

Alderman Adella Gray
Ward 1 Position 1

Alderman Sarah Marsh
Ward 1 Position 2

Alderman Mark Kinion
Ward 2 Position 1

Alderman Matthew Petty
Ward 2 Position 2



Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra E. Smith

Alderman Justin Tennant
Ward 3 Position 1

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

Alderman John La Tour
Ward 4 Position 1

Alderman Alan T. Long
Ward 4 Position 2

**City of Fayetteville Arkansas
City Council Meeting
August 16, 2016**

A meeting of the Fayetteville City Council was held on August 16, 2016 at 5:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions

City Council Meeting Presentations, Reports, and Discussion Items.

1. Fayetteville Natural Heritage Association check presentation.

Agenda Additions

A. Consent:

1. Approval of the August 2, 2016 City Council Meeting Minutes.

Approved

2. **NWA REGIONAL AIRPORT AND NWA COUNCIL FOUNDATION COOP AGR.:** A resolution to approve the Cooperative Agreement between the City of Fayetteville, Northwest Arkansas Regional Airport (XNA), and the Northwest Arkansas Council Foundation regarding the placement of Wayfinding signs directing travelers to and from the airport within the public rights-of-way at no cost to the city.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 150-16

3. **MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC:** A resolution to approve Amendment No. 4 to the contract with Mitchell, Williams, Selig, Gates & Woodyard, PLLC in the amount of \$15,000.00 for additional legal services related to the White River Water Quality Standards petition to the Arkansas Pollution Control and Ecology Commission, and to approve a budget adjustment.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 151-16

4. **CDI CONTRACTORS, LLC:** A resolution to approve a budget adjustment in the amount of \$11,820.00 recognizing revenue from CDI Contractors, LLC for its share of costs for repairs to Wilson Avenue.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 152-16

B. Unfinished Business:

1. **AMEND §164.23 SINGLE-FAMILY INFILL STANDARDS:** An ordinance to authorize the City Council to grant a variance in the single family infill standards to support attainable, affordable housing.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5895

C. New Business:

1. **RZN 16-5474 (SOUTH OF 1297 E. FARMERS RD./HALE):** An ordinance to rezone that property described in rezoning petition RZN 16-5474 for approximately 1.28 acres located south of 1297 East Farmers Road from R-A, Residential Agricultural and RSF-4, Residential Single Family, 4 units per acre to RSF-7, Residential Single Family, 7 units per acre.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5896

2. **KESSLER MOUNTAIN CONSERVATION EASEMENT:** A resolution to authorize Mayor Jordan to sign a grant of conservation easement to the Northwest Arkansas Land Trust for the preservation of Kessler Mountain.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 153-16

3. **RZN 16-5483: (NE CORNER OF MORNINGSIDE & 15TH ST./RAUSCH COLEMAN):** An ordinance to rezone that property described in rezoning petition RXN

16-5483 for approximately 36 acres located at the Northeast Corner of Morningside and Fifteenth Street from RSF-4, residential single family, 4 units per acre to NC, neighborhood conservation, subject to a bill of assurance.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5897

- 4. RZN 16-5501 (1030 S. COLLEGE AVE./K. SMITH):** An ordinance to rezone that property described in rezoning petition RZN 16-5501 for approximately 0.17 acres located at 1030 South College Avenue from NC, neighborhood conservation to NS, neighborhood services.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5898

D. City Council Agenda Session Presentations:

- 1.** Agenda session presentation - Dr. Matthew Wendt, new Superintendent of the Fayetteville Public School District, will and share goals for the Fayetteville Public Schools and provide thoughts on collaboration and partnership opportunities between Fayetteville Public Schools and the City of Fayetteville.

City Council Tour

Announcements

Adjournment: 6:38 p.m.

City Council Meeting:

August 16, 2016

Adjourn: 6:38 pm

Subject:	Roll				
	Tennant	✓			
	Schoppmeyer	✓			
	La Tour	✓			
	Long	✓			
	Gray	✓			
	Marsh	✓			
	Kinion	✓			
	Petty	✓			
	Mayor Jordan	✓			

9-0

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

City Council Meeting:

Subject:	Consent				
Motion To:		<i>Approve</i>			
Motion By:		<i>Petty</i>			
Seconded:		<i>Marsh</i>			
A.1 - A.4 Consent <i>Minutes</i> <u><i>Approved</i></u> <u><i>Approved</i></u> <i>150-11e</i> <i>152-11e</i>	Tennant	✓			
	Schoppmeyer	✓			
	La Tour	✓			
	Long	✓			
	Gray	✓			
	Marsh	✓			
	Kinion	✓			
	Petty	✓			
	Mayor Jordan				

8-0

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

City Council Meeting:

Subject:	AMEND §164.23 SINGLE-FAMILY INFILL STANDARDS				
Motion To:		<i>Amend</i>	<i>3rd Read</i>	<i>Approve</i>	
Motion By:		<i>Petty</i>	<i>Schoppmeyer</i>		
Seconded:		<i>Schoppmeyer</i>	<i>Long</i>		
B. 1 Unfinished Business <i>Approved</i> <i>5895</i>	Tennant	✓	✓	✓	
	Schoppmeyer	✓	✓	✓	
	La Tour	✓	✓	✓	
	Long	✓	✓	✓	
	Gray	✓	✓	✓	
	Marsh	✓	<i>N</i>	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Mayor Jordan				

8-0

7-1

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
B. 2 Unfinished Business	Tennant				
	Schoppmeyer				
	La Tour				
	Long				
	Gray				
	Marsh				
	Kinion				
	Petty				
	Mayor Jordan				

City Council Meeting:

Subject:		RZN 16-5474 (SOUTH OF 1297 E. FARMERS RD./HALE)			
Motion To:			2nd Read	3rd Read	Approve
Motion By:			Long	Tennant	
Seconded:			Tennant	Gray	
C. 1 New Business <u>Approved</u> 5896	Tennant	✓	✓	✓	
	Schoppmeyer	✓	✓	✓	
	La Tour	✓	✓	✓	
	Long	✓	✓	✓	
	Gray	✓	✓	✓	
	Marsh	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Mayor Jordan				
		8-0	8-0	8-0	

Subject:		KESSLER MOUNTAIN CONSERVATION EASEMENT			
Motion To:			Approve		
Motion By:			Petty		
Seconded:			Long		
C. 2 New Business <u>Approved</u> 153-14	Tennant	✓			
	Schoppmeyer	✓			
	La Tour	N			
	Long	✓			
	Gray	✓			
	Marsh	✓			
	Kinion	✓			
	Petty	✓			
	Mayor Jordan				
		7-1			

City Council Meeting:

Subject:	RZN 16-5483: (NE CORNER OF MORNINGSIDE & 15TH ST./RAUSCH COLEMAN)				
Motion To:		<i>2nd Read</i>	<i>3rd Read</i>	<i>Approve</i>	
Motion By:		<i>Long</i>	<i>Gray</i>		
Seconded:		<i>Gray</i>	<i>Long</i>		
C. 3 New Business <i>Approved</i> <i>5897</i>	Tennant	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Schoppmeyer	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	La Tour	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Long	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Gray	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Marsh	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Kinion	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Petty	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Mayor Jordan				

8-0

8-0

8-0

Subject:	RZN 16-5501 (1030 S. COLLEGE AVE./K. SMITH)				
Motion To:		<i>2nd Read</i>	<i>3rd Read</i>	<i>Approve</i>	
Motion By:		<i>Marsh</i>	<i>Marsh</i>		
Seconded:		<i>Gray</i>	<i>Gray</i>		
C. 4 New Business <i>Approved</i> <i>5898</i>	Tennant	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Schoppmeyer	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	La Tour	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Long	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Gray	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Marsh	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Kinion	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Petty	<i>✓</i>	<i>✓</i>	<i>✓</i>	
	Mayor Jordan				

8-0

8-0

8-0



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: **Mayor Jordan**

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams**, City Attorney

DATE: **August 17, 2016**

RE: Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of August 16, 2016

1. A resolution to approve the Cooperative Agreement between the City of Fayetteville, Northwest Arkansas Regional Airport (XNA), and the Northwest Arkansas Council Foundation regarding the placement of wayfinding signs directing travelers to and from the airport within the public rights-of-way at no cost to the City.
2. A resolution to approve Amendment No. 4 to the contract with Mitchell, Williams, Selig, Gates & Woodyard, PLLC in the amount of \$15,000.00 for additional legal services related to the White River Water Quality Standards Petition to the Arkansas Pollution Control and Ecology Commission, and to approve a budget adjustment.
3. A resolution to approve a budget adjustment in the amount of \$11,820.00 recognizing revenue from CDI Contractors, LLC for its share of costs for repairs to Wilson Avenue.
4. An ordinance to amend § 164.23 **Single-Family Infill Standards**.
5. An ordinance to rezone that property described in rezoning petition RZN 16-5474 for approximately 1.28 acres located south of 1297 East Farmers Road from R-A, Residential Agricultural and RSF-4, Residential Single Family, 4 Units Per Acre to RSF-7, Residential Single Family, 7 Units Per Acre.
6. A resolution to authorize Mayor Jordan to sign a grant of conservation easement to the Northwest Arkansas Land Trust for the preservation of Kessler Mountain.
7. An ordinance to rezone that property described in rezoning petition RZN 16-5483 for approximately 36 acres located at the northeast corner of Morningside and Fifteenth

Street from RSF-4, Residential Single Family, 4 Units Per Acre to NC, Neighborhood Conservation, subject to a Bill of Assurance.

8. An ordinance to rezone that property described in rezoning petition RZN 16-5501 for approximately 0.17 acres located at 1030 South College Avenue from NC, Neighborhood Conservation to NS, Neighborhood Services.

City of Fayetteville, Arkansas

*113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323*



Meeting Agenda - Final Agenda

Tuesday, August 16, 2016

5:30 PM

City Hall Room 219

City Council Meeting

*Adella Gray Ward 1
Sarah Marsh Ward 1
Mark Kinion Ward 2
Matthew Petty Ward 2
Justin Tennant Ward 3
Martin W. Schoppmeyer, Jr. Ward 3
John S. La Tour Ward 4
Alan Long Ward 4*

ELECTED OFFICIALS:

*Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith*

Call To Order**Roll Call****Pledge of Allegiance****Mayor's Announcements, Proclamations and Recognitions****City Council Meeting Presentations, Reports and Discussion Items:****1. [2016-0365](#)**

FAYETTEVILLE NATURAL HERITAGE ASSOCIATION CHECK PRESENTATION

Agenda Additions:**A. Consent:****A. 1 [2015-0653](#)**

APPROVAL OF THE AUGUST 2, 2016 CITY COUNCIL MEETING MINUTES.

A. 2 [2016-0334](#)**NWA REGIONAL AIRPORT AND NWA COUNCIL FOUNDATION COOP AGR.:**

A RESOLUTION TO APPROVE THE COOPERATIVE AGREEMENT BETWEEN THE CITY OF FAYETTEVILLE, NORTHWEST ARKANSAS REGIONAL AIRPORT (XNA), AND THE NORTHWEST ARKANSAS COUNCIL FOUNDATION REGARDING THE PLACEMENT OF WAYFINDING SIGNS DIRECTING TRAVELERS TO AND FROM THE AIRPORT WITHIN THE PUBLIC RIGHTS-OF-WAY AT NO COST TO THE CITY

Attachments:

[Agenda Packet - XNA Wayfinding](#)

[Wayfinding Signs XNA Signed Agreement 2016-0334](#)

A. 3 [2016-0353](#)**MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC:**

A RESOLUTION TO APPROVE AMENDMENT NO. 4 TO THE CONTRACT WITH MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC IN THE AMOUNT OF \$15,000.00 FOR ADDITIONAL LEGAL SERVICES RELATED TO THE WHITE RIVER WATER QUALITY STANDARDS PETITION TO THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION, AND TO APPROVE A BUDGET ADJUSTMENT

Attachments: [Mitchell Williams Amendment No. 4 Agenda Packet](#)
 [BA - Mitchell Williams Amendment No. 4](#)

A. 4 [2016-0363](#)**CDI CONTRACTORS, LLC:**

A RESOLUTION TO APPROVE A BUDGET ADJUSTMENT IN THE AMOUNT OF \$11,820.00 RECOGNIZING REVENUE FROM CDI CONTRACTORS, LLC FOR ITS SHARE OF COSTS FOR REPAIRS TO WILSON AVENUE

Attachments: [SRF 2016-0363](#)
 [BA 2016-0363](#)

B. Unfinished Business:**B. 1** [2016-0352](#)**AMEND §164.23 SINGLE-FAMILY INFILL STANDARDS:**

AN ORDINANCE TO AUTHORIZE THE CITY COUNCIL TO GRANT A VARIANCE IN THE SINGLE FAMILY INFILL STANDARDS TO SUPPORT ATTAINABLE, AFFORDABLE HOUSING

(LEFT ON SECOND READING)

Attachments: [Agenda Request Packet Infill Standards](#)
 [Additional B.1 Amend 164.23 Single Family Infill Standards](#)

At the August 2, 2016 City Council meeting this ordinance Left on the Second Reading and sent to Ordinance Review Committee.

C. New Business:

C. 1 [2016-0351](#)**RZN 16-5474 (SOUTH OF 1297 E. FARMERS RD./HALE):**

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 16-5474 FOR APPROXIMATELY 1.28 ACRES LOCATED SOUTH OF 1297 EAST FARMERS ROAD FROM R-A, RESIDENTIAL AGRICULTURAL AND RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE TO RSF-7, RESIDENTIAL SINGLE FAMILY, 7 UNITS PER ACRE

Attachments: [16-5474 CC Staff Report](#)

C. 2 [2016-0364](#)**KESSLER MOUNTAIN CONSERVATION EASEMENT:**

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO SIGN A GRANT OF CONSERVATION EASEMENT TO THE NORTHWEST ARKANSAS LAND TRUST FOR THE PRESERVATION OF KESSLER MOUNTAIN

Attachments: [Kessler CE Agenda Item](#)
 [Kessler Mountaion Signed Conservation Easement](#)

C. 3 [2016-0367](#)**RZN 16-5483: (NE CORNER OF MORNINGSIDE & 15TH ST./RAUSCH COLEMAN):**

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 16-5483 FOR APPROXIMATELY 36 ACRES LOCATED AT THE NORTHEAST CORNER OF MORNINGSIDE AND FIFTEENTH STREET FROM RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE TO NC, NEIGHBORHOOD CONSERVATION, SUBJECT TO A BILL OF ASSURANCE

Attachments: [16-5483 CC reports](#)

C. 4 [2016-0375](#)**RZN 16-5501 (1030 S. COLLEGE AVE./K. SMITH):**

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 16-5501 FOR APPROXIMATELY 0.17 ACRES LOCATED AT 1030 SOUTH COLLEGE AVENUE FROM NC, NEIGHBORHOOD CONSERVATION TO NS, NEIGHBORHOOD SERVICES

Attachments: [Agenda Request Packet RZN 16-5501](#)

D. City Council Agenda Session Presentations:**D. 1** [2016-0355](#)

AGENDA SESSION PRESENTATION - DR. MATTHEW WENDT, NEW SUPERINTENDENT OF THE FAYETTEVILLE PUBLIC SCHOOL DISTRICT, WILL INTRODUCE HIMSELF AND SHARE GOALS FOR THE FAYETTEVILLE PUBLIC SCHOOLS AND PROVIDE THOUGHTS ON COLLABORATION AND PARTNERSHIP OPPORTUNITIES BETWEEN FAYETTEVILLE PUBLIC SCHOOLS AND THE CITY OF FAYETTEVILLE.

E. City Council Tour:**F. Announcements:****G. 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 479-575-8330.

A copy of the complete City Council agenda is available at www.fayetteville-ar.gov or in the office of the City Clerk, 113 W. Mountain, Fayetteville, Arkansas.

Legistar ID No.: 2016-0375

AGENDA REQUEST FORM

FOR: Council Meeting of August 16, 2016

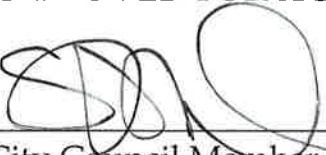
FROM:

City Council Member Sarah Marsh

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 16-5501 FOR APPROXIMATELY 0.17 ACRES LOCATED AT 1030 SOUTH COLLEGE AVENUE FROM NC, NEIGHBORHOOD CONSERVATION TO NS, NEIGHBORHOOD SERVICES

APPROVED FOR AGENDA:



City Council Member Sarah Marsh

August 9, 2016
Date



City Attorney Kit Williams
(as to form)

August 9, 2016
Date

Mulford, Patti

From: Smith, Sondra
Sent: Tuesday, August 09, 2016 12:14 PM
To: Mulford, Patti; Williams, Kit; Pennington, Blake
Cc: Branson, Lisa; Smith, Lorinda; Smith, Sondra; Pate, Jeremy; Garner, Andrew
Subject: FW: Request
Attachments: 1030_Rezone_Checklist.pdf

Agenda Request for today from Sarah Marsh.

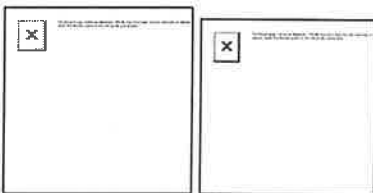
From: Marsh, Sarah
Sent: Tuesday, August 09, 2016 11:48 AM
To: Smith, Sondra <ssmith@fayetteville-ar.gov>
Subject: Fw: Request

Sondra,

I would like to walk on this rezoning request at our Agenda Session tonight due to a time crunch on the part of the applicant. What do I need to do to make this happen?

Thanks,

Sarah Marsh, bARCH, LEED AP BD+C
Vice Mayor | City Council Member, Ward 1, Position 2
City of Fayetteville, Arkansas
ward1_pos2@fayetteville-ar.gov | 479.799.0393



From: Sarah Marsh <sarahemarsh@gmail.com>
Sent: Tuesday, August 9, 2016 11:43 AM
To: Marsh, Sarah
Subject: Fwd: Request

----- Forwarded message -----

From: Keaton Smith <kwsmith1200@gmail.com>
Date: Mon, Aug 8, 2016 at 11:20 PM
Subject: Request
To: Sarah Marsh <sarahemarsh@gmail.com>

Sarah,

Tonight, our rezone request for 1030 S College passed the Planning Commission 7-1. Due to time constraints, I'm writing to request that you "walk on" our rezone request to the City Council agenda session tomorrow night, August 9th.

Our office tenant, Artist Laboratory Theatre, would like to move in September 1st. This date coincides with the beginning of their FY 17 budget. In addition, Artist Laboratory Theatre plans to have two yoga studios as sub-tenants, and both sub-tenants would like to move in on September 1st. For these reasons, I respectfully request that you consider walking our rezone request on to tomorrow night's agenda session.

I've attached our rezone request checklist that was submitted to City Planning. We feel the rezone from Neighborhood Conservation to Neighborhood Services is appropriate for several reasons:

- It is consistent with the historical use of the property (it has always been a church)
- It does not increase the intensity of the use
- An informal Facebook survey showed overwhelming demand for small-scale commercial use of the building
- The adjacent property owners are comfortable with the proposed zoning district and proposed use
- The building has never been residential, and would require substantial renovation to make it residential
- Changing the site to residential would reduce diversity of the neighborhood and sacrifice the historic character and charm of the building
- The Walker Park Neighborhood Master Plan calls for a diversity of uses
- City Plan 2030 calls for infill, revitalization and the promotion of traditional town form, such as mid-block commercial use

If I can provide any additional information, please do not hesitate to call or email me. I appreciate your service and your consideration of this request.

Keaton

479-879-7922

--
Sarah Marsh, bArch, LEED AP

Tanglewood Fashion & Lifestyle

Custom Apparel | Design Services

479.799.0393 | sarah@studioTanglewood.com



CITY COUNCIL AGENDA MEMO

MEETING OF AUGUST 16, 2016

TO: Mayor, Fayetteville City Council

THRU: Andrew Garner, City Planning Director

FROM: Harry Davis, Planner

DATE: August 9, 2016

SUBJECT: **RZN 16-5501: Rezone (1030 S. COLLEGE AVE./K. SMITH, 563):**
Submitted by KEATON SMITH for property at 1030 S. COLLEGE AVE. The property is zoned NC, NEIGHBORHOOD CONSERVATION and contains approximately 0.17 acres. The request is to rezone the property to NS, NEIGHBORHOOD SERVICES.

RECOMMENDATION:

The Planning Commission recommends approval of an ordinance to rezone the properties from NC, Neighborhood Conservation to NS, Neighborhood Services as shown in the attached Exhibits 'A' and 'B'. Staff has recommended against said ordinance.

BACKGROUND:

The subject property of 0.17 acres is located at 1030 S. College Ave. The parcel is zoned NC, Neighborhood Conservation. The property is currently developed with a 1,400 sq. ft. building with a gravel drive and parking lot in the back. The property has historically been used as a site for various churches and the building was last occupied by Fayetteville Christadelphia Ecclesia.

Request: The applicant's request is to rezone the parcel from NC, Neighborhood Conservation to NS, Neighborhood Services to allow for a flexible office and studio space.

Public Comment: Two long-time residents of the neighborhood called the Planning Division on August 8 to speak against the rezoning. They explained to staff that that commercial uses in a residential neighborhood were incompatible to their homes and would create problems based on intensity inherent in commercial properties and uses. They attended the previous church at this address and discussed that it was a very small, local congregation that primarily walked to the building on Sundays with little impact to the neighborhood.

Land Use Compatibility: The proposed zoning is consistent in terms of form-based development to the north, east, and south. The immediately surrounding properties are single-family, detached residences, which could coexist with a greater range of housing types and some limited business permitted by-right in NS. A rezoning to NS could allow the subject property to be redeveloped with higher densities and in a form-based pattern that fits development in adjacent Downtown and Walker Park neighborhoods. The kind of uses permitted in NS, such as single-, two-, and three-family; limited business; and home occupations, are relatively compatible with current uses in the surrounding neighborhood. Limited business ensures that developing large commercial buildings

could not happen under this rezone. However, non-residential uses and more intense development patterns within a predominantly single-family neighborhood should generally be encouraged in corner locations and edges of the neighborhood. Proposing to insert a commercial use mid-block and surrounded by single-family homes on three sides introduces the potential for incompatible land uses due to noise, light, traffic, and solid waste disposal that are more intense than the abutting properties.

Land Use Plan Analysis: The proposed zoning is generally incompatible with the Walker Park Neighborhood Master Plan, which calls for preservation of single-family homes for this particular area of Walker Park. Allowing businesses to be located in the middle of this residential block, disconnected and outside the proximity of other commercial or office uses, could be seen as compromising the integrity of the Walker Park Neighborhood Plan goals. The plan particularly notes places at Southgate Commercial Center, the intersection of School & 15th, Jefferson Square, and along Huntsville Rd. as places to grow commercial nodes and streets. The rest of the neighborhood was primarily rezoned and intended to encourage a range and mix of housing types.

Planning Division believes that the applicant's intention of developing this site for non-residential use could be better addressed in a Conditional Use Permit under current NC zoning. Furthermore, the site can be practically and appropriately used under said zoning.

DISCUSSION:

On August 8, 2016, Planning Division staff recommended against a rezone, stating that the rezone would not be in line with the Walker Park Neighborhood Plan and would be incompatible to adjoining properties. Planning Commission disagreed, stating that such development would be traditional in town-form and within the historical character of Walker Park neighborhoods. Planning Commission ultimately forwarded the applicant's request for a rezoning to NS on the subject property. A motion by Commissioner Autry, seconded by Commissioner Quinlan, to forward the proposal to the City Council with a recommendation for approval was made with a vote of 8-1-0. Commissioner Brown dissented, agreeing with Planning Division staff on their recommendation.

BUDGET/STAFF IMPACT:

N/A

Attachments:

- Exhibit A
- Exhibit B
- Application
- Planning Commission Staff Report

16-5501
EXHIBIT 'A'

RZN 16-5501

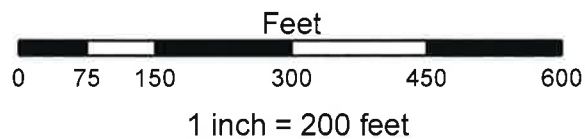
Close Up View

K. SMITH



Legend

- Planning Area
- Fayetteville City Limits
- Trail (Proposed)
- Building Footprint



- RSF-18
- Downtown General
- Neighborhood Conservation
- P-1

16-5501
EXHIBIT 'B'

1030 S College Ave Property Legal Description

Lot 23 and 24 in Block 2 of Glenwood Park Addition to the City of Fayetteville, Arkansas, as per plat on record in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

CITY OF FAYETTEVILLE, ARKANSAS

REZONING

FOR STAFF USE ONLY

Date Application Submitted:

Date Accepted as Complete:

Case / Appeal Number:

Public Hearing Date:

FEE: \$325.00

Sign Fee: \$5.00

S-T-R:

PP#:

Zone:

Please fill out this form completely, supplying all necessary information and documentation to support your request.
Your application will not be placed on the Planning Commission agenda until this information is furnished.

Application:

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

Applicant (person making request):

Name: Keaton Smith

Address: 88 E 4th St
Fayetteville AR 72701

E-mail: Ksmith1200@gmail.com

Phone: (479) 879-7922

()

Fax:

()

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

Name: _____

Address: _____

E-mail: _____

Phone: _____

()

()

Fax: _____

()

Site Address / Location: 1030 S College, Fayetteville AR 72701

Current Zoning District: Neighborhood Conservation Requested Zoning District: Neighborhood Services

Assessor's Parcel Number(s) for subject property: 765-05682-000

FINANCIAL INTERESTS

The following entities and / or people have financial interest in this project:

Keaton Smith, Megan Smith

APPLICANT / REPRESENTATIVE: I certify under penalty of perjury that the foregoing statements and answers herein made all data, information, and evidence herewith submitted are in all respects, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of application completeness, determination, or approval. I understand that the City might not approve what I am applying for, or might set conditions on approval.

Name (printed): Keaton Smith Date: 6/26/16
Signature: [Signature]

PROPERTY OWNER(S) / AUTHORIZED AGENT: I/we certify under penalty of perjury that I am/we are the owner(s) of the property that is the subject of this application and that I/we have read this application and consent to its filing. (If signed by the authorized agent, a letter from each property owner must be provided indicating that the agent is authorized to act on his/her behalf.)

Property Owners of Record (attach additional info if necessary):

Name (printed): Keaton Smith Address: _____
Signature: [Signature] _____
Date: 6/26/16 Phone: _____
()

Name (printed): Megan Smith Address: _____
Signature: [Signature] _____
Date: 6/26/16 Phone: _____
()

Rezoning Checklist:

Attach the following items to this application:

- (1) Payment in full of applicable fees for processing the application:
\$325.00 application fee
\$5.00 public notification sign fee
- (2) A legal description of the property to be rezoned. A survey may be required if the property description can not accurately be platted or if it is described by referring to other deeds.
- (3) CD containing a copy of the legal description in MS Word and all required submittal items should be also included on the CD in PDF format.
- (4) A copy of the county parcel map from the Washington County Assessor's office or from the Washington County website (www.co.washington.ar.us). The subject property and all adjacent parcels should be identified on this parcel map. The owner's name, official mailing address, and the parcel number for every adjacent property shall be shown on this map.



PLANNING COMMISSION MEMO

TO: City of Fayetteville Planning Commission

THRU: Andrew Garner, City Planning Director

FROM: Harry Davis, Planner

MEETING DATE: August 8, 2016 **UPDATED FOR PC RESULTS**

SUBJECT: **RZN 16-5501: Rezone (1030 S. College Ave./K. Smith, 563):** Submitted by KEATON SMITH for property at 1030 S. COLLEGE AVE. The property is zoned NC, NEIGHBORHOOD CONSERVATION, containing approximately 0.17 acres total. The request is to rezone the properties to NS, NEIGHBORHOOD SERVICES.

RECOMMENDATION:

Staff recommends denial of **RZN 16-5501**.

BACKGROUND:

The subject property of 0.17 acres is located at 1030 S. College Ave. The parcel is zoned NC, Neighborhood Conservation. The property is currently developed with a 1,400 sq. ft. building.

The property has historically been used as a site for various churches and the building was last occupied by Fayetteville Christadelphia Ecclesia.

Surrounding land use and zoning is depicted on *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction Site	from	Land Use	Zoning
North		Single-family Residential	NC, Neighborhood Conservation
South		Single-family Residential	NC, Neighborhood Conservation
East		Single-family Residential	NC, Neighborhood Conservation
West		Fayetteville Senior Center	P-1, Institutional

Request: The request is to rezone the parcel from NC, Neighborhood Conservation to NS, Neighborhood Services to allow for a flexible office and studio space.

Public Comment: No public comment has been received.

INFRASTRUCTURE:

- Streets:** The subject parcel has access to S. College Ave, a partially improved two-lane Collector street with sidewalk on the west side. Street improvements would be determined at time of development.
- Water:** Public water is available to the site. A 6" water main runs along South College.
- Sewer:** Public sewer is available to the site. A 6" sewer main runs along South College.
- Drainage:** Any additional improvements or requirements for drainage would be determined at time of development.
- Fire:** The Fire Department did not express any concerns with the request.
- Police:** The Police Department did not express any concerns with this request.

CITY PLAN 2030 FUTURE LAND USE PLAN:

*City Plan 2030 Future Land Use Plan designates this site as a **Complete Neighborhood Plan: Walker Park Neighborhood**. A central goal of the plan was to preserve single-family neighborhoods while encouraging additional housing types and a mix of uses. A digital copy of select pages from the plan has been provided separately.*

Walker Park neighborhood adopted a plan in 2008. That plan states that the neighborhood should have a balance of non-residential uses and housing. Stakeholders wanted zoning and other city regulations to reflect and encourage that balance while conserving the existing single-family fabric where it is intact. This means the neighborhood will retain and develop a variety of housing types for different income levels and retain and develop neighborhood commercial nodes that serve the neighborhood residents as well as the nearby employment centers. There is also an emphasis on connectivity and walkability. Connection of the street grid and improved pedestrian mobility between key destinations will unify the neighborhood, making it sustainable over time. Third, creating Jefferson Square as a core of the neighborhood will help to preserve some of the rich history embedded in the Jefferson Building and create a neighborhood center. Last, accessible greenspace in the form of community gardens throughout the neighborhood and additional uses and access points to Walker Park will capitalize on existing resources within the neighborhood and provide function and beauty for both residents and visitors.

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: ***Land Use Compatibility:** The proposed zoning is consistent in terms of form-based development to the north, east, and south. The immediately surrounding properties are single-family, detached residences, which could coexist with a greater range of housing types and some limited business permitted by-right in NS. A rezoning to NS could allow the subject property to be redeveloped with higher densities and in a form-based pattern that fits development in adjacent Downtown and Walker Park neighborhoods. The kind of uses permitted in NS, such as single-, two-, and three-family; limited business; and home occupations, are relatively compatible with current uses in the surrounding neighborhood. Limited business ensures that developing large commercial buildings could not happen under this rezone. However,*

non-residential uses and more intense development patterns within a predominantly single-family neighborhood should generally be encouraged in corner locations and edges of the neighborhood. Proposing to insert a commercial use mid-block and surrounded by single-family homes on three sides introduces the potential for incompatible land uses due to noise, light, traffic, and solid waste disposal that are more intense than the abutting properties.

Land Use Plan Analysis: The proposed zoning is generally incompatible with the Walker Park Neighborhood Master Plan, which calls for preservation of single-family homes for this particular area of Walker Park. Allowing businesses to be located in the middle of this residential block, disconnected and outside the proximity of other commercial or office uses, could be seen as compromising the integrity of the Walker Park Neighborhood Plan goals. The plan particularly notes places at Southgate Commercial Center, the intersection of School & 15th, Jefferson Square, and along Huntsville Rd. as places to grow commercial nodes and streets. The rest of the neighborhood was primarily rezoned and intended to encourage a range and mix of housing types.

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

Finding: The applicant's intentions to create a flexible space for offices and studios using the existing building could be granted under the current NC zoning as a conditional use.

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

Finding: The site has access to South College Avenue, so retail, commercial, or offices could appreciably increase traffic and congestion along South College. The parking lot for this parcel will likely be required to be improved with new development, as it is inadequate for substantial numbers of visitors and workers.

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: Rezoning the property from NC to NS would not increase the load on public services as the property is too small to have a significant-enough number of units. The density allowance of 10 units per acre does not change between NC and NS.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: Staff believes that the applicant's intention of developing this site for non-residential use could be better addressed in a Conditional Use Permit under current zoning. Furthermore, the site can be practically and appropriately used under the current NC zoning.

RECOMMENDATION: Staff recommends denial of RZN 16-5501 based on the findings discussed throughout this report.

PLANNING COMMISSION ACTION:		Required	<u>YES</u>
Date: <u>August 8, 2016</u>	☐ Tabled	☒ Forwarded	☐ Denied
Motion: Autry	MOTION TO FORWARD REZONE TO CITY COUNCIL, BROWN DISSENTING		
Second: Quinlan			
Vote: 8-1-0			

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code sections 161.26 & 161.16
- Request letter
- Rezone exhibit
- One Mile Map
- Close-Up Map
- Current Land Use Map
- Future Land Use Map
- Walker Park Neighborhood Plan

PLANNING COMMISSION MEMO

161.26 Neighborhood Conservation

(A) *Purpose.* The *Neighborhood Conservation* zone has the least activity and a lower density than the other zones. Although *Neighborhood Conservation* is the most purely residential zone, it can have some mix of uses, such as civic buildings. *Neighborhood Conservation* serves to promote and protect neighborhood character. For the purposes of Chapter 96: Noise Control, the *Neighborhood Conservation* district is a residential zone.

(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 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 12	Limited Business *
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 28	Center for collecting recyclable materials
Unit 36	Wireless communication facilities
Unit 44	Cottage Housing Development

(C) *Density.* 10 Units Per Acre.

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Single Family	40 ft.
Two Family	80 ft.
Three Family	90 ft.

(2) *Lot area minimum.* 4,000 Sq. Ft.

(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	5 ft.
Rear	5 ft.
Rear, from center line of an alley	12 ft.

(F) *Building height regulations.*

Building Height Maximum	45 ft.
-------------------------	--------

(Ord. 5128, 4-15-08; Ord. 5312, 4-20-10; Ord. 5462, 12-6-11; Ord. 5592, 6-18-13; Ord. 5664, 2-18-14)

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
Unit 44	Cottage Housing Development

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

(2) *Conditional uses*

Unit 2	City-wide uses by conditional use
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
Unit 45	Small scale production

(C) *Density.*

Units per acre	10 or less
----------------	------------

(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.
-------------------------	--------

- (G) *Building area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of the lot. (Ord. 5312, 4-20-10; Ord. 5462, 12-6-11; Ord. 5592, 6-18-13; Ord. 5664, 2-18-14; Ord. 5735, 1-20-15)

(5) Complete Written Description:

1030 S College (across the street from the City's new disc golf course in the Walker Park Neighborhood) was recently purchased by Keaton and Megan Smith (a). We are requesting a zoning change from Neighborhood Conservation to Neighborhood Services.

As our economy evolves and more and more individuals are self-employed as "freelancers", the need for small, flexible, affordable office space is increasing.

To meet this need, we propose a small-scale office and studio space for professionals. We are in discussions with several sole proprietors and non-profit organizations to lease space, including an architect, an artist, a graphic designer, a small non-profit with 2 staff members, and a real estate professional. The rezone request is needed for this commercial use (b).

Public water and sewer lines are already tied to the existing building (d), and no construction projects are anticipated on the site that would significantly increase water or sewer impact. The proposed zoning would have no impact on schools, traffic danger, or congestion. (h) It would slightly increase density, which helps advance the City's goal to grow a livable transportation network. (c)

The scale of the existing building is consistent with surrounding properties, and we have no plans to alter the scale of the building or add signage at this time. Parking is already arranged to the rear of the building. The nature of the proposed commercial use is not anticipated to increase traffic significantly. (g)

Commercial and institutional use is not rare in the Walker Park neighborhood, or on South College. The closest example is the Fayetteville Senior Center, which is across the street and just north of the subject property. There are several other churches and commercial uses (the Metro Marketing Realty office and an auto shop, for example) in otherwise residential, midblock areas of South College. (e)

The Walker Park Neighborhood Master Plan and City Plan 2030 both call for form-based zoning that allows for a variety of uses.

The Walker Park Neighborhood Master Plan states that “maintaining and enhancing a balance of uses and housing in the Walker Park Neighborhood is a benefit to the neighborhood and to the City....ensuring a balance of uses and housing contributes to the overall sustainability of the community by reducing the number of vehicle trips residents have to make in order to buy groceries or seek entertainment...the existing infrastructure within the neighborhood such as streets, water and sewer lines as well as the area’s proximity to Downtown creates an opportunity for residential and non-residential infill.” (page 17) (f)

The construction of the existing building makes it impractical for residential use. (i) We would like to preserve the building and it’s historic character, while adding a light commercial use to the neighborhood.

RZN 16-5501

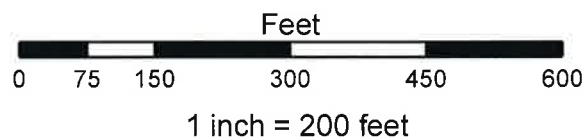
Close Up View

K. SMITH



Legend

- Planning Area
- Fayetteville City Limits
- Trail (Proposed)
- Building Footprint



- RSF-18
- Downtown General
- Neighborhood Conservation
- P-1

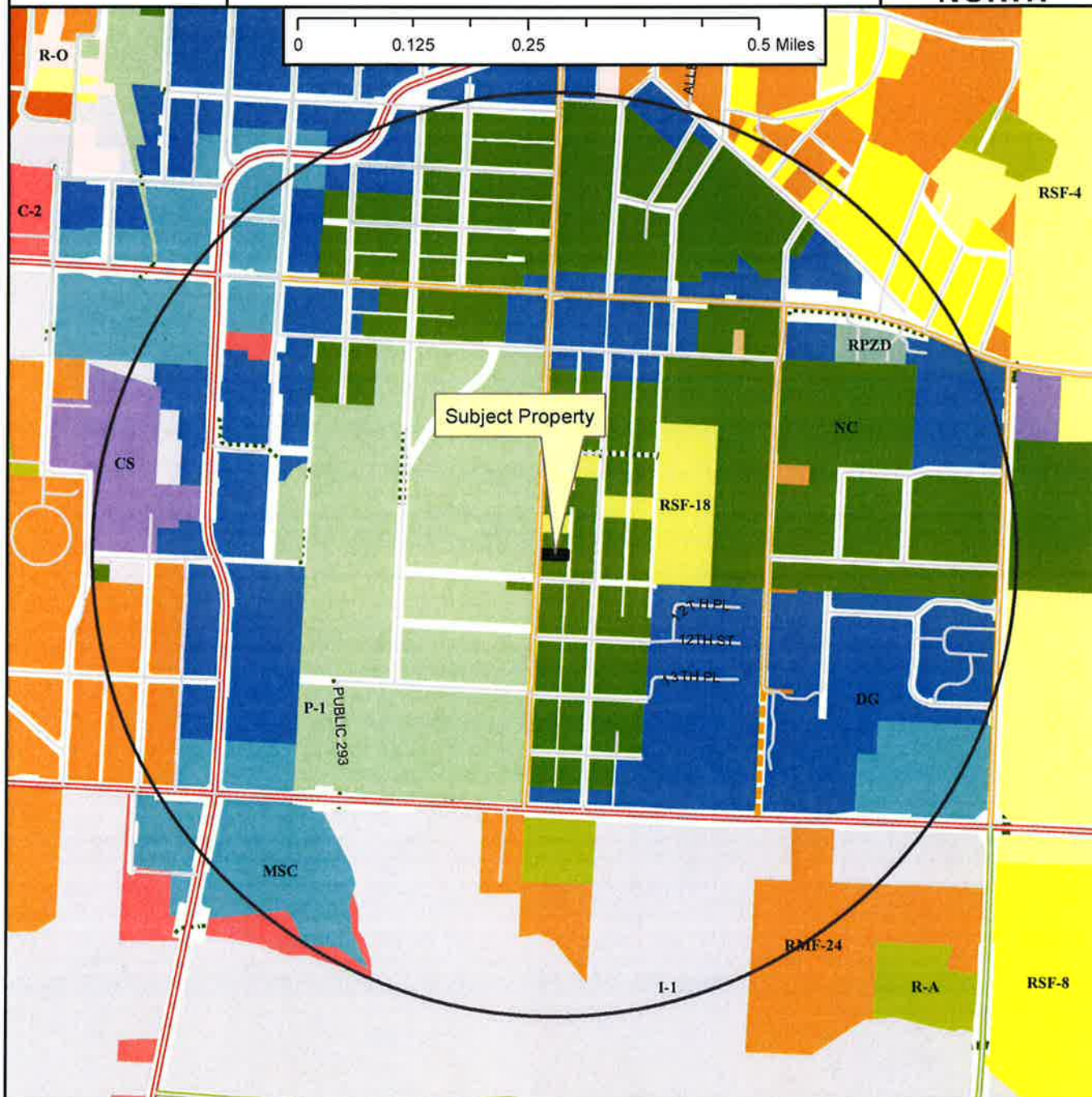
RZN 16-5501

K. SMITH

One Mile View

NORTH

0 0.125 0.25 0.5 Miles



Legend

- Planning Area
- Fayetteville City Limits
- Shared Use Paved Trail
- Trail (Proposed)
- Building Footprint



- | | |
|--|--|
| <p>Zoning</p> <p>RESIDENTIAL SINGLE-FAMILY</p> <ul style="list-style-type: none"> Residential Agricultural RSF-5 RSF-1 RSF-2 RSF-4 RSF-7 RSF-8 RSF-18 <p>RESIDENTIAL MULTI-FAMILY</p> <ul style="list-style-type: none"> RMF-12 Residential Two and Three Family RMF-6 RMF-13 RMF-18 RMF-24 RMF-40 <p>INDUSTRIAL</p> <ul style="list-style-type: none"> I-1 Heavy Commercial and Light Industrial I-2 General Industrial | <p>EXTRACTION</p> <ul style="list-style-type: none"> E-1 <p>COMMERCIAL</p> <ul style="list-style-type: none"> Residential Office C-1 C-2 C-3 <p>FORM BASED DISTRICTS</p> <ul style="list-style-type: none"> Downtown Core Urban Thoroughfare Main Street Center Downtown General Community Services Neighborhood Services Neighborhood Conservation <p>PLANNED ZONING DISTRICTS</p> <ul style="list-style-type: none"> Commercial (Industrial, Residential) <p>INSTITUTIONAL</p> <ul style="list-style-type: none"> P-1 |
|--|--|

RZN 16-5501

Current Land Use

K. SMITH



Legend

— Street

Streets Existing

MSP Class

— COLLECTOR

— Trail (Proposed)

— RZN16-5501

— Planning Area

— Fayetteville City Limits

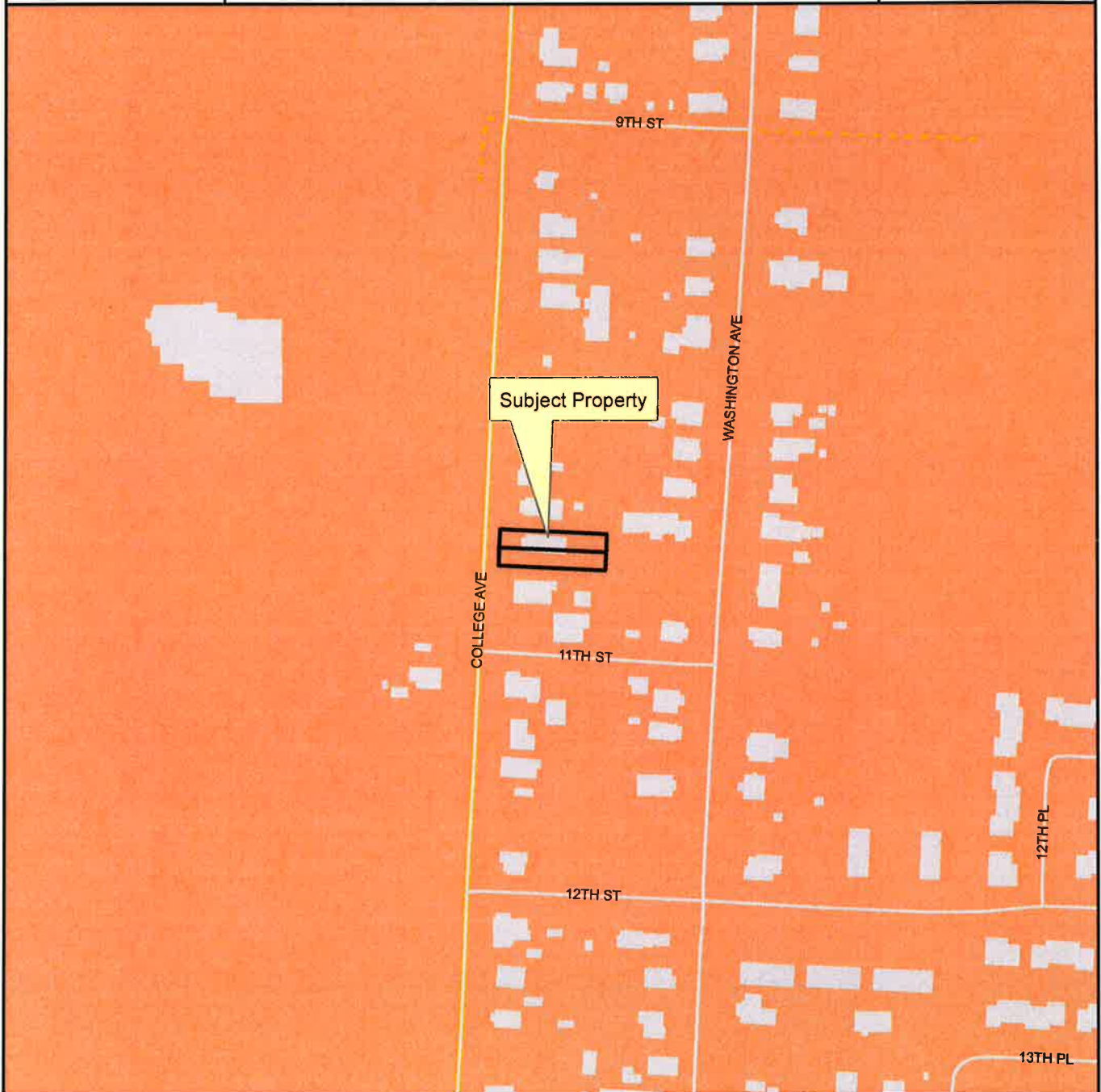
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RZN 16-5501

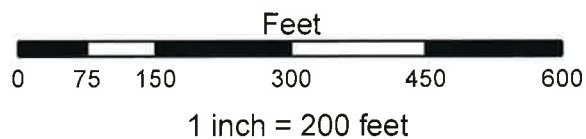
Future Land Use

K. SMITH



Legend

- Planning Area
- Fayetteville City Limits
- Trail (Proposed)
- Building Footprint



FUTURE LAND USE 2030

- Complete Neighborhood Plan

Walker Park Neighborhood

Short-Term Projects

Rezone the neighborhood to encourage an appropriate mix of uses and protect established neighborhoods.

Adopting the alternative zoning will ensure that the area preserves established single-family neighborhoods while encouraging additional housing types and a mix of uses. The proposed rezoning will change the vision for the neighborhood as demonstrated in the maps (below), reflecting the community's desires. See the Appendix for definitions of the proposed zoning.



Master Plan



Alderman Adella Gray
Ward 1 Position 1

Alderman Sarah Marsh
Ward 1 Position 2

Alderman Mark Kinion
Ward 2 Position 1

Alderman Matthew Petty
Ward 2 Position 2



Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra E. Smith

Alderman Justin Tennant
Ward 3 Position 1

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

Alderman John La Tour
Ward 4 Position 1

Alderman Alan T. Long
Ward 4 Position 2

**City of Fayetteville Arkansas
City Council Meeting
August 2, 2016**

A meeting of the Fayetteville City Council was held on August 2, 2016 at 5:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

PRESENT: Alderman Adella Gray, Sarah Marsh, Mark Kinion, Matthew Petty, Justin Tennant, Martin Schoppmeyer, John La Tour, Alan Long, Mayor Lioneld Jordan, City Attorney Kit Williams, 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

Consent:

Approval of the July 19, 2016 City Council Meeting Minutes.

Approved

Utility Service Company, Inc. Change Order No. 3: A resolution to approve Change Order No. 3 to the contract with Utility Service Company, Inc. in the amount of \$22,736.00 for structural repairs to the Baxter Water Tank, to approve an additional project contingency in the amount of \$56,675.50, and to approve a budget adjustment.

Resolution 141-16 as recorded in the office of the City Clerk

2016-2017 Justice Assistance and State Drug Crime Enforcement Grant: A resolution to authorize acceptance of the 2016-2017 Justice Assistance and State Drug Crime Enforcement Grant for federal and state funding of the Fourth Judicial District Drug Task Force in the amount of \$242,610.00, and to authorize Mayor Jordan to sign all necessary documents to receive the grant funds.

Resolution 142-16 as recorded in the office of the City Clerk

Icon Enterprises, Inc. d/b/a CivicPlus: A resolution to approve a one (1) year amended contract with Icon Enterprises, Inc. d/b/a CivicPlus for website content management system services in the amount of \$18,228.55 for the first year with automatic renewals for three (3) additional one (1) year terms with a price increase of five percent (5%) each time the contract is renewed, and to approve a project contingency of \$5,000.00 each year the contract is in effect.

Resolution 143-16 as recorded in the office of the City Clerk

Audio-Visual Renovation: A resolution to approve a budget adjustment to move funds from various audio-visual sub-projects to master project 13004 City Hall Audio-Visual Renovation.

Resolution 144-16 as recorded in the office of the City Clerk

Off-Street Parking District and the Dickson Street Improvement District Parking Revenues: A resolution to approve a budget adjustment recognizing increased parking revenues in the Off-Street Parking District and the Dickson Street Improvement District.

Resolution 145-16 as recorded in the office of the City Clerk

Arkansas Historic Preservation Program Grant Agreement: A resolution to approve a grant agreement with the Arkansas Historic Preservation Program for a Certified Local Government Grant in the amount of \$9,030.00, and to approve a budget adjustment.

Resolution 146-16 as recorded in the office of the City Clerk

2017 Employee Benefits Package: A resolution to approve the 2017 Employee Benefits Package.

Resolution 147-16 as recorded in the office of the City Clerk

Alderman Kinion moved to accept the Consent Agenda as read. Alderman Long seconded the motion. Upon roll call the motion passed unanimously.

Unfinished Business:

RZN 16-5442 (2514 W. Lori Rd./Razorback Golf Course): An ordinance to rezone that property described in rezoning Petition RZN 16-5442 for approximately 99.10 acres located at 2514 West Lori Road from R-A, Residential Agricultural; RSF-1, Residential Single Family, one unit per acre and RSF-4, Residential Single Family, 4 units per acre to NC, Neighborhood Conservation; R-A, Residential Agricultural and NS, Neighborhood Services. *This ordinance was left on the First Reading at the July 19, 2016 City Council meeting.*

Jeremy Pate, Director of Development Services: We have received a letter from the property owner requesting to withdraw the application. The applicant for the rezoning, who was a potential buyer, has backed out of the contract. My recommendation would be to either table this indefinitely or to deny the rezoning.

City Attorney Kit Williams: Normally in this situation you table it indefinitely. It automatically dies on December 31st.

Alderman Long moved to table the ordinance indefinitely. Alderman Kinion seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was Tabled Indefinitely

Proposals For Development of South End of West Avenue Parking Lot: A resolution to clarify and extend the timeframe to solicit proposals for development of the West Avenue Parking Lot and to consider parking neutral proposals for sale of smaller parcels on southern end. *This resolution was tabled at the June 21, 2016 City Council meeting to the July 5, 2016 City Council meeting. This resolution was tabled at the July 5, 2016 City Council meeting to the August 2, 2016 City Council meeting.*

Alderman Petty: We did get a portion of the parking study about two weeks ago. It did not contain the analysis of future demand that we expected. It only contained an analysis of existing inventory and utilization. I did not want to ask for a Council vote until we had that information in hand. I would like to table the item indefinitely.

Alderman La Tour: I understand the reluctance to move ahead before we have a full study, but seldom can you take an action where you only get advantages and no disadvantages. We want investment in Downtown Fayetteville and Fayetteville in general. The first to move on this particular proposal hired an architect and brought us plans and drawings. I don't know what Mr. Sharp's billing rate is, but I'm sure it isn't free. The owner has invested substantial sums of money. What we are telling that owner is, you spend all this money and all these other developers that are coming later are going to get equal opportunity to develop. We are discouraging people from taking risks. By tabling it indefinitely, we are saying you just lost your bet and we will let you come before us with all these other developers and we will choose the one we like the best.

Don Marr, Chief of Staff: When this item first came before you, it is because we had four different developments who had all invested significantly. We had multiple people making these types of

investments to try to get the Council to prioritize through an RFP process where everyone felt like there was an open and transparent process. We're waiting just for the RFP process to be open and to bring those recommendations to you at the end of the year, which was part of the original time period when we first started this discussion.

Alderman Long: Alderman La Tour, I know you haven't been on the Council as long as some others. When something is tabled indefinitely any time before December 31st, any Alderman can bring it back to the agenda. It doesn't mean this dies tonight if it is tabled indefinitely.

Alderman Kinion: We have had several projects that have come before us with a considerable investment upfront. A sound investment in the future is exactly that. Everyone is taking a risk when they are looking at a long term investment development. A good investment in a development project today will also be a good investment in a project tomorrow. We have made a commitment to the people to do a complete and exhaustive study for the parking. It is the responsible thing to do until we get the numbers to put this on hold. This is not throwing away an investment. What it has done is given people the opportunity to look at the value of the property. It is giving a lot of investors the opportunity to think forward. It has opened a very healthy dialogue with the merchants with the individuals that want to see the property used as a gathering place for Ward 2. I support the indefinite tabling of this.

Alderman La Tour: I agree it is a good discussion. I want us to realize there is this investment perspective. There may have been four at the beginning, but the first one I spoke with was Mr. Reindl and Mr. Sharp. This is the only proposal I knew of for weeks until it was announced here at the City Council and now a lot of other people have come forward. Mr. Reindl was the first. It would be discouraging to spend \$200,000 in architecture fees and now it is open for everybody. Good investments today are not good investments tomorrow.

Mayor Jordan: We brought the resolution forward because we had three or four.

Don Marr, Chief of Staff: The first proposal was from Hunter Haynes. The second proposal was from Reindl and Sharp.

Mayor Jordan: I met with the Dickson Street business owners that had a proposal. There were at least three and that is why I brought it to you all.

Alderman Petty moved to table the resolution indefinitely. Alderman Long seconded the motion. Upon roll call the motion passed 7-1. Alderman La Tour voting no.

This resolution was Tabled Indefinitely

New Business:

Bayyari Music Playground Donation: A resolution to accept a donation in the amount of \$30,000.00 from Fadil Bayyari to construct the David Lyle Bayyari Music Playground at Wilson Park, and to approve a budget adjustment.

Alison Jumper, Park Planning Superintendent gave a brief description of the resolution. She expressed her gratitude to Mr. Bayyari for considering Wilson Park as the venue to honor his son.

Mayor Jordan: Thank you to Mr. Bayyari for his very generous gift.

Alderman Kinion moved to approve the resolution. Alderman Marsh seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 148-16 as recorded in the office of the City Clerk

The Rotary Club of Fayetteville Agreement: A resolution to approve an agreement with the Rotary Club of Fayetteville regarding the funding for and naming of the Rotary Club of Fayetteville Playground at the Kessler Mountain Regional Park, to approve a budget adjustment recognizing a donation from the Rotary Club of Fayetteville and its members in the amount of \$150,000.00 for the project contingent upon receipt of the funds, and to express the City Council's intent to provide matching funds in an amount of \$120,000.00 toward the playground project contingent on approval of the 2017 budget.

Alison Jumper, Park Planning Superintendent gave a brief description of the resolution. She expressed her gratitude to the Rotary Club for choosing the project to make an impact in the community.

Harrison Pittman, Rotary Club President: This is a huge project for us and an honor. We are the largest civic organization in the city and Northwest Arkansas. This is a huge undertaking for us and something we have put our heart into. We are proud to be a part of it. This is an outgrowth of our ongoing partnership with the city. We appreciate the Mayor and staff.

Mayor Jordan: Thank you very much.

City Attorney Kit Williams thanked Mr. Pittman and previous president, Ray Boudreaux for raising the funds. He stated he was happy to be a part of the government of Fayetteville and the Rotary Club of Fayetteville.

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

Resolution 149-16 as recorded in the office of the City Clerk

VAC 16-5494 (3641 W. Wedington Dr./Ozarks Electric Co-op): An ordinance to approve VAC 16-5494 submitted by Crafton-Tull engineers, Inc. for property located at 3641 West Wedington drive to vacate a portion of a utility easement.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. The Planning Commission voted 9-0 in favor. Staff recommends approval.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5894 as Recorded in the office of the City Clerk

Amend §164.23 Single-Family Infill Standards: An ordinance to authorize the City Council to grant a variance in the Single-Family Infill Standards to support attainable, affordable housing.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: I sit with the Planning Commission. When the third developer had problems meeting these standards and had invested a considerable amount of money developing house designs that would not meet these standards, I informed an Alderman of the problems. In two of those cases the Planning Commission did grant some variances even though the Planning Department had recommended denial. In one, Rausch Coleman was building the fourth phase of, The Coves, they could make some of their houses comply, but 21 lots could not work. The Planning Commission granted a variance to them. The variance procedure in the Planning Commission is very difficult. The City Council has made a commitment to create opportunities for obtainable housing. Mark Marquess of Riverwood Homes has already done an extensive design and advertising operation with house designs and none of them will fit in this particular proposal. Alderman Schoppmeyer is sponsoring this variance procedure. You all are the ones that decide these basic policy issues about affordability. The Planning Commission decides variances on a case by case basis.

Alderman La Tour: We state in our goals that we want to build affordable housing. Does that adversely affect someone's ability to build million dollar houses?

City Attorney Kit Williams: Absolutely not. Our goals state we hope that there will be houses built on all ends of the spectrum so people can afford a house in Fayetteville. It is good for our government to encourage affordable and attainable housing for citizens.

Alderman La Tour: I agree there should be a variety of housing to accommodate all economic levels in our city. Our city is always stronger when we have people who own things instead of renting. We are voting on an amendment to some ordinance that was passed earlier?

City Attorney Kit Williams: Yes. You passed an ordinance for Single-Family home design standards. One of the provisions in that said the garage must be recessed behind the front of the house by five feet. If you look around what has happened around Fayetteville the last 40 years you will not find that kind of design very often. Usually the garage is slightly in front of the facade of the house and that's the way the designs had been made by Mr. Marquess. He has different sized lots and more expensive or less expensive houses within the same neighborhood. The City Council has wanted a mixture of houses.

Mark Marquess, Riverwood Homes: Fayetteville is a very good town to build affordable housing. The subdivision in questions is a new subdivision called Slonebrooke. We have the new rezoning that is Neighborhood Conservation that was passed and that allowed us to bring a broad mix of things to the subdivision. This is a Master Plan Community that is going from Broyles Road to Ruppel Road in the new extension. When it is all developed we expect it to be 500 to 600 homes. It is one of the first and unique subdivisions that Fayetteville has ever had that will have a full blended mixture of affordable, middle and upper end priced homes.

I wanted to specifically talk on Ordinance 164.23 (B) (1) (b) which specifically talks about the five foot set back of a garage in a home. In this subdivision we have lots that are 60 feet, 70 feet and 80 feet long. We are having complications with how we design these homes. Even though we have 60 foot lots, we may have a 67-foot lot right beside it with a 70-foot lot that starts at 1,750 square foot, this doesn't encompass anything over 70 foot wide. It's almost an economic hardship number one to discriminate against the smaller homes. They are just not designed to look out of place. I would appreciate your consideration on this.

Alderman Kinion: Kit, I believe what we are talking about is a variance ordinance not a design standard for a specific development. This is a remarkable presentation but I'm trying to get back to what we are doing with the change in the ordinance that was brought forward to offer a front porch type infill development that was more urban, less suburban and now we are looking at a variance for single family infill standards but not a specific development, am I correct?

City Attorney Kit Williams: Yes, you are looking at how developments will occur. The design standard that was approved was actually written in by the Planning Department it was supposed to help detour crime. Its primary design standard was requiring instead of having the garage flush with the house or in front of the house by four or five feet, which has been the normal case in Fayetteville that is now going to be required to be recessed from the house. That was the problem Mr. Marquess had is that none of his designs were like that. I think he had some that were pre-sold.

Mark Marquess: We already have over 20 and we haven't even started the marketing that show that show people have already taken these lots to hold.

City Attorney Kit Williams: What we are talking about really is the recessed garage. That is the only design standard that is of issue here. This is the first time except for Cottage Housing that the City Council has ever adopted any design standards for a single family home.

Alderman Kinion: The ordinance that we are looking to revise has to do with granting variances.

City Attorney Kit Williams: Yes, it would write in a variance. Exhibit D which was passed before, says for lots 46 feet to 69 feet of street frontage, Subsection (B) says for garage openings that are on the same side of the house as the front door shall be recessed at least five feet behind the principal facade. This would add one sentence that says the City Council may add a variance to this requirement, the only requirement in that subsection which is a recessed garage, to ensure affordable and attainable housing can be constructed for our citizens.

Alderman Kinion: My point is that is what we should be looking at in our discussion rather than making it cloudy with points that may not be pertinent to what we are doing today.

Alderman Petty: I have a deep appreciation for what the developer presented to us in terms of trying to mix incomes together in housing. I know that's not something that a lot of production builders have done in the past so I want to personally thank you for trying to do that.

I also wanted to thank you for your kind words about the setback ordinance. I wrote that ordinance and I'm glad that is helping people today. I am very much committed to encouraging or removing the barrier for smaller infill projects to happen. I have some criticism's myself about the infill standards, I really don't think they're beyond criticism and I think this is one of the valid criticisms but I think the approach we are taking is wrong.

He went on to discuss the variance ordinance process.

Alderman Marsh: It seems the primary issue here was with the projects that were caught in transition. It started just before this ordinance was passed and are now trying to move forward and it seems like our Planning Division is going to do a lot of work in terms of making our codes more legible and helping to educate the developer community. I don't think this is going to be a problem that is going to be on going as far as ignorance of the law.

In addition to creating opportunities for attainable housing our 2030 City Plan goals also states we will make traditional town form standard. Traditional town form is not garages in front of houses.

Alderman La Tour: I'm surprised that we would purport as a City government to tell a person your garage has to be five feet behind or five feet in front. Why isn't the garage placement left up to builder or home owner? What's happened to personal freedom? I will be supporting anything that lessens the impact of this so called design standard. I don't see that moving the garage five feet forward or backward is going to greatly affect crime rates in our City.

Alderman Kinion: I want to take a barrier away from the developer by having them go to Planning and then also go to City Council for the variance. I want to empower our professionals in the Planning Division and our appointed members of the Planning Commission to have the

authority to do this. I would like to suggest that this be sent to Ordinance Review for further study so that we can see if there is a way to streamline this and make these types of decisions. We are going to be faced with this more and more as we are developing the areas of town that have been opened up for development. It should be easier for the developer but at the same time it should protect the standards that we set in our 2030 Plan.

I don't think city Council needs to be involved in every single one of these I think we need to empower our Planning Division to streamline our ordinances in order to make it easier for the development of this type of activity.

Alderman Long: One thing I saw as I read this ordinance is that we may not have fairly applied metrics and we talked about that at Planning Commission. It is very important that we apply the laws that we write across everyone the same and standardize variance procedures. I think the idea of having this go to Planning Commission before City Council would be consistent with what the rest of our laws do. I would be supportive of sending this to Ordinance Review.

Alderman Tennant: I may or may not agree with it needing to go to Ordinance Review but I saw three head nods anyway that they would be in support of it going to Ordinance Review so I certainly am not opposed to it. I can see both sides of it so I will air on the side of more conservation. Do we have a goal in mind to bring this back?

City Attorney Kit Williams: It is only on the first reading so it would just be on the second reading at the next meeting.

Alderman Tennant: In my opinion we should hold it here and then that would give me a few days to work with Sondra and the other committee members to come up with a time.

Alderman Marsh: I would like to request that we get an opinion from the Planning Commission and Planning Staff since they are the ones most educated in these issues. I would like to know what they recommend as far as what is the best course of action in order to support our goal in creating attainable housing if this is their recommendable compliance route or not.

Alderman Gray: I wanted to clarify that we are not holding up this developer. He can move on because they have taken action, is that true?

Mark Marquess: Yes we are. We are going to final plat hopefully this month. The streets are finishing paving today and tomorrow and I guess the biggest thing I would challenge everyone to, this is discretionary for the purpose of affordable housing only. This doesn't turn around and say the person with the 70 foot lot has to move their house back five feet. It doesn't say that the person with the 80 foot lot in that same housing division has to move their house back five feet. The great thing about Fayetteville is its diversity. We don't turn around and dictate that everybody has to live in a brick home, a craftsman home or standard of size or design. If we are going to impose this five foot, and that is all we are talking about on this ordinance is one "B" maybe it should be struck and given further discussion. How can you turn around and take away the rights of one group but leave it for everybody else?

Mayor Jordan: Mr. Marquess you did not get a variance from the Planning Commission.

Mark Marquess: No, we did not. We just found out about this. My suggestion is why don't we consider striking one "B" out of the ordinance. We are not striking an ordinance we are just taking that one thing that is specifically aimed at affordable housing out and giving it time to vet and see if this is what everybody wants to do across the board. Instead of singling out one group. It's wrong, we know it's, wrong it's come up the last three new subdivisions recently and it's only that one item.

City Attorney Kit Williams: I think what he is also saying is he would like to have the Ordinance Review Committee meet within the next two weeks because his final plat is getting closer to being finished and he has some houses already sold and he wants to start working on them so he doesn't want it delayed too long.

Alderman Gray: I really misunderstood because I thought you had said that they had the variance and they could move on.

City Attorney Kit Williams: No, two of the developers had gone through the variance procedure. Buffington Homes which were building French cottage style housing and they were two thirds the way through their development when they were informed that they wouldn't get anymore building permits because their garage was about where the entrance was. I don't think it was in front of the entrance but it wasn't five feet back from the entrance. They did go to Planning Commission and the Planning Department recommended denial and the entire neighborhood came out and said please let us finish the beautiful style housing.

Developers showed up and said the substantial delay, some people had already sold their house because they were having another house built in the subdivision and they were paying rent while the house was going to be built and now it couldn't be built so the Planning Commission granted that variance. The second one was Rausch Coleman they came in and said they had not heard about it, even though Jesse Fulcher was working for them and he is the one that sponsored this ordinance. Eventually the Planning Commission granted them twenty one variances out of about fifty houses because Jesse informed them they could not meet the ordinance. It wasn't until a week ago that I was meeting with Andrew Garner and Mr. Marquess that he was also surprised. He has not been to Planning Commission but he was informed then that he will not be able to develop his subdivision as he had planned and as he had pre sold. He has not been to Planning Commission yet and I am concerned about always going to Planning Commission under the variance procedures because it is such a difficult thing. One of the things that Planning Commission would normally have to consider is that this situation is unique to the subject property. Here we have a plat that has been approved and it's probably going to be final soon with a bunch of lots on it but it's on fairly flat land. Is that so unique that nothing can be done, so the standard that Mr. Marquess would probably have to establish might not meet the variance test.

That is why a different variance that would only consider the affordability and attainability of the house would be something that would be justified in this particular case. This is stuff I think we should do at the Ordinance Review Committee if possible and go forward.

Mark Marquess: As you see in that design we are going to have five more phases come through this development. We are just trying to start this first one that we have spent so much money and invested in this town and never faced this issue. We are not trying to ask for anything else. If you decide this is what you want to go with in the future then we will look at it in future designs. We had this 97 lot subdivision approved without these ordinances in it or we may have needed to change to the 70 foot lots.

Mayor Jordan: You went through all that and you did not get a variance.

Mark Marquess: No.

Mayor Jordan: Ok, thank you.

Alderman Gray: So we will be slowing your process down.

Mark Marquess: Absolutely these are ready to go. Hopefully these will be ready to go in thirty days.

Mayor Jordan: I think the Ordinance Review is going to meet within the next few days.

Alderman Tennant: I definitely want city staff input. I will work with them as well but give them enough time to make sure they have time to do that.

Mayor Jordan: As an ordinance it could go two more readings anyway but we are probably not going to get that far.

Alderman Tennant: I understood that he doesn't have a variance so we will have that goal in mind.

Alderman Long: I wanted to thank Mr. Marquess for bringing this to Council's attention. I think developer input is very important and I appreciate it.

Lorraine O'Neal, 3001 West Wedington: I agree whole heartily with Mr. La Tour's comments that developers that come into this town and invest their time, energy and designs have but one goal in mind to provide housing for people who might be willing to move to this area and discouraging them from that effort is absolutely the wrong way to go.

Chung Tan, Fayetteville Chamber: I am here today to support Mark Marquess effort to continue to build in Fayetteville. Riverwood is a Fayetteville based company that has been building for the past 25 years. Marks personal philosophy has always been trying to build affordable and attainable housing so that more Fayetteville residents can own their own home.

Alderman Long moved to suspend the rules and go to the second reading. Alderman Gray seconded the motion.

Alderman Gray: It's concerning to me that we allow a developer to get this far and then put the brakes on. I hate to see that we as a Council are treating this developer this way and I'm very disappointed.

Alderman La Tour: I think we need to give this developer relief. I would make a motion that we strike one "B" and make it a level playing field for everyone. Why just impose that standard on affordable housing?

City Council Kit Williams: We have a motion and second on the floor so parliamentary wise I don't think a motion to amend is appropriate.

Alderman La Tour: Wouldn't be appropriate now but that is where I would head with this to give him some relief. I don't think it's reasonable that we tell people where they have to put their garage. They should put it where they want within certain broad parameters.

Mayor Jordan: Mr. Marquess, I know my staff have been meeting with developers for the last seven months trying to work out a lot of these, have you been in those meetings?

Mark Marquess: Yes sir.

Mayor Jordan: And this was never brought up?

Don Marr: This particular item hasn't. I just want to be clear to Council this application for variance has not been requested yet. Had it been requested then maybe it could be considered. It's not been submitted to the Planning Commission to be considered. You can't grant a variance that has not been requested. Once a request is made, if the Planning Commission denies it, we can bring it directly to the Council as any of you can appeal that requirement but it needs to get to the Planning Commission before it can be considered. Which I think is what they are saying that they are headed there but then there's also this route of changing the ordinance in general. Which then might not require them to go forward. They have two options, they can wait until you make changes and revisions to the ordinance or they can move forward with the request of the Planning Commission requesting the variance while the ordinance is going forward for a change if it is more time sensitive than your ability to get to the revision of the ordinance.

Mayor Jordan: You have been meeting with my staff for seven months and you knew this project was coming up and you never brought that to their attention?

Mark Marquess: This project has been going for a year and a half. We have it approved with the lots that are exactly like they were approved by the Planning Commission and the rezoning by the Council. I want you to think if you went out and approved one of these apartment designs, buy the land, put in infrastructure and they get ready to build the building and you say no you have to change this. This was never on the table when we did this design standard on this subdivision.

Mayor Jordan: I'm not disputing that, I'm just saying we are trying to meet with developers for seven months to get out these kind of things ironed out and for this to occur this evening is a concern of mine.

Mark Marquess: Charley Sloan and I sat in the builder developer meetings and it was a total surprise to us.

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Don Marr: Mr. Marquess has been very active in the development meetings and he is specifically helping us with the Drainage Criteria Review Manual. We appreciate his participation and want to continue that. On these types of items, remember there's many of these codes that we are looking at to bring forward, much like Jeremy brings forward, unattended consequences as a result of ordinance changes that we have done. The reality of is and Council member Marsh brought this up last Tuesday an area that we are focused on and are hearing from the development community is when codes change that we have educational opportunities to make sure everyone is informed and communicate those changes. It is any developer's responsibility to make sure things are following the codes and as codes change our Clerk codifies the codes and any codes that have not been codified in the code are listed on our website at the bottom of the code to show those are in place but we can do a better job of communicating those and a lot of these changes you are talking about came through in time periods when development was not taking place and we did not have record permits. We did not have developers watching the code as closely as they do when they are actively building.

Alderman Gray: When was it that you learned about this problem?

Mark Marquess: Two weeks ago and we do sit on the developer and builders committee. We do work with the drainage and Don and his staff. We are not trying to be contrary but I absolutely do not think that something should be put on, whether it's a developer or one builder, when you have invested this much money and time and we are at the end of the process and now all the sudden a new rule comes in on something we invested and made huge commitments and millions of dollars of decisions on that this wasn't even on the table when we had the subdivision approved to be what it is today. How can you come back in and change it in the middle of the game?

Mayor Jordan: Mr. Marquess we are going to address that.

Mark Marquess: Thank you.

Upon roll call the motion passed 7-1. Alderman Marsh voting no.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: We will leave it on the second reading and schedule a meeting for the Ordinance Review.

Announcements:

Alderman La Tour: We have an election coming up and we are going to discuss whether we are going to raise the library tax by about 300%. That vote is taking place on August 9th. Early voting

is taking place right now at the Court House. Be sure to get out and express your opinion. If you favor a tax increase vote yes. If you are against tax increase vote no twice.

Alderman Marsh: We will be having a Ward One meeting this Thursday evening at 6:00 p.m. at the Fayetteville Senior Center. We will be discussing the 2030 City Plan, Walker Park Master Plans, sidewalk and street improvements, economic development plan as well as giving advice on how to interact with different departments at the city.

Don Marr: I wanted to inform the Council that our new financial system, New World ERP has gone live and we are now operating on that system. There are multiple phases to come forward, our HR, payroll conversion and utility billing. As those things take place over the next six to twelve months we will have new services available like emailed utility bills and things of that nature that I know were important to you all. We are now accepting payments, doing our payables and check requests, purchase orders on the system and that is moving forward.

The Gulley Park Concert, our last concert, is this Thursday, August 4th at 7:00 p.m. It's Effron White we encourage you to come out. We are also presenting and receiving comments about Gulley Park Master Plan. There is also an online survey to provide feedback for the Gulley Park Master Plan on the City's website www.fayetteville-ar.gov.

The City is changing our conversion for our emergency notifications from Everbridge to Code Red. That is being done because of citizen feedback from those that have participated in the County notification system. It's more comprehensive, we think it is ultimately the common use of the technology creates a stronger communication for our citizens in the event of a disaster. Anyone who is currently signed up on the Everbridge system is automatically converted into our Code Red System we just ask that if you have moved or have a different address that you would need to go in and log in and create a profile to change your address because the notifications are by the longitude and latitude location of your address. You only receive warnings if you are in the line of a tornado, a severe thunderstorm or flash flooding.

For citizens that are driving on the north end of town in Council member Tennant and Schoppmeyer's ward the activation of a traffic signal at the intersection of Steele Boulevard and Van Asche will be turned on Thursday if you want to join the Mayor it will be at 1:00 p.m. It is flashing now but be prepared to follow the yellow, red and green indicators as that turns on.

Our last dive in movie Ratatouille is at the Wilson Park Pool this Friday. Gates open at 7:15 p.m. the movie will start at dark.

Mark your calendars the grand opening of Kessler Mountain Regional Park will be Saturday, August 20th. Festivities will start at 8:00 a.m. The ribbon cutting will begin at 10:00 a.m.

The University starts back August 22, 2016. The School district is August 17th. If you get questions about our new student housing complexes that are currently under construction, we are still waiting on a permit request from many of the builders that have to be completed prior to student being able to move in to make sure the structures are safe. It will be a lot of last minute request as those projects try to meet the deadline.

City Council Agenda Session Presentations:

City Council Tour: None

Adjournment: 7:08 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk Treasurer

UNOFFICIAL

TO: Mayor, City Council

COPY: Don Marr, Chief of Staff
Andrew Garner, City Planning Director
Kit Williams, City Attorney

FROM: Jeremy Pate, Development Services Director *J.P.*

DATE: August 10, 2016

SUBJECT: Single Family Garage Design Standards

At the most recent City Council meeting, Council members Marsh and Tennant requested that the Planning Staff and Planning Commission offer suggestions and comments to the Ordinance Review Committee related to the recent ordinance amendment offered by the City Attorney, which proposes the creation of a new variance process to offer developers relief from current single family garage design standards for more narrow lots than typical RSF-4 properties. The current proposal authorizes the City Council to grant a variance from the applicable design standards in order to support attainable, affordable housing.

The Planning Commission reviewed the proposed amendment at its meeting on August 08, and offered the following input, as summarized by meeting notes:

- There was a general consensus that the name of the ordinance section should be changed, from Single Family Infill Standards to Small Lot Design Standards, which is more indicative of the fact that this standard applies to all small lots, throughout the city.
- No general consensus was reached on the best approach to resolve this question, or even if there was an issue to be resolved. Some Planning Commissioners expressed concern with having design standards for smaller lots, finding it an unfair application; others stated that the size of the lot and the house built upon that lot can create issues unique to that property which are not necessarily present in larger lots, so a design standard is appropriate. Some indicated if the concern was an unfair application and there was consensus that this was a safety issue, then the standards should be applied city-wide, regardless of lot size.
- Some Planning Commissioners expressed their concern with creating a new variance process for a development matter for only the Council to decide, when the Planning Commission exists to review development matters. Others indicated that due to the complexity of what "affordable housing" is, if that is the test then the policy makers (City Council) should be left with that decision.
- Several indicated there are very good reasons for the ordinance to be in place: safety for pedestrians on sidewalks, a deterrent to petty theft, burglary and the like, and aesthetics were all mentioned. Even among those opposed to the concept of single family design standards as a rule, there was some agreement that small lot development, due to its inherently closer homes

and more densely developed properties, has the potential to be less safe if not built correctly, with clear views from the home to the street, and vice versa.

- There was general disagreement on the topic that the ordinance created separate “classes” of homes, with one side arguing that the ordinance creates a higher standard for more affordable homes (those on small lots) and the other side arguing there is no exclusive correlation between the width of the lot and socioeconomic status of the resident.
- The meeting ended with Chairman Kyle Cook reminding the Commissioner and City Attorney that even in disagreement on topics, everyone should try to be mindful and respectful of others’ opinions, and leave the meeting on good terms.

The Mayor also asked staff to respond to some of the statements recently made at public meetings:

1) “The purpose of this ordinance was to prevent crime.”

The purpose of the adopted ordinance, which was adopted by the City Council unanimously as Ordinance No. 5800 on October 05, 2015, “is to maintain visibility and security of the primary residence to and from the streetscape, provide pedestrian safety, and reduce opportunities for criminal activities.” The “Whereas” clauses of the ordinance, which are attached to this document, demonstrate that for multiple reasons, staff was proposing reduced lot width and size in many of the City’s zoning districts, to encourage small-lot single family development with a higher density, a concept supported by the City’s future land use plan. Small lot development is appropriate in many areas of the city, and reducing the zoning restrictions to allow this was one of the primary purposes of this ordinance. The adopted ordinance enabled developers to develop more homes on the same amount of land than they were allowed to before. It was also recognized that small-lot development comes with its own challenges, particularly when setbacks are smaller, houses are closer, and density increases. Sight distance for drivers exiting garages, pedestrian and child safety along sidewalks, and the potential for deterring crime by promoting and maximizing visual transparency between homes and the street were cited as reasons to create new design standards for small-lot development. During the drafting phase of the ordinance, the planning division met with the Fayetteville Police Department, who voiced support for the concepts of maintaining visibility between a home and a street, stating:

“The focus of CPTED (Crime Prevention Through Environmental Design) is lowering the opportunity for unwanted activities (break ins, burglaries) to occur. Windows on the front of the home is a good crime deterrent, for example. Windows provide natural surveillance to and from the road, when shades and curtains are open. Anyone who is considering an unwanted activity can never be sure they wouldn’t be seen. I believe this is a very positive design element that reduces crime.”

The Planning Staff proposed these standards as part of a larger ordinance amendment in several sections of the Unified Development Code. For the design standards, we chose two thresholds with slightly different requirements: 46-69 feet of lot width and less than 46 feet. Lots 70 feet and above are not subject to the ordinance. By far the majority of lots in the City of Fayetteville

are zoned RSF-4, and thus have at least 70 feet of lot width required. Some of the City's newer zoning districts like Neighborhood Conservation, RSF-7, RSF-8, and now RSF-18 allow lots of 30, 40, 50, and 60 feet in width. Many traditional neighborhoods were platted with lots of this size, and most do not have garages that project forward of their front façade. In keeping with this tradition, and for reasons relating to safety and aesthetics, the city staff proposed and City Council adopted these new standards, "making traditional town form the standard."

2) These standards now apply to the majority of residential properties; if one is looking for developable land to be built on, RSF-4 is definitely less than all of the Neighborhood Conservation that has been zoned recently.

The Planning staff is not sure where this information is sourced, though it was stated at least twice at the most recent Planning Commission discussion. The GIS division maintains a database of all properties in the city, what they are zoned, and whether or not they are developed into lots. As of today:

The single family zones that require lots to be developed 70 feet wide or larger, and thus are not subject to this ordinance, contains approximately 10,881 acres. RSF-4 is by far the majority of this acreage, at 9,535 acres. 56% of this acreage is developed in residential lots; the remaining 44%, or 4,176 acres, is considered undeveloped.

The single family zones that permit lots to be smaller than 70 feet wide contain 962 acres; 722 acres of this is Neighborhood Conservation. These more dense zones do not require lots to be less than 70 feet, but they do allow them to be so.

3) This design standard targets and discriminates against affordable homes.

This topic was debated at the Planning Commission at length. The size of a lot does not automatically equate to an affordable home, though it certainly can help, if that is the goal. One of the most valuable homes in the City of Fayetteville is on a lot that is 30 feet wide, and many small lots in the historic districts of Fayetteville have homes that are very high in value. Conversely, a small lot can reduce the cost to a homebuyer when that is the intent, in that it is less property to purchase. Reducing the frontage requirement and setbacks for many of our higher density single and multi-family districts allows a developer additional tools to provide a greater variety of house size and price point, thereby making them more attainable to a greater segment of our population. The design standard in and of itself has not been proven to increase the cost of a house; the "cost increase" that has been discussed in almost every case thus far is due more to the fact that an already designed house plan is planned for a specific development or lot and changing that already developed house plan would cost time and money. The standard does not attempt to make homes less affordable; one of the very purposes of the ordinance was to improve the land use efficiency by increasing density, where it is appropriate, and at the same time maintaining a high quality of life and safe neighborhoods. The design standard in place is a setback, not unlike other building setbacks or stepbacks in all zones.

4) Developers were caught by surprise or projects were already in process.

Clearly there were subdivisions or lots already in process that were impacted by this ordinance when it was adopted, much like every ordinance that is adopted. To give some perspective on the timeline:

- June 22, 2015 – Planning Commission discussion and table to allow public input
- July 13, 2015 – Planning Commission discussion and forward to City Council
- August 04, 2015 – City Council 1st reading, tabled to allow modifications
- October 06, 2015 – City Council 2nd and 3rd reading, adopted unanimously

To date, the variance process through the Planning Commission has offered relief for several of these projects. The project that was discussed at the last meeting is a good example; this project was submitted during the process of City Council review, and approved by the Planning Commission as a preliminary plat on September 28, just before the ordinance was adopted. While the lots have actually still not been approved for construction of homes, the developer indicated that they have already pre-sold lots and house plans for the lots they plan to develop that are less than 70 feet in width. The options to them at this point are to 1) request a variance before the Planning Commission or 2) change their lots to a minimum 70 feet in width.

5) City Planning Staff Recommendations:

At the request of the Council, the City Planning staff met to discuss this ordinance amendment proposal, and offers the following suggestions to consider if an amendment to UDC Section 164.23 is desired to allow more flexibility in design standards to meet the original intent of the code. These suggestions are shown in the attached strikeout-highlight version of the code and generally described below.

Lot Size Applicability

This option would simplify the code and lower the threshold of applicability only to lots 50 feet wide or less when the threshold currently applies to all lots less than 70 feet. The 50-foot lot dimension is what is typically understood in Fayetteville as a ‘traditional’ size. Many lots throughout older parts of the the City were originally platted in 25-foot or 50-foot increments, and we are seeing more lots platted with this size now. In staff’s opinion, the 50-foot threshold is a more accurate dimension for what is considered to be small-lot single family homes, where the relationship between the width of the home and the width of the lot began to be more prevalent. As lot sizes get smaller and development patterns more compact, negative design impacts of single family homes such as 22-foot wide garages start to become compounded. As homes are developed at the 50-foot width and below, design sensitivity to the public realm is critical to maintain safe, attractive neighborhoods.

Garage Door Placement

This option would modify the code to be consistent with the Urban Residential Design Standards (UDC 166.23) which requires that garages not protrude forward from the principal façade. The Single Family Infill Standards currently require garages to be recessed at least 5 feet behind the principal façade. This change would allow more flexibility while still maintaining the intent of eliminating prominent ‘snout house’ design where garages and garage doors are the primary visual feature of a home.

Single Family Infill Standards – Rename

Staff would suggest renaming this section to Single Family Design Standards, removing the “infill” name. A point was made at the last Council meeting that made good sense, these standards apply to new

greenfield developments with small lots, as well, thus taking out the “infill” designation is more descriptive of its applicability.

DISCUSSION:

In summary, staff still feels that the Single Family Infill code is important to guiding and encouraging small lot development in a pattern that is in line with the City’s goals. Recent code changes were proposed and adopted last year to encourage and allow small-lot single family development. These changes reduced the single family lot width minimums to 30 feet in multiple zoning districts and included the adoption of a new district called RSF-18, Residential Single Family 18 Units per acre. The subject design standards are intended to ensure that small lot development is done sensitively, maintaining transparency and interaction at the street level to create a pedestrian-friendly, active, and safe neighborhood. As with any ordinance that is adopted, staff is open to review and revise if the language is not meeting the stated intent. We have made some suggestions here for the Council to consider.

164.23 Single-family infill Small Lot Design Standards

(A) *Purpose.* The purpose of the standards is to maintain visibility and security of the primary residence to and from the streetscape, provide pedestrian safety, and reduce opportunities for criminal activities.

(B) *Applicability.* The following standards apply to new detached single-family homes on lots with less than 70 feet of street frontage of 50 feet or less.

~~(1) Lots with between 45 feet and 70 feet of street frontage.~~

~~(a) Each home shall have a clearly defined front door and windows on the ground floor façade facing the street. This is only required on one side of the home where there is more than one street frontage.~~

~~(b) Garage openings that are on the same side of the home as the front door shall be recessed at least 5 feet behind the principal façade.~~

~~(c) A garage does not have to be recessed behind the principal façade if the garage opening is located on a different side of the home than the front door.~~

~~(2) Lots with less than 45 feet of street frontage.~~

(1) Each home shall have a clearly defined front door and windows on the ground floor façade facing the street. This is only required on one side of the home where there is more than one street frontage.

~~(a)~~

(2) Garage openings that are on the same side of the home as the front door shall not protrude forward past the edge of the principal façade. ~~be recessed at least 5 feet behind the principal façade. Where a garage cannot be located at least 5 feet behind the principal façade, due to unique site characteristics, at least two of the following standards shall be implemented.~~

~~(i)~~

(3) The garage opening shall be less than 50 percent of the principal façade length.

~~(ii) The front door shall be even with or extend forward of the garage opening.~~

~~(iii) For multi-story homes, the principal façade, a balcony, deck, or similar feature shall project at least 12 inches beyond the garage opening. The upper floor(s) shall also have windows facing the street.~~



113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Ordinance: 5900

File Number: 2015-0330

ADM 15-5093 (UDC CHAPTERS 161, 164 AND 172 - SINGLE FAMILY AND TWO FAMILY INFILL)

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT CODE OF THE CITY OF FAYETTEVILLE, TO AMEND CHAPTERS 161, 164 AND 172 TO MODIFY EXISTING BULK AND AREA REGULATIONS TO ENCOURAGE SMALL-LOT, SINGLE FAMILY AND TWO FAMILY INFILL IN MULTI-FAMILY ZONING DISTRICTS; TO PERMIT ZERO LOT-LINE DEVELOPMENT IN CERTAIN ZONING DISTRICTS; TO CREATE THE RSF-18 ZONING DISTRICT; AND TO INCLUDE MINIMUM DESIGN STANDARDS FOR THIS TYPE OF DEVELOPMENT.

WHEREAS, the City of Fayetteville recognizes that the opportunity to provide appropriate neighborhood density through small lot development supports City Plan 2030 goals of prioritizing infill development and discouraging suburban sprawl; and

WHEREAS, small lot development with reduced lot sizes and building setbacks may encourage the creation of housing that may be financially attainable to a large segment of the Fayetteville community; and

WHEREAS, the City of Fayetteville recognizes that small lot developments are appropriate in many areas of the city zoned for high-density, multi-family housing; and

WHEREAS, the overall residential density of single-family and two-family developments in multi-family zoning districts will better match the underlying permitted density by reducing the lot size requirements for residential development; and

WHEREAS, design standards for narrow lot development shall be utilized to maximize visual transparency between homes and the street to increase "eyes on the street" and promote safe urban environments.

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

Section 1: That the City Council of Fayetteville, Arkansas hereby repeals the existing *§161.10 RT-12, §161.1 RMF-6, §161.12 RMF-12, §161.13 RMF-18, §161.14 RMF-24, and §161.15 RMF-40* and replaces these sections with the attached Exhibit "A", renumbering the subsequent sections accordingly.

Section 2: That the City Council of Fayetteville, Arkansas adopts a new *§161.10 District RSF-18, Residential Single Family - 18 units per acre*, as shown in Exhibit "B".

Section 3: That the City Council of Fayetteville, Arkansas hereby repeals *§164.11 Height or Setback Regulations; Exceptions and Home Protection Requirements* and replaces it with the attached Exhibit "C."

Section 4: That the City Council of Fayetteville, Arkansas hereby amends *§164: Supplementary Zoning Regulations* by adopting *§164.23 Single-Family Infill Standards* as shown on the attached Exhibit "D."

Section 5: That the City Council of Fayetteville, Arkansas hereby repeals *§172.11(G)(2) Driveways Beyond the Property Line* and replaces it with the following language:

§172.11(G)(2). Driveways Beyond the Property Line. Driveways shall be paved from the property line and/or master street plan right-of-way with asphalt, concrete, brick or stone pavers, or other solid surface and shall extend 18 feet (length) into the property. To prevent vehicles from parking over the public sidewalk, garages and carports shall be positioned to provide at least 18 feet between the sidewalk or Master Street Plan right-of-way line and the garage or carport.

PASSED and APPROVED on 10/6/2015

Approved:

Attest:

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk Treasurer



TO: Planning Staff; Planning Commission; Ordinance Review Committee

THRU: Kit Williams, City Attorney

FROM: Matthew Petty, Ward 2 Alderman

DATE: August 4, 2016

SUBJECT: Ordinance No. _____. An ordinance to authorize the City Council to grant a variance in the Single-Family Infill Standards to support attainable, affordable housing.

Planners, Commissioners, and Committee Members,

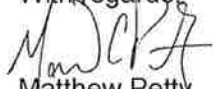
I support the intent of the ordinance in question. The regulations of our Unified Development Code are made more legitimate by a clear and accessible variance process. Yet I cannot support the proposed ordinance as constructed because it ignores current variance conventions. Bypassing the Planning Commission with variances for any development standard, including the design standards in question, is a mistake and further confuses our development review procedures.

Please consider an alternative approach. The intent of this ordinance can be met by writing new flexibility into our existing variance chapter. I propose broadening the justifications a developer must demonstrate to be granted a variance from the City Planning Commission. As it stands, a developer must convince the Commission our development provisions are causing an undue hardship unique to the subject property, but it is clear there are many ways a development might satisfy the intent and purpose of our regulations that do not strictly comply with our code. The Planning Commission should be able to grant variances based on the merit, broadly defined, of any proposal that meets the intent and purpose of the relevant provision.

This approach solves numerous problems in addition to the issue before us. It will allow the Planning Commission to consider all aspects of city planning and development, such as housing affordability, design precedents and context, economic development goals, and infrastructural advantages. It will grant staff the flexibility to support variance requests which advance city goals but presently go unsupported because no hardship can be demonstrated.

It's an improvement to the way we address development today. I respectfully request you give this suggestion the consideration it deserves.

With regards,


Matthew Petty
Alderman



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: Mayor Jordan
City Council

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

FROM: Kit Williams, City Attorney

DATE: August 12, 2016

RE: Ordinance Review Committee's Unanimous Recommendation for § 164.23 Single-family Infill Standards

The Ordinance Review Committee had a productive meeting Thursday afternoon. After hearing from City staff and the public, they unanimously passed a motion to recommend to the full City Council the changes proposed by the Planning Department (attached).

By focusing more clearly on relatively narrow lots (50 feet wide and narrower), most of the issues home builders and home buyers have had with the original code section will be resolved and will not likely reoccur. Because of this recommendation, the new variance procedure I had proposed with Alderman Schoppmeyer's sponsorship is no longer necessary. Therefore, the amendment to § 164.23 should now be primarily as proposed by the Planning Department.

I informed the Ordinance Review Committee (after consulting with Andrew Garner and receiving his tentative approval) that I would seek to retain some of Planning's original language to allow garages in narrow lots to sometimes exceed 50% of the house's principal façade's width. This is necessary for a normal 22 foot wide garage to fit along with the front of a house on a narrow lot. This would only be available if the house had a second floor with windows or a balcony or deck facing the street.

Therefore, I would suggest that § 164.23 (B) (3) would be as follows:

“(3) The garage opening shall be less than 50% of the principal façade’s length unless the garage has windows facing the street and the house has a second story with windows facing the street or has a balcony, deck, or similar feature which projects at least flush with the garage opening toward the street.”

After consultation with Planning on Monday, I will prepare and distribute a clean copy of the ordinance as recommended by Planning including the language of (3) above. I will also follow Planning’s suggestion about renaming this code section to **Small Lot Design Standards**, probably add a reference to aesthetics to a *Purpose* section, and provide different Whereas clauses.

If you wish to accept the Ordinance Review Committee’s recommendation, please move to amend the current agenda item’s ordinance to the new ordinance.

164.23 Single-family infill Small Lot Design Standards

(A) *Purpose.* The purpose of the standards is to maintain visibility and security of the primary residence to and from the streetscape, provide pedestrian safety, and reduce opportunities for criminal activities.

(B) *Applicability.* The following standards apply to new detached single-family homes on lots with less than 70 feet of street frontage of 50 feet or less.

~~(1) Lots with between 45 feet and 70 feet of street frontage.~~

~~(a) Each home shall have a clearly defined front door and windows on the ground floor façade facing the street. This is only required on one side of the home where there is more than one street frontage.~~

~~(b) Garage openings that are on the same side of the home as the front door shall be recessed at least 5 feet behind the principal façade.~~

~~(c) A garage does not have to be recessed behind the principal façade if the garage opening is located on a different side of the home than the front door.~~

~~(2) Lots with less than 45 feet of street frontage.~~

(1) Each home shall have a clearly defined front door and windows on the ground floor façade facing the street. This is only required on one side of the home where there is more than one street frontage.

~~(a) —~~

(2) Garage openings that are on the same side of the home as the front door shall not protrude forward past the edge of the principal façade. be recessed at least 5 feet behind the principal façade. Where a garage cannot be located at least 5 feet behind the principal façade, due to unique site characteristics, at least two of the following standards shall be implemented.

~~(i) —~~

(3) The garage opening shall be less than 50 percent of the principal façade length.

~~(ii) The front door shall be even with or extend forward of the garage opening.~~

~~(iii) For multi-story homes, the principal façade, a balcony, deck, or similar feature shall project at least 12 inches beyond the garage opening. The upper floor(s) shall also have windows facing the street.~~



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: **Mayor Jordan**
City Council

CC: **Don Marr**, Chief of Staff
Jeremy Pate, Development Services Director
Andrew Garner, Planning Director
Jonathan Curth, Senior Planner

FROM: **Kit Williams**, City Attorney

DATE: **August 18, 2016**

RE: **Amending § 164.23 Single-Family Infill Standards**

Attached please find the ordinance amending § 164.23 as recommended by Planning and the Ordinance Review Committee. The name of this code section has been changed to: "Small Lot Design Standards." The Purpose section has been shortened, but broadened to include aesthetics as a support for these standards.

I have also slightly modified (B) (3) from the changes Planning had initially recommended and retained their original wording in the current code. A traditional two car garage (normally around 22 feet wide) would probably take up slightly more than 50% of the front façade of a house on a 50 foot wide lot (with normal 5 foot side setbacks). Rather than requiring a variance request by the owner, the City Council through this code subsection would present two options: second floor windows facing the street or a balcony or deck flush with the garage front. Both of these options would increase visibility toward the street for better security and would improve streetscape aesthetics. By including these options rather than requiring a variance request, the City Council would simplify and speed up small lot design and give architects and home designers clear guidance about what would be approved if a garage opening needed to exceed 50% of the principal façade width.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND § 164.23 SINGLE-FAMILY INFILL STANDARDS

WHEREAS, § 164.23 **Single-Family Infill Standards** should be renamed **Small Lot Design Standards** to recognize such standards would apply to small lots (50 feet wide or less) throughout the City; and

WHEREAS, § 164.23's initial application to all lots smaller than 70 feet wide has created problems for several home builders and buyers and should be more focused upon truly small lots (50 feet or less).

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 § 164.23 **Single-Family Infill Standards** by repealing it and enacting a modified version entitled **Small Lot Design Standards** as follows:

“§ 164.23 Small Lot Design Standards

(A) Purpose. The purpose of these standards is to better maintain visibility, security, safety and aesthetics for pedestrians, drivers and the residents of homes built on relatively narrow lots.

(B) Applicability. These standards apply to new detached single-family homes with street frontage of 50 feet or less.

(1) Each home shall have a clearly defined front door and windows on the façade facing the street. This is only required on one side of a home where there is more than one street frontage.

(2) Garage openings that are on the same side of the home as the front door shall not protrude forward past the edge of the principal façade.

(3) The garage opening shall be less than 50% of the principal façade length unless the house has a second story with windows facing the street or has a balcony, deck, or similar feature which projects at least flush with the garage opening toward the street.”

PASSED and APPROVED this 16th day of August, 2016.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA SMITH, City Clerk/Treasurer

**Rezoning Checklist for
1030 S COLLEGE
FAYETTEVILLE, AR 72701**

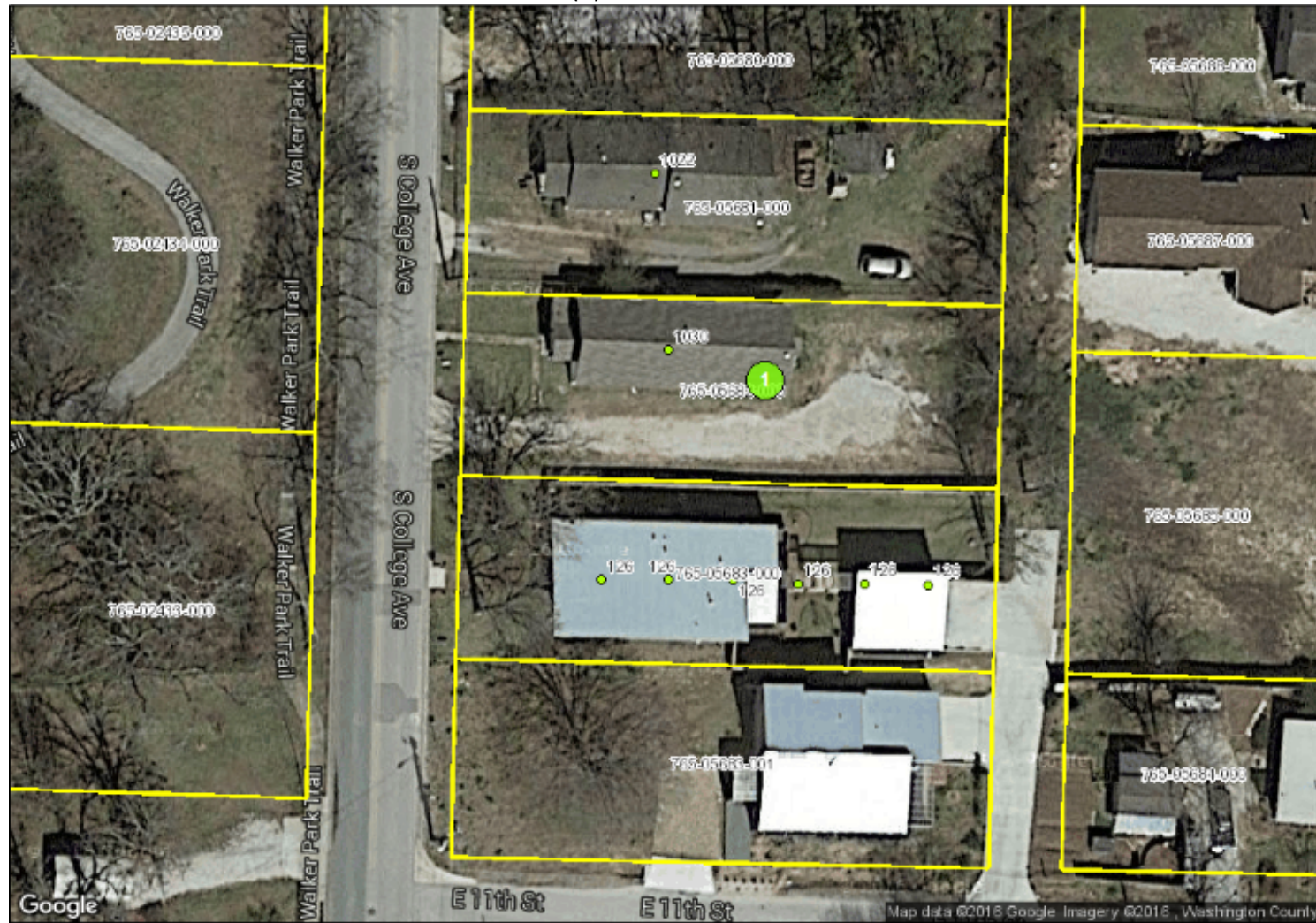
(1) Payment in full is attached.

(2) Legal Description:

Lot 23 and 24 in Block 2 of Glenwood Park Addition to the City of Fayetteville, Arkansas, as per plat on record in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

(3) CD is available upon request.

(4) PARCEL MAP



(5) Complete Written Description:

1030 S College (across the street from the City's new Disc Golf course in the Walker Park Neighborhood) was recently purchased by Keaton and Megan Smith. We are requesting a zoning change from Neighborhood Conservation to Neighborhood Services.

As our economy evolves and more and more individuals are self-employed as "freelancers", the need for small, flexible, affordable office space is increasing.

To meet this need, we propose a small-scale office and studio space for professionals. We are in discussions with several sole proprietors and non-profit organizations to lease space, including an architect, an artist, a graphic designer, a small non-profit with 2 staff members, and a real estate professional. We will execute leases with several tenants, who will each have their own desk in the front (West) half of the building, and share access to 3 private offices in the back (East) half of the building. We plan to allow tenants to move in as soon as the rezone/CUP is approved.

The proposed zoning change would allow the above uses (and potentially a church and temporary art gallery, if our concurrent CUP is approved) to coexist in the existing building on the site. The scale of the existing building is consistent with surrounding properties, which will not change. The nature of the proposed commercial use is not anticipated to increase traffic significantly,

Commercial and institutional use is not rare in the Walker Park neighborhood, or on South College. The closest example is the Fayetteville Senior Center, which is across the street and just north of the subject property. There are several other churches and small office buildings (Metro Marketing Realty, for example) in otherwise residential parts of the Walker Park neighborhood.

The Walker Park Neighborhood Master Plan and City Plan 2030 both call for form-based zoning that allows for a variety of uses.

The Walker Park Neighborhood Master Plan states that "maintaining and enhancing a balance of uses and housing in the Walker Park Neighborhood is a benefit to the neighborhood and to the City....ensuring a balance of uses and housing contributes to the overall sustainability of the community by reducing the number of vehicle trips residents have to make in

order to buy groceries or seek entertainment...the existing infrastructure within the neighborhood such as streets, water and sewer lines as well as the area's proximity to Downtown creates an opportunity for residential and non-residential infill." (page 17)

Public water and sewer lines are already tied to the existing building, and no construction projects are anticipated on the site that would significantly increase water or sewer impact. The proposed zoning would have no impact on density, schools, traffic danger, or congestion.

The below information was included in our concurrent CUP application, and included here for your convenience:

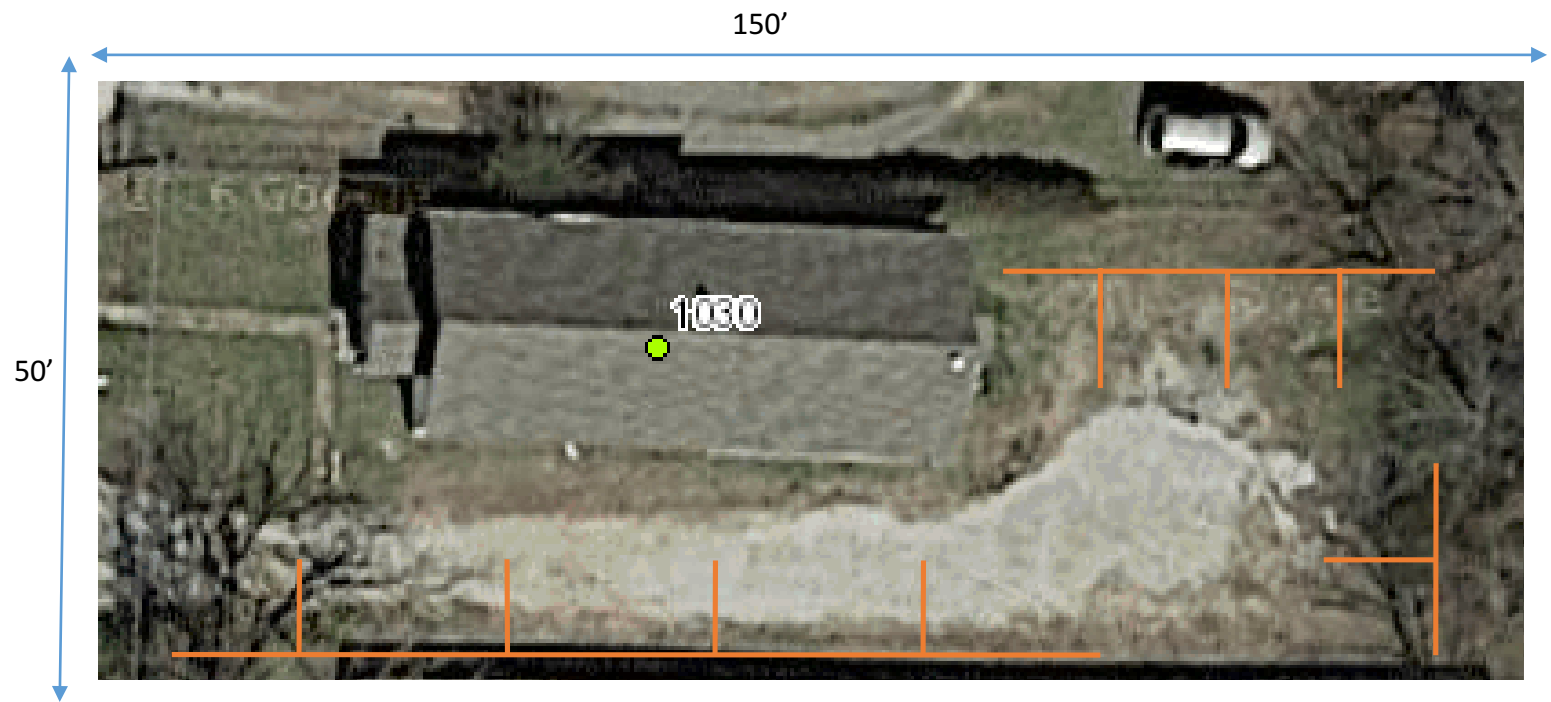
- (a) 1407 square feet existing. No changes proposed.
- (b) The existing site allows for at least 11 off-street parking spaces, supplemented by public parking at Walker Park. 0 off-street parking spaces are required.
- (c) Business Use
 - Hours of Operation: 8AM-5PM Daily
 - Number of Employees: Approximately 6, but it is unlikely that all 6 would be there at any one time
 - Anticipated number of patrons: The office users may entertain the occasional visitor or on-site business meeting, but we do not anticipate retail patrons in the traditional sense of the word. Approximately 2 visitors per day, total.
- (d) Existing outdoor lighting includes a double light fixture affixed over the front entrance and a gooseneck light over the back entrance.
- (e) Noise will be minimal as the property will be utilized for professional offices and studio space.
- (f) The east end of the property is buffered by a mature tree line and existing fences on north and south sides will screen the lot from adjacent properties.
- (g) Trash is kept in a city trashcan underneath the existing back entryway stairs, out of public view.
- (h) The property contains a dedicated drive to the south of the building with ingress and egress from S College Ave. Due to the limited number of patrons and visitors, we do not anticipate any significant traffic impacts.
- (i) The proposed use of the property as professional office and studio space is compatible with and complementary to the surrounding neighborhood of institutional and residential properties. As South Fayetteville continues to grow, the community has expressed demand for conveniently-located services and office space, as illustrated in the linked social media survey. In fact, most respondents to the Facebook post actually requested MORE intense commercial uses (coffee shop, restaurant, dance hall, etc.). Our proposal will have a negligible impact on traffic, will create virtually no additional

visual, noise or environmental pollution, and will add vibrancy and diversity to the neighborhood. Situated across from the Fayetteville Senior Center and just a block from Walker Park, 1030 S College Ave will provide the citizens of South Fayetteville an option to live and work within the comforts of their neighborhood.

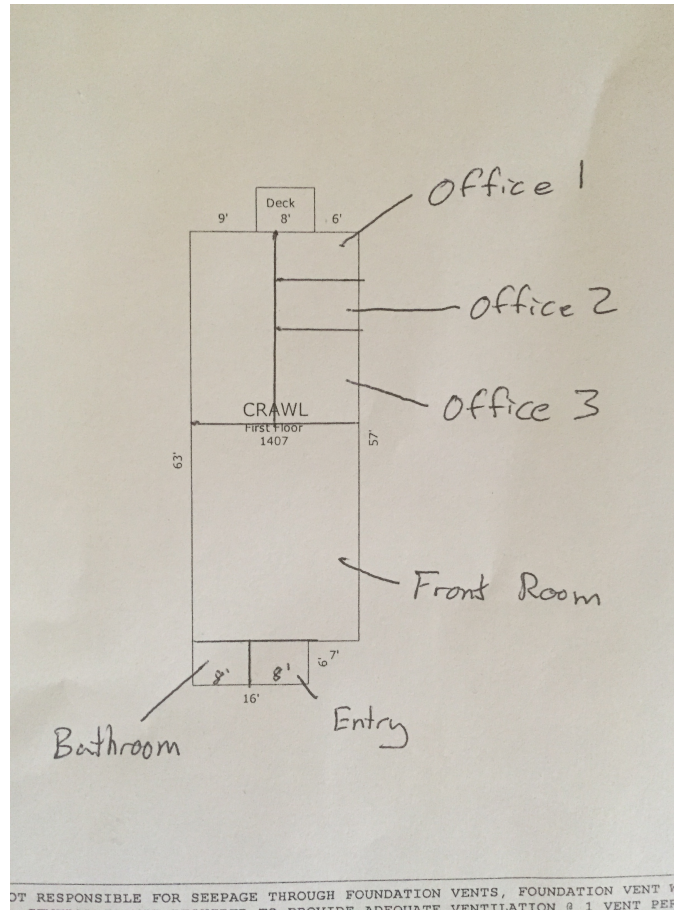
<https://www.facebook.com/groups/524806121025132/>

- (6) Site plan is attached. No changes are proposed.
- (7) Floor plans are attached. No changes are proposed.
- (8) County parcel map with owner, address, and parcel number ID is attached.
- (9) Signed CUP application is attached.
- (10) CD is available upon request. Applicants will comply with the Notification Requirements for a CUP.

1030 S COLLEGE SITE PLAN



1030 S COLLEGE FLOOR PLAN



PARCEL MAP



COUNTY

COUNTY PARCEL ADJACENT OWNERS

- (a) Owner: City of Fayetteville, Address: NA, Parcel ID: 765-02434-000
- (b) Owner: City of Fayetteville, Address: NA, Parcel ID: 65-02433-000
- (c) Owner: Robert E. Wheeler, Address: 1022 S College Ave, Parcel ID: 765-05681-000
- (d) Owner: Keaton W and Megan W Smith, Address: 1030 S College, Ave, Parcel ID: 765-05682-000
- (e) Owner: John Forrest Ales, Address: 1046 S College Ave, Parcel ID: 765-05683-000
- (f) Owner: Darla P Newman Revocable Trust, Address: 1049 S Washington Ave, Parcel ID: 765-05687-000
- (g) John and Bley and Karen Remmers, Address: 1067 S Washington Ave, Parcel ID: 765-05685-000

Smith, Lorinda

From: Smith, Sondra
Sent: Tuesday, August 09, 2016 12:14 PM
To: Mulford, Patti; Williams, Kit; Pennington, Blake
Cc: Branson, Lisa; Smith, Lorinda; Smith, Sondra; Pate, Jeremy; Garner, Andrew
Subject: FW: Request
Attachments: 1030_Rezone_Checklist.pdf

Agenda Request for today from Sarah Marsh.

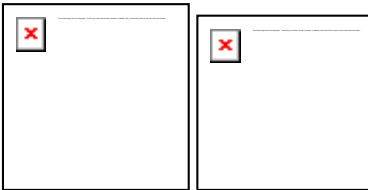
From: Marsh, Sarah
Sent: Tuesday, August 09, 2016 11:48 AM
To: Smith, Sondra <ssmith@fayetteville-ar.gov>
Subject: Fw: Request

Sondra,

I would like to walk on this rezoning request at our Agenda Session tonight due to a time crunch on the part of the applicant. What do I need to do to make this happen?

Thanks,

Sarah Marsh, bARCH, LEED AP BD+C
Vice Mayor | City Council Member, Ward 1, Position 2
City of Fayetteville, Arkansas
ward1_pos2@fayetteville-ar.gov | 479.799.0393



From: Sarah Marsh <sarahemarsh@gmail.com>
Sent: Tuesday, August 9, 2016 11:43 AM
To: Marsh, Sarah
Subject: Fwd: Request

----- Forwarded message -----

From: Keaton Smith <kwsmith1200@gmail.com>
Date: Mon, Aug 8, 2016 at 11:20 PM
Subject: Request
To: Sarah Marsh <sarahemarsh@gmail.com>

Sarah,

Tonight, our rezone request for 1030 S College passed the Planning Commission 7-1. Due to time constraints, I'm writing to request that you "walk on" our rezone request to the City Council agenda session tomorrow night, August 9th.

Our office tenant, Artist Laboratory Theatre, would like to move in September 1st. This date coincides with the beginning of their FY 17 budget. In addition, Artist Laboratory Theatre plans to have two yoga studios as sub-tenants, and both sub-tenants would like to move in on September 1st. For these reasons, I respectfully request that you consider walking our rezone request on to tomorrow night's agenda session.

I've attached our rezone request checklist that was submitted to City Planning. We feel the rezone from Neighborhood Conservation to Neighborhood Services is appropriate for several reasons:

- It is consistent with the historical use of the property (it has always been a church)
- It does not increase the intensity of the use
- An informal Facebook survey showed overwhelming demand for small-scale commercial use of the building
- The adjacent property owners are comfortable with the proposed zoning district and proposed use
- The building has never been residential, and would require substantial renovation to make it residential
- Changing the site to residential would reduce diversity of the neighborhood and sacrifice the historic character and charm of the building
- The Walker Park Neighborhood Master Plan calls for a diversity of uses
- City Plan 2030 calls for infill, revitalization and the promotion of traditional town form, such as mid-block commercial use

If I can provide any additional information, please do not hesitate to call or email me. I appreciate your service and your consideration of this request.

.....

Keaton

[479-879-7922](tel:479-879-7922)

--

Sarah Marsh, bArch, LEED AP

Tanglewood Fashion & Lifestyle

Custom Apparel | Design Services

479.799.0393 | sarah@studioTanglewood.com

C.4. 2016-0375 RZN 16-5501
1030 S. College

Handed out at
the 8-16-16
City Council
meeting

8/15/2016

Fayetteville City Council Members,

I'm writing you as a resident of the Walker Park Neighborhood to express my support of the request to rezone 1030 S College from Neighborhood Conservation to Neighborhood Services.

I support the rezone request because a light commercial use in the mid-block areas of our neighborhood adds diversity to the neighborhood and creates a new neighborhood amenity within walking distance of my home.

Thank you for considering my opinion on this matter.

Sincerely,

Morgan Hicks

Morgan Hicks
693 S. Block Ave
Fayetteville, AR 72701
Bob Wheeler
1022 S College
Fayetteville AR 72701

Silvia Tornay
48 E. South St.
Fayetteville, AR 72701

SAM HOUSER
48 E. SOUTH ST.
FAYETTEVILLE, AR 72701

8/15/2016

Fayetteville City Council Members,

I'm writing you as a resident of the Walker Park Neighborhood to express my very strong support of the request to rezone 1030 S College from Neighborhood Conservation to Neighborhood Services.

I support the rezone request because a light commercial use in the mid-block areas of our neighborhood adds diversity to the neighborhood and creates a new neighborhood amenity within walking distance of my home. This is right by the bike trail, and this type of commercial space gives residents an opportunity to work or recreate within walking or biking distance of where they live. This meets Goal 3 of City Plan 2030: We will make traditional town form the standard. This neighborhood was built in traditional form, and this is exactly the type of thing we should be trying to encourage with Goal 3.

Thank you for considering my opinion on this matter.

Sincerely,

Zara Niederman

Zara Niederman
849 S Washington Ave
Fayetteville AR 72701

8/15/2016

Fayetteville City Council Members,

I'm writing you as a resident of the Walker Park Neighborhood to express my support of the request to rezone 1030 S College from Neighborhood Conservation to Neighborhood Services.

I support the rezone request because a light commercial use in the mid-block areas of our neighborhood adds diversity to the neighborhood and creates a new neighborhood amenity within walking distance of my home.

Thank you for considering my opinion on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Gary Kahanak". The signature is written in dark ink and is positioned above the printed name and address.

Gary Kahanak
952 S Washington Ave
Fayetteville AR 72701

City of Fayetteville, Arkansas

*113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323*



Meeting Agenda - Tentative Agenda

Tuesday, August 9, 2016

4:30 PM

City Hall Room 326

City Council Agenda Session

*Adella Gray Ward 1
Sarah Marsh Ward 1
Mark Kinion Ward 2
Matthew Petty Ward 2
Justin Tennant Ward 3
Martin W. Schoppmeyer, Jr. Ward 3
John S. La Tour Ward 4
Alan Long Ward 4*

ELECTED OFFICIALS:

*Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith*

Call To Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions

City Council Meeting Presentations, Reports and Discussion Items:

[2016-0365](#)

FAYETTEVILLE NATURAL HERITAGE ASSOCIATION CHECK PRESENTATION

Agenda Additions

A. Consent:

A. 1 [2015-0653](#)

APPROVAL OF THE AUGUST 2, 2016 CITY COUNCIL MEETING MINUTES.

A. 2 [2016-0334](#)

NWA REGIONAL AIRPORT AND NWA COUNCIL FOUNDATION COOP AGR.:

A RESOLUTION TO APPROVE THE COOPERATIVE AGREEMENT BETWEEN THE CITY OF FAYETTEVILLE, NORTHWEST ARKANSAS REGIONAL AIRPORT (XNA), AND THE NORTHWEST ARKANSAS COUNCIL FOUNDATION REGARDING THE PLACEMENT OF WAYFINDING SIGNS DIRECTING TRAVELERS TO AND FROM THE AIRPORT WITHIN THE PUBLIC RIGHTS-OF-WAY AT NO COST TO THE CITY

Attachments:

[Agenda Packet - XNA Wayfinding](#)

[Wayfinding Signs XNA Signed Agreement 2016-0334](#)

A. 3 [2016-0353](#)**MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC:**

A RESOLUTION TO APPROVE AMENDMENT NO. 4 TO THE CONTRACT WITH MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC IN THE AMOUNT OF \$15,000.00 FOR ADDITIONAL LEGAL SERVICES RELATED TO THE WHITE RIVER WATER QUALITY STANDARDS PETITION TO THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION, AND TO APPROVE A BUDGET ADJUSTMENT

Attachments: [Mitchell Williams Amendment No. 4 Agenda Packet](#)
 [BA - Mitchell Williams Amendment No. 4](#)

A. 4 [2016-0363](#)**CDI CONTRACTORS, LLC:**

A RESOLUTION TO APPROVE A BUDGET ADJUSTMENT IN THE AMOUNT OF \$11,820.00 RECOGNIZING REVENUE FROM CDI CONTRACTORS, LLC FOR ITS SHARE OF COSTS FOR REPAIRS TO WILSON AVENUE

Attachments: [SRF 2016-0363](#)
 [BA 2016-0363](#)

B. Unfinished Business:**B. 1** [2016-0352](#)**AMEND §164.23 SINGLE-FAMILY INFILL STANDARDS:**

AN ORDINANCE TO AUTHORIZE THE CITY COUNCIL TO GRANT A VARIANCE IN THE SINGLE FAMILY INFILL STANDARDS TO SUPPORT ATTAINABLE, AFFORDABLE HOUSING

(LEFT ON SECOND READING)

Attachments: [Agenda Request Packet Infill Standards](#)
 [Additional B.1 Amend 164.23 Single Family Infill Standards](#)

At the August 2, 2016 City Council meeting this ordinance Left on the Second Reading and sent to Ordinance Review Committee.

C. New Business:

C. 1 [2016-0351](#)**RZN 16-5474 (SOUTH OF 1297 E. FARMERS RD./HALE 558):**

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 16-5474 FOR APPROXIMATELY 1.28 ACRES LOCATED SOUTH OF 1297 EAST FARMERS ROAD FROM R-A, RESIDENTIAL AGRICULTURAL AND RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE TO RSF-7, RESIDENTIAL SINGLE FAMILY, 7 UNITS PER ACRE

Attachments: [16-5474 CC Staff Report](#)

C. 2 [2016-0362](#)**ADM 16-5457: (E. END OF VAN ASCHE DR./VAN ASCHE MSP, 174):**

A RESOLUTION TO AMEND THE MASTER STREET PLAN BY REMOVING THE CONNECTION OVER MUD CREEK BETWEEN THE EAST END OF VAN ASCHE DRIVE AND THE SOUTH END OF SHILOH DRIVE

Attachments: [ADM 16-5457: \(E. END OF VAN ASCHE DR./VAN ASCHE MSP\)](#)

C. 3 [2016-0364](#)**KESSLER MOUNTAIN CONSERVATION EASEMENT:**

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO SIGN A GRANT OF CONSERVATION EASEMENT TO THE NORTHWEST ARKANSAS LAND TRUST FOR THE PRESERVATION OF KESSLER MOUNTAIN

Attachments: [Kessler CE Agenda Item](#)
 [Kessler Mounaion Signed Conservation Easement](#)

C. 4 [2016-0367](#)**RZN 16-5483: (NE CORNER OF MORNINGSIDE & 15TH ST./RAUSCH COLEMAN):**

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 16-5483 FOR APPROXIMATELY 36 ACRES LOCATED AT THE NORTHEAST CORNER OF MORNINGSIDE AND FIFTEENTH STREET FROM RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE TO NC, NEIGHBORHOOD CONSERVATION, SUBJECT TO A BILL OF ASSURANCE

Attachments: [16-5483 CC reports](#)

D. City Council Agenda Session Presentations:**D.1** [2016-0355](#)

AGENDA SESSION PRESENTATION - DR. MATTHEW WENDT, NEW SUPERINTENDENT OF THE FAYETTEVILLE PUBLIC SCHOOL DISTRICT, WILL INTRODUCE HIMSELF AND SHARE GOALS FOR THE FAYETTEVILLE PUBLIC SCHOOLS AND PROVIDE THOUGHTS ON COLLABORATION AND PARTNERSHIP OPPORTUNITIES BETWEEN FAYETTEVILLE PUBLIC SCHOOLS AND THE CITY OF FAYETTEVILLE.

E. City Council Tour:**F. Announcements:****G. 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 479-575-8330.

A copy of the complete City Council agenda is available at www.fayetteville-ar.gov or in the office of the City Clerk, 113 W. Mountain, Fayetteville, Arkansas.



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2016-0365

Agenda Date: 8/16/2016

Version: 1

Status: Agenda Ready

In Control: City Council Meeting

File Type: Presentation

Agenda Number:

FAYETTEVILLE NATURAL HERITAGE ASSOCIATION CHECK PRESENTATION

City Council Meeting Presentation - Fayetteville Natural Hertiage Association Check Presentation



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2015-0653

Agenda Date: 8/16/2016

Version: 1

Status: Agenda Ready

In Control: City Council Meeting

File Type: Minutes

Agenda Number: A. 1

APPROVAL OF THE AUGUST 2, 2016 CITY COUNCIL MEETING MINUTES.



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2016-0334

Agenda Date: 8/16/2016

Version: 1

Status: Agenda Ready

In Control: City Council Meeting

File Type: Resolution

Agenda Number: A. 2

NWA REGIONAL AIRPORT AND NWA COUNCIL FOUNDATION COOP AGR.:

A RESOLUTION TO APPROVE THE COOPERATIVE AGREEMENT BETWEEN THE CITY OF FAYETTEVILLE, NORTHWEST ARKANSAS REGIONAL AIRPORT (XNA), AND THE NORTHWEST ARKANSAS COUNCIL FOUNDATION REGARDING THE PLACEMENT OF WAYFINDING SIGNS DIRECTING TRAVELERS TO AND FROM THE AIRPORT WITHIN THE PUBLIC RIGHTS-OF-WAY AT NO COST TO 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 approves the Cooperative Agreement between the City of Fayetteville, the Northwest Arkansas Regional Airport (XNA), and the Northwest Arkansas Council Foundation regarding the placement of wayfinding signs directing travelers to and from the airport within the public rights-of-way at no cost to the City.

City of Fayetteville Staff Review Form

2016-0334

Legistar File ID

8/16/2016

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Jeremy Pate

7/29/2016

Development Services /
Development Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a Cooperative Agreement between the City of Fayetteville, Northwest Arkansas Regional Airport (XNA), and the Northwest Arkansas Council Foundation for placement of wayfinding vehicular signage within public right-of-way, directing travelers to and from the regional airport.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Current Budget \$ -

Funds Obligated \$ -

Current Balance \$ -

Does item have a cost? No

Item Cost

Budget Adjustment Attached? NA

Budget Adjustment

Remaining Budget \$ -

V20140710

Previous Ordinance or Resolution #

Original Contract Number:

Approval Date:

Comments:

MEETING OF AUGUST 16, 2016

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff

FROM: Jeremy Pate, Development Services Director

DATE: July 29, 2016

SUBJECT: Northwest Arkansas Regional Airport (XNA) wayfinding vehicular signage

RECOMMENDATION:

Staff recommends approval of a Cooperative Agreement between the City of Fayetteville, Northwest Arkansas Regional Airport (XNA), and the Northwest Arkansas Council Foundation for placement of wayfinding vehicular signage within public right-of-way, directing travelers to and from the regional airport.

BACKGROUND:

In 2015, the Northwest Arkansas Council Foundation, a support organization for the Northwest Arkansas Council, applied for and received a grant from the Walton Family Foundation for the design, fabrication and installation of wayfinding signs directing to XNA from the larger cities in the region and to certain downtown areas in the region from XNA. These signs will better enable travelers within our region to navigate to and from area cities, including Fayetteville. There are a total of 16 signs, 13 of which are proposed to be Airport Trailblazer signs and 3 of which are proposed to be vehicular directional signs installed on a new panel on existing Fayetteville wayfinding signs. In addition, wayfinding signs leading from XNA to Fayetteville will also be installed, pointing visitors to Downtown Fayetteville. All signs are proposed to be located within the public right-of-way.

DISCUSSION:

The City's rights-of-way are commonly utilized for the installation of signage directing users of the transportation system to public destinations. The City and XNA have coordinated these sign locations to enable visitors and residents to easily navigate to their destination. Wayfinding signs are permitted within the city right-of-way subject to the criteria of §174.01(A), with which XNA and its contractors will comply. The proposed agreement specifies construction and maintenance requirements for the wayfinding signage, which will have to be approved and inspected by the City. See the attached plans for more location-specific information.

BUDGET/STAFF IMPACT:

There is no cost to the City to install these signs. It will be the responsibility of the City to bring any issues regarding maintenance, replacement, or repair of the Trailblazer signs to the attention of XNA in the future. The sign panels installed on the City's existing wayfinding signs will be maintained with the rest of the City's sign.

Attachments:

Memorandum of Agreement
Construction Plans

Cooperative Agreement Between the City of Fayetteville, the Northwest Arkansas Regional Airport (XNA), and the Northwest Arkansas Council Foundation

I. Purpose:

The purpose of this agreement is to establish the terms for providing wayfinding signs to XNA from Fayetteville and from XNA to Fayetteville.

II. Background

In 2015, the Northwest Arkansas Council Foundation, a support organization for the Northwest Arkansas Council, applied for and received a grant from the Walton Family Foundation for the design, fabrication and installation of wayfinding signs directing to XNA from the larger cities in the region and to certain downtown areas in the region from XNA.

III. The City of Fayetteville Agrees:

- A. To participate in the program by providing the appropriate city personnel to work with the contractors, XNA, and the Northwest Arkansas Council Foundation to review plans and take any necessary steps to facilitate the programming and installation of the signs.
- B. To maintain, repair or replace the signs provided by this project that display directions to attractions within the city. These signs include signs 205, 210, and 215 as indicated on the attached document, entitled "Message Schedule" for the city of Fayetteville. This document is attached as Exhibit A. Once the signs have been installed and MERJE (the designer of the project), and Fayetteville have approved the installation, it will be the responsibility of the city to maintain, repair, or replace these signs installed in their city limits as needed and as instructed by the "Management and Maintenance Strategy" attached to this document as Exhibit B.

- C. To work with XNA to maintain, repair or replace signs solely directing to the airport (airport trailblazer signs) within Fayetteville City limits. Specifically, these signs include numbers 200, 201, 202, 203, 204, 206, 207, 208, 209, 211, 212, 213, and 214 as indicated in the attached Exhibit A. The city further agrees to be responsible for the administration of the repair with the understanding that XNA is financially responsible for repair or replacement of these signs if they are damaged or destroyed and are not otherwise covered by insurance.
- D. After the conclusion of the project, the city will submit any proposed alternations, such as removal, relocation, and change in message or appearance, to XNA, the Northwest Arkansas Council Foundation, and the Wayfinding Steering Committee for approval prior to altering the sign.

IV. Northwest Arkansas Regional Airport (XNA) agrees:

- A. To work with the Northwest Arkansas Council, the various cities involved in the project, and the contractors to provide wayfinding signage to and from XNA.
- B. To pay for the repair or replacement of any signs damaged or destroyed that direct solely to XNA, specifically the sign numbers referenced in paragraph III C above.
- C. To maintain, replace, or repair all signs on XNA property that are part of this project.

V. Changes, Modifications, or Amendments:

Changes, modifications, or amendments to this agreement shall be subject to approval of the City of Fayetteville, the Executive Director of the Northwest Arkansas Council, and the Executive Director of the Northwest Arkansas Regional Airport (XNA).

The City of Fayetteville, the Northwest Arkansas Council Foundation, and XNA have executed this agreement by their respective authorized representatives.

Mike Harvey
Executive Director
Northwest Arkansas Council Foundation
Date:

Scott Van Laningham
Executive Director
Northwest Arkansas Regional Airport
Date:

Lioneld Jordan
Mayor
City of Fayetteville, Arkansas
Date:

City of Fayetteville, Arkansas

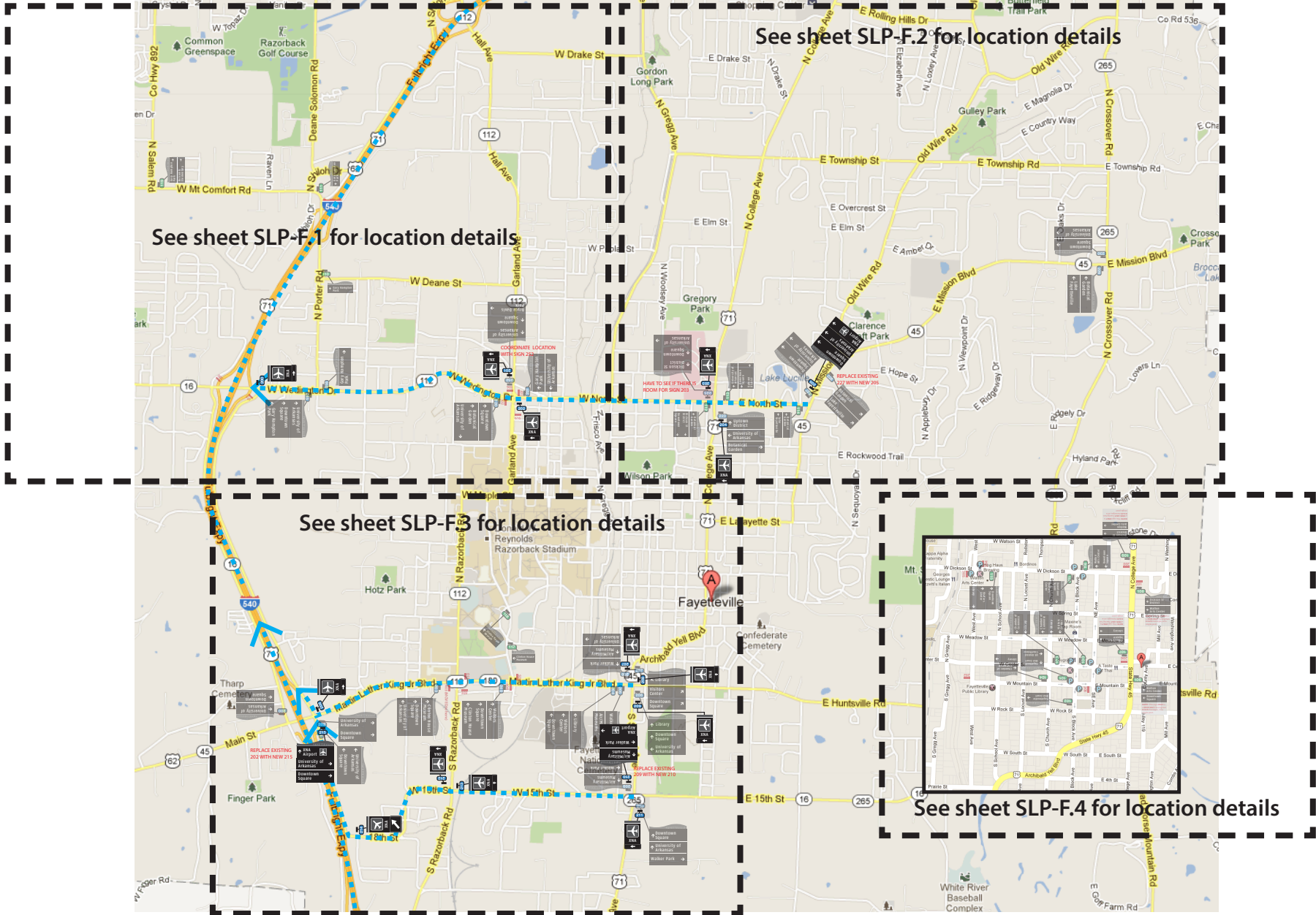
Northwest Arkansas Regional Airport
Wayfinding System

SIGN LOCATION PLANS - SECONDARY

June 13, 2016

merJe

120 North Church Street Suite 208
West Chester, PA 19380
T 484.266.0648
www.merjedesign.com



100

Directionals - 4" Text

200

Directionals - 6" Text

LEGEND

Route to XNA

50%

Existing Signs from previous projects

ENVIRONMENTS & EXPERIENCES

merJe

120 North Church Street
Suite 208
West Chester, PA 19380
T 484.266.0648
www.merjedesign.com

SUBCONSULTANT

DATE

06/13/16

DRAWN BY:

KH

These drawings are meant for DESIGN INTENT ONLY and are not for construction. Contractor shall verify and be responsible for all dimensions and conditions of the job. Contractor shall be familiar with the site and conditions it presents. This office must be notified of any variations from the dimensions and conditions shown on this drawing. Shop drawings and details must be submitted to this office for approval prior to proceeding with fabrication. All copy shall be proofread by client and legal requirements checked by legal department.

REVISIONS

CLIENT / PROJECT

City of Fayetteville, AR

Northwest Arkansas Regional Airport Wayfinding System

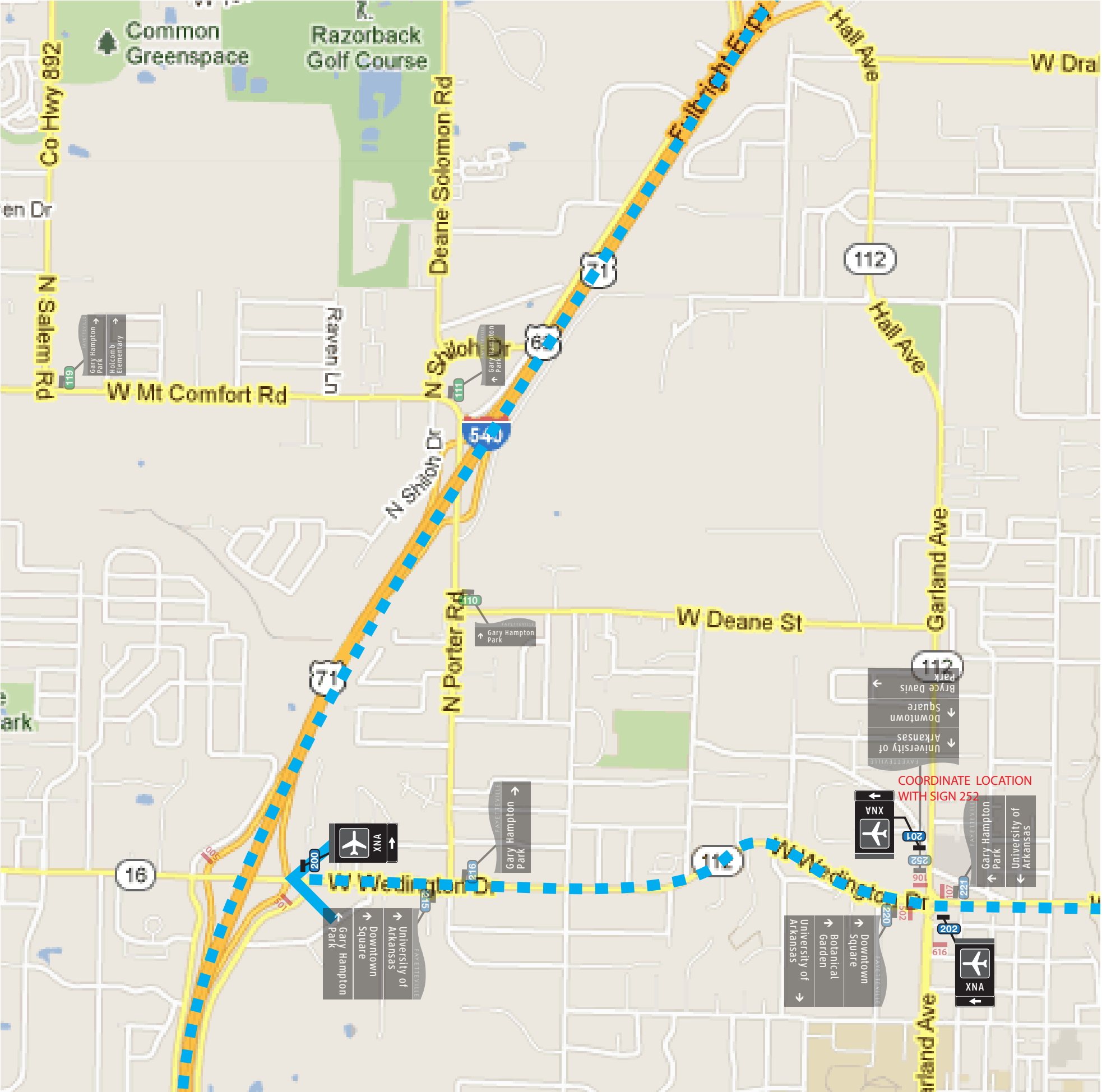
PROJECT NO.

SHEET TITLE

Sign Location Plan

SHEET NO.

KEY



SPECIFICATIONS

NOTE:

Refer to City of Fayetteville, Arkansas, signage system overview for the specific sign types, and material call outs.

Refer to City of Fayetteville, Arkansas, message schedule for all sign type messages, location numbers and quantities.

100

Directionals - 4" Text

200

Directionals - 6" Text

LEGEND

Route to XNA

50%

Existing Signs from previous projects

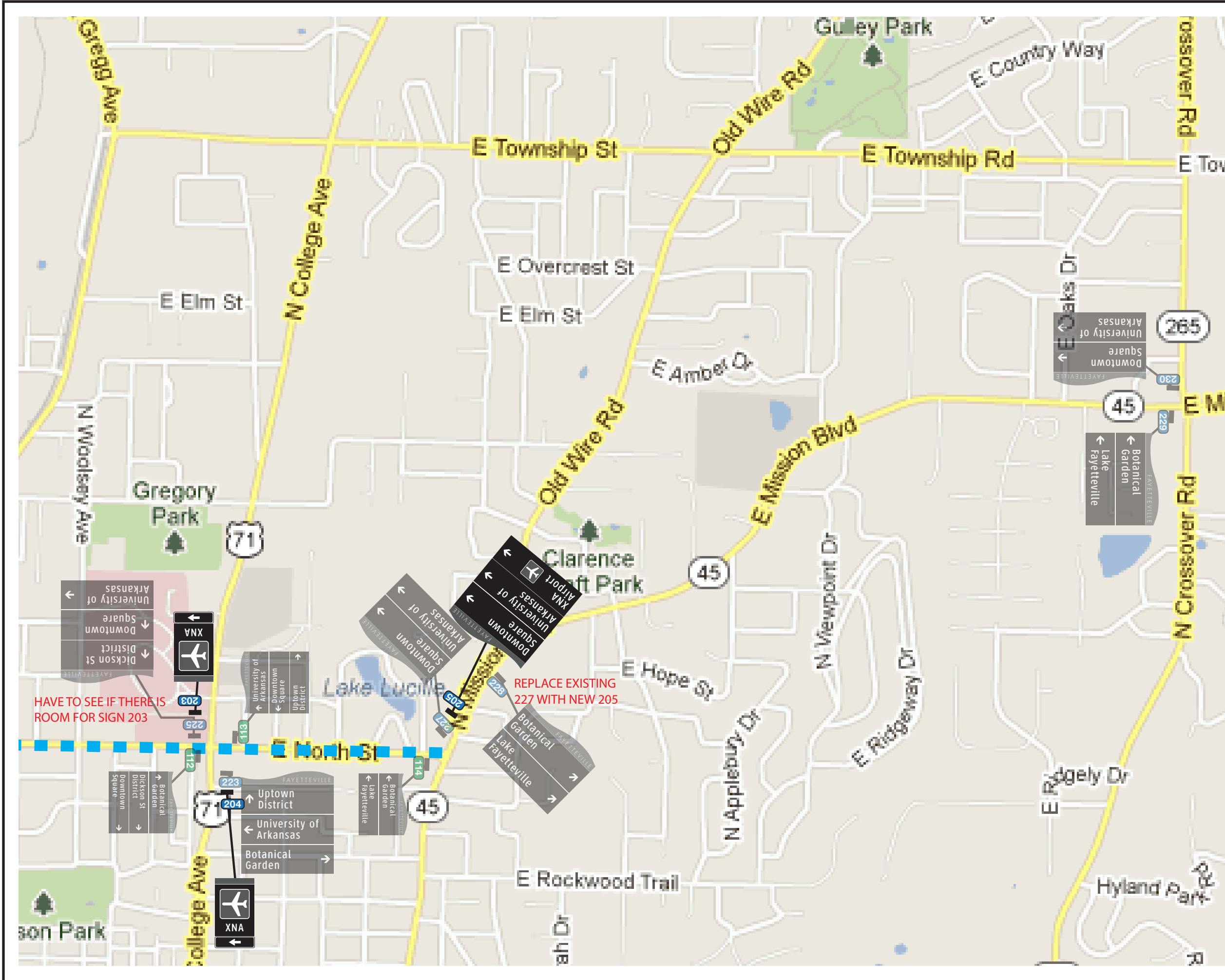
ENVIRONMENTS & EXPERIENCES

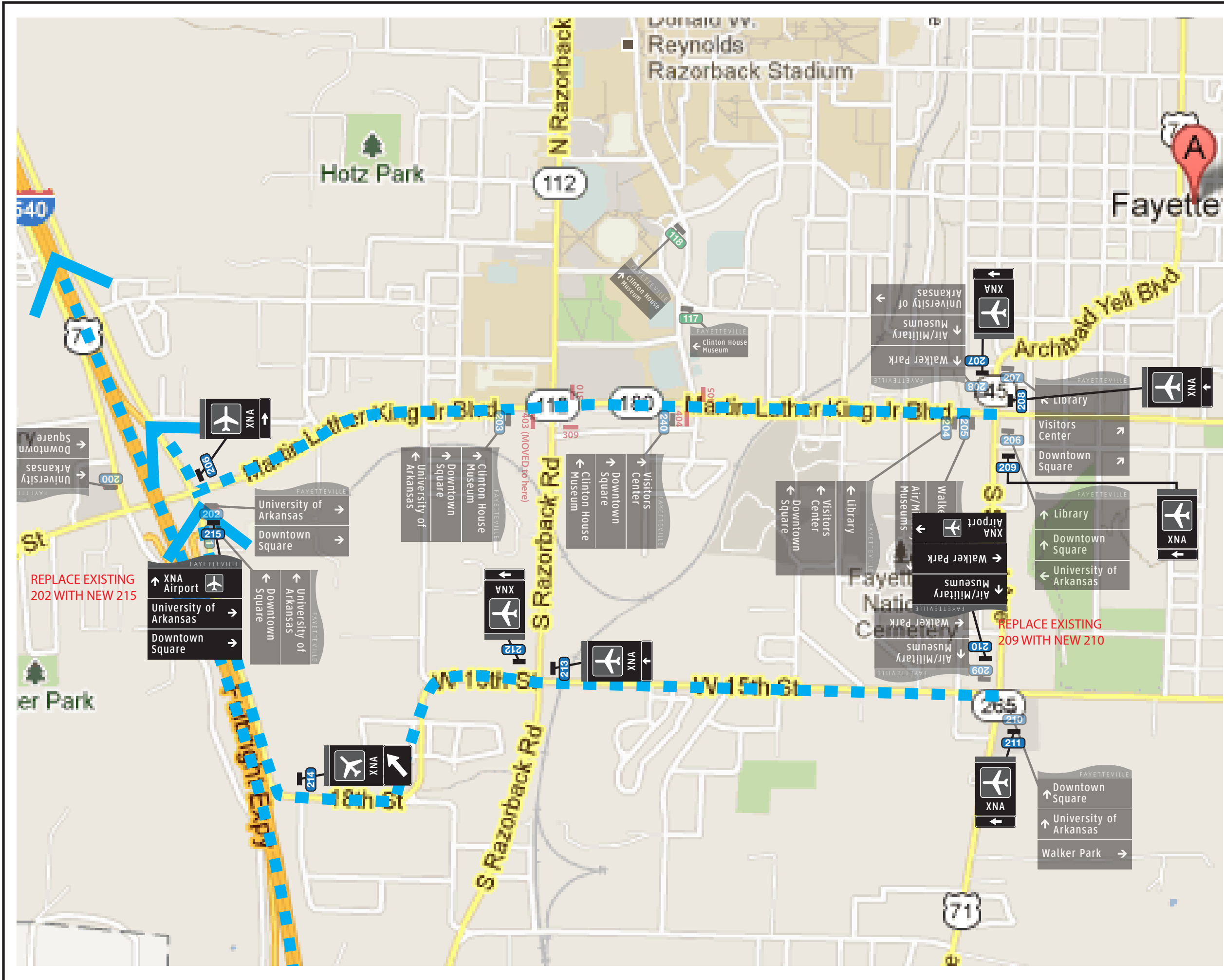
merJe

120 North Church Street
Suite 208
West Chester, PA 19380
T 484.266.0648
www.merjedesign.com

SUBCONSULTANT

DATE	06/13/16	CLIENT / PROJECT
DRAWN BY:	KH	
These drawings are meant for DESIGN INTENT ONLY and are not for construction. Contractor shall verify and be responsible for all dimensions and conditions of the job. Contractor shall be familiar with the site and conditions it presents. This office must be notified of any variations from the dimensions and conditions shown on this drawing. Shop drawings and details must be submitted to this office for approval prior to proceeding with fabrication. All copy shall be proofread by client and legal requirements checked by legal department.		
REVISIONS		PROJECT NO.
		SHEET TITLE
		Sign Location Plan
		SHEET NO.
		SLP-F.1





SPECIFICATIONS

NOTE:
Refer to City of Fayetteville, Arkansas, signage system overview for the specific sign types, and material call outs.

Refer to City of Fayetteville, Arkansas, message schedule for all sign type messages, location numbers and quantities.

100

Directionals - 4" Text

200

Directionals - 6" Text

LEGEND

Route to XNA

Existing Signs from previous projects

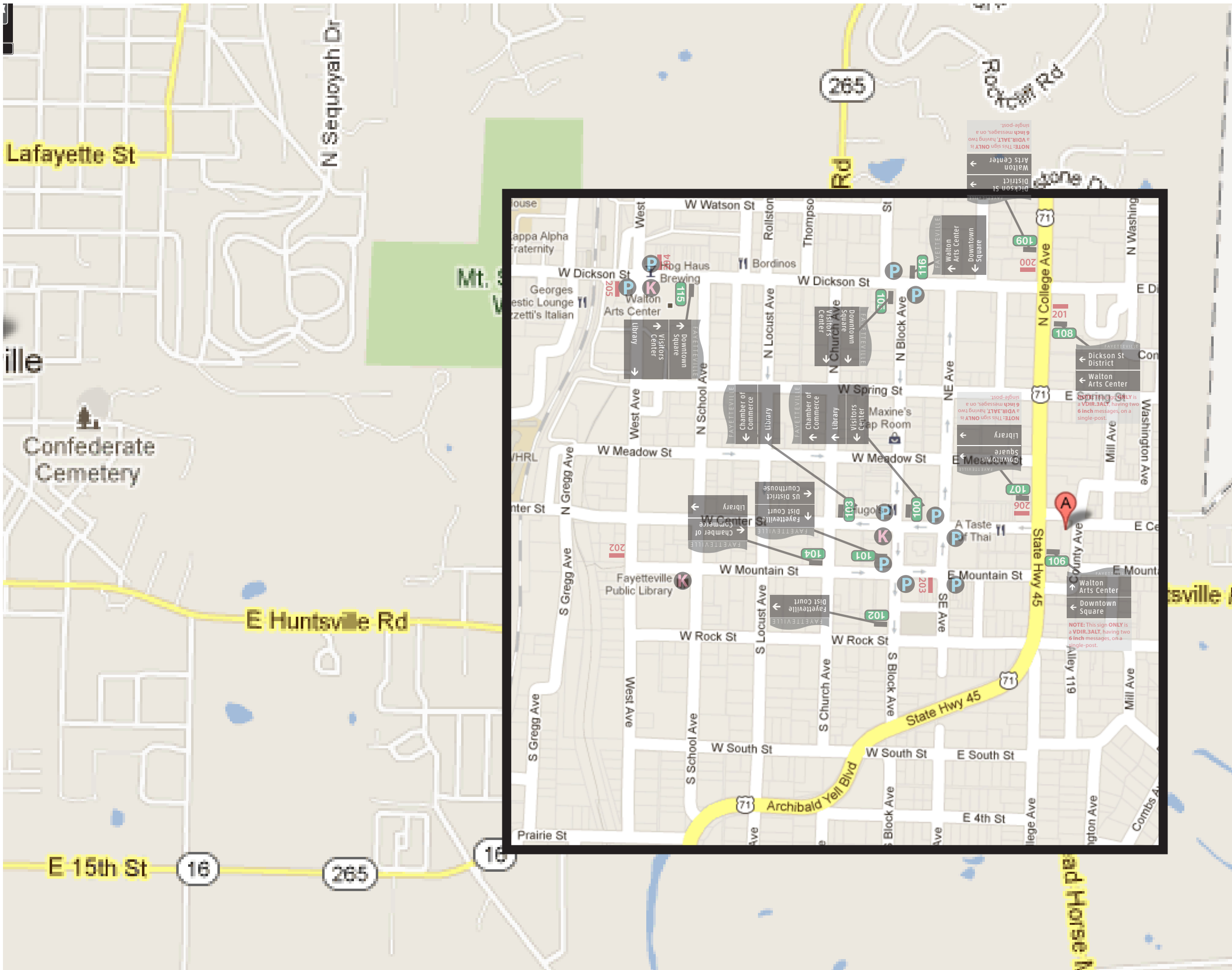
ENVIRONMENTS & EXPERIENCES

merJe

120 North Church Street
Suite 208
West Chester, PA 19380
T 484.266.0648
www.merjedesign.com

SUBCONSULTANT

DATE	06/13/16	CLIENT / PROJECT
DRAWN BY:	KH	
These drawings are meant for DESIGN INTENT ONLY and are not for construction. Contractor shall verify and be responsible for all dimensions and conditions of the job. Contractor shall be familiar with the site and conditions it presents. This office must be notified of any variations from the dimensions and conditions shown on this drawing. Shop drawings and details must be submitted to this office for approval prior to proceeding with fabrication. All copy shall be proofread by client and legal requirements checked by legal department.		City of Fayetteville, AR Northwest Arkansas Regional Airport Wayfinding System
REVISIONS		PROJECT NO.
		SHEET TITLE
		Sign Location Plan
		SHEET NO.
		SLP-F.3



SPECIFICATIONS

NOTE:

Refer to City of Fayetteville, Arkansas, signage system overview for the specific sign types, and material call outs.

Refer to City of Fayetteville, Arkansas, message schedule for all sign type messages, location numbers and quantities.

100

Directionals - 4" Text

200

Directionals - 6" Text

LEGEND

Route to XNA

Existing Signs from previous projects

ENVIRONMENTS & EXPERIENCES

merJe

120 North Church Street
Suite 208
West Chester, PA 19380
T 484.266.0648
www.merjedesign.com

SUBCONSULTANT

DATE

06/13/16

DRAWN BY:

KH

These drawings are meant for DESIGN INTENT ONLY and are not for construction. Contractor shall verify and be responsible for all dimensions and conditions of the job. Contractor shall be familiar with the site and conditions it presents. This office must be notified of any variations from the dimensions and conditions shown on this drawing. Shop drawings and details must be submitted to this office for approval prior to proceeding with fabrication. All copy shall be proofread by client and legal requirements checked by legal department.

CLIENT / PROJECT

City of Fayetteville, AR

Northwest Arkansas Regional Airport Wayfinding System

PROJECT NO.

SHEET TITLE

Sign Location Plan

REVISIONS

SHEET NO.

SLP-F.4



HIGHFILL INSPIRATION



GENTRY INSPIRATION



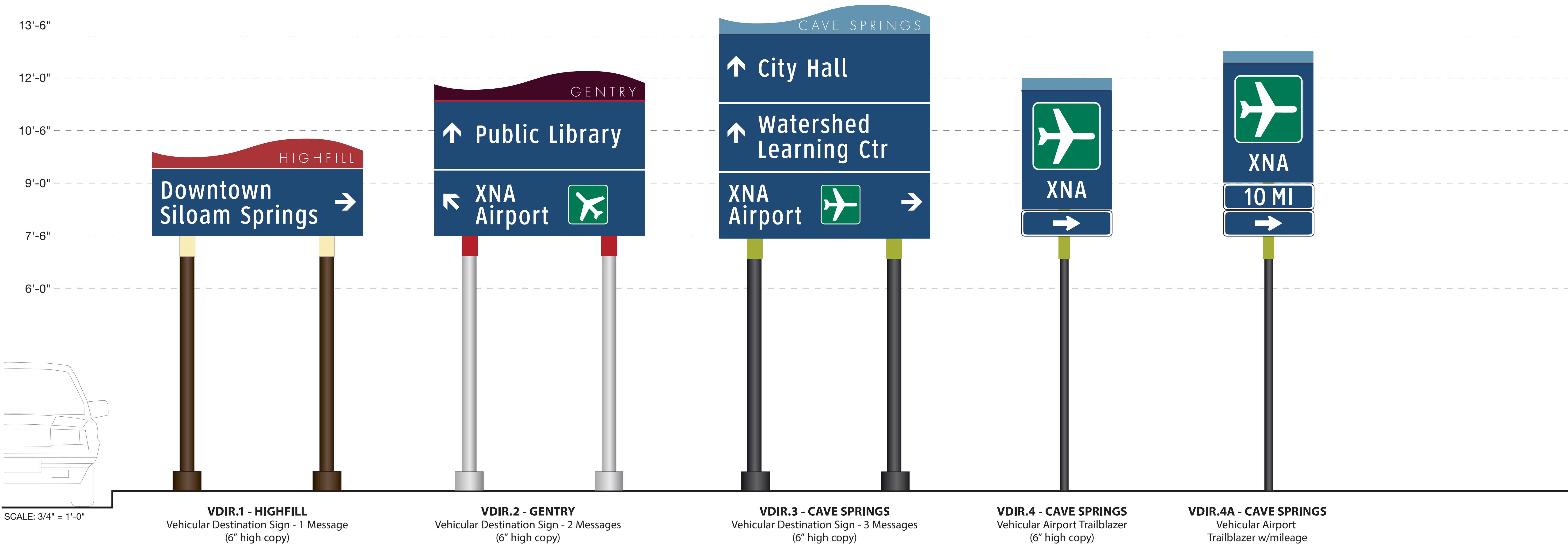
CAVE SPRINGS INSPIRATION



VDIR.4- FAYETTEVILLE
Vehicular Airport Trailblazer
(6" high copy)



VDIR.4A- FAYETTEVILLE
Vehicular Airport Trailblazer w/Mileage
(6" high copy)



City of Fayetteville, Arkansas

Northwest Arkansas Regional Airport
Wayfinding System

MESSAGE SCHEDULE - FINAL

July 19, 2016

merJe

120 North Church Street Suite 208

West Chester, PA 19380

T 484.266.0648

www.merjedesign.com

SIGN TYPE SUMMARY

MERJE | ENVIRONMENTS AND EXPERIENCES
120 N. Church Street
Suite 208
West Chester, PA 19380
484.266.0648
www.merjedesign.com

Client: Northwest Arkansas Regional Airport

Project: Wayfinding & Signage Program

Submittal: Final

Date: July 19, 2016

Sign Type	Quantity	Description
VDIR.4	0	1 Message Vehicular Directional - 6" text
VDIR.5	0	2 Messages Vehicular Directional - 6" text
VDIR.6	3	3 Messages Vehicular Directional - 6" text
VDIR.7	12	MUTCD Airport Trailblazer
VDIR.7A	0	MUTCD Airport Trailblazer - with Mileage
VDIR.7B	0	MUTCD Airport Trailblazer - with Mileage & LARGE Arrow Panel
VDIR.7C	1	MUTCD Airport Trailblazer with LARGE Arrow Panel
VDIR.7D	0	MUTCD Airport Trailblazer with Mileage - No Directional Arrow

SIGN MESSAGE SCHEDULE

MERJE | ENVIRONMENTS AND EXPERIENCES

120 N. Church Street
Suite 208
West Chester, PA 19380
484.266.0648
www.merjedesign.com

Client: Northwest Arkansas Regional Airport

Submittal: Final

Project: Wayfinding & Signage Program

Date: July 19, 2016

Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
200	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.1	1	[AIRPORT SYMBOL] XNA >	SIGN LOCATION TO BE SITE CHECKED IN THE FIELD WITH AHTD
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
201	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.1	1	[AIRPORT SYMBOL] XNA >	Coordinate location with New City signage location 252
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
202	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.1	1	[AIRPORT SYMBOL] XNA <	
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
203	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.2	1	[AIRPORT SYMBOL] XNA >	
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
204	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.2	1	[AIRPORT SYMBOL] XNA <	
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
205	VDIR.6 <i>3 Messages Vehicular Directional - 6" text</i>	SLP-F.2	1	> Downtown Square > University of Arkansas > XNA Airport [AIRPORT SYMBOL]	Replace existing 2 panel sign and with a new 3 panel sign
City: Fayetteville					

SIGN MESSAGE SCHEDULE

MERJE | ENVIRONMENTS AND EXPERIENCES

120 N. Church Street
Suite 208
West Chester, PA 19380
484.266.0648
www.merjedesign.com

Client: Northwest Arkansas Regional Airport

Submittal: Final

Project: Wayfinding & Signage Program

Date: July 19, 2016

Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
206	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.3	1	[AIRPORT SYMBOL] XNA >	SIGN LOCATION TO BE SITE CHECKED IN THE FIELD WITH AHTD
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
207	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.3	1	[AIRPORT SYMBOL] XNA >	
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
208	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.3	1	[AIRPORT SYMBOL] XNA ^	
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
209	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.3	1	[AIRPORT SYMBOL] XNA <	
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
210	VDIR.6 <i>3 Messages Vehicular Directional - 6" text</i>	SLP-F.3	1	^ Air/Military Museums < Walker Park > XNA Airport [AIRPORT SYMBOL]	Replace existing 2 panel sign and with a new 3 panel sign
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
211	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.3	1	[AIRPORT SYMBOL] XNA <	
City: Fayetteville					

SIGN MESSAGE SCHEDULE

MERJE | ENVIRONMENTS AND EXPERIENCES

120 N. Church Street
Suite 208
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Client: Northwest Arkansas Regional Airport

Submittal: Final

Project: Wayfinding & Signage Program

Date: July 19, 2016

Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
212	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.3	1	[AIRPORT SYMBOL] XNA >	Coordinate location with New University of Arkansas signage
City:	Fayetteville				
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
213	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.3	1	[AIRPORT SYMBOL] XNA ^	
City:	Fayetteville				
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
214	VDIR.7C <i>MUTCD Airport Trailblazer with LARGE Arrow Panel</i>	SLP-F.3	1	[AIRPORT SYMBOL] XNA [UP RIGHT]	
City:	Fayetteville				
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
215	VDIR.6 <i>3 Messages Vehicular Directional - 6" text</i>	SLP-F.3	1	^ XNA Airport [AIRPORT SYMBOL] > University of Arkansas > Downtown Square	Replace existing 2 panel sign and with a new 3 panel sign SIGN LOCATION TO BE SITE CHECKED IN THE FIELD WITH AHTD
City:	Fayetteville				

NWA REGIONAL WAYFINDING PROGRAM

**MANAGEMENT AND MAINTENANCE
STRATEGY**

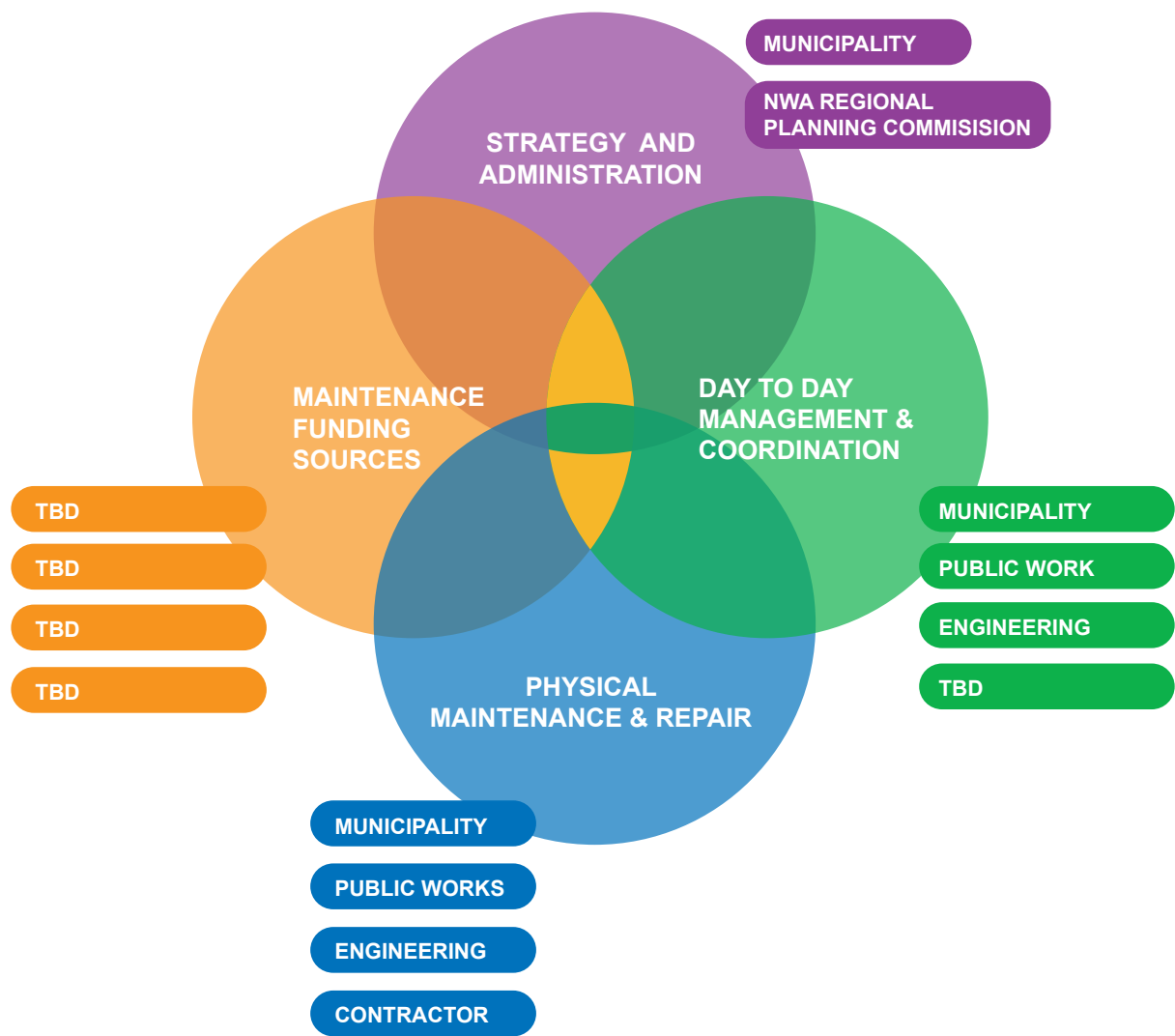
November 5, 2012

merJe

120 N. Church Street
Suite 208
West Chester, PA 19380
T. 484.266.0648
www.merjedesign.com

ENVIRONMENTS & EXPERIENCES

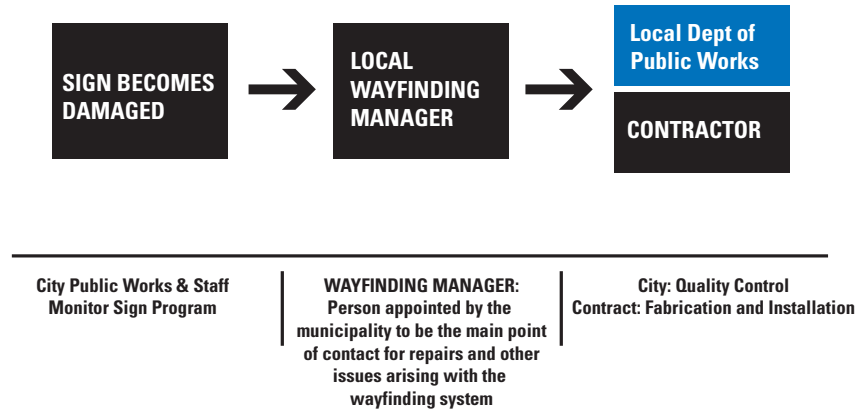
NWA REGIONAL WAYFINDING PROGRAM
OVERALL SYSTEM OVERSIGHT



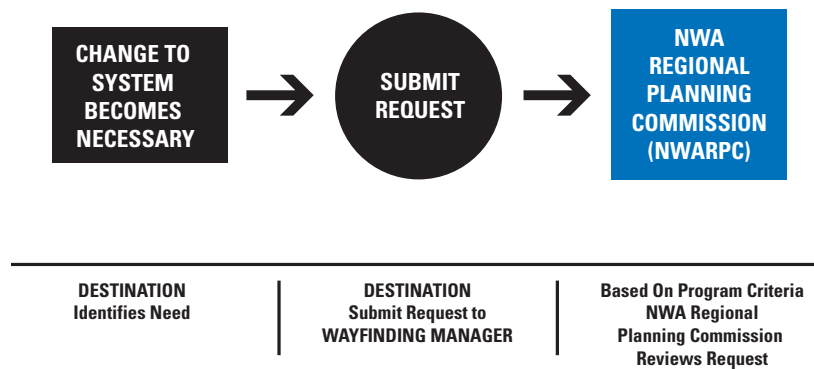
MANAGEMENT & MAINTENANCE

NWA REGIONAL WAYFINDING PROGRAM MAINTENANCE FLOW CHART

DAY-TO-DAY MAINTENANCE PROCESS FOR REPAIR OR REPLACEMENT OF EXISTING SIGNS



LONG TERM MAINTENANCE PROCESS FOR ADDITION, SUBTRACTION or ALTERATIONS TO THE SYSTEM (annual)



MANAGEMENT & MAINTENANCE

MANAGEMENT AND MAINTENANCE

SHORT TERM GENERAL MAINTENANCE (0 – 4 years)

- Planning and Design: Minor corrections and adjustments to help the system operate efficiently. This may include additional signs, or adjustments based on new circulation patterns.
- Physical Maintenance (Materials): Cleaning once a year and typical wear and tear repairs - new panels, tightening of fasteners, replacement parts due to vandalism or auto damage.
- Physical Maintenance (Locations): Relocation of problem sign locations.

LONG TERM GENERAL MAINTENANCE (5 – 9 years)

- Planning and Design: Additions and Deletions of Destinations/Messages and overall routing review, based on physical changes to the City.
- Physical Maintenance (Materials): Materials begin to fade, warranties expire and a more concentrated effort is required to maintain the system and its components. New panels, replacement parts, and sign replacement may be required.
- Physical Maintenance (Locations): Relocation may be necessary based on new routing or circulation.

SYSTEM LIFE SPAN (10 – 15+ years)

- Planning and Design: Complete review of the system and its effectiveness based on new destinations that may have opened or attractions which have closed. In addition new circulation/routing and construction projects may effect the system. Design elements may be reviewed for consistency with City identity and marketing initiatives.
- Physical Maintenance (Materials): Materials begin to reach their life span, full sign replacement may be necessary for some signs if they have not been maintained in the past.
- Physical Maintenance (Locations): Relocation may be necessary based on new routing or circulation.

MAINTENANCE GUIDELINE MATRIX

	0-4 Years	5-9 years	10-15+ years
Design and Planning	Design: General Evaluation of positive and negative aspects of the system. Planning: City In-house maintenance based on new request and circulation/destination updates..	Design: General Evaluation of positive and negative aspects of the system. Planning: Contract with a consultant to analyze major changes to the City and necessary system adjustments. 1 or 2 updates possible during this time period.	If the system has not been analyzed since implementation, a major updating is likely to be needed. Outside consultants will be required to review and inventory the system, as well as make suggested changes based on new circulation, destinations, etc.
Vandalism	Annual cleaning/repair. Stickers and graffiti are most common. Cleaning solvents and Goo-Gone are typical products utilized.	Parts replacements and full sign replacement as needed. Cleaning solvents and Goo-Gone are typical products utilized.	Parts replacements / full sign replacement as needed. Cleaning solvents and Goo-Gone are typical products utilized.
Cleaning Schedule	Annual Cleaning	Annual Cleaning	Annual Cleaning
Management / Administration	Weekly coordination transitioning to quarterly coordination between City and fabricator during year 1 and 2. Day-to-day monitoring of the system,	Annual coordination between City and fabricator. Day-to-day monitoring of the system, based on Public Works observations, safety	Annual coordination between City and fabricator. Day-to-day monitoring of the system, based on Public Works observations, safety

	based on Public Works observations, safety issues and citizens reports.	issues and citizens reports.	issues and citizens reports.
Breakaway Product: Transpo	<i>Maintenance Free - Covered under Warranty for 3 years.</i>	<i>Maintenance Free -</i> consider general review as part of yearly inspection process.	<i>Maintenance Free -</i> consider general review as part of yearly inspection process.
Reflectivity Life Span: 3M High Intensity Diamond Grade	<i>Covered under warranty for 5-7 years</i>	<i>Covered under warranty for 5-7 years.</i> Reflectivity may be effective beyond the warranty period. Individual signs may require sheeting to be replaced during this time period	Reflectivity becomes less effective. if not previously replaced. 10 – 15 years is the maximum lifespan.
Custom Color Life Span: 3M High Intensity Diamond Grade	<i>Covered under warranty for 3 years.</i> Color generally maintained beyond warranty period, depends on direction sign panel is facing.	Fading may begin depending on the direction sign panel is facing. Individual signs may require sheeting to be replaced during this time period	Fading occurs, if not previously replaced. 10 - 15 years is the maximum lifespan.
General Materials: Aluminum Sign Panels & Posts	<i>Specifications require 5 year fabricator warranty for workmanship.</i> General wear-and-tear maintenance required.	General wear-and-tear maintenance.	General wear-and-tear maintenance.
Painted Surfaces	<i>Covered under manufacturers warranty.</i> General maintenance and touch-up will be required.	Warranty expires. Typically color holds up beyond warranty period. Fading may begin depending on the direction sign panel is facing. Individual signs may require individual parts to be replaced during this time period	Fading occurs – based on direction sign panel is facing – 10 – 15 years is the maximum lifespan to expect.
Sign Panels / Fasteners	<i>Specifications require 5 year fabricator warranty for workmanship.</i> General repairs and replacement due to auto incidents or vandalism. Inspect welds and fasteners for connection integrity.	Quantity of repairs increases, if not maintained previously. Inspect welds and fasteners for connection integrity.	Consider full inventory of system and repairs based on consistency of maintenance and up-keep over the years.
Brackets/ Fins / Details	<i>Specifications require 5 year fabricator warranty.</i> General repairs and replacement of parts due to auto incidents or vandalism. Inspect welds and fasteners for connection integrity.	Quantity of repairs increases, if not maintained previously. Inspect welds and fasteners for connection integrity.	Consider full inventory of system and repairs based on consistency of maintenance and up-keep over the years.
Concrete Footers	<i>Maintenance free.</i> Inspect structural integrity – similar to any construction project.	<i>Maintenance free.</i> Inspect structural integrity – similar to any construction project.	<i>Maintenance free.</i> Inspect structural integrity – similar to any construction project.

Cooperative Agreement Between the City of Fayetteville, the Northwest Arkansas Regional Airport (XNA), and the Northwest Arkansas Council Foundation

I. Purpose:

The purpose of this agreement is to establish the terms for providing wayfinding signs to XNA from Fayetteville and from XNA to Fayetteville.

II. Background

In 2015, the Northwest Arkansas Council Foundation, a support organization for the Northwest Arkansas Council, applied for and received a grant from the Walton Family Foundation for the design, fabrication and installation of wayfinding signs directing to XNA from the larger cities in the region and to certain downtown areas in the region from XNA.

III. The City of Fayetteville Agrees:

- A. To participate in the program by providing the appropriate city personnel to work with the contractors, XNA, and the Northwest Arkansas Council Foundation to review plans and take any necessary steps to facilitate the programming and installation of the signs.
- B. To maintain, repair or replace the signs provided by this project that display directions to attractions within the city. These signs include signs 205, 210, and 215 as indicated on the attached document, entitled "Message Schedule" for the city of Fayetteville. This document is attached as Exhibit A. Once the signs have been installed and MERJE (the designer of the project), and Fayetteville have approved the installation, it will be the responsibility of the city to maintain, repair, or replace these signs installed in their city limits as needed and as instructed by the "Management and Maintenance Strategy" attached to this document as Exhibit B.

- C. To work with XNA to maintain, repair or replace signs solely directing to the airport (airport trailblazer signs) within Fayetteville City limits. Specifically, these signs include numbers 200, 201, 202, 203, 204, 206, 207, 208, 209, 211, 212, 213, and 214 as indicated in the attached Exhibit A. The city further agrees to be responsible for the administration of the repair with the understanding that XNA is financially responsible for repair or replacement of these signs if they are damaged or destroyed and are not otherwise covered by insurance
- D. After the conclusion of the project, the city will submit any proposed alternations, such as removal, relocation, and change in message or appearance, to XNA, the Northwest Arkansas Council Foundation, and the Wayfinding Steering Committee for approval prior to altering the sign.

IV. Northwest Arkansas Regional Airport (XNA) agrees:

- A. To work with the Northwest Arkansas Council, the various cities involved in the project, and the contractors to provide wayfinding signage to and from XNA.
- B. To pay for the repair or replacement of any signs damaged or destroyed that direct solely to XNA, specifically the sign numbers referenced in paragraph III C above.
- C. To maintain, replace, or repair all signs on XNA property that are part of this project.

V. Changes, Modifications, or Amendments:

Changes, modifications, or amendments to this agreement shall be subject to approval of the City of Fayetteville, the Executive Director of the Northwest Arkansas Council, and the Executive Director of the Northwest Arkansas Regional Airport (XNA).

The City of Fayetteville, the Northwest Arkansas Council Foundation, and XNA have executed this agreement by their respective authorized representatives.



Mike Harvey

Executive Director

Northwest Arkansas Council Foundation

Date: 8-3-2016



Scott Van Laningham

Executive Director

Northwest Arkansas Regional Airport

Date:

8-2-2016

Lioneld Jordan

Mayor

City of Fayetteville, Arkansas

Date:

NWA REGIONAL WAYFINDING PROGRAM

**MANAGEMENT AND MAINTENANCE
STRATEGY**

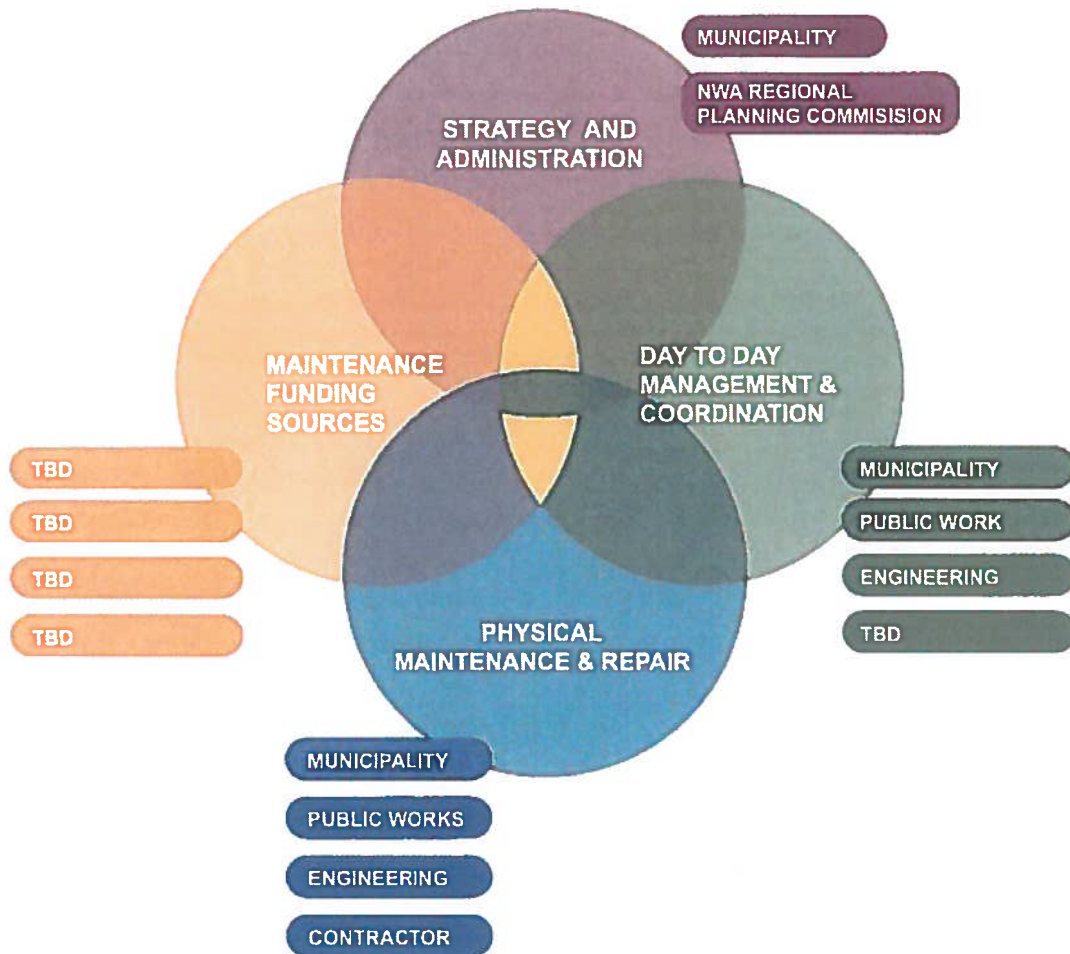
November 5, 2012

merJe

120 N. Church Street
Suite 208
West Chester, PA 19380
T. 484.266.0548
www.merjedesign.com

ENVIRONMENTS & EXPERIENCES

NWA REGIONAL WAYFINDING PROGRAM OVERALL SYSTEM OVERSIGHT



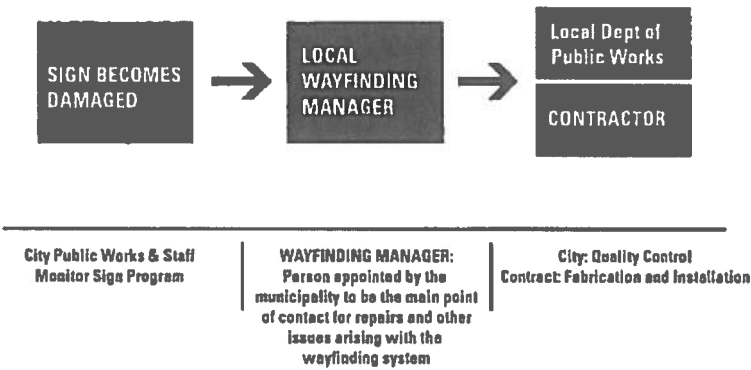
MANAGEMENT & MAINTENANCE

merJe

NWA Regional Wayfinding Program

NWA REGIONAL WAYFINDING PROGRAM
MAINTENANCE FLOW CHART

DAY-TO-DAY MAINTENANCE PROCESS FOR
REPAIR OR REPLACEMENT OF EXISTING SIGNS



LONG TERM MAINTENANCE PROCESS FOR
ADDITION, SUBTRACTION or ALTERATIONS
TO THE SYSTEM (annual)



MANAGEMENT & MAINTENANCE

MANAGEMENT AND MAINTENANCE

SHORT TERM GENERAL MAINTENANCE (0 – 4 years)

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	based on Public Works observations, safety issues and citizens reports.	issues and citizens reports.	issues and citizens reports.
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Brackets/ Fins / Details	<i>Specifications require 5 year fabricator warranty.</i> General repairs and replacement of parts due to auto incidents or vandalism. Inspect welds and fasteners for connection integrity.	Quantity of repairs increases, if not maintained previously. Inspect welds and fasteners for connection integrity.	Consider full inventory of system and repairs based on consistency of maintenance and up-keep over the years.
Concrete Footers	<i>Maintenance free.</i> Inspect structural integrity – similar to any construction project.	<i>Maintenance free.</i> Inspect structural integrity – similar to any construction project.	<i>Maintenance free.</i> Inspect structural integrity – similar to any construction project.

City of Fayetteville, Arkansas

Northwest Arkansas Regional Airport
Wayfinding System

MESSAGE SCHEDULE - FINAL

July 19, 2016

merJe

120 North Church Street Suite 208
West Chester, PA 19380
T 484.256.0616
www.merjedesign.com

SIGN TYPE SUMMARY

MERJE | ENVIRONMENTS AND EXPERIENCES
120 N. Church Street
Suite 208
West Chester, PA 19380
484.286.0848
www.merjedesign.com

Client: Northwest Arkansas Regional Airport

Project: Wayfinding & Signage Program

Submittal: Final

Date: July 19, 2016

Sign Type	Quantity	Description
VDIR.4	0	1 Message Vehicular Directional - 6" text
VDIR.5	0	2 Messages Vehicular Directional - 6" text
VDIR.6	3	3 Messages Vehicular Directional - 6" text
VDIR.7	12	MUTCD Airport Trailblazer
VDIR.7A	0	MUTCD Airport Trailblazer - with Mileage
VDIR.7B	0	MUTCD Airport Trailblazer - with Mileage & LARGE Arrow Panel
VDIR.7C	1	MUTCD Airport Trailblazer with LARGE Arrow Panel
VDIR.7D	0	MUTCD Airport Trailblazer with Mileage - No Directional Arrow

SIGN MESSAGE SCHEDULE

MEJLE (ENVIRONMENTS AND EXPERIENCES)
 120 N. Church Street
 Suite 208
 West Chester, PA 19380
 484.266.0548
 www.mejledesign.com

Client: Northwest Arkansas Regional Airport

Submittal: Final

Project: Wayfinding & Signage Program

Date: July 19, 2016

Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
200	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.1	1	[AIRPORT SYMBOL] XNA >	SIGN LOCATION TO BE SITE CHECKED IN THE FIELD WITH AHTD
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
201	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.1	1	[AIRPORT SYMBOL] XNA >	Coordinate location with New City signage location 252
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
202	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.1	1	[AIRPORT SYMBOL] XNA <	
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
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City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
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205	VDIR.6 <i>3 Messages Vehicular Directional - 6" text</i>	SLP-F.2	1	> Downtown Square > University of Arkansas > XNA Airport [AIRPORT SYMBOL]	Replace existing 2 panel sign and with a new 3 panel sign
City: Fayetteville					

SIGN MESSAGE SCHEDULE

MERJ | ENVIRONMENTAL AND ENGINEERING
 120 N. Church Street
 Suite 208
 West Chester, PA 19380
 484.286.0648
 www.merjdesign.com

Client: Northwest Arkansas Regional Airport

Submittal: Final

Project: Wayfinding & Signage Program

Date: July 19, 2016

Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
206	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.3	1	[AIRPORT SYMBOL] XNA >	SIGN LOCATION TO BE SITE CHECKED IN THE FIELD WITH AHTD
City:	Fayetteville				
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
207	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.3	1	[AIRPORT SYMBOL] XNA >	
City:	Fayetteville				
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
208	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.3	1	[AIRPORT SYMBOL] XNA ^	
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City:	Fayetteville				
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
210	VDIR.6 <i>3 Messages Vehicular Directional - 6" text</i>	SLP-F.3	1	^ Air/Military Museums < Walker Park > XNA Airport [AIRPORT SYMBOL]	Replace existing 2 panel sign and with a new 3 panel sign
City:	Fayetteville				
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
211	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.3	1	[AIRPORT SYMBOL] XNA <	
City:	Fayetteville				

SIGN MESSAGE SCHEDULE

MARJE | ENVIRONMENTAL AND ENGINEERING
 120 N. Church Street
 Suite 208
 West Chester, PA 19380
 484.286.0648
 www.marjedesign.com

Client: Northwest Arkansas Regional Airport

Submittal: Final

Project: Wayfinding & Signage Program

Date: July 19, 2016

Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
212	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.3	1	{AIRPORT SYMBOL} XNA >	Coordinate location with New University of Arkansas signage
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
213	VDIR.7 <i>MUTCD Airport Trailblazer</i>	SLP-F.3	1	{AIRPORT SYMBOL} XNA ^	
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
214	VDIR.7C <i>MUTCD Airport Trailblazer with LARGE Arrow Panel</i>	SLP-F.3	1	{AIRPORT SYMBOL} XNA [UP RIGHT]	
City: Fayetteville					
Location No:	Sign Type:	Sheet No:	Qty:	Message:	Comments/Notes
215	VDIR.6 <i>3 Messages Vehicular Directional - 6" text</i>	SLP-F.3	1	^ XNA Airport {AIRPORT SYMBOL} > University of Arkansas > Downtown Square	Replace existing 2 panel sign and with a new 3 panel sign SIGN LOCATION TO BE SITE CHECKED IN THE FIELD WITH AHTD
City: Fayetteville					



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2016-0353

Agenda Date: 8/16/2016

Version: 1

Status: Agenda Ready

In Control: City Council Meeting

File Type: Resolution

Agenda Number: A. 3

MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC:

A RESOLUTION TO APPROVE AMENDMENT NO. 4 TO THE CONTRACT WITH MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC IN THE AMOUNT OF \$15,000.00 FOR ADDITIONAL LEGAL SERVICES RELATED TO THE WHITE RIVER WATER QUALITY STANDARDS PETITION TO THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION, AND TO APPROVE A BUDGET ADJUSTMENT

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves Amendment No. 4 to the contract with Mitchell, Williams, Selig, Gates & Woodyard, PLLC in the amount of \$15,000.00 for additional legal services related to the White River water quality standards petition to the Arkansas Pollution Control and Ecology Commission.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached to this Resolution.

City of Fayetteville Staff Review Form

2016-0353

Legistar File ID

8/16/2016

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Tim Nyander

7/29/2016

Utilities Director /
Utilities Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of Amendment No. 4 to the Contract with Mitchell Williams, Selig, Gates & Woodyard (Mitchell Williams) in the amount of \$15,000 for additional legal services related to the White River Water Quality Standards Petition to the Arkansas Pollution Control and Ecology Commission and approval of a budget adjustment.

Budget Impact:

5400.720.5700-5314.00

Water/Sewer

Account Number

Fund

11014.1102

White River NPDES UAA and APCEC Action

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 45,236.00

Funds Obligated \$ 45,235.74

Current Balance \$ 0.26

Does item have a cost? Yes

Item Cost \$ 15,000.00

Budget Adjustment Attached? Yes

Budget Adjustment \$ 15,000.00

Remaining Budget \$ 0.26

V20140710

Previous Ordinance or Resolution # 80-14

Original Contract Number: 2182

Approval Date:

Comments:

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff

FROM: Tim Nyander, Utilities Director

DATE: July 26, 2016

SUBJECT: Amendment No. 4 to the contract with Mitchell, Williams, Selig, Gates & Woodyard, PLLC, for an additional \$15,000, for White River Water Quality Standards Petition

RECOMMENDATION:

Staff recommends approval of Amendment No. 4 to the contract with Mitchell, Williams, Selig, Gates & Woodyard, PLLC, increasing the compensation up to \$15,000, for legal actions relating to the White River Water Quality Standards and negotiations with the ADEQ and the Arkansas Pollution Control & Ecology Commission (APCEC).

BACKGROUND:

The Noland WWTP National Pollutant Discharge Elimination System (NPDES) permit contains limits on Total Dissolved Solids (TDS) and minerals, specifically chloride and sulfate. In that permit, the City was required to complete a Petition to the APCEC to change the local stream standards. If the APCEC does not approve our request, we might be required to complete a very expensive modification to our wastewater treatment plant to comply with the very strict limits of chloride, 20 mg/l; sulfate, 20 mg/l; and TDS, 160 mg/l. The estimated capital cost for this modification is approximately \$45 million. The City's team consists of the City's Utility Department, CH2M, and the Mitchell Williams law firm.

DISCUSSION:

The contract between the City and Mitchell Williams law firm was originally set at \$48,000 and was amended in 2013 to \$63,000, in 2014 to \$83,000 and again in 2015 to 97,000 to help cover un-anticipated costs due to Act 954. However, additional services are needed requiring the Mitchell, Williams firm to spend more time on the TDS and minerals effort than the amended contract allows for. There are still several tasks to be performed. Below is the list of items that still need to be done:

- Arrange for and meet with ADEQ water and legal division seeking agreement on the requested minerals numbers
- Prepare and file Statement of Basis and Responsiveness Summary (Response to Comments) with the APCEC
- Prepare for and attend (defend) legislative review of the Third-Party Rulemaking by Joint Legislative Public Health and Welfare Committee and the Joint Legislative Rules and Regulations Committee
- Prepare and File with APCEC the Motion to Adopt Water Quality Standard Changes and the Draft Order adopting same

- Prepare for and attend the APCEC meeting seeking final adoption of the changes
- Track submission and approval of the water quality changes to EPA

BUDGET/STAFF IMPACT:

A budget adjustment is attached to increase the budget in the White River NPDES UAA and APCEC Action project, Environmental Attorney for APCEC Rule Change sub- project to cover the additional legal costs. Cost savings from the completed Regional Park Waterline project will be moved into this project budget to cover the additional legal costs.

AMENDMENT TO AGREEMENT FOR ENVIRONMENTAL LEGAL SERVICES

CONTRACT AMENDMENT NO. 4

This Contract Amendment No. 4 dated July 25, 2016 shall amend the original contract between the City of Fayetteville, Arkansas, and Mitchell, Williams, Selig, Gates & Woodyard, PLLC., dated April 5, 2011, referred to in the following paragraphs as the original contract.

This Contract Amendment No. 4:

1. Services to be Performed: Adds: Continued actions as required to obtain final approval from the Arkansas Pollution Control and Ecology Commission (APCEC) to modify site specific water quality criteria in the White River, to provide advice and guidance on what actions the City and its consultants need to take to successfully accomplish the task of receiving approval to the petition from two committees of the AR Legislature, and to assist in obtaining relevant approvals from USEPA. The following items are the currently known required actions:

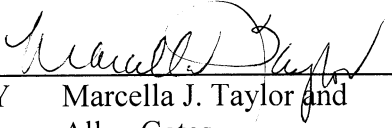
- Team conference(s) to deal with comments by ADEQ.
- Arrange for and meet with ADEQ water and legal division seeking agreement on the requested minerals numbers
- Prepare and file Statement of Basis and Responsiveness Summary (Response to Comments) with the APCEC
- Prepare for and attend (defend) legislative review of the Third-Party Rulemaking by Joint Legislative Public Health and Welfare Committee and the Joint Legislative Rules and Regulations Committee
- Prepare and File with APC&EC the Motion to Adopt Water Quality Standard Changes and the Draft Order adopting same
- Prepare for and attend the APC&EC meeting seeking final adoption of the changes
- Track submission and approval of the water quality changes to EPA.

8. Compensation: Replaces not to exceed compensation amount of \$108,000 with not to exceed compensation amount of \$15,000.

WITNESS OUR HANDS THIS _____ DAY OF _____, 2016.

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, PLLC

CITY OF FAYETTEVILLE,
FAYETTEVILLE, ARKANSAS


BY Marcella J. Taylor and
Allan Gates

LIONELD JORDAN, Mayor

Attest:



Leann Kret

Mitchell, Williams, Selig, Gates & Woodyard, PLLC
425 West Capitol Avenue, Suite 1800
Little Rock, AR 72201

Attest:

Sondra Smith, City Clerk

City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

Budget Year	Division	Adjustment Number
2016	WATER SEWER (720)	
	/Org2	
	Requestor: Cheryl Partain	

A BA is needed within the White River NPDES UAA and APCEC Action Project to cover the cost of additional legal services related to the White River Water Quality Standards Petition to the Arkansas Pollution Control and Ecology Commission. Cost savings from the completed Regional Park Waterlines project will be moved into the White River NPDES UAA and APCEC Action project to cover the additional legal costs.

v.20160722

1 of 1



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2016-0363

Agenda Date: 8/16/2016

Version: 1

Status: Agenda Ready

In Control: City Council Meeting

File Type: Resolution

Agenda Number: A. 4

CDI CONTRACTORS, LLC:

A RESOLUTION TO APPROVE A BUDGET ADJUSTMENT IN THE AMOUNT OF \$11,820.00 RECOGNIZING REVENUE FROM CDI CONTRACTORS, LLC FOR ITS SHARE OF COSTS FOR REPAIRS TO WILSON AVENUE

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$11,820.00, a copy of which is attached to this Resolution, recognizing revenue from CDI Contractors, LLC for its share of costs for repairs to Wilson Avenue.

City of Fayetteville Staff Review Form

2016-0363

Legistar File ID

8/16/2016

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

John Nelson

7/28/2016

Transportation Services /
Transportation Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A resolution to approve a budget adjustment in the amount of \$11,820 to recognize revenue from CDI Contractors, LLC for its cost share for repairs to Wilson Avenue.

Budget Impact:

4470.9470.5809.00

Sales Tax Capital Improvements

Account Number

Fund

02116

Street ROW / Intersection / Cost Sharing

Project Number

Project Title

Budgeted Item? No

Current Budget \$ 531,482.00

Funds Obligated \$ 8,475.00

Current Balance \$ 523,007.00

Does item have a cost? Yes

Item Cost \$ 36,940.00

Budget Adjustment Attached? Yes

Budget Adjustment \$ 11,820.00

Remaining Budget \$ 497,887.00

V20140710

Previous Ordinance or Resolution #

Original Contract Number:

Approval Date:

Comments:

MEETING OF AUGUST 16, 2016

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff
Terry Gulley, Transportation Services Director

FROM: John Nelson, Management Accounting Coordinator

DATE: July 28, 2016

SUBJECT: Wilson Avenue Cost Share

RECOMMENDATION:

A resolution to approve a budget adjustment in the amount of \$11,820.80 to recognize revenue from CDI Contractors, LLC for its cost share for repairs to Wilson Avenue

BACKGROUND:

The Pi Beta Phi sorority house is a 42,000 square foot, 37 unit sorority house located on approximately 1.62 acres at the northeast corner of the intersection of Maple Street and Wilson Avenue. The project was approved as a large scale development in March 2015 and started construction soon after in summer of 2015. During construction of the project there was a significant amount of construction traffic introduced to Wilson Avenue which is a narrow local street. Damage to the street caused by heavy trucks from the construction site was witnessed by the City of Fayetteville Engineering Division during site inspections. At the end of the project the damage was assessed by the Engineering Division, and varied from rutting, to alligator cracking, to raveled edges, and in some locations gouges and scrapes from metal tracked equipment being driven on the road. Although it was obvious the road was damaged by construction in some areas, there were also other areas that were in need of repair prior to the start of the project. Since some repairs were going to be necessary to fix the damage done by construction, the engineering division recognized the opportunity to partner with the contractor and repair the other failures in the street that existed prior to construction.

DISCUSSION:

The City of Fayetteville Engineering Division and contractor measured the scope of the repairs and found that approximately 8,875 square feet of pavement would need to be milled and overlaid. In addition, there would be striping that would need to be replaced, and small sections of the street subgrade that would need to be under cut and replaced to create a stable foundation for the new pavement. This total cost of repair was estimated to be \$36,940.00. Of the 8,875 SF total, 2,835 SF (32%) was due to damage caused by construction of the sorority house, and 6,040 SF (68%) was failed asphalt prior to the start of construction. Therefore, the contractor's share of the repairs was found to be \$11,820.80 (32% of the total cost).

BUDGET/STAFF IMPACT:

Sales Tax Capital Improvements funds are budgeted annually for cost shares to complete street improvements and to provide for construction of miscellaneous street projects.

Attachments:

Budget Adjustment

Budget Year	Division: Transportation Services	Adjustment Number
2016	Dept.: Transportation Services	
	Requestor: John Nelson	

This budget adjustment recognizes \$ received from CDI Contractors, LLC for its cost share for repairs to Wilson Avenue.

	COUNCIL DATE:	8/16/2016
	LEGISTAR FILE ID#:	2016-0363
	<i>Barbara Fell</i>	
	<i>7/28/2016 3:49 PM</i>	
	Budget Director	Date
	TYPE:	
	DESCRIPTION:	
	GLDATE:	
	POSTED:	/
RESOLUTION/ORDINANCE		

[illegible]



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2016-0352

Agenda Date: 8/16/2016

Version: 1

Status: Second Reading

In Control: City Council Meeting

File Type: Ordinance

Agenda Number: B. 1

AMEND §164.23 SINGLE-FAMILY INFILL STANDARDS:

AN ORDINANCE TO AUTHORIZE THE CITY COUNCIL TO GRANT A VARIANCE IN THE SINGLE FAMILY INFILL STANDARDS TO SUPPORT ATTAINABLE, AFFORDABLE HOUSING

(LEFT ON SECOND READING)

WHEREAS, the City Council has long supported an increase in the amount of affordable and attainable housing available to Fayetteville workers and their families; and

WHEREAS, City Plan 2025, adopted by the City Council, expressed "Housing Concerns" because housing costs were increasing faster than incomes "which significantly impact the ability of home ownership for many potential home buyers"; and

WHEREAS, City Plan 2030, unanimously adopted by the City Council in July of 2011, expressed the identical "Housing Concerns" of "housing affordability" as City Plan 2025; and

WHEREAS, the City Council placed within City Plan 2030 a new general guiding principle: "Goal 6 We will create opportunities for attainable housing," to emphasize how important attainable and affordable housing is to our citizens and City; and

WHEREAS, a provision concerning garage placement within the newly adopted Single Family Infill Standards can in some circumstances significantly and unnecessarily raise the costs of home construction and impair the affordability and attainability of housing; and

WHEREAS, the City Council should be able to consider and grant a reasonable variance to such provision which would preserve the legitimate aesthetic concerns, but allow home builders to offer attainable houses to our citizens.

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 § 164.23 **Single-Family Infill Standards** (B)(1)(b) by adding the following at the end of this subsection:

"The City Council may grant a variance to this requirement to ensure affordable and attainable housing can be constructed for our citizens."

AGENDA REQUEST FORM

FOR: Council Meeting of August 2, 2016

FROM:

City Council Member Martin Schoppmeyer

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO AUTHORIZE THE CITY COUNCIL TO GRANT A
VARIANCE IN THE SINGLE FAMILY INFILL STANDARDS TO SUPPORT
ATTAINABLE, AFFORDABLE HOUSING

APPROVED FOR AGENDA:



City Council Member Martin Schoppmeyer

7.20.16
Date



City Attorney Kit Williams
(as to form)

July 20, 2016
Date

Williams, Kit

From: Mark Marquess <markm@riverwoodhomesnwa.com>
Sent: Wednesday, July 20, 2016 2:37 PM
To: Williams, Kit; Schoppmeyer, Martin
Cc: markm@riverwoodhomesnwa.com; 'Charles W Sloan DbA Sloan'
Subject: Change to ordinance 164.23 Single family Infill Standards

Kit and Marty,

Please consider this a formal request for a variance to the Fayetteville Code of Ordinances, section 164.23 – Single-family Infill Standards. We would support an amendment to change the Single-family Infill Standards 164.23 to modify the 46' – 69' street frontage garage placement and setback standards. This would create a significant hardship for the builders ability to provide attainable priced housing. It would increase the cost several thousand dollars to the home buyer.

Riverwood Homes will assist and seek support from other local and regional homebuilders to show approval for this ordinance.

Thank you,

MARK MARQUESS
RIVERWOOD HOMES, LLC
3420 N. Plainview Ave.
Fayetteville, AR 72703
479-435-2088 Phone
markm@riverwoodhomes.com



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: **Mayor Jordan**
City Council

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

FROM: **Kit Williams**, City Attorney

DATE: **July 22, 2016**

RE: **Attainable and Affordable Housing**

City Plan 2025 "through a collaboration between City staff and urban design firm, Dove, Kohl and Partners, combines citizen input and ideas with concepts and policies that have been proven and tested in our own and other communities...." Preface to City Plan 2025, page 3.

City Plan 2025 includes **Vision and Strategies** of the 2020 Long Range Plan adopted in the 20th century. The Visions include "Housing choices for all incomes...." The Means to reach that Vision lists "Attainable housing throughout the City." "Attainable housing" is also shown in support of "A revitalized South Fayetteville." Thus, for at least two decades, the Fayetteville City Council has supported the goal of affordable and attainable housing for our citizens.

A major portion of both City Plan 2025 and City Plan 2030 has been its Chapter 4 **Housing**. Both Long Range City Plans end the **Housing** chapter with **Housing Concerns** which is devoted to the loss of affordability of housing because of its escalating costs. The average housing cost has been increasing faster than average household income "which significantly impacts the ability of home ownership for many potential home buyers." City Plan 2025 and City Plan 2030.

City Plan 2025 present five overall goals or visions to guide the City Council. City Plan 2030 adopted by the City Council unanimously in July of 2011 added one more overall goal and vision: **“Goal 6 We will create opportunities for affordable housing.”** In its attempt to improve home affordability, the City Council should be careful not to unintentionally increase the costs of attainable homes by enacting new regulations that might unnecessarily increase housing construction costs.

The Planning Department presented proposed U.D.C. amendments to the Planning Commission with its memo of July 13, 2015. While the vast majority of proposed changes allowed easier development of single family homes in multi-family districts, reduced setbacks, lot widths and introduced the most dense single-family district to date, RSF-18, a final provision introduced single family design standards for any lot with less than seventy (70) feet of street frontage. Planner Jessie Fulcher explained the rationale to require design standards for these single family homes:

“2. Chapter 164.23 Small Lot Design Standards. Introduce a set of design standards for single-family homes on small lots.

• • •

As noted above, Chapter 161 is being updated to allow greater variability in the types of residential units constructed in multi-family zoning districts, principally by reducing the barriers to construct single-family homes. However, as lot width and building footprints are reduced it becomes more difficult to design a home and maintain visibility between the street and building. A primary goal of Crime Prevention Through Environment Design (CPTED) is to maintain natural surveillance, or “see and be seen.” Unfortunately, poor design choices when building smaller homes can greatly reduce and sometimes even eliminate natural surveillance. As a result, staff is proposing a relatively brief set of design standards for single-family homes on small lots (see exhibit ‘B’ attached). The code specifies the standards only apply to lots with less than 70 feet of street frontage. This exempts a majority of all single-family lots in the City which are typically located in the RSF-4 zoning district, with a minimum lot width of 70 feet and maximum density of 4 units per acre.”

For years Fayetteville has been in the top 10 of American cities to raise a family, start a business, live and work. I think we are currently number 3 in the nation. Our Fayetteville Police Department has done much to ensure the safety of our citizens and neighborhoods. Our crime rate is low. Maybe other cities may need to implement Crime Prevention Through Environment Design to try to reduce their crime rate, but I think there is little evidence to support Fayetteville's need for such action.

All over town in traditional neighborhoods zoned RSF-4, the City allows front yards and does not restrict the placement of garages. Does Planning think crime is rampant in these traditional neighborhoods or will be in the future because garages tend to be closer to the street than the house? Does this justify requiring home owners to move their garages back at least five feet behind the front of their houses? Indeed, how would building a garage flush with the front of the house impede any "surveillance" or "visibility between the street and building"? This alleged need to maintain "natural surveillance" of the street is a very weak reed to base design requirements for home owners.

Although passed on October 6, 2015 and therefore effective on November 7, 2015, no issues concerning these design standards surfaced until around March at the Planning Commission. Buffington Homes was two thirds of the way through an upscale "French Cottage" subdivision whose beautifully designed and constructed homes had garages that were not at least five feet behind the houses. Although Planning staff recommended denial of a variance to complete the subdivision as designed, just about the entire neighborhood appeared and requested approval of the variance which was finally granted by the Planning Commission.

The same issue reappeared in April after Rausch Coleman Homes, Inc. was surprised to learn of the ordinance when building permits for its final phase of the Coves Development were rejected. Although Rausch Coleman said it could eventually comply, the costs per house would likely be \$8,000 to \$10,000. (Planning Commission Minutes, page 5 within Final Agenda of May 9, 2016). Eventually, Jesse Fulcher (now working for Rausch Coleman Homes, Inc.) persuaded the Planning Commission to grant variances for 21 houses because "to build in compliance will cost a significant amount of money." (Planning Commission Minutes page 4 of Final Agenda of May 23, 2016 meeting).

Finally, I recently met with Andrew Garner, Chris Brown and Mark Marquess over his request to build three “model” houses (with sufficient current frontage on Broyles and access to water and sewer) prior to his Final Plat approval. This complied with the U.D.C. so Andrew okayed his request. Andrew then told Mark about the Single-family design standards if a lot has less than 70 feet of street frontage (as do the vast majority of Mark’s lots in his approved Preliminary Plat). This was surprising news to Mark. None of his house designs for his development would satisfy the moved back garage, and he agreed with Rausch Coleman Homes that compliance would cost his home buyers thousands of dollars.

Because a principal goal adopted by the City Council in the 2030 Plan was to “create opportunities for affordable housing,” I became concerned that our major affordable housing construction companies believe this garage location requirement would push up the cost of their houses and endanger these homes’ affordability for our citizens. Since this would be contrary to the City Council’s adopted primary goal to support affordable housing, I believed something might need to be done.

When I explained my concerns to Alderman Schoppmeyer, he agreed that the **City Council should empower itself** to listen to the explanations of the home builders and grant any necessary relief as to garage location that might be required to ensure: “We will create opportunities for affordable housing.” That it what his one sentence amendment to the garage location provision of the single family home design standards would do.



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2016-0351

Agenda Date: 8/16/2016

Version: 1

Status: Agenda Ready

In Control: City Council Meeting

File Type: Ordinance

Agenda Number: C. 1

RZN 16-5474 (SOUTH OF 1297 E. FARMERS RD./HALE 558):

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 16-5474 FOR APPROXIMATELY 1.28 ACRES LOCATED SOUTH OF 1297 EAST FARMERS ROAD FROM R-A, RESIDENTIAL AGRICULTURAL AND RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE TO RSF-7, RESIDENTIAL SINGLE FAMILY, 7 UNITS PER ACRE

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 property shown on the map (Exhibit A) and the legal description (Exhibit B) both attached to the Planning Department's Agenda Memo from R-A, Residential Agricultural and RSF-4, Residential Single Family, 4 Units Per Acre to RSF-7, Residential Single Family, 7 Units Per Acre.

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.

City of Fayetteville Staff Review Form

2016-0351

Legistar File ID

8/16/2016

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Jeremy Pate

7/29/2016

City Planning /
Development Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN 16-5474: Rezone (SOUTH OF 1297 E. FARMERS RD./HALE 558): Submitted by HAMBLÉN DESIGN SERVICES, INC. for properties SOUTH OF 1297 E. FARMERS RD. The properties are zoned R-A, RESIDENTIAL AGRICULTURAL AND RSF 4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE and contain approximately 1.28 acres. The request is to rezone the properties to RSF-7, RESIDENTIAL SINGLE FAMILY, 7 UNITS PER ACRE.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? NA

Current Budget \$ -

Funds Obligated \$ -

Current Balance \$ -

Does item have a cost? No

Item Cost

Budget Adjustment Attached? NA

Budget Adjustment

Remaining Budget \$ -

V20140710

Previous Ordinance or Resolution #

Original Contract Number:

Approval Date:

Comments:

MEETING OF AUGUST 16, 2016

TO: Mayor, Fayetteville City Council

THRU: Andrew Garner, City Planning Director

FROM: Quin Thompson, Planner

DATE: July 18, 2016

SUBJECT: **RZN 16-5474: Rezone (SOUTH OF 1297 E. FARMERS RD./HALE 558):**
Submitted by HAMBLÉN DESIGN SERVICES, INC. for properties SOUTH OF 1297 E. FARMERS RD. The properties are zoned R-A, RESIDENTIAL AGRICULTURAL AND RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE and contain approximately 1.28 acres. The request is to rezone the properties to RSF-7, RESIDENTIAL SINGLE FAMILY, 7 UNITS PER ACRE.

RECOMMENDATION:

The Planning Commission and staff recommend approval of an ordinance to rezone the properties to RSF-7, Residential Single-family / 7 units per acre as shown in the attached Exhibits 'A' and 'B'.

BACKGROUND:

The proposed rezoning request is for approximately 1.28 acres on Farmers Drive, a small residential neighborhood north of Finger Park. The property is currently within the R-A and RSF-4 zoning districts. The property to be rezoned contains 3 undeveloped parcels.

Land Use Compatibility: The proposed zoning is compatible with surrounding land use patterns in this area, which contains a mixture of older single and two-family homes. A Wal-mart supercenter occupies a large parcel to the west. The proposed zoning would allow the land owner to develop single-family homes on lots of 60 feet in width.

Land Use Plan Analysis: The proposed zoning is fully consistent with the Future Land Use Map (FLUM) of the City Plan 2030, in which infill of existing development centers is strongly encouraged for properties already served by public infrastructure.

The goals of City Plan 2030 include making the traditional town form the standard. The RSF-7 zoning district encourages a residential development pattern which is slightly denser than the common RSF-4 zone, but remains recognizably suburban. The future land use plan could support a far more compact and dense development pattern, but in this case the 7 unit per acre limit is compatible with surrounding land use and configuration of the subject property lines.

DISCUSSION:

On July 11, 2016 the Planning Commission forwarded the applicant's request rezoning with a unanimous recommendation for approval.

BUDGET/STAFF IMPACT:

N/A

Attachments:

- Exhibit A
- Exhibit B
- Application
- Planning Commission Staff Report

**16-5474
EXHIBIT 'A'**

RZN 16-5474

HALE



Close Up View

LUTHER KING

PRIVATE 26

FARMERS DR

Subject Property

R-A

RMF-24

PRIVATE 2553

PRIVATE 2551

PRIVATE 2663

RSF-7

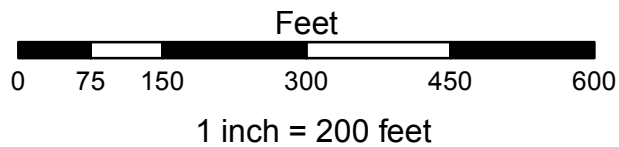
RT-12

P-1

RSF-4

Legend

-  Planning Area
-  Fayetteville City Limits
-  Trail (Proposed)
-  Design Overlay District
-  Building Footprint



-  Residential-Agricultural
-  RSF-4
-  RSF-7
-  RT-12 Residential Two and Three-family
-  RMF-24
-  C-2
-  Commercial, Industrial, Residential
-  P-1

16-5474
EXHIBIT 'B'

Legal Description

Part of the Northeast Quarter (NE ¼) of Section Nineteen (19) in Township Sixteen (16) North, Range Thirty (30) West being more particularly described at commencing at the calculated center of the Northeast Quarter (NE ¼) of Section Nineteen (19) in Township Sixteen (16) North, Range Thirty (30) West; thence South 02°36'02" West a distance of 496.96 feet to a point; thence North 87°23'58" West a distance of 204.20 feet to a point; thence South 02°39'59" East a distance of 424.51 feet the POINT OF BEGINNING a point; thence South 02°16'50" East a distance of 242.40 feet to a point in the east right of way of West Farmer Drive; thence along said right of way North 77°27'27" West a distance of 35.10 feet to a point; thence continue along said right of way North 52°21'48" West a distance of 10.67 feet to a point; thence continue along said right of way North 45°46'29" West a distance of 3.63 feet to a point; thence continue along said right of way North 36°15'14" West a distance of 4.77 feet to a point; thence continue along said right of way North 26°24'05" West a distance of 8.63 feet to a point; thence continue along said right of way North 18°35'41" West a distance of 14.07 feet to a point; thence continue along said right of way North 09°54'52" West a distance of 11.20 feet to a point; thence continue along said right of way North 04°26'17" West a distance of 25.31 feet to a point; thence continue along said right of way North 03°17'57" West a distance of 42.92 feet to a point; thence continue along said right of way North 02°47'38" West a distance of 42.54 feet to a point; thence continue along said right of way North 01°05'51" West a distance of 51.17 feet to a point; thence continue along said right of way North 01°52'56" West a distance of 43.55 feet to a point; thence continue along said right of way North 03°19'44" West a distance of 41.56 feet to a point; thence continue along said right of way North 03°52'11" West a distance of 24.48 feet to a point; thence continue along said right of way North 03°23'24" West a distance of 53.78 feet to a point; thence continue along said right of way North 04°14'07" West a distance of 61.73 feet to a point; thence continue along said right of way North 04°25'36" West a distance of 28.32 feet to a point; thence leaving the east right of way of West Farmer Road South 88°54'42" East a distance of 144.60 feet to a point; thence South 00°31'23" East a distance of 61.35 feet to a point; thence North 89°14'37" East a distance of 155.98 feet to a point in the centerline of East Farmer Road; thence along the centerline of East Farmer Road South 01°00'21" East a distance of 80.00 feet to a point; thence leaving the centerline of East Farmer Road South 89°13'51" West a distance of 161.07 feet to a point; thence South 03°12'40" West a distance of 80.15 feet to a point; thence South 89°14'37" West a distance of 65.33 feet to the POINT OF BEGINNING containing in all 55,996 square feet or 1.29 acres, more or less and being further subject to any rights-of-ways, easements, liens, or encumbrances which may or may not be of record.

PLANNING COMMISSION MEMO

TO: City of Fayetteville Planning Commission

THRU: Andrew Garner, City Planning Director

FROM: Quin Thompson, Current Planner

MEETING DATE: ~~July 11, 2016~~ **UPDATED 7-12-2016**

SUBJECT: **RZN 16-5474: Rezone (SOUTH OF 1297 E. FARMERS RD./HALE 558):**
Submitted by HAMBLÉN DESIGN SERVICES, INC. for properties SOUTH OF 1297 E. FARMERS RD. The properties are zoned R-A, RESIDENTIAL AGRICULTURAL AND RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE and contain approximately 1.28 acres. The request is to rezone the properties to RSF-7, RESIDENTIAL SINGLE FAMILY, 7 UNITS PER ACRE.

RECOMMENDATION:

Staff recommends forwarding **RZN 16-5474** to the City Council with a recommendation of approval, based on the findings herein.

BACKGROUND:

The proposed rezoning request is for approximately 1.28 acres on Farmers Drive, a small residential neighborhood north of Finger Park. The property is currently within the R-A and RSF-4 zoning districts. The property to be rezoned contains 3 undeveloped parcels.

Surrounding land use and zoning is depicted on *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Residential	RSF-4, Residential Single-family/ R-A, Residential Agricultural
South	Residential	RSF-4, Residential Single-family/ R-A, Residential Agricultural
East	Residential	RSF-4, Residential Single-family
West	Wal-mart superstore	R-A, Residential Agricultural/C-2 Thoroughfare Commercial

Request: The request is to rezone the subject parcels (approximately 1.28 acres) from R-A and RSF-4 to RSF-7 in order prepare the parcel for development.

Public Comment: Staff has received no public comment.

INFRASTRUCTURE:

- Streets:** Any additional improvements or requirements for drainage would be determined at time of development. No portion of this parcel lies within the FEMA designated 100-yr floodplain. No protected streams flow through these parcels and no part of these parcels lies within the HHOD.
- Water:** Public water is available to the site. A 2.25" water main runs along the western edge of the Farmers Drive right of way adjacent to the frontage of these parcels.
- Sewer:** Public sewer is available to the site. A 6" sewer main runs along the eastern edge of the Farmers Drive right of way adjacent to the frontage of these parcels.
- Drainage:** The subject parcels have access to Farmers Drive, an improved public street with asphalt, curb/gutter, sidewalk on one side, and no storm drainage. Any further street improvements would be determined at time of development.
- Fire:** The Fire Department did not express any concerns with this request.
- Police:** The Police Department did not express any concerns with this request.

CITY PLAN 2030 FUTURE LAND USE PLAN: *City Plan 2030 Future Land Use Plan designates the properties within the proposed rezone as **Urban Center Area**.*

Urban Center Areas contain the most intense and dense development patterns within the City, as well as the tallest and greatest variety of buildings. They accommodate rowhouses, apartments, local and regional retail, including large-scale stores, hotels, clean tech industry and entertainment uses. These areas are typified by their location adjacent to major thoroughfares with high visibility, usually automobile-dependent customers and large areas dedicated to parking. Although **Urban Center Areas** recognize the conventional big-box and strip retail centers developed along major arterials, it is expected that vacant properties will be developed into traditional mixed-use centers, allowing people to live, work and shop in the same areas. Additionally, infill of existing development centers should be strongly encouraged, since there is greater return for properties already served by public infrastructure.

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: ***Land Use Compatibility:*** The proposed zoning is compatible with surrounding land use patterns in this area, which contains a mixture of older single and two-family homes. A Wal-mart supercenter occupies a large parcel to the west. The proposed zoning would allow the land owner to develop single-family homes on lots of 60 feet in width.

Land Use Plan Analysis: The proposed zoning is fully consistent with the Future Land Use Map (FLUM) of the City Plan 2030, in which infill of existing development centers is strongly encouraged for properties already served by public infrastructure.

The goals of City Plan 2030 include making the traditional town form the standard. The RSF-7 zoning district encourages a residential development pattern which is slightly denser than the common RSF-4 zone, but remains recognizably suburban. The future land use plan could support a far more compact and dense development pattern, but in this case the 7 unit per acre limit is compatible with surrounding land use and configuration of the subject property lines.

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

Finding: The proposed zoning will encourage appropriate residential development on these parcels, a large portion of which fronts on a public street but is undevelopable due to a lack of access to City water facilities.

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

Finding: Traffic danger and congestion is not expected to increase appreciably. The rezone would allow an additional two single-family homes to be developed on the 1.28 acre property.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: Rezoning the property from R-A and RSF-4 to RSF-7 would allow the construction of a single-family home to be developed on the lot with East Farmers Drive lot while reserving frontage for two existing non-conforming lots in the rear of the property. The rezone request is not likely to undesirably increase load on public services.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

RECOMMENDATION: Staff recommends forwarding **RZN 16-5474** to the City Council with a recommendation of approval, based on the findings discussed throughout this report.

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code sections 161.03, 161.07, & 161.08
- Engineering Comments
- Request letter
- Rezone exhibit
- One Mile Map, Close-Up Map, Current Land Use Map, Future Land Use Map

PLANNING COMMISSION ACTION: Required <u>YES</u>			
Date: <u>July 11, 2016</u>	☐ Tabled	☒ Forwarded	☐ Denied
Motion: AUTRY			
Second: BROWN			
Vote: 9-0-0			
CITY COUNCIL ACTION: Required <u>YES</u>			
Date: <u>August 2, 2016</u>	☐ Approved	☐ Denied	

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)

161.08 District RSF-7, Residential Single-Family – Seven Units Per Acre

(A) *Purpose* The RSF-7 Residential District is designed to permit and encourage the development of detached dwellings in suitable environments.

(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 dwelling units per acre	7 or less
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(D) *Bulk and area regulations.*

(E) *Lot width minimum.*

Single-family	60 ft.
Two-family	60 ft.
Townhouse, no more than two attached	30 ft.

(F) *Lot area minimum.*

Single-family	6,000 sq. ft.
Two-family	6,000 sq. ft.
Townhouse, no more than two attached	3,000 sq. ft.

(G) *Land area per dwelling unit.*

Single-family	6,000 sq. ft.
Two-family	3,000 sq. ft.
Townhouse, no more than two attached	3,000 sq. ft.

(H) *Setback requirements.*

Front	Side	Rear
15 ft.	5 ft.	15 ft.

(I) *Building height regulations.*

Building Height Maximum	45 ft.
-------------------------	--------

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).

(J) *Building area.* The area occupied by all buildings shall not exceed 50% of the total lot area.

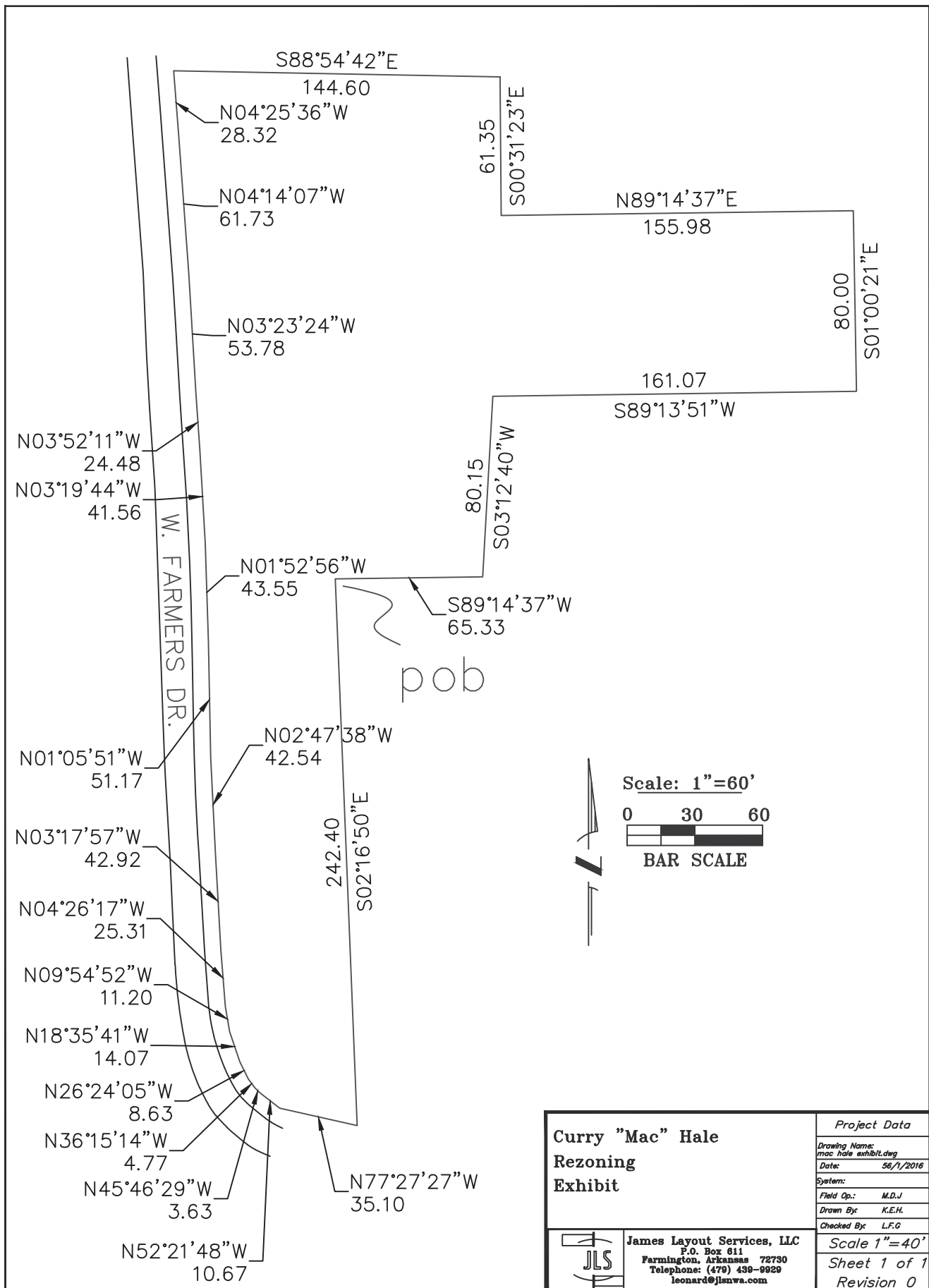
(Code 1991, §160.046; Ord. No. 3792, §4, 5-17-94; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 4858, 4-18-06; Ord. 5028, 6-19-07; Ord. 5128, 4-15-08; Ord. 5224, 3-3-09; Ord. 5312, 4-20-10; Ord. 5462, 12-6-11)

The Curry “Mac” Hale Living Trust Rezoning

R-A to RSF-7

Parcels: 765-14717-000, 765-14714-001, 765-14745-000

The subject property is three adjacent parcels owned by the Curry M. Hale Living Trust. No sales are pending at this time. The family wishes to rezone the property to increase its future value. Several nearby properties are zoned RSF-4, RT-12, RMF-24, RSF-7 as well as C-2 to the west (Walmart Supercenter on MLK). No adverse effect is anticipated if the rezoning is approved. A 2.25” waterline is on the east side of the parcels as well as a 6” sewer line. After speaking with staff, it is our understanding that an RSF-7 zoning in this location would be in keeping with the Future Land Use Plan. The trust wishes to make the property a valuable asset for the future, and therefore requests the rezoning at this time. No appreciable increases in traffic or population density are anticipated. The present zoning is R-A, and the surrounding areas are commercial or high/medium density residential. An agricultural use in this location is somewhat impractical.



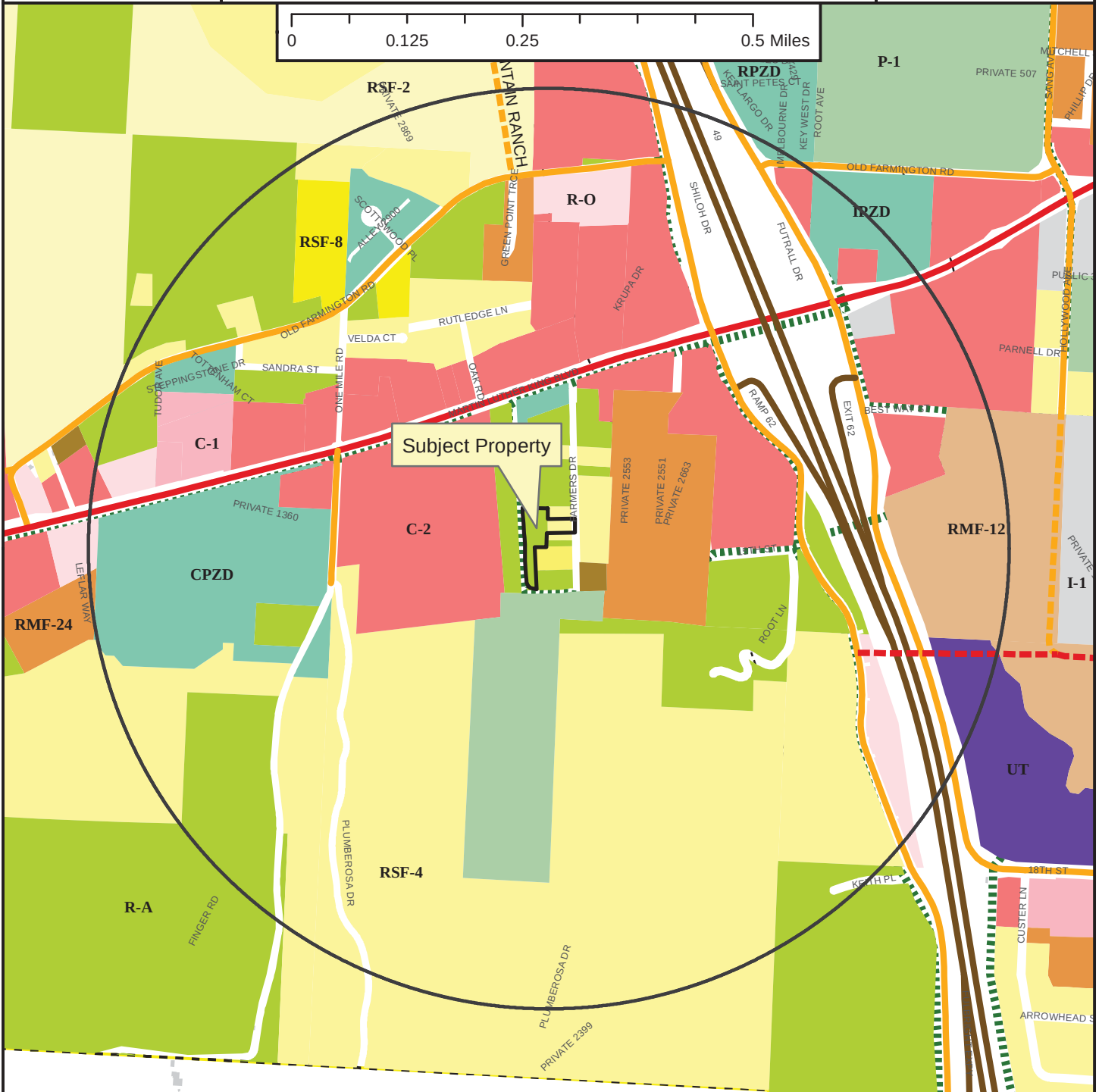
RZN 16-5474

One Mile View

HALE

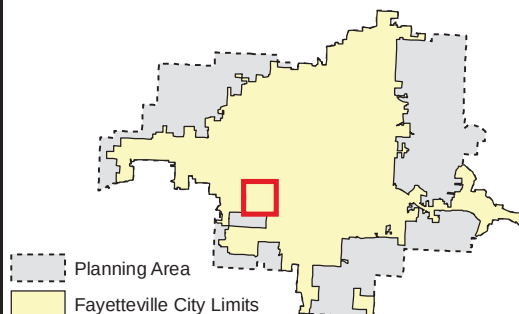


0 0.125 0.25 0.5 Miles



Legend

- Planning Area
- Fayetteville City Limits
- Shared Use Paved Trail
- Trail (Proposed)
- Design Overlay District
- Building Footprint



- | | |
|---|---|
| Zoning
RESIDENTIAL SINGLE-FAMILY
RSF-5
RSF-1
RSF-2
RSF-4
RSF-7
RSF-8
RSF-18
RESIDENTIAL MULTI-FAMILY
RT-12 Residential Two and Three-family
RMF-6
RMF-12
RMF-18
RMF-24
RMF-40
INDUSTRIAL
I-1 Heavy Commercial and Light Industrial
I-2 General Industrial | EXTRACTION
E-1
COMMERCIAL
C-1
C-2
C-3
FORM BASED DISTRICTS
Downtown Core
Urban Thoroughfare
Main Street Center
Downtown General
Community Services
Neighborhood Services
Neighborhood Conservation
PLANNED ZONING DISTRICTS
Commercial, Industrial, Residential
INSTITUTIONAL
P-1 |
|---|---|

Planning Commission

July 11, 2016

Agenda Item 8

16-5474 Hale

Page 10 of 13

RZN 16-5474

Current Land Use

HALE



Legend

Streets Existing

MSP Class

PRINCIPAL ARTERIAL

Trail (Proposed)

RZN16-5474

Planning Area

Fayetteville City Limits

Design Overlay District

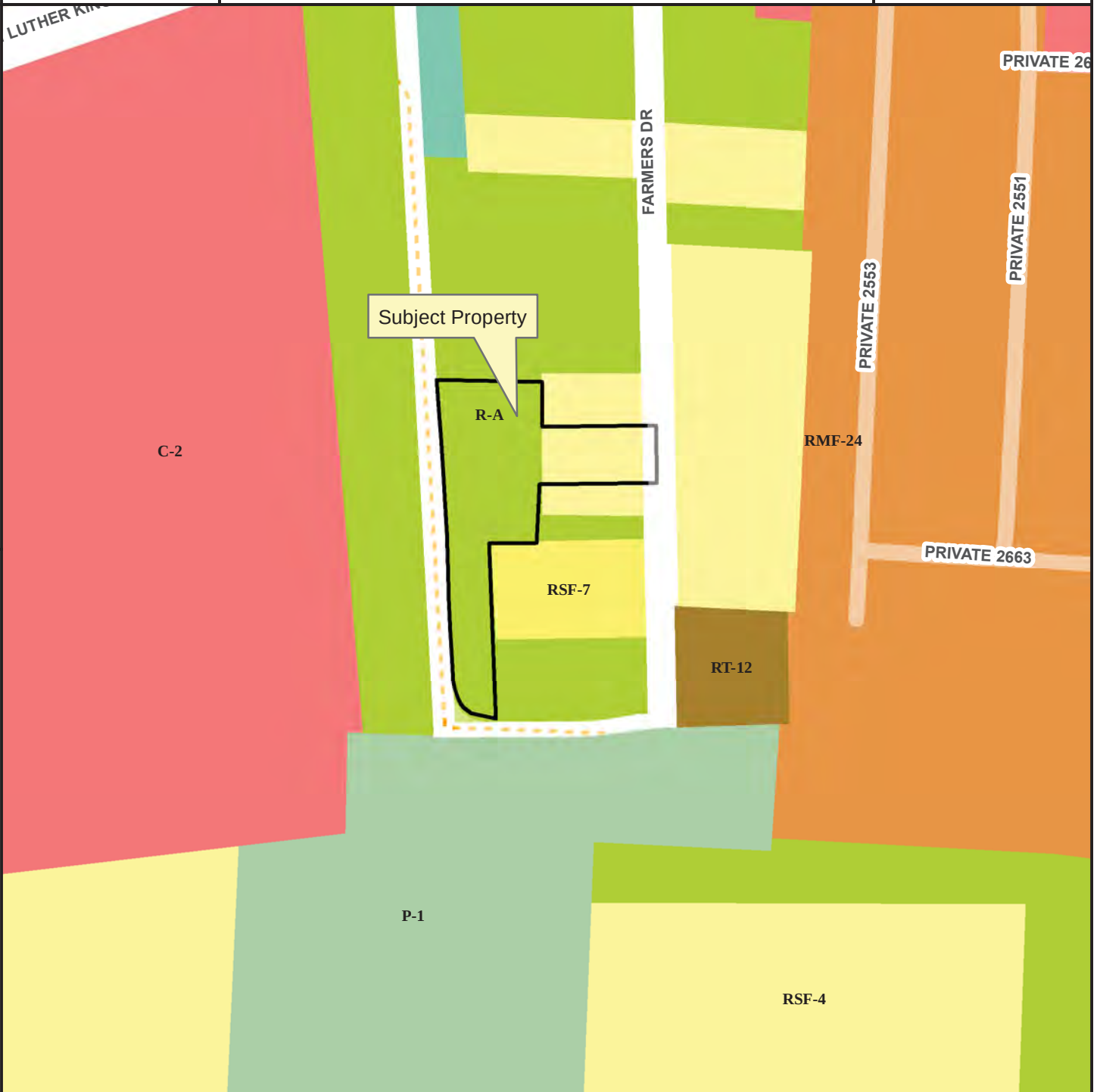
Feet



RZN 16-5474

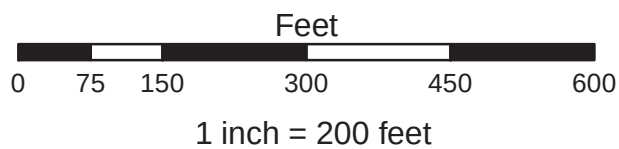
Close Up View

HALE



Legend

- Planning Area
- Fayetteville City Limits
- Trail (Proposed)
- Design Overlay District
- Building Footprint

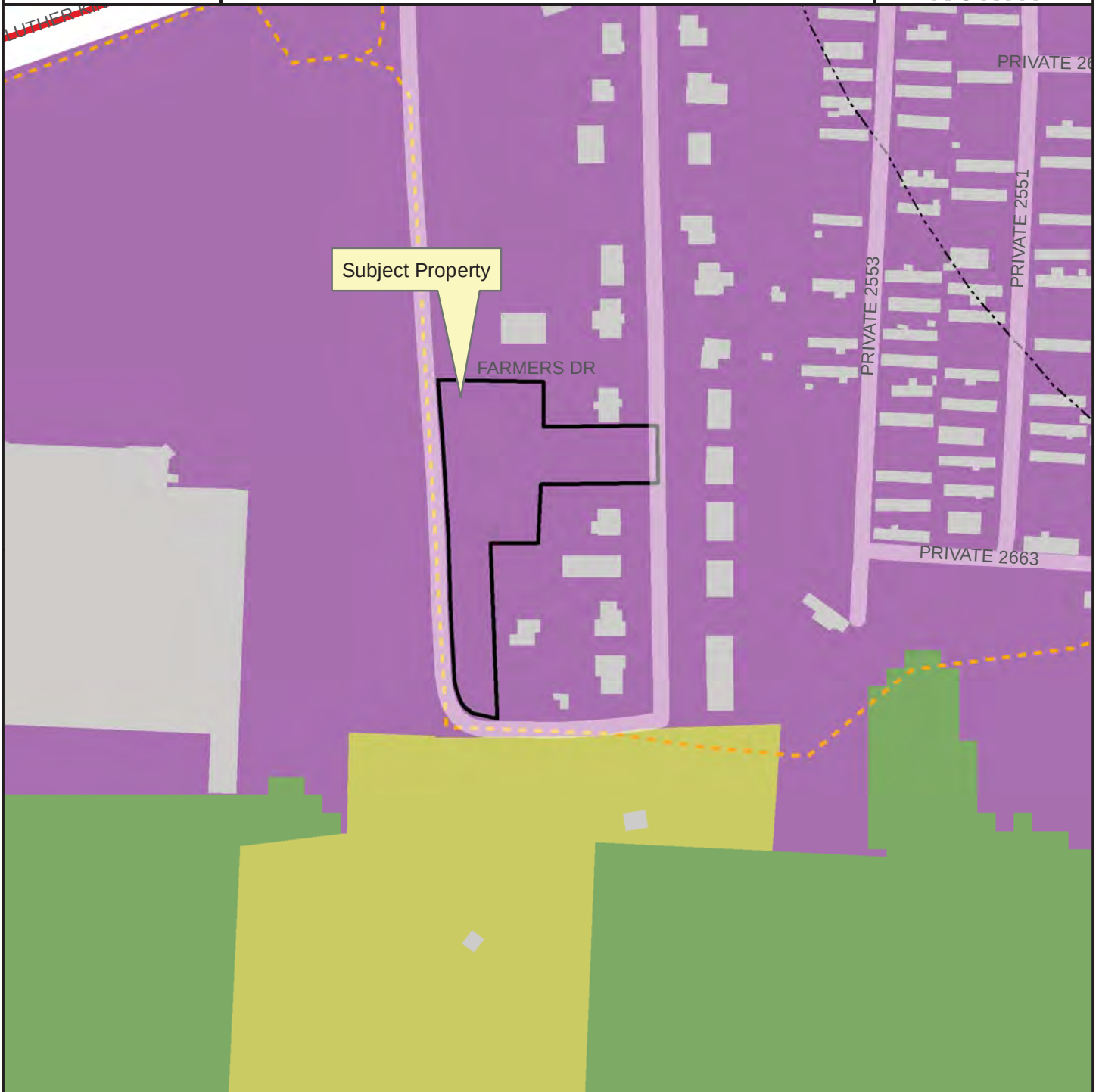


- Residential-Agricultural
- RSF-4
- RSF-7
- RT-12 Residential Two and Three-family
- RMF-24
- C-2
- Commercial, Industrial, Residential
- P-1

RZN 16-5474

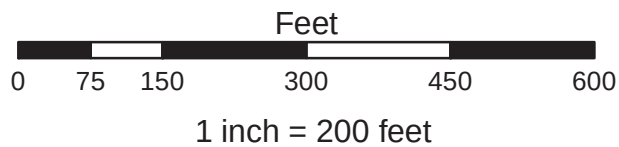
Future Land Use

HALE



Legend

- Planning Area
- Fayetteville City Limits
- Trail (Proposed)
- Design Overlay District
- Building Footprint



FUTURE LAND USE 2030

- Natural Area
- City Neighborhood Area
- Urban Center Area
- Civic and Private Open Space/Parks

CITY OF FAYETTEVILLE, ARKANSAS

REZONING

FOR STAFF USE ONLY

Date Application Submitted:

Date Accepted as Complete:

Case / Appeal Number:

Public Hearing Date:

FEE: \$325.00

Sign Fee: \$5.00

S-T-R:

PP#:

Zone:

Please fill out this form completely, supplying all necessary information and documentation to support your request.
Your application will not be placed on the Planning Commission agenda until this information is furnished.

Application:

Indicate one contact person for this request: _____ Applicant X Representative

Applicant (person making request):

Name: Curry M. Hale

Address: 8907 Southridge Dr., Ft. Smith, AR 72908

E-mail: n/a

Phone:

(479) 650-4165

() _____

Fax:

() n/a

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

Name: Kellye Hamblen; Hamblen Design Services

Address: 102 N. Double Springs Rd.

Farmington, AR 72730

E-mail: hamblendesignservices@gmail.com

Phone:

(479) 236-0172

() _____

Fax:

() n/a

Site Address / Location: Between W. Farmers Dr. and E. Farmers Dr. South of 1297 E. Farmers Dr. and
North of 1389 E. Farmers Dr.

Current Zoning District: R-A; RSF-4

Requested Zoning District: RSF-7

Assessor's Parcel Number(s) for subject property: 765-14717-000; 765-14717-001; 765-14745-000

FINANCIAL INTERESTS

The following entities and / or people have financial interest in this project:

Curry M. Hale Living Trust

APPLICANT / REPRESENTATIVE: I certify under penalty of perjury that the foregoing statements and answers herein made all data, information, and evidence herewith submitted are in all respects, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of application completeness, determination, or approval. I understand that the City might not approve what I am applying for, or might set conditions on approval.

Name (printed): _____ Date: _____

Signature: _____

PROPERTY OWNER(S) / AUTHORIZED AGENT: I/we certify under penalty of perjury that I am/we are the owner(s) of the property that is the subject of this application and that I/we have read this application and consent to its filing. *(If signed by the authorized agent, a letter from each property owner must be provided indicating that the agent is authorized to act on his/her behalf.)*

Property Owners of Record (attach additional info if necessary):

Name (printed): _____ Address: _____

Signature: _____

Date: _____ Phone: _____
()

Name (printed): _____ Address: _____

Signature: _____

Date: _____ Phone: _____
()

Rezoning Checklist:

Attach the following items to this application:

- (1) Payment in full of applicable fees for processing the application:
\$325.00 application fee
\$5.00 public notification sign fee
- (2) A legal description of the property to be rezoned. A survey may be required if the property description can not accurately be platted or if it is described by referring to other deeds.
- (3) CD containing a copy of the legal description in MS Word and all required submittal items should be also included on the CD in PDF format.
- (4) A copy of the county parcel map from the Washington County Assessor's office or from the Washington County website (www.co.washington.ar.us). The subject property and all adjacent parcels should be identified on this parcel map. The owner's name, official mailing address, and the parcel number for every adjacent property shall be shown on this map.

- (5) A *written description* of this request addressing the following items:
- a. Current ownership information and any proposed or pending property sales.
 - b. Reason (need) for requesting the zoning change.
 - c. Statement of how the proposed rezoning will relate to surrounding properties in terms of land use, traffic, appearance, and signage.
 - d. Availability of water and sewer (state size of lines). This information is available from the City Engineering Division.
 - e. The degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.
 - f. Whether the proposed zoning is justified and/or needed at the time of the request.
 - g. Whether the proposed zoning will create or appreciably increase traffic danger and congestion.
 - h. Whether the proposed zoning will alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.
 - i. Why it would be impractical to use the land for any of the uses permitted under its existing zoning classification.
- (6) The applicant is responsible for meeting the public notification requirements for a Rezoning listed on the Notification Requirements pages in this application.

Notice: Resources including current zoning regulations, City Plan 2030, Future Land Use Plan, Master Street Plan and Zoning maps are available for review on our website, www.accessfayetteville.org and in the Planning Office.

All applicants should meet with a staff Planner prior to completing a Rezoning application.



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2016-0362

Agenda Date: 8/16/2016

Version: 1

Status: Agenda Ready

In Control: City Council Meeting

File Type: Resolution

Agenda Number: C. 2

ADM 16-5457: (E. END OF VAN ASCHE DR./VAN ASCHE MSP, 174):

A RESOLUTION TO AMEND THE MASTER STREET PLAN BY REMOVING THE CONNECTION OVER MUD CREEK BETWEEN THE EAST END OF VAN ASCHE DRIVE AND THE SOUTH END OF SHILOH DRIVE

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby amends the Master Street Plan to remove the connection over Mud Creek between the east end of Van Asche Drive and the south end of Shiloh Drive as indicated in Exhibit "A," attached hereto and made a part hereof.

City of Fayetteville Staff Review Form

2016-0362

Legistar File ID

8/16/2016

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Jeremy Pate

7/28/2016

City Planning /
Development Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

ADM 16-5457: Administrative Item (E. END OF VAN ASCHE DR./VAN ASCHE MSP, 174): Submitted by SWOPE CONSULTING, LLC. for property located at the E. END OF VAN ASCHE DR. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 4.44 acres. The request is to remove the connection over Mud Creek from E. Van Asche to S. Shiloh Dr. on the Master Street Plan.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? NA

Current Budget \$ -

Funds Obligated \$ -

Current Balance \$ -

Does item have a cost? No

Item Cost

Budget Adjustment Attached? NA

Budget Adjustment

Remaining Budget \$ -

V20140710

Previous Ordinance or Resolution #

Original Contract Number:

Approval Date:

Comments:



CITY COUNCIL AGENDA MEMO

MEETING OF AUGUST 16, 2016

TO: Mayor, Fayetteville City Council

THRU: Andrew Garner, City Planning Director

FROM: Jonathan Curth, Senior Planner

DATE: August 16, 2016

SUBJECT: **ADM 16-5457: Administrative Item (E. END OF VAN ASCHE DR./VAN ASCHE MSP, 174):** Submitted by SWOPE CONSULTING, LLC. for property located at the E. END OF VAN ASCHE DR. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 4.44 acres. The request is to remove the connection over Mud Creek from E. Van Asche to S. Shiloh Dr. on the Master Street Plan.

RECOMMENDATION:

Staff recommends approval of a resolution to amend the City of Fayetteville Master Street Plan to remove the proposed connection between East Van Asche and South Shiloh Drives as shown in Exhibit 'A'. The Planning Commission and Transportation Committee both recommend denial of this request.

BACKGROUND:

The applicant requests the removal of the proposed Connector Street link between the east end of Van Asche Drive and the southern end of Shiloh Drive. As established in the City Plan 2030 MSP, the planned street would represent a north-south connection to compliment those at Gregg, Avenue, Steele Boulevard, and Mall Avenue to the west, and College Avenue and Front Street to the east. This connection would involve bridge construction over the Mud Creek Trail and Mud Creek itself, which is a waterway subject to the Streamside Protection Zones ordinance (§168.12). The properties adjacent to the planned street are zoned C-2 and have been developed to include restaurants, medical offices, and a hotel.

Terrain, particularly with regard to Mud Creek, has led to a development pattern of limited connectivity between Van Asche Drive and Joyce Boulevard. In an effort to alleviate congestion and facilitate the area's development as a regional commercial center it was determined as part of the MSP adopted in August of 2011 that two additional crossings of Mud Creek would be beneficial. The first, to the east of College Avenue, is proposed to connect the Collector Streets of Sain Street in the south to Vantage Drive to the north. The second crossing, and the subject of this proposed MSP amendment, is to connect the east end of Van Asche Drive, which currently terminates in a cul de sac, with the southern end of Shiloh Drive, both of which are also classified as Collector Streets. This second connection, between Van Asche and Shiloh, has been on, and off, and back on the City's MSP over the last several updates, as the benefits, costs, and challenges associated with it are reevaluated.

The City's Master Street Plan was updated in 2011 to include, among other things, the addition of the Collector Street link between the east end of Van Asche Drive and the south end of Shiloh Drive. This followed the removal of that link in the preceding MSP due to the uncertain benefits as related to the considerable costs. Staff now recommends amending the City's MSP to remove the aforementioned proposed connection between Van Asche and Shiloh for five principle reasons:

1. The price of connecting Van Asche to Shiloh is considerable. Although the precise figures are unavailable, largely due to the connection's inconsistent inclusion in the MSP, staff estimates put the rights-of way acquisition, street extension, and bridge costs at well over \$2 million;
2. The existing number of Mud Creek crossings coupled with the proposed Sain Street-Vantage Drive crossing are generally considered to be sufficient to provide for existing and projected transportation needs;
3. The use of transportation funds in this area of Fayetteville would be better served by improving those existing north-south routes between Van Asche Drive and Joyce Boulevard that can better facilitate connectivity;
4. Any construction over the environmentally sensitive Mud Creek will encroach upon both the Waterside and Management Zones of the waterway, possibly damaging or otherwise negatively affecting the stream bank, existing vegetation and water quality; and
5. The construction of a Van Asche to Shiloh connection will be of limited benefit. The intensity of uses on both Collector Streets leading up to their respective termini is relatively low, with the amount of traffic not dictating the need for crossing less than a 1/4 mile from Mall Avenue to the west and both College Avenue and Front Street less than an 1/8 of a mile to the east.

Evaluating these considerations, staff contends that is appropriate to amend the MSP to remove the proposed connection between the east end of Van Asche Drive and the southern end of Shiloh Drive. If the connection is removed, the remaining segments of Shiloh and Van Asche Drives should be reclassified as Local Streets.

DISCUSSION:

On June 13th, 2016 the Planning Commission voted 7-0-0 to forward the proposal to the City Council with a recommendation of denial. Commissioners cited concerns with the existing connectivity in the area, and expressed doubts as to the likelihood that the proposed Sain-Vantage connection over Mud Creek can alleviate existing congestion.

More recently, on July 27th, 2016, the Transportation Committee reviewed the proposed amendment, voting unanimously to forward it to the full City Council with a recommendation of denial. Although there was some general agreement with staff about the uncertainty that the Van Asche to Shiloh connection could ever be feasible, it was strongly held that this area of Fayetteville needs greater connectivity, and that this option remains among the most viable means of ameliorating congestion.

BUDGET/STAFF IMPACT:

There is no question that the additional bridge and associated street added to the City's system will have a budgetary impact. As the project has only been an infrequent inclusion in the City's MSP, its projected costs have only been summarily considered at best, although the most recent estimates from staff for design, right-of-way acquisition, and construction costs total well over \$2 million.

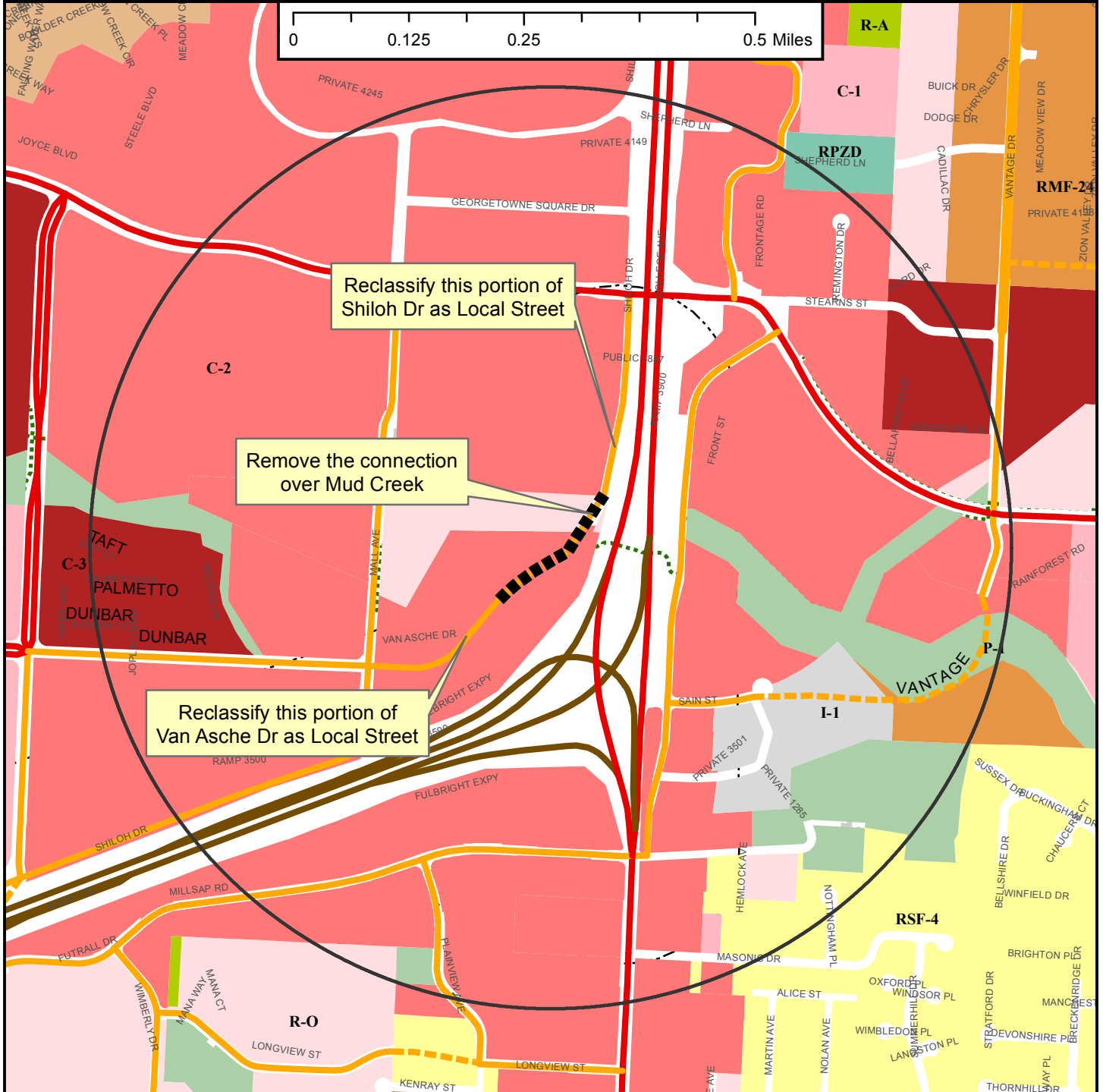
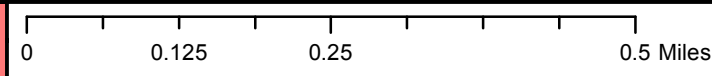
Attachments:

- Exhibit A
- Application
- Planning Commission Staff Report

ADM 16-5457

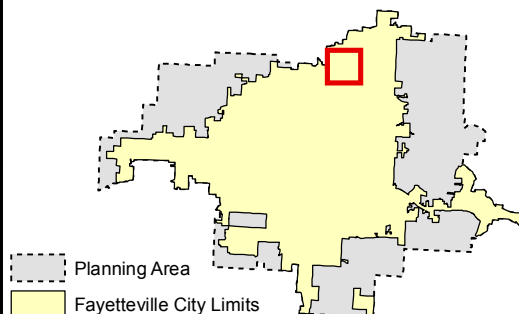
One Mile View

MSP REVISION



Legend

- Planning Area
- Fayetteville City Limits
- Shared Use Paved Trail
- Trail (Proposed)
- Design Overlay District
- Building Footprint



- Planning Area
- Fayetteville City Limits

Zoning

RESIDENTIAL SINGLE-FAMILY

- Residential-Agricultural
- RSF-5
- RSF-1
- RSF-2
- RSF-4
- RSF-7
- RSF-8
- RSF-18

RESIDENTIAL MULTI-FAMILY

- RT-12 Residential Two and Three-family
- RMF-6
- RMF-12
- RMF-18
- RMF-24
- RMF-40

INDUSTRIAL

- I-1 Heavy Commercial and Light Industrial
- I-2 General Industrial

EXTRACTION

COMMERCIAL

- Residential-Office
- C-1
- C-2
- C-3

FORM BASED DISTRICTS

- Downtown Core
- Urban Thoroughfare
- Main Street Center
- Downtown General
- Community Services
- Neighborhood Services
- Neighborhood Conservation

PLANNED ZONING DISTRICTS

- Commercial, Industrial, Residential
- INSTITUTIONAL
- P-1

CITY OF FAYETTEVILLE, ARKANSAS

ADMINISTRATIVE ITEM

FOR STAFF USE ONLY

Date Application Submitted:

Date Accepted as Complete:

Case / Appeal Number:

Public Hearing Date:

FEE: \$25.00 (if applicable)

SIGN FEE: \$5.00 (if applicable)

S-T-R:

PP#:

Zone:

Please fill out this form completely, supplying all necessary information and documentation to support your request.
Your application will not be placed on the Planning Commission agenda until this information is furnished.

Application:

Indicate one contact person for this request: _____ Applicant _____ Representative

Applicant (person making request):

Name- FAYETTEVILLE LODGING LLC

Address - 1 SHACKLEFORD DRIVE
LITTLE ROCK, AR 72206

Phone -

~~(870)~~

(870) 830-9148

Fax -

(800) 671-8948

Email - SHASH@ISQUARECAP.COM

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

Name- PHIL SWOPE, PE
SWOPE CONSULTING, LLC

Address - 3511 SE J Street Suite 9 #264
Bentonville, AR 72712

Phone -

(479) 685-8399

()

Fax -

(479) 250-4285

Email - PHIL@CIVILFIRST.COM

Site Address / Location: End of Van Ashe Drive - Lot 17-F
Eliminate the MSP roadway that shows crossing the creek.

OWNER/APPLICANT/REPRESENTATIVE: I certify under penalty of perjury that the foregoing statements and answers herein made all data, information, and evidence herewith submitted are in all respects, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of application completeness, determination, or approval. I understand that the City might not approve what I am applying for, or might set conditions on approval.

Name (printed): PHIL SWOPE

Date: 5-2-16

Signature: Phil Swope

Checklist:

Attach the following items to this application:

- Complete written description of this request for public hearing.
- CD containing a PDF of application and all submitted items.

PLANNING COMMISSION MEMO

TO: Fayetteville Planning Commission

FROM: Jonathan Curth, Senior Planner

MEETING DATE: June 13, 2016 **(Updated with Planning Commission results)**

SUBJECT: **ADM 16-5457: Administrative Item (E. END OF VAN ASCHE DR./VAN ASCHE MASTER STREET PLAN, 174):** Submitted by SWOPE CONSULTING, LLC. for property located at the E. END OF VAN ASCHE DR. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 4.44 acres. The request is to remove the connection over Mud Creek from E. Van Asche to S. Shiloh Dr. on the Master Street Plan and re-classify the remaining street segments as Local Streets.

RECOMMENDATION:

Staff recommends forwarding **ADM 16-5457** to the City Council with a recommendation for approval.

BACKGROUND:

Property: The planned street is identified in the Fayetteville City Plan 2030 Master Street Plan (MSP) as a connection between the east end of Van Asche Drive northward to the south end of Shiloh Drive. This connection would involve bridge construction over the Mud Creek Trail and Mud Creek itself, which is a waterway subject to the Streamside Protection Zones ordinance (§168.12). The properties adjacent to the planned street are zoned C-2 and have been developed to include restaurants, medical offices, and a hotel. Surrounding land use and zoning is depicted on *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Home Depot; Restaurants	C-2, Commercial Thoroughfare
South	Medical Office; Restaurants	C-2, Commercial Thoroughfare
East	Fulbright Expy./College Ave.	n/a
West	Hotel	C-2, Commercial Thoroughfare;

Master Street Plan: The City Plan 2030 MSP includes two significant proposed streets in the area of College and Joyce Avenues. Terrain, particularly with regard to Mud Creek, has led to a development pattern of limited connectivity between Van Asche Drive and Joyce Boulevard. In an effort to alleviate congestion and facilitate the area's development as a regional commercial center it was determined as part of the MSP adopted in August of 2011 that two additional crossings of Mud Creek would be beneficial. The first, to the east of College Avenue, is proposed to connect the Collector Streets of Sain Street in the south to Vantage Drive to the north. The

second crossing, and the subject of this proposed MSP amendment, is to connect the east end of Van Asche Drive, which currently terminates in a cul de sac, with the southern end of Shiloh Drive, both of which are also classified as Collector Streets. This second connection, between Van Asche and Shiloh, has been on, and off, and back on the City's MSP over the last several updates, as the benefits, costs, and challenges associated with it are reevaluated.

Proposal: The applicant requests the removal of the proposed Connector Street link between the east end of Van Asche Drive and the southern end of Shiloh Drive. As established in the City Plan 2030 MSP, the planned street would represent a north-south connection to compliment those at Gregg, Avenue, Steele Boulevard, and Mall Avenue to the west, and College Avenue and Front Street to the east. If the connection over the creek is removed the remaining segments of Shiloh and Van Asche Drives should be reclassified as Local Streets.

DISCUSSION:

The City's Master Street Plan was updated in 2011 to include among other things, the addition of the Collector Street link between the east end of Van Asche Drive and the south end of Shiloh Drive. This followed the removal of that link in the preceding MSP due to the uncertain benefits stemming from the well-defined costs. Staff now recommends amending the City's MSP to remove the aforementioned proposed connection between Van Asche and Shiloh for four principle reasons.

First, the cost of connecting Van Asche to Shiloh is considerable. Although the precise figures are unavailable, the link between the two Collector Streets will not only involve an extension of the both rights-of-way and streets, but also the construction of a bridge, and possible realignment of the Mud Creek Trail. Secondly, the existing number of Mud Creek crossings coupled with the proposed Sain Street-Vantage Drive crossing are generally considered to be sufficient to provide for existing and projected transportation needs. A third reason to amend the Fayetteville MSP to remove the Van Asche to Shiloh connection is the environmentally sensitive nature of Mud Creek. Any construction over Mud Creek will encroach upon both the Waterside and Management Zones of the waterway, possibly damaging or otherwise negatively affecting the stream bank, existing vegetation and water quality. Lastly, the construction of a Van Asche to Shiloh connection will be of limited benefit. The intensity of uses on both Collector Streets leading up to their respective termini is relatively low, with the amount of traffic not dictating the need for crossing less than a 1/4 mile from Mall Avenue to the west and both College Avenue and Front Street less than an 1/8 of a mile to the east. Evaluating these considerations, staff contends that is appropriate to amend the MSP to remove the proposed connection between the east end of Van Asche Drive and the southern end of Shiloh Drive.

Recommendation: Staff recommends forwarding ADM 16-5457 to the City Council with a recommendation for approval to amend the Master Street Plan as proposed, removing the connection over Mud Creek and re-classifying Shiloh Drive and Van Asche Drive from Collector to Local Streets.

PLANNING COMMISSION ACTION:				Required	<u>YES</u>
Date: <u>June 13, 2016</u>	☐ Tabled	☒ Forwarded	☐ Denied		
Motion: Hoskins		Second: Hoffman	Vote: 7-0-0		
(Motion to forward to City Council with a recommendation of Denial)					
CITY COUNCIL ACTION:		Required	<u>YES</u>		
Date:	☐ Approved	☐ Denied			

BUDGET/STAFF IMPACT:

None

Attachments:

- Request letter
- Site Plan
- Existing/Proposed Mud Creek Crossings
- Future Land Use Plan map
- One Mile Map
- Current Land Use
- Close Up Map



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2016-0364

Agenda Date: 8/16/2016

Version: 1

Status: Agenda Ready

In Control: City Council Meeting

File Type: Resolution

Agenda Number: C. 3

KESSLER MOUNTAIN CONSERVATION EASEMENT:

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO SIGN A GRANT OF CONSERVATION EASEMENT TO THE NORTHWEST ARKANSAS LAND TRUST FOR THE PRESERVATION OF KESSLER MOUNTAIN

WHEREAS, establishing a permanent conservation easement on the 384 acres of Kessler Mountain owned by the City will protect open space, wildlife habitat, water quality, and aesthetic and scenic values, as well as establish the types of sustainable land uses permitted on Kessler Mountain, including the establishment and maintenance of trails that are used and enjoyed by Fayetteville residents and visitors alike; and

WHEREAS, the Northwest Arkansas Land Trust has agreed to accept the conservation easement and perform the corresponding duties as the easement holder for the amount of \$50,309.00, which the Fayetteville Natural Heritage Association has agreed to pay.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to sign the Grant of Conservation Easement and all other documents necessary for the preservation of Kessler Mountain by the Northwest Arkansas Land Trust.

City of Fayetteville Staff Review Form

2016-0364

Legistar File ID

8/16/2016

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Jeremy Pate

7/29/2016

Development Services /
Development Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A resolution establishing a Conservation Easement as described herein for Kessler Mountain, entering into an agreement with the Northwest Arkansas Land Trust as the Holder of the easement, and authorizing the Mayor to sign the attached legal documents necessary to formalize the permanent Conservation Easement.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Current Budget \$ -

Funds Obligated \$ -

Current Balance \$ -

Does item have a cost? No

Item Cost

Budget Adjustment Attached? NA

Budget Adjustment

Remaining Budget \$ -

V20140710

Previous Ordinance or Resolution #

Original Contract Number:

Approval Date:

Comments:

MEETING OF AUGUST 16, 2016

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff

FROM: Jeremy Pate, Development Services Director

DATE: July 29, 2016

SUBJECT: Kessler Mountain Conservation Easement

RECOMMENDATION:

Staff recommends approval of an agreement with the Northwest Arkansas Land Trust, establishing a permanent conservation easement on Kessler Mountain for the purposes of protecting the open space, wildlife habitat, water quality, aesthetic and scenic values, and to establish the types of sustainable land uses, including current and future trails, that are permitted on the property now and in the future.

BACKGROUND:

In 2014, the City obtained approximately 376 acres of land in southwest Fayetteville commonly known as Kessler Mountain, adjacent to the 200-acre property the City previously acquired for the new Regional Park. Kessler Mountain is a unique property with an abundance of native flora and fauna, natural springs and seeps, stands of native old-growth and a variety of Ozark tree species, rock outcroppings and geological interest, significant viewsheds, and an existing 8-mile nature trail network. This purchase of Kessler Mountain by the City of Fayetteville was made possible by a 1:1 matching grant from the Walton Family Foundation in the amount of \$1.5 million. The City contributed the same amount and agreed to certain terms with the Walton Family Foundation in order to realize the purchase. One of the terms was to "outline...a plan and process for placing the property in the public domain and permanent preservation as greenspace," while maintaining current and future trails on the property to a high standard for hikers, bikers, walkers, runners, bird enthusiasts and others. The vehicle identified for achieving this permanent protection is a conservation easement. A conservation easement is a "voluntary agreement between a landowner and a land trust that permanently limits uses of the land in order to protect its conservation values."

DISCUSSION:

After the City Council unanimously approved the property purchase in February of 2014, the City entered into discussions regarding the establishment of a conservation easement with the Northwest Arkansas Land Trust (NWALT), the only nationally accredited land trust in the State of Arkansas or the greater Ozarks region including Missouri and Oklahoma. In October of 2014, the City Council passed Resolution 209-14, agreeing to terms with the Fayetteville Natural Heritage Association to accept its \$300,000 investment in Kessler Mountain, including the payment to NWALT for the establishment of the conservation easement in the amount of \$50,309. Subsequently, December of 2014, the City Council entered into an agreement with NWALT to begin the formal process of establishing a conservation easement. In the months

following, the City and NWALT have been in discussions and reviewing drafts, preparing legal descriptions and maps, and negotiating the terms of the conservation easement document.

The final easement encompasses 384 acres, as identified in Exhibits A and B. The Conservation Purpose is outlined, and a Baseline Documentation Report was created to establish the current use and state of the land. Article III of the easement identifies uses that are prohibited and permitted on the property once the easement is established; as is the intent of a conservation easement, the basic development rights of the landowner are removed. Uses of the property consistent with the conservation values are allowed, such as wildlife viewing, trails for all users, habitat management, streamside restoration, and so forth; but construction of structures, roads, and utilities, and the use of the property for special events is restricted – not prohibited - to limit damage to the conservation values of the protected property.

Most recently, members of NWALT and a broad cross-section of the community participated in a city-wide master planning process for the trail system on Kessler Mountain. This process included extensive public input meetings, eventually culminating in a new master trails plan that was unanimously adopted. This plan is the first step in improvements to Kessler Mountain, particularly its trail system. Construction of new and rehabilitation and repair of old trails is anticipated to occur later this year, after the opening of the new Regional Park.

BUDGET/STAFF IMPACT:

There is no cost to the City to enter into the conservation easement agreement. There is a cost for the easement, a total of \$50,309. However, the City and Fayetteville Natural Heritage Association have already entered into an agreement wherein if the City enters into this conservation easement with NWALT, the Association will pay for the easement cost.

ATTACHMENTS:

- 1) Conservation Easement Document
- 2) Resolution 40-14, Purchase of Kessler Mountain
- 3) Resolution 209-14, FNHA Agreement
- 4) Resolution 210-14, NWALT Agreement
- 5) Kessler Mountain Baseline Documentation Report

**This document prepared by, and
upon recording to be returned to:**

Northwest Arkansas Land Trust
P.O. Box 2211
Bentonville, AR 72712
479-966-4666

Portions or All of Tax Parcels:

#765-15443-207, #765-16322-700, #765-16322-600, #765-16322-701, #765-16323-102,
#765-16323-100, #765-16322-900, #765-16322-901, #765-16322-800, #765-16322-801,
#765-16323-403, #765-16323-300, #765-16323-200

GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT (this “**Grant**” or this “**Easement**”) is made this _____ day of _____, 2016 (the “**Easement Date**”) by and between the **CITY OF FAYETTEVILLE, ARKANSAS**, an Arkansas municipal corporation (“the **Grantor**”) and the **NORTHWEST ARKANSAS LAND TRUST**, an Arkansas non-profit corporation (the “**Holder**”), for the purpose of forever conserving the Conservation Values of the Protected Property (both hereinafter defined). Capitalized Terms not otherwise defined in this Easement shall have the meanings given them in Article VII hereof.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

BACKGROUND

1.01 Protected Property

The Grantor is the sole Owner in fee simple of certain real property more particularly described in Exhibit “A” hereto (the “**Protected Property**”). The Protected Property is also described as:

Known As:	Kessler Mountain
Municipality:	Fayetteville
County:	Washington
State:	Arkansas
Acreage:	384.225 acres, more or less

1.02 General Description

Attached as Exhibit “B” is a graphic depiction of the Protected Property. The Protected Property possesses significant Open Space, wildlife habitat/biological, water quality/hydrologic, aesthetic and scenic values (collectively, the “**Conservation Values**”) of great importance to the Grantor and to the citizens of the City of Fayetteville, and the citizens of the State of Arkansas. The Protected Property supports ecologically, biologically and geologically diverse habitat areas.

1.03 Conservation Purposes

By this Grant, the Grantor imposes a perpetual conservation servitude and easement (the “**Conservation Easement**”) on the Protected Property so as to assure that the Conservation Values of the Protected Property, that would otherwise be threatened by development pressure, will be retained forever, and to prevent any use of the Protected Property that would impair the Conservation Purposes set forth below (collectively, the “**Conservation Purposes**”).

(a) **Conservation Purposes.** The Conservation Purposes include, but are not limited to the following:

(i) **Open Space Preservation.** To maintain the Protected Property as an Open Space and nature park facility for the enjoyment and education of the general public and to support the Grantor’s Enduring Green Network goals.

(ii) **Wildlife Habitat Protection.** To maintain and improve the quality of wildlife habitat; to protect ecologically significant sites and species; to promote biodiversity and Native Species; to preserve large intact areas of wildlife habitat, connect patches of wildlife habitat and secure migration corridors.

(iii) **Water Quality Preservation.** To maintain and improve the watershed/hydrological value, both surface and groundwater, within, around and downstream of the Protected Property. Specifically, helping to protect the water quality of the Illinois River and of Beaver Lake.

(iv) **Forest, Woodland Area and Other Vegetative Resource Protection.** To perpetuate and foster the growth of a healthy and unfragmented Woodland Area; to maintain a continuous canopy of vegetation with multi-tiered understory of trees, shrubs, wildflowers and grasses; to support healthy ecosystem processes; and to trap air pollution particulates for healthier air and sequester carbon in trees and soil in order to mitigate rising atmospheric carbon levels.

(v) **Scenic Value Preservation.** To preserve the relationship of scenic resources within the Protected Property to natural and scenic resources in its surroundings and to protect scenic vistas visible from public rights-of-way and other public access points in the vicinity of the Protected Property.

(vi) **Sustainable Land Uses.** To ensure that public access and other permitted uses are conducted and maintained in a Sustainable manner that will neither diminish the biological integrity of the Protected Property nor deplete natural resources over time nor lead to an irreversible disruption of ecosystems and associated processes.

1.04 Baseline Documentation

The specific Conservation Values of the Protected Property and its current use and state of Improvement are documented in a Baseline Documentation Report (the “**Baseline Documentation Report**”), prepared by the Holder and to be kept at the principal office of the Holder. As of the Easement Date, the Grantor and Holder have signed and acknowledged the Report to be complete and accurate as of the Easement Date. The Report includes reports, maps, photographs and other documentation, to be used by the Holder to assure that any future changes in the use of the Protected Property will be consistent with the terms of this Conservation

Easement. (However, the Report is not intended to preclude the use of other evidence to establish additional Conservation Value of the Protected Property now or in the future.)

1.05 Federal Tax Items

(a) Holder. The Holder is a qualified, tax-exempt, publicly supported organization under Section 501(c) of the Internal Revenue Code, 26U.S.C. § 501(c), as amended, and is eligible to be a Holder of conservation easements under Applicable Law, and the Holder has agreed to accept this grant of Conservation Easement.

(b) Qualified Conservation Contribution. The undersigned Grantor and Holder confirm that the grant to the Holder of this Conservation Easement is not intended to be a Qualified Conservation Contribution under the Code and Regulations.

(c) Public Benefit. The Grantor has granted the Conservation Easement to provide a significant public benefit (as defined in §1.170A-14(d)(4) of the Regulations). In addition to the public benefits described in the Conservation Purposes, the Baseline Documentation Report identifies public policy statements and other factual information supporting the significant public benefit of this Conservation Easement, including:

(i) Preserving a relatively natural environment as described in the Conservation Purposes.

(ii) Preserving Open Space in furtherance of the public policies.

(d) Mineral Interests. No Person has retained a qualified mineral interest in the Protected Property of a nature that would disqualify the Conservation Easement for purposes of §1.170A-14(g)(4) of the Regulations. From and after the Easement Date, the grant of any such interest is prohibited and the Holder has the right to prohibit the exercise of any such right or interest if granted in violation of this provision.

(e) Notice Required under Regulations. To the extent required for compliance with §1.170A-14(g)(5)(ii) of the Regulations, and only to the extent such activity is not otherwise subject to Review under this Grant, the Grantor agrees to Notify the Holder before exercising any reserved right that may have an adverse impact on the Conservation Values associated with the Protected Property.

(f) Property Right. In accordance with §1.170A-14(g)(6) of the Regulations, the Grantor agrees that the grant of this Conservation Easement gives rise to a property right, immediately vested in the Holder, that entitles the Holder to compensation upon extinguishment of the easement. The fair Market Value of the property right is to be determined in accordance with the Regulations; i.e., it is at least equal to the proportionate value that the Conservation Easement as of the Easement Date bears to the value of the Protected Property as a whole as of the Easement Date (the “Proportionate Value”). If the Proportionate Value exceeds the compensation otherwise payable to the Holder under Article V, the Holder is entitled to payment of the Proportionate Value. Holder must use any funds received on account of the Proportionate Value for conservation purposes (as that phrase is defined in the Regulations).

(g) Acknowledgment of Donation. Except for such monetary consideration (if any) as is set forth in this Article, the Holder acknowledges that no goods or services were received in consideration of this Grant.

(h) No Representation of Tax Benefits. The Grantor represents, warrants and covenants to the Holder that:

- (i)** The Grantor has not relied upon any information or analyses furnished by the Holder with respect to either the availability, amount or effect of any deduction, credit or other benefit to Grantor under Applicable Law; or the value of the Conservation Easement or the Protected Property.
- (ii)** The Grantor has relied solely upon its own judgment and/or professional advice furnished by the appraiser and legal, financial and accounting professionals engaged by the Grantor. If any Person providing services in connection with this Conservation Easement or the Protected Property was recommended by the Holder, the Grantor acknowledges that the Holder is not responsible in any way for the performance of services by these Persons.
- (iii)** This Grant is not conditioned upon the availability or amount of any deduction, credit or other benefit under Applicable Law.

1.06 Beneficiaries

This Conservation Easement does not confer any rights or remedies upon any Person other than the Grantor and Holder. No other Persons are vested with any rights, whether arising under this Conservation Easement or otherwise under Applicable Law.

ARTICLE II

TRANSFER; SUBDIVISION

2.01 Transfer

- (a) Notice Required.** Not less than thirty (30) days prior to transfer of the Protected Property, Grantor must Notify Holder of the name(s) and address for notices of the Persons who will become Owners following the transfer.
- (b) Prior to Transfer.** Owners authorize Holder to (i) contact the Persons to whom the Protected Property will be transferred, and other Persons representing Owners or the prospective transferees, to discuss with them this Conservation Easement and, if applicable, other pertinent documents; and (ii) enter the Protected Property to assess compliance with this Conservation Easement. Grantor and all subsequent Owners agree that Holder's right to enter, access, and inspect the Protected Property shall run with the land and be binding upon any transferees, assignees, grantees, lessees or receivers of the Protected Property.
- (c) Ending Continuing Liability.** Grantor prior to transfer is liable, on a joint and several basis with the Owners following the transfer, for the correction of violations and discharge of other obligations of Grantor under this Grant. This provision continues to apply until Holder has been notified of the transfer, inspects the Protected Property after the transfer, and reports no violations observed during such inspection.

2.02 Prohibitions

No transfer of a Lot independent of the remainder of the Protected Property; no change in the boundary of any Lot; and no other Subdivision is permitted.

ARTICLE III.

ACTIVITIES AND USES

3.01 Prohibited Activities and Uses

Any activity on or use of the Protected Property that is inconsistent with the Conservation Purposes of this Conservation Easement is prohibited, subject to the Reserved Rights and Permitted Uses as specified in Sections 3.02 and 3.03 below. Without limiting the generality of the foregoing, the following activities and uses are **expressly prohibited**:

- (a) Except as provided in Section 3.03 below, the change, disturbance, alteration, or impairment of the relatively natural habitat for plants, wildlife, or similar ecosystems within or upon the Protected Property.
- (b) Any Commercial or Agricultural Uses of the Protected Property.
- (c) Except as provided in section 3.03 below, any private or public gathering or event, including but not limited to, festivals, fairs, concerts, markets, within or upon the Protected Property.
- (d) Except as provided in Section 3.03 below, the Construction and/or placement of any structure or Improvement, including but not limited to, a building, dwelling, office, mobile home, tent, asphalt, concrete pavement, any portion of a septic system, tennis court or other recreational court, swimming pool, dock, aircraft landing strip, tower, Utility Improvement, antenna, underground utilities, conduit, line, lighting, billboard or other advertising display, or any other temporary or permanent structure or facility.
- (e) The conveyance of leases, easements, and rights-of-ways without first obtaining the express written consent of Holder, which may be withheld by Holder for any reason.
- (f) Except as provided in Section 3.03 below, the Construction of roadways.
- (g) The erection, Construction, installation, relocation or use of any lighting which interferes with wildlife on the Protected Property or with landowners or visitors within the scenic viewscape of the Protected Property.
- (h) Except as provided in Section 3.03 below, the placement of any camping, resting or gathering structure, including but not limited to, a tent, umbrella, tarp, hammock, lean to, shed, shelter, recreational vehicle or any other temporary or permanent camping, resting or gathering structure or facility.
- (i) The Construction, placement or use of any temporary or permanent cooking or fire structure, including but not limited to, campfires, fire pits, fire circles, cooking grills, gas stoves or portable cooking stoves.
- (j) The introduction of fire to the Protected Property unless part of a Habitat Management Plan as described in Section 3.03 below.
- (k) The division, subdivision, partitioning or *de facto* subdivision of the Protected Property into two or more parcels of land or separate interests, or conveyance of individual tracts separately from one another.

- (l) Except as provided in Section 3.03 below, the ditching, draining, diking, filling, manipulation, diversion or otherwise changing of the topography or surface hydrology of the Protected Property in any manner.
- (m) Any use that would increase or substantially add to the risk of erosion as determined by historical and current scientific literature.
- (n) The exploration for, or extraction of, minerals, oil, gas, or other hydrocarbons, soils, sands, gravel, rock, field stone or other materials on or below the surface of the Protected Property.
- (o) The transfer, encumbrance, lease, sale or other separation of the minerals, oil, gas, or other hydrocarbons, soils, sands, gravel, rock, field stone or other materials from the Protected Property.
- (p) The transfer, encumbrance, lease, sale or other separation of the water rights on the Protected Property.
- (q) The removal, harvesting, destruction or cutting of Native Species of vegetation unless in accordance with a Habitat Management Plan as described in Section 3.03 below.
- (r) Except as provided in Section 3.03 below, the introduction of Non-Native Species of vegetation and/or animals to the Protected Property.
- (s) The gathering, displacement, and/or removal of firewood, rocks, fossils, artifacts, plants, wildflowers, fungi, leaves, animals, insects or other living or non-living things, remains or specimens, unless in accordance with a Habitat Management Plan or approved research or educational program, as provided in Sections 3.03 and 4.03 below.
- (t) The application of chemicals including but not limited to herbicides, biocides, pesticides, insecticides, fungicides, rodenticides and fertilizers, unless in accordance with a Habitat Management Plan as described in Section 3.03 below.
- (u) The storage or dumping of ashes, litter, trash, garbage, human or pet waste, solid waste or other unsightly or offensive material, hazardous or petroleum substance, hazardous or toxic waste, nor any placement of aboveground or underground storage tanks in, on, or under the Protected Property.
- (v) Except as provided in Section 3.03 below, the pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, seeps, springs, ground or subsurface water or any other water bodies, within or upon the Protected Property, nor shall activities be conducted on adjacent property, if owned by Grantor, that would be detrimental to water purity or that could alter the natural water level or flow in, under or over the Protected Property.
- (w) Except as provided in Section 3.03 below, the use of motorized or recreational vehicles, including but not limited to, the operation of snowmobiles, dune buggies, motorcycles, all-terrain or off-road vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles.
- (x) Neither the Protected Property nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, Lot coverage, or Open Space requirements under otherwise Applicable

Laws, Regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to transferrable development rights, scheme cluster development arrangement or otherwise.

3.02 Reserved Rights of Grantor

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns of the Protected Property (each of which shall be “Grantor” within the meaning of this paragraph), all rights accruing from its Ownership of the Protected Property not otherwise conflicting with the terms of this Easement, including the right to engage in, permit or invite others to engage in all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the Conservation Purposes of this Conservation Easement, including without limitation the rights and permitted uses set forth below:

(a) Public Use and Access. Grantor reserves the right to allow public access and use of the Protected Property subject to the restrictions outlined by this Conservation Easement for the purpose of permitted outdoor recreational activities and educational outreach to enhance the quality of life.

(b) Existing Uses. Grantor may undertake or continue any activity not prohibited by this Conservation Easement. Prior to making any change in the use of the Protected Property, the Grantor shall Notify Holder in writing to allow Holder a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.

3.03 Permitted Uses

The parties agree that the following uses of the Protected Property are permitted, as specified below:

(a) Special Events. *Subject to Review by Holder as specified in Section 4.04 below*, the Grantor may permit or host special events by specific groups and by city permit only of short duration within the Protected Property, including organized bike races, trail runs, bio-blitzes and camping outings, so long as such events do not substantially diminish or impair the Conservation Values of the Protected Property. Special Events may include the temporary use of service vehicles, cooking grills or bonfires, temporary tents, shade structures, and toilet and refreshment areas.

(b) Structures. *Subject to Review by Holder as specified in Section 4.04 below*, the Grantor may construct, maintain, repair, remove or replace any of the following, provided that the structure is of a reasonably limited footprint, is architecturally consistent with the natural setting of the Protected Property, does not pose a threat to sensitive species or ecologically sensitive habitats, and is in accordance with local, state, and federal laws. Any area of the Protected Property disturbed in the process of Construction must be restored to a natural condition promptly after completion to ensure that the activity does not substantially diminish or impair the Conservation Values.

(i) Pavilion. One (1) open-air pavilion.

(ii) Additional Structures. Holder may adjust structure limit to accommodate specific recommendations that are made through the *Public Park Planning Process* as

specified in Section 3.04 in keeping with the spirit and intent of this Conservation Easement.

- (iii) **Wildlife Viewing and Habitat Structures.** A reasonable and necessary number of raised walkways, wildlife viewing platforms, bird blinds, and habitat enhancement devices such as bat boxes, bird houses.

(c) **Trails.** As shall be identified in the master trail plan (the “**Master Trail Plan**”), which may be reviewed and updated subject to *approval through the Public Park Planning Process as specified in Section 3.04*, the Grantor may construct, install, maintain and repair any one or more of the items as described in paragraphs i-vii of this section, including mowing, cutting or removal of soil, rock or vegetation, so long as improvements do not pose a threat to sensitive species or ecologically sensitive habitats. These activities may include vehicular use.

- (i) **Trail Uses.** Trails may be used for walking, hiking, jogging, bicycling, bird watching and nature study.
- (ii) **Trail Width.** Trails shall be no more than four (4) feet in width where possible and in no case should exceed six (6) feet in width together with steps, railings, features and other surface structures which, as to Wet Areas, may include bridges and culverts (collectively, “**Trails**”).
- (iii) **Trail Design.** Trails shall be constructed and maintained in accordance with then-current, generally accepted Best Management Practices for the sites, soils, hydrology, habitats and terrain of the Protected Property.
- (iv) **Trail Location.** The location and density of trails shall be planned in a manner consistent with the preservation of the natural integrity of the Protected Property, including avoidance of impact to ecologically significant areas and species of special conservation concern.
- (v) **Trail Covering.** All trails will be natural surface and may be covered, if at all, by wood chips, gravel, or any other porous surface so as to blend with the natural surroundings and not to enhance stormwater runoff. Notwithstanding the foregoing restrictions, specific segments of the trails more particularly identified in the master trail plan (the “**Master Trail Plan**”), shall be permitted to be paved as more particularly set forth in the Master Trail Plan and shall be subject to the following requirements: (1) the exact routing of any paved trail(s) shall be approved by Holder, (2) the maximum trail width for any paved sections shall be no more than 20 feet, including any abutting mowed shoulders and edges, and (3) pervious pavement is encouraged where suitable for any such paved portions of the trail(s).
- (vi) **Trail Signage.** Trails may include signs to mark the trail, to provide information regarding restrictions, and for interpretive purposes. Signage shall be unobtrusive in nature and planned with the express goal of minimizing impact to the vistas and Open Space nature of the Protected Property.
- (vii) **Trail Facilities.** Trails may include benches, picnic tables, wastebaskets and bicycle racks, as may be deemed necessary. The design, location and density of trail facilities shall be architecturally consistent with the natural setting of the Protected Property and planned with the express goal of minimizing impact to ecologically

significant areas and species of special concern, and ensuring the vistas and Open Space nature of the Protected Property.

(d) Road Construction. *Subject to Review by Holder as specified in section 4.04 below,* maintenance and emergency Access Drives may hereafter be constructed where reasonably necessary to provide access for maintenance and emergency personnel only. Such Access Drives on the Protected Property:

- (i)** Shall be limited to the minimum number, width and length necessary to provide access for permitted purposes.
- (ii)** Shall follow the general contour of the natural terrain where possible and shall be designed with extreme care and concern for the natural integrity of the Protected Property, particularly the avoidance of ecologically significant areas.
- (iii)** Shall be gated and posted to prevent unauthorized access.
- (iv)** Shall be planned to maximize the ability of the road to be reclaimed and returned to a natural state when it is no longer required or needed.

(e) Fences. Existing fences may be repaired and replaced, and new fences may be built, on the Protected Property for purposes of reasonable and customary access control and protection of resources, provided that fencing does not substantially diminish or impair the Conservation Values, including aesthetic and scenic values, of the Protected Property, and does not exclude or restrict wildlife movement on or off of the Protected Property.

(f) Stream Restoration Construction and Repairs. *Subject to Review by Holder as specified in Section 4.04 below,* the Grantor may carry out stream restoration activities including, excavation, fill, rock structures, tree and vegetation establishment, erosion control, and natural channel Construction and repairs as needed, through or under the guidance of a qualified stream restoration expert.

(g) Service Vehicles. Grantor may use, or permit the use of, service vehicles and motorized equipment, including motorized recreational vehicles, on the Protected Property provided that:

- (i)** The use of such vehicles is reasonable and necessary for maintenance and/or emergency access to the Protected Property, or for providing access to people with disabilities.
- (ii)** The permission afforded by Grantor consists of short-term license and is not a right-of-way, easement, or other permanent legal interest.
- (iii)** Vehicles take care to avoid ecologically significant areas and species of special conservation concern on the Protected Property.

(h) Habitat Management. Grantor reserves the right to conduct habitat management activities subject to federal, state and local regulations and the specific terms and conditions of the Conservation Easement, and shall be conducted in accordance with the following provisions:

- (i) Ten Year Habitat Management Plan.** All habitat management activities shall be conducted in accordance with a written plan (a “**Habitat Management Plan**”) subject to review and approval by Grantor. The Habitat Management Plan shall be prepared

by a Qualified Preparer prior to any treatment activities, and should, if possible, be reviewed and updated at least every ten years. Grantor is not required to fund the Habitat Management Plan. The Habitat Management Plan shall include, at a minimum, the following:

- 1) Goals and objectives of the Grantor, consistent with the purposes and terms of the Conservation Easement.
- 2) Identification and mapped location of significant habitat types, species of special conservation concern, and natural and physical features of the Protected Property.
- 3) A description of the current and desired natural condition and threats to each habitat type.
- 4) A description of contemplated management plans and proposed access plan for each habitat type.
- 5) A description of foreseeable situations in which chemical application will be recommended, including the type, amount, method of application, and recommended limitations to protect water quality and sensitive species.
- 6) A description of recommended Soil Conservation Plan; erosion control and reclamation practices to ensure soil stabilization and to maintain the scenic quality of the Protected Property.

(i) **Cutting and Clearing of Trees.** Grantor may engage in the following non-commercial Forestry practices:

- (i) The cutting and removal of Non-Native Species, invasive, or diseased trees, shrubs that may endanger public safety or need to be removed to ensure the health of other trees or ecological attributes of the Protected Property, and these activities may involve the temporary introduction of goats.
- (ii) *Subject to Review by Holder as specified in Section 4.04 below*, the cutting of firebreaks, except that such approval shall not be required in the case of emergency firebreaks.

3.04 Public Park Planning Process

Before undertaking any Construction, or Additional Improvements, aside from minor improvements and repairs, and as specified for any reserved right or exception to a prohibited use that will disrupt the surface of the Protected Property, Grantor shall engage in a public park planning process (a “**Public Park Planning Process**”) to address the specific Construction or Additional Improvement or other surface disruption that is contemplated to be undertaken on the Protected Property. This Public Park Planning Process shall include Holder or its designated representative, with Grantor providing specific Notice to Holder, as specified in Section 4.04 below, of the hearing no less than thirty (30) days in advance of said hearing.

3.05 Permitted Uses Within Minimal Protection Area

As demonstrated in Exhibits “A” and “B”, a buffer zone (the “**Minimal Protection Area**”) exists on the Protected Property pursuant to the establishment of the Regional Park. The following activities and uses are permitted within the Minimal Protection Area:

- (a) Activities and uses permitted under preceding sections of this Article are permitted with the Minimal Protection Area. Introduction of Invasive Species remains prohibited.
- (b) Disturbances of resources within the Minimal Protection Area are permitted for purposes reasonably related to the development, maintenance and use of the Regional Park so long as those activities do not further encroach outside of the Minimal Protection Area.

ARTICLE IV.

RIGHTS AND DUTIES OF GRANTEE

4.01 Grant to Holder

- (a) **Grant in Perpetuity.** By signing this Grant and unconditionally delivering it to Holder, the Grantor, intending to be legally bound, grants and conveys to Holder a Conservation Easement over the Protected Property in perpetuity for the purpose of advancing the Conservation Purposes and administering and enforcing the restrictions and limitations set forth in Articles II and III. The parties agree that this Conservation Easement and the covenants, conditions, and restrictions set forth herein shall run with the land and be binding upon each of their respective successors, assigns, grantees, and lessees.
- (b) **Superior to all Liens.** The Grantor represents and warrants to Holder that the Protected Property is, as of the Easement Date, free and clear of all Liens or, if it is not, that Grantor has obtained and recorded in the Public Records the legally binding and recorded subordination of any Liens affecting the Protected Property as of the Easement Date. Grantor hereby agrees that it shall not further encumber the Protected Property with any Liens or encumbrances without obtaining a) prior written consent from Holder in Holder's sole discretion in accordance with the Notice provisions set forth in Section 6.01 hereof, and b) a subordination agreement meeting the requirements of Holder that subordinates the Lien or encumbrance to the terms and conditions of this Easement.

4.02 Rights and Duties of Holder

The items set forth below are both rights and duties vested in Holder by this Conservation Easement:

- (a) **Protect in Perpetuity.** To protect the Conservation Values of the Protected Property in perpetuity.
- (b) **Entry.** To enter the Protected Property without notice, and, if necessary, across other adjacent lands retained by the Grantor, for the purposes of exercising the rights and duties herein.
- (c) **Inspection.** To inspect the Protected Property for compliance with the requirements of this Conservation Easement and any suspected, alleged or threatened violation.
- (d) **Enforcement.** To enforce the terms of this Conservation Easement by exercising Holder's remedies in Article V.
- (e) **Review.** To exercise rights of Review and approval in accordance with the requirements of this Conservation Easement.

(f) Interpretation. To interpret the terms of this Conservation Easement and, at the request of Grantor, furnish Holder's explanation of the application of such terms to then-existing, proposed or reasonably foreseeable conditions within the Protected Property.

4.03 Other Rights of Holder

The items set forth below are also rights vested in Holder by this Conservation Easement; however, Holder, in its discretion, may or may not exercise them:

(a) Amendment. To enter into an Amendment with Grantor if Holder determines that the Amendment is consistent with and in furtherance of the Conservation Purposes, will not result in any private benefit prohibited under the Code, and otherwise conforms to Holder's policy with respect to Amendments.

(b) Signs. To place one or more signs within the Protected Property identifying it as a Conservation Easement protected by the Holder. Signs are to be of the customary size installed by Holder and must be installed in locations reasonably acceptable to Grantor.

(c) Proceedings. To assert a claim, defend or intervene in, or appeal, any proceeding under Applicable Law that pertains to the impairment of the Conservation Values of the Protected Property or may result in a transfer, Improvement or use that violates the terms of this Conservation Easement.

(d) Biological Monitoring. To monitor the condition of any plant and/or animal populations, communities, natural habitats, restored areas and natural features on the Protected Property, including non-intrusive scientific studies and taking of samples for such purposes.

(e) Habitat Maintenance. With the express written consent of Grantor, Holder may manage or repair the condition of any plant and/or animal populations, communities, natural habitats, restored areas and natural features on the Protected Property to ensure their continued presence, functionality and viability. This description does not preclude Holder from exercising rights and remedies as specified under Article V.

4.04 Review

The following provisions are incorporated into any provision of this Conservation Easement that is subject to Review by Holder:

(a) Notice to Holder. Not less than twenty-one (21) days before Grantor begins or allows any Construction, Improvement, activity or use that is contrary to this Easement in any way or is subject to Review by Holder, Grantor must *Notify Holder as specified in Section 6.01 below* of the change including with the Notice such information as is reasonably sufficient to comply with Review Requirements and otherwise describe the change and its potential impact on the natural resources within the Protected Property.

(b) Notice to Grantor. Within fifteen (15) days after receipt of Grantors' Notice, Holder must *Notify Grantor as specified in Section 6.01 below* of Holder's determination to (i) accept Grantors' proposal in whole or in part; (ii) reject Grantors' proposal in whole or in part; (iii) accept Grantors' proposal conditioned upon compliance with conditions imposed by Holder; or (iv) reject Grantors' Notice for insufficiency of information on which to base a determination. If Holder gives conditional acceptance under clause (iii), commencement of

the proposed Construction, Improvement, activity or use constitutes acceptance by Grantor of all conditions set forth in Holder's Notice.

(c) Failure to Notify. If Holder fails to Notify Grantor as required in the preceding subsection (b), the proposal set forth in Grantors' Notice is deemed approved.

(d) Standard of Review. Except when specifically stated to the contrary as set forth herein, Holder's approval of items subject to Review is not to be unreasonably withheld. It is not unreasonable for Holder to disapprove a proposal that it determines, in its sole discretion, may adversely affect natural resources described in the Conservation Purposes or that is otherwise inconsistent with maintenance or attainment of Conservation Purposes. Approval of appropriate proposals keeping with the spirit and intent of the Conservation Easement shall not be unreasonably withheld.

4.05 Reimbursement

Other than costs incurred monitoring compliance with this Easement in the ordinary course, Grantor must reimburse Holder for the costs and expenses of Holder reasonably incurred in the course of performing its duties with respect to this Conservation Easement other than monitoring in the ordinary course, such as but not limited to, requests by Grantor for Amendment, or requests by Grantor for Holder to intercede in a proceeding affecting the Protected Property. These costs and expenses include the allocated costs of employees of Holder. Grantor is not responsible to reimburse costs and expenses arising from Holder's response to an inquiry or request by a Person other than Grantor without Grantors' approval. Holder must obtain approval prior to incurring any expense expected to be paid for by the Grantor. Approval of expenditure is dependent upon a formal agreement.

ARTICLE V.

VIOLATION; REMEDIES

5.01 Breach of Duty

If Holder fails to enforce the terms of this Conservation Easement, or ceases to qualify as a Qualified Organization, then the Conservation Easement may be transferred to another Qualified Organization. Such transfer shall be subject to the review and approval of Grantor.

5.02 Violation

If Holder determines that the terms of this Conservation Easement are being or have been violated or that a violation is threatened or imminent then the provisions of this section will apply:

(a) Notice. Holder must Notify Grantor of any violation. Holder's Notice may include its recommendations of measures to be taken by Grantor to cure the violation and restore features of the Protected Property damaged or altered as a result of the violation.

(b) Opportunity to Cure. Grantors' cure period expires thirty (30) days after the date of Holder's Notice to Grantor subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied:

(i) Grantor ceases the activity constituting the violation promptly upon receipt of Holder's Notice;

(ii) Grantor and Holder agree, within the initial thirty (30) day period, upon the measures Grantor will take to cure the violation;

(iii) Grantor commences to cure within the initial thirty (30) day period; and

(iv) Grantor continues thereafter to use best efforts and due diligence to complete the agreed upon cure.

(c) Imminent Harm. No Notice or cure period is required if circumstances require prompt action to prevent or mitigate irreparable harm or alteration to any natural resource or other feature of the Protected Property described in the Conservation Purposes.

5.03 Remedies

Upon expiration of the cure period (if any) described in the preceding section, Holder may do any one or more of the following:

(a) Injunctive Relief. Seek injunctive relief to specifically enforce the terms of this Conservation Easement; to restrain present or future violations of the terms of this Conservation Easement; and/or to compel restoration of resources destroyed or altered as a result of the violation.

(b) Civil Action. Recover from Grantor or other Persons responsible for the violation all sums owing to Holder under applicable provisions of this Conservation Easement together with interest thereon from the date due at the Default Rate. These monetary obligations include, among others, Losses and Litigation Expenses.

(c) Self-Help. Enter the Protected Property to prevent or mitigate further damage to or alteration of natural resources of the Protected Property identified in the Conservation Purposes.

5.04 Modification or Termination

If the Conservation Easement is or is about to be modified or terminated by exercise of the power of eminent domain (condemnation) or adjudication of a court of competent jurisdiction sought by a Person other than Holder the following provisions apply:

(a) Compensatory Damages. Holder is entitled to collect from the Person seeking the modification or termination, compensatory damages in an amount equal to the increase in Market Value of the Protected Property resulting from the modification or termination plus reimbursement of Litigation Expenses as if a violation had occurred.

(b) Restitution. Holder is entitled to recover from the Person seeking the modification or termination, (i) restitution of amounts paid for this Conservation Easement (if any) and any

other sums invested in the Protected Property for the benefit of the public as a result of rights vested by this Conservation Easement plus (ii) reimbursement of Litigation Expenses as if a violation had occurred.

5.05 Remedies Cumulative

The description of Holder's remedies in this Article does not preclude Holder from exercising any other right or remedy that may at any time be available to Holder under this Article or Applicable Law. If Holder chooses to exercise one remedy, Holder may nevertheless choose to exercise any one or more of the other rights or remedies available to Holder at the same time or at any other time.

5.06 No Waiver

If Holder does not exercise any right or remedy when it is available to Holder, that is not to be interpreted as a Waiver of any non-compliance with the terms of this Conservation Easement or a Waiver of Holder's rights to exercise its rights or remedies at another time.

5.07 No Fault of Grantor

Holder will waive its right to reimbursement under this Article as to Grantor (but not other Persons who may be responsible for the violation) if Holder determines in its sole discretion that the violation was not the fault of Grantor and could not have been anticipated or prevented by Grantor by reasonable means.

ARTICLE VI.

MISCELLANEOUS

6.01 Notices

(a) Requirements. Each Person giving any notice pursuant to this Conservation Easement (a "Notice") must give the Notice in writing and must use one of the following methods of delivery: (i) personal delivery; (ii) electronic mail with written confirmation of receipt; (iii) certified mail, return receipt requested and postage prepaid; or (iv) nationally recognized overnight courier, with all fees prepaid. Each time the term "Notify" is used herein, it shall be deemed to refer to sending a Notice in accordance with this Article VI.

(b) Address for Notices. Each Person giving a Notice must address the Notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by Notice to the other Person:

If to Grantor: City of Fayetteville
113 W. Mountain Street
Fayetteville, AR 72701

If to Holder: Northwest Arkansas Land Trust
P.O. Box 2211
Bentonville, AR 72712

6.02 Governing Law

The laws of the State of Arkansas govern this Conservation Easement.

6.03 Assignment and Transfer

Neither Grantor nor Holder may assign or otherwise transfer any of their respective rights or duties under this Conservation Easement voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner except as permitted below. Any purported assignment or transfer in violation of this section is void.

(a) By Holder. Holder may assign its rights and duties under this Conservation Easement, either in whole or in part, but only to a Qualified Organization, subject to review and approval of Grantor, that executes and records in the Public Records a written agreement assuming the obligations of Holder under this Conservation Easement. The Holder must notify Grantor within 30-days prior to the assignment of the identity and address of the Qualified Organization who has agreed to assume the obligation of the Holder under this Conservation Easement. The assigning Holder must deliver the Baseline Documentation Report to the assignee Holder as of the date of the assignment. Holder must assign its rights and duties under this Conservation Easement to another Qualified Organization if Holder becomes the Owner of the Protected Property.

(b) By Grantor. This Conservation Easement vests a servitude running with the land binding upon the undersigned Owners and, upon recordation in the Public Records, all subsequent Owners of the Protected Property or any portion of the Protected Property are bound by its terms whether or not the Owners had actual notice of this Conservation Easement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Conservation Easement.

6.04 Burdens; Benefits; Exclusive to Holder

Subject to the restrictions on assignment and transfer set forth in the preceding section, this Conservation Easement binds and benefits Grantor and Holder and their respective personal representatives, successors and assigns. Only the Holder (or its successors and assigns, as applicable) has the right to enforce the terms of this Conservation Easement and exercise rights of Review, Waiver, Amendment or other discretionary rights of Holder.

6.05 Requirement of Writing

No Amendment, Waiver, approval after Review, interpretation or other decision by Holder is valid or effective unless it is in writing and signed by an authorized signatory for Holder. This requirement may not be changed by oral agreement. The grant of an Amendment or Waiver in any instance does not imply that an Amendment or Waiver will be granted in any other instance.

6.06 Severability

If any provision of this Conservation Easement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Conservation Easement remain valid, binding and enforceable. To the extent permitted by Applicable Law, the parties waive any provision of Applicable Law that renders any provision of this Conservation Easement invalid, illegal or unenforceable in any respect.

6.07 Counterparts

This Conservation Easement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one document.

6.08 Guides to Interpretation

(a) Captions. Except for the identification of defined terms in the Glossary, the descriptive headings of the articles, sections and subsections of this Conservation Easement are for convenience only and do not constitute a part of this Conservation Easement.

(b) Glossary. If any term defined in the Glossary is not used in this Conservation Easement, the defined term is to be disregarded as surplus material.

(c) Other Terms

(i) The word “including” means “including but not limited to”.

(ii) The word “must” is obligatory; the word “may” is permissive and does not imply any obligation.

(d) Conservation Easements Act. This Conservation Easement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a Holder of a conservation easement under the Conservation Easements Act as set forth in Arkansas Code Ann. § 15-20-401 *et seq.*

(e) Restatement (Third) of the Law of Property: Servitudes. This Conservation Easement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a Holder of a conservation servitude under the Restatement (Third) of the Law of Property, to the extent that Arkansas law or other Applicable Law does not provide sufficient guidance.

6.09 Entire Agreement. This is the entire agreement of Grantor and Holder pertaining to the subject matter of this Conservation Easement. The terms of this Conservation Easement supersede in full all statements and writings between Grantor, Holder and others pertaining to the transaction set forth in this Conservation Easement.

6.10 Incorporation by Reference. Each exhibit attached to this Conservation Easement is incorporated into this Conservation Easement by this reference. The Baseline Documentation Report (whether or not attached to this Conservation Easement) is incorporated into this Conservation Easement by this reference.

ARTICLE VII.

GLOSSARY

7.01 Access Drive(s)

Roads, drives or lanes providing vehicular access to or located within the Protected Property.

7.02 Additional Improvements

All buildings, structures, facilities and other Improvements within the Protected Property, whether temporary or permanent, other than Existing Improvements.

7.03 Agricultural or Agriculture Uses

Any one or more of the following and the leasing of land for any of these purposes:

7.04 Farming. Farming activities, including, but not limited to:

- (a) Production of vegetables, fruits, seeds, mushrooms, nuts and nursery crops (including trees) for sale.
- (b) Production of poultry, livestock and their products for sale.
- (c) Production of field crops, hay or pasture.
- (d) Production of sod to be removed and planted elsewhere.

7.05 Equestrian. Boarding, stabling, raising, feeding, grazing, exercising, riding and training horses and instructing riders.

7.06 Amendment

An amendment, modification or supplement to this Grant signed by Owners and Holder and recorded in the Public Records.

7.07 Applicable Law

Any federal, state or local laws, statutes, Codes, ordinances, standards and Regulations applicable to the Protected Property, the Conservation Easement or this Grant as amended through the applicable date of reference. If this Grant is intended to meet the requirements of a qualified conservation contribution, then applicable provisions of the Code and the Regulations are also included in the defined term.

7.08 Best Management Practices

A series of guidelines or minimum standards (sometimes referred to as BMP's) recommended by federal, state and/or county resource management agencies for proper application of Forestry operations, habitat management, trail Construction, non-point pollution of water resources and other disturbances of soil, water and vegetative resources and to protect wildlife habitats.

7.09 Code

The Internal Revenue Code of 1986, as amended through the applicable date of reference.

7.10 Commercial Use

The use or leasing of land for purposes designed or used for retail, office or other commercial use.

7.11 Conservation Easement Act

The Arkansas Conservation Easements Act (A.C.A. § 15-20-401 *et seq.*) as amended through the applicable date of reference.

7.12 Construction

Any demolition, Construction, reconstruction, expansion, exterior alteration, installation or erection of temporary or permanent Improvements; and, whether or not in connection with any of the foregoing, any excavation, dredging, mining, filling or removal of gravel, soil, rock, sand, coal, petroleum or other minerals.

7.13 Default Rate

An annual rate of interest equal at all times to two percent (2%) above the “prime rate” announced from time to time in *The Wall Street Journal*; provided, however, that the Default Rate shall never exceed the maximum rate allowed under Applicable Law.

7.14 Existing Agreements

Easements and other servitudes affecting the Protected Property prior to the Easement Date that constitute legally binding servitudes prior in right to the Conservation Easement.

7.15 Existing Improvements

All buildings, structures, facilities and other improvements, whether temporary or permanent, located on, above or under the Protected Property as of the Easement Date as identified in the Baseline Documentation Report.

7.16 Forestry

Planting, growing, nurturing, managing and harvesting trees whether for timber and other useful products or for water quality, wildlife habitat and other Conservation Purposes.

7.17 Impervious Surfaces

Surfaces that impenetrable to water and incapable of supporting vegetation, such as asphalt, concrete, brick, stone and highly compacted soils. Impervious surfaces seal the soil surface, preventing rainwater infiltration and natural groundwater recharge, increase rainwater runoff and the portage of pollutants into nearby waterway, and deprive tree roots of aeration.

7.18 Improvement

Any Existing Improvement or Additional Improvement.

7.19 Indemnified Parties

Holder and its respective members, directors, officers, employees and agents and the heirs, personal representatives, successors and assigns of each of them.

7.20 Invasive Species

A plant species that is (a) Non-Native (or alien) to the ecosystem under consideration; and/or (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, publications are to be used to identify Invasive Species.

7.21 Lien

Any mortgage, lien or other encumbrance securing the payment of money.

7.22 Litigation Expense

Any court filing fee, court cost, arbitration fee or cost, witness fee and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Grant including in each case, attorneys' fees, other professionals' fees and disbursements.

7.23 Losses

Any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.

7.24 Lot

A unit, lot or parcel of real property separated or transferable for separate Ownership or lease under Applicable Law.

7.25 Market Value

The fair value that a willing buyer, under no compulsion to buy, would pay to a willing seller, under no compulsion to sell as established by appraisal in accordance with the then-current edition of Uniform Standards of Professional Appraisal Practice issued by the Appraisal Foundation or, if applicable, a qualified appraisal in conformity with §1.170A-13 of the Regulations.

7.26 Native Species

A plant or animal indigenous to the locality under consideration. In cases of uncertainty, published atlases are to be used to establish whether or not a species is native.

7.27 Non-Native Species

A plant or animal that is not indigenous (alien) to the locality under consideration. In cases of uncertainty, published atlases are to be used to establish whether or not a species is non-native.

7.28 Open Space

Open Space is any open piece of land that is undeveloped and helps enhance the beauty and environmental quality of a community.

7.29 Owners/Ownership

The Grantor and all Persons after them who hold a fee simple ownership interest in the Protected Property.

7.30 Person

An individual, organization, trust, government or other entity.

7.31 Public Records

The public records of the office for the recording of deeds in and for the county in which the Protected Property is located.

7.32 Qualified Organization

A governmental or non-profit entity that (a) has a perpetual existence; (b) is established as a public charity for the purpose of preserving and conserving natural resources, natural habitats,

environmentally sensitive areas and other charitable, scientific and educational purposes; (c) meets the criteria of a qualified organization under the Regulations; and (d) is duly authorized to acquire and hold conservation easements under Applicable Law.

7.33 Qualified Preparer

A resource management professional with educational background and experience related to the management of natural lands.

7.34 Regulations

The provisions of C.F.R. §1.170A-14, and any other regulations promulgated under the Code that pertain to qualified conservation contributions, as amended through the applicable date of reference.

7.35 Habitat Management Plan

A record of the decisions and intentions of Grantor prepared by a qualified resource management professional for the purpose of protecting natural resources described in the Conservation Purposes during certain operations potentially affecting natural resources protected by this Conservation Easement. The Habitat Management Plan (sometimes referred to as the “HMP”) includes a resource assessment, identifies appropriate performance standards (based upon Best Management Practices where available and appropriate) and projects a multi-year description of planned activities for identified operations to be conducted in accordance with the plan.

7.36 Review

Review and approval of Holder under the procedure described in Article IV.

7.37 Review Requirements

Collectively, any plans, specifications or information required for approval of the activity, use or Construction under Applicable Law (if any) plus (a) the information required under the Review Requirements incorporated into this Conservation Easement either as an exhibit or as part of the Baseline Documentation Report or (b) if the information described in clause (a) is inapplicable, unavailable or insufficient under the circumstances, the guidelines for Review of submissions established by Holder as of the applicable date of reference.

7.38 Soil Conservation Plan

A plan for soil conservation and/or sedimentation and erosion control that meets the requirements of Applicable Law.

7.39 Subdivision

Any division of the Protected Property or any Lot within the Protected Property; and any creation of a unit, Lot or parcel of real property, including subsurface portions of the Protected Property, for separate use or Ownership by any means including by lease or by implementing the condominium form of Ownership.

7.40 Sustainable

Land management practices that provide goods and services from an ecosystem without degradation of biodiversity and resource values at the site and without a decline in the yield of goods and services over time.

7.41 Utility Improvements

Improvements for the reception, storage or transmission of potable water, stormwater, sewage, electricity, gas and telecommunications or other sources of power.

7.42 Waiver

A written commitment by which Holder, without any obligation to do so, agrees to refrain from exercising one or more of its rights and remedies for a specific period of time with respect to a specific set of circumstances if Holder is satisfied that the accommodation will have no material effect on Conservation Purposes.

7.43 Wet Areas

Watercourses, springs, wetlands and non-impounded standing water and areas within 100-feet of their edge.

7.44 Woodland Areas

Area(s) within the Protected Property described as “wooded” or “forested” in the Baseline Documentation Report or identified as such on the Habitat Management Plan, or if not wooded or forested as of the Easement Date, are designated as successional woodland areas on the Habitat Management Plan.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

INTENDING TO BE LEGALLY BOUND, each of the Grantor and Holder, by their respective duly authorized representatives, have signed and delivered this Conservation Easement as of the Easement Date. This Easement may be executed in multiple counterparts, which, when taken together, shall constitute a single instrument.

Witness:

GRANTOR:

Name: _____

CITY OF FAYETTEVILLE, ARKANSAS

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF ARKANSAS)
) ss
COUNTY OF WASHINGTON)

On this day before me, the undersigned Notary Public within and for the County and State aforesaid, duly commissioned, qualified and acting, appeared the within named _____, who executed the foregoing writing on behalf of the Grantor hereunder, and stated and acknowledged to me that the he/she was duly authorized in his/her capacity as _____ to execute the foregoing on behalf of the Grantor, and that the foregoing instrument was executed for the considerations and purposes therein mentioned and contained, and I hereby so certify.

IN WITNESS WHEREOF I have hereunto set my hand and seal, this the _____ day of _____, 2016.

My Commission Expires: _____

Notary Public

Witnesses:

HOLDER:

NORTHWEST ARKANSAS LAND TRUST

Eileen Jennings, Secretary

By: _____
Tom Oppenheim, President

ACKNOWLEDGEMENT

STATE OF ARKANSAS)
) ss
COUNTY OF BENTON)

On this day before me, the undersigned Notary Public within and for the County and State aforesaid, duly commissioned, qualified and acting, appeared the within named Tom Oppenheim, who executed the foregoing writing as Holder, and acknowledged before me that he executed the same as President of the Northwest Arkansas Land Trust in name of and on behalf of the said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and seal as such Notary Public on this the _____ day of _____, 2016.

My Commission Expires:

Notary Public

EXHIBIT A

Legal Description of Protected Property

A PART OF ADJUSTED TRACT 5 AND ALL OF ADJUSTED TRACT 6 AS PER A PROPERTY LINE ADJUSTMENT SURVEY FILED AS INSTRUMENT NUMBER 2014-16097 WITH THE CIRCUIT CLERK OF WASHINGTON COUNTY, ARKANSAS, BEING A PART OF THE FRACTIONAL WEST HALF (W ½) OF THE SOUTHWEST QUARTER (SW ¼) AND A PART OF THE SOUTHEAST QUARTER (SE ¼) OF THE SOUTHWEST QUARTER (SW ¼), ALL BEING IN SECTION THIRTY (30); AND A PART OF THE FRACTIONAL NORTHWEST QUARTER (NW ¼) OF SECTION THIRTY-ONE (31); AND A PART OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION TWENTY-FIVE (25); AND A PART OF THE NORTH HALF (N ½) OF THE NORTHEAST QUARTER (NE ¼) AND A PART OF THE SOUTHEAST QUARTER (SE ¼) OF THE NORTHEAST QUARTER (NE ¼), ALL BEING IN SECTION THIRTY-SIX (36); ALL PARTS BEING IN TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY-ONE (31) WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND ALUMINUM MONUMENT AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER (SE ¼), SECTION TWENTY-FIVE (25), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY-ONE (31) WEST; THENCE ALONG THE EASTERLY LINE OF SAID TRACT SOUTH 02°25'51" WEST 36.60 FEET TO A FOUND ALUMINUM MONUMENT AT THE NORTHWEST CORNER OF THE FRACTIONAL SOUTHWEST QUARTER (SW ¼) OF SECTION THIRTY (30), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY (30) WEST; THENCE ALONG THE NORTH LINE OF SAID TRACT SOUTH 87°15'10" EAST 700.17 FEET; THENCE LEAVING SAID NORTH LINE SOUTH 02°05'17" WEST 660.00 FEET; THENCE THE FOLLOWING COURSES: SOUTH 87°15'10" EAST 257.44 FEET; SOUTH 58°07'31" WEST 324.29 FEET; NORTH 86°44'15" WEST 330.61 FEET; SOUTH 74°09'23" WEST 137.05 FEET; SOUTH 30°16'13" WEST 254.00 FEET; SOUTH 27°26'52" WEST 126.27 FEET; SOUTH 04°45'59" WEST 193.96 FEET; SOUTH 25°07'29" EAST 274.91 FEET; SOUTH 46°49'29" EAST 159.23 FEET; SOUTH 03°33'11" WEST 69.09 FEET; SOUTH 28°33'12" WEST 86.25 FEET; SOUTH 02°12'58" EAST 248.61 FEET; SOUTH 05°50'07" EAST 152.03 FEET; SOUTH 29°43'41" WEST 92.26 FEET; SOUTH 37°07'18" EAST 120.86 FEET; SOUTH 45°00'58" EAST 126.58 FEET; SOUTH 17°48'52" WEST 178.11 FEET; SOUTH 04°52'49" EAST 113.12 FEET; NORTH 82°59'00" EAST 136.94 FEET; SOUTH 09°29'53" EAST 155.53 FEET; NORTH 52°21'44" EAST 384.50 FEET; SOUTH 04°18'51" WEST 13.13 FEET; SOUTH 87°23'14" EAST 1005.32 FEET; SOUTH 82°23'57" EAST 151.75; NORTH 90°00'00" EAST 176.03 FEET; NORTH 56°33'49" EAST 100.55 FEET; THENCE SOUTH 33°16'32" EAST 120.80 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 16°38'06" AND A RADIUS OF 360.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 104.52 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 41°35'35" EAST 104.15 FEET; THENCE SOUTH 49°54'38" EAST 54.78 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 48°18'27" AND A RADIUS OF 360.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 303.53 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 25°45'24" EAST 294.61 FEET; THENCE SOUTH 01°36'10" EAST 48.91 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 17°44'21" AND A RADIUS OF 220.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 68.11 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 10°28'21" EAST 67.84 FEET; THENCE SOUTH 19°20'31" EAST 37.23 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 24°59'05" AND A RADIUS OF 220.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 95.93 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 06°50'59" EAST 95.18 FEET; THENCE SOUTH 05°38'34" WEST 122.87 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 16°45'37" AND A RADIUS OF 560.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 163.81 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 02°44'14" EAST 163.23 FEET; THENCE SOUTH 11°07'03" EAST 17.62 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 46°37'08" AND A RADIUS OF 560.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 455.65 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 12°11'31" WEST 443.18 FEET; THENCE SOUTH 35°30'05" WEST 58.56 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 45°41'49" AND A RADIUS OF 280.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 223.32 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 12°39'11" WEST

217.45 FEET; THENCE SOUTH 10°11'44" EAST 1.43 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 71°40'01" AND A RADIUS OF 120.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 150.10 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 46°01'45" EAST 140.50 FEET; THENCE SOUTH 81°51'46" EAST 60.59 FEET TO A FOUND IRON PIN; THENCE SOUTH 02°36'50" WEST 111.94 FEET TO A FOUND IRON PIN; THENCE NORTH 87°10'03" WEST 1671.80 FEET TO A FOUND IRON PIN; THENCE SOUTH 02°37'31" WEST 651.66 FEET TO THE SOUTHERLY LINE OF SAID NORTH HALF (N ½) OF THE FRACTIONAL SECTION THIRTY-ONE (31); THENCE ALONG SAID SOUTHERLY LINE NORTH 87°04'57" WEST 963.78 FEET TO A FOUND ALUMINUM MONUMENT BEING THE SOUTHWEST CORNER OF SAID FRACTIONAL NORTHWEST QUARTER (NW ¼), SECTION THIRTY-ONE (31), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY (30) WEST; THENCE ALONG THE SOUTHERLY LINE OF SAID SOUTHEAST QUARTER (SE ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SECTION THIRTY-SIX (36), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY-ONE (31) WEST NORTH 87°03'18" WEST 962.79 FEET TO A FOUND IRON PIN; THENCE LEAVING SAID SOUTHERLY LINE NORTH 03°06'30" EAST 249.93 FEET TO A FOUND IRON PIN; THENCE NORTH 86°53'02" WEST 350.00 FEET TO A FOUND IRON PIN ON THE WESTERLY LINE OF SAID SOUTHEAST QUARTER (SE ¼) OF THE NORTHEAST QUARTER (NE ¼), SECTION THIRTY-SIX (36), TOWNSHIP SIXTEEN (16), RANGE THIRTY-ONE (31) WEST; THENCE ALONG SAID WESTERLY LINE NORTH 01°47'26" EAST 1060.68 FEET TO A FOUND IRON PIN AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHEAST QUARTER (NE ¼) SAID SECTION THIRTY-SIX (36), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY-ONE (31) WEST; THENCE ALONG THE SOUTHERLY LINE OF SAID FORTY (40) ACRE TRACT NORTH 87°16'27" WEST 1343.38 FEET TO A FOUND IRON PIN LOCATED IN THE CENTERLINE OF A GRAVEL ROAD; THENCE ALONG SAID CENTERLINE NORTH 04°02'35" EAST 72.47 FEET; THENCE CONTINUING ALONG SAID CENTERLINE NORTH 11°19'49" EAST 40.24 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A DELTA ANGLE OF 51°07'26" AND A RADIUS OF 101.22 FEET; THENCE CONTINUING ALONG SAID CENTERLINE ALONG SAID CURVE AN ARC LENGTH OF 90.32 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 24°09'50" WEST 87.35 FEET; THENCE NORTH 48°44'10" WEST 34.21 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A DELTA ANGLE OF 42°42'03" AND A RADIUS OF 215.87 FEET; THENCE CONTINUING ALONG SAID CENTERLINE ALONG SAID CURVE AN ARC LENGTH OF 160.88 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 67°02'42" WEST 157.18 FEET; THENCE CONTINUING ALONG SAID CENTERLINE NORTH 89°17'23" WEST 123.09 FEET; THENCE CONTINUING ALONG SAID CENTERLINE NORTH 87°11'38" WEST 161.28 FEET; THENCE LEAVING SAID CENTERLINE NORTH 01°57'34" EAST 1055.60 FEET TO A FOUND IRON PIN; THENCE SOUTH 87°31'37" EAST 1230.87 FEET TO A FOUND IRON PIN LOCATED ON A BLUFF LINE; THENCE ALONG SAID BLUFF LINE THE FOLLOWING COURSES:
NORTH 17°08'05" EAST 157.76 FEET; NORTH 23°29'30" EAST 127.51 FEET; NORTH 02°25'44" EAST 131.20 FEET; N 30°29'11" WEST 198.42 FEET; NORTH 16°15'45" WEST 180.52 FEET; NORTH 03°00'58" EAST 113.62 FEET; NORTH 14°13'54" EAST 202.18 FEET; NORTH 24°51'02" WEST 100.73 FEET; NORTH 08°41'17" EAST 110.59 FEET; NORTH 67°53'42" EAST 173.71 FEET TO A FOUND IRON PIN; THENCE LEAVING SAID BLUFF LINE NORTH 87°18'22" WEST 147.50 FEET TO A FOUND IRON PIN; THENCE NORTH 01°28'04" EAST 659.86 FEET TO A FOUND IRON PIN; THENCE SOUTH 87°13'07" EAST 660.25 FEET TO A FOUND IRON PIN ON THE WESTERLY LINE OF A PROPERTY DESCRIBED AS "ADJUSTED TRACT 2" IN INSTRUMENT NO. 2010-26595 AS FILED WITH THE CIRCUIT CLERK OF SAID COUNTY; THENCE ALONG THE WESTERLY LINE OF SAID PROPERTY NORTH 01°27'39" EAST 675.06 TO A FOUND IRON PIN AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER (NE ¼) OF THE SOUTHEAST QUARTER (SE ¼), SAID SECTION TWENTY-FIVE (25), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY-ONE (31) WEST; THENCE ALONG SAID NORTHERLY LINE OF SAID TRACT SOUTH 87°09'38" EAST 1314.52 FEET TO THE POINT OF BEGINNING, CONTAINING 384.628 ACRES, MORE OR LESS.

LESS AND EXCEPT: ONE SQUARE FOOT AT THE NORTHWESTERN MOST CORNER OF WASHINGTON COUNTY PARCEL NUMBER 765-16323-100 PER INSTRUMENT NUMBER 2006-15251 FILED WITH THE CIRCUIT CLERK, WASHINGTON COUNTY, ARKANSAS.

LESS AND EXCEPT: TWENTY-FIVE FEET (25') NORTHERLY AND EASTERLY OF THE CENTERLINE OF SAID ARCHIE WATKINS ROAD (WASHINGTON COUNTY ROAD 265) FOR CITY OF FAYETTEVILLE

RIGHT-OF-WAY PER INSTRUMENT NUMBER 2010-28100 FILED WITH THE CIRCUIT CLERK, WASHINGTON COUNTY, ARKANSAS, SAID RIGHT-OF-WAY CONTAINING 0.403 ACRES, MORE OR LESS.

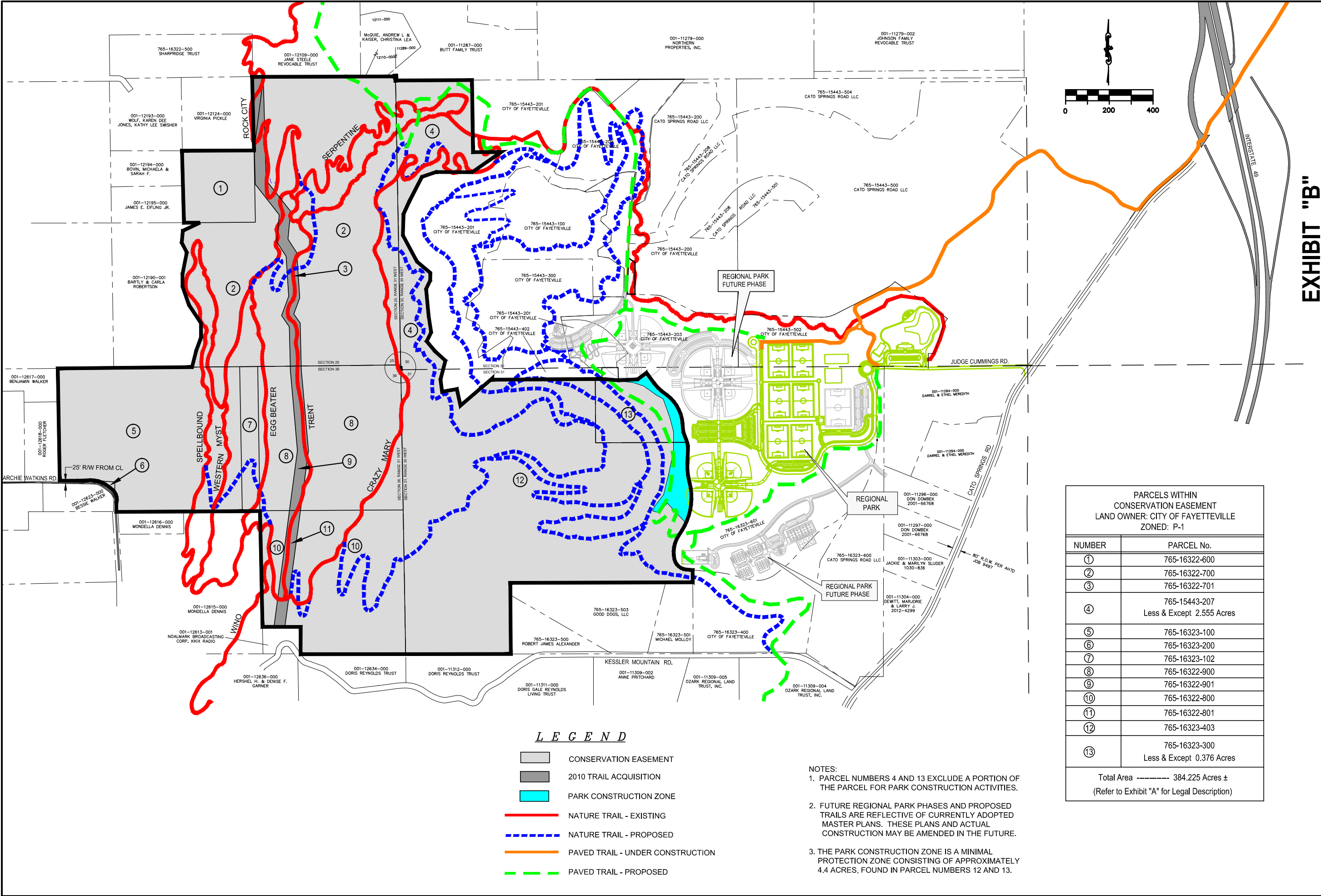
THE ABOVE DESCRIBED CONSERVATION EASEMENT CONTAINING A NET TOTAL OF 384.225 ACRES, MORE OR LESS.

SUBJECT TO ANY OTHER RIGHTS-OF-WAY AND/OR EASEMENTS WHETHER OR NOT OF RECORD.

EXHIBIT B

Graphic Depiction of Protected Property

Attached.



SURVEYED BY:
DVD/JAP

DRAWN BY:
JTS

DESIGNED BY:
-

FILE NAME:
CE Exhibit.dwg

TITLE:
**KESSLER MOUNTAIN
CONSERVATION EASEMENT**

REVISED

ENGINEERING DIVISION
113 W. MOUNTAIN STREET
FAYETTEVILLE, ARKANSAS
PHONE NO: (479) 575-8300
FAX NO: (479) 575-8302

CITY OF
Fayetteville
ARKANSAS

DATE:
July 28, 2016

SHEET:
1

PROJECT:
Kessler Mountain



Baseline Documentation Report

FOR

Kessler Mountain

Conservation Easement

Fayetteville, Arkansas

By

Northwest Arkansas Land Trust

2016

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PROPERTY CONDITION CERTIFICATION

This is to certify **City of Fayetteville, Arkansas** the Grantor/s, and **Terri Lane** representing the Grantee, **The Northwest Arkansas Land Trust**, do accept and acknowledge this Easement Baseline Documentation Report as an accurate description of the current land uses and physical features as of **7-11-16** on the **Kessler Mountain** property. This report contains **37** pages.

The Grantor and the Grantee further certify that to the best of their knowledge there have been no activities on the easement property which are inconsistent with the terms and covenants contained in the Conservation Easement, originally granted by the Grantor to The Northwest Arkansas Land Trust recorded in the **Washington County** Deed Book, Book _____, Page _____.

GRANTOR
CITY OF FAYETTEVILLE, AR

By _____
Lioneld Jordan, Mayor

GRANTEE
THE NORTHWEST ARKANSAS LAND TRUST

By _____
Terri Lane, Executive Director

NOTARY

STATE OF _____)
COUNTY OF _____)

I _____ a Notary Public, do hereby certify that **Lioneld Jordan**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the ____ day of _____, 2016.

Official seal

(Seal)
Notary Public

My commission expires:

STATE OF _____)
COUNTY OF _____)

I, _____, a Notary public, certify that **Terri Lane**, to me personally known, who being by me duly sworn did say that she is the Executive Director, of The Northwest Arkansas Land Trust, the corporation named in the foregoing instrument; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

WITNESS my hand and official seal, this the ____ day of _____, 2016.

Official Seal

(Seal)
NOTARY PUBLIC

BACKGROUND

State: **Arkansas**

Town or District/County: **Fayetteville, Washington County**

Easement Recorded: **Date:** _____ **Washington County/Book #** _____ **/Page#** _____

Date Easement Granted: _____

Grantor: Name: **The City of Fayetteville, Arkansas**
 Address: **113 West Mountain Street Fayetteville, Arkansas 72701**
 Phone: **479-521-7700**

Grantee: Name: **Northwest Arkansas Land Trust**
 Address: **P.O. Box 2211 Bentonville, AR 72712**
 Phone: **479- 966-4666**

Present Owner: **City of Fayetteville, AR**

Adjacent Land Owners: **Private Landowners and City of Fayetteville Regional Park**

Report Prepared By: **Alan Edmondson, Land Stewardship Specialist, Northwest Arkansas Land Trust**

Date Report Prepared: **Updated July 29, 2016**

DESCRIPTION OF PROPERTY

Target Element: Protection of approx. 384.2 acres on Kessler Mountain in Fayetteville, AR

Physical Description: Kessler Mountain is on the southwest side of Fayetteville in Washington County Arkansas. Kessler Mountain is part of the Boston Mountains Ecoregion but is located on the boundary with the Ozark Highlands Ecoregion. The property is mostly oak-hickory forest with rock bluffs and outcroppings. A majority of the forest on the top of the mountain appears to have been only selectively logged with many old growth trees left standing. There are some areas around the base of the mountain with old home sites and abandoned farm fields that have regrown into forest densely populated with invasive woody plant species such as bush honeysuckle, privet, eastern red cedar and tree of heaven. The main north-south ridge of Kessler Mountain is the watershed divide between the Illinois River watershed and West Fork of the White River/Beaver Lake watershed.

Ecological Features: The Protected Property supports many ecologically diverse habitat types. An ecological assessment of the property conducted by Theo Witsell of the Arkansas Natural Heritage Commission identified eleven different habitat types with 544 plant species identified, including at least six species that are of state conservation concern and at least two species that are of global conservation concern. Five habitat types were identified as being ecologically significant, including Shale Barrens, Bluffs, Old Growth Post Oak Woodland, Riparian Habitat, and Seeps and Springs. In addition, 26 species of reptiles and amphibians were reported, including the Ozark Zigzag Salamander, a species of state concern.

Man-made Structures/Improvements: Approximately seven miles of natural-surface trails, as well as old road beds, stone walls, and three ponds.

Prior Land Use: Largely undisturbed wildlife habitat with some old home sites, farming, hunting, and an abandoned landfill on regional park property near water towers on northeast side of mountain. Land fill has been capped.

Current Land Use: Hiking, trail running, mountain biking, wildlife habitat, wildlife viewing, outdoor education, and research.

Management Needs: Restoration and impact avoidance/trail rerouting of sensitive shale barrens habitat, invasive plant species removal, improve current trails to meet sustainable trail design standards and continued efforts to guard against potential threats listed below. More biological surveys and a Habitat Management Plan can help guide specific activities related to ongoing biodiversity and resource preservation.

Potential Threats to Ecological Integrity: Invasive plant and animal species, illegal dumping, damage to sensitive habitats by overuse and abuse by public.

Required Frequency of Monitoring for this Easement: Formal monitoring reported once per year following leaf-off with more frequent and targeted inspections as needed throughout the year.

CONSERVATION VALUES SUPPORTED BY PROPERTY

The protected property possesses significant Conservation Values including:

- 1. Open Space Preservation**
- 2. Wildlife Habitat**
- 3. Recreation**
- 4. Water Quality Protection**
- 5. Viewshed Preservation**

ARTICLE I; FROM EASEMENT Conservation Purposes

The Grantor imposes a conservation servitude (the “Conservation Easement”) on the Protected Property so as to assure that the Conservation Values of the Protected Property, that would otherwise be threatened by development pressure, will be retained forever, and to prevent any use of the Protected Property that would significantly impair the Conservation Purposes set forth below.

(a) Conservation Purposes

- (i) **Open Space Preservation.** To maintain the Protected Property as an important open space and nature park facility for the enjoyment and education of the general public and to support the city of Fayetteville’s Enduring Green Network goals and the Northwest Arkansas Open Space Plan.
- (ii) **Wildlife Habitat Protection.** To maintain and improve the quality of wildlife habitat; to protect ecologically significant sites and species; to promote biodiversity and Native Species; to preserve large intact areas of wildlife habitat, connect patches of wildlife habitat and secure migration corridors. Large habitat patches typically support greater biodiversity than small patches; migration corridors enable wildlife to move to meet nutritional and reproductive needs and facilitate the migration of species in response to changes in environmental conditions.
- (iii) **Water Quality Preservation.** To maintain and improve the watershed/hydrological value, both surface and groundwater, within, around and downstream of the Protected Property. Specifically, helping to protect the water quality of the Illinois River, and of Beaver Lake, a Corp of Engineers impoundment that is also a public water source.
- (iv) **Forest, Woodland and Other Vegetative Resource Protection.** To perpetuate and foster the growth of a healthy and unfragmented forest; to maintain a continuous canopy of vegetation with multi-tiered understory of trees, shrubs, wildflowers and grasses; to support healthy ecosystem processes; and to trap air pollution particulates for healthier air and sequester carbon in trees and soil in order to mitigate rising atmospheric carbon levels.

- (v) **Scenic Value Preservation.** To preserve the relationship of scenic resources within the Protected Property to natural and scenic resources in its surrounds and to protect scenic vistas visible from public rights-of-way and other public access points in the vicinity of the Protected Property.
- (vi) **Sustainable Land Uses.** To ensure that Public Access and other permitted uses are conducted in a manner that will neither diminish the biological integrity of the Protected Property nor deplete natural resources over time nor lead to an irreversible disruption of ecosystems and associated processes.

ARTICLE III; FROM EASEMENT Activities and Uses

Prohibited Uses: Any activity on or use of the Protected Property that is inconsistent with the Conservation Purposes of this Conservation Easement is prohibited, subject to the Reserved Rights and Permitted Uses as specified in Sections 3.02 and 3.03 below. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- (a) Except as provided in Section 3.03 below, the change, disturbance, alteration, or impairment of the relatively natural habitat for plants, wildlife, or similar ecosystems within or upon the Protected Property.
- (b) Any Commercial or Agricultural Uses of the Protected Property.
- (c) Except as provided in section 3.03 below, any private or public gathering or event, including but not limited to, festivals, fairs, concerts, markets, within or upon the Protected Property.
- (d) Except as provided in Section 3.03 below, the Construction and/or placement of any structure or Improvement, including but not limited to, a building, dwelling, office, mobile home, tent, asphalt, concrete pavement, any portion of a septic system, tennis court or other recreational court, swimming pool, dock, aircraft landing strip, tower, Utility Improvement, antenna, underground utilities, conduit, line, lighting, billboard or other advertising display, or any other temporary or permanent structure or facility.
- (e) The conveyance of leases, easements, and rights-of-ways without first obtaining the express written consent of Holder, which may be withheld by Holder for any reason.
- (f) Except as provided in Section 3.03 below, the Construction of roadways.
- (g) The erection, Construction, installation relocation or use of any lighting which interferes with wildlife on the Protected Property or with landowners or visitors within the scenic viewscape of the Protected Property.
- (h) Except as provided in Section 3.03 below, the placement of any camping, resting or gathering structure, including but not limited to, a tent, umbrella, tarp, hammock, lean to, shed, shelter, recreational vehicle or any other temporary or permanent camping, resting or gathering structure or facility.
- (i) The Construction, placement or use of any temporary or permanent cooking or fire structure, including but not limited to, campfires, fire pits, fire circles, cooking grills, gas stoves or portable cooking stoves.
- (j) The introduction of fire to the Protected Property unless part of a Habitat Management Plan as described in Section 3.03 below.
- (k) The division, subdivision, partitioning or *de facto* subdivision of the Protected Property into two or more parcels of land or separate interests, or conveyance of individual tracts separately from one another.

- (l) Except as provided in Section 3.03 below, the ditching, draining, diking, filling, manipulation, diversion or otherwise changing of the topography or surface hydrology of the Protected Property in any manner.
- (m) Any use that would increase or substantially add to the risk of erosion as determined by historical and current scientific literature.
- (n) The exploration for, or extraction of, minerals, oil, gas, or other hydrocarbons, soils, sands, gravel, rock, field stone or other materials on or below the surface of the Protected Property.
- (o) The transfer, encumbrance, lease, sale or other separation of the minerals, oil, gas, or other hydrocarbons, soils, sands, gravel, rock, field stone or other materials from the Protected Property.
- (p) The transfer, encumbrance, lease, sale or other separation of the water rights on the Protected Property.
- (q) The removal, harvesting, destruction or cutting of Native Species of vegetation unless in accordance with a Habitat Management Plan as described in Section 3.03 below.
- (r) Except as provided in Section 3.03 below, the introduction of Non-Native Species of vegetation and/or animals to the Protected Property.
- (s) The gathering, displacement, and/or removal of firewood, rocks, fossils, artifacts, plants, wildflowers, fungi, leaves, animals, insects or other living or non-living things, remains or specimens, unless in accordance with a Habitat Management Plan or approved research or educational program, as provided in Sections 3.03 and 4.03 in Easement.
- (t) The application of chemicals including but not limited to herbicides, biocides, pesticides, insecticides, fungicides, rodenticides and fertilizers, unless in accordance with a Habitat Management Plan as described in Section 3.03 below.
- (u) The storage or dumping of ashes, litter, trash, garbage, human or pet waste, solid waste or other unsightly or offensive material, hazardous or petroleum substance, hazardous or toxic waste, nor any placement of aboveground or underground storage tanks in, on, or under the Protected Property.
- (v) Except as provided in Section 3.03 below, the pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, seeps, springs, ground or subsurface water or any other water bodies, within or upon the Protected Property, nor shall activities be conducted on adjacent property, if owned by Grantor, that would be detrimental to water purity or that could alter the natural water level or flow in, under or over the Protected Property.
- (w) Except as provided in Section 3.03 below, the use of motorized or recreational vehicles, including but not limited to, the operation of snowmobiles, dune buggies, motorcycles, all-terrain or off-road vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles.
- (x) Neither the Protected Property nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, Lot coverage, or Open Space requirements under otherwise Applicable Laws, Regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to transferrable development rights, scheme cluster development arrangement or otherwise.

Permitted Uses: The parties agree that the following uses of the Protected Property are permitted, as specified below:

(a) Special Events. *Subject to Review by Holder as specified in Section 4.04 in Easement*, the Grantor may permit or host special events by specific groups and by city permit only of short duration within the Protected Property, including organized bike races, trail runs, bio-blitzes and camping outings, so long as such events do not substantially diminish or impair the Conservation Values of the Protected Property. Special Events may include the temporary use of service vehicles, cooking grills or bonfires, temporary tents, shade structures, and toilet and refreshment areas.

(b) Structures. *Subject to Review by Holder as specified in Section 4.04 in Easement*, the Grantor may construct, maintain, repair, remove or replace any of the following, provided that the structure is of a reasonably limited footprint, is architecturally consistent with the natural setting of the Protected Property, does not pose a threat to sensitive species or ecologically sensitive habitats, and is in accordance with local, state, and federal laws. Any area of the Protected Property disturbed in the process of Construction must be restored to a natural condition promptly after completion to ensure that the activity does not substantially diminish or impair the Conservation Values.

i. **Pavilion.** One (1) open-air pavilion.

ii. **Additional Structures.** Holder may adjust structure limit to accommodate specific recommendations that are made through the *Public Park Planning Process as specified in Section 3.04* in keeping with the spirit and intent of this Conservation Easement.

iii. **Wildlife Viewing and Habitat Structures.** A reasonable and necessary number of raised walkways, wildlife viewing platforms, bird blinds, and habitat enhancement devices such as bat boxes, bird houses.

(c) Trails. As shall be identified in the master trail plan (the “**Master Trail Plan**”), which may be reviewed and updated subject to *approval through the Public Park Planning Process as specified in Section 3.04*, the Grantor may construct, install, maintain and repair any one or more of the items as described in paragraphs i-vii of this section, including mowing, cutting or removal of soil, rock or vegetation, so long as improvements do not pose a threat to sensitive species or ecologically sensitive habitats. These activities may include vehicular use.

i. **Trail Uses.** Trails may be used for walking, hiking, jogging, bicycling, bird watching and nature study.

ii. **Trail Width.** Trails shall be no more than four (4) feet in width where possible and in no case should exceed six (6) feet in width together with steps, railings, features and other surface structures which, as to Wet Areas, may include bridges and culverts (collectively, “**Trails**”).

iii. **Trail Design.** Trails shall be constructed and maintained in accordance with then-current, generally accepted Best Management Practices for the sites, soils, hydrology, habitats and terrain of the Protected Property.

iv. **Trail Location.** The location and density of trails shall be planned in a manner consistent with the preservation of the natural integrity of the Protected Property, including avoidance of impact to ecologically significant areas and species of special conservation concern.

v. **Trail Covering.** All trails will be natural surface and may be covered, if at all, by wood chips, gravel, or any other porous surface so as to blend with the natural surroundings and not to enhance stormwater runoff. Notwithstanding the foregoing restrictions, specific segments of the trails more particularly identified in the master trail plan (the “**Master Trail Plan**”), shall be

permitted to be paved as more particularly set forth in the Master Trail Plan and shall be subject to the following requirements: (1) the exact routing of any paved trail(s) shall be approved by Holder, (2) the maximum trail width for any paved sections shall be no more than 20 feet, including any abutting mowed shoulders and edges, and (3) pervious pavement shall be used where suitable for any such paved portions of the trail(s).

vi. **Trail Signage.** Trails may include signs to mark the trail, to provide information regarding restrictions, and for interpretive purposes. Signage shall be unobtrusive in nature and planned with the express goal of ensuring the vistas and Open Space nature of the Protected Property.

vii. **Trail Facilities.** Trails may include benches, picnic tables, wastebaskets and bicycle racks, as may be deemed necessary. The design, location and density of trail facilities shall be architecturally consistent with the natural setting of the Protected Property and planned with the express goal of minimizing impact to ecologically significant areas and species of special concern, and ensuring the vistas and Open Space nature of the Protected Property.

(d) Road Construction. *Subject to Review by Holder as specified in section 4.04 in Easement,* maintenance and emergency Access Drives may hereafter be constructed where reasonably necessary to provide access for maintenance and emergency personnel only. Such Access Drives on the Protected Property:

- (i) Shall be limited to the minimum number, width and length necessary to provide access for permitted purposes.
- (ii) Shall follow the general contour of the natural terrain where possible and shall be designed with extreme care and concern for the natural integrity of the Protected Property, particularly the avoidance of ecologically significant areas.
- (iii) Shall be gated and posted to prevent unauthorized access.
- (iv) Shall be planned to maximize the ability of the road to be reclaimed and returned to a natural state when it is no longer required or needed.

(e) Fences. Existing fences may be repaired and replaced, and new fences may be built, on the Protected Property for purposes of reasonable and customary access control and protection of resources, provided that fencing does not substantially diminish or impair the Conservation Values, including aesthetic and scenic values, of the Protected Property, and does not exclude or restrict wildlife movement on or off of the Protected Property.

(f) Stream Restoration Construction and Repairs. *Subject to Review by Holder as specified in Section 4.04 in Easement,* the Grantor may carry out stream restoration activities including, excavation, fill, rock structures, tree and vegetation establishment, erosion control, and natural channel Construction and repairs as needed, through or under the guidance of a qualified stream restoration expert.

(g) Service Vehicles. Grantor may use, or permit the use of, service vehicles and motorized equipment, including motorized recreational vehicles, on the Protected Property provided that:

- (i) The use of such vehicles is reasonable and necessary for maintenance and/or emergency access to the Protected Property, or for providing access to people with disabilities.
- (ii) The permission afforded by Grantor consists of short-term license and is not a right-of-way, easement, or other permanent legal interest.
- (iii) Vehicles take care to avoid ecologically significant areas and species of special conservation concern on the Protected Property.

(h) Habitat Management. Grantor reserves the right to conduct habitat management activities subject to federal, state and local regulations and the specific terms and conditions of the Conservation Easement, and shall be conducted in accordance with the following provisions:

i. **Ten Year Habitat Management Plan.** All habitat management activities shall be conducted in accordance with a written plan (a “**Habitat Management Plan**”) subject to review and approval by Grantor. The Habitat Management Plan shall be prepared by a Qualified Preparer prior to any treatment activities, and should, if possible, be reviewed and updated at least every ten years. Grantor is not required to fund the Habitat Management Plan. The Habitat Management Plan shall include, at a minimum, the following:

- 1) Goals and objectives of the Grantor, consistent with the purposes and terms of the Conservation Easement.
- 2) Identification and mapped location of significant habitat types, species of special conservation concern, and natural and physical features of the Protected Property.
- 3) A description of the current and desired natural condition and threats to each habitat type.
- 4) A description of contemplated management plans and proposed access plan for each habitat type.
- 5) A description of foreseeable situations in which chemical application will be recommended, including the type, amount, method of application, and recommended limitations to protect water quality and sensitive species.
- 6) A description of recommended Soil Conservation Plan; erosion control and reclamation practices to ensure soil stabilization and to maintain the scenic quality of the Protected Property.

(i) Cutting and Clearing of Trees. Grantor may engage in the following non-commercial Forestry practices:

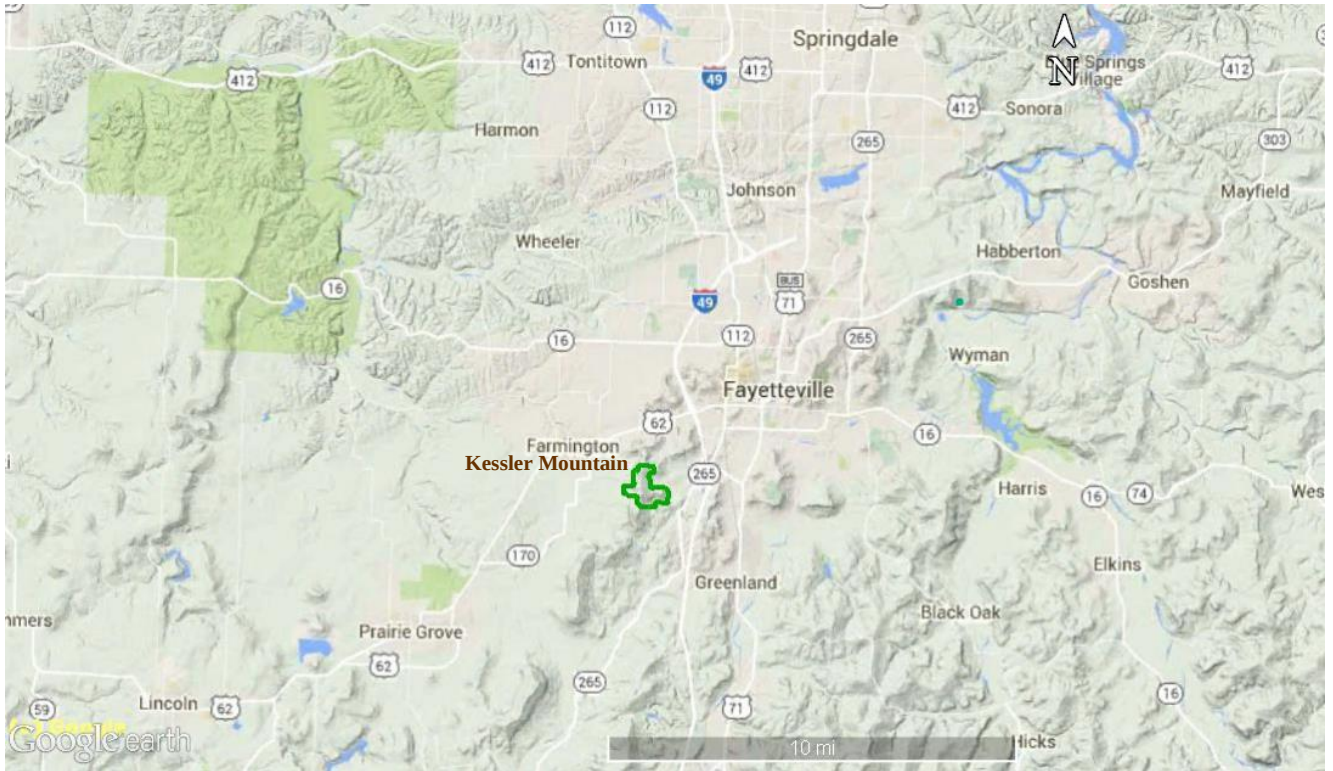
- (i) The cutting and removal of Non-Native Species, invasive, or diseased trees, shrubs that may endanger public safety or need to be removed to ensure the health of other trees or ecological attributes of the Protected Property, and these activities may involve the temporary introduction of goats.
- (ii) *Subject to Review by Holder as specified in Section 4.04 in Easement*, the cutting of firebreaks, except that such approval shall not be required in the case of emergency firebreaks.

Public Park Planning Process: Before undertaking any Construction, or Additional Improvements, aside from minor improvements and repairs, and as specified for any reserved right or exception to a prohibited use that will disrupt the surface of the Protected Property, Grantor shall engage in a public park planning process (a “**Public Park Planning Process**”) to address the specific Construction or Additional Improvement or other surface disruption that is contemplated to be undertaken on the Protected Property. This Public Park Planning Process shall include Holder or its designated representative, with Grantor providing specific Notice to Holder, as specified in Section 4.04 in Easement, of the hearing no less than thirty (30) days in advance of said hearing.

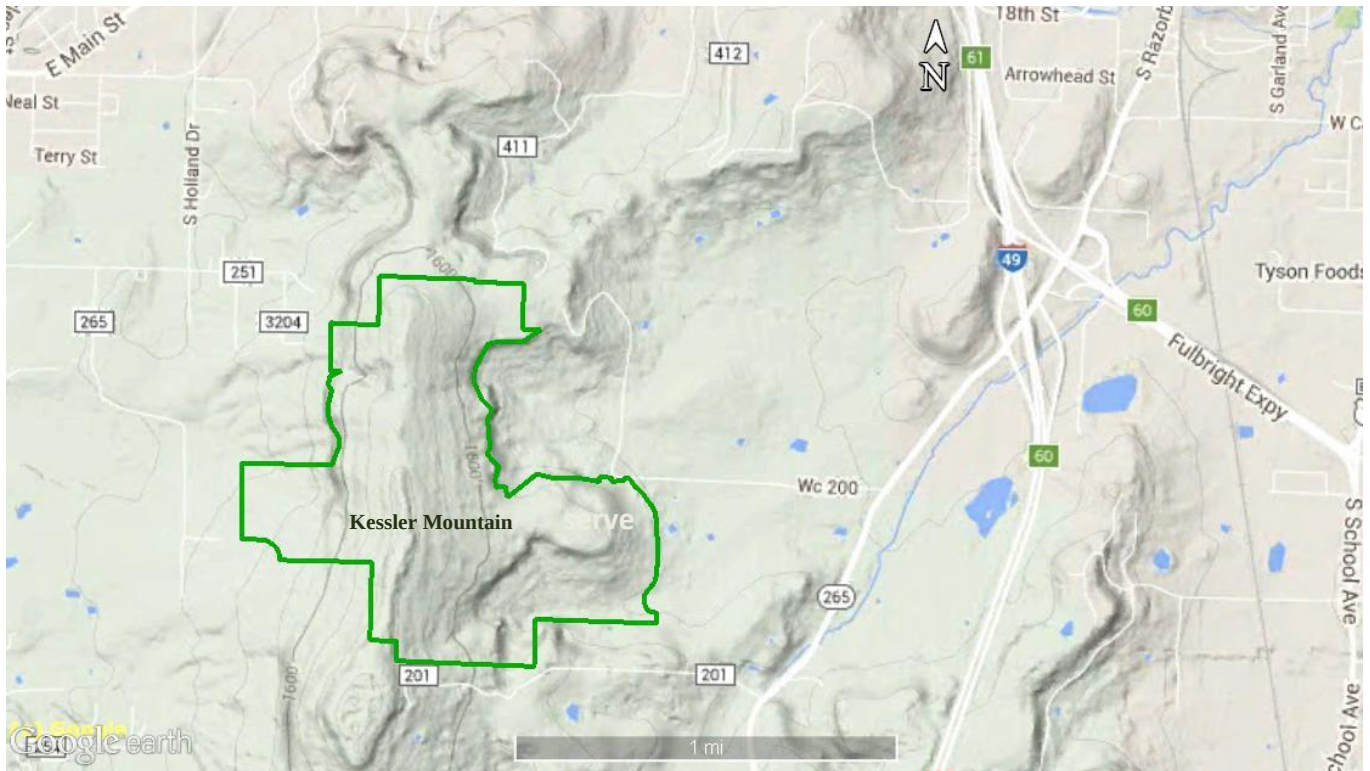
Permitted Uses Within Minimal Protection Area: As demonstrated in Exhibits “A” and “B”, a buffer zone (the “**Minimal Protection Area**”) exists on the Protected Property pursuant to the establishment of the Regional Park. The following activities and uses are permitted within the Minimal Protection Area:

- (a) Activities and uses permitted under preceding sections of this Article are permitted with the Minimal Protection Area. Introduction of Invasive Species remains prohibited.
- (b) Disturbances of resources within the Minimal Protection Area are permitted for purposes reasonably related to the development, maintenance and use of the Regional Park so long as those activities do not further encroach outside of the Minimal Protection Area.

REGIONAL MAP



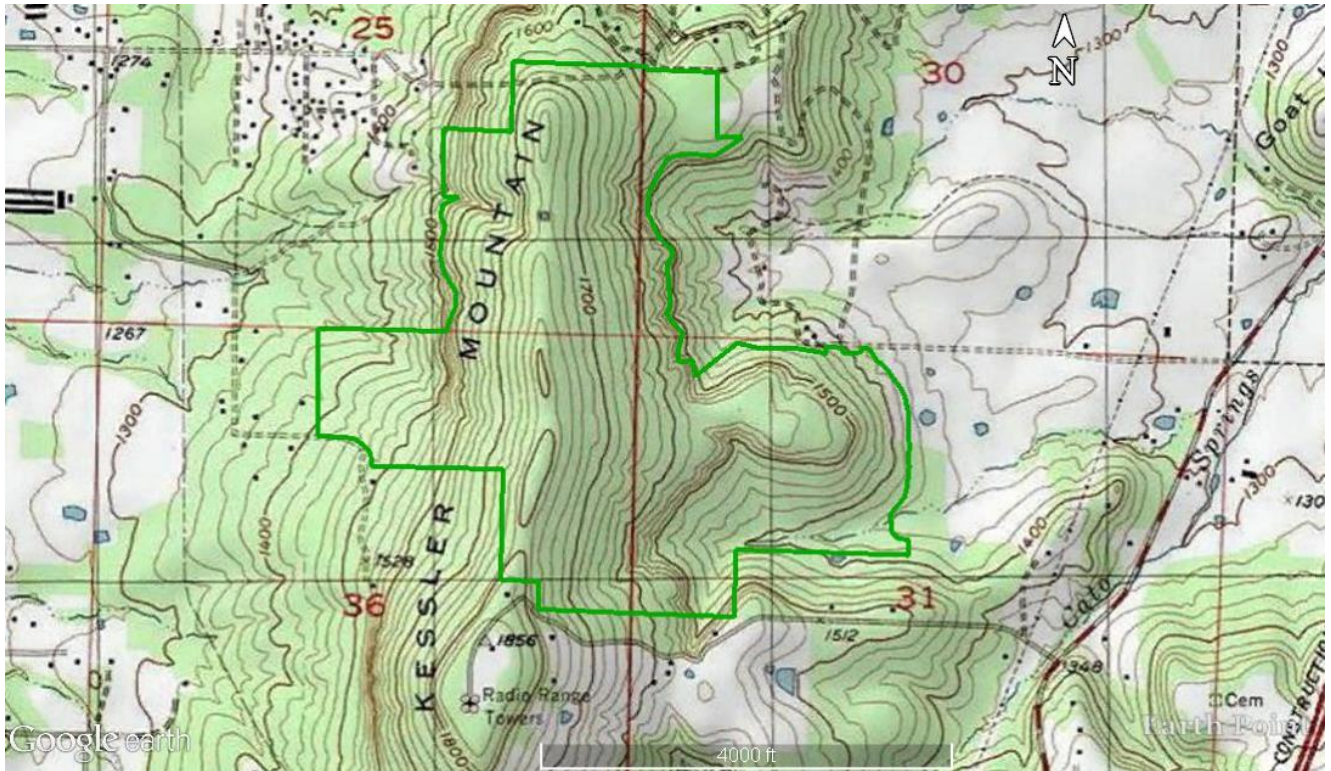
LOCAL ROAD MAP AND DRIVING DIRECTIONS



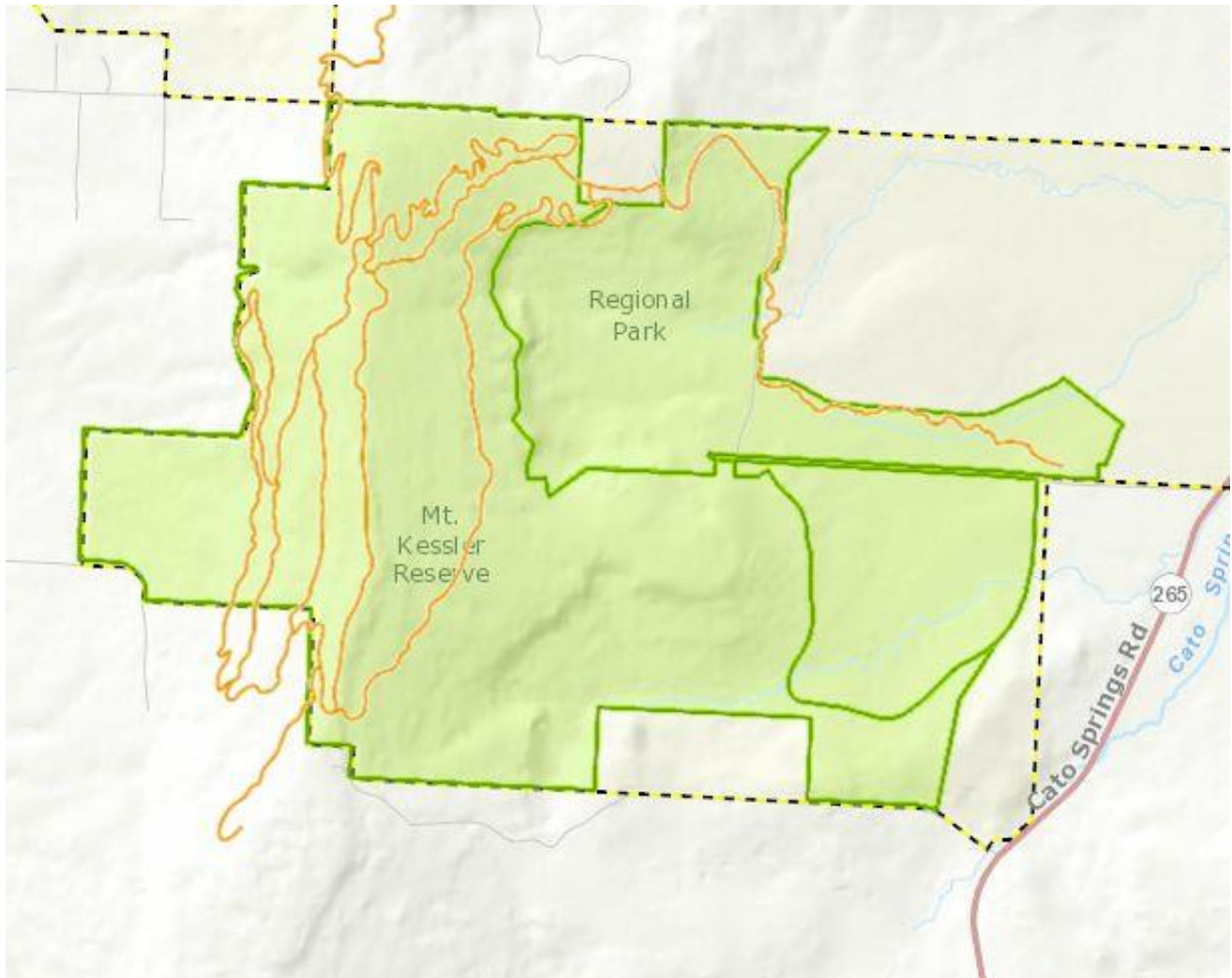
Driving Directions

From I -49 in Fayetteville, AR take Exit 60 AR-265 S/S Cato Springs Road. Drive approximately 1.2 miles turn right onto Washington County Road 200 Trail head parking lot on right.

USGS TOPOGRAPHIC MAP



PROPERTY FEATURES MAP



Current Trail System on Kessler Mountain

Photo-Points Map

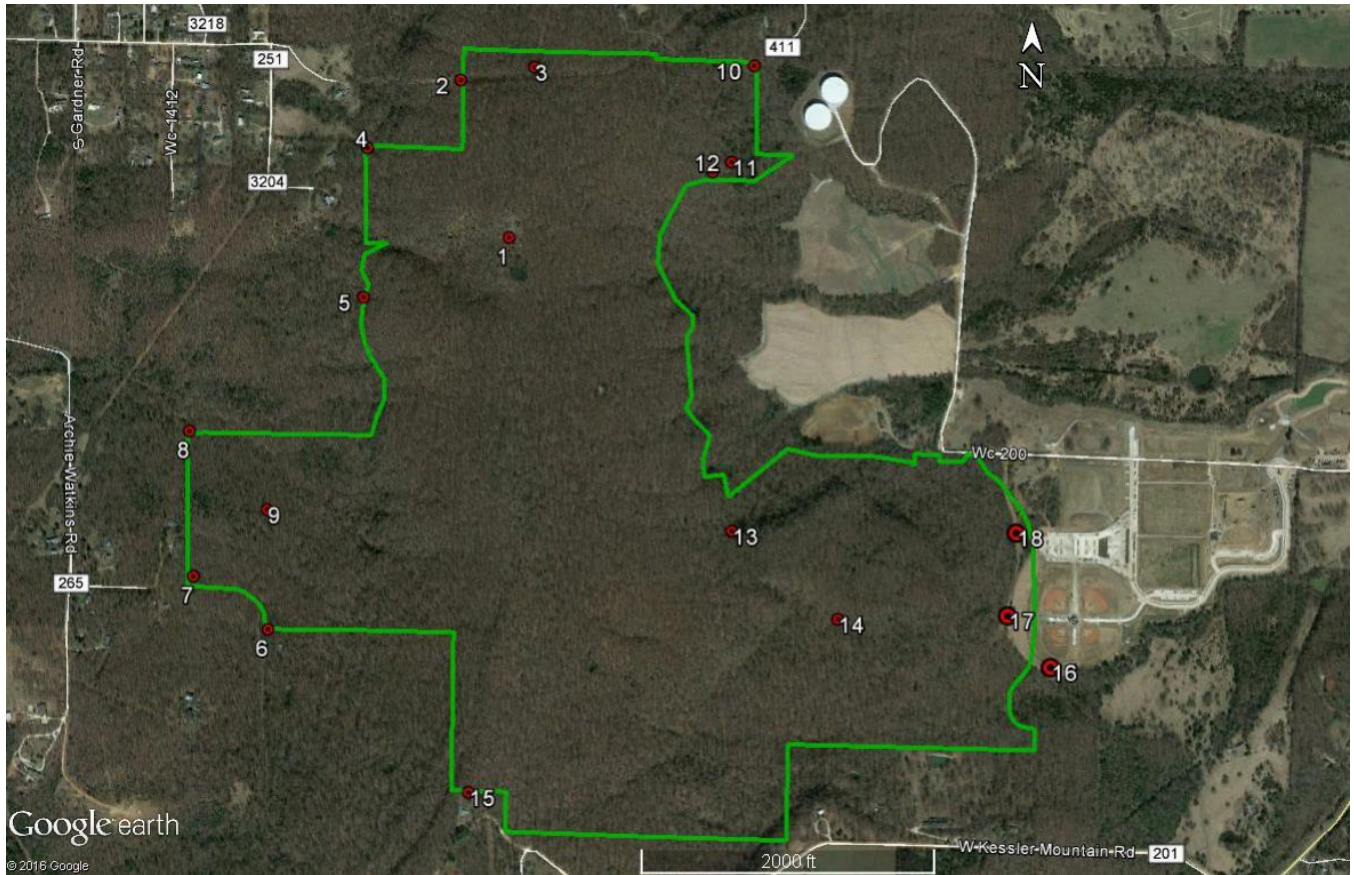


Photo-Points Data Sheet

Photo-Point	GPS Coordinates in Decimal Degrees	Azimuth
1	N 36.03163° W 094.21739°	N 0°
2	N 36.03456° W 094.21850°	SE 150°
3	N 36.03480° W 094.21680°	SW 190°
4	N 36.03341° W 094.22077°	SE 170°
5	N 36.03052° W 094.22074°	SE 135°
6	N 36.02434° W 094.22294°	E 90°
7	N 36.02533° W 094.22466°	NE 25°
8	N 36.02803° W 094.22475°	SE 135°
9	N 36.02657° W 094.22296°	SE 125°
10	N 36.03482° W 094.21174°	SE 165°
11	N 36.03299° W 094.21226°	S 180°
12	N 36.03277° W 094.21261°	E 90°
13	N 36.02617° W 094.21226°	S 180°
14	N 36.02453° W 094.20982°	N 0°
15	N 36.02129° W 094.21829°	N 0°
16	N 36.02363° W 094.20491°	NW 330°
17	N 36.02460° W 094.20590°	NE 15°
18	N 36.02716° W 094.20570°	S 180°

Photo-Point Images



1. Ancient Post Oak at shale barrens on top of Kessler Mountain. Facing north.



2. Intersection of Trent Trail, power line clear-cut and property boundary. Facing southeast 150° towards property.



3. Old road bed crossing property boundary. Looking towards power line clear-cut. Possible point of access for unauthorized off-road vehicles. Facing southwest 190°



4. Corner of city property with Pickles and Wolf property Facing south 170° towards property.



5. Bluff shelter near property boundary. Facing south 200° towards property.



6. Corner of city property and Beaty property. Standing on pin, facing east.



7. Corner of city property with Fletcher property. Facing north 25° looking along property boundary.



8. Corner of city property with Walker and Robertson properties. Standing on pin, facing southeast 135° looking towards city property.



9. Old road bed/ rock wall on west side of property. Facing southeast 125°.



10. City property boundary with Butt property. Facing south 165°.



11. Heavy erosion/sinkhole on both sides of Crazy Mary Trail. Facing south 180°.



12. Old rock wall along Crazy Mary Trail. Near regional park boundary. Facing east



13. Spring at base of tree and rock ledge flowing out of 10 inch diameter cavity. Facing south



14. Spring coming out of Bluff at Shale boundary. Facing north.



15. Trent Trail Head/ City Property boundary by radio tower. Facing north up Trent Trail.



16. Minimal Protection Zone. Facing northwest 330°



17. Minimal Protection Zone. Facing northeast 15°



18. Minimal Protection Zone. Facing south.

RESOLUTION NO. 40-14

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO APPLY FOR AND ACCEPT A 50/50 MATCHING GRANT FROM THE WALTON FAMILY FOUNDATION IN THE AMOUNT OF \$1,500,000.00, TO USE THIS GRANT AND \$1,600,000.00 OUT OF RESERVES TO PURCHASE ABOUT 328 ACRES OF MT. KESSLER FROM CHAMBERS BANK AND TO BUILD A TRAILHEAD, TO APPROVE A LAND SWAP WITH CHAMBERS BANK, TO SUPPORT A PARKLAND DEDICATION OF ABOUT 48 ACRES FOR FUTURE PARKLAND CREDIT AND TO APPROVE THE ATTACHED BUDGET ADJUSTMENT

WHEREAS, the City of Fayetteville has a unique opportunity to work with the Walton Family Foundation, Fayetteville Natural Heritage Association and Chambers Bank to acquire and preserve 376 acres of Mt. Kessler for \$3,000,000.00 and parkland dedication so that the Regional Park will grow to almost 600 contiguous acres of amenities running the gamut from developed sports fields to mountain biking and nature trails; and

WHEREAS, the City will also need to spend about \$100,000.00 from reserves to develop a public trailhead for the many nature, hiking, biking and recreational trails already established and to be established and enhanced as part of the Regional Park.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the City of Fayetteville application for the 50/50 matching grant with the Walton Family Foundation, extends its deepest appreciation and gratitude to the Walton Family Foundation for this grant, agrees to accept and match this \$1.5 million donation with City funds from reserves, agrees to use this Three Million Dollars to purchase about 328 acres from Chambers Bank, agrees to build the public trailhead for about \$100,000.00 from reserves and authorizes Mayor Jordan to sign all necessary documents and agreements necessary to accomplish this grant, purchase and project.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby agrees to support and recommend that the Fayetteville Planning Commission accept a parkland dedication of about 48 acres by Chambers Bank to be used for future parkland credit.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby agrees to swap those parcels of City land with Chambers Bank for the Chambers Bank parcels and trail easements all as identified on the map attached to this Resolution as Exhibit A.

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Budget Adjustment recognizing grant revenue of \$1.5 million from the Walton Family Foundation and expenditures of \$3.1 million for purchase of the Mt. Kessler property and construction on the trailhead.

PASSED and **APPROVED** this 18th day of February, 2014.

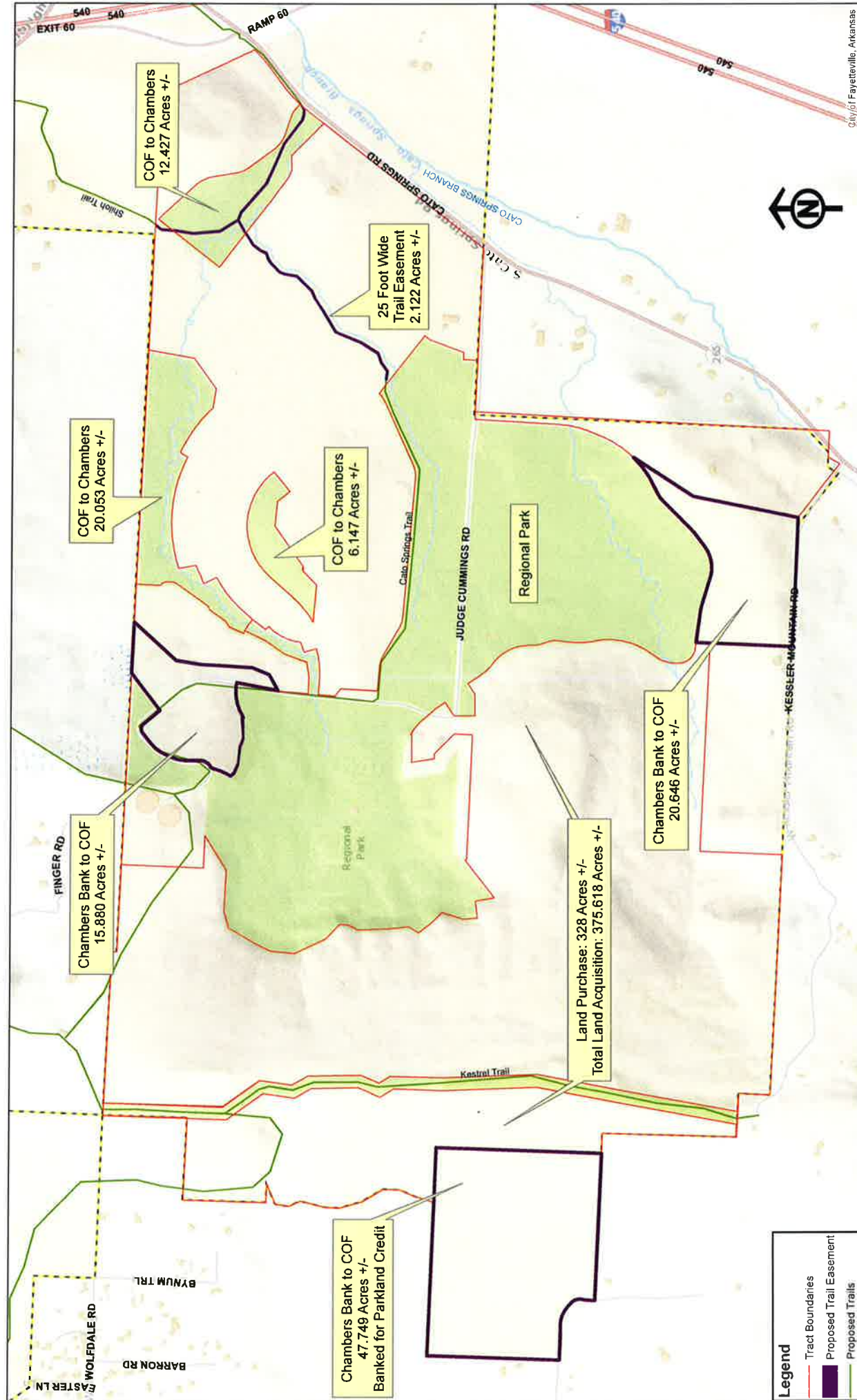
APPROVED:

By: 
LIONELD JORDAN, Mayor

ATTEST:

By: 
SONDRA E. SMITH, City Clerk/Treasurer





Mt. Kessler / Regional Park

RESOLUTION NO. 40-14

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO APPLY FOR AND ACCEPT A 50/50 MATCHING GRANT FROM THE WALTON FAMILY FOUNDATION IN THE AMOUNT OF \$1,500,000.00, TO USE THIS GRANT AND \$1,600,000.00 OUT OF RESERVES TO PURCHASE ABOUT 328 ACRES OF MT. KESSLER FROM CHAMBERS BANK AND TO BUILD A TRAILHEAD, TO APPROVE A LAND SWAP WITH CHAMBERS BANK, TO SUPPORT A PARKLAND DEDICATION OF ABOUT 48 ACRES FOR FUTURE PARKLAND CREDIT AND TO APPROVE THE ATTACHED BUDGET ADJUSTMENT

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PASSED and **APPROVED** this 18th day of February, 2014.

APPROVED:

By: 
LIONELD JORDAN, Mayor

ATTEST:

By: 
SONDRA E. SMITH, City Clerk/Treasurer



RESOLUTION NO. 210-14

A RESOLUTION TO AUTHORIZE AN AGREEMENT WITH THE NORTHWEST ARKANSAS LAND TRUST IN THE AMOUNT OF \$50,309.00, WHICH WILL BE PAID BY THE FAYETTEVILLE NATIONAL HERITAGE ASSOCIATION, TO BEGIN THE PROCESS OF ESTABLISHING A CONSERVATION EASEMENT FOR THE PRESERVATION OF MOUNT KESSLER RESERVE

WHEREAS, The Fayetteville Natural Heritage Association has committed to contributing \$300,000.00 toward the City's purchase of the Mount Kessler Reserve; and

WHEREAS, the Fayetteville National Heritage Association and the City have agreed to use a portion of the \$300,000.00 to pay the startup and stewardship fees required by the Northwest Arkansas Land Trust to begin the process of establishing a conservation easement for the preservation of Mount Kessler Reserve.

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

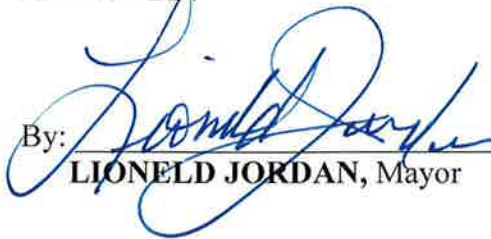
Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes an agreement with the Northwest Arkansas Land Trust in the amount of \$50,309.00, which will be paid by the Fayetteville National Heritage Association, in order to begin the process of establishing a conservation easement for the preservation of Mount Kessler Reserve. A copy of the agreement is attached to this Resolution.

PASSED and APPROVED this 2nd day of December 2014.

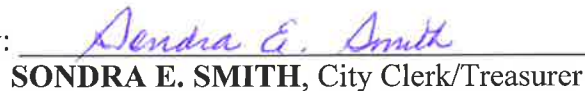
APPROVED:

ATTEST:

By:


LIONEL JORDAN, Mayor

By:


SONDRA E. SMITH, City Clerk/Treasurer





November 11, 2014

Mayor Lioneld Jordan
113 W Mountain Street
Fayetteville, AR 72701

RE: Letter Agreement for Kessler Mountain Conservation Easement

Dear Mayor,

This Letter Agreement outlines our understanding with respect to the grant of a conservation easement from the City of Fayetteville, as Grantor ("Grantor, to the Northwest Arkansas Land Trust, an Arkansas nonprofit corporation, as Grantee, the "NWA Land Trust") with respect to 376 acres (more or less) of open space located in Washington County, Arkansas, known as the "Kessler Mountain Reserve." The conservation easement for the Kessler Mountain Reserve is referred to in this Letter Agreement as the "Conservation Easement."

The NWA Land Trust takes its perpetual land stewardship role very seriously. In accordance with Land Trust Alliance Standards and Practices, NWA Land Trust must ensure that each project is backed with sufficient funding to cover the upfront and long-term costs it incurs in accepting a conservation easement. Stewardship funding is calculated according to the formula specified in NWA Land Trust's Stewardship Funding Cost Analysis, which is performed for each potential project. Calculations are based on experience and informed assumptions. The calculation is adjusted upward based on size, complexity and risk factors that will require greater time and expenditures by NWA Land Trust in the future.

Based on these calculations, and as previously communicated, costs for the Kessler Mountain Conservation Easement are **\$10,309** for initial set-up fees (the "Start-Up Fee"), and a **\$40,000** contribution for ongoing monitoring and stewardship (the "Stewardship Fee").

The Board of Directors of the NWA Land Trust has approved preliminary acceptance of the Conservation Easement, subject to payment of the Start-Up Fee and the Stewardship Fee and satisfaction of the additional terms and conditions hereinafter set forth.

Agreements of the Parties; Terms and Conditions to Final Conservation Easement.

- Grantor shall pay to the NWA Land Trust the Start-Up Fee upon execution of this Letter Agreement. This Letter Agreement shall not be effective until Grantor shall have executed the Letter Agreement and the NWA Land Trust shall have received the Start-Up Fee.
- NWA Land Trust agrees to allocate \$2,500 of the Start-Up Fee to its conservation easement defense fund, in accordance with its current policies, and such funds shall continue to be maintained and administered in accordance with NWA Land Trust's policies and procedures, as in effect from time to time. The conservation easement defense fund is Board-designated, and

the NWA Land Trust's Board of Directors directs the use of these funds for their stated purposes.

- Upon execution of this Letter Agreement and receipt of the Start-Up Fee, NWA Land Trust will begin its due diligence work to draft and complete the Conservation Easement.
- Grantor shall provide the following items to the NWA Land Trust at Grantor's cost, all of which must be received, reviewed and approved by the NWA Land Trust, its Board of Directors and its legal counsel prior to final approval of the Conservation Easement:
 - Current survey of the property subject to the Conservation Easement, platting the Conservation Easement and including a separate legal description for the conservation property subject to the Conservation Easement;
 - Current title commitments for an owner's policy for the property subject to the Conservation Easement; and
 - Master plans including trail design, access points and any other improvement plans for the property subject to the Conservation Easement.
- NWA Land Trust will prepare and complete a Baseline Documentation Report, which will be forwarded to the Grantor for review and signature. To prepare the Baseline Documentation Report, a NWA Land Trust staff member will be making a several more site visits to the conservation property.

Final Approval and Payment of Stewardship Fee.

Final approval of the Conservation Easement will be subject to approval and by both parties. While preliminary due diligence has yielded no reason to suspect such an issue may arise, the NWA Land Trust shall have the right to disapprove the final Conservation Easement and terminate this Letter Agreement upon notice to Grantor if the title commitment, survey, or further due diligence performed by NWA Land Trust in accordance with this Letter Agreement reveal unanticipated conditions that would severely impact the conservation values of the property.

Once final approval of the Conservation Easement is obtained, Grantor shall pay to the NWA Land Trust the Stewardship Fee, which shall be due and payable upon execution and delivery of the final Conservation Easement. The Stewardship Fee will be deposited into the NWA Land Trust's stewardship fund for long-term easement monitoring and management, in accordance with the NWA Land Trust's current policies, and such funds shall continue to be maintained and administered in accordance with NWA Land Trust's policies and procedures, as in effect from time to time. The stewardship fund is Board-designated, and the NWA Land Trust's Board of Directors directs the use of these funds for their stated purposes.

Failure to Complete.

Should the NWA Land Trust disapprove the final Conservation Easement and terminate this Letter Agreement due to an unforeseen defect in title, assurances or other unanticipated circumstances, as more particularly set forth in "Final Approval and Payment of Stewardship Fee" above, then the Start-Up Fee shall be retained by the NWA Land Trust to cover costs of its due diligence, but any portion of the Stewardship Fee paid by Grantor shall be refunded in its entirety to Grantor, and this Letter Agreement shall terminate.

In the event Grantor has performed all obligations under this Letter Agreement and the NWA Land Trust has failed to perform any of its obligations and such default is not cured as agreed and specified in writing, then Grantor may terminate this Letter Agreement by written notice to the NWA Land Trust on or prior to an agreed upon deadline and receive a refund of any portion of the Stewardship Fee and the Start-Up Fee paid by Grantor to the NWA Land Trust as liquidated damages in lieu of any other remedy Grantor may have.

Execution of Letter Agreement.

This Letter Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. A counterpart hereof signed and transmitted by any party hereto by facsimile or attachment to electronic mail is to be treated as an original. The signature of such party thereon, for purposes hereof, is to be considered as an original signature, and the counterpart so transmitted is to be considered to have the same binding effect as an original signature on an original document. In making proof of this Letter Agreement, it shall not be necessary to produce or account for any counterpart other than one signed by the party against which enforcement is sought.

Thank you for your interest in the Northwest Arkansas Land Trust. We look forward to working with you to ensure the permanent protection of this important property for future generations.

Please call us at 479-966-4666 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Terri Lane", with a stylized flourish at the end.

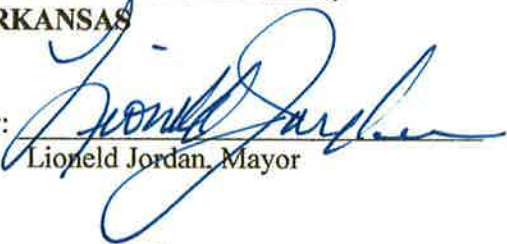
Terri L. Lane
Executive Director

By signing below, the Parties acknowledge that they have read, understand and agree to the terms of the Letter Agreement.

GRANTOR:

**CITY OF FAYETTEVILLE,
ARKANSAS**

By:


Lioneld Jordan, Mayor

GRANTEE:

NORTHWEST ARKANSAS LAND TRUST

By:


Terri L. Lane, Executive Director

Attest:


Sondra E. Smith, City Clerk

Date:

11-17-14

Date:

12-08-14



**This document prepared by, and
upon recording to be returned to:**

Northwest Arkansas Land Trust
P.O. Box 2211
Bentonville, AR 72712
479-966-4666

Portions or All of Tax Parcels:

#765-15443-207, #765-16322-700, #765-16322-600, #765-16322-701, #765-16323-102,
#765-16323-100, #765-16322-900, #765-16322-901, #765-16322-800, #765-16322-801,
#765-16323-403, #765-16323-300, #765-16323-200

GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT (this “**Grant**” or this “**Easement**”) is made this _____ day of _____, 2016 (the “**Easement Date**”) by and between the **CITY OF FAYETTEVILLE, ARKANSAS**, an Arkansas municipal corporation (“the **Grantor**”) and the **NORTHWEST ARKANSAS LAND TRUST**, an Arkansas non-profit corporation (the “**Holder**”), for the purpose of forever conserving the Conservation Values of the Protected Property (both hereinafter defined). Capitalized Terms not otherwise defined in this Easement shall have the meanings given them in Article VII hereof.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

BACKGROUND

1.01 Protected Property

The Grantor is the sole Owner in fee simple of certain real property more particularly described in Exhibit “A” hereto (the “**Protected Property**”). The Protected Property is also described as:

Known As:	Kessler Mountain
Municipality:	Fayetteville
County:	Washington
State:	Arkansas
Acreage:	384.225 acres, more or less

1.02 General Description

Attached as Exhibit “B” is a graphic depiction of the Protected Property. The Protected Property possesses significant Open Space, wildlife habitat/biological, water quality/hydrologic, aesthetic and scenic values (collectively, the “**Conservation Values**”) of great importance to the Grantor and to the citizens of the City of Fayetteville, and the citizens of the State of Arkansas. The Protected Property supports ecologically, biologically and geologically diverse habitat areas.

1.03 Conservation Purposes

By this Grant, the Grantor imposes a perpetual conservation servitude and easement (the “**Conservation Easement**”) on the Protected Property so as to assure that the Conservation Values of the Protected Property, that would otherwise be threatened by development pressure, will be retained forever, and to prevent any use of the Protected Property that would impair the Conservation Purposes set forth below (collectively, the “**Conservation Purposes**”).

(a) **Conservation Purposes.** The Conservation Purposes include, but are not limited to the following:

(i) **Open Space Preservation.** To maintain the Protected Property as an Open Space and nature park facility for the enjoyment and education of the general public and to support the Grantor’s Enduring Green Network goals.

(ii) **Wildlife Habitat Protection.** To maintain and improve the quality of wildlife habitat; to protect ecologically significant sites and species; to promote biodiversity and Native Species; to preserve large intact areas of wildlife habitat, connect patches of wildlife habitat and secure migration corridors.

(iii) **Water Quality Preservation.** To maintain and improve the watershed/hydrological value, both surface and groundwater, within, around and downstream of the Protected Property. Specifically, helping to protect the water quality of the Illinois River and of Beaver Lake.

(iv) **Forest, Woodland Area and Other Vegetative Resource Protection.** To perpetuate and foster the growth of a healthy and unfragmented Woodland Area; to maintain a continuous canopy of vegetation with multi-tiered understory of trees, shrubs, wildflowers and grasses; to support healthy ecosystem processes; and to trap air pollution particulates for healthier air and sequester carbon in trees and soil in order to mitigate rising atmospheric carbon levels.

(v) **Scenic Value Preservation.** To preserve the relationship of scenic resources within the Protected Property to natural and scenic resources in its surroundings and to protect scenic vistas visible from public rights-of-way and other public access points in the vicinity of the Protected Property.

(vi) **Sustainable Land Uses.** To ensure that public access and other permitted uses are conducted and maintained in a Sustainable manner that will neither diminish the biological integrity of the Protected Property nor deplete natural resources over time nor lead to an irreversible disruption of ecosystems and associated processes.

1.04 Baseline Documentation

The specific Conservation Values of the Protected Property and its current use and state of Improvement are documented in a Baseline Documentation Report (the “**Baseline Documentation Report**”), prepared by the Holder and to be kept at the principal office of the Holder. As of the Easement Date, the Grantor and Holder have signed and acknowledged the Report to be complete and accurate as of the Easement Date. The Report includes reports, maps, photographs and other documentation, to be used by the Holder to assure that any future changes in the use of the Protected Property will be consistent with the terms of this Conservation

Easement. (However, the Report is not intended to preclude the use of other evidence to establish additional Conservation Value of the Protected Property now or in the future.)

1.05 Federal Tax Items

(a) **Holder.** The Holder is a qualified, tax-exempt, publicly supported organization under Section 501(c) of the Internal Revenue Code, 26U.S.C. § 501(c), as amended, and is eligible to be a Holder of conservation easements under Applicable Law, and the Holder has agreed to accept this grant of Conservation Easement.

(b) **Qualified Conservation Contribution.** The undersigned Grantor and Holder confirm that the grant to the Holder of this Conservation Easement is not intended to be a Qualified Conservation Contribution under the Code and Regulations.

(c) **Public Benefit.** The Grantor has granted the Conservation Easement to provide a significant public benefit (as defined in §1.170A-14(d)(4) of the Regulations). In addition to the public benefits described in the Conservation Purposes, the Baseline Documentation Report identifies public policy statements and other factual information supporting the significant public benefit of this Conservation Easement, including:

(i) Preserving a relatively natural environment as described in the Conservation Purposes.

(ii) Preserving Open Space in furtherance of the public policies.

(d) **Mineral Interests.** No Person has retained a qualified mineral interest in the Protected Property of a nature that would disqualify the Conservation Easement for purposes of §1.170A-14(g)(4) of the Regulations. From and after the Easement Date, the grant of any such interest is prohibited and the Holder has the right to prohibit the exercise of any such right or interest if granted in violation of this provision.

(e) **Notice Required under Regulations.** To the extent required for compliance with §1.170A-14(g)(5)(ii) of the Regulations, and only to the extent such activity is not otherwise subject to Review under this Grant, the Grantor agrees to Notify the Holder before exercising any reserved right that may have an adverse impact on the Conservation Values associated with the Protected Property.

(f) **Property Right.** In accordance with §1.170A-14(g)(6) of the Regulations, the Grantor agrees that the grant of this Conservation Easement gives rise to a property right, immediately vested in the Holder, that entitles the Holder to compensation upon extinguishment of the easement. The fair Market Value of the property right is to be determined in accordance with the Regulations; i.e., it is at least equal to the proportionate value that the Conservation Easement as of the Easement Date bears to the value of the Protected Property as a whole as of the Easement Date (the "Proportionate Value"). If the Proportionate Value exceeds the compensation otherwise payable to the Holder under Article V, the Holder is entitled to payment of the Proportionate Value. Holder must use any funds received on account of the Proportionate Value for conservation purposes (as that phrase is defined in the Regulations).

(g) **Acknowledgment of Donation.** Except for such monetary consideration (if any) as is set forth in this Article, the Holder acknowledges that no goods or services were received in consideration of this Grant.

(h) No Representation of Tax Benefits. The Grantor represents, warrants and covenants to the Holder that:

- (i)** The Grantor has not relied upon any information or analyses furnished by the Holder with respect to either the availability, amount or effect of any deduction, credit or other benefit to Grantor under Applicable Law; or the value of the Conservation Easement or the Protected Property.
- (ii)** The Grantor has relied solely upon its own judgment and/or professional advice furnished by the appraiser and legal, financial and accounting professionals engaged by the Grantor. If any Person providing services in connection with this Conservation Easement or the Protected Property was recommended by the Holder, the Grantor acknowledges that the Holder is not responsible in any way for the performance of services by these Persons.
- (iii)** This Grant is not conditioned upon the availability or amount of any deduction, credit or other benefit under Applicable Law.

1.06 Beneficiaries

This Conservation Easement does not confer any rights or remedies upon any Person other than the Grantor and Holder. No other Persons are vested with any rights, whether arising under this Conservation Easement or otherwise under Applicable Law.

ARTICLE II

TRANSFER; SUBDIVISION

2.01 Transfer

- (a) Notice Required.** Not less than thirty (30) days prior to transfer of the Protected Property, Grantor must Notify Holder of the name(s) and address for notices of the Persons who will become Owners following the transfer.
- (b) Prior to Transfer.** Owners authorize Holder to (i) contact the Persons to whom the Protected Property will be transferred, and other Persons representing Owners or the prospective transferees, to discuss with them this Conservation Easement and, if applicable, other pertinent documents; and (ii) enter the Protected Property to assess compliance with this Conservation Easement. Grantor and all subsequent Owners agree that Holder's right to enter, access, and inspect the Protected Property shall run with the land and be binding upon any transferees, assignees, grantees, lessees or receivers of the Protected Property.
- (c) Ending Continuing Liability.** Grantor prior to transfer is liable, on a joint and several basis with the Owners following the transfer, for the correction of violations and discharge of other obligations of Grantor under this Grant. This provision continues to apply until Holder has been notified of the transfer, inspects the Protected Property after the transfer, and reports no violations observed during such inspection.

2.02 Prohibitions

No transfer of a Lot independent of the remainder of the Protected Property; no change in the boundary of any Lot; and no other Subdivision is permitted.

ARTICLE III.

ACTIVITIES AND USES

3.01 Prohibited Activities and Uses

Any activity on or use of the Protected Property that is inconsistent with the Conservation Purposes of this Conservation Easement is prohibited, subject to the Reserved Rights and Permitted Uses as specified in Sections 3.02 and 3.03 below. Without limiting the generality of the foregoing, the following activities and uses are **expressly prohibited**:

- (a) Except as provided in Section 3.03 below, the change, disturbance, alteration, or impairment of the relatively natural habitat for plants, wildlife, or similar ecosystems within or upon the Protected Property.
- (b) Any Commercial or Agricultural Uses of the Protected Property.
- (c) Except as provided in section 3.03 below, any private or public gathering or event, including but not limited to, festivals, fairs, concerts, markets, within or upon the Protected Property.
- (d) Except as provided in Section 3.03 below, the Construction and/or placement of any structure or Improvement, including but not limited to, a building, dwelling, office, mobile home, tent, asphalt, concrete pavement, any portion of a septic system, tennis court or other recreational court, swimming pool, dock, aircraft landing strip, tower, Utility Improvement, antenna, underground utilities, conduit, line, lighting, billboard or other advertising display, or any other temporary or permanent structure or facility.
- (e) The conveyance of leases, easements, and rights-of-ways without first obtaining the express written consent of Holder, which may be withheld by Holder for any reason.
- (f) Except as provided in Section 3.03 below, the Construction of roadways.
- (g) The erection, Construction, installation, relocation or use of any lighting which interferes with wildlife on the Protected Property or with landowners or visitors within the scenic viewscape of the Protected Property.
- (h) Except as provided in Section 3.03 below, the placement of any camping, resting or gathering structure, including but not limited to, a tent, umbrella, tarp, hammock, lean to, shed, shelter, recreational vehicle or any other temporary or permanent camping, resting or gathering structure or facility.
- (i) The Construction, placement or use of any temporary or permanent cooking or fire structure, including but not limited to, campfires, fire pits, fire circles, cooking grills, gas stoves or portable cooking stoves.
- (j) The introduction of fire to the Protected Property unless part of a Habitat Management Plan as described in Section 3.03 below.
- (k) The division, subdivision, partitioning or *de facto* subdivision of the Protected Property into two or more parcels of land or separate interests, or conveyance of individual tracts separately from one another.

- (l) Except as provided in Section 3.03 below, the ditching, draining, diking, filling, manipulation, diversion or otherwise changing of the topography or surface hydrology of the Protected Property in any manner.
- (m) Any use that would increase or substantially add to the risk of erosion as determined by historical and current scientific literature.
- (n) The exploration for, or extraction of, minerals, oil, gas, or other hydrocarbons, soils, sands, gravel, rock, field stone or other materials on or below the surface of the Protected Property.
- (o) The transfer, encumbrance, lease, sale or other separation of the minerals, oil, gas, or other hydrocarbons, soils, sands, gravel, rock, field stone or other materials from the Protected Property.
- (p) The transfer, encumbrance, lease, sale or other separation of the water rights on the Protected Property.
- (q) The removal, harvesting, destruction or cutting of Native Species of vegetation unless in accordance with a Habitat Management Plan as described in Section 3.03 below.
- (r) Except as provided in Section 3.03 below, the introduction of Non-Native Species of vegetation and/or animals to the Protected Property.
- (s) The gathering, displacement, and/or removal of firewood, rocks, fossils, artifacts, plants, wildflowers, fungi, leaves, animals, insects or other living or non-living things, remains or specimens, unless in accordance with a Habitat Management Plan or approved research or educational program, as provided in Sections 3.03 and 4.03 below.
- (t) The application of chemicals including but not limited to herbicides, biocides, pesticides, insecticides, fungicides, rodenticides and fertilizers, unless in accordance with a Habitat Management Plan as described in Section 3.03 below.
- (u) The storage or dumping of ashes, litter, trash, garbage, human or pet waste, solid waste or other unsightly or offensive material, hazardous or petroleum substance, hazardous or toxic waste, nor any placement of aboveground or underground storage tanks in, on, or under the Protected Property.
- (v) Except as provided in Section 3.03 below, the pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, seeps, springs, ground or subsurface water or any other water bodies, within or upon the Protected Property, nor shall activities be conducted on adjacent property, if owned by Grantor, that would be detrimental to water purity or that could alter the natural water level or flow in, under or over the Protected Property.
- (w) Except as provided in Section 3.03 below, the use of motorized or recreational vehicles, including but not limited to, the operation of snowmobiles, dune buggies, motorcycles, all-terrain or off-road vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles.
- (x) Neither the Protected Property nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, Lot coverage, or Open Space requirements under otherwise Applicable

Laws, Regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to transferrable development rights, scheme cluster development arrangement or otherwise.

3.02 Reserved Rights of Grantor

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns of the Protected Property (each of which shall be "Grantor" within the meaning of this paragraph), all rights accruing from its Ownership of the Protected Property not otherwise conflicting with the terms of this Easement, including the right to engage in, permit or invite others to engage in all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the Conservation Purposes of this Conservation Easement, including without limitation the rights and permitted uses set forth below:

- (a) **Public Use and Access.** Grantor reserves the right to allow public access and use of the Protected Property subject to the restrictions outlined by this Conservation Easement for the purpose of permitted outdoor recreational activities and educational outreach to enhance the quality of life.
- (b) **Existing Uses.** Grantor may undertake or continue any activity not prohibited by this Conservation Easement. Prior to making any change in the use of the Protected Property, the Grantor shall Notify Holder in writing to allow Holder a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.

3.03 Permitted Uses

The parties agree that the following uses of the Protected Property are permitted, as specified below:

- (a) **Special Events.** *Subject to Review by Holder as specified in Section 4.04 below*, the Grantor may permit or host special events by specific groups and by city permit only of short duration within the Protected Property, including organized bike races, trail runs, bio-blitzes and camping outings, so long as such events do not substantially diminish or impair the Conservation Values of the Protected Property. Special Events may include the temporary use of service vehicles, cooking grills or bonfires, temporary tents, shade structures, and toilet and refreshment areas.
- (b) **Structures.** *Subject to Review by Holder as specified in Section 4.04 below*, the Grantor may construct, maintain, repair, remove or replace any of the following, provided that the structure is of a reasonably limited footprint, is architecturally consistent with the natural setting of the Protected Property, does not pose a threat to sensitive species or ecologically sensitive habitats, and is in accordance with local, state, and federal laws. Any area of the Protected Property disturbed in the process of Construction must be restored to a natural condition promptly after completion to ensure that the activity does not substantially diminish or impair the Conservation Values.
 - (i) **Pavilion.** One (1) open-air pavilion.
 - (ii) **Additional Structures.** Holder may adjust structure limit to accommodate specific recommendations that are made through the *Public Park Planning Process* as

specified in Section 3.04 in keeping with the spirit and intent of this Conservation Easement.

- (iii) **Wildlife Viewing and Habitat Structures.** A reasonable and necessary number of raised walkways, wildlife viewing platforms, bird blinds, and habitat enhancement devices such as bat boxes, bird houses.

(c) **Trails.** As shall be identified in the master trail plan (the “**Master Trail Plan**”), which may be reviewed and updated subject to *approval through the Public Park Planning Process as specified in Section 3.04*, the Grantor may construct, install, maintain and repair any one or more of the items as described in paragraphs i-vii of this section, including mowing, cutting or removal of soil, rock or vegetation, so long as improvements do not pose a threat to sensitive species or ecologically sensitive habitats. These activities may include vehicular use.

- (i) **Trail Uses.** Trails may be used for walking, hiking, jogging, bicycling, bird watching and nature study.
- (ii) **Trail Width.** Trails shall be no more than four (4) feet in width where possible and in no case should exceed six (6) feet in width together with steps, railings, features and other surface structures which, as to Wet Areas, may include bridges and culverts (collectively, “**Trails**”).
- (iii) **Trail Design.** Trails shall be constructed and maintained in accordance with then-current, generally accepted Best Management Practices for the sites, soils, hydrology, habitats and terrain of the Protected Property.
- (iv) **Trail Location.** The location and density of trails shall be planned in a manner consistent with the preservation of the natural integrity of the Protected Property, including avoidance of impact to ecologically significant areas and species of special conservation concern.
- (v) **Trail Covering.** All trails will be natural surface and may be covered, if at all, by wood chips, gravel, or any other porous surface so as to blend with the natural surroundings and not to enhance stormwater runoff. Notwithstanding the foregoing restrictions, specific segments of the trails more particularly identified in the master trail plan (the “**Master Trail Plan**”), shall be permitted to be paved as more particularly set forth in the Master Trail Plan and shall be subject to the following requirements: (1) the exact routing of any paved trail(s) shall be approved by Holder, (2) the maximum trail width for any paved sections shall be no more than 20 feet, including any abutting mowed shoulders and edges, and (3) pervious pavement is encouraged where suitable for any such paved portions of the trail(s).
- (vi) **Trail Signage.** Trails may include signs to mark the trail, to provide information regarding restrictions, and for interpretive purposes. Signage shall be unobtrusive in nature and planned with the express goal of minimizing impact to the vistas and Open Space nature of the Protected Property.
- (vii) **Trail Facilities.** Trails may include benches, picnic tables, wastebaskets and bicycle racks, as may be deemed necessary. The design, location and density of trail facilities shall be architecturally consistent with the natural setting of the Protected Property and planned with the express goal of minimizing impact to ecologically

significant areas and species of special concern, and ensuring the vistas and Open Space nature of the Protected Property.

(d) Road Construction. *Subject to Review by Holder as specified in section 4.04 below,* maintenance and emergency Access Drives may hereafter be constructed where reasonably necessary to provide access for maintenance and emergency personnel only. Such Access Drives on the Protected Property:

- (i)** Shall be limited to the minimum number, width and length necessary to provide access for permitted purposes.
- (ii)** Shall follow the general contour of the natural terrain where possible and shall be designed with extreme care and concern for the natural integrity of the Protected Property, particularly the avoidance of ecologically significant areas.
- (iii)** Shall be gated and posted to prevent unauthorized access.
- (iv)** Shall be planned to maximize the ability of the road to be reclaimed and returned to a natural state when it is no longer required or needed.

(e) Fences. Existing fences may be repaired and replaced, and new fences may be built, on the Protected Property for purposes of reasonable and customary access control and protection of resources, provided that fencing does not substantially diminish or impair the Conservation Values, including aesthetic and scenic values, of the Protected Property, and does not exclude or restrict wildlife movement on or off of the Protected Property.

(f) Stream Restoration Construction and Repairs. *Subject to Review by Holder as specified in Section 4.04 below,* the Grantor may carry out stream restoration activities including, excavation, fill, rock structures, tree and vegetation establishment, erosion control, and natural channel Construction and repairs as needed, through or under the guidance of a qualified stream restoration expert.

(g) Service Vehicles. Grantor may use, or permit the use of, service vehicles and motorized equipment, including motorized recreational vehicles, on the Protected Property provided that:

- (i)** The use of such vehicles is reasonable and necessary for maintenance and/or emergency access to the Protected Property, or for providing access to people with disabilities.
- (ii)** The permission afforded by Grantor consists of short-term license and is not a right-of-way, easement, or other permanent legal interest.
- (iii)** Vehicles take care to avoid ecologically significant areas and species of special conservation concern on the Protected Property.

(h) Habitat Management. Grantor reserves the right to conduct habitat management activities subject to federal, state and local regulations and the specific terms and conditions of the Conservation Easement, and shall be conducted in accordance with the following provisions:

- (i) Ten Year Habitat Management Plan.** All habitat management activities shall be conducted in accordance with a written plan (a “**Habitat Management Plan**”) subject to review and approval by Grantor. The Habitat Management Plan shall be prepared

by a Qualified Preparer prior to any treatment activities, and should, if possible, be reviewed and updated at least every ten years. Grantor is not required to fund the Habitat Management Plan. The Habitat Management Plan shall include, at a minimum, the following:

- 1) Goals and objectives of the Grantor, consistent with the purposes and terms of the Conservation Easement.
- 2) Identification and mapped location of significant habitat types, species of special conservation concern, and natural and physical features of the Protected Property.
- 3) A description of the current and desired natural condition and threats to each habitat type.
- 4) A description of contemplated management plans and proposed access plan for each habitat type.
- 5) A description of foreseeable situations in which chemical application will be recommended, including the type, amount, method of application, and recommended limitations to protect water quality and sensitive species.
- 6) A description of recommended Soil Conservation Plan; erosion control and reclamation practices to ensure soil stabilization and to maintain the scenic quality of the Protected Property.

(i) **Cutting and Clearing of Trees.** Grantor may engage in the following non-commercial Forestry practices:

- (i) The cutting and removal of Non-Native Species, invasive, or diseased trees, shrubs that may endanger public safety or need to be removed to ensure the health of other trees or ecological attributes of the Protected Property, and these activities may involve the temporary introduction of goats.
- (ii) *Subject to Review by Holder as specified in Section 4.04 below*, the cutting of firebreaks, except that such approval shall not be required in the case of emergency firebreaks.

3.04 Public Park Planning Process

Before undertaking any Construction, or Additional Improvements, aside from minor improvements and repairs, and as specified for any reserved right or exception to a prohibited use that will disrupt the surface of the Protected Property, Grantor shall engage in a public park planning process (a “**Public Park Planning Process**”) to address the specific Construction or Additional Improvement or other surface disruption that is contemplated to be undertaken on the Protected Property. This Public Park Planning Process shall include Holder or its designated representative, with Grantor providing specific Notice to Holder, as specified in Section 4.04 below, of the hearing no less than thirty (30) days in advance of said hearing.

3.05 Permitted Uses Within Minimal Protection Area

As demonstrated in Exhibits “A” and “B”, a buffer zone (the “**Minimal Protection Area**”) exists on the Protected Property pursuant to the establishment of the Regional Park. The following activities and uses are permitted within the Minimal Protection Area:

(a) Activities and uses permitted under preceding sections of this Article are permitted with the Minimal Protection Area. Introduction of Invasive Species remains prohibited.

(b) Disturbances of resources within the Minimal Protection Area are permitted for purposes reasonably related to the development, maintenance and use of the Regional Park so long as those activities do not further encroach outside of the Minimal Protection Area.

ARTICLE IV.

RIGHTS AND DUTIES OF GRANTEE

4.01 Grant to Holder

(a) **Grant in Perpetuity.** By signing this Grant and unconditionally delivering it to Holder, the Grantor, intending to be legally bound, grants and conveys to Holder a Conservation Easement over the Protected Property in perpetuity for the purpose of advancing the Conservation Purposes and administering and enforcing the restrictions and limitations set forth in Articles II and III. The parties agree that this Conservation Easement and the covenants, conditions, and restrictions set forth herein shall run with the land and be binding upon each of their respective successors, assigns, grantees, and lessees.

(b) **Superior to all Liens.** The Grantor represents and warrants to Holder that the Protected Property is, as of the Easement Date, free and clear of all Liens or, if it is not, that Grantor has obtained and recorded in the Public Records the legally binding and recorded subordination of any Liens affecting the Protected Property as of the Easement Date. Grantor hereby agrees that it shall not further encumber the Protected Property with any Liens or encumbrances without obtaining a) prior written consent from Holder in Holder's sole discretion in accordance with the Notice provisions set forth in Section 6.01 hereof, and b) a subordination agreement meeting the requirements of Holder that subordinates the Lien or encumbrance to the terms and conditions of this Easement.

4.02 Rights and Duties of Holder

The items set forth below are both rights and duties vested in Holder by this Conservation Easement:

(a) **Protect in Perpetuity.** To protect the Conservation Values of the Protected Property in perpetuity.

(b) **Entry.** To enter the Protected Property without notice, and, if necessary, across other adjacent lands retained by the Grantor, for the purposes of exercising the rights and duties herein.

(c) **Inspection.** To inspect the Protected Property for compliance with the requirements of this Conservation Easement and any suspected, alleged or threatened violation.

(d) **Enforcement.** To enforce the terms of this Conservation Easement by exercising Holder's remedies in Article V.

(e) **Review.** To exercise rights of Review and approval in accordance with the requirements of this Conservation Easement.

(f) **Interpretation.** To interpret the terms of this Conservation Easement and, at the request of Grantor, furnish Holder's explanation of the application of such terms to then-existing, proposed or reasonably foreseeable conditions within the Protected Property.

4.03 Other Rights of Holder

The items set forth below are also rights vested in Holder by this Conservation Easement; however, Holder, in its discretion, may or may not exercise them:

(a) **Amendment.** To enter into an Amendment with Grantor if Holder determines that the Amendment is consistent with and in furtherance of the Conservation Purposes, will not result in any private benefit prohibited under the Code, and otherwise conforms to Holder's policy with respect to Amendments.

(b) **Signs.** To place one or more signs within the Protected Property identifying it as a Conservation Easement protected by the Holder. Signs are to be of the customary size installed by Holder and must be installed in locations reasonably acceptable to Grantor.

(c) **Proceedings.** To assert a claim, defend or intervene in, or appeal, any proceeding under Applicable Law that pertains to the impairment of the Conservation Values of the Protected Property or may result in a transfer, Improvement or use that violates the terms of this Conservation Easement.

(d) **Biological Monitoring.** To monitor the condition of any plant and/or animal populations, communities, natural habitats, restored areas and natural features on the Protected Property, including non-intrusive scientific studies and taking of samples for such purposes.

(e) **Habitat Maintenance.** With the express written consent of Grantor, Holder may manage or repair the condition of any plant and/or animal populations, communities, natural habitats, restored areas and natural features on the Protected Property to ensure their continued presence, functionality and viability. This description does not preclude Holder from exercising rights and remedies as specified under Article V.

4.04 Review

The following provisions are incorporated into any provision of this Conservation Easement that is subject to Review by Holder:

(a) **Notice to Holder.** Not less than twenty-one (21) days before Grantor begins or allows any Construction, Improvement, activity or use that is contrary to this Easement in any way or is subject to Review by Holder, Grantor must *Notify Holder as specified in Section 6.01 below* of the change including with the Notice such information as is reasonably sufficient to comply with Review Requirements and otherwise describe the change and its potential impact on the natural resources within the Protected Property.

(b) **Notice to Grantor.** Within fifteen (15) days after receipt of Grantors' Notice, Holder must *Notify Grantor as specified in Section 6.01 below* of Holder's determination to (i) accept Grantors' proposal in whole or in part; (ii) reject Grantors' proposal in whole or in part; (iii) accept Grantors' proposal conditioned upon compliance with conditions imposed by Holder; or (iv) reject Grantors' Notice for insufficiency of information on which to base a determination. If Holder gives conditional acceptance under clause (iii), commencement of

the proposed Construction, Improvement, activity or use constitutes acceptance by Grantor of all conditions set forth in Holder's Notice.

(c) Failure to Notify. If Holder fails to Notify Grantor as required in the preceding subsection (b), the proposal set forth in Grantors' Notice is deemed approved.

(d) Standard of Review. Except when specifically stated to the contrary as set forth herein, Holder's approval of items subject to Review is not to be unreasonably withheld. It is not unreasonable for Holder to disapprove a proposal that it determines, in its sole discretion, may adversely affect natural resources described in the Conservation Purposes or that is otherwise inconsistent with maintenance or attainment of Conservation Purposes. Approval of appropriate proposals keeping with the spirit and intent of the Conservation Easement shall not be unreasonably withheld.

4.05 Reimbursement

Other than costs incurred monitoring compliance with this Easement in the ordinary course, Grantor must reimburse Holder for the costs and expenses of Holder reasonably incurred in the course of performing its duties with respect to this Conservation Easement other than monitoring in the ordinary course, such as but not limited to, requests by Grantor for Amendment, or requests by Grantor for Holder to intercede in a proceeding affecting the Protected Property. These costs and expenses include the allocated costs of employees of Holder. Grantor is not responsible to reimburse costs and expenses arising from Holder's response to an inquiry or request by a Person other than Grantor without Grantors' approval. Holder must obtain approval prior to incurring any expense expected to be paid for by the Grantor. Approval of expenditure is dependent upon a formal agreement.

ARTICLE V.

VIOLATION; REMEDIES

5.01 Breach of Duty

If Holder fails to enforce the terms of this Conservation Easement, or ceases to qualify as a Qualified Organization, then the Conservation Easement may be transferred to another Qualified Organization. Such transfer shall be subject to the review and approval of Grantor.

5.02 Violation

If Holder determines that the terms of this Conservation Easement are being or have been violated or that a violation is threatened or imminent then the provisions of this section will apply:

(a) Notice. Holder must Notify Grantor of any violation. Holder's Notice may include its recommendations of measures to be taken by Grantor to cure the violation and restore features of the Protected Property damaged or altered as a result of the violation.

(b) Opportunity to Cure. Grantors' cure period expires thirty (30) days after the date of Holder's Notice to Grantor subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied:

- (i)** Grantor ceases the activity constituting the violation promptly upon receipt of Holder's Notice;
- (ii)** Grantor and Holder agree, within the initial thirty (30) day period, upon the measures Grantor will take to cure the violation;
- (iii)** Grantor commences to cure within the initial thirty (30) day period; and
- (iv)** Grantor continues thereafter to use best efforts and due diligence to complete the agreed upon cure.

(c) Imminent Harm. No Notice or cure period is required if circumstances require prompt action to prevent or mitigate irreparable harm or alteration to any natural resource or other feature of the Protected Property described in the Conservation Purposes.

5.03 Remedies

Upon expiration of the cure period (if any) described in the preceding section, Holder may do any one or more of the following:

- (a) Injunctive Relief.** Seek injunctive relief to specifically enforce the terms of this Conservation Easement; to restrain present or future violations of the terms of this Conservation Easement; and/or to compel restoration of resources destroyed or altered as a result of the violation.
- (b) Civil Action.** Recover from Grantor or other Persons responsible for the violation all sums owing to Holder under applicable provisions of this Conservation Easement together with interest thereon from the date due at the Default Rate. These monetary obligations include, among others, Losses and Litigation Expenses.
- (c) Self-Help.** Enter the Protected Property to prevent or mitigate further damage to or alteration of natural resources of the Protected Property identified in the Conservation Purposes.

5.04 Modification or Termination

If the Conservation Easement is or is about to be modified or terminated by exercise of the power of eminent domain (condemnation) or adjudication of a court of competent jurisdiction sought by a Person other than Holder the following provisions apply:

- (a) Compensatory Damages.** Holder is entitled to collect from the Person seeking the modification or termination, compensatory damages in an amount equal to the increase in Market Value of the Protected Property resulting from the modification or termination plus reimbursement of Litigation Expenses as if a violation had occurred.

(b) Restitution. Holder is entitled to recover from the Person seeking the modification or termination, (i) restitution of amounts paid for this Conservation Easement (if any) and any other sums invested in the Protected Property for the benefit of the public as a result of rights vested by this Conservation Easement plus (ii) reimbursement of Litigation Expenses as if a violation had occurred.

5.05 Remedies Cumulative

The description of Holder's remedies in this Article does not preclude Holder from exercising any other right or remedy that may at any time be available to Holder under this Article or Applicable Law. If Holder chooses to exercise one remedy, Holder may nevertheless choose to exercise any one or more of the other rights or remedies available to Holder at the same time or at any other time.

5.06 No Waiver

If Holder does not exercise any right or remedy when it is available to Holder, that is not to be interpreted as a Waiver of any non-compliance with the terms of this Conservation Easement or a Waiver of Holder's rights to exercise its rights or remedies at another time.

5.07 No Fault of Grantor

Holder will waive its right to reimbursement under this Article as to Grantor (but not other Persons who may be responsible for the violation) if Holder determines in its sole discretion that the violation was not the fault of Grantor and could not have been anticipated or prevented by Grantor by reasonable means.

ARTICLE VI.

MISCELLANEOUS

6.01 Notices

(a) Requirements. Each Person giving any notice pursuant to this Conservation Easement (a "Notice") must give the Notice in writing and must use one of the following methods of delivery: (i) personal delivery; (ii) electronic mail with written confirmation of receipt; (iii) certified mail, return receipt requested and postage prepaid; or (iv) nationally recognized overnight courier, with all fees prepaid. Each time the term "Notify" is used herein, it shall be deemed to refer to sending a Notice in accordance with this Article VI.

(b) Address for Notices. Each Person giving a Notice must address the Notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by Notice to the other Person:

If to Grantor: City of Fayetteville
113 W. Mountain Street
Fayetteville, AR 72701

If to Holder: Northwest Arkansas Land Trust
P.O. Box 2211
Bentonville, AR 72712

6.02 Governing Law

The laws of the State of Arkansas govern this Conservation Easement.

6.03 Assignment and Transfer

Neither Grantor nor Holder may assign or otherwise transfer any of their respective rights or duties under this Conservation Easement voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner except as permitted below. Any purported assignment or transfer in violation of this section is void.

(a) **By Holder.** Holder may assign its rights and duties under this Conservation Easement, either in whole or in part, but only to a Qualified Organization, subject to review and approval of Grantor, that executes and records in the Public Records a written agreement assuming the obligations of Holder under this Conservation Easement. The Holder must notify Grantor within 30-days prior to the assignment of the identity and address of the Qualified Organization who has agreed to assume the obligation of the Holder under this Conservation Easement. The assigning Holder must deliver the Baseline Documentation Report to the assignee Holder as of the date of the assignment. Holder must assign its rights and duties under this Conservation Easement to another Qualified Organization if Holder becomes the Owner of the Protected Property.

(b) **By Grantor.** This Conservation Easement vests a servitude running with the land binding upon the undersigned Owners and, upon recordation in the Public Records, all subsequent Owners of the Protected Property or any portion of the Protected Property are bound by its terms whether or not the Owners had actual notice of this Conservation Easement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Conservation Easement.

6.04 Burdens; Benefits; Exclusive to Holder

Subject to the restrictions on assignment and transfer set forth in the preceding section, this Conservation Easement binds and benefits Grantor and Holder and their respective personal representatives, successors and assigns. Only the Holder (or its successors and assigns, as applicable) has the right to enforce the terms of this Conservation Easement and exercise rights of Review, Waiver, Amendment or other discretionary rights of Holder.

6.05 Requirement of Writing

No Amendment, Waiver, approval after Review, interpretation or other decision by Holder is valid or effective unless it is in writing and signed by an authorized signatory for Holder. This requirement may not be changed by oral agreement. The grant of an Amendment or Waiver in any instance does not imply that an Amendment or Waiver will be granted in any other instance.

6.06 Severability

If any provision of this Conservation Easement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Conservation Easement remain valid, binding and enforceable. To the extent permitted by Applicable Law, the parties waive any provision of Applicable Law that renders any provision of this Conservation Easement invalid, illegal or unenforceable in any respect.

6.07 Counterparts. This Conservation Easement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one document.

6.08 Guides to Interpretation

(a) **Captions.** Except for the identification of defined terms in the Glossary, the descriptive headings of the articles, sections and subsections of this Conservation Easement are for convenience only and do not constitute a part of this Conservation Easement.

(b) **Glossary.** If any term defined in the Glossary is not used in this Conservation Easement, the defined term is to be disregarded as surplus material.

(c) **Other Terms**

(i) The word “including” means “including but not limited to”.

(ii) The word “must” is obligatory; the word “may” is permissive and does not imply any obligation.

(d) **Conservation Easements Act.** This Conservation Easement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a Holder of a conservation easement under the Conservation Easements Act as set forth in Arkansas Code Ann. § 15-20-401 *et seq.*

(e) **Restatement (Third) of the Law of Property: Servitudes.** This Conservation Easement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a Holder of a conservation servitude under the Restatement (Third) of the Law of Property, to the extent that Arkansas law or other Applicable Law does not provide sufficient guidance.

6.09 Entire Agreement. This is the entire agreement of Grantor and Holder pertaining to the subject matter of this Conservation Easement. The terms of this Conservation Easement supersede in full all statements and writings between Grantor, Holder and others pertaining to the transaction set forth in this Conservation Easement.

6.10 Incorporation by Reference. Each exhibit attached to this Conservation Easement is incorporated into this Conservation Easement by this reference. The Baseline Documentation Report (whether or not attached to this Conservation Easement) is incorporated into this Conservation Easement by this reference.

ARTICLE VII.

GLOSSARY

7.01 Access Drive(s)

Roads, drives or lanes providing vehicular access to or located within the Protected Property.

7.02 Additional Improvements

All buildings, structures, facilities and other Improvements within the Protected Property, whether temporary or permanent, other than Existing Improvements.

7.03 Agricultural or Agriculture Uses

Any one or more of the following and the leasing of land for any of these purposes:

(a) Farming. Farming activities, including, but not limited to:

(i) Production of vegetables, fruits, seeds, mushrooms, nuts and nursery crops (including trees) for sale.

(ii) Production of poultry, livestock and their products for sale.

(iii) Production of field crops, hay or pasture.

(iv) Production of sod to be removed and planted elsewhere.

(b) Equestrian. Boarding, stabling, raising, feeding, grazing, exercising, riding and training horses and instructing riders.

7.04 Amendment

An amendment, modification or supplement to this Grant signed by Owners and Holder and recorded in the Public Records.

7.05 Applicable Law

Any federal, state or local laws, statutes, Codes, ordinances, standards and Regulations applicable to the Protected Property, the Conservation Easement or this Grant as amended through the applicable date of reference. If this Grant is intended to meet the requirements of a qualified conservation contribution, then applicable provisions of the Code and the Regulations are also included in the defined term.

7.06 Best Management Practices

A series of guidelines or minimum standards (sometimes referred to as BMP's) recommended by federal, state and/or county resource management agencies for proper application of Forestry operations, habitat management, trail Construction, non-point pollution of water resources and other disturbances of soil, water and vegetative resources and to protect wildlife habitats.

7.07 Code

The Internal Revenue Code of 1986, as amended through the applicable date of reference.

7.08 Commercial Use

The use or leasing of land for purposes designed or used for retail, office or other commercial use.

7.09 Conservation Easement Act

The Arkansas Conservation Easements Act (A.C.A. § 15-20-401 *et seq.*) as amended through the applicable date of reference.

7.10 Construction

Any demolition, Construction, reconstruction, expansion, exterior alteration, installation or erection of temporary or permanent Improvements; and, whether or not in connection with any of the foregoing, any excavation, dredging, mining, filling or removal of gravel, soil, rock, sand, coal, petroleum or other minerals.

7.11 Default Rate

An annual rate of interest equal at all times to two percent (2%) above the “prime rate” announced from time to time in *The Wall Street Journal*; provided, however, that the Default Rate shall never exceed the maximum rate allowed under Applicable Law.

7.12 Existing Agreements

Easements and other servitudes affecting the Protected Property prior to the Easement Date that constitute legally binding servitudes prior in right to the Conservation Easement.

7.13 Existing Improvements

All buildings, structures, facilities and other improvements, whether temporary or permanent, located on, above or under the Protected Property as of the Easement Date as identified in the Baseline Documentation Report.

7.14 Forestry

Planting, growing, nurturing, managing and harvesting trees whether for timber and other useful products or for water quality, wildlife habitat and other Conservation Purposes.

7.15 Impervious Surfaces

Surfaces that impenetrable to water and incapable of supporting vegetation, such as asphalt, concrete, brick, stone and highly compacted soils. Impervious surfaces seal the soil surface, preventing rainwater infiltration and natural groundwater recharge, increase rainwater runoff and the portage of pollutants into nearby waterway, and deprive tree roots of aeration.

7.16 Improvement

Any Existing Improvement or Additional Improvement.

7.17 Indemnified Parties

Holder and its respective members, directors, officers, employees and agents and the heirs, personal representatives, successors and assigns of each of them.

7.18 Invasive Species

A plant species that is (a) Non-Native (or alien) to the ecosystem under consideration; and/or (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, publications are to be used to identify Invasive Species.

7.19 Lien

Any mortgage, lien or other encumbrance securing the payment of money.

7.20 Litigation Expense

Any court filing fee, court cost, arbitration fee or cost, witness fee and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Grant including in each case, attorneys’ fees, other professionals’ fees and disbursements.

7.21 Losses

Any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.

7.22 Lot

A unit, lot or parcel of real property separated or transferable for separate Ownership or lease under Applicable Law.

7.23 Market Value

The fair value that a willing buyer, under no compulsion to buy, would pay to a willing seller, under no compulsion to sell as established by appraisal in accordance with the then-current edition of Uniform Standards of Professional Appraisal Practice issued by the Appraisal Foundation or, if applicable, a qualified appraisal in conformity with §1.170A-13 of the Regulations.

7.24 Native Species

A plant or animal indigenous to the locality under consideration. In cases of uncertainty, published atlases are to be used to establish whether or not a species is native.

7.25 Non-Native Species

A plant or animal that is not indigenous (alien) to the locality under consideration. In cases of uncertainty, published atlases are to be used to establish whether or not a species is non-native.

7.26 Open Space

Open Space is any open piece of land that is undeveloped and helps enhance the beauty and environmental quality of a community.

7.27 Owners/Ownership

The Grantor and all Persons after them who hold a fee simple ownership interest in the Protected Property.

7.28 Person

An individual, organization, trust, government or other entity.

7.29 Public Records

The public records of the office for the recording of deeds in and for the county in which the Protected Property is located.

7.30 Qualified Organization

A governmental or non-profit entity that (a) has a perpetual existence; (b) is established as a public charity for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and other charitable, scientific and educational purposes; (c) meets the criteria of a qualified organization under the Regulations; and (d) is duly authorized to acquire and hold conservation easements under Applicable Law.

7.31 Qualified Preparer

A resource management professional with educational background and experience related to the management of natural lands.

7.32 Regulations

The provisions of C.F.R. §1.170A-14, and any other regulations promulgated under the Code that pertain to qualified conservation contributions, as amended through the applicable date of reference.

7.33 Habitat Management Plan

A record of the decisions and intentions of Grantor prepared by a qualified resource management professional for the purpose of protecting natural resources described in the Conservation Purposes during certain operations potentially affecting natural resources protected by this Conservation Easement. The Habitat Management Plan (sometimes referred to as the "HMP") includes a resource assessment, identifies appropriate performance standards (based upon Best Management Practices where available and appropriate) and projects a multi-year description of planned activities for identified operations to be conducted in accordance with the plan.

7.34 Review

Review and approval of Holder under the procedure described in Article IV.

7.35 Review Requirements

Collectively, any plans, specifications or information required for approval of the activity, use or Construction under Applicable Law (if any) plus (a) the information required under the Review Requirements incorporated into this Conservation Easement either as an exhibit or as part of the Baseline Documentation Report or (b) if the information described in clause (a) is inapplicable, unavailable or insufficient under the circumstances, the guidelines for Review of submissions established by Holder as of the applicable date of reference.

7.36 Soil Conservation Plan

A plan for soil conservation and/or sedimentation and erosion control that meets the requirements of Applicable Law.

7.37 Subdivision

Any division of the Protected Property or any Lot within the Protected Property; and any creation of a unit, Lot or parcel of real property, including subsurface portions of the Protected Property, for separate use or Ownership by any means including by lease or by implementing the condominium form of Ownership.

7.38 Sustainable

Land management practices that provide goods and services from an ecosystem without degradation of biodiversity and resource values at the site and without a decline in the yield of goods and services over time.

7.39 Utility Improvements

Improvements for the reception, storage or transmission of potable water, stormwater, sewage, electricity, gas and telecommunications or other sources of power.

7.40 Waiver

A written commitment by which Holder, without any obligation to do so, agrees to refrain from exercising one or more of its rights and remedies for a specific period of time with respect to a specific set of circumstances if Holder is satisfied that the accommodation will have no material effect on Conservation Purposes.

7.41 Wet Areas

Watercourses, springs, wetlands and non-impounded standing water and areas within 100-feet of their edge.

7.42 Woodland Areas

Area(s) within the Protected Property described as “wooded” or “forested” in the Baseline Documentation Report or identified as such on the Habitat Management Plan, or if not wooded or forested as of the Easement Date, are designated as successional woodland areas on the Habitat Management Plan.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

INTENDING TO BE LEGALLY BOUND, each of the Grantor and Holder, by their respective duly authorized representatives, have signed and delivered this Conservation Easement as of the Easement Date. This Easement may be executed in multiple counterparts, which, when taken together, shall constitute a single instrument.

Witness:

GRANTOR:

Name: _____

CITY OF FAYETTEVILLE, ARKANSAS

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF ARKANSAS)
) ss
COUNTY OF WASHINGTON)

On this day before me, the undersigned Notary Public within and for the County and State aforesaid, duly commissioned, qualified and acting, appeared the within named _____, who executed the foregoing writing on behalf of the Grantor hereunder, and stated and acknowledged to me that the he/she was duly authorized in his/her capacity as _____ to execute the foregoing on behalf of the Grantor, and that the foregoing instrument was executed for the considerations and purposes therein mentioned and contained, and I hereby so certify.

IN WITNESS WHEREOF I have hereunto set my hand and seal, this the _____ day of _____, 2016.

My Commission Expires: _____

Notary Public

Witnesses:

HOLDER:

NORTHWEST ARKANSAS LAND TRUST

Eileen Jennings, Sec.
Eileen Jennings, Secretary

By: Thomas C. Oppenheim
Tom Oppenheim, President

ACKNOWLEDGEMENT

STATE OF ARKANSAS)
) ss
COUNTY OF WASHINGTON)

On this day before me, the undersigned Notary Public within and for the County and State aforesaid, duly commissioned, qualified and acting, appeared the within named Tom Oppenheim, who executed the foregoing writing as Holder, and acknowledged before me that he executed the same as President of the Northwest Arkansas Land Trust in name of and on behalf of the said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and seal as such Notary Public on this the 3 day of August, 2016.

My Commission Expires:
2/15/26

Karla Miller
Notary Public



EXHIBIT A

Legal Description of Protected Property

A PART OF ADJUSTED TRACT 5 AND ALL OF ADJUSTED TRACT 6 AS PER A PROPERTY LINE ADJUSTMENT SURVEY FILED AS INSTRUMENT NUMBER 2014-16097 WITH THE CIRCUIT CLERK OF WASHINGTON COUNTY, ARKANSAS, BEING A PART OF THE FRACTIONAL WEST HALF (W ½) OF THE SOUTHWEST QUARTER (SW ¼) AND A PART OF THE SOUTHEAST QUARTER (SE ¼) OF THE SOUTHWEST QUARTER (SW ¼), ALL BEING IN SECTION THIRTY (30); AND A PART OF THE FRACTIONAL NORTHWEST QUARTER (NW ¼) OF SECTION THIRTY-ONE (31); AND A PART OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION TWENTY-FIVE (25); AND A PART OF THE NORTH HALF (N ½) OF THE NORTHEAST QUARTER (NE ¼) AND A PART OF THE SOUTHEAST QUARTER (SE ¼) OF THE NORTHEAST QUARTER (NE ¼), ALL BEING IN SECTION THIRTY-SIX (36); ALL PARTS BEING IN TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY-ONE (31) WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND ALUMINUM MONUMENT AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER (SE ¼), SECTION TWENTY-FIVE (25), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY-ONE (31) WEST; THENCE ALONG THE EASTERLY LINE OF SAID TRACT SOUTH 02°25'51" WEST 36.60 FEET TO A FOUND ALUMINUM MONUMENT AT THE NORTHWEST CORNER OF THE FRACTIONAL SOUTHWEST QUARTER (SW ¼) OF SECTION THIRTY (30), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY (30) WEST; THENCE ALONG THE NORTH LINE OF SAID TRACT SOUTH 87°15'10" EAST 700.17 FEET; THENCE LEAVING SAID NORTH LINE SOUTH 02°05'17" WEST 660.00 FEET; THENCE THE FOLLOWING COURSES: SOUTH 87°15'10" EAST 257.44 FEET; SOUTH 58°07'31" WEST 324.29 FEET; NORTH 86°44'15" WEST 330.61 FEET; SOUTH 74°09'23" WEST 137.05 FEET; SOUTH 30°16'13" WEST 254.00 FEET; SOUTH 27°26'52" WEST 126.27 FEET; SOUTH 04°45'59" WEST 193.96 FEET; SOUTH 25°07'29" EAST 274.91 FEET; SOUTH 46°49'29" EAST 159.23 FEET; SOUTH 03°33'11" WEST 69.09 FEET; SOUTH 28°33'12" WEST 86.25 FEET; SOUTH 02°12'58" EAST 248.61 FEET; SOUTH 05°50'07" EAST 152.03 FEET; SOUTH 29°43'41" WEST 92.26 FEET; SOUTH 37°07'18" EAST 120.86 FEET; SOUTH 45°00'58" EAST 126.58 FEET; SOUTH 17°48'52" WEST 178.11 FEET; SOUTH 04°52'49" EAST 113.12 FEET; NORTH 82°59'00" EAST 136.94 FEET; SOUTH 09°29'53" EAST 155.53 FEET; NORTH 52°21'44" EAST 384.50 FEET; SOUTH 04°18'51" WEST 13.13 FEET; SOUTH 87°23'14" EAST 1005.32 FEET; SOUTH 82°23'57" EAST 151.75; NORTH 90°00'00" EAST 176.03 FEET; NORTH 56°33'49" EAST 100.55 FEET; THENCE SOUTH 33°16'32" EAST 120.80 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 16°38'06" AND A RADIUS OF 360.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 104.52 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 41°35'35" EAST 104.15 FEET; THENCE SOUTH 49°54'38" EAST 54.78 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 48°18'27" AND A RADIUS OF 360.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 303.53 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 25°45'24" EAST 294.61 FEET; THENCE SOUTH 01°36'10" EAST 48.91 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 17°44'21" AND A RADIUS OF 220.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 68.11 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 10°28'21" EAST 67.84 FEET; THENCE SOUTH 19°20'31" EAST 37.23 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 24°59'05" AND A RADIUS OF 220.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 95.93 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 06°50'59" EAST 95.18 FEET; THENCE SOUTH 05°38'34" WEST 122.87 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 16°45'37" AND A RADIUS OF 560.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 163.81 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 02°44'14" EAST 163.23 FEET; THENCE SOUTH 11°07'03" EAST 17.62 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 46°37'08" AND A RADIUS OF 560.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 455.65 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 12°11'31" WEST 443.18 FEET; THENCE SOUTH 35°30'05" WEST 58.56 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 45°41'49" AND A RADIUS OF 280.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 223.32 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 12°39'11" WEST

217.45 FEET; THENCE SOUTH 10°11'44" EAST 1.43 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 71°40'01" AND A RADIUS OF 120.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 150.10 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 46°01'45" EAST 140.50 FEET; THENCE SOUTH 81°51'46" EAST 60.59 FEET TO A FOUND IRON PIN; THENCE SOUTH 02°36'50" WEST 111.94 FEET TO A FOUND IRON PIN; THENCE NORTH 87°10'03" WEST 1671.80 FEET TO A FOUND IRON PIN; THENCE SOUTH 02°37'31" WEST 651.66 FEET TO THE SOUTHERLY LINE OF SAID NORTH HALF (N ½) OF THE FRACTIONAL SECTION THIRTY-ONE (31); THENCE ALONG SAID SOUTHERLY LINE NORTH 87°04'57" WEST 963.78 FEET TO A FOUND ALUMINUM MONUMENT BEING THE SOUTHWEST CORNER OF SAID FRACTIONAL NORTHWEST QUARTER (NW ¼), SECTION THIRTY-ONE (31), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY (30) WEST; THENCE ALONG THE SOUTHERLY LINE OF SAID SOUTHEAST QUARTER (SE ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SECTION THIRTY-SIX (36), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY-ONE (31) WEST NORTH 87°03'18" WEST 962.79 FEET TO A FOUND IRON PIN; THENCE LEAVING SAID SOUTHERLY LINE NORTH 03°06'30" EAST 249.93 FEET TO A FOUND IRON PIN; THENCE NORTH 86°53'02" WEST 350.00 FEET TO A FOUND IRON PIN ON THE WESTERLY LINE OF SAID SOUTHEAST QUARTER (SE ¼) OF THE NORTHEAST QUARTER (NE ¼), SECTION THIRTY-SIX (36), TOWNSHIP SIXTEEN (16), RANGE THIRTY-ONE (31) WEST; THENCE ALONG SAID WESTERLY LINE NORTH 01°47'26" EAST 1060.68 FEET TO A FOUND IRON PIN AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHEAST QUARTER (NE ¼) SAID SECTION THIRTY-SIX (36), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY-ONE (31) WEST; THENCE ALONG THE SOUTHERLY LINE OF SAID FORTY (40) ACRE TRACT NORTH 87°16'27" WEST 1343.38 FEET TO A FOUND IRON PIN LOCATED IN THE CENTERLINE OF A GRAVEL ROAD; THENCE ALONG SAID CENTERLINE NORTH 04°02'35" EAST 72.47 FEET; THENCE CONTINUING ALONG SAID CENTERLINE NORTH 11°19'49" EAST 40.24 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A DELTA ANGLE OF 51°07'26" AND A RADIUS OF 101.22 FEET; THENCE CONTINUING ALONG SAID CENTERLINE ALONG SAID CURVE AN ARC LENGTH OF 90.32 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 24°09'50" WEST 87.35 FEET; THENCE NORTH 48°44'10" WEST 34.21 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A DELTA ANGLE OF 42°42'03" AND A RADIUS OF 215.87 FEET; THENCE CONTINUING ALONG SAID CENTERLINE ALONG SAID CURVE AN ARC LENGTH OF 160.88 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 67°02'42" WEST 157.18 FEET; THENCE CONTINUING ALONG SAID CENTERLINE NORTH 89°17'23" WEST 123.09 FEET; THENCE CONTINUING ALONG SAID CENTERLINE NORTH 87°11'38" WEST 161.28 FEET; THENCE LEAVING SAID CENTERLINE NORTH 01°57'34" EAST 1055.60 FEET TO A FOUND IRON PIN; THENCE SOUTH 87°31'37" EAST 1230.87 FEET TO A FOUND IRON PIN LOCATED ON A BLUFF LINE; THENCE ALONG SAID BLUFF LINE THE FOLLOWING COURSES:

NORTH 17°08'05" EAST 157.76 FEET; NORTH 23°29'30" EAST 127.51 FEET; NORTH 02°25'44" EAST 131.20 FEET; N 30°29'11" WEST 198.42 FEET; NORTH 16°15'45" WEST 180.52 FEET; NORTH 03°00'58" EAST 113.62 FEET; NORTH 14°13'54" EAST 202.18 FEET; NORTH 24°51'02" WEST 100.73 FEET; NORTH 08°41'17" EAST 110.59 FEET; NORTH 67°53'42" EAST 173.71 FEET TO A FOUND IRON PIN; THENCE LEAVING SAID BLUFF LINE NORTH 87°18'22" WEST 147.50 FEET TO A FOUND IRON PIN; THENCE NORTH 01°28'04" EAST 659.86 FEET TO A FOUND IRON PIN; THENCE SOUTH 87°13'07" EAST 660.25 FEET TO A FOUND IRON PIN ON THE WESTERLY LINE OF A PROPERTY DESCRIBED AS "ADJUSTED TRACT 2" IN INSTRUMENT NO. 2010-26595 AS FILED WITH THE CIRCUIT CLERK OF SAID COUNTY; THENCE ALONG THE WESTERLY LINE OF SAID PROPERTY NORTH 01°27'39" EAST 675.06 TO A FOUND IRON PIN AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER (NE ¼) OF THE SOUTHEAST QUARTER (SE ¼), SAID SECTION TWENTY-FIVE (25), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY-ONE (31) WEST; THENCE ALONG SAID NORTHERLY LINE OF SAID TRACT SOUTH 87°09'38" EAST 1314.52 FEET TO THE POINT OF BEGINNING, CONTAINING 384.628 ACRES, MORE OR LESS.

LESS AND EXCEPT: ONE SQUARE FOOT AT THE NORTHWESTERN MOST CORNER OF WASHINGTON COUNTY PARCEL NUMBER 765-16323-100 PER INSTRUMENT NUMBER 2006-15251 FILED WITH THE CIRCUIT CLERK, WASHINGTON COUNTY, ARKANSAS.

LESS AND EXCEPT: TWENTY-FIVE FEET (25') NORTHERLY AND EASTERLY OF THE CENTERLINE OF SAID ARCHIE WATKINS ROAD (WASHINGTON COUNTY ROAD 265) FOR CITY OF FAYETTEVILLE

RIGHT-OF-WAY PER INSTRUMENT NUMBER 2010-28100 FILED WITH THE CIRCUIT CLERK, WASHINGTON COUNTY, ARKANSAS, SAID RIGHT-OF-WAY CONTAINING 0.403 ACRES, MORE OR LESS.

THE ABOVE DESCRIBED CONSERVATION EASEMENT CONTAINING A NET TOTAL OF 384.225 ACRES, MORE OR LESS.

SUBJECT TO ANY OTHER RIGHTS-OF-WAY AND/OR EASEMENTS WHETHER OR NOT OF RECORD.

EXHIBIT B

Graphic Depiction of Protected Property

Attached.

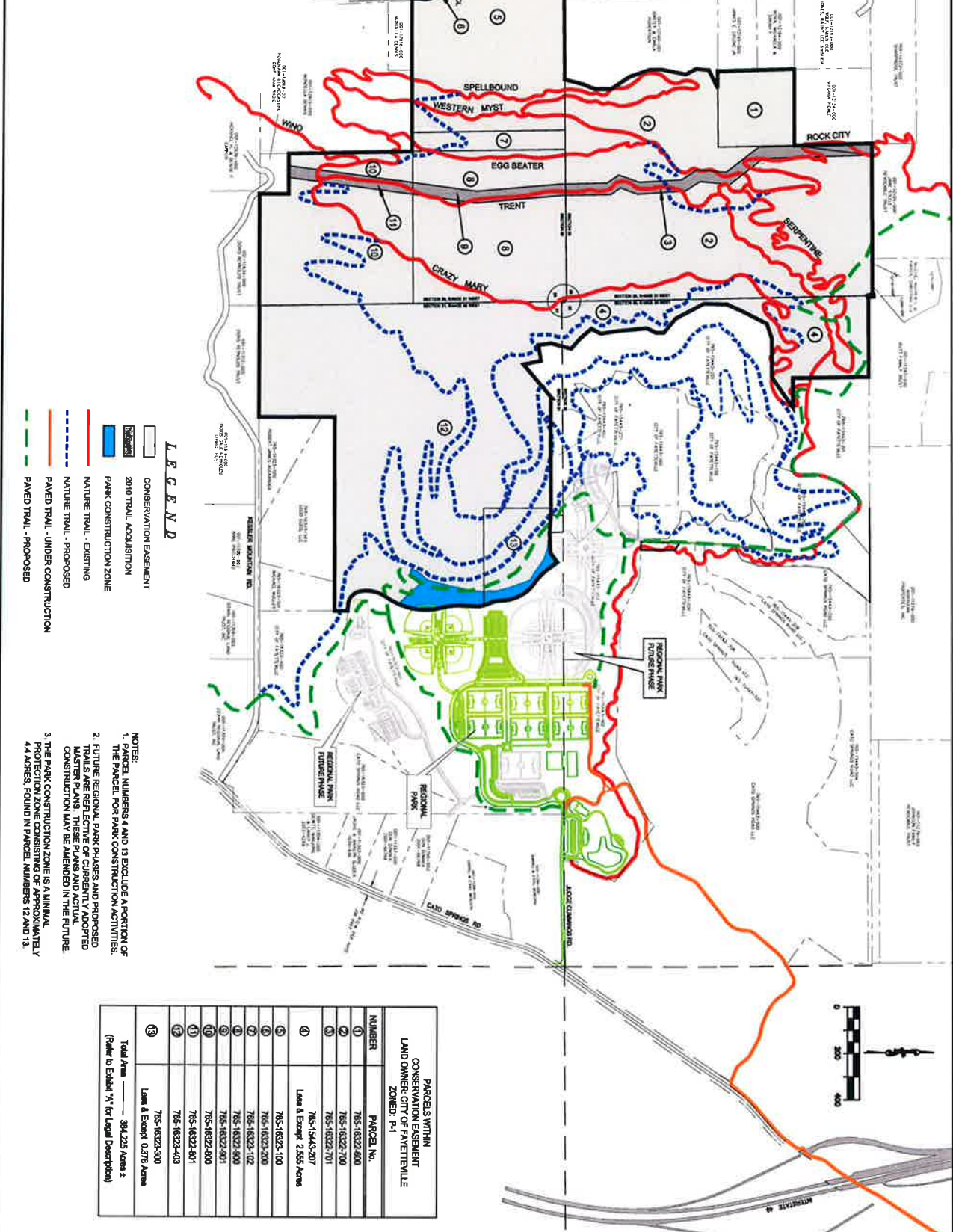


EXHIBIT "B"



Baseline Documentation Report

FOR

Kessler Mountain

Conservation Easement

Fayetteville, Arkansas

By

Northwest Arkansas Land Trust

2016

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PROPERTY CONDITION CERTIFICATION

This is to certify **City of Fayetteville, Arkansas** the Grantor/s, and **Terri Lane** representing the Grantee, **The Northwest Arkansas Land Trust**, do accept and acknowledge this Easement Baseline Documentation Report as an accurate description of the current land uses and physical features as of **7-11-16** on the **Kessler Mountain** property. This report contains **37** pages.

The Grantor and the Grantee further certify that to the best of their knowledge there have been no activities on the easement property which are inconsistent with the terms and covenants contained in the Conservation Easement, originally granted by the Grantor to The Northwest Arkansas Land Trust recorded in the **Washington County Deed Book**, Book _____, Page _____.

GRANTOR

CITY OF FAYETTEVILLE, AR

By _____
Lioneld Jordan, Mayor

GRANTEE

THE NORTHWEST ARKANSAS LAND TRUST

By  _____
Terri Lane, Executive Director

NOTARY

STATE OF _____)
COUNTY OF _____)

I _____ a Notary Public, do hereby certify that **Lioneld Jordan**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the ____ day of _____, 2016.

Official seal

(Seal)
Notary Public

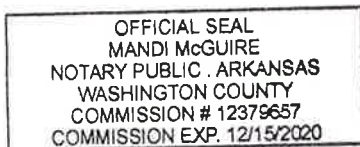
My commission expires:

STATE OF Arkansas)
COUNTY OF Washington)

I, Mandi McGuire a Notary public, certify that **Terri Lane**, to me personally known, who being by me duly sworn did say that she is the Executive Director, of The Northwest Arkansas Land Trust, the corporation named in the foregoing instrument; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

WITNESS my hand and official seal, this the 3 day of August, 2016.

Official Seal



Mandi McGuire (Seal)
NOTARY PUBLIC

TL

BACKGROUND

State: **Arkansas**

Town or District/County: **Fayetteville, Washington County**

Easement Recorded: **Date:** _____ **Washington County/Book #** _____ **/Page#** _____

Date Easement Granted: _____

Grantor: Name: **The City of Fayetteville, Arkansas**
Address: **113 West Mountain Street Fayetteville, Arkansas 72701**
Phone: **479-521-7700**

Grantee: Name: **Northwest Arkansas Land Trust**
Address: **P.O. Box 2211 Bentonville, AR 72712**
Phone: **479- 966-4666**

Present Owner: **City of Fayetteville, AR**

Adjacent Land Owners: **Private Landowners and City of Fayetteville Regional Park**

Report Prepared By: **Alan Edmondson, Land Stewardship Specialist, Northwest Arkansas Land Trust**

Date Report Prepared: **Updated July 29, 2016**

DESCRIPTION OF PROPERTY

Target Element: Protection of approx. 384.2 acres on Kessler Mountain in Fayetteville, AR

Physical Description: Kessler Mountain is on the southwest side of Fayetteville in Washington County Arkansas. Kessler Mountain is part of the Boston Mountains Ecoregion but is located on the boundary with the Ozark Highlands Ecoregion. The property is mostly oak-hickory forest with rock bluffs and outcroppings. A majority of the forest on the top of the mountain appears to have been only selectively logged with many old growth trees left standing. There are some areas around the base of the mountain with old home sites and abandoned farm fields that have regrown into forest densely populated with invasive woody plant species such as bush honeysuckle, privet, eastern red cedar and tree of heaven. The main north-south ridge of Kessler Mountain is the watershed divide between the Illinois River watershed and West Fork of the White River/Beaver Lake watershed.

Ecological Features: The Protected Property supports many ecologically diverse habitat types. An ecological assessment of the property conducted by Theo Witsell of the Arkansas Natural Heritage Commission identified eleven different habitat types with 544 plant species identified, including at least six species that are of state conservation concern and at least two species that are of global conservation concern. Five habitat types were identified as being ecologically significant, including Shale Barrens, Bluffs, Old Growth Post Oak Woodland, Riparian Habitat, and Seeps and Springs. In addition, 26 species of reptiles and amphibians were reported, including the Ozark Zigzag Salamander, a species of state concern.

Man-made Structures/Improvements: Approximately seven miles of natural-surface trails, as well as old road beds, stone walls, and three ponds.

Prior Land Use: Largely undisturbed wildlife habitat with some old home sites, farming, hunting, and an abandoned landfill on regional park property near water towers on northeast side of mountain. Land fill has been capped.

Current Land Use: Hiking, trail running, mountain biking, wildlife habitat, wildlife viewing, outdoor education, and research.

Management Needs: Restoration and impact avoidance/trail rerouting of sensitive shale barrens habitat, invasive plant species removal, improve current trails to meet sustainable trail design standards and continued efforts to guard against potential threats listed below. More biological surveys and a Habitat Management Plan can help guide specific activities related to ongoing biodiversity and resource preservation.

Potential Threats to Ecological Integrity: Invasive plant and animal species, illegal dumping, damage to sensitive habitats by overuse and abuse by public.

Required Frequency of Monitoring for this Easement: Formal monitoring reported once per year following leaf-off with more frequent and targeted inspections as needed throughout the year.

CONSERVATION VALUES SUPPORTED BY PROPERTY

The protected property possesses significant Conservation Values including:

- 1. Open Space Preservation**
- 2. Wildlife Habitat**
- 3. Recreation**
- 4. Water Quality Protection**
- 5. Viewshed Preservation**

ARTICLE I; FROM EASEMENT Conservation Purposes

The Grantor imposes a conservation servitude (the "Conservation Easement") on the Protected Property so as to assure that the Conservation Values of the Protected Property, that would otherwise be threatened by development pressure, will be retained forever, and to prevent any use of the Protected Property that would significantly impair the Conservation Purposes set forth below.

(a) Conservation Purposes

- (i) **Open Space Preservation.** To maintain the Protected Property as an important open space and nature park facility for the enjoyment and education of the general public and to support the city of Fayetteville's Enduring Green Network goals and the Northwest Arkansas Open Space Plan.
- (ii) **Wildlife Habitat Protection.** To maintain and improve the quality of wildlife habitat; to protect ecologically significant sites and species; to promote biodiversity and Native Species; to preserve large intact areas of wildlife habitat, connect patches of wildlife habitat and secure migration corridors. Large habitat patches typically support greater biodiversity than small patches; migration corridors enable wildlife to move to meet nutritional and reproductive needs and facilitate the migration of species in response to changes in environmental conditions.
- (iii) **Water Quality Preservation.** To maintain and improve the watershed/hydrological value, both surface and groundwater, within, around and downstream of the Protected Property. Specifically, helping to protect the water quality of the Illinois River, and of Beaver Lake, a Corp of Engineers impoundment that is also a public water source.
- (iv) **Forest, Woodland and Other Vegetative Resource Protection.** To perpetuate and foster the growth of a healthy and unfragmented forest; to maintain a continuous canopy of vegetation with multi-tiered understory of trees, shrubs, wildflowers and grasses; to support healthy ecosystem processes; and to trap air pollution particulates for healthier air and sequester carbon in trees and soil in order to mitigate rising atmospheric carbon levels.

- (v) **Scenic Value Preservation.** To preserve the relationship of scenic resources within the Protected Property to natural and scenic resources in its surrounds and to protect scenic vistas visible from public rights-of-way and other public access points in the vicinity of the Protected Property.
- (vi) **Sustainable Land Uses.** To ensure that Public Access and other permitted uses are conducted in a manner that will neither diminish the biological integrity of the Protected Property nor deplete natural resources over time nor lead to an irreversible disruption of ecosystems and associated processes.

ARTICLE III; FROM EASEMENT Activities and Uses

Prohibited Uses: Any activity on or use of the Protected Property that is inconsistent with the Conservation Purposes of this Conservation Easement is prohibited, subject to the Reserved Rights and Permitted Uses as specified in Sections 3.02 and 3.03 below. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- (a) Except as provided in Section 3.03 below, the change, disturbance, alteration, or impairment of the relatively natural habitat for plants, wildlife, or similar ecosystems within or upon the Protected Property.
- (b) Any Commercial or Agricultural Uses of the Protected Property.
- (c) Except as provided in section 3.03 below, any private or public gathering or event, including but not limited to, festivals, fairs, concerts, markets, within or upon the Protected Property.
- (d) Except as provided in Section 3.03 below, the Construction and/or placement of any structure or Improvement, including but not limited to, a building, dwelling, office, mobile home, tent, asphalt, concrete pavement, any portion of a septic system, tennis court or other recreational court, swimming pool, dock, aircraft landing strip, tower, Utility Improvement, antenna, underground utilities, conduit, line, lighting, billboard or other advertising display, or any other temporary or permanent structure or facility.
- (e) The conveyance of leases, easements, and rights-of-ways without first obtaining the express written consent of Holder, which may be withheld by Holder for any reason.
- (f) Except as provided in Section 3.03 below, the Construction of roadways.
- (g) The erection, Construction, installation relocation or use of any lighting which interferes with wildlife on the Protected Property or with landowners or visitors within the scenic viewscape of the Protected Property.
- (h) Except as provided in Section 3.03 below, the placement of any camping, resting or gathering structure, including but not limited to, a tent, umbrella, tarp, hammock, lean to, shed, shelter, recreational vehicle or any other temporary or permanent camping, resting or gathering structure or facility.
- (i) The Construction, placement or use of any temporary or permanent cooking or fire structure, including but not limited to, campfires, fire pits, fire circles, cooking grills, gas stoves or portable cooking stoves.
- (j) The introduction of fire to the Protected Property unless part of a Habitat Management Plan as described in Section 3.03 below.
- (k) The division, subdivision, partitioning or *de facto* subdivision of the Protected Property into two or more parcels of land or separate interests, or conveyance of individual tracts separately from one another.

- (l) Except as provided in Section 3.03 below, the ditching, draining, diking, filling, manipulation, diversion or otherwise changing of the topography or surface hydrology of the Protected Property in any manner.
- (m) Any use that would increase or substantially add to the risk of erosion as determined by historical and current scientific literature.
- (n) The exploration for, or extraction of, minerals, oil, gas, or other hydrocarbons, soils, sands, gravel, rock, field stone or other materials on or below the surface of the Protected Property.
- (o) The transfer, encumbrance, lease, sale or other separation of the minerals, oil, gas, or other hydrocarbons, soils, sands, gravel, rock, field stone or other materials from the Protected Property.
- (p) The transfer, encumbrance, lease, sale or other separation of the water rights on the Protected Property.
- (q) The removal, harvesting, destruction or cutting of Native Species of vegetation unless in accordance with a Habitat Management Plan as described in Section 3.03 below.
- (r) Except as provided in Section 3.03 below, the introduction of Non-Native Species of vegetation and/or animals to the Protected Property.
- (s) The gathering, displacement, and/or removal of firewood, rocks, fossils, artifacts, plants, wildflowers, fungi, leaves, animals, insects or other living or non-living things, remains or specimens, unless in accordance with a Habitat Management Plan or approved research or educational program, as provided in Sections 3.03 and 4.03 in Easement.
- (t) The application of chemicals including but not limited to herbicides, biocides, pesticides, insecticides, fungicides, rodenticides and fertilizers, unless in accordance with a Habitat Management Plan as described in Section 3.03 below.
- (u) The storage or dumping of ashes, litter, trash, garbage, human or pet waste, solid waste or other unsightly or offensive material, hazardous or petroleum substance, hazardous or toxic waste, nor any placement of aboveground or underground storage tanks in, on, or under the Protected Property.
- (v) Except as provided in Section 3.03 below, the pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, seeps, springs, ground or subsurface water or any other water bodies, within or upon the Protected Property, nor shall activities be conducted on adjacent property, if owned by Grantor, that would be detrimental to water purity or that could alter the natural water level or flow in, under or over the Protected Property.
- (w) Except as provided in Section 3.03 below, the use of motorized or recreational vehicles, including but not limited to, the operation of snowmobiles, dune buggies, motorcycles, all-terrain or off-road vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles.
- (x) Neither the Protected Property nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, Lot coverage, or Open Space requirements under otherwise Applicable Laws, Regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to transferrable development rights, scheme cluster development arrangement or otherwise.

Permitted Uses: The parties agree that the following uses of the Protected Property are permitted, as specified below:

(a) **Special Events.** *Subject to Review by Holder as specified in Section 4.04 in Easement*, the Grantor may permit or host special events by specific groups and by city permit only of short duration within the Protected Property, including organized bike races, trail runs, bio-blitzes and camping outings, so long as such events do not substantially diminish or impair the Conservation Values of the Protected Property. Special Events may include the temporary use of service vehicles, cooking grills or bonfires, temporary tents, shade structures, and toilet and refreshment areas.

(b) **Structures.** *Subject to Review by Holder as specified in Section 4.04 in Easement*, the Grantor may construct, maintain, repair, remove or replace any of the following, provided that the structure is of a reasonably limited footprint, is architecturally consistent with the natural setting of the Protected Property, does not pose a threat to sensitive species or ecologically sensitive habitats, and is in accordance with local, state, and federal laws. Any area of the Protected Property disturbed in the process of Construction must be restored to a natural condition promptly after completion to ensure that the activity does not substantially diminish or impair the Conservation Values.

i. **Pavilion.** One (1) open-air pavilion.

ii. **Additional Structures.** Holder may adjust structure limit to accommodate specific recommendations that are made through the *Public Park Planning Process as specified in Section 3.04* in keeping with the spirit and intent of this Conservation Easement.

iii. **Wildlife Viewing and Habitat Structures.** A reasonable and necessary number of raised walkways, wildlife viewing platforms, bird blinds, and habitat enhancement devices such as bat boxes, bird houses.

(c) **Trails.** As shall be identified in the master trail plan (the “**Master Trail Plan**”), which may be reviewed and updated subject to *approval through the Public Park Planning Process as specified in Section 3.04*, the Grantor may construct, install, maintain and repair any one or more of the items as described in paragraphs i-vii of this section, including mowing, cutting or removal of soil, rock or vegetation, so long as improvements do not pose a threat to sensitive species or ecologically sensitive habitats. These activities may include vehicular use.

i. **Trail Uses.** Trails may be used for walking, hiking, jogging, bicycling, bird watching and nature study.

ii. **Trail Width.** Trails shall be no more than four (4) feet in width where possible and in no case should exceed six (6) feet in width together with steps, railings, features and other surface structures which, as to Wet Areas, may include bridges and culverts (collectively, “**Trails**”).

iii. **Trail Design.** Trails shall be constructed and maintained in accordance with then-current, generally accepted Best Management Practices for the sites, soils, hydrology, habitats and terrain of the Protected Property.

iv. **Trail Location.** The location and density of trails shall be planned in a manner consistent with the preservation of the natural integrity of the Protected Property, including avoidance of impact to ecologically significant areas and species of special conservation concern.

v. **Trail Covering.** All trails will be natural surface and may be covered, if at all, by wood chips, gravel, or any other porous surface so as to blend with the natural surroundings and not to enhance stormwater runoff. Notwithstanding the foregoing restrictions, specific segments of the trails more particularly identified in the master trail plan (the “**Master Trail Plan**”), shall be

permitted to be paved as more particularly set forth in the Master Trail Plan and shall be subject to the following requirements: (1) the exact routing of any paved trail(s) shall be approved by Holder, (2) the maximum trail width for any paved sections shall be no more than 20 feet, including any abutting mowed shoulders and edges, and (3) pervious pavement shall be used where suitable for any such paved portions of the trail(s).

vi. **Trail Signage.** Trails may include signs to mark the trail, to provide information regarding restrictions, and for interpretive purposes. Signage shall be unobtrusive in nature and planned with the express goal of ensuring the vistas and Open Space nature of the Protected Property.

vii. **Trail Facilities.** Trails may include benches, picnic tables, wastebaskets and bicycle racks, as may be deemed necessary. The design, location and density of trail facilities shall be architecturally consistent with the natural setting of the Protected Property and planned with the express goal of minimizing impact to ecologically significant areas and species of special concern, and ensuring the vistas and Open Space nature of the Protected Property.

(d) **Road Construction.** *Subject to Review by Holder as specified in section 4.04 in Easement,* maintenance and emergency Access Drives may hereafter be constructed where reasonably necessary to provide access for maintenance and emergency personnel only. Such Access Drives on the Protected Property:

(i) Shall be limited to the minimum number, width and length necessary to provide access for permitted purposes.

(ii) Shall follow the general contour of the natural terrain where possible and shall be designed with extreme care and concern for the natural integrity of the Protected Property, particularly the avoidance of ecologically significant areas.

(iii) Shall be gated and posted to prevent unauthorized access.

(iv) Shall be planned to maximize the ability of the road to be reclaimed and returned to a natural state when it is no longer required or needed.

(e) **Fences.** Existing fences may be repaired and replaced, and new fences may be built, on the Protected Property for purposes of reasonable and customary access control and protection of resources, provided that fencing does not substantially diminish or impair the Conservation Values, including aesthetic and scenic values, of the Protected Property, and does not exclude or restrict wildlife movement on or off of the Protected Property.

(f) **Stream Restoration Construction and Repairs.** *Subject to Review by Holder as specified in Section 4.04 in Easement,* the Grantor may carry out stream restoration activities including, excavation, fill, rock structures, tree and vegetation establishment, erosion control, and natural channel Construction and repairs as needed, through or under the guidance of a qualified stream restoration expert.

(g) **Service Vehicles.** Grantor may use, or permit the use of, service vehicles and motorized equipment, including motorized recreational vehicles, on the Protected Property provided that:

(i) The use of such vehicles is reasonable and necessary for maintenance and/or emergency access to the Protected Property, or for providing access to people with disabilities.

(ii) The permission afforded by Grantor consists of short-term license and is not a right-of-way, easement, or other permanent legal interest.

(iii) Vehicles take care to avoid ecologically significant areas and species of special conservation concern on the Protected Property.

(h) **Habitat Management.** Grantor reserves the right to conduct habitat management activities subject to federal, state and local regulations and the specific terms and conditions of the Conservation Easement, and shall be conducted in accordance with the following provisions:

i. **Ten Year Habitat Management Plan.** All habitat management activities shall be conducted in accordance with a written plan (a "**Habitat Management Plan**") subject to review and approval by Grantor. The Habitat Management Plan shall be prepared by a Qualified Preparer prior to any treatment activities, and should, if possible, be reviewed and updated at least every ten years. Grantor is not required to fund the Habitat Management Plan. The Habitat Management Plan shall include, at a minimum, the following:

- 1) Goals and objectives of the Grantor, consistent with the purposes and terms of the Conservation Easement.
- 2) Identification and mapped location of significant habitat types, species of special conservation concern, and natural and physical features of the Protected Property.
- 3) A description of the current and desired natural condition and threats to each habitat type.
- 4) A description of contemplated management plans and proposed access plan for each habitat type.
- 5) A description of foreseeable situations in which chemical application will be recommended, including the type, amount, method of application, and recommended limitations to protect water quality and sensitive species.
- 6) A description of recommended Soil Conservation Plan; erosion control and reclamation practices to ensure soil stabilization and to maintain the scenic quality of the Protected Property.

(i) **Cutting and Clearing of Trees.** Grantor may engage in the following non-commercial Forestry practices:

- (i) The cutting and removal of Non-Native Species, invasive, or diseased trees, shrubs that may endanger public safety or need to be removed to ensure the health of other trees or ecological attributes of the Protected Property, and these activities may involve the temporary introduction of goats.
- (ii) *Subject to Review by Holder as specified in Section 4.04 in Easement*, the cutting of firebreaks, except that such approval shall not be required in the case of emergency firebreaks.

Public Park Planning Process: Before undertaking any Construction, or Additional Improvements, aside from minor improvements and repairs, and as specified for any reserved right or exception to a prohibited use that will disrupt the surface of the Protected Property, Grantor shall engage in a public park planning process (a "**Public Park Planning Process**") to address the specific Construction or Additional Improvement or other surface disruption that is contemplated to be undertaken on the Protected Property. This Public Park Planning Process shall include Holder or its designated representative, with Grantor providing specific Notice to Holder, as specified in Section 4.04 in Easement, of the hearing no less than thirty (30) days in advance of said hearing.

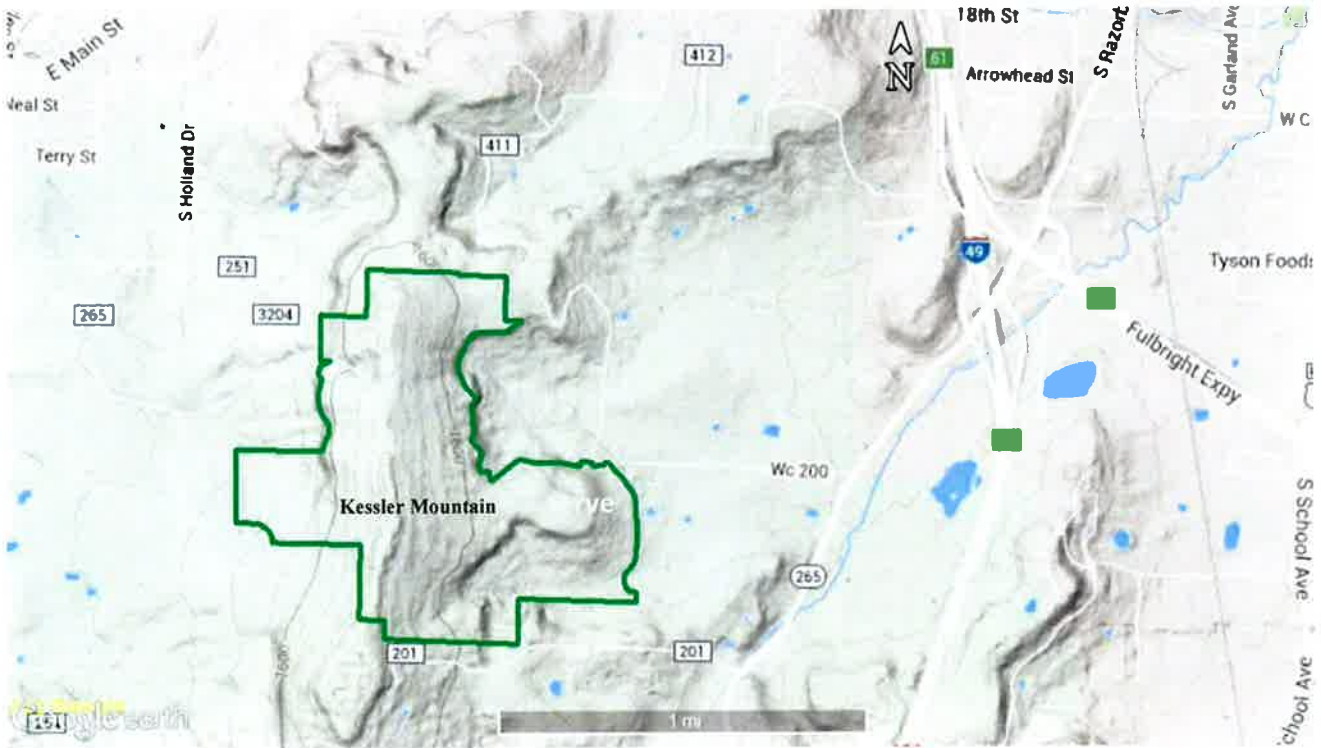
Permitted Uses Within Minimal Protection Area: As demonstrated in Exhibits "A" and "B", a buffer zone (the "**Minimal Protection Area**") exists on the Protected Property pursuant to the establishment of the Regional Park. The following activities and uses are permitted within the Minimal Protection Area:

- (a) Activities and uses permitted under preceding sections of this Article are permitted with the Minimal Protection Area. Introduction of Invasive Species remains prohibited.
- (b) Disturbances of resources within the Minimal Protection Area are permitted for purposes reasonably related to the development, maintenance and use of the Regional Park so long as those activities do not further encroach outside of the Minimal Protection Area.

REGIONAL MAP



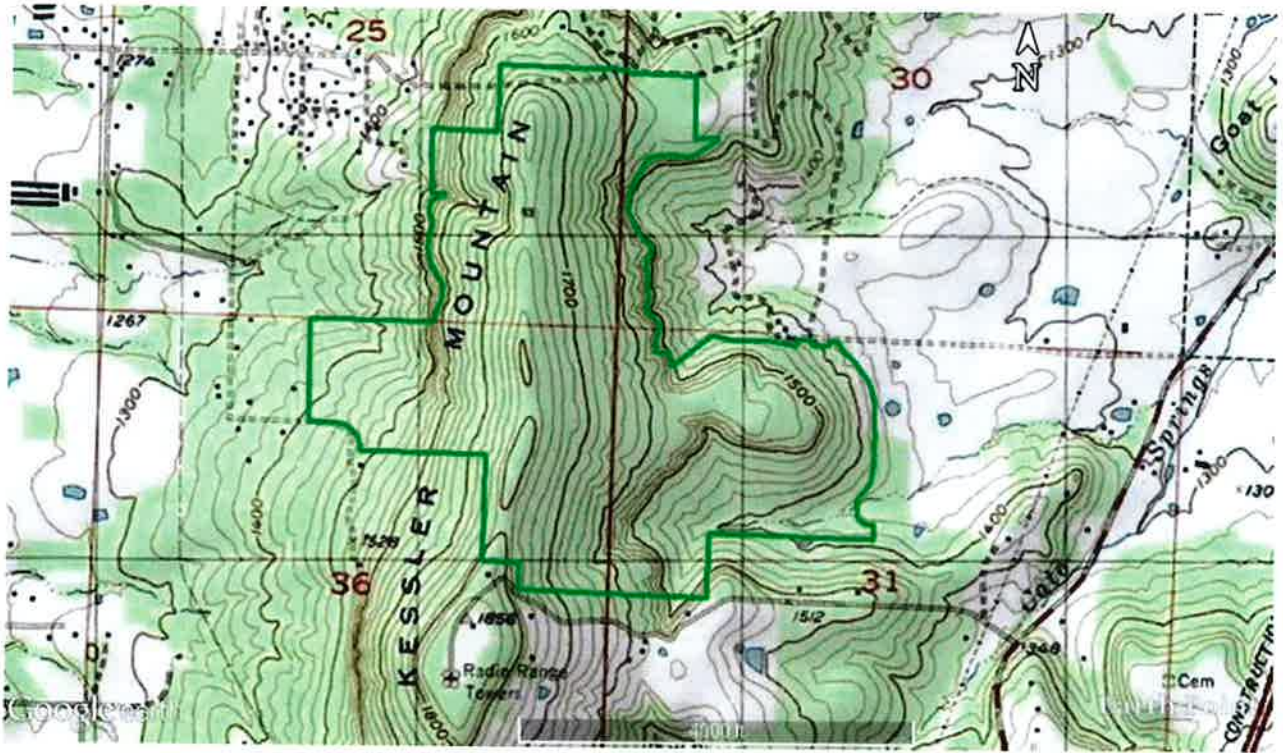
LOCAL ROAD MAP AND DRIVING DIRECTIONS



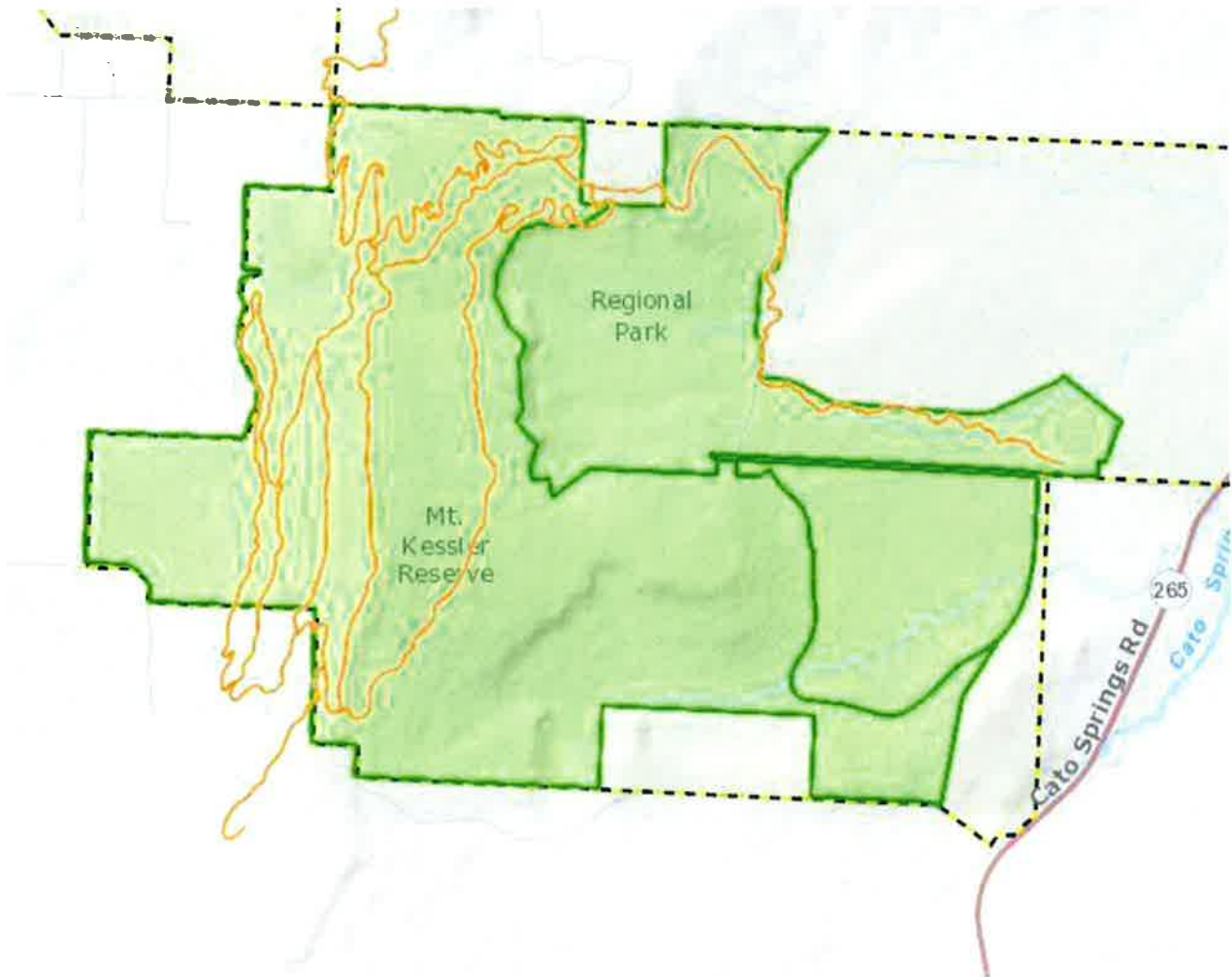
Driving Directions

From I-49 in Fayetteville, AR take Exit 60 AR-265 S/S Cato Springs Road. Drive approximately 1.2 miles turn right onto Washington County Road 200 Trail head parking lot on right.

USGS TOPOGRAPHIC MAP

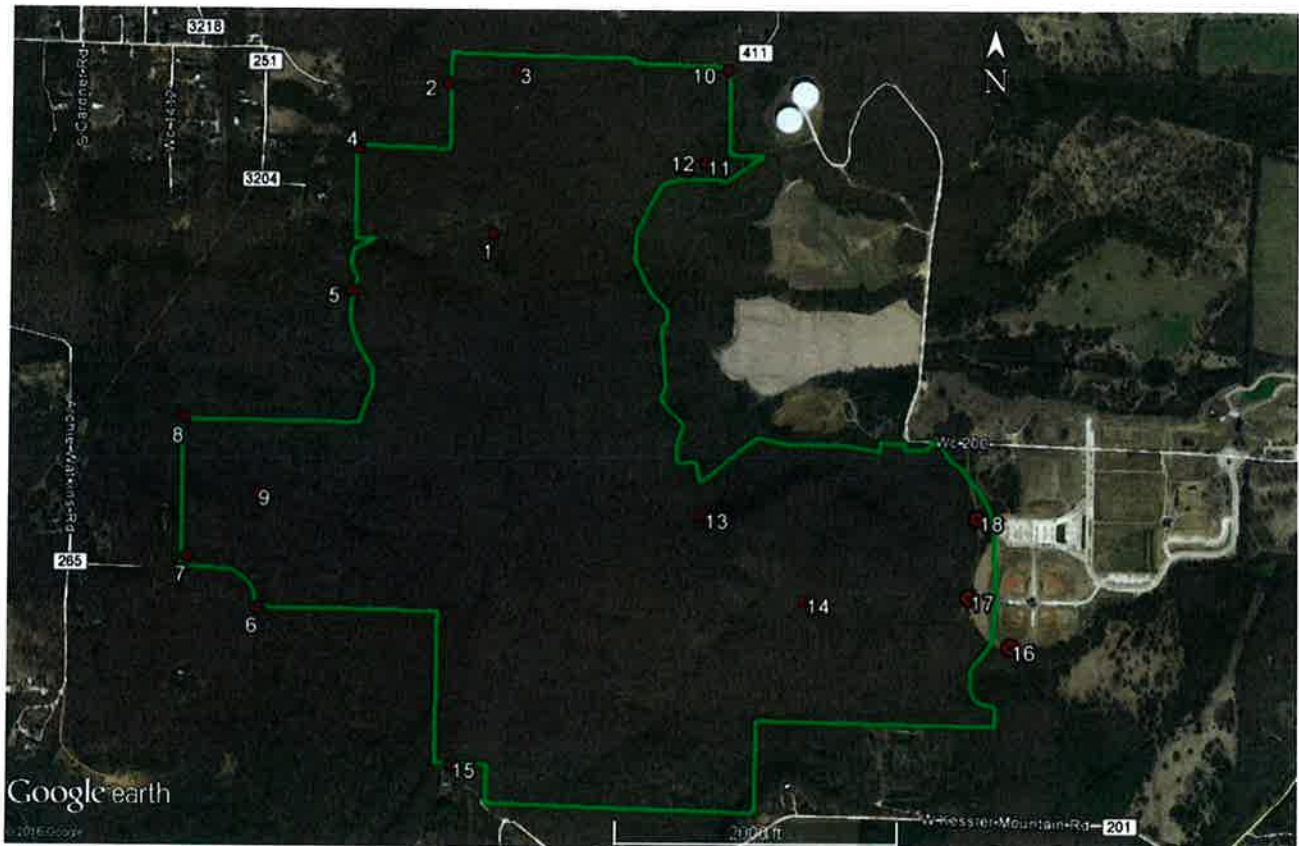


PROPERTY FEATURES MAP



Current Trail System on Kessler Mountain

Photo-Points Map



TL

Photo-Points Data Sheet

Photo-Point	GPS Coordinates in Decimal Degrees	Azimuth
1	N 36.03163° W 094.21739°	N 0°
2	N 36.03456° W 094.21850°	SE 150°
3	N 36.03480° W 094.21680°	SW 190°
4	N 36.03341° W 094.22077°	SE 170°
5	N 36.03052° W 094.22074°	SE 135°
6	N 36.02434° W 094.22294°	E 90°
7	N 36.02533° W 094.22466°	NE 25°
8	N 36.02803° W 094.22475°	SE 135°
9	N 36.02657° W 094.22296°	SE 125°
10	N 36.03482° W 094.21174°	SE 165°
11	N 36.03299° W 094.21226°	S 180°
12	N 36.03277° W 094.21261°	E 90°
13	N 36.02617° W 094.21226°	S 180°
14	N 36.02453° W 094.20982°	N 0°
15	N 36.02129° W 094.21829°	N 0°
16	N 36.02363° W 094.20491°	NW 330°
17	N 36.02460° W 094.20590°	NE 15°
18	N 36.02716° W 094.20570°	S 180°

TL

Photo-Point Images



1. Ancient Post Oak at shale barrens on top of Kessler Mountain. Facing north.



2. Intersection of Trent Trail, power line clear-cut and property boundary. Facing southeast 150° towards property.



3. Old road bed crossing property boundary. Looking towards power line clear-cut. Possible point of access for unauthorized off-road vehicles. Facing southwest 190°



4. Corner of city property with Pickles and Wolf property Facing south 170° towards property.



5. Bluff shelter near property boundary. Facing south 200° towards property.



6. Corner of city property and Beaty property. Standing on pin, facing east.



7. Corner of city property with Fletcher property. Facing north 25° looking along property boundary.



8. Corner of city property with Walker and Robertson properties. Standing on pin, facing southeast 135° looking towards city property.



9. Old road bed/ rock wall on west side of property. Facing southeast 125°.



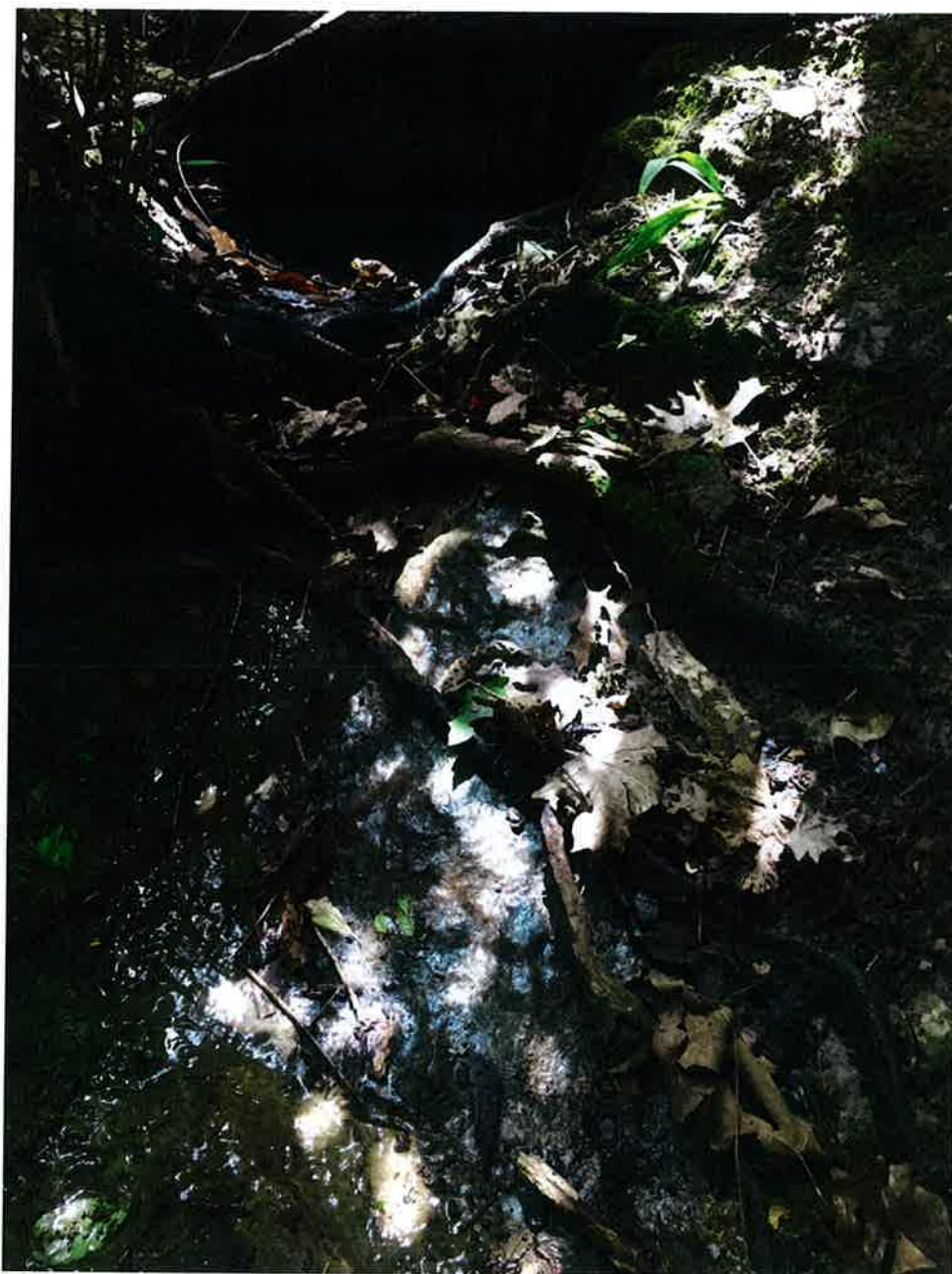
10. City property boundary with Butt property. Facing south 165°.



11. Heavy erosion/sinkhole on both sides of Crazy Mary Trail. Facing south 180°.



12. Old rock wall along Crazy Mary Trail. Near regional park boundary. Facing east



13. Spring at base of tree and rock ledge flowing out of 10 inch diameter cavity. Facing south



14. Spring coming out of Bluff at Shale boundary. Facing north.



15. Trent Trail Head/ City Property boundary by radio tower. Facing north up Trent Trail.



16. Minimal Protection Zone. Facing northwest 330°



17. Minimal Protection Zone. Facing northeast 15°



18. Minimal Protection Zone. Facing south.



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2016-0367

Agenda Date: 8/16/2016

Version: 1

Status: Agenda Ready

In Control: City Council Meeting

File Type: Ordinance

Agenda Number: C. 4

RZN 16-5483: (NE CORNER OF MORNINGSIDE & 15TH ST./RAUSCH COLEMAN):

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 16-5483 FOR APPROXIMATELY 36 ACRES LOCATED AT THE NORTHEAST CORNER OF MORNINGSIDE AND FIFTEENTH STREET FROM RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE TO NC, NEIGHBORHOOD CONSERVATION, SUBJECT TO A BILL OF ASSURANCE

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 property shown on the map (Exhibit A) and the legal description (Exhibit B) both attached to the Planning Department's Agenda Memo from RSF-4, Residential Single Family, 4 Units Per Acre to NC, Neighborhood Conservation, subject to a Bill of Assurance (Exhibit C to the Planning Department's Agenda Memo).

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.

City of Fayetteville Staff Review Form

2016-0367

Legistar File ID

8/16/2016

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Jeremy Pate

7/29/2016

City Planning /
Development Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN 16-5483: Rezone (NE CORNER OF MORNINGSIDE & 15TH ST./RAUSCH COLEMAN 564): Submitted by RAUSCH-COLEMAN, INC. for property at the NE CORNER OF MORNINGSIDE & 15TH ST. The property is zoned RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE and contains approximately 36.00 acres. The request is to rezone the property to NC, NEIGHBORHOOD CONSERVATION, subject to a Bill of Assurance.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	NA	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	No	Item Cost	
Budget Adjustment Attached?	NA	Budget Adjustment	
		Remaining Budget	\$ -

V20140710

Previous Ordinance or Resolution #

Original Contract Number:

Approval Date:

Comments:

MEETING OF AUGUST 16, 2016

TO: Mayor, Fayetteville City Council

THRU: Andrew Garner, City Planning Director

FROM: Quin Thompson, Planner

DATE: July 29, 2016

SUBJECT: **RZN 16-5483: Rezone (NE CORNER OF MORNINGSIDE & 15TH ST./RAUSCH COLEMAN 564):** Submitted by RAUSCH-COLEMAN, INC. for property at the NE CORNER OF MORNINGSIDE & 15TH ST. The property is zoned RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE and contains approximately 36.00 acres. The request is to rezone the property to NC, NEIGHBORHOOD CONSERVATION, subject to a Bill of Assurance.

RECOMMENDATION:

The Planning Commission and staff recommend approval of an ordinance to rezone the property to NC, Neighborhood Conservation as shown in the attached Exhibits 'A' and 'B' and subject to a Bill of Assurance, Exhibit 'C'.

BACKGROUND:

The subject property is a 36 acre parcel located on the northeast corner of Morningside Drive and 15th Street. A small portion of the parcel extends to the south side of 15th Street. The parcel is currently zoned RSF-4. The property is undeveloped pasture, and remains in agricultural use. The parcel contains some flood plain, and a string of ponds that become a protected stream immediately to the south. These valuable natural resources are classified as Natural Area on the 2030 Future Land Use Plan, the remainder of the site is classified as City Neighborhood Area.

Request: The request is to rezone the property from RSF-4 to NC, Neighborhood Conservation, subject to a Bill of Assurance placing land classified as Natural Area within a Conservation Easement approximately as shown in the attached Exhibit 'C', in order to allow development of higher density single-family housing. The proposed Bill of Assurance allows a maximum of 5 road/utility crossings and trail construction over the area conserved.

Land Use Compatibility: The proposed zoning is compatible with the surrounding mixture primarily of residential uses. The immediate area contains a range of single-family and multi-family development types, and all share a low to moderate densities, a residential development pattern that would be continued in the NC zone.

Land Use Plan Analysis: A majority of the site is classified as City Neighborhood Area. The proposed zoning for higher density single family development (NC permits 10 units per acre) is

generally compatible with the City Neighborhood designation that encourages higher density and a wide spectrum of housing types. The proposed NC zoning is possibly too low of a density with a lack of permitted uses other than single family. However, given the setting of this site adjacent to the Walker Park Neighborhood with similar development patterns the zoning is appropriate. The proposed zoning, as limited by the proposed Bill of Assurance, is also consistent with that portion of the property designated as Natural Area.

DISCUSSION:

On July 25, 2016 the Planning Commission forwarded the applicant's request rezoning with a recommendation for approval by a vote of 6-0-0.

BUDGET/STAFF IMPACT:

N/A

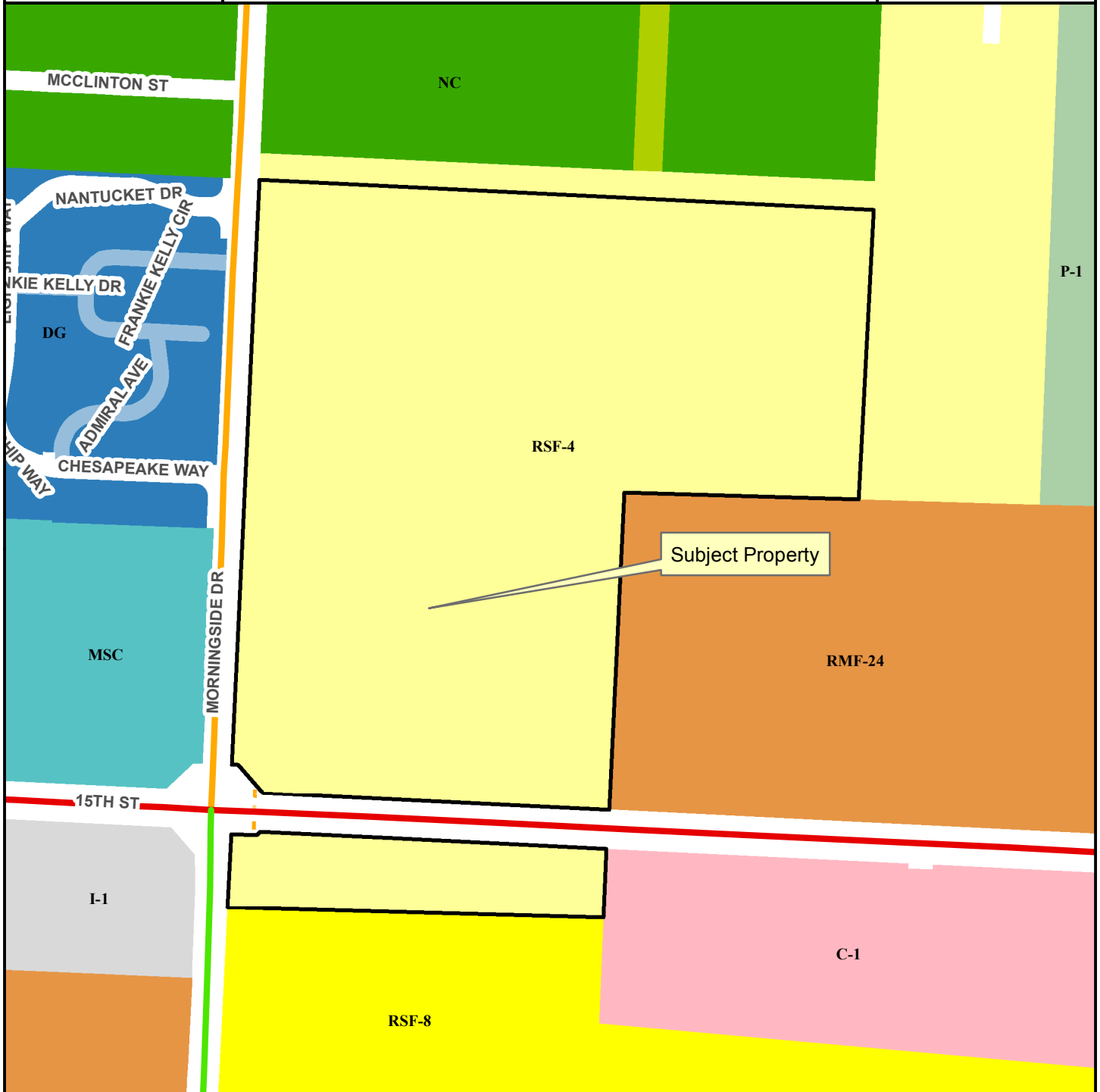
Attachments:

- Exhibit A
- Exhibit B
- Exhibit C
- Application
- Planning Commission Staff Report

RZN 16-5483

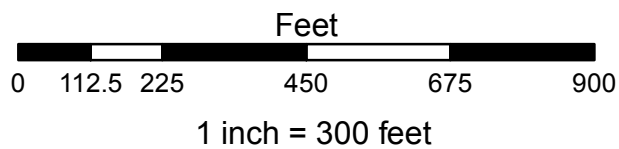
Close Up View

RAUSCH COLEMAN



Legend

- Planning Area
- Fayetteville City Limits
- Trail (Proposed)
- Building Footprint



- Residential-Agricultural
- RSF-4
- RSF-8
- RMF-24
- I-1 Heavy Commercial and Light Industrial
- C-1
- Main Street Center
- Downtown General
- Neighborhood Conservation
- P-1

RZN 16-5483
EXHIBIT 'B'
page 1 of 2

TRACT "A"

ALL THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, THAT LAYS NORTH OF THE RIGHT OF WAY OF ARKANSAS STATE HIGHWAY #16, ALSO KNOWN AS 15TH STREET AND EAST OF THE EAST RIGHT OF WAY OF MORNINGSIDE DRIVE. LESS AND EXCEPT THE FOLLOWING: COMMENCING AT THE NORTH EAST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE SOUTH 02°47'36" WEST A DISTANCE OF 582.75 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 02°44'15" WEST A DISTANCE OF 663.92 FEET; THENCE NORTH 87°15'49" WEST A DISTANCE OF 470.22 FEET; THENCE NORTH 02°44'15" EAST A DISTANCE OF 654.87 FEET; THENCE SOUTH 88°21'58" EAST A DISTANCE OF 470.31 FEET TO THE POINT OF BEGINNING.

CONTAINING 29.6 ACRES MORE OR LESS.

SUBJECT TO ANY EASEMENTS OF RECORD OR FACT.

RZN 16-5483
EXHIBIT 'B'
page 2 of 2

TRACT "B"

PART OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS.

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE SOUTH 02°52'58" WEST A DISTANCE OF 27.89 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 87°03'55" EAST A DISTANCE OF 849.45 FEET; THENCE SOUTH 02°46'10" WEST A DISTANCE OF 152.24 FEET; THENCE NORTH 87°15'33" WEST A DISTANCE OF 849.75 FEET; THENCE NORTH 02°52'58" EAST A DISTANCE OF 155.11 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.99 ACRES MORE OR LESS.

SUBJECT TO HWY #16 ALONG THE NORTH SIDE AND MORNINGSIDE DRIVE ALONG THE WEST SIDE AND ANY EASEMENTS OF RECORD OR FACT.

BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of a request for a zoning reclassification, the owner, developer, or buyer of this property, (hereinafter "Petitioner") Charles P. Rose Testamentary Trust, hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Chancery/Circuit Court of Washington County and agrees that if Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, **substantial irreparable damage justifying injunctive relief** has been done to the citizens and City of Fayetteville, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will **reasonable** rely upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows IF Petitioner's rezoning is approved by the Fayetteville City Council.

1. The use of Petitioner's property shall be limited to _____

No restrictions are being placed on this property, with the exception of a 60-foot wide conservation easement centered on the two stream channels, as generally shown on the attached exhibit.

2. Other restrictions including number and type of structures upon the property are limited to Development within the conservation easements shall be limited to a maximum of 5 road/utility crossings and trail construction. The Planning Commission may approve 1 additional crossing at the time of preliminary lot. Minor grading along the edge of the easement may be allowed to tie in grading lines.

3. Specific activities will not be allowed upon petitioner's property include _____

4. (Any other terms or conditions) _____

5. Petitioner specifically agrees that all such restrictions and terms shall run with the land and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, I, Curtis E. Hogue, Trustee of the Trust, as the owner, developer or buyer (Petitioner) voluntarily offer all such assurances and sign my name below.

July 21, 2016
Date

Curtis E. Hogue, Trustee
Printed Name Charles P. Rose Test. Trust

75 N. East Ave, Ste 402
Address
Fayetteville, AR 72701

Curtis E. Hogue, Trustee
Signature

NOTARY OATH

STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

And now on this the 21st day of July, 2016, appeared before me, Curtis E. Hogue, Trustee Charles P. Rose Test. Trust and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

Robin K. Matlock
NOTARY PUBLIC

My Commission Expires:
Feb. 13, 2024

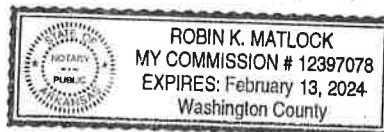
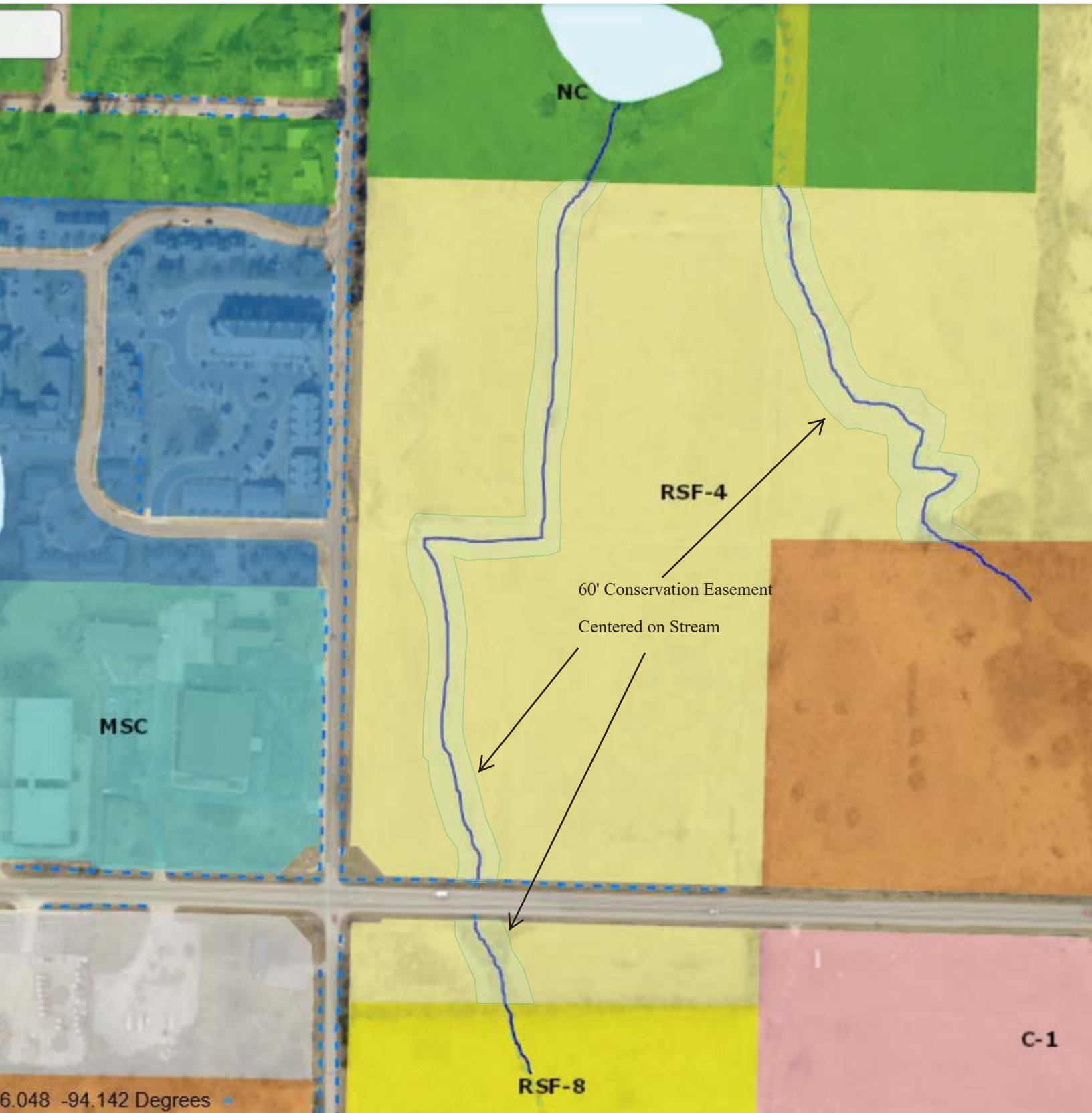


EXHIBIT FOR BILL OF ASSURANCE



CITY OF FAYETTEVILLE, ARKANSAS

REZONING

FOR STAFF USE ONLY

Date Application Submitted:

Date Accepted as Complete:

Case / Appeal Number:

Public Hearing Date:

FEE: \$325.00

Sign Fee: \$5.00

S-T-R:

PP#:

Zone:

Please fill out this form completely, supplying all necessary information and documentation to support your request.
Your application will not be placed on the Planning Commission agenda until this information is furnished.

Application:

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

Applicant (person making request):

Name: Jesse Fulcher

Address: 4058 N. College Avenue
Fayetteville, AR 72701

E-mail: jesse.fulcher@ruuschoolman.com

Phone: () 479-301-6639

Fax: ()

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

Name:

Address:

E-mail:

Phone: ()

Fax: ()

Site Address / Location: Northeast corner of 15th Street and Morningside Parcel #765-15088-000

Current Zoning District: RSF-4

Requested Zoning District: NC

Assessor's Parcel Number(s) for subject property: 36 Acres

FINANCIAL INTERESTS

The following entities and / or people have financial interest in this project:

APPLICANT / REPRESENTATIVE: I certify under penalty of perjury that the foregoing statements and answers herein made all data, information, and evidence herewith submitted are in all respects, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of application completeness, determination, or approval. I understand that the City might not approve what I am applying for, or might set conditions on approval.

Name (printed): Jesse Fulcher Date: 6/10/16
Signature: [Signature]

PROPERTY OWNER(S) / AUTHORIZED AGENT: I/we certify under penalty of perjury that I am/we are the owner(s) of the property that is the subject of this application and that I/we have read this application and consent to its filing. (If signed by the authorized agent, a letter from each property owner must be provided indicating that the agent is authorized to act on his/her behalf.)

Property Owners of Record (attach additional info if necessary):

Name (printed): <u>Charles E. Hogue Trustee</u>	Address: <u>75 N East Ave, Suite 402</u>
<u>Charles P. Rose Testametary Trust</u>	<u>Fayetteville, AR 72701</u>
Signature: <u>[Signature]</u>	Phone: _____
<u>Trustee</u>	<u>(479) 973-5000</u>
Date: <u>6/14/16</u>	

Name (printed): _____	Address: _____
Signature: _____	_____
Date: _____	Phone: _____
	()

Rezoning Checklist:

Attach the following items to this application:

- (1) Payment in full of applicable fees for processing the application:
\$325.00 application fee
\$5.00 public notification sign fee
- (2) A legal description of the property to be rezoned. A survey may be required if the property description can not accurately be platted or if it is described by referring to other deeds.
- (3) CD containing a copy of the legal description in MS Word and all required submittal items should be also included on the CD in PDF format.
- (4) A copy of the county parcel map from the Washington County Assessor's office or from the Washington County website (www.co.washington.ar.us). The subject property and all adjacent parcels should be identified on this parcel map. The owner's name, official mailing address, and the parcel number for every adjacent property shall be shown on this map.

PLANNING COMMISSION MEMO

TO: City of Fayetteville Planning Commission

THRU: Andrew Garner, City Planning Director

FROM: Quin Thompson, Current Planner

MEETING DATE: July 25, 2016 (*Updated with Planning Commission results*)

SUBJECT: **RZN 16-5483: Rezone (NE CORNER OF MORNINGSIDE & 15TH ST./RAUSCH COLEMAN 564):** Submitted by RAUSCH-COLEMAN, INC. for property at the NE CORNER OF MORNINGSIDE & 15TH ST. The property is zoned RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE and contains approximately 36.00 acres. The request is to rezone the property to NC, NEIGHBORHOOD CONSERVATION, subject to a Bill of Assurance.

RECOMMENDATION:

Staff recommends forwarding **RZN 16-5483** to the City Council with a recommendation for approval of NC as proposed, subject to a Bill of Assurance.

BACKGROUND:

The subject property is a 36 acre parcel located on the northeast corner of Morningside Drive and 15th Street. A small portion of the parcel extends to the south side of 15th Street. The parcel is currently zoned RSF-4. The property is undeveloped pasture, and remains in agricultural use. The parcel contains some flood plain, and a string of ponds that become a protected stream immediately to the south. These valuable natural resources are classified as Natural Area on the 2030 Future Land Use Plan.

On March 1, 2016 the City Council approved a rezone for the northern 34 acre portion of this property. The property was rezoned from RSF-4 to a mixture of Commercial Services (CS), Neighborhood Conservation (NC), and Residential-Agricultural (R-A). The R-A portion was created in an effort to encourage conservation of the connected ponds that cross the property and to provide a green belt connection between natural areas to the north and south of the property. The rezoning configuration was intended to concentrate development more densely onto portions of land away from sensitive environmental resources. The zoning of CS and NC allows for a residential density of more than double that permitted in a typical single family (RSF-4) zoning. This provides the opportunity to preserve remaining land zoned R-A for conservation, public and neighborhood use. Although not required under the R-A zoning, one of the benefits of this type of zoning pattern is that it allows a significant amount of greenways and linkages through a neighborhood and access to these amenities for a large number of residents. The R-A zoning is a low density zoning that will reduce impacts to sensitive environmental resources compared to standard zoning districts. Surrounding land use and zoning is depicted on *Table 1*.

**Table 1
Surrounding Land Use and Zoning**

Direction from Site	Land Use	Zoning
North	Agricultural	NC, Neighborhood Conservation
South	Undeveloped	RSF-8, Residential Single-Family/RMF-24, Residential Multi-family
East	City of Fayetteville/Undeveloped	RSF-4, Residential Single-Family/RMF-12, Residential Multi-family
West	Residential/Senior Housing	NC, Neighborhood Conservation/DG, Downtown General

Request: The request is to rezone the property from RSF-4 to NC, Neighborhood Conservation, subject to a Bill of Assurance placing land classified as Natural Area within a Conservation Easement approximately as shown in the attached exhibit, in order to allow development of higher density single-family housing. The proposed Bill of Assurance allows a maximum of 5 road/utility crossings and trail construction over the area conserved.

Public Comment: Staff has not received public comment.

INFRASTRUCTURE:

Streets: The subject parcel has access to both Morningside Drive, and 15th Street (Hwy 16). Morningside Drive is a partially improved two lane road with curb/gutter and sidewalk along the west side, as well as open ditches along the east. 15th Street is also State Highway 16, and is an unimproved two lane roadway with open ditches on both sides. Any further street improvements would be determined at time of development.

Water: Public water is available to the site. A 24" water main exists along the property frontage of Morningside Drive on the east. In addition, a 12" water main exists along the property frontage of 15th Street on the south.

Sewer: Public sewer is not available to the site. GIS indicates the nearest accessible sanitary sewer main to be located approximately 400 feet south of the property on Morningside Drive. An off-site sanitary sewer extension would be required to service the property at the time of development.

Drainage: Any additional improvements or requirements for drainage would be determined at time of development. Portions of this parcel lie within the FEMA designated 100-yr floodplain. No protected streams are present on this parcel. No portions of this parcel lie within the HHOD.

Fire: The Fire Department did not express any concerns with the request.

Police: The Police Department did not express any concerns with this request.

CITY PLAN 2030 FUTURE LAND USE PLAN: *City Plan 2030 Future Land Use Plan designates the properties within the proposed rezone as **City Neighborhood Area** and **Natural Area**.*

- **City Neighborhood Areas** are more densely developed than residential neighborhood areas and provide a varying mix of nonresidential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types.

- **Natural Areas** consist of lands approximating or reverting to a wilderness condition, including those with limited development potential due to topography, hydrology, vegetation or value as an environmental resource. These resources can include stream and wildlife corridors, as well as natural hubs and cores, as identified in the FNHA study, many of which make up the backbone of the enduring green network. A Natural Area designation would encourage a development pattern that requires conservation and preservation, prevents degradation of these areas, and would utilize the principles of low impact development for all construction.

The portion of this site designated on the Future Land Use Map as 'Natural Area' has been identified as having high environmental value by the Fayetteville Natural Heritage Association (FNHA), a local non-profit group. As a result of the FNHA work and other City staff research, this study area was included on the Enduring Green Network (EGN) map. The EGN map resulted in designation of portions of this area as Natural Area on the Future Land Use Map. Due to the environmental sensitivity of the study area, Staff recommends in favor of the applicant's proposal that portions of the land identified as **Natural Area** be placed within a 60 foot wide conservation easement that will be centered on the drainage/stream. This easement should result in conservation along these greenway corridors in exchange for higher density in other areas.

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: *Land Use Compatibility:* The proposed zoning is compatible with the surrounding mixture of residential and institutional uses. The immediate area contains a range of single-family and multi-family development types, and all share a low to moderate densities, a residential development pattern that would be continued in the NC zone.

Land Use Plan Analysis: The proposed zoning with the Bill of Assurance for a conservation easement over land classified as Natural Area is generally compatible with the Future Land Use Map for the portion of property designated as City Neighborhood Area. The proposed zoning, as limited by the proposed Bill of Assurance, is also consistent with that portion of the property designated as Natural Area.

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

Finding: The applicant has requested the zoning change in order develop the property with moderately dense single-residential neighborhood. The proposed zoning district would beneficially increase residential densities above those allowed under the current 4 unit per acre limit, a goal of the City Plan 2030 for infill in the core of the City. The property is located less than one mile from the city center, and in staff opinion, the pattern of development should reflect that with increased density and traditional town form as indicated by the goals of City Plan 2030.

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

Finding: The site has access to 15th Street and Morningside Drive. Morningside Drive is a partially improved 'Collector' street. 15th Street is an unimproved 'Principal Arterial' Street. The rezone encourages development that would increase traffic on this property, however, development of the area is unlikely to have significant negative impact on safety and congestion in the area.

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: Rezoning the property from RSF-4 to NC would certainly alter future population density, but should not undesirably affect load on public services. The Police and Fire Departments have expressed no objections to the proposal. A significant amount of street improvement would likely be required to fully develop this site, and would be reviewed in detail at the time of development.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

RECOMMENDATION: Staff recommends forwarding **RZN 16-5483** to the City Council with a recommendation for approval of NC as proposed, subject to a Bill of Assurance.

PLANNING COMMISSION ACTION:		Required	<u>YES</u>
Date: <u>July 25, 2016</u>	☐ Tabled	☒ Forwarded	☐ Denied
Motion: <u>Hoskins</u>			
Second: <u>Hoffman</u>			
Vote: <u>6-0-0</u>	<u>Note: recommend approval</u>		
CITY COUNCIL ACTION:		Required	<u>YES</u>
Date: <u>August 16, 2016</u>	☐ Approved	☐ Denied	

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code sections 161.03, 161.07 & 161.27
- Request letter
- Bill of Assurance
- Proposed Conservation Easement Area
- One Mile Map, Close-Up Map, Current Land Use Map, Future Land Use Map

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 (½)
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(D) *Bulk and Area Regulations.*

Lot width minimum	200 feet
Lot Area Minimum:	
Residential:	2 acres
Nonresidential:	2 acres

Lot area per dwelling unit	2 acres
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(E) *Setback Requirements.*

Front	Side	Rear
35 feet	20 feet	35 feet

(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. No. 5028, 6-19-07; Ord. No. 5128, 4-15-08; Ord. No. 5195, 11-6-08; Ord. No. 5238, 5-5-09; Ord. No. 5479, 2-7-12)

161.07 - District RSF-4, Residential Single-Family - Four (4) 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
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(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 (2) family dwellings
Units per acre	4 or less	7 or less

(D) *Bulk and Area Regulations.*

	Single-family dwellings	Two (2) family dwellings
Lot minimum width	70 feet	80 feet
Lot area minimum	8,000 square feet	12,000 square feet
Land area per dwelling unit	8,000 square feet	6,000 square feet
Hillside Overlay District Lot minimum width	60 feet	70 feet
Hillside Overlay District Lot area minimum	8,000 square feet	12,000 square feet
Land area per dwelling unit	8,000 square feet	6,000 square feet

(E) *Setback Requirements.*

Front	Side	Rear
15 feet	5 feet	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	45 feet
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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.

(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. No. 4858, 4-18-06; Ord. No. 5028, 6-19-07; Ord. No. 5128, 4-15-08; Ord. No. 5224, 3-3-09; Ord. No. 5312, 4-20-10; Ord. No. 5462, 12-6-11)

161.27 - Neighborhood Conservation

(A) *Purpose.* The Neighborhood Conservation zone has the least activity and a lower density than the other zones. Although Neighborhood Conservation is the most purely residential zone, it can have some mix of uses, such as civic buildings. Neighborhood Conservation serves to promote and protect neighborhood character. For the purposes of Chapter 96: Noise Control, the Neighborhood Conservation district is a residential zone.

(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 9	Two (2) family dwellings
Unit 10	Three (3) family dwellings
Unit 12	Limited business*
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 28	Center for collecting recyclable materials
Unit 36	Wireless communication facilities
Unit 44	Cottage Housing Development

(C) *Density.* Ten (10) Units Per Acre.(D) *Bulk and Area Regulations.*(1) *Lot Width Minimum.*

Single Family

40 feet

Two Family	80 feet
Three Family	90 feet

(2) *Lot Area Minimum.* 4,000 square feet

(E) *Setback Regulations.*

Front	A build-to zone that is located between the front property line and a line 25 feet from the front property line.
Side	5 feet
Rear	5 feet
Rear, from center line of an alley	12 feet

(F) *Building Height Regulations.*

Building Height Maximum	45 feet
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(Ord. No. 5128, 4-15-08; Ord. No. 5312, 4-20-10; Ord. No. 5462, 12-6-11; Ord. No. 5592, 6-18-13; Ord. No. 5664, 2-18-14; Ord. No. 5800, § 1(Exh. A), 10-6-15)



410 205 0 410 Feet

To the Fayetteville Planning Commission:

- a. The property is currently owned by the Testamentary Trust A. Rausch Coleman Homes has the property under contract.
- b. We are requesting the rezoning to allow for single-family home development. The increased density allowed under Neighborhood Conservation is more appropriate than RSF-4, given the properties close proximity to schools, parks and downtown Fayetteville, which is less than 1 mile to the west.
- c. The Neighborhood Conservation zoning district will be very compatible with surrounding land uses, which are primarily residential. Land uses to the west include a church, multi-family housing and single-family housing. Property to the south and east are primarily undeveloped, with the exception of the 7-Hills development adjacent to the east property line. There is a large, single-family residence to the north that was approved for educational services. A small business occupies land at the corner of Huntsville and Morningside.
- d. There is adequate water and sewer capacity adjacent to this site to serve future development. This includes 6-inch, 8-inch, 12-inch and 24-inch water lines; and 6-inch and 8-inch sewer lines.
- e. The proposed zoning of Neighborhood Conservation is very consistent with land use planning objectives and policies and with the Future Land Use Plan. Specifically, the Neighborhood Conservation district is intended to promote and protect neighborhood character. Although much of the adjacent land is undeveloped, the subject property is within reach of the Walker Park Neighborhood Plan and the overall downtown area of Fayetteville. There are many established neighborhoods, primarily consisting of small lot, single-family residences, to the west of this land. The Neighborhood Conservation district allows for smaller, single-family lots that are consistent with the historical context of surrounding neighborhoods.

Further, the Future Land Use Plan designates the site as a City Neighborhood Area, which are more densely developed areas, providing for a spectrum of uses and densities in all housing types. The Neighborhood Conservation zoning district allows for a more-dense, single-family development pattern than the existing RSF-4 zoning district, which typically averages less than 3 units per acre.

In addition to compliance with the Future Land Use Map and surrounding land uses, the Neighborhood Conservation zoning district will also allow the site to be developed in accordance with all of the goals of City Plan 2030.

- Goal 1: The subject property is adjacent to the Walker Park Neighborhood, and in close proximity to downtown Fayetteville. While being a greenfield site, the location most certainly qualifies it for infill development and certainly not suburban sprawl.
- Goal 2: As noted above, the proximity of the site to existing public infrastructure, established neighborhoods and downtown make this an infill location.
- Goal 3: The neighborhood conservation zoning district provides a build-to zone, which requires a more traditional building placement along the street and sidewalk edge. In addition to building placement, this neighborhood is within walking distance of small-scale commercial uses, churches, parks and jobs.

- Goal 4: The subject property is located along and adjacent to Ozark Regional Transit Services and the Fayetteville Trail System. Additionally, interior streets will be designed with short block lengths, narrow travel ways and an eye for slow traffic speeds.
 - Goal 5: Approximately 2.2 acres of waterways and pools within the overall 73-acre property have already been set aside as preserved greenspace. Additionally, areas within the subject 36-acre property will also be set aside as a riparian buffer and neighborhood park. An overall goal of this development is to preserve and enhance natural drainage features.
 - Goal 6: Housing within close proximity to downtown Fayetteville is primarily unaffordable for the average family. There is an opportunity with this property to provide new housing, at a price point that is attainable for small families, young professionals, single-parent households, or even baby boomers looking to downsize and who want to live in a location that is close to schools, parks, and jobs, and all of the amenities offered on the Square and Dickson Street.
- f. Rezoning the property to allow for increased residential density is justified at this time. The property provides an opportunity to create new housing that is compatible with surrounding land uses and place homes in close proximity to jobs and amenities.
 - g. Any development on this property will increase traffic on surrounding streets. However, the site has direct access to Huntsville Road, which is primary collector street that connects into downtown Fayetteville and east to Crossover Road; and 15th Street which is a primary east/west corridor. There is sufficient infrastructure in place to support development of this property.
 - h. Development of the property will increase the population of the area. However, this property is in close proximity to all of these services: Fire Station, Police Station, Happy Hollow Elementary, Commerce Park, Downtown Fayetteville, University of Arkansas, Walker Park and Fayetteville High School, to name a few.
 - i. The land is currently zoned for residential development. However, as has been seen, the RSF-4 zoning district is very inefficient, provided less than 3 units per acre of land. The Neighborhood Conservation zoning district will likely permit approximately 6 units per acre, which is much more in line with traditional development patterns found in Walker Park. Further, increasing the density of this property will allow for an appropriate infill development that will support and be supported by schools, parks, jobs and services that are all within close proximity of the property.

BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of a request for a zoning reclassification, the owner, developer, or buyer of this property, (hereinafter "Petitioner") Charles P. Rose Testamentary Trust, hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Chancery/Circuit Court of Washington County and agrees that if Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, substantial irreparable damage justifying injunctive relief has been done to the citizens and City of Fayetteville, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will reasonable rely upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows IF Petitioner's rezoning is approved by the Fayetteville City Council.

1. The use of Petitioner's property shall be limited to _____

No restrictions are being placed on this property, with the exception of a 60-foot wide conservation easement centered on the two stream channels, as generally shown on the attached exhibit.

2. Other restrictions including number and type of structures upon the property are limited to Development within the conservation easements shall be limited to a maximum of 5 road/utility crossings and trail construction. The Planning Commission may approve 1 additional crossing at the time of preliminary lot. Minor grading along the edge of the easement may be allowed to tie in grading lines.

3. Specific activities will not be allowed upon petitioner's property include _____

4. (Any other terms or conditions) _____

5. Petitioner specifically agrees that all such restrictions and terms shall run with the land and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, I, Curtis E. Hogue, Trustee of the Trust, as the owner, developer or buyer (Petitioner) voluntarily offer all such assurances and sign my name below.

July 21, 2016
Date

Curtis E. Hogue, Trustee
Printed Name Charles P. Rose Test Trust

75 N. East Ave, Ste 402
Address
Fayetteville, AR 72701

Curtis E. Hogue, Trustee
Signature

NOTARY OATH

STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

And now on this the 21st day of July, 2016, appeared before me, Curtis E. Hogue, Trustee Charles P. Rose Test. Trust and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

Robin K. Matlock
NOTARY PUBLIC

My Commission Expires:
Feb. 13, 2024

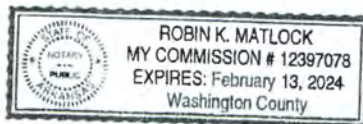
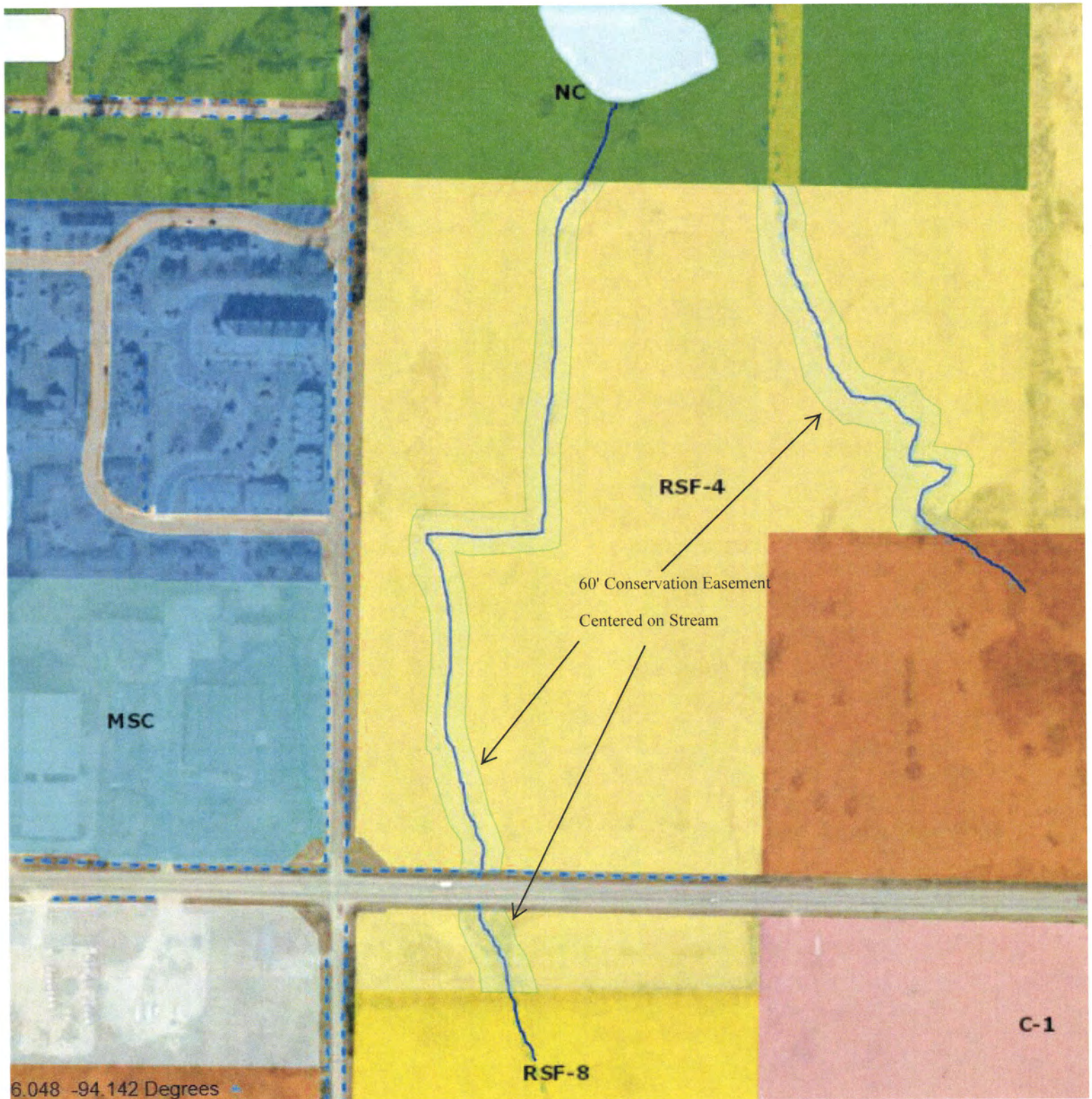


EXHIBIT FOR BILL OF ASSURANCE



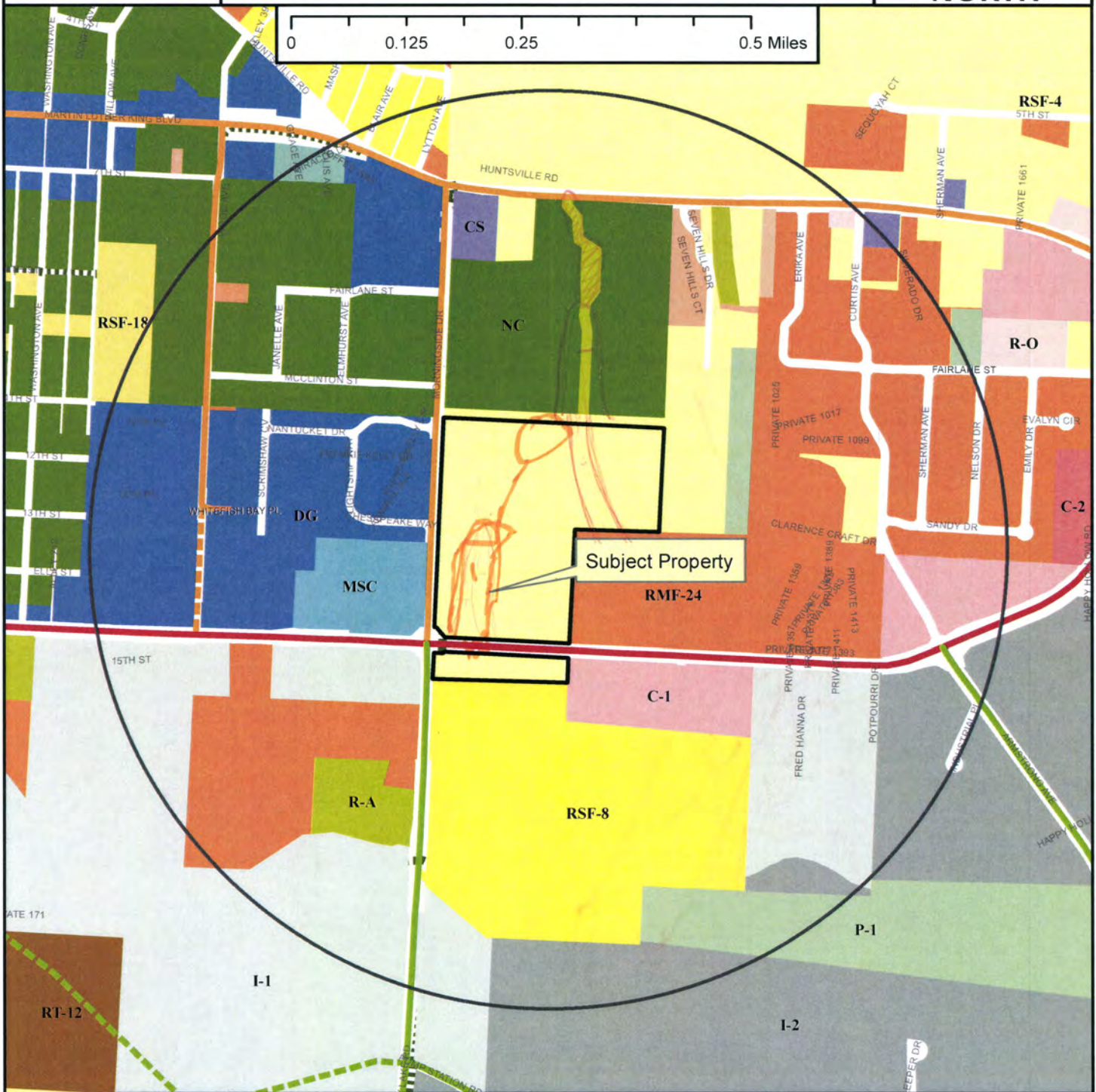
RZN 16-5483

One Mile View

RAUSCH COLEMAN



0 0.125 0.25 0.5 Miles



Legend

- Planning Area
- Fayetteville City Limits
- Shared Use Paved Trail
- Trail (Proposed)
- Building Footprint



- | | |
|---|--|
| <p>Zoning</p> <p>RESIDENTIAL SINGLE-FAMILY</p> <ul style="list-style-type: none"> RSF-5 RSF-1 RSF-2 RSF-4 RSF-7 RSF-8 RSF-18 <p>RESIDENTIAL MULTI-FAMILY</p> <ul style="list-style-type: none"> RMF-6 RMF-12 RMF-18 RMF-24 RMF-40 <p>INDUSTRIAL</p> <ul style="list-style-type: none"> I-1 Heavy Commercial and Light Industrial I-2 General Industrial | <p>EXTRACTION</p> <ul style="list-style-type: none"> E-1 <p>COMMERCIAL</p> <ul style="list-style-type: none"> C-1 Residential-Office C-2 C-3 <p>FORM BASED DISTRICTS</p> <ul style="list-style-type: none"> Downtown Core Urban Thoroughfare Main Street Center Downtown General Community Services Neighborhood Services Neighborhood Conservation <p>PLANNED ZONING DISTRICTS</p> <ul style="list-style-type: none"> Commercial, Industrial, Residential <p>INSTITUTIONAL</p> <ul style="list-style-type: none"> P-1 |
|---|--|

Planning Commission

July 25, 2016

Agenda Item 5

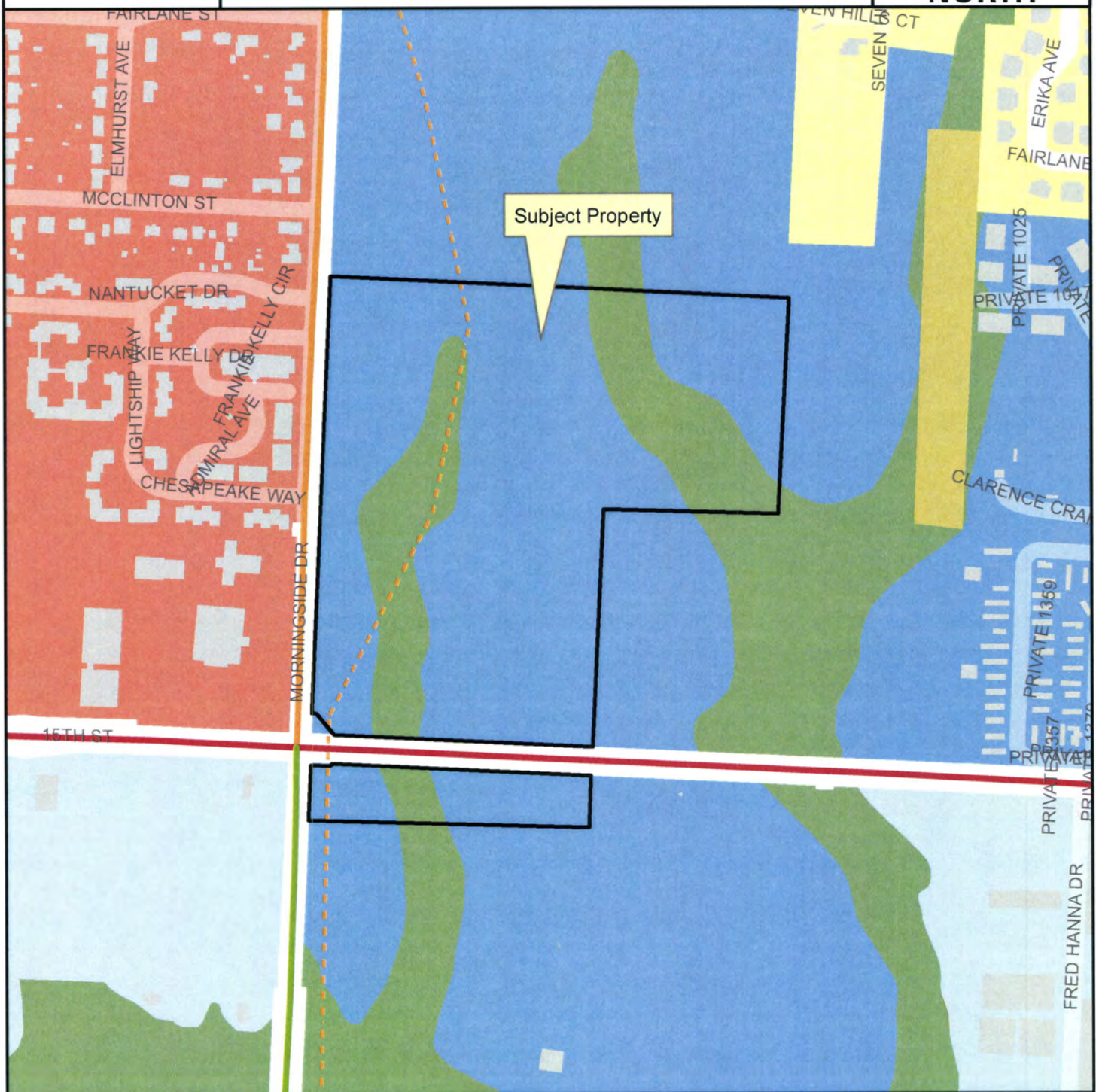
16-5483 Rausch Coleman

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RZN 16-5483

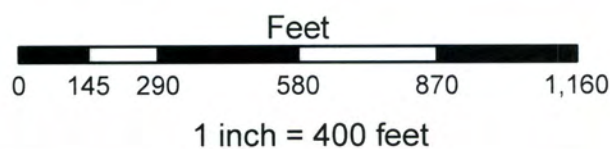
Future Land Use

RAUSCH COLEMAN



Legend

- Planning Area
- Fayetteville City Limits
- Trail (Proposed)
- Building Footprint



FUTURE LAND USE 2030

- Natural Area
- Residential Neighborhood Area
- City Neighborhood Area
- Industrial
- Complete Neighborhood Plan
- Civic and Private Open Space/Parks
- Civic Institutional

Planning Commission

July 25, 2016

Agenda Item 5

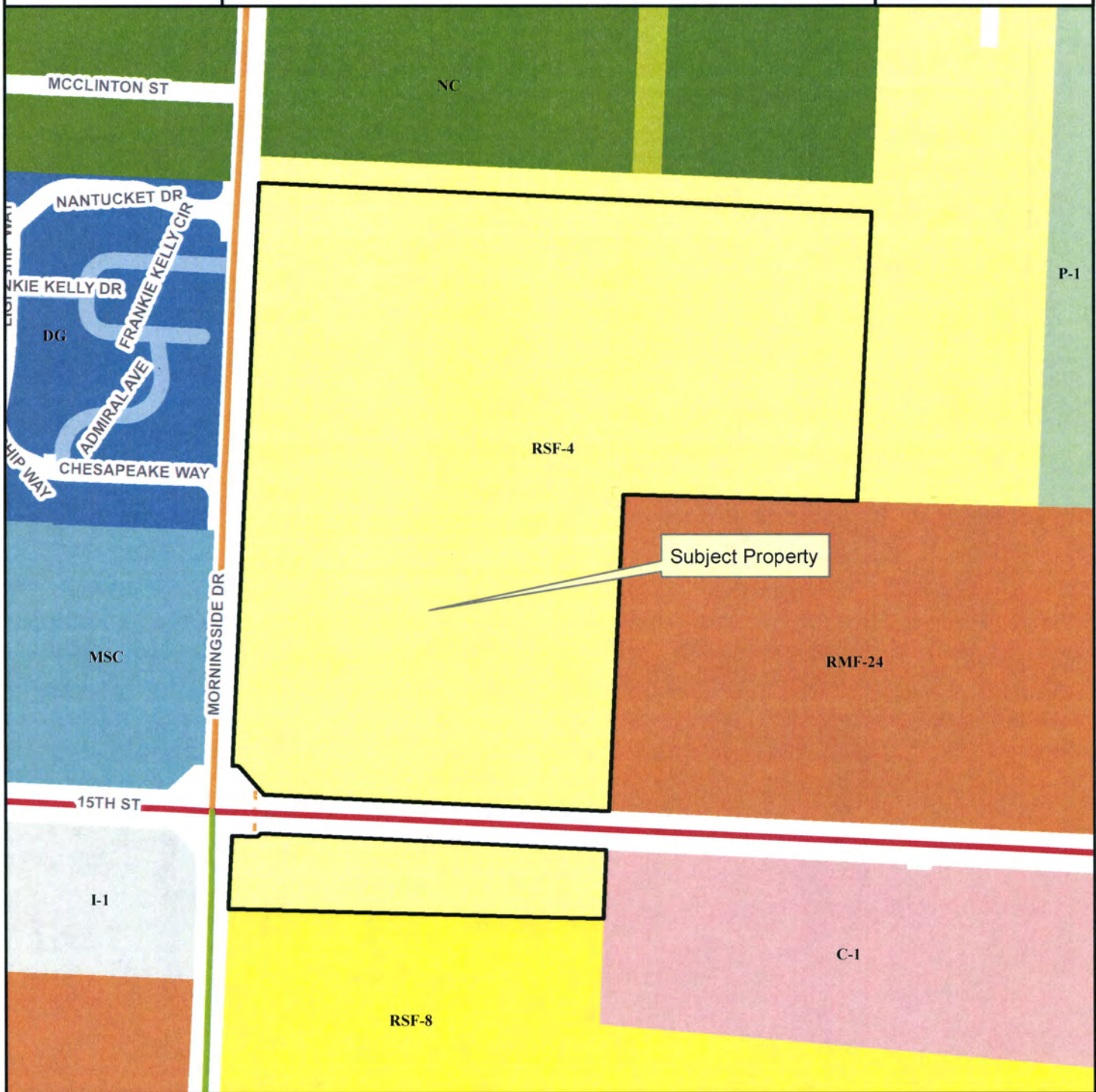
16-5483 Rausch Coleman

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RZN 16-5483

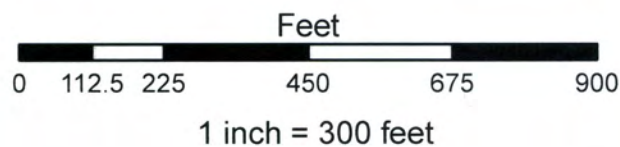
Close Up View

RAUSCH COLEMAN



Legend

- Planning Area
- Fayetteville City Limits
- Trail (Proposed)
- Building Footprint



- Residential-Agricultural
- RSF-4
- RSF-8
- RMF-24
- I-1 Heavy Commercial and Light Industrial
- C-1
- Main Street Center
- Downtown General
- Neighborhood Conservation
- P-1

RZN 16-5483

Current Land Use

RAUSCH COLEMAN



Legend

Streets Existing

MSP Class

COLLECTOR

MINOR ARTERIAL

PRINCIPAL ARTERIAL

Trail (Proposed)

RZN16-5483

Planning Area

Fayetteville City Limits



Planning Commission

July 26, 2016

Agenda Item 5

16-5483 Rausch Coleman

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City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2016-0355

Agenda Date: 8/16/2016

Version: 1

Status: Agenda Ready

In Control: City Council Meeting

File Type: Presentation

Agenda Number: D. 1

AGENDA SESSION PRESENTATION - DR. MATTHEW WENDT, NEW SUPERINTENDENT OF THE FAYETTEVILLE PUBLIC SCHOOL DISTRICT, WILL INTRODUCE HIMSELF AND SHARE GOALS FOR THE FAYETTEVILLE PUBLIC SCHOOLS AND PROVIDE THOUGHTS ON COLLABORATION AND PARTNERSHIP OPPORTUNITIES BETWEEN FAYETTEVILLE PUBLIC SCHOOLS AND THE CITY OF FAYETTEVILLE.

Agenda Session
2 Changes

City of Fayetteville, Arkansas

*113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323*



Meeting Agenda - Tentative Agenda

Tuesday, August 9, 2016

4:30 PM

City Hall Room 326

City Council Agenda Session

*Adella Gray Ward 1
Sarah Marsh Ward 1
Mark Kinion Ward 2
Matthew Petty Ward 2
Justin Tennant Ward 3
Martin W. Schoppmeyer, Jr. Ward 3
John S. La Tour Ward 4
Alan Long Ward 4*

ELECTED OFFICIALS:

*Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith*

Call To Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions

City Council Meeting Presentations, Reports and Discussion Items:

2016-0365

FAYETTEVILLE NATURAL HERITAGE ASSOCIATION CHECK PRESENTATION

Agenda Additions

A. Consent:

✓ A. 1 2015-0653

✓ APPROVAL OF THE AUGUST 2, 2016 CITY COUNCIL MEETING MINUTES.

✓ A. 2 2016-0334

NWA REGIONAL AIRPORT AND NWA COUNCIL FOUNDATION COOP AGR.:

A RESOLUTION TO APPROVE THE COOPERATIVE AGREEMENT BETWEEN THE CITY OF FAYETTEVILLE, NORTHWEST ARKANSAS REGIONAL AIRPORT (XNA), AND THE NORTHWEST ARKANSAS COUNCIL FOUNDATION REGARDING THE PLACEMENT OF WAYFINDING SIGNS DIRECTING TRAVELERS TO AND FROM THE AIRPORT WITHIN THE PUBLIC RIGHTS-OF-WAY AT NO COST TO THE CITY

Attachments:

Agenda Packet - XNA Wayfinding

Wayfinding Signs XNA Signed Agreement 2016-0334

✓ **A. 3** 2016-0353**MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC:**

A RESOLUTION TO APPROVE AMENDMENT NO. 4 TO THE CONTRACT WITH MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC IN THE AMOUNT OF \$15,000.00 FOR ADDITIONAL LEGAL SERVICES RELATED TO THE WHITE RIVER WATER QUALITY STANDARDS PETITION TO THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION, AND TO APPROVE A BUDGET ADJUSTMENT

Attachments: Mitchell Williams Amendment No. 4 Agenda Packet
 BA - Mitchell Williams Amendment No. 4

✓ **A. 4** 2016-0363**CDI CONTRACTORS, LLC:**

A RESOLUTION TO APPROVE A BUDGET ADJUSTMENT IN THE AMOUNT OF \$11,820.00 RECOGNIZING REVENUE FROM CDI CONTRACTORS, LLC FOR ITS SHARE OF COSTS FOR REPAIRS TO WILSON AVENUE

Attachments: SRF 2016-0363
 BA 2016-0363

B. Unfinished Business:✓ **B. 1** 2016-0352**AMEND §164.23 SINGLE-FAMILY INFILL STANDARDS:**

AN ORDINANCE TO AUTHORIZE THE CITY COUNCIL TO GRANT A VARIANCE IN THE SINGLE FAMILY INFILL STANDARDS TO SUPPORT ATTAINABLE, AFFORDABLE HOUSING

(LEFT ON SECOND READING)

Attachments: Agenda Request Packet Infill Standards
 Additional B.1 Amend 164.23 Single Family Infill Standards

At the August 2, 2016 City Council meeting this ordinance Left on the Second Reading and sent to Ordinance Review Committee.

C. New Business:

C.1 2016-0351

RZN 16-5474 (SOUTH OF 1297 E. FARMERS RD./HALE 558):

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 16-5474 FOR APPROXIMATELY 1.28 ACRES LOCATED SOUTH OF 1297 EAST FARMERS ROAD FROM R-A, RESIDENTIAL AGRICULTURAL AND RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE TO RSF-7, RESIDENTIAL SINGLE FAMILY, 7 UNITS PER ACRE

Attachments: 16-5474 CC Staff Report

C.2 2016-0362

Remove

ADM 16-5457: (E. END OF VAN ASCHE DR./VAN ASCHE MSP, 174):

A RESOLUTION TO AMEND THE MASTER STREET PLAN BY REMOVING THE CONNECTION OVER MUD CREEK BETWEEN THE EAST END OF VAN ASCHE DRIVE AND THE SOUTH END OF SHILOH DRIVE

Attachments: ADM 16-5457: (E. END OF VAN ASCHE DR./VAN ASCHE MSP)

C.3 2016-0364

KESSLER MOUNTAIN CONSERVATION EASEMENT:

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO SIGN A GRANT OF CONSERVATION EASEMENT TO THE NORTHWEST ARKANSAS LAND TRUST FOR THE PRESERVATION OF KESSLER MOUNTAIN

Attachments: Kessler CE Agenda Item
Kessler Mountain Signed Conservation Easement

C.4 2016-0367

RZN 16-5483: (NE CORNER OF MORNINGSIDE & 15TH ST./RAUSCH COLEMAN):

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 16-5483 FOR APPROXIMATELY 36 ACRES LOCATED AT THE NORTHEAST CORNER OF MORNINGSIDE AND FIFTEENTH STREET FROM RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE TO NC, NEIGHBORHOOD CONSERVATION, SUBJECT TO A BILL OF ASSURANCE

Attachments: 16-5483 CC reports

C.5. - Add: RZN 16-5501 - 1030 South College Ave.

D. City Council Agenda Session Presentations:

D.1 2016-0355

AGENDA SESSION PRESENTATION - DR. MATTHEW WENDT, NEW SUPERINTENDENT OF THE FAYETTEVILLE PUBLIC SCHOOL DISTRICT, WILL INTRODUCE HIMSELF AND SHARE GOALS FOR THE FAYETTEVILLE PUBLIC SCHOOLS AND PROVIDE THOUGHTS ON COLLABORATION AND PARTNERSHIP OPPORTUNITIES BETWEEN FAYETTEVILLE PUBLIC SCHOOLS AND THE CITY OF FAYETTEVILLE.

E. City Council Tour:**F. Announcements:****G. Adjournment****NOTICE TO MEMBERS OF THE AUDIENCE**

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Added to the August 16, 2016 agenda

Legistar ID No.: 2016-0375

AGENDA REQUEST FORM

FOR: Council Meeting of August 16, 2016

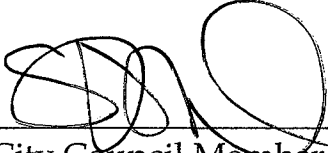
FROM:

City Council Member Sarah Marsh

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

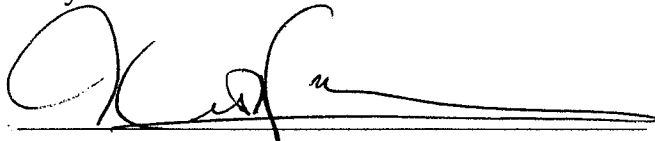
AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 16-5501 FOR APPROXIMATELY 0.17 ACRES LOCATED AT 1030 SOUTH COLLEGE AVENUE FROM NC, NEIGHBORHOOD CONSERVATION TO NS, NEIGHBORHOOD SERVICES

APPROVED FOR AGENDA:



City Council Member Sarah Marsh

August 9, 2016
Date



City Attorney Kit Williams
(as to form)

August 9, 2016
Date

ORDINANCE NO.

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 16-5501 FOR APPROXIMATELY 0.17 ACRES LOCATED AT 1030 SOUTH COLLEGE AVENUE FROM NC, NEIGHBORHOOD CONSERVATION TO NS, NEIGHBORHOOD SERVICES

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 property shown on the map (Exhibit A) and the legal description (Exhibit B) both attached to the Planning Department's Agenda Memo from NC, Neighborhood Conservation to NS, Neighborhood Services.

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 16th day of August, 2016.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Mulford, Patti

From: Smith, Sondra
Sent: Tuesday, August 09, 2016 12:14 PM
To: Mulford, Patti; Williams, Kit; Pennington, Blake
Cc: Branson, Lisa; Smith, Lorinda; Smith, Sondra; Pate, Jeremy; Garner, Andrew
Subject: FW: Request
Attachments: 1030_Rezone_Checklist.pdf

Agenda Request for today from Sarah Marsh.

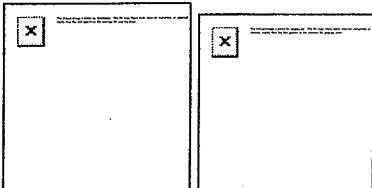
From: Marsh, Sarah
Sent: Tuesday, August 09, 2016 11:48 AM
To: Smith, Sondra <ssmith@fayetteville-ar.gov>
Subject: Fw: Request

Sondra,

I would like to walk on this rezoning request at our Agenda Session tonight due to a time crunch on the part of the applicant. What do I need to do to make this happen?

Thanks,

Sarah Marsh, bARCH, LEED AP BD+C
Vice Mayor | City Council Member, Ward 1, Position 2
City of Fayetteville, Arkansas
ward1_pos2@fayetteville-ar.gov | 479.799.0393



From: Sarah Marsh <sarahemarsh@gmail.com>
Sent: Tuesday, August 9, 2016 11:43 AM
To: Marsh, Sarah
Subject: Fwd: Request

----- Forwarded message -----

From: Keaton Smith <kwsmith1200@gmail.com>
Date: Mon, Aug 8, 2016 at 11:20 PM
Subject: Request
To: Sarah Marsh <sarahemarsh@gmail.com>

Sarah,

Tonight, our rezone request for 1030 S College passed the Planning Commission 7-1. Due to time constraints, I'm writing to request that you "walk on" our rezone request to the City Council agenda session tomorrow night, August 9th.

Our office tenant, Artist Laboratory Theatre, would like to move in September 1st. This date coincides with the beginning of their FY 17 budget. In addition, Artist Laboratory Theatre plans to have two yoga studios as sub-tenants, and both sub-tenants would like to move in on September 1st. For these reasons, I respectfully request that you consider walking our rezone request on to tomorrow night's agenda session.

I've attached our rezone request checklist that was submitted to City Planning. We feel the rezone from Neighborhood Conservation to Neighborhood Services is appropriate for several reasons:

- It is consistent with the historical use of the property (it has always been a church)
- It does not increase the intensity of the use
- An informal Facebook survey showed overwhelming demand for small-scale commercial use of the building
- The adjacent property owners are comfortable with the proposed zoning district and proposed use
- The building has never been residential, and would require substantial renovation to make it residential
- Changing the site to residential would reduce diversity of the neighborhood and sacrifice the historic character and charm of the building
- The Walker Park Neighborhood Master Plan calls for a diversity of uses
- City Plan 2030 calls for infill, revitalization and the promotion of traditional town form, such as mid-block commercial use

If I can provide any additional information, please do not hesitate to call or email me. I appreciate your service and your consideration of this request.

.....
Keaton
479-879-7922

--
Sarah Marsh, bArch, LEED AP
Tanglewood Fashion & Lifestyle
Custom Apparel | Design Services
479.799.0393 | sarah@studioTanglewood.com



PLANNING COMMISSION MEMO

TO: City of Fayetteville Planning Commission

THRU: Andrew Garner, City Planning Director

FROM: Harry Davis, Planner

MEETING DATE: August 8, 2016 UPDATED FOR PC RESULTS

SUBJECT: **RZN 16-5501: Rezone (1030 S. College Ave./K. Smith, 563):** Submitted by KEATON SMITH for property at 1030 S. COLLEGE AVE. The property is zoned NC, NEIGHBORHOOD CONSERVATION, containing approximately 0.17 acres total. The request is to rezone the properties to NS, NEIGHBORHOOD SERVICES.

RECOMMENDATION:
Staff recommends denial of **RZN 16-5501**.

BACKGROUND:
The subject property of 0.17 acres is located at 1030 S. College Ave. The parcel is zoned NC, Neighborhood Conservation. The property is currently developed with a 1,400 sq. ft. building.

The property has historically been used as a site for various churches and the building was last occupied by Fayetteville Christadelphia Ecclesia.

Surrounding land use and zoning is depicted on *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Single-family Residential	NC, Neighborhood Conservation
South	Single-family Residential	NC, Neighborhood Conservation
East	Single-family Residential	NC, Neighborhood Conservation
West	Fayetteville Senior Center	P-1, Institutional

Request: The request is to rezone the parcel from NC, Neighborhood Conservation to NS, Neighborhood Services to allow for a flexible office and studio space.

Public Comment: No public comment has been received.

INFRASTRUCTURE:

- Streets:** The subject parcel has access to S. College Ave, a partially improved two-lane Collector street with sidewalk on the west side. Street improvements would be determined at time of development.
- Water:** Public water is available to the site. A 6" water main runs along South College.
- Sewer:** Public sewer is available to the site. A 6" sewer main runs along South College.
- Drainage:** Any additional improvements or requirements for drainage would be determined at time of development.
- Fire:** The Fire Department did not express any concerns with the request.
- Police:** The Police Department did not express any concerns with this request.

CITY PLAN 2030 FUTURE LAND USE PLAN:

*City Plan 2030 Future Land Use Plan designates this site as a **Complete Neighborhood Plan: Walker Park Neighborhood**. A central goal of the plan was to preserve single-family neighborhoods while encouraging additional housing types and a mix of uses. A digital copy of select pages from the plan has been provided separately.*

Walker Park neighborhood adopted a plan in 2008. That plan states that the neighborhood should have a balance of non-residential uses and housing. Stakeholders wanted zoning and other city regulations to reflect and encourage that balance while conserving the existing single-family fabric where it is intact. This means the neighborhood will retain and develop a variety of housing types for different income levels and retain and develop neighborhood commercial nodes that serve the neighborhood residents as well as the nearby employment centers. There is also an emphasis on connectivity and walkability. Connection of the street grid and improved pedestrian mobility between key destinations will unify the neighborhood, making it sustainable over time. Third, creating Jefferson Square as a core of the neighborhood will help to preserve some of the rich history embedded in the Jefferson Building and create a neighborhood center. Last, accessible greenspace in the form of community gardens throughout the neighborhood and additional uses and access points to Walker Park will capitalize on existing resources within the neighborhood and provide function and beauty for both residents and visitors.

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: ***Land Use Compatibility:*** The proposed zoning is consistent in terms of form-based development to the north, east, and south. The immediately surrounding properties are single-family, detached residences, which could coexist with a greater range of housing types and some limited business permitted by-right in NS. A rezoning to NS could allow the subject property to be redeveloped with higher densities and in a form-based pattern that fits development in adjacent Downtown and Walker Park neighborhoods. The kind of uses permitted in NS, such as single-, two-, and three-family; limited business; and home occupations, are relatively compatible with current uses in the surrounding neighborhood. Limited business ensures that developing large commercial buildings could not happen under this rezone. However,

non-residential uses and more intense development patterns within a predominantly single-family neighborhood should generally be encouraged in corner locations and edges of the neighborhood. Proposing to insert a commercial use mid-block and surrounded by single-family homes on three sides introduces the potential for incompatible land uses due to noise, light, traffic, and solid waste disposal that are more intense than the abutting properties.

Land Use Plan Analysis: The proposed zoning is generally incompatible with the Walker Park Neighborhood Master Plan, which calls for preservation of single-family homes for this particular area of Walker Park. Allowing businesses to be located in the middle of this residential block, disconnected and outside the proximity of other commercial or office uses, could be seen as compromising the integrity of the Walker Park Neighborhood Plan goals. The plan particularly notes places at Southgate Commercial Center, the intersection of School & 15th, Jefferson Square, and along Huntsville Rd. as places to grow commercial nodes and streets. The rest of the neighborhood was primarily rezoned and intended to encourage a range and mix of housing types.

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

Finding: The applicant's intentions to create a flexible space for offices and studios using the existing building could be granted under the current NC zoning as a conditional use.

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

Finding: The site has access to South College Avenue, so retail, commercial, or offices could appreciably increase traffic and congestion along South College. The parking lot for this parcel will likely be required to be improved with new development, as it is inadequate for substantial numbers of visitors and workers.

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: Rezoning the property from NC to NS would not increase the load on public services as the property is too small to have a significant-enough number of units. The density allowance of 10 units per acre does not change between NC and NS.

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

- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: Staff believes that the applicant's intention of developing this site for non-residential use could be better addressed in a Conditional Use Permit under current zoning. Furthermore, the site can be practically and appropriately used under the current NC zoning.

RECOMMENDATION: Staff recommends denial of RZN 16-5501 based on the findings discussed throughout this report.

PLANNING COMMISSION ACTION:		Required	<u>YES</u>
Date: <u>August 8, 2016</u>	☐ Tabled	☒ Forwarded	☐ Denied
Motion: Autry	MOTION TO FORWARD REZONE TO CITY COUNCIL, BROWN DISSENTING		
Second: Quinlan			
Vote: 8-1-0			

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code sections 161.26 & 161.16
- Request letter
- Rezone exhibit
- One Mile Map
- Close-Up Map
- Current Land Use Map
- Future Land Use Map
- Walker Park Neighborhood Plan

Agenda Session August 16, 2016
Removed from Agenda
C.2. ADM 16-5457.

CityClerk

From: Curth, Jonathan
Sent: Tuesday, August 09, 2016 2:26 PM
To: CityClerk
Subject: FW: please remove our Van Asche extension

City Clerk's Office,

Please find below the formal request by Swope Consulting to remove the proposed Master Street Plan amendment for the East End of Van Asche. (2016-0362)

Thanks,

Jonathan Curth
Senior Planner
City Planning Division
City of Fayetteville, Arkansas
jcurth@fayetteville-ar.gov
479.575.8308

From: Phil Swope [mailto:phil@civilfirst.com]
Sent: Tuesday, August 09, 2016 2:19 PM
To: Curth, Jonathan <jcurth@fayetteville-ar.gov>
Cc: Eric Heller <eric@civilfirst.com>
Subject: please remove our Van Asche extension

We would like this item to be removed from this afternoon's council agenda.

Thanks,

Phil Swope, PE
Swope Consulting, LLC
479.685.8399 cell/office

Pre-Agenda Meeting 8-3-16

City of Fayetteville, Arkansas

*113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323*



Meeting Agenda - Tentative Agenda

Tuesday, August 16, 2016

4:30 PM

City Hall Room 326

City Council Agenda Session

*Adella Gray Ward 1
Sarah Marsh Ward 1
Mark Kinion Ward 2
Matthew Petty Ward 2
Justin Tennant Ward 3
Martin W. Schoppmeyer, Jr. Ward 3
John S. La Tour Ward 4
Alan Long Ward 4*

ELECTED OFFICIALS:

*Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith*

Call To Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions

City Council Meeting Presentations, Reports and Discussion Items:

2016-0365

FAYETTEVILLE NATURAL HERITAGE ASSOCIATION CHECK PRESENTATION

2016-0366

DEVELOPMENT SERVICES PRESENTATION - JEREMY PATE

Move to
Sept. 6
→

Agenda Additions

A. Consent:

A. 1 2015-0653

APPROVAL OF THE AUGUST 2, 2016 CITY COUNCIL MEETING MINUTES.

A. 2 2016-0334

NWA REGIONAL AIRPORT AND NWA COUNCIL FOUNDATION COOP AGR.:

A RESOLUTION TO APPROVE THE COOPERATIVE AGREEMENT BETWEEN THE CITY OF FAYETTEVILLE, NORTHWEST ARKANSAS REGIONAL AIRPORT (XNA), AND THE NORTHWEST ARKANSAS COUNCIL FOUNDATION REGARDING THE PLACEMENT OF WAYFINDING SIGNS DIRECTING TRAVELERS TO AND FROM THE AIRPORT WITHIN THE PUBLIC RIGHTS-OF-WAY AT NO COST TO THE CITY

Attachments:

Agenda Packet - XNA Wayfinding

Signed
Contract
needs
attached
✓

A. 3 2016-0353 *Meyer*

A RESOLUTION TO APPROVE AMENDMENT NO. 4 TO THE CONTRACT WITH MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC IN THE AMOUNT OF \$15,000.00 FOR ADDITIONAL LEGAL SERVICES RELATED TO THE WHITE RIVER WATER QUALITY STANDARDS PETITION TO THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION, AND TO APPROVE A BUDGET ADJUSTMENT

Attachments:

Mitchell Williams Amendment No. 4 Agenda Packet

BA - Mitchell Williams Amendment No. 4

A. 4 2016-0363**CDI CONTRACTORS, LLC:**

A RESOLUTION TO APPROVE A BUDGET ADJUSTMENT IN THE AMOUNT OF \$11,820.00 RECOGNIZING REVENUE FROM CDI CONTRACTORS, LLC FOR ITS SHARE OF COSTS FOR REPAIRS TO WILSON AVENUE

Attachments:SRF 2016-0363BA 2016-0363**B. Unfinished Business:****B. 1 2016-0352****AMEND §164.23 SINGLE-FAMILY INFILL STANDARDS:**

AN ORDINANCE TO AUTHORIZE THE CITY COUNCIL TO GRANT A VARIANCE IN THE SINGLE FAMILY INFILL STANDARDS TO SUPPORT ATTAINABLE, AFFORDABLE HOUSING

(LEFT ON SECOND READING)Attachments:Agenda Request Packet Infill StandardsAdditional C. 5 Amend 164.23 Single Family Infill Standards

At the August 2, 2016 City Council meeting this ordinance Left on the Second Reading and sent to Ordinance Review Committee.

C. New Business:

*Contact
Justin Tennant
about Ord.
Review Com.
Meeting.
8/11/16*

C. 1 2016-0351

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 16-5474 FOR APPROXIMATELY 1.28 ACRES LOCATED SOUTH OF 1297 EAST FARMERS ROAD FROM R-A, RESIDENTIAL AGRICULTURAL AND RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE TO RSF-7, RESIDENTIAL SINGLE FAMILY, 7 UNITS PER ACRE

Attachments: 16-5474 CC Staff Report

C. 2 2016-0362

A RESOLUTION TO AMEND THE MASTER STREET PLAN BY REMOVING THE CONNECTION OVER MUD CREEK BETWEEN THE EAST END OF VAN ASCHE DRIVE AND THE SOUTH END OF SHILOH DRIVE

Attachments: ADM 16-5457: (E. END OF VAN ASCHE DR./VAN ASCHE MSP)

C. 3 2016-0364

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Signed
Contract
needs
attached
✓

Don will
send us →
an email
to forward
to Aldermen
about
the
superintendent
presentation

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