renewable energy project, water
23 conservation improvement, or energy efficiency improvement for which the loan
24 may be offered;

25 (B) The proposed arrangement for the loan program,
26 including without limitation:

27 (i) A statement concerning the source of funding
28 that will be used to pay for work performed under the loan contract;

29 (ii) The interest rate and time period during which
30 contracting real property owners would repay the loan; and

31 (iii) The method of apportioning all or any portion
32 of the costs incidental to the financing, administration, and collection of
33 the arrangement among the consenting real property owners and the
34 governmental entity;

35 (C) A minimum and maximum aggregate dollar amount that may
36 be financed per property;

As Engrossed: S3/5/13 S3/14/13 S3/20/13

SB640

1 (D)(i) A method for prioritizing requests from real
2 property owners for financing if the requests appear likely to exceed the
3 authorization amount of the loan program.

4 (ii) Priority shall be given to those requests from
5 real property owners that meet the eligibility requirements on a first come,
6 first served basis.

7 (E) Identification of a local official authorized to enter
8 into loan contracts on behalf of the district; and

9 (F) A draft contract specifying the terms and conditions
10 proposed by the district.

11 (c)(1) The district may combine the loan payment required by the loan
12 contract with the billing for the real property tax assessment for the real
13 property where the renewable energy project, water conservation improvement,
14 or the energy efficiency improvement is installed.

15 (2) The district may establish the order in which a loan payment
16 will be applied to the different charges.

17 (3) The district may not combine the billing for a loan payment
18 required by a contract authorized under this section with a billing of
19 another county or political subdivision unless the county or political
20 subdivision has given its consent by a resolution or ordinance.

21 (d) The district shall offer private lending institutions the
22 opportunity to participate in local loan programs established under this
23 section.

24 (e)(1)(A) In order to secure a loan authorized under this section, the
25 district may place a lien equal in value to the loan against any real
26 property where the renewable energy project, water conservation improvement,
27 or the energy efficiency improvement is installed.

28 (B) The lien shall attach to the real property when it is
29 filed in the county recorder's office for record.

30 (2)(A)(i) The priority of the lien created under this chapter is
31 determined based on the date of filing of the lien.

32 (ii) Except as provided in subdivision
33 (e)(2)(A)(iii) of this section, the priority of the lien shall be determined
34 in the same manner as the priority for other real property tax and assessment
35 liens.

36 (iii) A lien created under this chapter shall be

As Engrossed: S3/5/13 S3/14/13 S3/20/13

SB640

1 subordinate to any real or personal property tax liens.

2 (iv) A district shall discharge the lien created
3 under this chapter upon full payment of the lien.

4 (B) If the real property is sold, the lien shall stay
5 attached to the real property, and the loan created under this chapter will
6 be owed by the new real property owner.

7 (C) If the real property enters into default or
8 foreclosure:

9 (i) Payment of the assessment shall not be sought
10 from a member of the district who does not own the real property that entered
11 into default or foreclosure;

12 (ii) Repayment of the assessment shall not be
13 accelerated automatically; and

14 (iii) The balance of the assessment shall be repaid
15 according to the terms of the agreed-upon schedule.

16 (3) The district may bundle or package the loans for transfer to
17 private lenders in a manner that would allow the liens to remain in full
18 force to secure the loans.

19 (f)(1) Before the enactment of an ordinance under this section, a
20 public hearing shall be held at which interested persons may object to or
21 inquire about the proposed loan program or any of its particulars.

22 (2) The public hearing shall be advertised one (1) time per week
23 for two (2) consecutive weeks in a newspaper of general circulation in the
24 district.

25
26 8-15-114. Program guidelines.

27 The board of directors, together with any third-party administrator it
28 may select, shall determine:

29 (1) The guidelines of the PACE program, including without
30 limitation that:

31 (A) The base energy performance evaluation shall be
32 completed by a certified and qualified energy evaluation professional to
33 determine existing energy use and options for improved energy efficiency;

34 (B) The approved improvements create a positive cash flow;

35 (C) Work shall be performed by qualified and certified
36 contractors in the field of energy efficiency and methods of renewable energy

As Engrossed: S3/5/13 S3/14/13 S3/20/13

SB640

1 installation;

2 (D) Performance testing and verification shall be
3 performed by a qualified professional after the work is completed;

4 (E) Adequate consumer protections are in place; and

5 (F) The applicable underwriting standards for the
6 participants in the program are established;

7 (2) The qualifications of the vendors performing installations
8 under this chapter;

9 (3) The mechanisms by which the district will remit the received
10 special assessment payments and any cost reimbursement; and

11 (4) Any other matters necessary to implement and administer the
12 PACE program.

13
14 8-15-115. Payment by special assessments.

15 The credit and taxing power of the State of Arkansas will not be
16 pledged for the debt evidenced by the bonds, which will be payable solely
17 from the revenues received from the special assessments on the participants'
18 real property under this chapter.

19
20 8-15-116. Bonds.

21 (a) A district may:

22 (1) Issue bonds to provide the PACE program loans authorized by
23 this chapter; and

24 (2) Create a debt reserve fund of legally available moneys from
25 nonstate sources as partial security for the bonds.

26 (b) Bonds issued under this chapter and income from the bonds,
27 including any profit made on the sale or transfer of the bonds, are exempt
28 from taxation in this state.

29 (c) Bonds issued under this chapter shall:

30 (1)(A) Be authorized by a resolution of the board of directors.

31 (B) The authorizing bond resolution may contain any terms,
32 covenants, and conditions that the board of directors deems to be reasonable
33 and desirable; and

34 (2) Have all of the qualities of and shall be deemed to be
35 negotiable instruments under the laws of the State of Arkansas.

36

As Engrossed: S3/5/13 S3/14/13 S3/20/13

SB640

1 8-15-117. Sale.

2 The bonds may be sold in such a manner, either at public or private
3 sale, and upon such terms as the board of directors of a district shall
4 determine to be reasonable and expedient for effectuating the purposes of
5 this chapter.

6
7 8-15-118. Revolving fund.

8 (a) A district may maintain a revolving fund to be held in trust by a
9 banking institution chosen by the board of directors separate from any other
10 funds and administered by the board of directors.

11 (b) A district may transfer into its revolving fund money from any
12 permissible source, including:

- 13 (1) Bond revenues;
14 (2) Contributions; and
15 (3) Loans.

16
17 8-15-119. Notice to mortgage lender.

18 At least thirty (30) days before the execution of an agreement with a
19 district, an owner shall provide written notice to each mortgage lender
20 holding a lien on the owner's property of the owner's application to
21 participate in a PACE program.

22
23 */s/D. Johnson*

24
25
26 **APPROVED: 04/11/2013**

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: MAYOR & CITY COUNCIL
FROM: JASON KELLEY, ASST. CITY ATTORNEY JK
THRU: KIT WILLIAMS, CITY ATTORNEY
DATE: SEPTEMBER 30, 2013
RE: ENERGY IMPROVEMENT DISTRICTS/ PACE BONDS

To my knowledge, Fayetteville is the first governmental entity to make use of the new Property Assessed Clean Energy Act. The Act authorizes the creation of "Energy Improvement Districts" which are independent legal entities (akin to other types of improvement districts in the City) authorized to create, finance and manage programs promoting renewable energy, energy efficiency and water conservation improvements on residential, commercial and industrial property.

The districts have the authority to issue bonds, which are characterized in the enabling legislation as revenue bonds. These bonds would provide further funding for loans to be made to individual property owners for purposes of financing energy improvements. Repayment of the loans is tied to the collection of real property taxes and is handled through the normal county property tax collection process.

The enabling legislation is silent on the method of appointment of the board of directors when only one city is creating a district. The Act provides that when "a district is composed of one (1) or more cities . . . members shall be appointed as specified in the agreement establishing the district[.]" Ark. Code Ann. § 8-15-108(b)(4). Obviously, when only one city is participating, there is no one else to enter an "agreement." The Act specifically states that these districts are created "by adoption of an ordinance" and not through an agreement. Ark. Code Ann. § 8-15-105(a). Thus, I have drafted this proposed ordinance to provide for appointment of members to the board of directors. However, the draft also provides that if another governmental entity desires to join, the makeup of the board would be as determined in the agreement between Fayetteville and the joining entity.

It is my opinion that the provision in the draft ordinance clarifying and re-asserting the legal and financial independence of this District from the City is important due to the constitutional prohibition the City must follow restricting it from appropriating money or loaning credit for the benefit of any corporation or private individual. Ark. Const. Art. 12, § 5 & Art. 16, § 1. State created improvement districts have greater leeway in this area. *See generally Fitzgerald v. Walker*, 55 Ark. 148, 17 S.W. 702 (1891), *Nakdimen v. Fort Smith & Van Buren Bridge Dist.*, 115 Ark. 194, 172 S.W. 272 (1914), *Ray v. City of Mountain Home*, 228 Ark. 885, 311 S.W.2d 163 (1958); *Bell v. Fulkerson*, 291 Ark. 604, 727 S.W.2d 141 (1987). Protecting this legal distinction is important for the future viability of the potential future bonds, both for the District and for the City.

TO: Mayor Jordan
Don Marr, Chief of Staff
Paul Becker, Finance Director
Peter Nierengarten, Sustainability & Strategic Planning

Kit Williams
City Attorney
Jason B. Kelley
Assistant City Attorney

FROM: Kit Williams, City Attorney

DATE: January 28, 2013

RE: Energy Improvement Districts Bill
Priority Status of Property Assessed Clean Energy Bonds

You asked me to answer Kenton Smith's e-mail questions about the draft bill establishing Property Assessed Clean Energy (PACE) bonds. §8-15-112 *Financing projects* (e) (2) (A) refers to the priority to be given to PACE bonds.

“(2) (A)(i) The priority of the lien created under this chapter is determined based on the date of filing of the lien.

(ii) The priority of the lien shall be determined in the same manner as the priority for other real property tax and assessment liens.”

This language is not perfectly clear. Priority for real estate taxes is very clear: “Taxes assessed upon real and personal property shall bind them and be entitled to preference over all judgments, executions, encumbrances, or liens whensoever created.” A.C.A. §26-34-101 (a).

Real estate taxes are owned to a governmental entity and will be paid during a sale or foreclosure BEFORE all other liens and mortgages. Will PACE bonds receive such preferential status? Not during a sale.

As opposed to a tax lien, the lien supporting a PACE bond does not become fully due upon the sale, but transfers through the sale to remain a lien on the property to be paid by the purchaser (new owner). This appears to be the case upon default or foreclosure also.

However, A.C.A. §80-50-108 **Effect of sale** in the **Statutory Foreclosure** subchapter states: “A sale made by a mortgagee or trustee shall foreclose and terminate all interest in the trust property of all persons to whom notice is given under §18-50-104”

A.C.A. §18-50-104 requires that notice be given to “(a)ny person having a lien or interest subsequent to the interest of the mortgage or trustee” All such normal liens would be revoked and invalidated by the statutory foreclosure action in favor of a mortgage entered into prior to the filing of these other liens.

Tax liens and apparently PACE bond liens will not be cut off, but will survive a statutory foreclosure sale. The tax lien would have to be paid off, while the PACE bond lien would simply still attach to the property and not be extinguished by the foreclosure of the property despite §18-50-108 (a).

This is further bolstered by the proposed §8-15-112 (e)(2)(B) & (E) subsections:

“(B) If the real property is sold, the lien shall stay attached to the real property, and the loan created under this chapter will be owed by the new real property owner.

(C) If the real property enters into default or foreclosure:

(i) Repayment of the assessment shall not be accelerated automatically; and

(ii) The balance of the assessment shall be repaid according to the terms of the agreed-upon schedule.”

CONCLUSION

All this proposed language appears to give a qualified preference for PACE bond liens. I believe these liens will remain attached to the real property’s title until they are fully paid. A sale, default, or statutory foreclosure does not require PACE bonds to be paid during these events (as taxes would be). However, it appears the PACE bonds will survive any of these events so that the new owner will still have to pay off the PACE bonds pursuant to the original terms of the bonds.

POSITIVE CASH FLOW

A positive cash flow from sufficient savings of utility or other costs must be established by the PACE Board of Directors before bonds can be sold or funds loaned to a property owner desiring to use PACE funds for improved energy efficiency. §8-15-113 (1)(B). There is no definition of “positive cash flow” in the proposed statute nor any description or requirements about how to determine that a “positive cash flow” would exist. Most of the “positive cash flow” analysis will be determined by how long the payback period would be (10 years to 30 years?) and what percentage will be applied to repay the loan. If a thirty year payback period at a very low interest rate is used (as was for our new Energy Efficiency Code requirements), a “positive cash flow” could likely be achieved. More realistic assumptions would make a positive cash flow determination less likely to be achieved.

We also remain concerned that a PACE program established under this statute by City Ordinance should not be allowed to run afoul of Article 16 §1 of the Arkansas Constitution:

“Neither the State nor any city ... shall ever lend its credit for any purpose whatsoever, nor shall any county, city or town or municipality ever issue any interest bearing evidences of indebtedness”

The proposed statute does not appear to violate Article 16 §1 of the Constitution. However, the PACE District Board of Directors is authorized to issue bonds whose “resolution may contain any terms, covenants, and conditions that the board of directors deem reasonable and desirable.” {§8-15-115 (c)(1)} Such terms and conditions must not pledge tax revenue, nor any revenue not derived from repayment of bonds, non-city “contributions” or bond revenue.

City of Fayetteville Staff Review Form

C. 5
Amend Chapter 71.052 "U" Turns
Page 1 of 8City Council Agenda Items
and
Contracts, Leases or Agreements

10/15/2013

City Council Meeting Date
Agenda Items Only

Chris Brown ^{CB} Engineering Development Services
 Submitted By Division Department

Action Required:

Ordinance Revision to Allow U Turns on Streets with Medians

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 ☐

Jeffrey C. Pite
 Department Director

09.27.2013
 Date

Previous Ordinance or Resolution #

[Signature]
 City Attorney

9-27-13
 Date

Original Contract Date:

Original Contract Number:

Paul A. Bueh
 Finance and Internal Services Director

9-27-2013
 Date

Received in City
 Clerk's Office

[Signature]
 Chief of Staff

9-30-13
 Date

Received in
 Mayor's Office

[Signature]
 Mayor

9/30/13
 Date

Comments:



www.accessfayetteville.org

CITY COUNCIL MEMO

MEETING DATE: OCTOBER 15, 2013

TO: City Council

CC: Mayor Jordan
Don Marr, Chief of Staff
Jeremy Pate, Development Services Director *JP*

FROM: Chris Brown, City Engineer *CB*

DATE: September 26, 2013

SUBJECT: Ordinance Revision to Allow U-Turns

City Code Chapter 71.052 addresses u-turns in the City, and prohibits them at signalized intersections. This prohibition affects the soon to be completed section of Highway 265, in that the design and concept of the Highway 265 project is to utilize medians to limit left turns, and restrict them to median break locations, several of which are located at signalized intersections on the project. The access management plan and agreement that the City has with the Arkansas State Highway and Transportation Department references u-turns, and the street is designed to accommodate u-turns by providing widened areas at each median break and intersection. If u-turns are not allowed, the street system will not function as efficiently, and problems with cars turning around on side streets at private driveways, or cutting through neighborhood side streets will likely be seen.

Future streets, namely Garland Avenue and Ruppel Road, are planned to be constructed with medians, which may create a situation similar to the one Highway 265. Therefore, staff recommends that the Ordinance be changed to allow u-turns on streets with medians.

The Transportation Committee reviewed the proposed changes, and recommended that the existing Ordinance language remain, with the additional provision to allow u-turns on streets with medians unless prohibited by the use of "no u-turn" signage. The original and proposed ordinance language is attached.

ORIGINAL LANGUAGE:

71.052 "U" Turns

No vehicle shall be turned so as to proceed in the opposite direction on any street, except at an intersection, and such turn shall be made then only if traffic is not controlled at such intersection by a traffic control signal.

(Code 1965, §19-79; Ord. No. 1447, 6-7-65; Code 1991, §71.052)

Cross reference(s)--Penalty, §71.999.

State law reference(s)--Turning on curve or crest of grade prohibited, A.C.A. §27-51-402.

PROPOSED LANGUAGE:

71.052 "U" Turns

No vehicle shall be turned so as to proceed in the opposite direction on any street, except at an intersection, and such turn shall be made then only if traffic is not controlled at such intersection by a traffic control signal, except on streets with median access control, on which such turns shall be allowed at all breaks in the median unless signage is displayed prohibiting such turns.

(Code 1965, §19-79; Ord. No. 1447, 6-7-65; Code 1991, §71.052)

Cross reference(s)--Penalty, §71.999.

State law reference(s)--Turning on curve or crest of grade prohibited, A.C.A. §27-51-402.



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

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

FROM: Kit Williams, City Attorney



DATE: September 27, 2013

RE: "U" Turns

I inserted the state statutory law restriction for any "U" Turn within the "U" turn code section so that all the rules about "U" turns would be in a single location. I also broke Engineering's proposed language into two sections to avoid a long sentence with two consecutive "except" clauses in an attempt to make our regulation more clear and simple.

I believe my proposed wording accomplishes the change to allow "U" turns on Highway 265 as proposed by Engineering in order to help drivers more easily and quickly access properties on both sides of Highway 265.

ORDINANCE NO. _____

AN ORDINANCE TO REPEAL § 71.052 "U" TURNS AND TO ENACT A NEW § 71.052 "U" TURNS INTO THE FAYETTEVILLE CODE TO PERMIT "U" TURNS ON STREETS WITH MEDIANS

WHEREAS, streets with medians including the newly enlarged Highway 265 north of Mission have been designed to safely allow "U" turns at median breaks for easier access to property on back sides of the street; and

WHEREAS, the current restriction on permitted "U" turns within the Fayetteville Code needs to be amended to allow "U" turns at these median breaks.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby repeals § 71.052 "U" Turns in its entirety and enacts a replacement § 71.052 "U" Turns as shown below:

"71.052 "U" Turns

- (a) *Sufficient visibility required by State law.* No vehicle shall be turned so as to proceed in the opposite direction (a "U" turn) where the vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.
- (b) *Streets without median access control.* No vehicle shall be turned in the opposite direction on a street without median access control except at a non-signalized intersection.
- (c) *Streets with median access control.* "U" turns are permitted on streets with median access control at all constructed breaks in the median unless signage is displayed prohibiting such "U" turns."

Page 2
Ordinance No.

PASSED and **APPROVED** this 15th day of October, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

current law

(Code 1965, §19-78; Ord. No. 1447, 6-7-65; Code 1991, §71.051)

Cross reference(s)--Penalty, §71.999.

State law reference(s)--Turning at intersections, A.C.A. §27-51-401.

71.052 "U" Turns

No vehicle shall be turned so as to proceed in the opposite direction on any street, except at an intersection, and such turn shall be made then only if traffic is not controlled at such intersection by a traffic control signal.

(Code 1965, §19-79; Ord. No. 1447, 6-7-65; Code 1991, §71.052)

Cross reference(s)--Penalty, §71.999.

State law reference(s)--Turning on curve or crest of grade prohibited, A.C.A. §27-51-402.

71.053 Turning And Stopping Signals

- (A) No person shall turn a vehicle from a direct course upon a street or highway without giving an appropriate signal, in the event any other vehicle may be affected by such movement. A signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.
- (B) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided in this chapter to the driver of any vehicle immediately to the rear, when there is opportunity to give such signal.
- (C) Any stop or turn signal, when required, shall be given either by means of the hand and arm or by signal lamps; provided that, any motor vehicle in use on a street or highway shall be equipped with, and the required signal shall be given by, signal lamps, when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle and to any combination of vehicles.
- (D) All signals required by this section given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

- (1) *Left turn.* Hand and arm extended horizontally.

- (2) *Right turn.* Hand and arm extended upward.

- (3) *Stop or decrease of speed.* Hand and arm extended downward.

(Code 1965, §19-81; Ord. No. 1447, 6-7-65; Code 1991, §71.053)

Cross reference(s)--Penalty, §71.999.

State law reference(s)--Signals for turning, stopping, or decreasing speed required, A.C.A. §27-51-403; Signals to stop or sign, A.C.A. §27-51-404; Hand and arm signals, A.C.A. §27-51-405.

71.054-71.064 Reserved

ARTICLE IV SPEED REGULATIONS

71.065 General Speed Restrictions

- (A) No person shall drive a vehicle on any street or highway in the city at a speed greater than is reasonable and prudent under the conditions then existing.
- (B) Where no special hazard exists, the following speeds shall be lawful, but any speed in excess of such limits shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:
- (1) Twenty miles per hour in any business district.
- (2) Twenty-five miles per hour in any residential district.
- (C) The fact that the speed of the vehicle is lower than the foregoing prima facie limits shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when traveling upon any narrow or winding roadway, or when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or street conditions, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the street in compliance with legal requirements and the duty of all persons to show due care.

(Code 1965, §19-68; Ord. No. 1447, 6-7-65; Code 1991, §71.065)

Cross reference(s)--Penalty, §71.999.

State law reference(s)--Limitations generally, A.C.A. §27-51-201; Local authorities may alter prima facie speed limits, A.C.A. §27-51-206.

State Law

27-51-402

TRANSPORTATION

116

27-51-402. Turning on curve or crest of grade prohibited.

No vehicle shall be turned so as to proceed in the opposite direction upon any curve or upon the approach to or near the crest of a grade where the vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet (500').

History. Acts 1937, No. 300, § 65; Pope's Dig., § 6723; A.S.A. 1947, § 75-616.

27-51-403. Signals for turning, stopping, changing lanes, or decreasing speed required.

(a) No person shall turn a vehicle from a direct course upon a highway unless and until the movement can be made with reasonable safety and then only after giving a clearly audible signal by sounding the horn if any pedestrian may be affected by the movement or after giving an appropriate signal in the manner provided in subsection (b) of this section in the event any other vehicle may be affected by the movement.

(b) A signal of intention to change lanes or to turn right or left shall be given continuously during not less than the last one hundred feet (100') traveled by the vehicle before changing lanes or turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided in this subchapter to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

History. Acts 1937, No. 300, § 67; Pope's Dig., § 6725; A.S.A. 1947, § 75-618; Acts 2007, No. 364, § 1.

Amendments. The 2007 amendment added "changing lanes" and made a minor

punctuation change in the section heading; and in (b), inserted "change lanes or to" preceding "turn" and inserted "changing lanes or" preceding "turning."

CASE NOTES**ANALYSIS**

Contributory Negligence.
Evidence of Negligence.
Instructions.
Jury Questions.
Ordinary Care.
Recovery Precluded.
Sufficiency of Evidence.

Contributory Negligence.

The law of the road is that the automobile in front has the superior right to the use of the highway for the purpose of leaving it on either side, and a driver in the rear who fails to observe such rule, although driver in front failed to give

signal, is guilty of contributory negligence. *Jones v. King*, 211 Ark. 1084, 204 S.W.2d 548 (1947).

Evidence of Negligence.

It is the duty of one driving a car, where there is another car following close behind him, to warn the approaching car of his intention to stop, and the sudden stopping without any notice to the driver of the car immediately behind is, if unexplained, negligence. *Missouri Pac. Transp. Co. v. Sacker*, 200 Ark. 92, 138 S.W.2d 371 (1940).

A violation of this section, while not conclusive of the issue, may be evidence of negligence on the part of the violator.

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City of Fayetteville Staff Review Form

C. 6
Amend Chapter 115 Pawnbrokers
Page 1 of 6City Council Agenda Items
and
Contracts, Leases or Agreements

10/15/2013

City Council Meeting Date
Agenda Items Only

Chief of Police Greg Tabor

Submitted By

Police

Division

Police

Department

Action Required:

Staff seeks council approval to amend Fayetteville City Code Chapter 115, Pawnbrokers, to include secondhand dealers.

\$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

☐

Greg Tabor

8/20/2013

Previous Ordinance or Resolution #

Department Director

Date

Original Contract Date:

City Attorney

Date

Original Contract Number:

Paul A. Beebe

8-20-2013

Finance and Internal Services Director

Date

Received in City
Clerk's Office

King

Chief of Staff

Date

Received in
Mayor's Office

BEP

Mayor

Date

Comments:

To: Mayor Lioneld Jordan and City Council

From: Greg Tabor, Chief of Police 

Date: Tuesday, August 20, 2013

Re: Pawnbroker and Secondhand Dealer Ordinance

Recommendation:

Staff seeks council approval to amend Fayetteville City Code Chapter 115, Pawnbrokers, to include secondhand dealers for the purpose of collecting, maintaining and reporting records of purchase.

Background and Discussion:

The first City of Fayetteville pawnbroker ordinance with a yearly fee was enacted on July 3, 1967. The police department requests the current code, Chapter 115, be amended to include secondhand dealers to assist in the identification and recovery of stolen property.

The police department held public meetings to work with merchants on the amendment. The two primary concerns from merchants were the proposed fifteen day holding period for purchased property and the \$300 yearly permit fee currently paid by pawnbrokers. The holding period for purchased items has been reduced to seven days, to match state law as it applies to pawnbrokers. The yearly permit fee has been reduced to \$75.00.

The ordinance amendment was presented to the City of Fayetteville Ordinance Review Committee on Monday, September 25, 2013. After minor revisions, it was determined the amended ordinance should be presented to the full council.

Secondhand dealers purchase many of the same items as pawnbrokers, but secondhand dealers have no responsibility to report purchases. The police department does not have any means to locate stolen property that has been sold to local secondhand dealers.

Budget Impact:

None

GT/jf

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 115: PAWNBROKERS OF THE CODE OF FAYETTEVILLE, RENAMING IT TO CHAPTER 115: PAWNBROKERS AND SECONDHAND DEALERS, REQUIRING LICENSURE OF SECONDHAND DEALERS AND REQUIRING ELECTRONIC REPORTING OF CERTAIN ITEMS PURCHASED BY SECONDHAND DEALERS

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 Chapter 115: Pawnbrokers of the Code of Fayetteville so that, after amendment, the chapter shall read as presented in Exhibit "A", which is attached hereto and incorporated herein.

PASSED and APPROVED this _____ day of _____, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

CHAPTER 115: PAWNBROKERS AND SECONDHAND DEALERS

115.01 Definitions

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(A) *Pawnbroker*. Any person, firm, or corporation whose business or occupation is to take, receive, by way of pledge, pawn, or exchange any goods, wares, or merchandise, or any kind of personal property whatsoever.

(B) *Secondhand Dealer*. Any person, partnership, corporation, limited liability company, or other legal entity, whether as a principal, agent or employee thereof, licensed under this Chapter, whose business includes selling, trading or buying any kind of used property for profit. For purposes of this Chapter, "used property" includes only the following:

- (1) Jewelry, precious metals, precious stones, collectible coins, watches, bracelets, rings, necklaces and earrings.
- (2) Electronics, typewriters, calculators, cash registers, copying machines, facsimile machines, computer hardware or software, computers, computer parts, computer monitors, computer printers, computer memory cards, computer storage media, computer hard drives, cellular telephones, televisions, speakers, stereos, stereo components, gaming consoles, any kind of accessories, cameras, video cameras or any other kind of device that can be used for viewing or listening to motion pictures, videos or music.
- (3) Tools used to facilitate manual or mechanical work.
- (4) Musical instruments, including all devices or contrivances designed to produce musical tones or sounds.
- (5) Compact discs (CDs), digital video discs (DVDs), blu-ray discs, video game discs, video game cartridges, and any other device that can be used in or attached to a gaming console or computer to play games.
- (6) Sporting equipment of any type needed for use in any sporting activity.

(C) Notwithstanding subsection (B) of this section, the following do not constitute secondhand dealers:

- (1) Persons conducting a private residential sale commonly known as a "garage sale" or "yard sale," so

long as such sale takes place on residentially zoned property.

- (2) An organization qualified as a section 501(c)(3) tax-exempt organization by the Internal Revenue Code.
- (3) A used motor vehicle dealer.
- (4) Auctioneers, auction houses and flea markets.
- (5) Antique or Used Furniture Dealers.
- (6) Persons solely conducting sales online via internet websites including, but not limited to, Craigslist and eBay.

115.02 License Requirements

(A) The business of owning, operating, or conducting a business defined by §115.01 hereof, as that of a pawnbroker or secondhand dealer, is hereby declared to be a privilege, and no person shall own, operate, conduct, or engage in any such business unless he has a current license to do so issued by the city.

(B) Licenses as herein provided for shall be issued by the finance department and attested by the license officer. The mayor shall have authority to promulgate from time to time any rules and regulations necessary for the proper administration of this chapter.

(C) *Application required.*

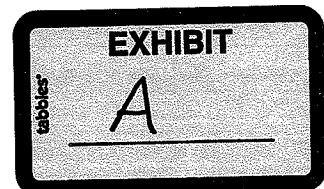
- (1) Any person desiring to engage in any business for which a license is required by this chapter shall file an application for such license with the license officer. The application shall then be referred to the chief of police of the city, who shall make a written recommendation to the mayor.

- (2) It shall be unlawful for any person to make any false statement or representation in any application or give any false statement or representation in any application or give any false answer to any question contained therein.

(D) The annual license fee shall be \$75.00.

(E) A license applied for under this chapter shall be issued by the mayor upon compliance by the applicant with all provisions of this chapter, including payment of the prescribed fee.

(F) A license issued under this chapter shall not be transferable.



(G) Every license issued under this chapter shall expire on the next December 31st following its issuance.

(H) *Revocation.*

- (1) When any person licensed under this chapter is convicted of a violation of any provision of this chapter, the court shall, in addition to the penalty imposed for such violation, revoke such person's license.
- (2) When any license is revoked under this chapter no new license shall be issued to the same person within one year after such revocation.

115.03 Duty To Maintain Books And Records

Every pawnbroker and secondhand dealer shall keep a book or record, which shall be numbered consecutively and will correspond to the pawn ticket or stub issued to the person so pawning, pledging, leaving as security, or selling such article. The book or record shall contain an accurate, detailed description, so as to be readily identified, bearing the serial number, if it has one, of the article so pawned, pledged, left as security, or sold, as well as the make, model, color and size of the article. The book or record shall further contain the date and hour the article was pawned, pledged, left as security, or sold, the name, residence, address, state-issued identification or driver's license number, telephone number, date of birth, and signature of the person so pawning, pledging, leaving such article as security, or selling, the amount of money loaned or advanced on the article, and the date that such is to be redeemed, or the sale amount of the article. The book or record shall at all times be open to inspection by the chief of police, or any police officer of the city.

115.04 Daily Reports

Every pawnbroker, pawnshop, or secondhand dealer doing business in the City of Fayetteville, Arkansas, shall be required to upload via internet connection to the entity designated by the Fayetteville Police Department, information detailing all goods pawned, pledged, or left as security or sold with the pawnbroker, pawnshop, or secondhand dealer, within (1) business day of receipt.

115.05 Waiting Period Before Disposition Of Pawned Article Or Article Sold to Secondhand Dealer

It shall be unlawful for any pawnbroker, or secondhand dealer to sell, exchange, barter, or remove from his place of business or permit to be sold or redeemed any article pawned, pledged, left as security, or sold for a period of seven (7) days after making such daily report unless the article is redeemed by the person who sold or pawned it.

115.06-115.98 Reserved

115.99 Penalty

Every person, firm, or corporation, or their agents, servants, or employees, who shall violate any of the provisions of this chapter, shall upon conviction thereof, be guilty of a misdemeanor, and shall be fined in a sum not less than \$10.00 nor more than \$50.00, and each day's violation shall constitute a separate offense.

City of Fayetteville Staff Review Form

C. 7
Boston Mountain Solid Waste District
Page 1 of 6City Council Agenda Items
and
Contracts, Leases or Agreements

October 15th, 2013

City Council Meeting Date
Agenda Items Only

Brian Pugh

Submitted By

Solid Waste and Recycling

Division

Transportation Services

Department

Action Required:

Ordinance waiving the requirements of formal competitive bidding and authorizing a Contract for Service with Boston Mountain Solid Waste District for an education position utilized in the Solid Waste and Recycling Division.

\$ 25,000.00

Cost of this request

\$ 739,593.00

Category / Project Budget

Services & Charges

Program Category / Project Name

5500.5000.5315.00

Account Number

\$ 444,390.10

Funds Used to Date

SW Operations & Administration

Program / Project Category Name

\$ 295,202.90

Remaining Balance

Solid Waste and Recycling

Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐

Terry J. Gully

Department Director

9-27-13
Date

Previous Ordinance or Resolution #

J. Skellie

City Attorney

10-1-13
Date

Original Contract Date:

Original Contract Number:

Paul A. Beck

Finance and Internal Services Director

10-1-2013
DateReceived in City
Clerk's Office

09-27-13 P03:06 RCVD

D. Miller

Chief of Staff

10-1-13
DateReceived in
Mayor's Office

L. Jordan

Mayor

10/1/13
Date

Comments:

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff
Terry Gulley, Transportation Director

From: Brian Pugh, Waste Reduction Coordinator 

Date: September 27, 2013

Subject: Ordinance waiving the requirements of formal competitive bidding and authorizing a Contract for Service with the Boston Mountain Solid Waste District for an education position utilized in the Solid Waste and Recycling Division.

RECOMMENDATION

Fayetteville City Administration recommends authorizing a ordinance waiving the requirements of formal competitive bidding and authorizing a Contract for Service with the Boston Mountain Solid Waste District for an education position utilized in the Solid Waste and Recycling Division.

BACKGROUND

The Solid Waste & Recycling Division utilized two Energy Corp members from November 2012 to September 2013 for education related activities. The two positions were split with one full time and one part time position working on the recycling marketing and education programs. To date these positions have helped with these programs by reaching approximately 1,800 people with presentations ranging from solid waste and recycling tours, waste free lunches, recycling basics, composting techniques and how recycling can help with energy savings. These positions have been vital working in house on researching other programs, website maintenance and brochure and sign development and also crucial in conducting outreach to businesses and non-profits. These positions conducted much of the door to door education in rolling out the commercial glass program and cigarette litter prevention plan on Dickson St.

DISCUSSION

The Energy Corp program is no longer being funded through the Federal Government so there will be no positions in the 2013-2014 period in which to apply for help with the recycling education efforts. The Boston Mountain Solid Waste District has an agreement in place with Madison County to supply an education position for their programs. In addition, Boston Mountain is hiring for a position that would work 20 hours a week for Washington County and 20 hours a week for the City of Fayetteville conducting education for the recycling programs.

The employee hired for the new education position would be employed through the Boston Mountain Solid Waste District and the District would handle all personnel issues and benefit packages. The cost for the City would be \$25,000 per year and would come from education budget funds already approved for 2013 and 2014.

BUDGET IMPACT

The agreement is for \$25,000 and will be paid for from the Solid Waste and Recycling Budget – Promotional Activities 5500.5060.5342.00. In 2013 the cost will be pro-rated for the last remaining quarter in 2013. There is sufficient funding in the operating budget for this position.

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A CONTRACT WITH THE BOSTON MOUNTAIN SOLID WASTE DISTRICT IN THE AMOUNT OF \$25,000.00 FOR AN ENVIRONMENTAL AND RECYCLING EDUCATION PROGRAM

WHEREAS, the Boston Mountain Solid Waste District is willing to cost-share a position, to be employed by the District, to provide environmental and recycling education; and

WHEREAS, the Boston Mountain Solid Waste District already has an agreement in place with Madison County to supply an education program and cost-sharing this position with the District would be the most cost-effective way to provide this educational program,

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 an exceptional situation exists in which competitive bidding is deemed not feasible or practical and therefore waives the requirements of formal competitive bidding and approves a Contract (marked as Exhibit "A" attached hereto and made a part hereof) between the City of Fayetteville, Arkansas and the Boston Mountain Solid Waste District in the amount of \$25,000.00 for the provision of an environmental and recycling education program for the citizens of Fayetteville.

PASSED and APPROVED this 15th day of October, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

CONTRACT FOR SERVICE

The Boston Mountain Regional Solid Waste Management District (District) and the City of Fayetteville, Arkansas agree to enter into the following agreement to provide environmental education and outreach in the City of Fayetteville.

Environmental Education is to be provided by the District. The District has the resources available to provide public education and community outreach relating to solid waste management and waste minimization education in Fayetteville.

It is agreed by the District and the City of Fayetteville as follows:

The District shall:

1. Provide waste reduction and waste minimization education to citizens of the City of Fayetteville.
2. Prepare and present education programs to Fayetteville's citizens on services and programs available to them related to solid waste management, including recycling.
3. Provide an environmental educator that will perform at least 1,040 hours per year on environmental education for the City. For any partial year performance, the District shall provide a prorated number of hours per year at a rate of 86.67 hours per month.
4. The environmental educator will be an employee of Boston Mountain Solid Waste District. The District agrees to indemnify and hold harmless, to the extent such is not in conflict with immunities provided for by state law, the City of Fayetteville and all of its officers and officials from any claims, of whatever nature, relating to the employment of the environmental educator.
5. Provide an annual report to the City of outreach programs and services performed. Said report shall be provided by January 31 of the year for the prior year. The report shall include detailed statistics regarding the number of Fayetteville citizens served by the education services provided by the District pursuant to this agreement, and the nature and content of educational services provided.

The City of Fayetteville shall:

1. Pay for this service the sum of \$25,000 per calendar year. A pro-rated sum shall be paid for any partial year performance for the calendar year of the execution of this agreement (2013).

This contract shall renew automatically on an annual basis unless by December 1st, either party provides written notice to the other of its intention not to renew this agreement.

All provisions of this agreement are contingent on annual budget authority granted by the City Council of the City of Fayetteville, Arkansas.

Signatures:

BOSTON MOUNTAIN REGIONAL SOLID WASTE
MANAGEMENT DISTRICT

HONORABLE FRANK WEAVER
BOARD CHAIRMAN

DATE

CITY OF FAYETTEVILLE, ARKANSAS

MAYOR LIONELD JORDAN

DATE

AGENDA REQUEST

FOR: COUNCIL MEETING OF October ¹⁵ 1, 2013

FROM:
ALDERMAN MARTIN SCHOPPMAYER

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A RESOLUTION TO AMEND THE RULES OF ORDER AND PROCEDURE OF THE FAYETTEVILLE CITY COUNCIL A. CITY COUNCIL MEETINGS 7. PRESENTATION OF AGENDA ITEMS BY ADDING A NEW SUBSECTION a. AGENDA ITEMS NOT INCLUDED WITHIN THE TENTATIVE AGENDA PACKET

APPROVED FOR AGENDA:


Alderman Martin Schoppmeyer

9.23.13
Date


City Attorney Kit Williams
(as to form)

^{12/8}
September 12, 2013
Date

09-25-13 A09:18 RCVD

9-23-13



Departmental Correspondence



**LEGAL
DEPARTMENT**

www.accessfayetteville.org

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Sondra Smith, City Clerk/Treasurer
Don Marr, Chief of Staff

FROM: Kit Williams, City Attorney

DATE: September 12, 2013

RE: Amendment to City Council Rules of Order and Procedure

Alderman Marty Schoppmeyer asked me to draft an amendment to the City Council Rules of Order and Procedure in an attempt to lessen the number of agenda items "walked-on" during the City Council Agenda Session. Alderman Schoppmeyer is concerned that such walked-on items do not give the City Council Members enough time to fully examine the item so that any questions or requests for further information can be made at the Agenda Session.

Alderman Schoppmeyer realized that some items will have to be presented at the Agenda Session rather than being included in the Tentative Agenda packet because of circumstances beyond the control of City staff. His proposed rule simply requires that the staff memo of such item "shall begin with a clear and compelling reason why this proposed agenda item could not have been included within the Tentative Agenda and cannot wait for City Council consideration at a later City Council meeting."

His proposed amendment also requests that fellow City Council Members bringing forward an agenda item not included within the Tentative Agenda packet explain “why the proposed agenda item should be included in the Final Agenda rather than postponed to the next meeting.”

Alderman Schoppmeyer’s recommended change to the Rules does not change the basic rule that every Council Member can place any agenda item on the Final Agenda at or before the Agenda Session. He merely hopes that City staff and fellow City Council members will strive to present agenda items soon enough to make the Tentative Agenda so that every City Council Member will have more time to analyze and reflect upon the suggested agenda item and get any concerns or questions presented and hopefully resolved during the Agenda Session.

RESOLUTION NO. _____

**A RESOLUTION TO AMEND THE RULES OF ORDER AND PROCEDURE
OF THE FAYETTEVILLE CITY COUNCIL A. CITY COUNCIL MEETINGS
7. PRESENTATION OF AGENDA ITEMS BY ADDING A NEW
SUBSECTION a. AGENDA ITEMS NOT INCLUDED WITHIN THE
TENTATIVE AGENDA PACKET**

WHEREAS, including agenda items within the Tentative Agenda provides the City Council several days to consider the requested Resolution or Ordinance prior to the City Council Agenda Session; and

WHEREAS, this review and consideration period is needed and desirable because it enables all members of the City Council sufficient time to examine the proposal and determine whether additional information or explanation is needed during the Agenda Session; and

WHEREAS, if a proposed Resolution or Ordinance for a proposal is not included within the Tentative Agenda packet, but “walked-on” during the Agenda Session, City Council members do not have sufficient time for full consideration of the item.

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 amends City Council Rules of Order and Procedure #A.7. **Presentation of Agenda Items** by enacting a new a. **Agenda items not included within the Tentative Agenda packet** and relettering current a. and b. to b. and c. The new a. shall read as follows:

“a. Agenda items not included within the Tentative Agenda packet.

(1) *Staff agenda items.* If the City staff requests to “walk-on” an agenda item for the City Council Agenda during the City Council Agenda Session, the memo from the City staff shall begin with a clear and compelling reason why this proposed agenda item could not have been included within the Tentative Agenda and cannot wait for City Council consideration at a later City Council meeting. Any member of the City Council including the Mayor can then place this item on the Final Agenda.

(2) *City Council Member agenda items.* City Council Members should also strive to include any agenda item a Council Member wishes the City Council to consider be included within the Tentative Agenda. If that is not possible, the City Council Member should explain during the Agenda Session why the proposed agenda item should be included in the Final Agenda rather than postponed to the next meeting. Any member of the City Council including the Mayor can then place this item on the Final Agenda.”

Current Law

Government Channel announcements and presentation, and agenda copies available at City Council meetings.

7. **Presentation of Agenda Items**

add new

a.

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

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

c. **Old business and new business.**

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

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

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

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Sarah Marsh
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Martin W. Schoppmeyer, Jr.
Ward 4 Position 1 – Rhonda Adams
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**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
October 15, 2013**

A meeting of the Fayetteville City Council will be held on October 15, 2013 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

- ✓ Approval of the October 01, 2013 City Council meeting minutes.
- ✓ **Bid #13-52 Time Striping, Inc.:** A resolution awarding Bid #13-52 and authorizing the purchase from Time Striping, Inc. of thermal striping, in variable amounts, for the Transportation Division as needed through the end of calendar year 2014.
- ✓ **Solid Waste Hauling and Disposal Fees:** A resolution approving a budget adjustment in the total amount of \$269,000.00 to provide funding for solid waste hauling and disposal fees.

B. Unfinished Business:

- 1/✓ **Amend §164.11 Height and Setback Regulations; Exceptions:** An ordinance to Amend §164.11 Height and Setback Regulations; Exceptions to enhance livability through appropriate transitions in building scale and to protect access to air and sunlight and to enact an emergency clause. *This ordinance was left on the First Reading at the September 17, 2013 City Council meeting. This ordinance was left on the Second Reading at the October 01, 2013 City Council meeting.*

Left on the Second Reading

- 2/✓ **PPL 13-4404 (Persimmon Street Master Street Plan Right-of-Way/Legacy IV Subdivision):** A resolution to approve the dedication of 70 feet of right of way for Persimmon Street along most of the owner's property as recommended by the Planning Commission. *This resolution was tabled at the October 1, 2013 City Council meeting to the October 15, 2013 City Council meeting.*

- 3/✓ **RZN 13-4467 (Mount Comfort and Shiloh/Kum & Go):** An ordinance rezoning that property described in rezoning petition RZN 13-4467, for approximately 1.65 acres located at the northwest corner of Mount Comfort Road and Shiloh Drive from R-A, Residential Agricultural and RSF-4, Residential Single-Family, 4 units per acre, to C-1, Neighborhood Commercial. *This ordinance was left on the First Reading at the October 01, 2013 City Council meeting.*

Left on the First Reading

C. New Business:

- 1/✓ **VAC 13-4478 (Twin Creeks Village Lot 19B4):** An ordinance approving VAC 13-4478 submitted by McClelland Engineering Consulting for property located at 163 Van Asche Loop, to vacate a portion of a drainage easement, a total of 0.03 acres.
- 2/✓ **ADM 13-4487 (Links at Fayetteville PZD Modification #3):** An ordinance amending a Residential Planned Zoning District entitled R-PZD 07-2452 Links at Fayetteville to revise the zoning criteria for Planning Area One, to include Use Unit 18, Gasoline Service Stations and Drive-in/Drive Through Restaurants, as a permitted use, and to revise the architectural design standards at the northeast corner of Wedington Drive and Golf Club Drive.
- 3/✓ **Dickson Street Crossing Safety Improvements:** A resolution expressing the intent of the City of Fayetteville to enter into a cost-share agreement with Arkansas & Missouri Railroad Co. for crossing safety improvements at the Dickson Street Railroad Crossing, contingent upon approval by Arkansas & Missouri Railroad Co. of Amendment No. 1 to the 2008 trail license agreement and not unreasonably withholding assent to future trail easements for the City.

- Peter has a letter that should be added. He may have already turned it in.
- 4/✓ **Fayetteville Energy Improvement District:** An ordinance creating a Property Assessed Energy Improvement District coextensive with the City of Fayetteville named "Energy Improvement District No. 1" to facilitate a PACE program and adopting certain provisions related thereto.

- ✓ **Amend Chapter §71.052 "U" Turns:** An ordinance to repeal §71.052 "U" Turns and to enact a new §71.052 "U" Turns into the Fayetteville Code to permit "U" Turns on streets with medians.
 - ✓ **Amend Chapter 115 Pawnbrokers:** An ordinance amending Chapter 115: Pawnbrokers of the Code of Fayetteville, renaming it to Chapter 115: Pawnbrokers and Secondhand Dealers, requiring licensure of secondhand dealers and requiring electronic reporting of certain items purchased by secondhand dealers.
 - ✓ **Boston Mountain Solid Waste District:** An ordinance waiving the requirements of formal competitive bidding and approving a contract with the Boston Mountain Solid Waste District in the amount of \$25,000.00 for an environmental and recycling education program.
 - ✓ **Amend Rules of Order and Procedure:** A resolution to amend the Rules of Order and Procedure of the Fayetteville City Council A. City Council meetings 7. Presentation of Agenda Items by adding a new subsection a. Agenda items not included within the Tentative Agenda packet.
-

D. City Council Agenda Session Presentations:

E. City Council Tour: *December 2, 2013 4:00 p.m. Mt. Kessler*

F. Announcements:

Adjournment:

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

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

Pre Agenda Meeting 10/2/13

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
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7. **Boston Mountain Solid Waste District:** An ordinance waiving the requirements of formal competitive bidding and approving a contract with the Boston Mountain Solid Waste District in the amount of \$25,000.00 for an environmental and recycling education program.
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D. City Council Agenda Session Presentations:

E. City Council Tour:

F. Announcements:

Adjournment:

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

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

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

Old business and new business.

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

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

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

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