



AGENDA

FORT SMITH BOARD OF DIRECTORS REGULAR MEETING

May 3, 2011 ~ 6:00 P.M.

FORT SMITH PUBLIC SCHOOLS
SERVICE CENTER
3205 JENNY LIND ROAD

THIS MEETING IS BEING TELECAST LIVE ON THE CITY CABLE ACCESS CHANNEL 6

INVOCATION & PLEDGE OF ALLEGIANCE

ROLL CALL

**PRESENTATION BY MEMBERS OF THE BOARD OF DIRECTORS OF ANY ITEMS
OF BUSINESS NOT ALREADY ON THE AGENDA FOR THIS MEETING**

(Section 2-37 of Ordinance No. 24-10)

APPROVE MINUTES OF THE APRIL 19, 2011 REGULAR MEETING

ITEMS OF BUSINESS:

1. Ordinance rezoning identified property and amending the zoning map (*from Commercial Light (C-2) to Commercial Heavy (C-5) by extension located at 4613, 4615 and 4617 Jenny Lind Road*)
2. Ordinance amending the Master Land Use Plan Map and rezoning identified property and amending the zoning map (*from Residential Detached to Neighborhood Commercial and rezoning from Residential Multi-Family Medium Density (RM-3) to Commercial Light (C-2) by classification located at 6300 Cliff Drive*)
3. Ordinance amending the Master Land Use Plan Map and rezoning identified property and amending the zoning map (*from Open Space, Office Research, Light Industrial and Residential Detached to General Commercial and rezoning from Industrial Light (I-1) to Commercial Heavy (C-5) by extension located at 8201 and 8225 South Zero Street*)
4. Ordinance adopting amendments to the Transitional and Commercial Building Design Standards of the Unified Development Code (*Fencing*)

5. Ordinance establishing charges for water and sanitary sewer connections, industrial user permit and vacuum truck discharge permit to the utility systems of the City of Fort Smith, repealing ordinances in conflict herewith, establishing a permit procedure for certain connections to the utility systems of the city, prohibiting and establishing penalties for unauthorized use of the utility easements and rights-of-way of the city of Fort Smith and for other purposes
6. Ordinance providing for procedures related to the enforcement and collection of gross receipts taxes; to declare an emergency and prescribing other matters pertaining thereto
7. Ordinance changing the local name of Clayton Expressway to Riverfront Drive to further the economic development and marketing to investors of the riverfront in downtown Fort Smith
8. Ordinance ordering the owners of certain dilapidated and substandard structures to demolish same, authorizing the City Administrator to cause the demolition of such structures to occur, and for other purposes (*2801 Royal Scots Way*)
9. Resolution authorizing payment of retirement benefits to Mrs. Nancy Baker
10. Consent Agenda
 - A. Ordinance to abandon a portion of a public utility easement located in Sparks Regional Medical Center, an addition to the City of Fort Smith, Sebastian County, Arkansas
 - B. Resolution authorizing the Mayor to execute an agreement with Mickle Wagner Coleman, Inc. for engineering services associated with the Fort Smith Landfill Scale Project
 - C. Resolution to accept the bids and authorize a contract for the construction of Carnall Sanitary Sewer Relocation, Project No. 11-06-C (\$284,092.00)
 - D. Resolution accepting bid for the purchase of a skid steer loader (\$54,529.00) ~ *Street Department* ~
 - E. Resolution authorizing the Mayor to execute an agreement with RJN Group, Inc. for providing engineering services associated with Wastewater Collection System Flow Monitoring Services (\$87,604.00)

- F. Resolution authorizing Change Order Number Two with The Burgess Company, Inc. for construction of the Lake Fort Smith Water Treatment Plant Contract 2 – Residuals Lagoons Improvements (\$30,164.70)
- G. Resolution authorizing final payment to The Burgess Company, Inc. for construction of the Lake Fort Smith Water Treatment Plant Contract 2 – Residuals Lagoons Improvements (\$116,749.64)
- H. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding and accepting the bid of and authorizing a contract with Harris Company of Fort Smith, Inc. for completion of Rye Hill Sewer Outfall Sewer Improvements – Phase IV (\$346,630.50)

**OFFICIALS FORUM ~ presentation of information requiring no official action
(Section 2-36 of Ordinance No. 24-10)**

- A. Mayor
- B. Directors
- C. City Administrator

**CITIZENS FORUM ~ presentation of information by citizens ~ an opportunity for citizens to present matters to the Mayor and Board of Directors which involve the city government and are not directly related to items considered on the agenda for this meeting. Presentations are limited to 2 minutes for each citizen
(Section 2-44(b) of Ordinance No. 24-10)**

ADJOURN

ORDINANCE NO. _____

**AN ORDINANCE REZONING IDENTIFIED PROPERTY
AND AMENDING THE ZONING MAP**

WHEREAS, the City Planning Commission has heretofore held a public hearing upon request No. 6-4-11 to rezone certain properties hereinafter described, and, having considered said request, recommended on April 12, 2011, that said change be made;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS:

SECTION 1: That the following properties to-wit:

Part of Lot 1, Tract "F", Schulte Property, according to plat filed January 14, 1913, Fort Smith, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at the SW of the NW/4, NE/4 of Section 33, T-8-N, R-32-W; thence N 00 degrees 01 minutes 00 seconds W along the west line of said Lot 1, Tract "F", Schulte Property, 286.4' more or less to the Point of Beginning, to existing zone boundary; thence continuing N 00 degrees 01 minutes 00 seconds W 185.0'; thence N 89 degrees 34 minutes 14 seconds E, 165.8' more or less to the east line of existing zone boundary; thence S 00 degrees 01 minutes 00 seconds E along said east line of existing zone boundary 185.0' more or less to the said south line of existing zone boundary; thence S 89 degrees 34 minutes 14 seconds W along said south line of existing zone limit, 165.8' more or less to the Point of Beginning, containing 30,673 square feet or 0.70 acre more or less.

more commonly known as 4613, 4615, 4617 Jenny Lind Road should be, and is hereby rezoned from Commercial Light (C-2) to Commercial Heavy (C-5) by Extension.

Approved as to Form:



City Attorney
Published time

The zoning map of the City of Fort Smith is hereby amended to reflect said rezoning.

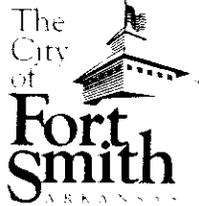
PASSED AND APPROVED THIS _____ DAY OF MAY, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk



April 27, 2011

Honorable Mayor and Board of Directors
City of Fort Smith, Arkansas

Re: Rezoning #6-4-11; A request by Larry Boggs for a zone change from Commercial Light (C-2) to Commercial Heavy (C-5) by Extension located at 4613, 4615 and 4617 Jenny Lind Road.

On April 12, 2011, the City Planning Commission held a public hearing to consider the above rezoning request.

Ms. Maggie Rice read the staff report indicating that the purpose of the rezoning request is to allow the applicant to have more opportunities when leasing the existing buildings.

Ms. Rice stated that a neighborhood meeting was held at 10:00 a.m. on April 4th at the site with several neighbors voicing their concerns relative to the existing wood privacy fence, loud music coming from one of the businesses and possible businesses that could locate there if the rezoning is approved. Ms. Rice noted that the proposed zoning is an extension of a larger area zoned Commercial-5 which consists of a mini-storage business, convenience store and a retail sales establishment. Ms. Rice stated that the proposed C-5 zoning does not appear to present any significant issues or changes in the overall land uses in this area.

Mr. Larry Boggs was present to speak on behalf of this request. Mr. Boggs stated that the concerns relative to noise had been addressed and resolved.

No one was present to speak in opposition to the request.

Following a discussion by the Commission, Chairman Griffin called for the vote on the rezoning request. The vote was 8 in favor and 0 opposed.

A copy of the draft minutes and staff report to the Planning Commission is enclosed for your review.

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(501) 785-2801
Administrative Offices FAX (501) 784-2407

The Planning Commission hereby certifies this zoning map amendment to the Board of Directors in accordance with A.C.A. 14-56-422.

Respectfully Submitted,

CITY PLANNING COMMISSION

Steve Griffin, Chairman

SG/lp

cc: File
City Administrator

Memo

To: City Planning Commission

From: Planning Staff

Date: April 8, 2011

Subject: Rezoning #6-4-11; A request by Larry Boggs, owner, for Planning Commission consideration of a zone change from Commercial Light (C-2) to Commercial Heavy (C-5) at 4613, 4615 and 4617 Jenny Lind Road.

LOT LOCATION AND SIZE

The requested rezoning area is on the east side of Jenny Lind Road north of Phoenix Avenue. The area contains approximately 28,000 square feet (0.64 acres) with 192 feet of street frontage along Jenny Lind Road.

EXISTING ZONING

The existing zoning district on this lot is Commercial Light (C-2). Characteristics of this zone are as follows:

Purpose: To provide office, service, and retail activities that are located within buffer areas near the edge of residential areas but which serve an area larger than adjacent neighborhoods.

Uses: A wide variety of retail uses including clothing stores, restaurants, grocery stores and specialty shops. Commercial-2 zones also allow professional offices and multi-family apartments.

Conditional Uses allowed in C-2 zones include churches, schools, day care centers and taverns.

Area Regulations:

Minimum Lot Size - 7,000 square feet

Maximum Lot Coverage - 60%

Minimum Lot Width - 50 feet

Front Setback - 25 feet

Interior Side Yard Setback - 10 feet

Street Side Setback - 10 feet

Rear Yard Setback - 10 feet

Separation of Buildings - Determined by current city building and fire code.

Minimum Street Frontage - 20 feet

Maximum Building size - 30,000 square feet

Maximum Height - 35 feet (1+1)

REQUESTED ZONING

The proposed zoning for the property is Commercial-5. Characteristics are as follows:

Purpose: To provide adequate locations for retail uses and services that generate moderate to heavy automobile traffic. The C-5 zoning district is designed to facilitate convenient access, minimize traffic congestion and reduce visual clutter.

Uses: Retail sales and outside storage, offices and other high volume activities.

Area Regulations:

Lot Area - 14,000 square feet
Front Yard Setback - 25 feet
Side Yard Setback - 20 feet
Side Yard on Street Side of Corner Lot - 15 feet
Side/Rear Yard Setback (adjoining single family) - 30 feet
Rear Yard Setback - 20 feet
Separation of Buildings - Per current City Building/Fire Code
Maximum Height - 45 feet (1 + 1)

SURROUNDING ZONING AND LAND USE

The area to the north is zoned Commercial Light (C-2) and is developed as single family residences.

The area to the east is zoned Commercial Heavy (C-5) and is vehicle storage associated with the mini storage development.

The area to the south is zoned Commercial Heavy (C-5) and is developed as mini storage facility.

The area to the west is zoned Residential Multifamily Medium Density (RM-3) and is developed as an apartment complex and a church.

PROPOSED REZONING

The applicant would like to have more opportunities when leasing the existing buildings.

LAND USE PLAN COMPLIANCE

The Master Land Use Plan classification is General Commercial. This classification is to provide opportunities for business transactions and activities, and meet the consumer needs of the community. This is the proper Master Land Use classification for a Commercial Heavy (C-5) zoning.

MASTER STREET PLAN CLASSIFICATION

The Master Street Plan classifies Jenny Lind Road as a Minor Arterial. This classification is appropriate for the Commercial Heavy (C-5) zoning.

STAFF COMMENTS AND RECOMMENDATIONS

A neighborhood meeting was held at 10:00 a.m. on April 4th on site. Several neighbors voiced their concerns about the existing wood privacy fence, loud music coming from one of the businesses on site and concerns over what possible businesses could locate there if the rezoning is approved.

Attached is a comparison list of uses for the existing Commercial Light (C-2) and the proposed Commercial Heavy (C-5).

The proposed Commercial Heavy (C-5) zoning is an extension of a larger area zoned Commercial-5. The area extends south of the intersection to the Yeager's Hardware site and west to the railroad tracks. The proposed C-5 is not contiguous to the residential neighborhood. There is currently a mini storage business, convenience store, and a retail sales establishment located at the intersection of Phoenix Avenue and Jenny Lind Road.

The proposed C-5 zoning does not appear to present any significant issues or changes in the overall land uses in this area.

Appendix A

Fort Smith Use Matrix		X	Z
		C-2	C-5
Districts		C-2	C-5
P = Permitted Use, C = Conditional Use, A = Accessory Use			
<i>Size or density restrictions for any use may be noted in the district</i>			
Residence or Accommodation			
Private Household			
St	Single Family building		
	Accessory residential dwelling unit	P	P
	Multifamily (apartments/condominiums)	P	P
	Community residential facility	P	P
	Group home, neighborhood	P	P
	Homeless shelter		C
	Orphanage	C	C
Housing for the Elderly			
	Assisted living	P	P
	Retirement housing	P	P
Hotels, Motels, or other Accommodations			
	Bed and breakfast inn	P	P
	Dormitory, sorority, fraternity	C	C
	Hotel/motel		P
	Rooming or boarding house	P	P
General Sales or Services			
Automobile Sales or Service			
	Auto & vehicle impoundment or holding yard (no salvage)		C
	Auto and vehicle dealer		P
	Auto and vehicle towing (wrecker)		P
	Auto detailing service	C	P
	Auto glass, muffler, and seatcover shop	C	P
	Auto parts and accessories sales		P
	Auto quick lube		P
	Auto repair		P
	Boat or marine craft dealer		P
	Car wash - full service		P
	Car wash self-service	C	P
	Gasoline service station		P
	Motorcycle or ATV sales & service		P
	Tire sales		P
	Truck stop/travel plaza		C
Heavy Consumer Goods Sales or Service			
	Agricultural equipment and supplies (sales & service)		P
	Appliance repair - (Large)		P
	Appliance repair (Small)		P
	Bus, truck sales and service		P
	Clothing and personal items (repair)	P	P
	Commercial, industrial machinery & equipment (sales & service)		P
	Department store, warehouse club or superstore		P
	Electronics and appliances (new)	P	P
	Electronics and appliances (used)		P
	Floor, paint, wall coverings, window treatments		P
	Furniture or home furnishings (new)	P	P
	Furniture or home furnishings (used)		P
	Furniture repair and upholstery shop		P
	Greenhouse (sales)		P
	Hardware store		P

3D

Appendix A

Districts	C-2	C-5
P = Permitted Use, C = Conditional Use, A = Accessory Use	C-2	C-5
Hardware store (neighborhood)	P	
Home improvement center		P
Lawn and garden supplies	C	P
Locksmith	P	P
Mall or shopping center		P
Manufactured home and mobile home sales and service		P
Sand, gravel, stone, or earth sales and storage		C
Swimming pool sales and supply store (w/o storage yard)		P
Truck or tractor sales and service facility		P
Durable Consumer Goods Sales or Service		
Bait and tackle shop		P
Bicycle sales and service	C	P
Bookstore	P	P
Bridal shop	P	P
Cameras, photographic supplies and services	P	P
Clothing, jewelry, luggage, shoes, accessories	P	P
Computer and software shop	P	P
Gift shop	P	P
Sewing machine store (sales & service)		P
Sporting goods, toys, & musical instruments	P	P
Thrift store	P	P
Consumer Goods, Other		
Antique shop	P	P
Art dealers, art studio, galleries, supplies	P	P
Arts and craft shop	P	P
Flea market (indoor)		P
Florist shop	P	P
Hobby shop	P	P
Office supply store		P
Pawnshop		P
Pawnshop (no outside storage)		P
Tobacco shop	P	P
Grocery, Food, Beverage, Dairy		
Bakery or confectionery shop	P	P
Beer, wine and liquor store (with drive-through)	C	P
Beer, wine and liquor store (without drive-through)	P	P
Convenience store (with gasoline sales)	C	P
Farmer's market	P	P
Fruit and vegetable store	P	P
Grocery store or supermarket	P	P
Neighborhood store	P	P
Health and Personal Care		
Cosmetics, beauty supplies, and perfume stores	P	P
Medical appliance services	P	P
Optical shop	P	P
Pharmacy or drug store	P	P
Finance and Insurance		
Auto insurance claims office	P	P
Automatic teller machine	P	P
Bank, credit union, or savings institution	P	P
Credit and finance establishment	P	P
Fund, trust, or other financial establishment	P	P

Appendix A

Districts	C-2	C-5
P = Permitted Use, C = Conditional Use, A = Accessory Use	C-2	C-5
Insurance office	P	P
Investment banking, securities, and brokerages	P	P
Rental and Leasing		
Auto (rental and leasing)		P
Commercial, industrial machinery & equipment		P
Consumer rental center	P	P
Video, music, software	P	P
Business, Professional, Scientific, and Technical Services		
Professional Services		
Abstract services	P	P
Accounting, tax, bookkeeping, payroll	P	P
Advertising and media services	P	P
Architectural, engineering	P	P
Carpet and upholstery cleaning		P
Consulting services	P	P
Extermination and pest control		P
Graphic, industrial, interior design	P	P
Investigation and security services		P
Janitorial services		P
Legal services	P	P
Medical laboratory (no animal research/testing)		C
Offices, corporate	P	P
Offices, general	P	P
Property management services (office only)	P	P
Real estate agency	P	P
Travel arrangement and reservation services	P	P
Administrative Services		
Business support services	P	P
Collection agency	P	P
Employment agency		P
Employment agency (day labor)		P
Facilities support services	P	P
Office and administrative services	P	P
Telemarketer/call center		P
Food Services		
Bar or tavern	C	P
Beer garden		C
Catering service	P	P
Mobile food services		P
Restaurant	P	P
Restaurant (with drive-in services)		P
Restaurant (with drive-through services)	C	P
Restaurant (with outdoor dining)	C	C
Vending		P
Personal Services		
Bail bonds office		P
Barber shop/salon/spa/massage services	P	P
Laundry and cleaning facilities (self-service)	P	P
Laundry, cleaner	P	P
Laundry, cleaner (drop-off station)	P	P
Photocopy shop	P	P
Photography studio	P	P

Appendix A

	Districts	C-2	C-5
P = Permitted Use, C = Conditional Use, A = Accessory Use			
Print shop		C-2	C-5
Shoe repair shop		P	P
Tailor shop		P	P
Tanning salons		P	P
Tattoo/body piercing parlor			P
Weight loss centers		P	P
Pet and animal services			
Animal and pet services (indoor)		P	P
Animal and pet services (outdoor)			P
Kennels			P
Pet cemetery		C	C
Pet shop		C	P
Pet supply store		C	P
Veterinary clinic (no outdoor kennels)		P	P
Veterinary clinic (with outdoor kennels)			P
Automobile Parking Facilities			
Parking garage			P
Parking lot (commercial)			P
Parking lot (off site)		P	P
Wholesale Trade Establishment			
Durable goods			P
Nondurable goods			P
Warehouse and Storage Services			
Container storage			P
Mini storage warehouse			P
Portable storage Unit			P
Vehicle storage yard			P
Transportation, Communication, Information and Utilities			
Transportation Services			
Bus station and terminal			C
Courier and messenger services		C	P
Heliport			A
Limousine service			P
Mail services		C	P
Moving company			P
Taxicab service			P
Communications and Information			
Commercial communication towers		C	P
Data processing facility		C	P
Motion pictures and sound recording studios			P
Telecommunications and broadcasting studios			P
Utilities and Utility Services			
Amateur radio transmitting towers		C	P
Radio, television, and microwave transmitting towers		C	P
Recycling collection station		C	C
Utility shop, storage yard or building			C
Utility substation		C	C
Arts, Entertainment, and Recreation			
Performing Arts or Supporting Establishments			
Drive-in theater			C
Movie theater			P
Performance theater			P

Appendix A

Districts	C-2	C-5
P = Permitted Use, C = Conditional Use, A = Accessory Use	C-2	C-5
Carnival or circus (temporary with permit)	P	P
Fairground/rodeo ground		P
Museums and Other Special Purpose Recreational Institutions		
Museum	C	C
Zoos, botanical gardens, arboreta		C
Amusement, Sports, or Recreation Establishment		
Amusement center (indoor)	P	P
Amusement center (outdoor)		C
Convention/Event center	C	P
Bingo parlor		P
Country club	C	C
Dance hall/night club		P
Private club		P
Fitness, Recreational Sports, Athletic Club		
Bowling alley	C	P
Community recreation center	C	C
Driving range (outdoor)		P
Golf course	C	C
Pistol Range (Indoor)		C
Health club	C	P
Fitness studio	P	P
Indoor Games Facility		
Miniature golf course		P
Pool hall	C	P
Sexually oriented business (see Ft. Smith Muni. Code Sec.14-14)	P	P
Skating rink		P
Sports complex/athletic field		C
Swimming pool	C	P
Water park		C
Camps, Camping, and Related Establishments		
Camps, camping, and related establishments		C
Natural and Other Recreational Parks		
Park or playground (public and nonpublic)	C	C
Education, Public Administration, Health Care and Other Institutions		
Educational Services		
College, university, or seminary	C	C
Fine art and performance education	C	C
Library or public arts complex	C	C
Nursery school	C	C
Preschool	C	C
Primary and secondary school	C	C
School, business professional	C	C
School, technical or trade		C
Public Administration - Government		
Government office	P	P
Public Safety		
Emergency response station	P	P
Fire and rescue station	P	P
Police station	C	C
Police substation (no incarceration)	P	P
Health and Human Services		
Community health and welfare clinic		C

Appendix A

Districts	C-2	C-5
P = Permitted Use, C = Conditional Use, A = Accessory Use	C-2	C-5
Diagnostic laboratory testing facility	C	P
Doctor office and clinic	P	P
Hospice residential care facility	P	P
Hospital	P	P
Mental health hospital	C	C
Nursing home	C	C
Substance abuse treatment facility	C	C
Social Assistance, Welfare, and Charitable Services		
Child and youth services (office)	P	P
Day care center	C	C
Community food services		C
Emergency and relief services		P
Family support services		P
Senior citizen center	C	C
Vocational rehabilitation		C
Religious Institutions		
Church, synagogue, temple, mosque	C	C
Rectory, convent, monastery	A	A
Note: educational/hospital facilities owned or run by religious institutions are classified by use not ownership		
Wedding chapel	P	P
Death Care Services		
Cemetery, mausoleum, crematorium, funeral home, & m	C	C
Monument (sales)	P	P
Associations, Nonprofit Organizations		
Lodge or fraternal organization	C	C
Construction-Related Businesses		
Contractor's office	P	P
Contractor's shop and storage yard		C
Glass sales and service		P
Landscaping contractor		C
Sign contractor		C
Fishing, Hunting and Trapping, Game Preserves		
Taxidermy shop		P

PETITION FOR CHANGE IN ZONING MAP

Before the Planning Commission of the City of Fort Smith, Arkansas

The undersigned, as owner(s) or agent for the owner(s) of the herein described property, makes application for a change in the zoning map of the City of Fort Smith, Arkansas, pursuant to Ordinance No. 3391 and Arkansas Statutes (1974) 19-2830, representing to the Planning Commission as follows:

- 1. The applicant is the owner or the agent for the owner(s) of real estate situated in the City of Fort Smith, Sebastian County, Arkansas, described as follows: (Insert legal description)

SEE ATTACHED

- 2. Address of property: 4613, 4615/4617 JENNY LIND ROAD

- 3. The above described property is now zoned: C-2

- 4. Application is hereby made to change the zoning classification of the above described property to C-5 by extension.
(Extension or classification)

- 5. Why is the zoning change requested?
To match adjacent property.

- 6. Submit any proposed development plans that might help explain the reason for the request.

Signed:

LARRY BOGGS
Owner or Agent Name
(please print)

Owner

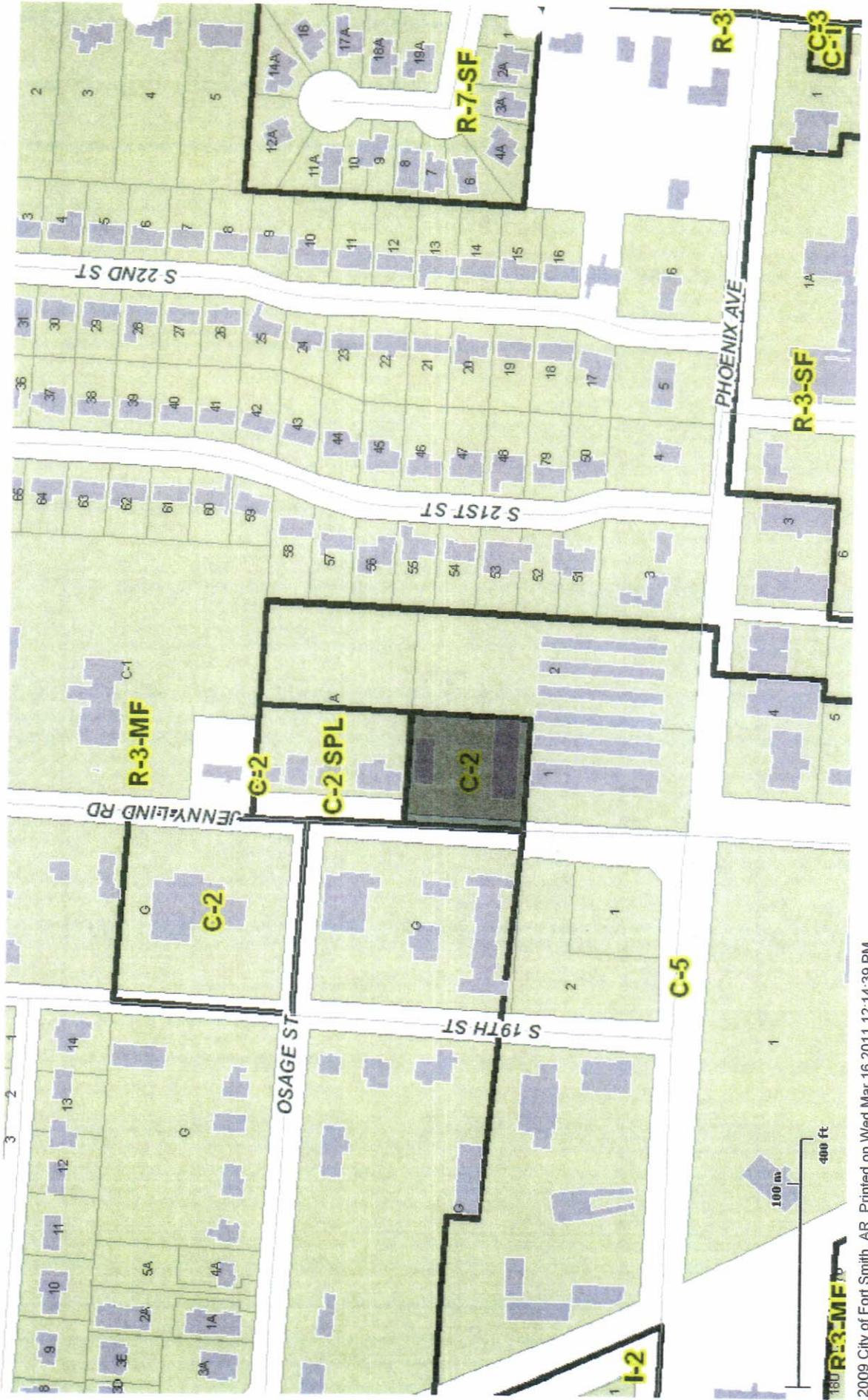
A-1 MINI STORAGE
2001 PHOENIX AVE
Owner or Agent Mailing Address
FT SMITH, AR 72901

or
Larry Boggs
Agent

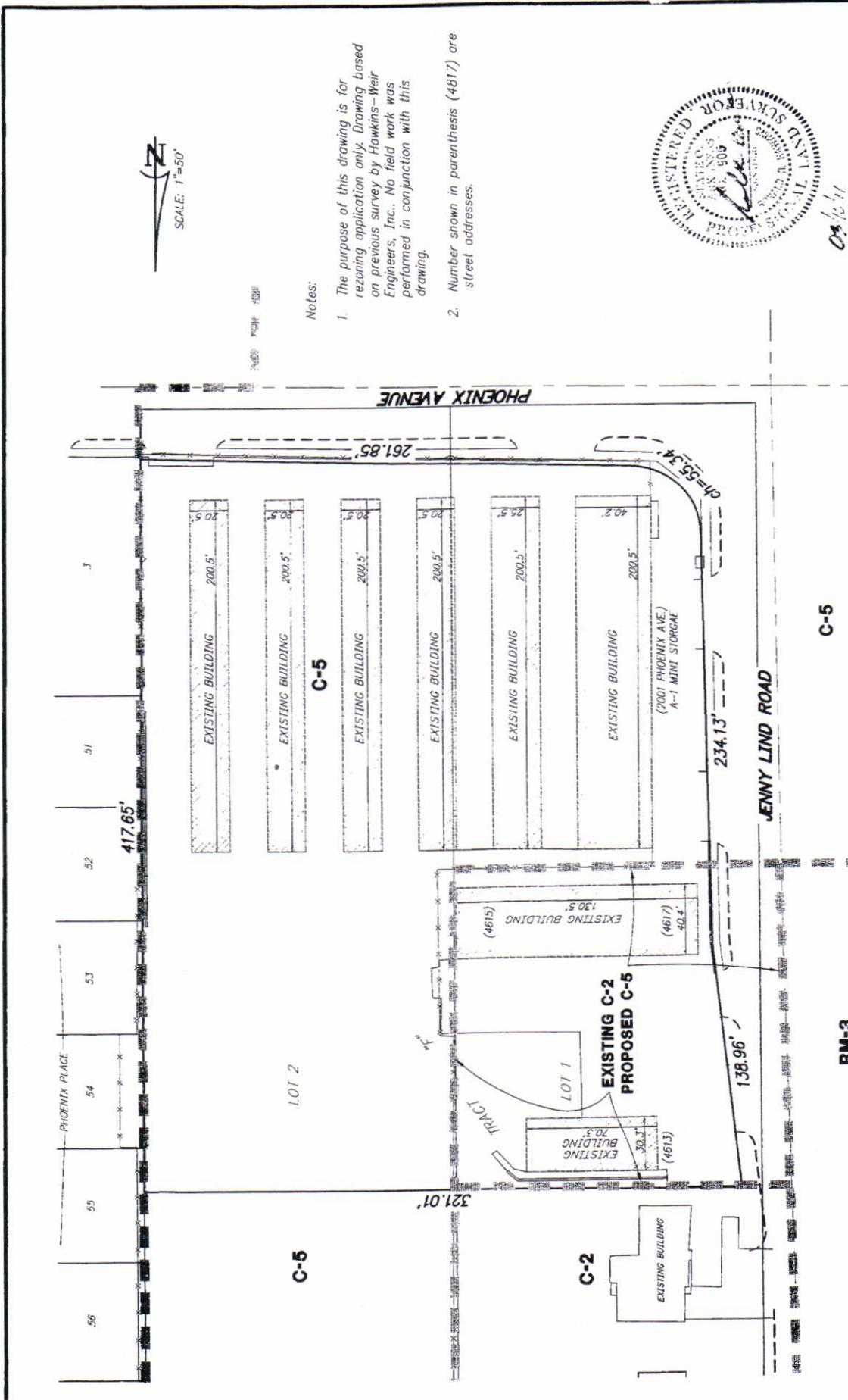
918 429-3107
Owner or Agent Phone Number

Rezoning #6-4-11: From Commercial Light (C-2) to Commercial Heavy (C-5)

4613, 4615 & 4617 Jenny Lind Road



35



SCALE: 1"=50'

- Notes:
1. The purpose of this drawing is for rezoning application only. Drawing based on previous survey by Hawkins-Weir Engineers, Inc.. No field work was performed in conjunction with this drawing.
 2. Number shown in parenthesis (4817) are street addresses.

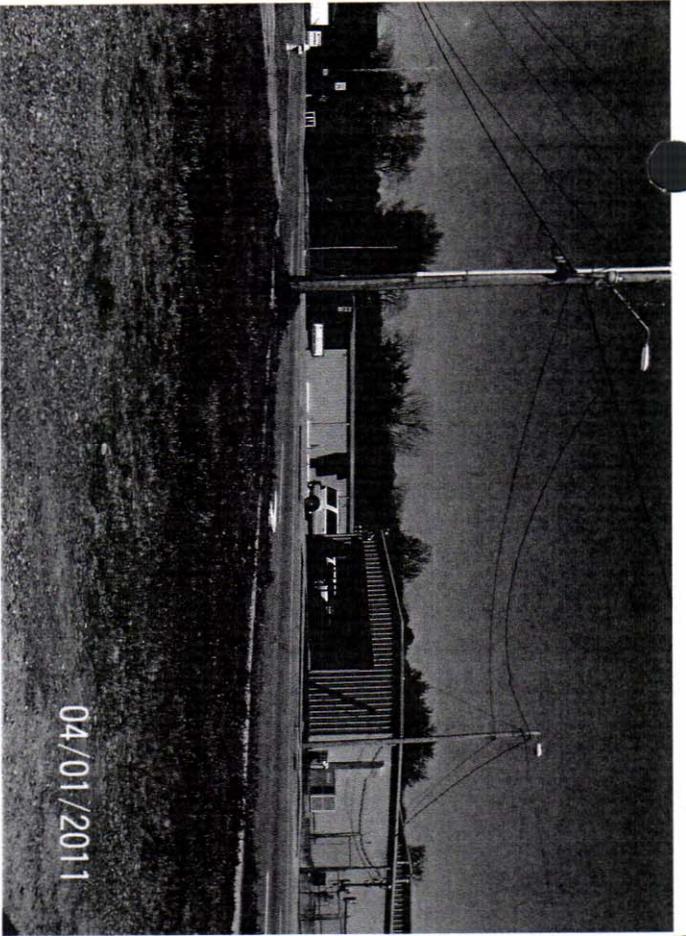


HAWKINS-WEIR ENGINEERS, INC.
 110 South 7th St. • P.O. Box 648 • Van Buren, AR 72957 • (501) 574-1227
 200 River Market Ave • Suite 250 • Little Rock, AR 72201 • (501) 774-4466
 www.hawkins-weir.com

FORT SMITH, ARKANSAS
 REZONING MAP & LAND USE MAP
 OF PART OF
 LOT 1, TRACT "F", SCHULTE PROPERTY
 FOR: LARRY BOGGS

DATE: 03/07/11 SCALE: 1"=50' JOB NO. 11021A

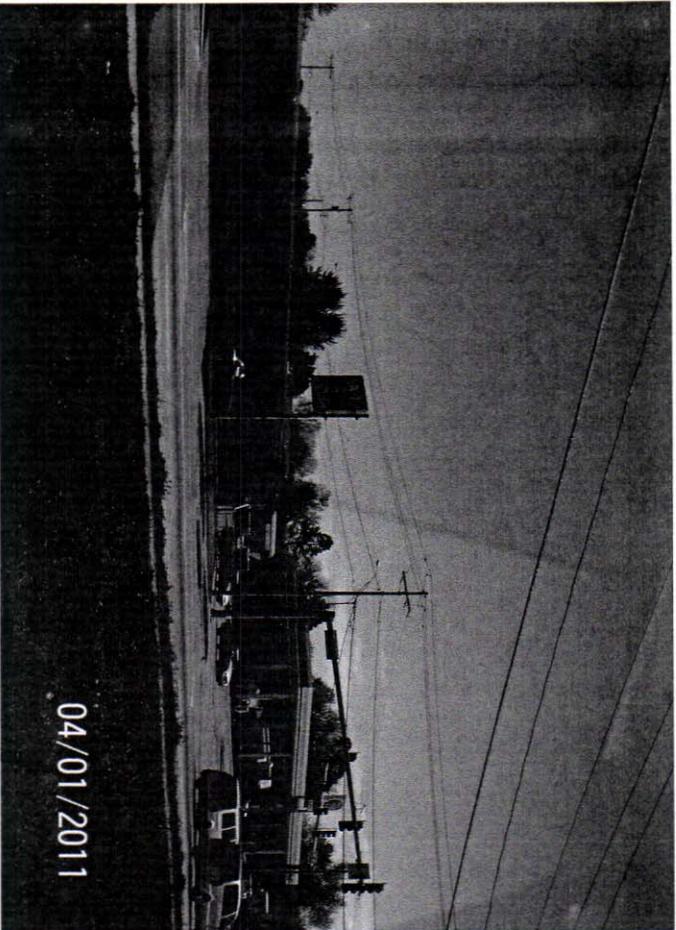
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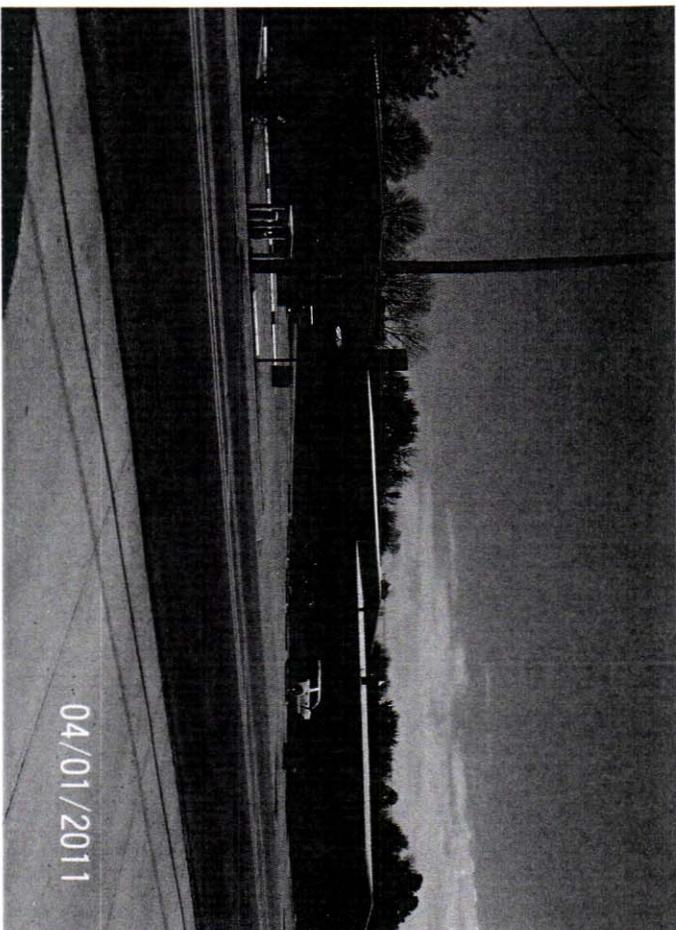
04/01/2011



03/25/2011



04/01/2011



04/01/2011

Arkansas Conference Association
P. O. Box 31000
Shreveport, LA 71130

Darren & Linda Bonds
4604 South 21st Street
Fort Smith, AR 72901

William & Maxine Brown
#2 Haven Drive
Fort Smith, AR 72901

Daniel & Jennifer Bush
4506 South 21st Street
Fort Smith, AR 72901

Pamela Byrd
2017 South 88th Street
Fort Smith, AR 72903

Clifton & JoAnn Eames
4512 South 21st Street
Fort Smith, AR 72901

Ernesto Lira
4422 South 21st Street
Fort Smith, AR 72901

Iva Nicholson
P. O. Box 6861
Fort Smith, AR 72906

Ronald & Jere Ann Ocker
1207 North 8th Street
Van Buren, AR 72956

Earl & Clara Price Trust
4500 South 21st Street
Fort Smith, AR 72901

James & Shelly Smith
3325 S. Fresno Street
Fort Smith, AR 72903

Kenith Staab
2109 S. Phoenix
Fort Smith, AR 72901

The A-1 Mini Storage Trust
P. O. Box 5767
Fort Smith, AR 72913

Jerry & Linda Tomlin
4524 South 21st Street
Fort Smith, AR 72901

Tran Living Trust
1804 Fianna Way
Fort Smith, AR 72908

Wilmington Office Partners, LLC
813 Fort Street
Barling, AR 72923

Lynn Ellison
Fort Smith Public Schools
P. O. Box 1948
Fort Smith, AR 72902

DRAFT

**Planning Commission Meeting Minutes
April 12, 2011**

Mr. Bailey thanked Commissioner Lau for his six (6) years of service on the Commission and thanked him for his needed input during the development of the City of Fort Smith's Unified Development Ordinance.

2. Amendments to the Unified Development Ordinance (Fencing)

Mr. Wally Bailey stated that currently the code prohibits chain link fencing material to be used on any commercial site in any location for any purpose. He noted that many commercial sites use chain link fencing for security purposes and that staff feels it was not the intent of the UDO to place a total prohibition on chain link fencing. He also noted that paragraph nine (9) of the same code section (Section 27-602-4 (C)-Transitional and Commercial Building Design Standards) has some missing language and, therefore, this amendment would add some language to clarify the requirement for the fencing between commercial and residential properties.

No one was in attendance to either speak in favor or opposition to these amendments.

Chairman Griffin then called for the vote on the amendments to the Unified Development Ordinance. The vote was 8 in favor and 0 opposed.

3. Rezoning #6-4-11; A request by Larry Boggs, agent, for a zone change from Commercial Light (C-2) to Commercial Heavy (C-5) by Extension located at 4613, 4615, 4617 Jenny Lind Road.

Ms. Maggie Rice read the staff report indicating that the purpose of the rezoning request is to allow the applicant to have more opportunities when leasing the existing buildings.

Ms. Rice stated that a neighborhood meeting was held at 10:00 a.m. on April 4th at the site with several neighbors voicing their concerns relative to the existing wood privacy fence, loud music coming from one of the businesses and possible businesses that could locate there if the rezoning is approved. Ms. Rice noted that the proposed zoning is an extension of a larger area zoned Commercial-5 which consists of a mini-storage business, convenience store and a retail sales establishment. Ms. Rice stated that the proposed C-5 zoning does not appear to present any significant issues or changes in the overall land uses in this area.

Mr. Larry Boggs was present to speak on behalf of this request. Mr. Boggs stated that the concerns relative to noise had been addressed and resolved.

No one was present to speak in opposition to the request.

DRAFT

Chairman Griffin then called for the vote on the rezoning request. The vote was 8 in favor and 0 opposed.

4. **Master Land Use Plan Amendment from Residential Detached to Neighborhood Commercial located at 6300 Cliff Drive. (companion item to items #5, #6 & #16).**
5. **Rezoning #7-4-11; A request by Mickle-Wagner-Coleman, agent, for a zone change from Residential Multi-Family Medium Density (RM-3) to Commercial Light (C-2) by Classification located at 6300 Cliff Drive. (companion item to items #4, #6 & #16)**
6. **Development Plan Approval of a parking lot located at 6300 Cliff Drive. (companion item to items #4, #5 & #16)**
16. **Variance #6-4-11; A request by Mickle-Wagner-Coleman, agent, for a variance from a major collector to residential collector street classification required for street access at 6300 Cliff Drive. (companion item to items #4, #5 & #6)**

It was noted that these items would be discussed together but would be voted on separately.

Mr. Bailey read the staff reports indicating that the purpose of these requests is to facilitate the development of a 1.4 acre site for a proposed 35 space parking lot to serve an existing office building. Mr. Bailey noted that staff finds the properties location and topography incongruous with residential development and also noted that only 40% of the property, or the 110 feet adjacent to Cliff Drive, is proposed in the rezoning request with the remainder of the property to remain residential.

Mr. Pat Mickle with Mickle-Wagner-Coleman was present to speak on behalf of these requests.

No one was present to speak in opposition to the requests.

Following a discussion by the Commission, Chairman Griffin called for the vote on these items separately.

4. **Master Land Use Plan Amendment from Residential Detached to Neighborhood Commercial located at 6300 Cliff Drive. (companion item to items #5, #6 & #16)**

Motion was made by Commissioner Lorenz, seconded by Commissioner Maurras and carried unanimously to amend this request to make approval subject to prohibiting ingress or egress off Country Club Avenue except for maintenance purposes.

Chairman Griffin then called for the vote on the Master Land Use Plan Amendment as amended. The vote was 8 in favor and 0 opposed.

2,

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE MASTER LAND USE PLAN MAP AND REZONING IDENTIFIED PROPERTY AND AMENDING THE ZONING MAP

WHEREAS, the City Planning Commission has held a public hearing to consider a request to amend the Master Land Use Plan Map relative to property described in Section 1 of this ordinance, and, having considered the request, recommended on April 12, 2011, that said change be made; and,

WHEREAS, the City Planning Commission determined the change to the Master Land Use Plan Map does conform to the goals and objectives of the Comprehensive Plan.

WHEREAS, the City Planning Commission has heretofore held a public hearing to consider request No. 7-4-11 to rezone certain properties hereinafter described, and, having considered this request, recommended on April 12, 2011, that said change be made;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS:

SECTION 1: The hereinafter described property is hereby reclassified on the Master Land Use Plan Map from Residential Detached to Neighborhood Commercial and the Master Land Use Plan Map is hereby amended to reflect said amendment to-wit:

The northern 110 feet of Cliff Terrace Addition, Lots 20-23 and that part of Lot 19 described as follows:

Beginning in the Southeast Corner of said Lot 19 on the North right-of-way line of Country Club Drive; thence West along said right-of-way line, 117.00' to the I-540

Approved as to Form:



City Attorney
Publish Home

fence; thence North 17 degrees 13 minutes 44 seconds East 173.13' along said fence to the south right-of-way line of Cliff Drive; thence North 85 degrees 58 minutes 37 seconds East along said right-of-way line, 95.00' to the Northeast corner of said Lot 19; thence South 09 degrees 35 minutes 00 seconds West along the East line of said Lot 19, 174.46' to the point of beginning containing 17728 square feet or 0.41 acres more or less. Containing 1.42 acres more or less.

More commonly known as 6300 Cliff Drive.

SECTION 2: The hereinafter described property is hereby rezoned from Residential Multi-Family-Medium Density (RM-3) to Commercial Light (C-2) by Classification:

The northern 110 feet of Cliff Terrace Addition, Lots 20-23 and that part of Lot 19 described as follows:

Beginning in the Southeast Corner of said Lot 19 on the North right-of-way line of Country Club Drive; thence West along said right-of-way line, 117.00' to the I-540 fence; thence North 17 degrees 13 minutes 44 seconds East 173.13' along said fence to the south right-of-way line of Cliff Drive; thence North 85 degrees 58 minutes 37 seconds East along said right-of-way line, 95.00' to the Northeast corner of said Lot 19; thence South 09 degrees 35 minutes 00 seconds West along the East line of said Lot 19, 174.46' to the point of beginning containing 17728 square feet or 0.41 acres more or less. Containing 1.42 acres more or less.

more commonly known as 6300 Cliff Drive.

The zoning map of the City of Fort Smith is hereby amended to reflect said rezoning subject to prohibiting ingress or egress off Country Club Avenue except for maintenance purposes.

PASSED AND APPROVED THIS _____ DAY OF MAY, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk



April 27, 2011

Honorable Mayor and Board of Directors
City of Fort Smith, Arkansas

Re: A request by Mickle-Wagner-Coleman, agent, for a Master Land Use Plan Amendment from Residential Detached to Neighborhood Commercial and a zone change from Residential Multi-Family-Medium Density (RM-3) to Commercial Light (C-2) by Classification located at 6300 Cliff Drive.

On April 12, 2011, the City Planning Commission held a public hearing to consider the above rezoning request.

Mr. Bailey read the staff reports indicating that the purpose of these requests is to facilitate the development of a 1.4 acre site for a proposed 35 space parking lot to serve an existing office building. Mr. Bailey noted that staff finds the properties location and topography incongruous with residential development and also noted that only 40% of the property, or the 110 feet adjacent to Cliff Drive, is proposed in the rezoning request with the remainder of the property to remain residential.

Mr. Pat Mickle with Mickle-Wagner-Coleman was present to speak on behalf of these requests.

No one was present to speak in opposition to the requests.

Following a discussion by the Commission, Chairman Griffin then called for the vote on the master land use plan amendment. Motion was made by Commissioner Lorenz, seconded by Commissioner Maurras and carried unanimously to amend this request to make approval subject to prohibiting ingress or egress off Country Club Avenue except for maintenance purposes. Chairman Griffin then called for the vote on the master land use plan amendment as amended. The vote was 8 in favor and 0 opposed.

Chairman Griffin then called for the vote on the rezoning request. Motion was made by Commissioner Lorenz, seconded by Commissioner Parks and carried unanimously to amend this request to make approval subject to the following:

- The Master Land Use Plan Amendment and variance applications being approved and a final development plan being submitted.

625 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(501) 783-2801
Administrative Offices FAX (501) 784-3407

- Prohibiting ingress or egress off Country Club Avenue except for maintenance purposes.

Chairman Griffin then called for the vote on the rezoning request as amended. The vote was 8 in favor and 0 opposed.

A copy of the draft minutes and staff report to the Planning Commission is enclosed for your review.

The Planning Commission hereby certifies this zoning map amendment to the Board of Directors in accordance with A.C.A. 14-56-422.

Respectfully Submitted,

CITY PLANNING COMMISSION

Steve Griffin, Chairman

SG/lp

cc: File
City Administrator

MEMO

To: City Planning Commission
From: Planning Staff
Date: April 1, 2011
Subject: Proposed Master Land Use Plan Amendment at 6300 Cliff Drive from Residential Detached to Neighborhood Commercial (companion item to item #5, #6, and #16).

The Planning Department is in receipt of an application from Pat Mickle, agent, to amend the *Master Land Use Plan* to facilitate the construction of a parking lot. The proposed change is from Residential Detached to Neighborhood Commercial. The subject property is on the south side of Cliff Drive south of Rogers Avenue. The area contains approximately 1.4 acres. The tract has approximately 495 feet of frontage on Cliff Drive.

The existing zoning of the site is Residential-Multifamily-Medium/High Density (RM-3). Companion applications (#5, #6, #16) propose changing the zoning classification to Commercial Light (C-2) by classification for the purpose of developing a parking lot. The *Master Land Use Plan* is a guide to zoning and development and must be considered with the other application.

ADJACENT LAND USE CLASSIFICATIONS AND USES

Land use classification and uses contiguous to the subject lot are as follows:

The area to the north is classified as General Commercial and is developed as offices.

The area to the east is classified as Residential Detached and General Commercial and is developed as a tattoo parlor.

The area to the south is classified as Residential Detached and is developed as single-family residential.

The area to the west is classified as Residential Detached and is developed as single-family residential.

The proposed land use classification of Neighborhood Commercial is described as follows:

Purpose: To provide opportunities for business transactions and activities, and meet the consumer needs of the community.

4A

Characteristics and Use: Retail sales of all product types requiring transportation of goods; and, professional, technical, and financial services.

Criteria for Designation:

Compliance Noted

- | | |
|--|-----|
| • Compatible with and complimentary to, neighboring uses | YES |
| • Located on high volume arterials and collectors | NO |
| • Located as a cluster of like services | NO |
| • Accessible by most modes of transportation | YES |
| • Appropriately located for minimum impact to adjacent uses, and, by volume of activity and trips generated by use | YES |

MASTER STREET PLAN CLASSIFICATIONS

The Master Street Plan classifies Cliff Drive as Residential Collector.

STAFF COMMENTS

Staff finds the location of the site between Rogers Avenue and Interstate 540 make this a viable location for the Neighborhood Commercial land use classification. Further, the topography of the site will make development extremely difficult. Staff recommends approval of the request.

For a Minor, Standard or Major Master Land Use Plan Amendment, please attach the following information and answer the questions below. You may provide answers on a separate sheet and attach it to this application:

1. A legal description of the subject property that is to be amended (reclassified).

The northern 110 feet of Cliff Terrace Addition, Lots 20-23 and that part of Lot 19 described as follows:

Beginning in the Southeast Corner of said Lot 19 on the North right-of-way line of Country Club Drive; thence West along said right-of-way line, 117.00' to the I-540 fence; thence North $17^{\circ} 13' 44''$ East 173.13' along said fence to the south right-of-way line of Cliff Drive; thence North $85^{\circ} 58' 37''$ East along said right-of-way line, 95.00' to the Northeast corner of said Lot 19; thence South $09^{\circ} 35' 00''$ West along the East line of said Lot 19, 174.46' to the point of beginning containing 17728 square feet or 0.41 acres more or less.

Containing 1.42 acres more or less.

2. A map of the property which includes the scaled distance, legal description, and general vicinity map inset showing the property's location.

See Attached.

3. The area dimensions of the property in square feet or acres.

Roughly 110' x 180', containing 1.42 acres more or less.

4. Describe existing road conditions and new roads to be included in the development and the effect of the proposed development on existing roads and traffic conditions:

Existing streets along both the north and south property boundary. The northern street is Cliff Drive – 22' asphalt pavement. The southern street is Country Club Avenue – 20' asphalt pavement. No new road will be built. The site is vacant, any use will increase traffic; however the proposed use as a parking lot for up to 35 cars will not generate more traffic than a multi-family use for which the property is currently zoned.

5. Describe the existing public utility services and infrastructure (such as water, sewer, fire/police) which are available to the property and the source/method of providing additional utilities and infrastructure to the property if necessary:

There is an existing six-inch water line along Cliff Drive with a fire hydrant at midpoint of the frontage. There is a six-inch water line along Country Club with a fire hydrant at the 62nd Street intersection. There is a six-inch sanitary sewer line along Cliff Drive and a six-inch sanitary sewer line along Country Club.

6. Provide a statement of the proposed build-out density and maximum potential build-out density (units per acre) permitted by the proposed land use classification:

The southern 60% of the property has a very steep slope which will limit the density of

any future development. The proposed use is a parking lot for up to 28 cars initially; the maximum practical number is 35 spaces. The zoning allows for other land uses, including multi-family; the maximum practical number of dwelling units is 20, which is a density of 9.1 per acre.

7. Identify any known or anticipated environmental concerns:

The only known or anticipated environmental concern is erosion control. The steep slope, especially in the middle one-third of the property, must be adequately vegetated to control erosion and its associated run-off.

For a Standard or Major Master Land Use Plan Amendment only, please attach the following additional information and answer the questions below. You may provide answers on a separate sheet and attach it to this application:

8. An analysis of the impact of the amendment on surrounding properties and plans in terms of:

a. Describe potential changes to development patterns in terms of local and regional impacts:

b. Describe the consistency in zoning between existing and planned uses:

c. Provide explanation of the need for and demand in the proposed uses:

9. Provide an analysis of the long term development plan for the area (10-20 years) which incorporates a review of the land use, transportation, and infrastructure impact to both the City of Fort Smith and the property owner:

HE

Certification

Once an application has been deemed complete, the applicant shall not modify it unless requested or agreed upon by the Planning Department. Should the applicant request a modification to the application after it has been advertised for public hearing, it shall be at the discretion of the Planning Commission to review or continue the application. A re-advertising fee may be required.

I, the undersigned applicant, hereby certify that the information contained in this application is true and correct to the best of my knowledge and belief. I grant the appropriate City personnel permission to enter the subject property during reasonable hours so that they may investigate and review this application.

Pat McLean

March 15, 2011

Signature (Agent/Owner)

Date

The City of Fort Smith requires complete applications. If your application does not include all of the information required for submission, it will not be processed.

Memo

To: City Planning Commission

From: Planning Staff

Date: April 1, 2011

Subject: Rezoning #7-4-11; A request by Pat Mickle, agent, for Planning Commission consideration of a zone change from Residential Multifamily Medium/High Density (RM-3) to Commercial Light (C-2) by classification at 6300 Cliff Drive. (Companion item to items #4, #6, #16)

LOT LOCATION AND SIZE

The requested rezoning area is on the south side of Cliff Drive south of Rogers Avenue. The area contains approximately 1.4 acres and has 495 feet of frontage on Cliff Drive.

EXISTING ZONING

The property is currently zoned Residential Multifamily Medium/High Density (RM-3).

Characteristics of the Residential-3-Multi-Family (RM-3) zone are as follows:

Purpose: To provide for medium density attached homes, including multi-unit residential buildings in areas where such development already exists or is planned for the future.

Uses: Permitted uses include detached and duplex dwellings, row houses, zero lot line dwelling units, multi-family apartments/condominiums, family group home, neighborhood group home and community residential facility.

Area Regulations:

Lot Area - 6,500 square feet
Front Yard Setback - 25 feet
Side Yard Setback - 7.5 feet
Side Yard on Street Side of Corner Lot - 15 feet
Side Yard (adjacent to RS Dist/Development) - 30 feet
Rear Yard Setback - 10 feet
Separation of Buildings - 10 feet
Maximum Height - 40 feet

Density Requirements:

20 dwelling units per acre

REQUESTED ZONING

The requested zoning on this tract is Commercial Light (C-2). Characteristics of this zone are as follows:

The existing zoning on this tract is Commercial-2. Characteristics of this zone are as follows:

The C-2 zone was established for business activities located at the edge of residential areas but which serve an area larger than adjacent neighborhoods.

Permitted Uses: A wide variety of retail uses including clothing stores, restaurants, grocery stores and specialty shops. Commercial-2 zones also allow professional offices and multi-family apartments.

Conditional uses allowed in C-2 zones include churches, schools, day care centers and taverns.

Area Regulations:

Minimum Lot Size - 7,000 square feet

Street Right-of-Way Setback - 25 feet

Interior Side Yard Setback - 10 feet

Rear Yard Setback - 10 feet

Separation of Buildings determined by current City building and fire codes

Maximum Height - 35 feet

Density Regulations:

Maximum Lot Coverage - 60%

SURROUNDING ZONING AND LAND USE

The area to the north is zoned Transitional and is developed as offices.

The area to the east is zoned Commercial Heavy and is developed as a tattoo parlor.

The area to the south and west is zoned Residential Multifamily Medium/High Density (RM-3) and Residential Single Family Low Density (RS-1) and is developed as single family residences.

PROPOSED REZONING

The applicant would like to utilize the property as a parking lot that will serve the office building across the street.

LAND USE PLAN COMPLIANCE

The Master Land Use Plan classification is Residential Detached. This classification provides for safe, stable neighborhoods and attractive family environments.

MASTER STREET PLAN CLASSIFICATION

The Master Street Plan classifies Cliff Drive as Residential Collector and Country Club as a Local Road.

5B

STAFF COMMENTS AND RECOMMENDATIONS

Staff finds the properties location and topography incongruous with residential development. Staff notes only 40% of the property, or the 110 feet adjacent to Cliff Drive, is proposed in the rezoning request. The remainder of the property will remain Residential.

Staff recommends approval of the request with the following comments:

- The master land use plan amendment and variance applications are approved and a final development plan is submitted.
- Ingress or egress off Country Club Avenue will not be allowed.

PETITION FOR CHANGE IN ZONING MAP

Before the Planning Commission of the City of Fort Smith, Arkansas

The undersigned, as owner(s) or agent for the owner(s) of the herein described property, makes application for a change in the zoning map of the City of Fort Smith, Arkansas, pursuant to Ordinance No. 3391 and Arkansas Statutes (1974) 19-2830, representing to the Planning Commission as follows:

1. The applicant is the owner or the agent for the owner(s) of real estate situated in the City of Fort Smith, Sebastian County, Arkansas, described as follows: (Insert legal description)

The northern 110 feet of Cliff Terrace Addition, Lots 20-23 and that part of Lot 19 described as follows:

Beginning in the Southeast Corner of said Lot 19 on the North right-of-way line of Country Club Drive; thence West along said right-of-way line, 117.00' to the I-540 fence; thence North 17° 13' 44" East 173.13' along said fence to the south right-of-way line of Cliff Drive; thence North 85° 58' 37" East along said right-of-way line, 95.00' to the Northeast corner of said Lot 19; thence South 09° 35' 00" West along the East line of said Lot 19, 174.46' to the point of beginning containing 17728 square feet or 0.41 acres more or less.

Containing 1.42 acres more or less.

2. Address of property: 6300 Cliff Drive

3. The above described property is now zoned: R3MF (Residential Multi-Family Medium Density RM-3)

4. Application is hereby made to change the zoning classification of the above described property to Commercial Light by Classification.
(Extension or classification)

5. Why is the zoning change requested?

To permit construction of a parking lot

6. Submit any proposed development plans that might help explain the reason for the request.

Signed:

Mickle Wagner Coleman, Inc.
Owner or Agent Name
(please print)

Owner .

P.O. Box 1507, Fort Smith, AR 72902
Owner or Agent Mailing Address

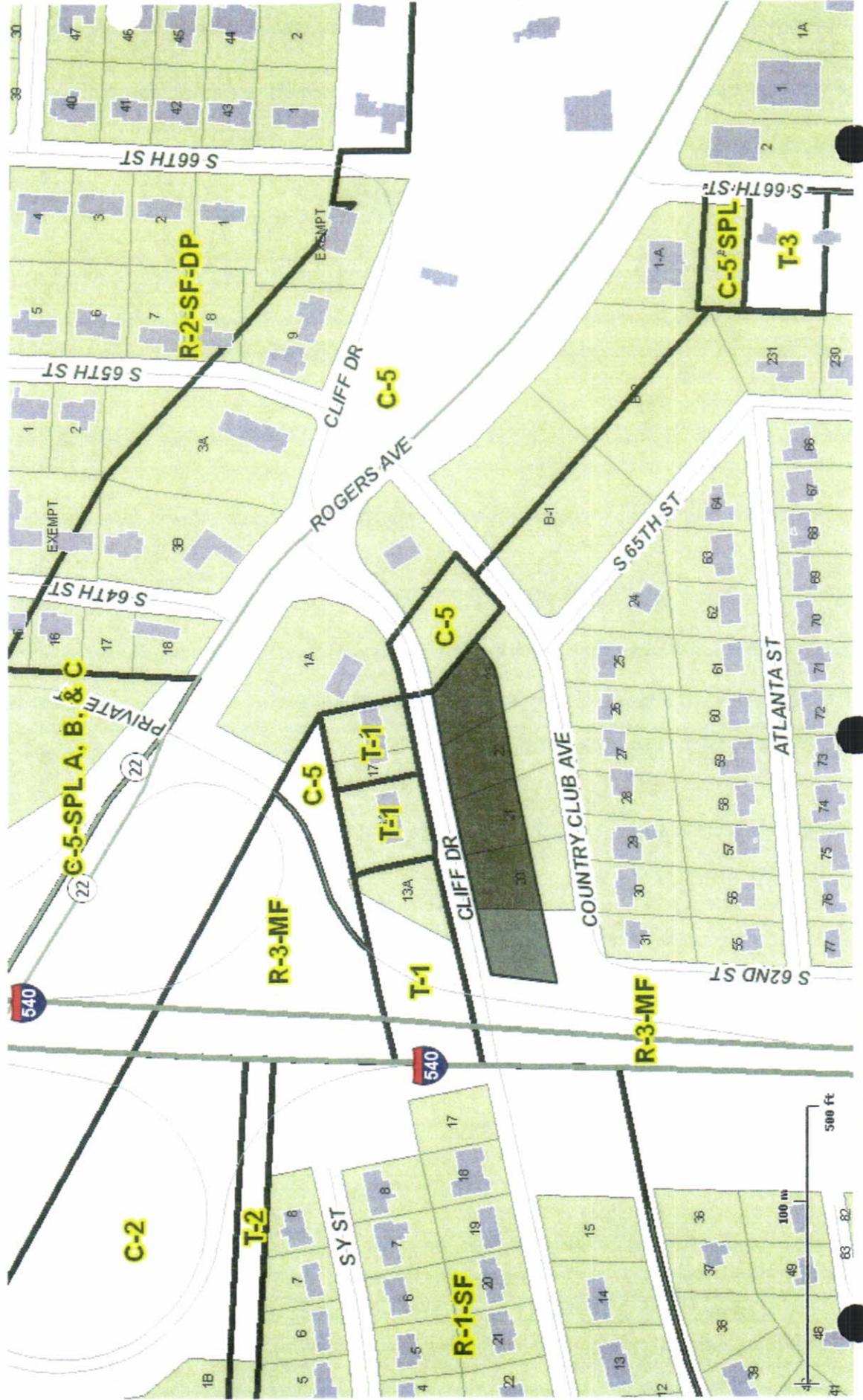
or

Agent

649-8484
Owner or Agent Phone Number

Rezoning #7-4-11: From Residential Multi-Family Medium Density (RM-3) to Commercial Light (C-2)

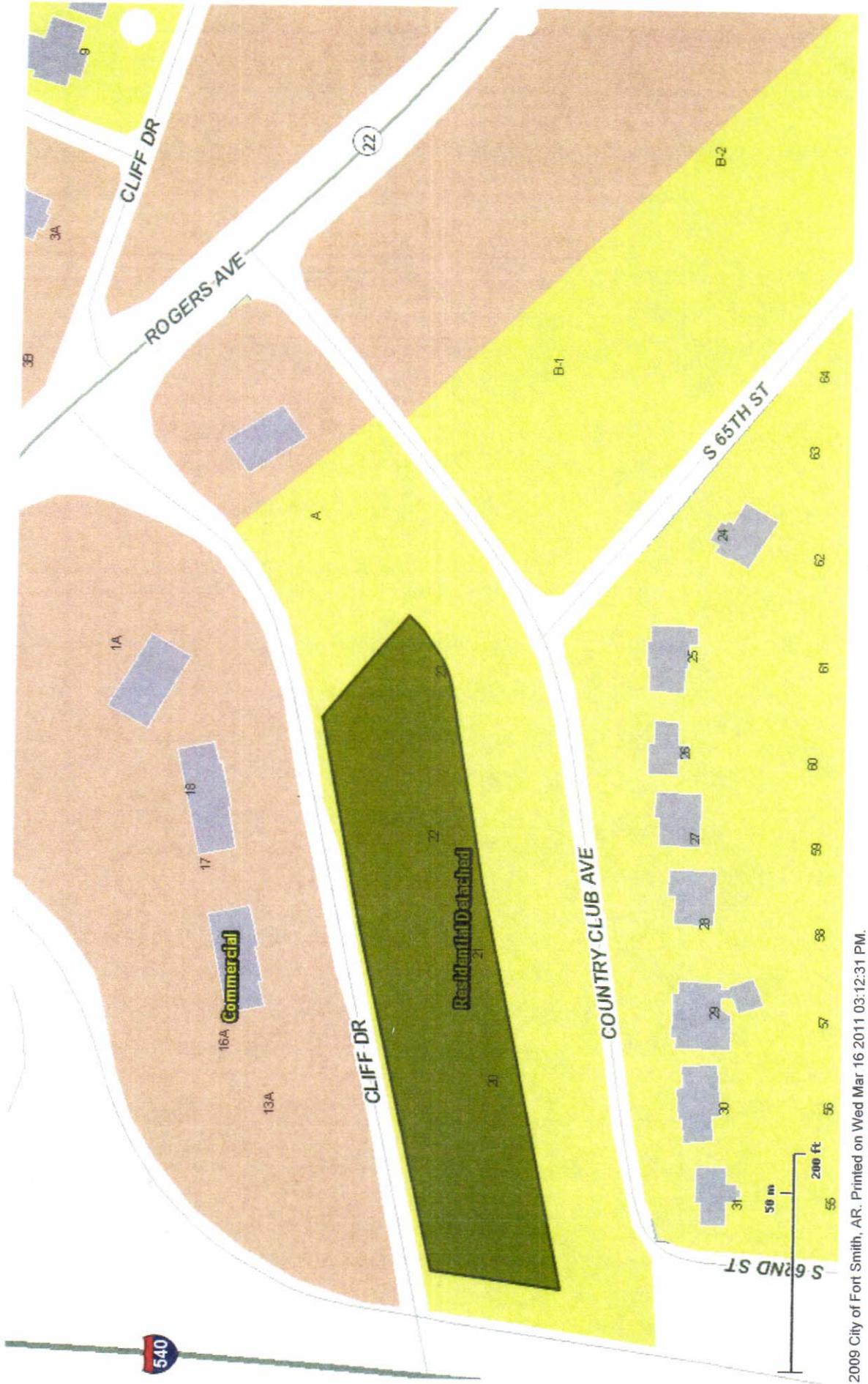
6300 Cliff Drive



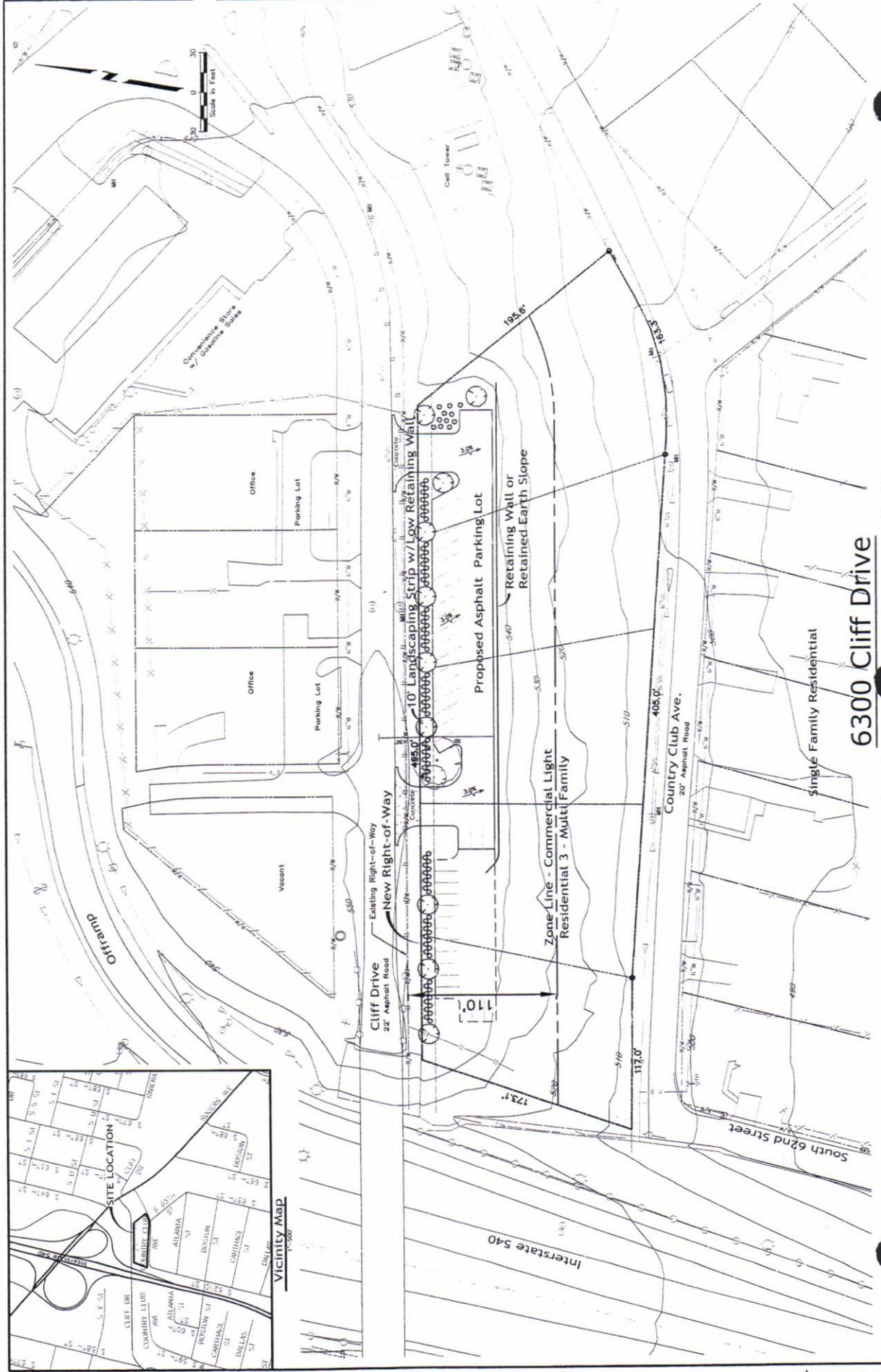
5F

Master Land Use Amendment: From Residential Detached to Neighborhood Commercial

6300 Cliff Drive

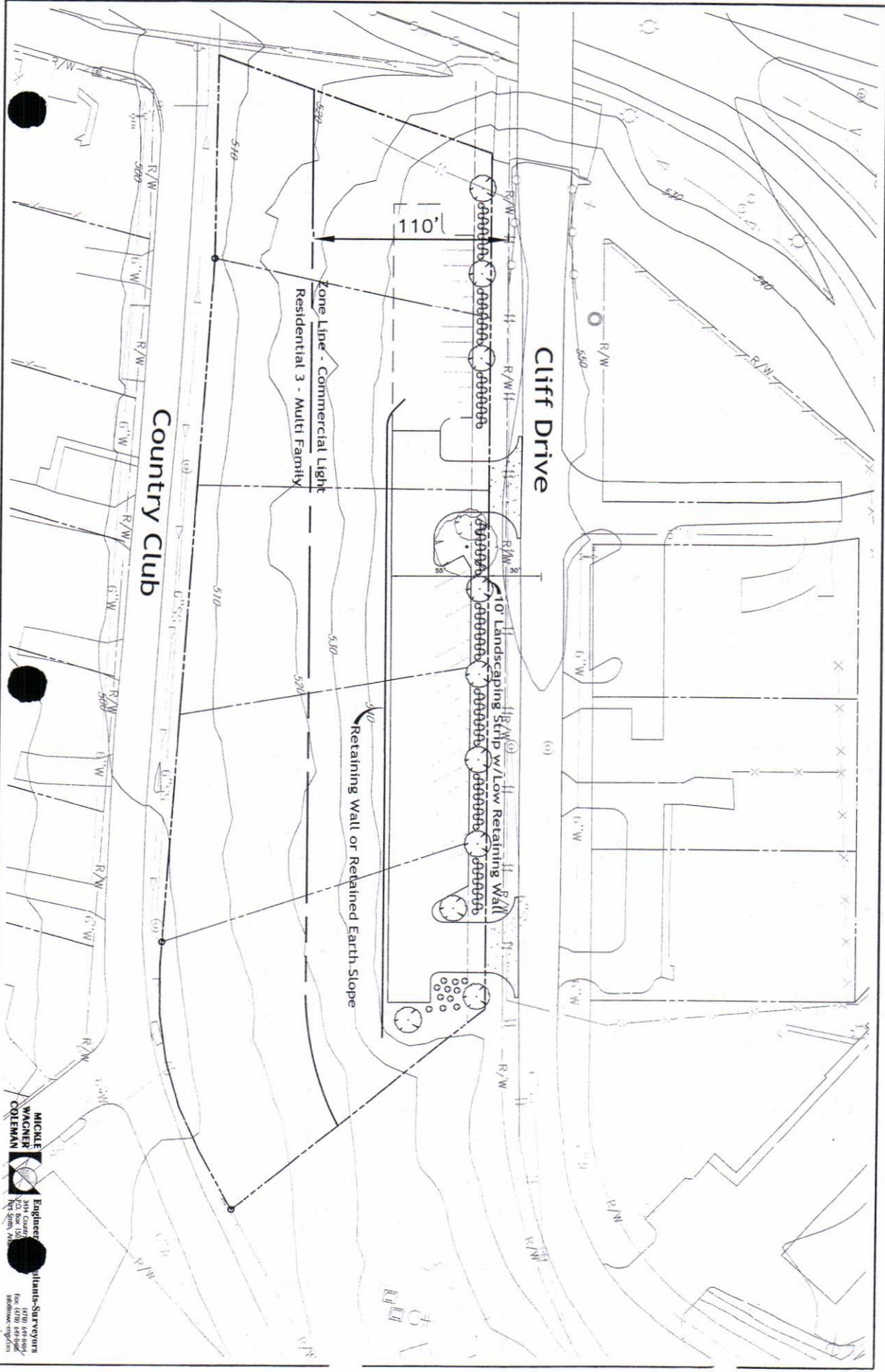


HG



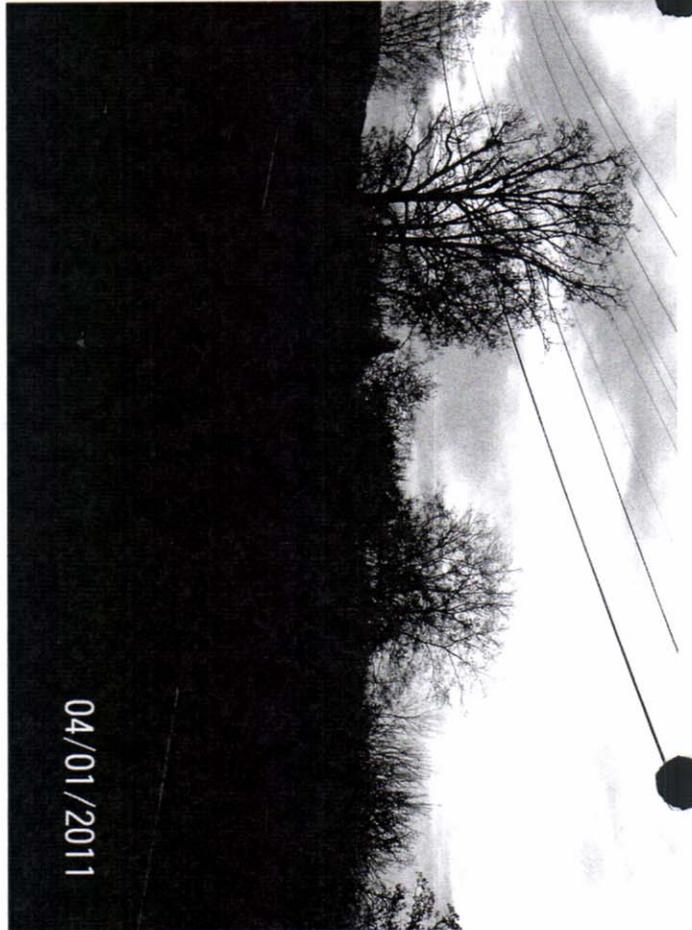
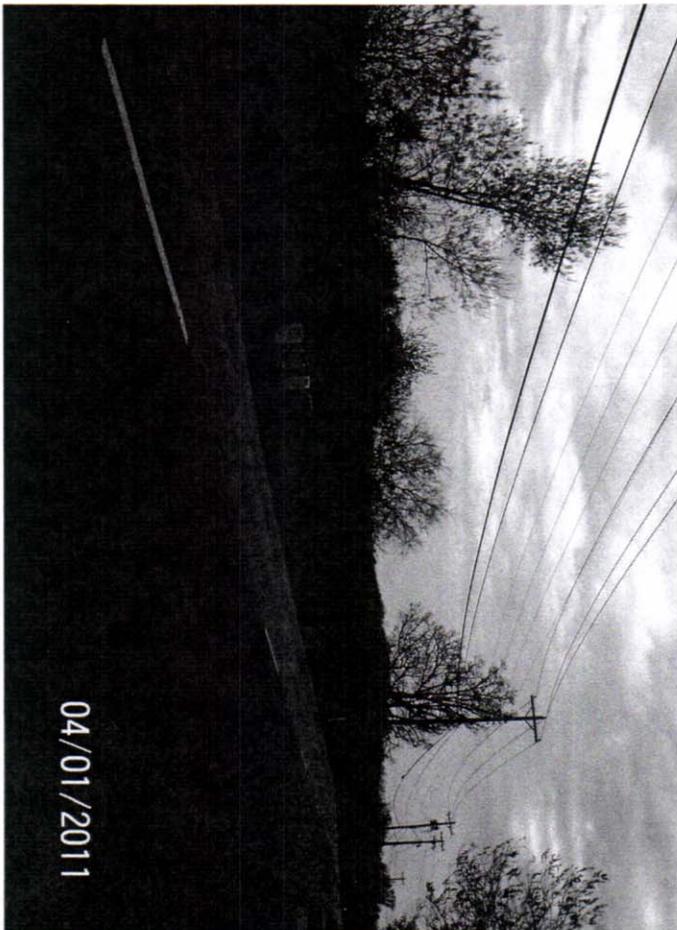
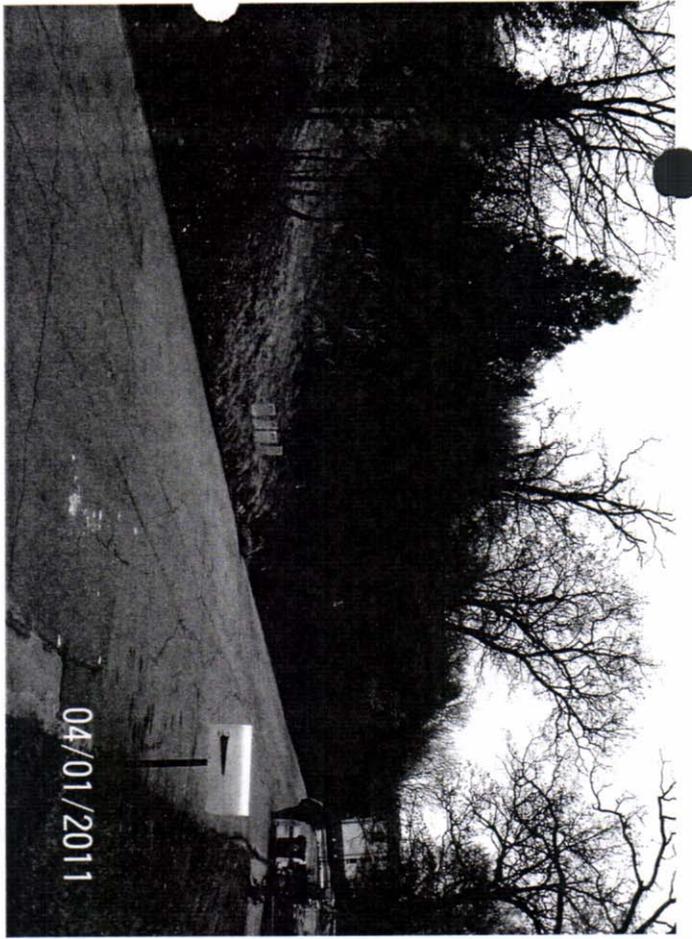
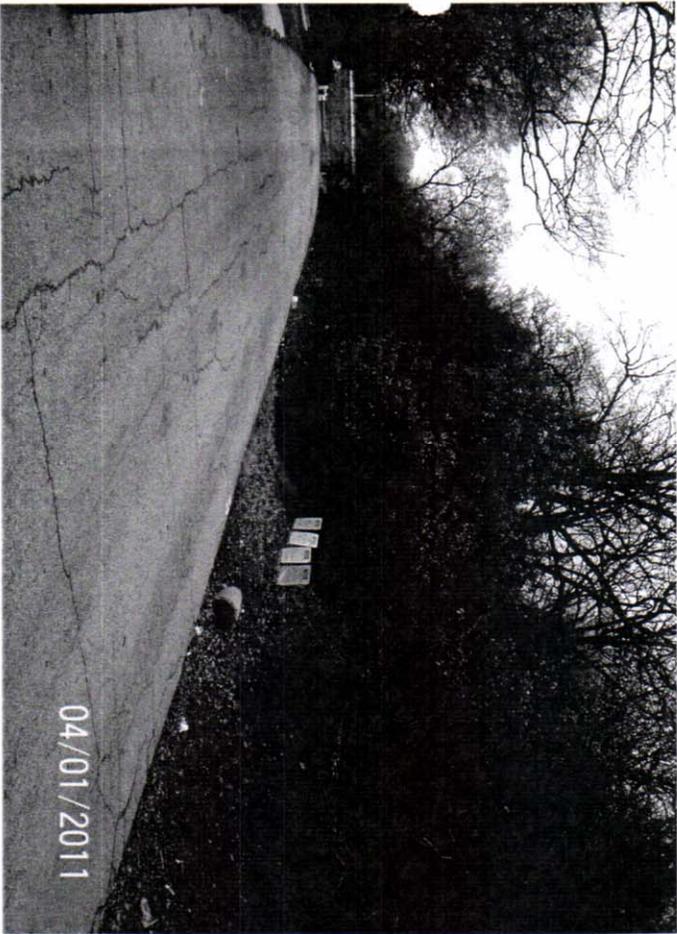
6300 Cliff Drive
Preliminary Development Plan
 February 2011

MICKLE WAGNER COLEMAN
 Engineers-Surveyors
 204 Co. Rd. 10
 Fort Worth, Texas
 76104-0001
 817-335-1100
 mwc@mwco.com



**MICKLE
WAGNER
COLEMAN**
Engineers
301 Court
120 Box 150
Bel Air, MD
410-341-1100
info@micklewagner.com

Plants-Surveyors
1010 4th Ave
Bel Air, MD
410-341-1100
info@plants-surveyors.com



Diamond State Oil, LLC
1434 Pike Avenue
North Little Rock, AR 72114

Mike Jordan Co., Inc.
6305 Cliff Drive
Fort Smith, AR 72903

Palermo Properties, LLC
6301 Cliff Drive
Fort Smith, AR 72903

Stanley Isaacks
1201 South 74th Street
Fort Smith, AR 72903

Global Signal Acquisitions
12034 Ridgefield Drive
Fort Smith, AR 72916

Foundation Life Insurance
109 North 6th Street
Fort Smith, AR 72901

Whitten Development, Inc.
5395 W. Ash Street-Suite 3
Pottsville, AR 72858

Tanecia Krueger & Jacob Grace
2604 South 65th Street
Fort Smith, AR 72903

Rodney & Carolyn Gilbert
6312 Country Club Drive
Fort Smith, AR 72903

Jacquelyn West
6308 Country Club Drive
Fort Smith, AR 72903

Lora Fowler
6304 Country Club Drive
Fort Smith, AR 72903

Kathleen Kralik
6300 Country Club Drive
Fort Smith, AR 72903

Rudolph & Kathryn Jorgensen
6212 Country Club Drive
Fort Smith, AR 72903

Mary Miner
6206 Country Club Drive
Fort Smith, AR 72903

Charles & Wanda Vaughn
6611 South "T" Street
Fort Smith, AR 72903

Bill Harvey, Sr.
6205 S. Atlanta Street
Fort Smith, AR 72903

Lee & Dora Montgomery
6209 S. Atlanta Street
Fort Smith, AR 72903

L. Earnest & Dan Swearingen
6221 S. Atlanta Street
Fort Smith, AR 72903

Jerry & Audry Clemons
6500 Meadows Cliff Drive
Fort Smith, AR 72903

Keith Cline & Mary Ruttle
6301 S. Atlanta Street
Fort Smith, AR 72903

Frank & Lois Cameron
6307 S. Atlanta Street
Fort Smith, AR 72903

Ronnie & Mary Kilgore
6315 S. Atlanta Street
Fort Smith, AR 72903

Pam Ehnle
6325 S. Atlanta Street
Fort Smith, AR 72903

Richard & Susie Baldwin
6405 S. Atlanta Street
Fort Smith, AR 72903

Mike & Linda Schluterman
6005 Cliff Drive
Fort Smith, AR 72903

Eugene Didion
P. O. Box 11032
Fort Smith, AR 72917

Sabra & Sarah Jaber
5915 Cliff Drive
Fort Smith, AR 72903

John & Rita Rissingner
5914 Cliff Drive
Fort Smith, AR 72903

Warren Kimbrough
5900 Cliff Drive
Fort Smith, AR 72903

Scott Gentry
5914 Cliff Drive
Fort Smith, AR 72903

DRAFT

Planning Commission Meeting Minutes
April 12, 2011

4. **Master Land Use Plan Amendment from Residential Detached to Neighborhood Commercial located at 6300 Cliff Drive. (companion item to items #5, #6 & #16).**
5. **Rezoning #7-4-11; A request by Mickle-Wagner-Coleman, agent, for a zone change from Residential Multi-Family Medium Density (RM-3) to Commercial Light (C-2) by Classification located at 6300 Cliff Drive. (companion item to items #4, #6 & #16)**
6. **Development Plan Approval of a parking lot located at 6300 Cliff Drive. (companion item to items #4, #5 & #16)**
16. **Variance #6-4-11; A request by Mickle-Wagner-Coleman, agent, for a variance from a major collector to residential collector street classification required for street access at 6300 Cliff Drive. (companion item to items #4, #5 & #6)**

It was noted that these items would be discussed together but would be voted on separately.

Mr. Bailey read the staff reports indicating that the purpose of these requests is to facilitate the development of a 1.4 acre site for a proposed 35 space parking lot to serve an existing office building. Mr. Bailey noted that staff finds the properties location and topography incongruous with residential development and also noted that only 40% of the property, or the 110 feet adjacent to Cliff Drive, is proposed in the rezoning request with the remainder of the property to remain residential.

Mr. Pat Mickle with Mickle-Wagner-Coleman was present to speak on behalf of these requests.

No one was present to speak in opposition to the requests.

Following a discussion by the Commission, Chairman Griffin called for the vote on these items separately.

4. **Master Land Use Plan Amendment from Residential Detached to Neighborhood Commercial located at 6300 Cliff Drive. (companion item to items #5, #6 & #16)**

Motion was made by Commissioner Lorenz, seconded by Commissioner Maurras and carried unanimously to amend this request to make approval subject to prohibiting ingress or egress off Country Club Avenue except for maintenance purposes.

Chairman Griffin then called for the vote on the Master Land Use Plan Amendment as amended. The vote was 8 in favor and 0 opposed.

DEPT

5. Rezoning #7-4-11; A request by Mickle-Wagner-Coleman, agent, for a zone change from Residential Multi-Family Medium Density (RM-3) to Commercial Light (C-2) by Classification located at 6300 Cliff Drive. (companion item to items #4, #6 & #16)

Motion was made by Commissioner Lorenz, seconded by Commissioner Parks and carried unanimously to amend this request to make approval subject to the following:

- The Master Land Use Plan Amendment and variance applications being approved and a final development plan being submitted.
- Prohibiting ingress or egress off Country Club Avenue except for maintenance purposes.

Chairman Griffin then called for the vote on the rezoning request as amended. The vote was 8 in favor and 0 opposed.

6. Development Plan Approval of a parking lot located at 6300 Cliff Drive. (companion item to items #4, #5 & #16)

Motion was made by Commissioner Lorenz, seconded by Commissioner Parks and carried unanimously to amend this request to make approval subject to the following:

- The master land use plan amendment and rezoning applications being approved and a final development plan being submitted.
- Prohibiting ingress or egress off Country Club Avenue except for maintenance purposes.

Chairman Griffin then called for the vote on the rezoning request as amended. The vote was 8 in favor and 0 opposed.

**RECESS PLANNING COMMISSION
CONVENE BOARD OF ZONING ADJUSTMENT**

16. Variance #6-4-11; A request by Mickle-Wagner-Coleman, agent, for a variance from a major collector to residential collector street classification required for street access at 6300 Cliff Drive. (companion item to items #4, #5 & 16)

Chairman Griffin called for the vote on the variance request. The vote was 8 in favor and 0 opposed. Chairman Griffin noted that his approval of the variance was due to the topography of the land and the fact that he felt the variance request would not be detrimental to the adjoining properties.

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE MASTER LAND USE PLAN MAP AND REZONING IDENTIFIED PROPERTY AND AMENDING THE ZONING MAP

WHEREAS, the City Planning Commission has held a public hearing to consider a request to amend the Master Land Use Plan Map relative to property described in Section 1 of this ordinance, and, having considered the request, recommended on April 12, 2011, that said change be made; and,

WHEREAS, the City Planning Commission determined the change to the Master Land Use Plan Map does conform to the goals and objectives of the Comprehensive Plan.

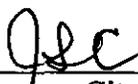
WHEREAS, the City Planning Commission has heretofore held a public hearing to consider request No. 8-4-11 to rezone certain properties hereinafter described, and, having considered this request, recommended on April 12, 2011, that said change be made;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS:

SECTION 1: The hereinafter described property is hereby reclassified on the Master Land Use Plan Map from Open Space, Office Research, Light Industrial and Residential Detached to General Commercial and the Master land Use Plan Map is hereby amended to reflect said amendment to-wit:

Part of Government Lots 1 and 2 of the Northwest Quarter of Fractional Section 6, Township 7 North, Range 31 West, all in Fort Smith, Sebastian County, Arkansas. Being more particularly described as follows:

Approved as to Form:



City Attorney
Publish / time

Commencing at Northwest Corner of said Fractional Section 6; thence along the north line of said Section 6, S 87 degrees 13 minutes 03 seconds East, 1507.41 feet to an existing ½" rebar; thence continuing along said north line, S 87 degrees 12 minutes 34 seconds East, 316.12 feet to an existing ½" rebar at the Southwest Corner of said Government Lot 1 of the Southwest Quarter of Section 31; thence along the west line of said Government lot 1, North 02 degrees 39 minutes 29 seconds East, 709.78 feet to an existing ½" iron pin on the south right of way of Fort Smith Railroad; thence along said right of way the following bearings and distances: 574.65 feet along the arc of a curve to the right, said curve having a radius of 3198.18 feet and being subtended by a chord having a bearing of South 60 degrees 58 minutes 40 seconds East and a distance of 573.88 feet to an existing ½" iron pin; South 55 degrees 49 minutes 34 seconds East, 886.67 feet to an existing pk nail on the west right of way of Massard Road; thence along said right of way the following bearings and distances; South 06 degrees 23 minutes 25 seconds West, 363.84 feet to an existing pk nail; South 03 degrees 02 minutes 17 seconds West, 108.77 feet to the Point of Beginning; thence continuing South 03 degrees 02 minutes 17 seconds West, 269.89 feet to a set ½" rebar; thence 87.42 feet along the arc of a curve to the right in said west right of way, said curve having a radius of 50.00 feet and being subtended by a chord having a bearing of South 53 degrees 07 minutes 10 seconds West and a distance of 76.70 feet to a set ½" rebar on said north right of way of Arkansas Highway 255 (Zero Street); thence along said right of way the following bearings and distances: North 76 degrees 50 minutes 25 seconds West, 536.84 feet to an existing concrete right of way marker; North 13 degrees 27 minutes 21 seconds East, 30.00 feet to a set ½" rebar, North 76 degrees 15 minutes 05 seconds West, 998.59 feet to a set ½" rebar; thence leaving said north right of way, North 02 degrees 48 minutes 56 seconds East, 305.55 feet; thence South 76 degrees 15 minutes 05 seconds East, 1592.00 feet to the Point of Beginning. Containing 11.31 acres, more or less.

More commonly known as 8201 and 8225 South Zero.

SECTION 2: The hereinafter described property is hereby rezoned from Industrial Light (I-1) to Commercial Heavy (C-5) by Extension.

Part of Government Lots 1 and 2 of the Northwest Quarter of Fractional Section 6, Township 7 North, Range 31 West, all in Fort Smith, Sebastian County, Arkansas. Being more particularly described as follows:

Commencing at Northwest Corner of said Fractional Section 6; thence along the north line of said Section 6, S 87 degrees 13 minutes 03 seconds East, 1507.41 feet to an existing ½" rebar; thence continuing along said north line, S 87 degrees 12 minutes 34 seconds East, 316.12 feet to an existing ½" rebar at the Southwest Corner of said Government Lot 1 of the Southwest Quarter of Section 31; thence along the west line of said Government lot 1, North 02 degrees 39 minutes 29 seconds East, 709.78 feet to an existing ½" iron pin on the south right of way of Fort Smith Railroad; thence along said right of way the following bearings and distances: 574.65 feet along the arc of a curve to

the right, said curve having a radius of 3198.18 feet and being subtended by a chord having a bearing of South 60 degrees 58 minutes 40 seconds East and a distance of 573.88 feet to an existing ½' iron pin; South 55 degrees 49 minutes 34 seconds East, 886.67 feet to an existing pk nail on the west right of way of Massard Road; thence along said right of way the following bearings and distances; South 06 degrees 23 minutes 25 seconds West, 363.84 feet to an existing pk nail; South 03 degrees 02 minutes 17 seconds West, 108.77 feet to the Point of Beginning; thence continuing South 03 degrees 02 minutes 17 seconds West, 269.89 feet to a set ½" rebar; thence 87.42 feet along the arc of a curve to the right in said west right of way, said curve having a radius of 50.00 feet and being subtended by a chord having a bearing of South 53 degrees 07 minutes 10 seconds West and a distance of 76.70 feet to a set ½" rebar on said north right of way of Arkansas Highway 255 (Zero Street); thence along said right of way the following bearings and distances: North 76 degrees 50 minutes 25 seconds West, 536.84 feet to an existing concrete right of way marker; North 13 degrees 27 minutes 21 seconds East, 30.00 feet to a set ½" rebar, North 76 degrees 15 minutes 05 seconds West, 998.59 feet to a set ½" rebar; thence leaving said north right of way, North 02 degrees 48 minutes 56 seconds East, 305.55 feet; thence South 76 degrees 15 minutes 05 seconds East, 1592.00 feet to the Point of Beginning. Containing 11.31 acres, more or less.

more commonly known as 8201 and 8225 South Zero.

The zoning map of the City of Fort Smith is hereby amended to reflect said rezoning subject to the submittal of a final development plan that complies with all Unified Development Ordinance requirements.

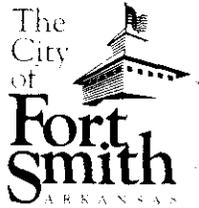
PASSED AND APPROVED THIS _____ DAY OF MAY, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk



April 27, 2011

Honorable Mayor and Board of Directors
City of Fort Smith, Arkansas

Re: A request by Mickle-Wagner-Coleman, agent, for a Master Land Use Plan Amendment from Open Space, Office Research, Light Industrial and Residential Detached to General Commercial and a zone change from Industrial Light (I-1) to Commercial Heavy (C-5) by Extension located at 8201 and 8225 South Zero.

On April 12, 2011, the City Planning Commission held a public hearing to consider the above rezoning request.

Ms. Brenda Andrews read the staff reports indicating that the purpose of these requests is to allow for commercial and retail development compatible to the surrounding areas. Ms. Andrews stated that the Massard Business Park, Lots 1-13 preliminary plat was reviewed and approved by the Planning Commission last month and a development plan for a proposed bank on Lot 1 is also a companion item to these requests.

Ms. Andrews noted that a neighborhood meeting was held on Thursday, March 24, 2011, at 5:30 p.m. at Benefit Bank, 8300 Phoenix Avenue which was attended by an adjacent property owner and an interested person who expressed no concerns regarding the proposed development.

Mr. Randy Coleman of Mickle-Wagner-Coleman was present to speak on behalf of these requests.

No one was present to speak in opposition to these requests.

Following a discussion by the Commission, Chairman Griffin then called for the vote on the master land use plan amendment. The vote was 8 in favor and 0 opposed.

Chairman Griffin then called for the vote on the rezoning request. The vote was 8 in favor and 0 opposed.

A copy of the draft minutes and staff report to the Planning Commission is enclosed for your review.

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(501) 785-2801
Administrative Offices FAX (501) 784-2407

The Planning Commission hereby certifies this zoning map amendment to the Board of Directors in accordance with A.C.A. 14-56-422.

Respectfully Submitted,

CITY PLANNING COMMISSION

Steve Griffin, Chairman

SG/lp

cc: File
City Administrator

MEMO

To: City Planning Commission

From: Planning Staff

Date: April 5, 2011

Subject: Proposed Master Land Use Plan Amendment at 8201 and 8225 South Zero Street from Open Space, Office Research and Light Industrial, and Residential Detached to General Commercial (companion item to items #1, #8, and #9)

The Planning Department is in receipt of an application from Randy Coleman with Mickle-Wagner-Coleman, agent, to amend the *Master Land Use Plan* to facilitate proposed retail and commercial uses at 8201 and 8225 South Zero Street. The proposed change is from Open, Office Research and Light Industrial, and Residential Detached to General Commercial. The subject property is located on Zero Street (AR Highway 255) at the northwest intersection with Massard Road. The tract contains an area of approximately 11.3 acres with approximately 1,600 feet of road frontage on Zero Street and 300 feet of frontage of Massard Road.

The existing zoning of the site is Industrial Light (I-1). A companion application (item #8) proposes a change in the zoning classification to Commercial Heavy (C-5) by extension. The *Master Land Use Plan* is a guide to zoning and development and must be considered with the companion applications.

ADJACENT LAND USE CLASSIFICATIONS AND USES

Land use classification and uses contiguous to the subject lot are as follows:

The area to the north is classified as Open Space and Residential Detached and is undeveloped.

The area to the south is a mix of unclassified and Low Density Residential and is developed as a regional park, distribution center, natural gas substation and an undeveloped area.

The area to the east is classified as General Commercial and developed as commercial uses.

The area to the west is classified as Office Research and Light Industrial and developed as commercial and industrial uses.

7A

The proposed land use classification of General Commercial is described as follows:

Purpose: To provide opportunities for business transactions and activities and meet the consumer needs of the community.

Characteristics and Use: Retail sales of all product types requiring transportation of goods; and, professional, technical, and financial services.

Criteria for Designation:

Compliance Noted

- | | |
|--|-----|
| • Compatible with, and complimentary to surrounding uses | Yes |
| • Located on high-volume arterials and collectors | Yes |
| • Located as a cluster of like services | Yes |
| • Accessible by most modes of transportation | Yes |
| • Appropriately located for minimum impact to adjacent uses and by volume of activity and trips generated by use | Yes |

MASTER STREET PLAN CLASSIFICATIONS

The Fort Smith Master Street Plan classifies Zero Street (AR Highway 255) and Massard Road as major arterial streets.

STAFF COMMENTS

The applicant held a neighborhood meeting on Thursday, March 24, 5:30 p.m., at Benefit Bank, 8300 Phoenix Avenue. The meeting was attended by an adjacent property owner and an interested person. The two individuals attending the meeting expressed no concerns regarding the proposed development. The meeting summary is attached.

Staff finds that the request meets the criteria for designation as General Commercial and recommends approval of the proposed Master Land Use Plan amendment.

March 28, 2011

The meeting was held at Benefit Bank with the two attendees- Fred Sullivan and Karen LaRosen. Fred owns property across Massard Road and was just wanting to know what was proposed. He did not have any problem with the plan nor the rezoning. Ms LaRosen is a realtor trying to sell Fred's land.

Randy Coleman, P.E.
Mickle Wagner Coleman, Inc.
3434 Country Club Ave
Fort Smith, Arkansas
479-649-8484
email: rcoleman@mwc-engr.com

7C

Application Type

Minor Amendment **Standard Amendment** **Major Amendment**
(See Section 27-328-5 C. (Criteria))

Request to Amend Map **Request to Amend Text**

Applicant Name: Randy Coleman, P.E.		
Firm Name: Mickle Wagner Coleman, Inc.		
Address: 3434 Country Club Avenue		
Phone # (day): 479-649-8484	Phone # (cell):	Fax #: 479-649-8486
Owner Name: Blake River, LLC		
Owner Address: 109 North 6 th Street – Fort Smith, AR 72901		
Phone # (day): 479-783-2792	Phone # (cell):	Fax #:
Property Address (subject property): 8201 4 8225 S. 2nd		
Subject Property		
Current Land Use: Vacant		
Existing MLUP Classification: Reserved, Open, Office Research, General Commercial, Residential Detached		
Proposed MLUP Classification: General Commercial		
Existing Zoning Classification: I-1		
Proposed Zoning Classification: C-5		
Surrounding Property		
Current Land Use: north- Single-Family Residential		
south- Commercial		
east- Commercial		
west- Commercial		
Existing MLUP Classification: north: Residential Open, Residential Detached		
south: Open		
east: Commercial		
west: Office Research		
Existing Zoning Classification: north: I-2		
south: ETJ O-1		
east: C-5		
west: I-2, C-5		
Pre-Application Meeting Date: N/A		

For a Minor, Standard or Major Master Land Use Plan Amendment, please attach the following information and answer the questions below. You may provide answers on a separate sheet and attach it to this application:

1. A legal description of the subject property that is to be amended (reclassified).

See Attached.

2. A map of the property which includes the scaled distance, legal description, and general vicinity map inset showing the property's location.

See Attached Exhibit.

3. The area dimensions of the property in square feet or acres.

Approximately 300 x 1500 containing 10.3 acres more or less.

4. Describe existing road conditions and new roads to be included in the development and the effect of the proposed development on existing roads and traffic conditions:

Existing streets along south and east property boundary. The southern street is South Zero - 50' asphalt; the eastern street is Massard Road - 50' concrete. No new road to be built. The site is currently vacant. Each adjacent street is capable of accommodating future traffic.

5. Describe the existing public utility services and infrastructure (such as water, sewer, fire/police) which are available to the property and the source/method of providing additional utilities and infrastructure to the property if necessary:

There is an existing 12" water line in South Zero and an existing 18" water line in Massard Road. There is an existing 30" sanitary sewer line on site running south to North. There is an existing 12" sewer line running east across the site. There are existing fire hydrants along the frontage.

6. Provide a statement of the proposed build-out density and maximum potential build-out density (units per acre) permitted by the proposed land use classification:

It is anticipated that the Zero Street frontage will be heavy commercial with possibly 4 to 6 buildings along this frontage. This relates to about 1 unit per acre.

7. Identify any known or anticipated environmental concerns:

The only known environmental concern is the creek running thru the property. Ongoing work has been approved by governing agencies.

For a Standard or Major Master Land Use Plan Amendment only, please attach the following additional information and answer the questions below. You may provide answers on a separate sheet and attach it to this application:

8. An analysis of the impact of the amendment on surrounding properties and plans in terms of:

a. Describe potential changes to development patterns in terms of local and regional impacts:

b. Describe the consistency in zoning between existing and planned uses:

c. Provide explanation of the need for and demand in the proposed uses:

9. Provide an analysis of the long term development plan for the area (10-20 years) which incorporates a review of the land use, transportation, and infrastructure impact to both the City of Fort Smith and the property owner:

For a Comprehensive Plan-Text Amendment only, please attach the following information. Provide answers on a separate sheet and attach it to this application:

1. A typewritten copy of the proposed changes to the text in underline/strikeout (also known as "track changes") format.
2. A description of the reasons supporting the amendment and the special circumstances requiring the change:

Certification

Once an application has been deemed complete, the applicant shall not modify it unless requested or agreed upon by the Planning Department. Should the applicant request a modification to the application after it has been advertised for public hearing, it shall be at the discretion of the Planning Commission to review or continue the application. A re-advertising fee may be required.

I, the undersigned applicant, hereby certify that the information contained in this application is true and correct to the best of my knowledge and belief. I grant the appropriate City personnel permission to enter the subject property during reasonable hours so that they may investigate and review this application.



3-16-11

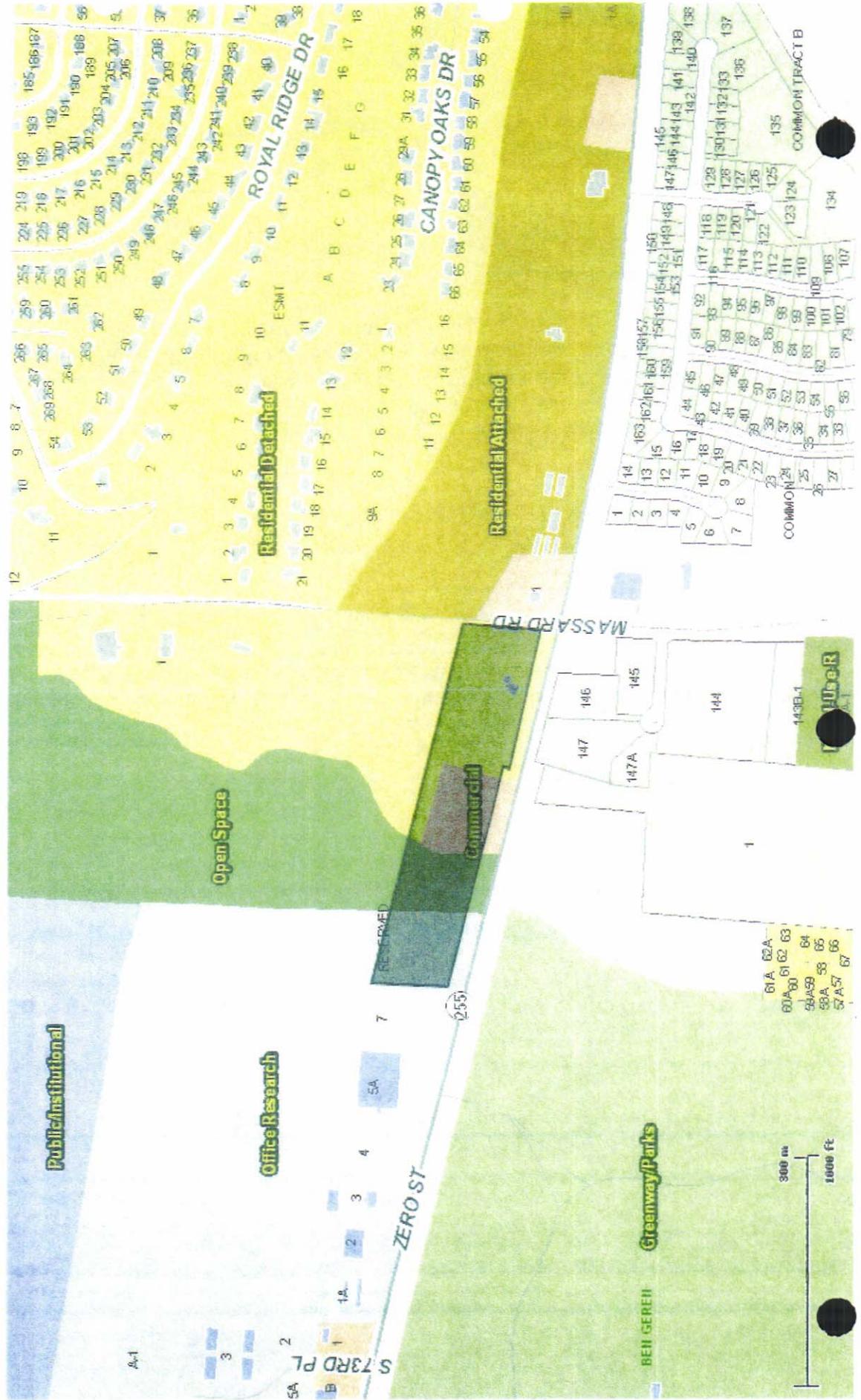
Signature (Agent/Owner)

Date

The City of Fort Smith requires complete applications. If your application does not include all of the information required for submission, it will not be processed.

Master Land Use: From Open Space, Residential Detached, Office Research to General Commercial

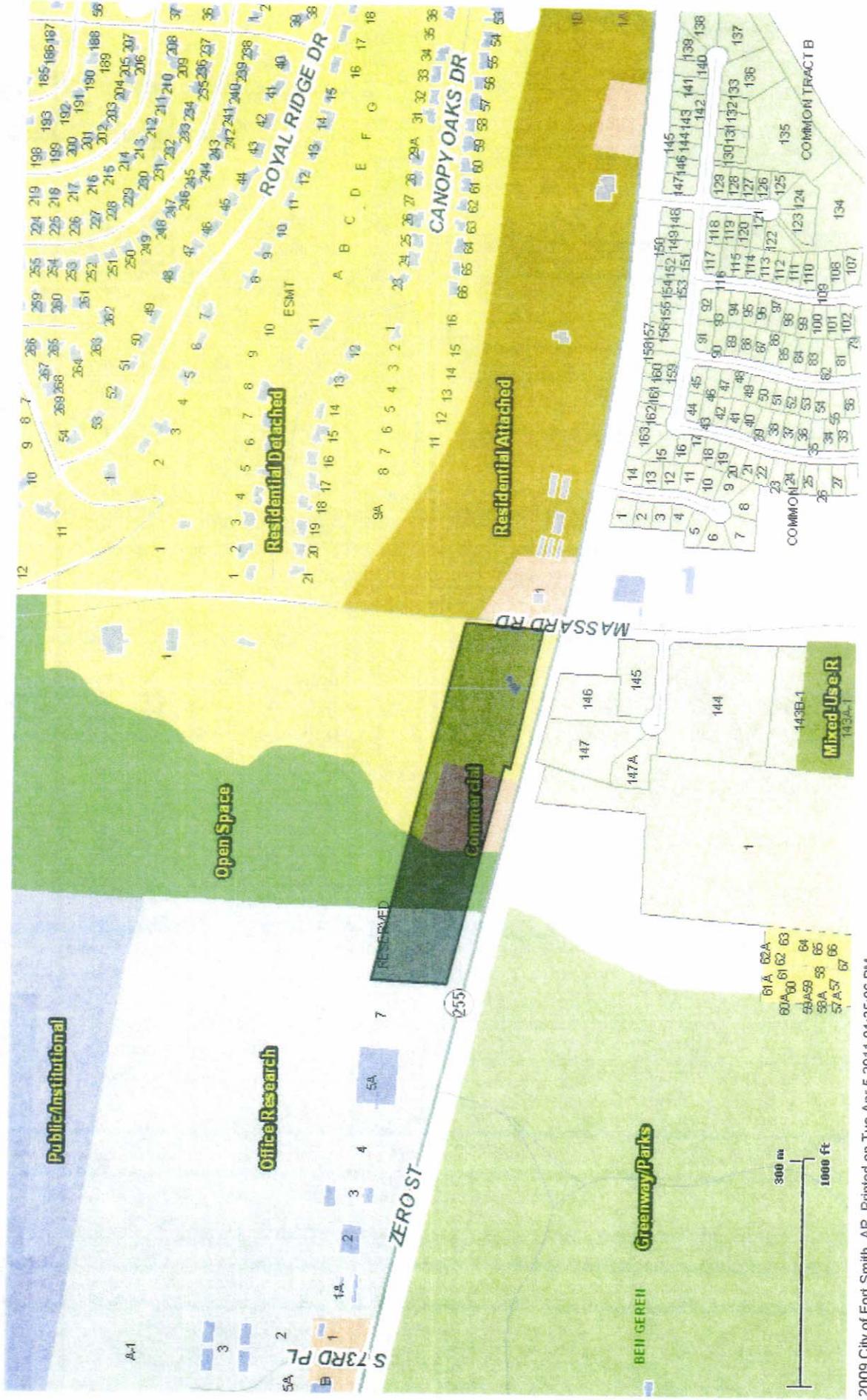
8201 & 8225 Zero Street



7F

Master Land Use: From Open Space, Residential Detached, Office Research to General Commercial

8201 & 8225 Zero Street



Memo

To: City Planning Commission

From: Planning Staff

Date: April 5, 2011

Subject: Rezoning #8-4-11; A request by Randy Coleman, Mickle-Wagner-Coleman, agent, for Planning Commission consideration of a zone change from Industrial Light (I-1) to Commercial Heavy (C-5) by extension at 8201 and 8225 South Zero Street (Companion item to items #1, #7 and #9)

LOT LOCATION AND SIZE

The subject property is located on Zero Street (U.S. Highway 255) at the northwest intersection with Massard Road. The tract contains an area of approximately 11.3 acres with approximately 1,600 feet of road frontage on Zero Street and 300 feet of frontage of Massard Road.

EXISTING ZONING

The property is currently zoned Industrial Light (I-1).

REQUESTED ZONING

The requested zoning on this tract is Commercial Heavy (C-5). Characteristics of this zone are as follows:

Purpose: To provide for adequate locations for retail uses and services that generate moderate to heavy automobile traffic. The C-5 zoning district is designed to facilitate convenient access, minimize traffic congestion, and reduce visual clutter. The C-5 zoning district is appropriate in the General Commercial classification of the Master Land Use Plan.

Permitted Uses: Permitted uses include a variety of retail establishments, finance, grocery, beverage and restaurant establishments, as well as multi-family residential.

Conditional Uses: Schools and religious institutions, restaurants with outdoor dining, and beer gardens are examples of uses permitted as conditional uses.

8A

Bulk & Area Regulations:

- Minimum Lot Size – 14,000 s.f.
- Minimum Lot Width – 100 feet
- Maximum Lot Coverage – 75%
- Maximum Height – 45 feet (1 + 1)
- Front Yard Setback – 25 feet
- Side Yard Setback – 20 feet
- Side Yard on Street Side of Corner Lot – 15 feet
- Rear Yard Setback – 20 feet
- Rear/Side Yard Adjoining Single Family Residential District/Development – 30 feet

SURROUNDING ZONING AND LAND USE

The area to the north is zoned Industrial Light (I-1) and is undeveloped.

The area located at the southwest corner of the intersection of Zero Street and Massard Road is not zoned and is developed as a distribution center and a natural gas substation. A portion of this area is also undeveloped. An area also to the south and further west on Zero Street is zoned ETJ-Open-1 and is developed as Ben Geren Park.

The area to the east is zoned as Heavy Commercial (C-5) and is developed as a liquor store, mini storage units, and contractor's office.

The area to the west is zoned Industrial Light (I-1) and developed as a wholesale electrical supplier and an adult development center. A small area is also zoned Heavy Commercial (C-5) and is developed with a commercial business.

PROPOSED REZONING

The proposed zoning will facilitate retail and commercial development.

LAND USE PLAN COMPLIANCE

The Master Land Use Plan classifies this property as Open Space, Office Research and Light Industrial, and Residential Detached. A companion Master Land Use Plan Amendment application requests a land use classification change to General Commercial.

MASTER STREET PLAN CLASSIFICATION

The Fort Smith Master Street Plan classifies Zero Street (U.S. Highway 255) and Massard Road as major arterial streets.

STAFF COMMENTS AND RECOMMENDATIONS

The area proposed for rezoning will allow commercial and retail development compatible to the surrounding areas. Massard Business Park, Lots 1-13 – preliminary plat was reviewed and approved by the planning commission last month. A development plan for a proposed bank on Lot 1 is a companion item to this request.

The applicant held a neighborhood meeting on Thursday, March 24, 5:30 p.m., at Benefit Bank, 8300 Phoenix Avenue. The meeting was attended by an adjacent property owner and an interested person. The two individuals attending the meeting expressed no concerns regarding the proposed development. The meeting summary is attached.

Staff finds that the C-5 zone is appropriate for this location and recommends approval of the zone change.

PETITION FOR CHANGE IN ZONING MAP

Before the Planning Commission of the City of Fort Smith, Arkansas

The undersigned, as owner(s) or agent for the owner(s) of the herein described property, makes application for a change in the zoning map of the City of Fort Smith, Arkansas, pursuant to Ordinance No. 3391 and Arkansas Statutes (1974) 19-2830, representing to the Planning Commission as follows:

1. The applicant is the owner or the agent for the owner(s) of real estate situated in the City of Fort Smith, Sebastian County, Arkansas, described as follows: (Insert legal description)

Part of Government Lots 1 and 2 of the Northwest Quarter of Fractional Section 6, Township 7 North, Range 31 West, all in Fort Smith, Sebastian County, Arkansas. Being more particularly described as follows:

Commencing at Northwest Corner of said Fractional Section 6; Thence along the north line of said Section 6, S87°13'03"E, 1507.41 feet to an existing 1/2" rebar; Thence continuing along said north line, S87°12'34"E, 316.12 feet to an existing 1/2" rebar at the Southwest Corner of said Government Lot 1 of the Southwest Quarter of Section 31; Thence along the west line of said Government Lot 1, N02°39'29"E, 709.78 feet to an existing 1/2" iron pin on the south right of way of Fort Smith Railroad; Thence along said right of way the following bearings and distances: 574.65 feet along the arc of a curve to the right, said curve having a radius of 3198.18 feet and being subtended by a chord having a bearing of S60°58'40"E and a distance of 573.88 feet to an existing 1/2" iron pin; S55°49'34"E, 886.67 feet to an existing pk nail on the west right of way of Massard Road; Thence along said right of way the following bearings and distances: S06°23'25"W, 363.84 feet to an existing pk nail; S03°02'17"W, 108.77 feet to the Point of Beginning; Thence continuing S03°02'17"W, 269.89 feet to a set 1/2" rebar; Thence 87.42 feet along the arc of a curve to the right in said west right of way, said curve having a radius of 50.00 feet and being subtended by a chord having a bearing of S53°07'10"W and a distance of 76.70 feet to a set 1/2" rebar on said north right of way of Arkansas Highway 255 (Zero Street); Thence along said right of way the following bearings and distances: N76°50'25"W, 536.84 feet to an existing concrete right of way marker; N13°27'21"E, 30.00 feet to a set 1/2" rebar; N76°15'05"W, 998.59 feet to a set 1/2" rebar; Thence leaving said north right of way, N02°48'56"E, 305.55 feet; Thence S76°15'05"E, 1592.00 feet to the Point of Beginning. Containing 11.31 acres, more or less.

2. Address of property: 8201 1/2 8225 S Leero

3. The above described property is now zoned: I-1 (I-2)

4. Application is hereby made to change the zoning classification of the above described property to C-5 by Extension
(Extension or classification)

5. Why is the zoning change requested?

Preparation for future commercial development

6. Submit any proposed development plans that might help explain the reason for the request.

Signed:

Mickle Wagner Coleman, Inc.

Owner or Agent Name
(please print)

Owner .

P.O. Box 1507, Fort Smith, AR. 72902
Owner or Agent Mailing Address

Randall Olsen
or

Agent

479-649-8484
Owner or Agent Phone Number

8E

Rezoning #8-4-11: From Industrial Light (I-2) to Commercial Heavy (C-5)

8201 & 8225 Zero Street



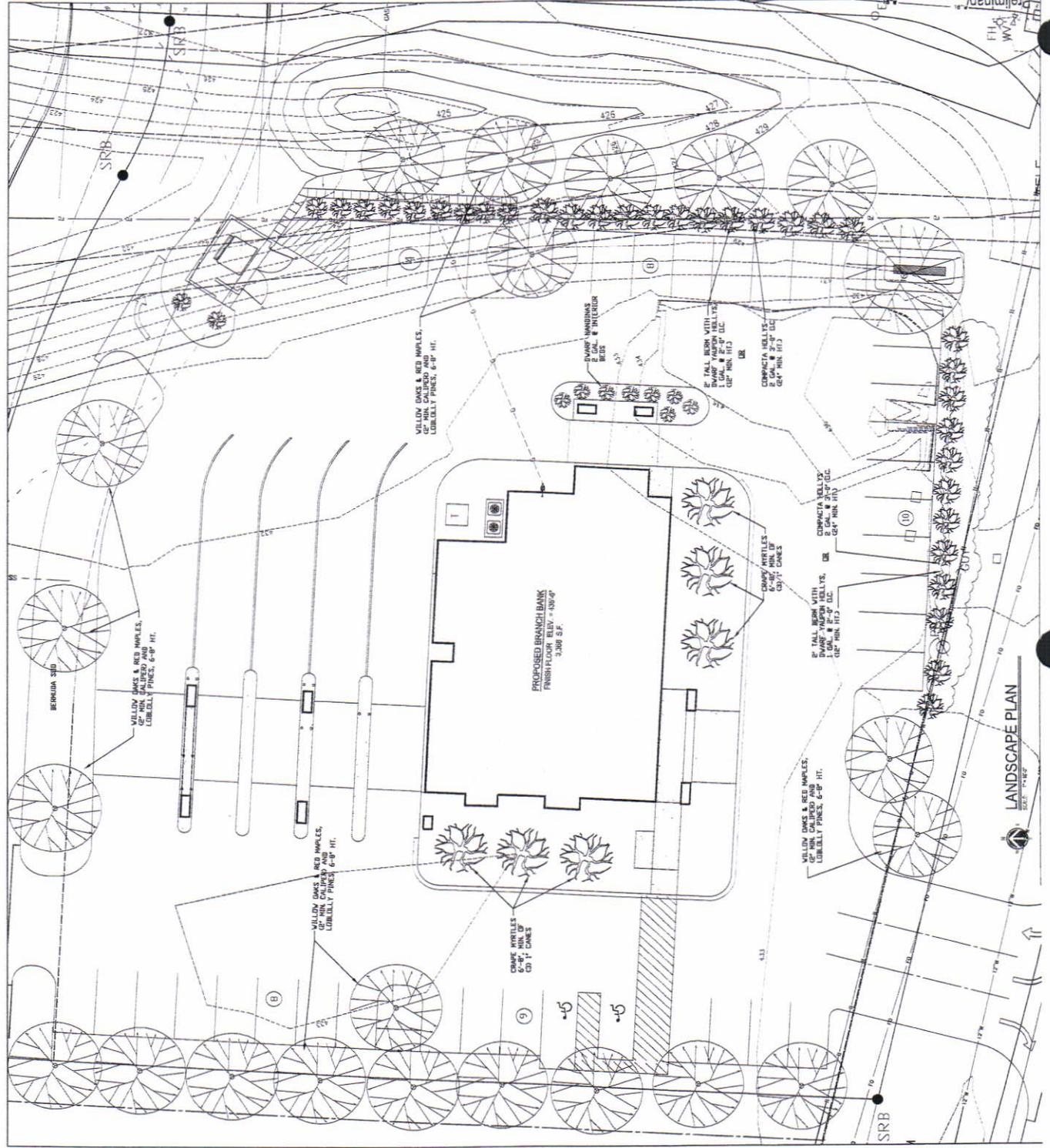
87



TM A. RISLEY & ASSOCIATES
 ARCHITECTS AND PLANNERS
 101 PHOENIX • FORT SMITH, ARKANSAS - 72503
 PHONE - 479-662-3923 • FAX - 479-662-3925 • EMAIL - tm@risley-associates.com

FIRST NATIONAL BANK
 ZERO and MASSARD BRANCH
 ARKANSAS

Sheet No. **L1**
 Date: 11-11-11
 Title: Preliminary



9A

Bost Human Development
P. O. Box 11495
Fort Smith, AR 72917

Cotner Properties, LP
P. O. Box 152
Fort Smith, AR 72902

Blake River, LLC
109 North 6th Street
Fort Smith, AR 72901

Roger & Dorothy Day
2718 County Road 2201
Hartman, AR 72840

Pinemeadow's Defined Benefit
Pension Plan
P. O. Box 180547
Fort Smith, AR 72918

Fred & Patty Sullivan
535 Clear Creek Road
Alma, AR 72921

Sebastian County, Arkansas
35 South 6th Street – Room 106
Fort Smith, AR 72901

ERC Land Development Group
813 Fort Street
Barling, AR 72923

Wal-Mart Properties, Inc.
P. O. Box 8050
Bentonville, AR 72712-8050

Arkansas Oklahoma Gas
P. O. Box 17004
Fort Smith, AR 72917

GMCM Partners
c/o Charles McCourt
7906 Yorktown Road
Fort Smith, AR 72903

William & Doris Files
8300 Canopy Oaks Drive
Fort Smith, AR 72903

The Balsara Family Trust
8309 Canopy Oaks Drive
Fort Smith, AR 72903

Richard & Jennifer Millican
8308 Canopy Oaks Drive
Fort Smith, AR 72903

Lisa & John Klein
5209 Twin Hills Drive
Fort Smith, AR 72916

Virgil L. Pratt Trust
8909 Skypark Drive
Fort Smith, AR 72903

Goodson's Enterprises, Inc.
5500 Massard Road
Fort Smith, AR 72903

Lynn Ellison
Fort Smith Public Schools
P. O. Box 1948
Fort Smith, AR 72902

**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT
MINUTES
CREEKMORE PARK COMMUNITY CENTER
5:30 P.M.
APRIL 12, 2011**

On roll call, the following Commissioners were present: Steve Griffin, Mike Lorenz, Walton Maurras, Keith Lau, Marshall Sharpe, Jennifer Parks, Salvatore Salamone and John Huffman. Commissioner Travis Stephens was absent.

Chairman Griffin then called for the vote on the minutes from the March 8, 2011, Planning Commission meeting. Motion was made by Commissioner Lau, seconded by Commissioner Parks and carried unanimously to approve the minutes as written.

Mr. Wally Bailey spoke on the procedures.

- 1. Final Plat – Massard Business Park – Lot 1 – Mickle-Wagner-Coleman (companion item to items #7, #8 and #9)**
- 7. Master Land Use Plan Amendment from Reserved, Open, Office Search, General Commercial & Residential Detached to General Commercial located at 8201 and 8225 South Zero. (companion item to items #8 & #9)**
- 8. Rezoning #8-4-11; A request by Mickle-Wagner-Coleman, agent, for a zone change from Industrial Light (I-1) to Commercial Heavy (C-5) by Extension located at 8201 and 8225 South Zero. (companion item to items #7 & #9)**
- 9. Development Plan Approval of a commercial development located at 8225 South Zero (companion item to items #7 & #8)**

Ms. Brenda Andrews read the staff reports indicating that the purpose of these requests is to allow for commercial and retail development compatible to the surrounding areas. She noted that Massard Business Park, Lots 1-13 preliminary plat was reviewed and approved by the Planning Commission last month and a development plan for a proposed bank on Lot 1 is also a companion item to these requests.

Ms. Andrews stated that a neighborhood meeting was held on Thursday, March 24, 2011, at 5:30 p.m. at Benefit Bank, 8300 Phoenix Avenue. Ms. Andrews noted that the meeting was attended by an adjacent property owner and an interested person who expressed no concerns regarding the proposed development.

Mr. Randy Coleman of Mickle-Wagner-Coleman was present to speak on behalf of these requests.

No one was present to speak in opposition to these requests.

DRAFT

Chairman Griffin then called for the vote on these items separately.

1. Final Plat – Massard Business Parks – Lot 1 – Mickle-Wagner-Coleman (companion items to items #7, #8 & #9)

Motion was made by Commissioner Lorenz, seconded by Commissioner Parks and carried unanimously to approve the final plat subject to all required approvals of the plat and the affixing of all required signatures on the original tracing and other copies and associated documents prior to the plat being filed with the county recorder.

Chairman Griffin then called for the vote on the final plat as amended. The vote was 8 in favor and 0 opposed.

7. Master Land Use Plan Amendment from Reserved, Open, Office Research, General Commercial & Residential Detached to General Commercial located at 8201 and 8225 South Zero. (companion item to items #8 & #9)

Chairman Griffin called for the vote on the Master Land Use Plan Amendment. The vote was 8 in favor and 0 opposed.

8. Rezoning #8-4-11; A request by Mickle-Wagner-Coleman, agent, for a zone change from Industrial Light (I-1) to Commercial Heavy (C-5) by Extension located at 8201 and 8225 South Zero. (companion item to items #7 & #9)

Chairman Griffin called for the vote on the rezoning request. The vote was 8 in favor and 0 opposed.

9. Development Plan Approval of a commercial development located at 8225 South Zero. (companion item to items #7 & #8)

Chairman Griffin called for the vote on the development plan. Motion was made by Commissioner Lorenz, seconded by Commissioner Sharpe and carried unanimously to amend this request to make approval subject to approval of the Master Land Use Plan Amendment and rezoning application and submittal of a final development plan that complies with all UDO requirements.

Chairman Griffin then called for the vote on the development plan as amended. The vote was 8 in favor and 0 opposed.

Before going forward with the next item on the agenda Chairman Griffin noted that this would be Commissioner Lau's last meeting and expressed his appreciation to him for his years of service to the community. Commissioner Lau stated that he had enjoyed his terms on the Commission and hopefully can serve the City in another capacity later on.

ORDINANCE NO. _____

AN ORDINANCE ADOPTING AMENDMENTS TO THE TRANSITIONAL AND COMMERCIAL BUILDING DESIGN STANDARDS OF THE UNIFIED DEVELOPMENT CODE

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: Section 27-602-4 (C) (5) of the Fort Smith Municipal Code is hereby deleted in its entirety.

SECTION 2: Section 27-602-4 (C) (8) of the Fort Smith Municipal Code is hereby amended to read:

A permanent six-foot opaque screening fence, wall or landscape buffer shall be provided along any side or rear property line adjacent to property zoned for residential purposes including alleys.

SECTION 3: The codifier is directed to renumber the sections of 27-602-4(C) as a result of the deleted section described in Section 1 of this Ordinance.

SECTION 4: It is hereby found and determined that the adoption of these amendments to the Unified Development Ordinance is necessary to alleviate an emergency created by the lack of regulation of uses of property within the City of Fort Smith so that the protection of the health, safety and welfare of the inhabitants of the City requires that the amendments be effective immediately. Therefore, the amendments adopted by this Ordinance shall be in full force and effect as of the date of approval of this Ordinance.

PASSED AND APPROVED THIS ____ DAY OF MAY, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form:

[Signature]

City Attorney
Publish 1 time

MEMORANDUM

To: Ray Gosack, City Administrator
From: Wally Bailey, Director of Development Services
Date: April 28, 2011
Subject: UDO Amendment; Section 27-602-4(C)

Recently we discovered two sections of the Unified Development Ordinance (UDO) that require amending. Language exists that prohibits chain link fencing in any location and on any developments located in commercial and transitional zones.

We realize that many businesses and developments need chain link fencing for security reasons. Also, it should be noted that the recently adopted residential fencing standards allow chain link fencing. The proposed amendment to the code will delete the paragraph that provides for the complete prohibition on chain link fencing materials.

It is important to note that the use of chain link fencing is still prohibited when screening is required at locations such as between commercial and residential properties; screening of parking lots, and screening around trash dumpsters. At these locations an opaque screen fence is required.

Additionally the paragraph concerning fencing along property lines between commercial and residential developments has some missing words that are necessary to provide better understanding of the requirement.

I have attached excerpts from the UDO that show the proposed amendments. The sections are highlighted and are in legislative format with the deleted language stricken and the new language underlined.

The Planning Commission reviewed this matter at their April 12, 2011, meeting where they voted 8-0 to recommend the UDO be amended to permit the use of chain link fencing and to add the missing language to the fence buffer section.

An ordinance has been prepared and will be presented to the Board of Directors at the May 3, 2011, Board meeting.

- b. For roof-mounted equipment, the screening shall be architecturally incorporated into the roof design and shall consist of materials that are visually compatible with the supporting building.

~~5. Chain link fencing material is prohibited with the exception of franchise utilities.~~

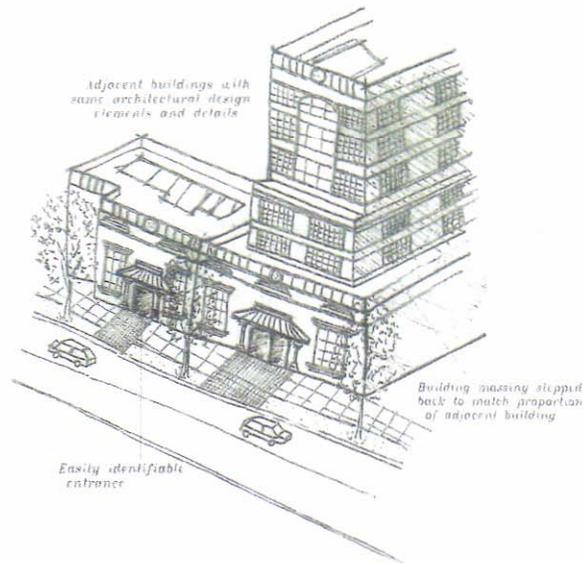
- 6. Barbed wire, sheet metal, wood slat, split log, tarps or other nonconventional fencing material are prohibited.

7. Transitional and Commercial Building Elements

- a. The main entrance of a building should face a pedestrian plaza or space with a direct pedestrian connection to the street.
- b. Buildings should be located in such a manner as to minimize conflicts between pedestrians and automobiles
- c. Buildings should be oriented primarily to the street, with street-oriented retail or service spaces.
- d. Retail shops at street level should have direct access to and from the sidewalk.
- e. Entrances should be easily identifiable as primary points of access to buildings.
- f. Corner buildings at gateways or prominent intersections should be designed to emphasize the gateway or intersection location. This may include major architectural expression in the façade, roof form and/or massing, such as:
 - 1. larger bulk
 - 2. tower forms
 - 3. peaked roofs
 - 4. over-sized windows
 - 5. sloped parapets and appurtenances

- 8. Auto impoundment or holding yards shall be screened with a minimum six (6) to eight (8) foot opaque fence constructed of wood or masonry.

9. A permanent opaque **six-foot** screening fence, wall or landscape buffer shall be provided along any side or rear **property line** adjacent to property zoned for residential purposes including alleys.



Building Element Sketch - Examples

10. Linear or strip development is discouraged, including linear open air centers.
11. Pad sites shall be clustered together to define street edges and entry points or to enclose and create interesting places between buildings, such as public outdoor seating, landscaped areas, or other focal points.
12. Buildings, walls, trees, topography, and other site features shall be oriented and arranged to define circulation areas and lend a human scale to the development.
13. Shared parking agreements between adjacent or closely related developments are strongly encouraged.

D. Multifamily Building Standards. The following standards shall apply to multifamily (3 or more units) development, including row house developments:

1. New building design should respect the context of adjacent residential neighborhoods, including the height, scale, mass, form and character of surrounding developments.

5

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: April 28, 2011

FROM: Steve Parke, Director of Utilities

SUBJECT: Agenda Item No. 5

Agenda item number 5, which is the Ordinance establishing charges, is being rescheduled for the May 17 agenda. The review by the attorney's office indicated that additional clarification for the repeal and amendment to sections of the municipal code should be made. Those changes could not be made and reviewed within the time frame for this week's Board package submission.

Should you have any questions, please advise.

**AN ORDINANCE PROVIDING FOR PROCEDURES RELATED TO
THE ENFORCEMENT AND COLLECTION OF GROSS RECEIPT TAXES;
TO DECLARE AN EMERGENCY AND PRESCRIBING OTHER
MATTERS PERTAINING THERETO.**

WHEREAS, pursuant to Act 185 of 1965, as amended, the City of Fort Smith, Arkansas (the "City"), passed Ordinance Nos. 79-89, 47-01, and 14-11 wherein gross receipt taxes were levied; and,

WHEREAS, the City desires to adopt certain procedures related to the enforcement and collection of said gross receipt taxes levied by the City pursuant to A.C.A. § 26-75-602 and desires to authorize the Fort Smith Advertising and Promotion Commission ("the Commission") to adopt rules and regulations related to said enforcement and collection.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Directors of the City of Fort Smith, Arkansas, that:

SECTION I: Collection and Enforcement of Gross Receipts Tax.

Section 13-125 of the Fort Smith Municipal Code is hereby repealed effective at 11:59 p.m. on May 3, 2011. Effective at 12:00 a.m. on May 4, 2011, chapter 13, art. V, section 13-125 of the Fort Smith Municipal Code shall be amended to read as follows:

Section 13-125. 1. Definitions.

The following words and phrases, when used in this Article, shall have the following meanings except where the context clearly indicates the application of a different meaning:

- (1) "A&P Tax" means the gross receipts taxes levied by Ordinance Nos. 79-89, 47-01 and 14-11, as amended from time to time.
- (2) "Commission" means the Advertising and Promotion Commission of Fort Smith,

Arkansas, and any of its authorized or designated employees, agents, representatives, committees, or bodies.

(3) "City" means the City of Fort Smith, Arkansas.

(4) "Person" means any individual, trust, estate, fiduciary, firm, partnership, limited liability company, or corporation.

(5) "Seller" means any Person subject to or liable for the A&P Tax. With respect to any Seller that is a business entity, a Seller shall also include its owners, officers, and employees whose duties include (1) filing any tax return required by or pursuant to this Article or (2) accounting for or remitting the proper amount of A&P tax, penalty, or interest required by or pursuant to this Article.

(6) "Tax return preparer" means any Person who prepares for compensation, or who employs one (1) or more Persons to prepare for compensation, any tax return required by or pursuant to this Article. The preparation of a substantial portion of a return shall be treated as if it were the preparation of the return.

Section 13-125.2. Gross Receipts Tax – Collection Procedures.

Unless otherwise provided in this Article, the following provisions and procedures shall apply with respect to the enforcement and collection of any gross receipt taxes levied by the City pursuant to A.C.A. § 26-75-602.

(1) Permits.

(a) It shall be unlawful for any Seller to transact business within the City prior to the issuance and receipt of an A&P Tax permit from the Commission's office or the office of its designated agent.

(b) A separate A&P Tax permit must be obtained from the Commission's

office for each location at or from which a Seller makes sales subject to the A&P Tax. An A&P Tax permit shall be considered a sub license to a Seller's primary business license issued by the City. Any revocation or suspension by the City of a Seller's primary business license or of any other City-issued permit or license shall result in an automatic revocation or suspension of the Seller's A&P Tax permit.

(2) Application for Permit.

Any Seller transacting business in the City shall file with the Commission or its designated agent an application for an A&P Tax permit, the form and contents of which shall be as prescribed by the Commission from time to time.

(3) Permits not Assignable, Display Required, and Expiration.

(a) The A&P Tax permit shall not be assignable and shall be valid only for the Seller in whose name it is issued and for the location thereon designated.

(b) The A&P Tax permit shall at all times be conspicuously displayed at the location thereon designated.

(c) All A&P Tax permits must be renewed annually through the Commission or its designated agent's office. The A&P Tax permit shall expire automatically at the time of cessation of sales subject to the A&P Tax at the location designated thereon.

(4) Discontinuance of Business; Unpaid A&P Taxes.

(a) Any Seller operating under an A&P Tax permit that has expired or been revoked shall immediately return the A&P Tax permit to the Commission or to its designated agent together with remittance of any unpaid and accrued A&P Taxes, interest, and/or penalty. A Seller shall provide a notarized, written statement to the

Commission or to its designated agent that, as of an effective date, it will no longer be selling prepared food or beverages and desires to surrender its A&P Tax permit. The Seller shall, however, remain liable for any accrued taxes to the effective date of the surrender of the A&P Tax permit.

(b) In the case of the sale of any business having sales subject to the A&P Tax, the A&P Tax shall be deemed to be due and payable at the time of the sale of fixtures and equipment incident to the business and shall constitute a lien in the Commission's favor against said fixtures and equipment in the hands of the purchaser of the business until all A&P Taxes have been paid.

(c) Upon a Seller's failure to timely report or to pay any and all accrued A&P Tax, the Commission or its designated agent may require the Seller to post a cash bond, in an amount determined by the Commission not to exceed \$10,000.00, as assurance of remitting said due tax in the future. In the event that further failures to timely report or to pay A&P Tax occur within sixty (60) days of the initial failure(s) with respect to the same issued A&P Tax permit, the posted cash bond shall be forfeited in favor of the Commission at which time a second cash bond, in an amount determined by the Commission not to exceed \$20,000.00, may be required from the Seller. The second cash bond shall be forfeited in favor of the Commission if delinquency continues for an additional sixty (60) days with respect to the subject A&P Tax permit. If failures to timely report or to pay A&P Tax remain persistent after 120 days from the initial failure, then notice of revocation of the business license permit and of the A&P Tax permit may be sent to the Seller, and the Seller's primary business license, as well as the A&P Tax permit, may be revoked.

(5) Revocation of Permit; Renewal.

(a) In the event that any holder of an A&P Tax permit issued hereunder is found, by the Commission or its designated agent, to be in violation of the provisions of this Article or the Commission's rules and regulations, the Commission or its designated agent is hereby authorized to serve notice on the holder of the A&P Tax permit, of the Commission's intention to revoke such permit. Unless the Seller has filed a notice for review with the Commission or its designated agent, within ten (10) days of receipt of such notice, the Commission or its designated agent shall proceed to revoke the A&P Tax permit.

(b) If a notice for review is timely filed with the Commission, the Commission or its designated agent shall conduct a review to receive any information the Seller desires to present prior to final action being taken. The hearing shall be conducted at a time and place to be designated by the Commission and the Seller requesting the hearing shall be entitled to introduce testimony and be represented by counsel, and the Commission shall determine whether the Seller's A&P Tax permit should be revoked or suspended. Failure of the Seller to appear at the hearing shall be grounds for the Commission, acting through its designated agent, to revoke the Seller's A&P Tax permit.

(c) The Seller shall be entitled, within thirty (30) days from the date of any revocation of the A&P Tax permit, to appeal to the circuit court of Sebastian County.

(d) An appeal shall lie from the circuit court to the Supreme Court of Arkansas as in other cases provided by law.

(e) Any revoked A&P Tax permit may be reinstated upon the filing of proper tax returns and the payment of all A&P Taxes, interest accrued thereon, and/or any assessed penalty due or removal of any other cause or basis for the permit's revocation.

(6) Preparation of Tax Returns; Payment of A&P Tax.

(a) The A&P Tax shall be due and payable as of the first day of each calendar month by the Seller and shall be delinquent if not paid on or before the first day of the next calendar month on official forms prepared by the Commission.

(b) (1) It shall be the duty of the Seller on or before the twentieth day of each calendar month to deliver to the Commission or its designated agent, upon forms prescribed and furnished by the Commission, a tax return under oath showing the total combined gross receipts which are subject to the A&P Tax for the preceding calendar month and the amount of tax due. The tax due shall be remitted with the tax return.

(2) The tax returns shall contain such further information as the Commission may require and, once the Seller has become liable for the payment of the A&P Tax, the Seller must continue to file a tax return, even though no tax may be due, until such time as the Seller surrenders the A&P Tax permit.

(c) If the tax return is delivered on or before the twentieth day of the calendar month, the Seller may remit therewith to the Commission ninety-eight (98) percent of the A&P Tax due on or before the twentieth of that calendar month. A tax return is considered to be "delivered" on the date it is postmarked if it is delivered by

the U.S. Postal Service.

(d) Failure of the Seller to remit the A&P Tax on or before the twentieth of each calendar month shall cause the Seller to forfeit Seller's claim to the discount and the Seller must remit to the Commission one hundred (100) percent of the amount of the A&P Tax due, plus any assessed penalty and interest accrued thereon; provided, however, no penalty for delinquency nor interest shall be assessed if payment thereof is made on or before the first day of the calendar month next following.

(7) Examinations and Investigations.

(a) In the administration of this Article, the Commission or its designated agent, for the purpose of determining the accuracy of a tax return or fixing any A&P Tax liability of a Seller, may make an examination, investigation, or inspection of the place of business, the tangible personal property, equipment, and facilities, and the books, records, papers, vouchers, accounts, and documents of any Seller or Person.

(b) No Seller shall be subjected to unnecessary examinations or investigations, and only one (1) inspection of a Seller's books of account may be made for each taxable year unless the Seller requests otherwise or unless the Commission, after investigation, notifies the Seller in writing that an additional inspection is necessary.

(c) (1) When conducting an investigation or an audit of any Seller, the Commission or its designated agent may, in its discretion and unless privileged by law, examine the records and files of any Person, any other business, institution, financial institution, as well as the records of any state

agency, agency of the United States Government, or agency of any other state where permitted by agreement or reciprocity.

(2) The Commission or its designated agent may compel production of these records by summons. A summons may be served directly by the Commission or its designated agent.

(d) In the administration of this Article, the Commission or its designated agent may:

(1) Administer oaths, conduct hearings, and compel by summons the attendance of witnesses, testimony, and the production of any books, records, papers, or other data of any Person or Seller; or

(2) Examine under oath any Person regarding the business of any Seller concerning any matter incident to the administration of this Article, and pay witness fees to such witness required by the Commission or its designated agent to attend any hearing, witness fees being the same as those allowed to witnesses appearing before circuit courts of this state.

(e) (1) A Commission investigation may extend to any Person that the Commission or its designated agent determines has access to information which may be relevant to the examination or investigation.

(2) When any summons requiring the production of records is served on a Person that is not a Seller, written notice of the summons shall be mailed to the Seller that the Seller's records are being summoned, at least fourteen (14) days prior to the date fixed in the summons as the day for the examination of the records.

(3) Notice to the Seller required by this section is sufficient if it is mailed by certified mail to the last address on record with the Commission or its designated agent.

(f) The Commission shall honor any reasonable request by any Seller to issue a summons on the Seller's behalf.

(g) (1) The Commission or the Seller may apply to a court of competent jurisdiction in Sebastian County, Arkansas, for an order compelling the production of summoned records.

(2) Failure to comply with the order of the court for the production of records may be punished by the court as for contempt.

(h) (1) The cost of producing records of a third party required by a summons shall be borne by the Seller if the Seller requests the summons to be issued.

(2) If the Commission or its designated agents initiate the summons for records in the possession of a third-party, the Commission shall bear the reasonable cost of producing the records. The Commission or its designated agents may later assess the cost against any delinquent or deficient Seller as determined by the records.

(8) Time Limitations for Assessments, Collection, Refunds, and Prosecution.

(a) Except as specifically provided otherwise in this Article, no assessment of the A&P Tax shall be made after the expiration of three (3) years from the date the tax return was required to be filed or the date the tax return was actually filed, whichever period expires later. The Commission shall not begin court

required to be given by the Commission to a Seller shall be served either by personal service or sent by mail to the Seller's last address on record with the Commission. Except as to notices of final assessment, if this mail is returned unclaimed or refused, then proper notice shall be deemed to have been served and given, and the Commission may take any action permitted by this Article or otherwise by law.

(3) All notices of final assessment hereunder shall be sent either by certified mail, return receipt requested, or shall be by personal service.

(b) The Seller, when giving notice to the Commission, shall give notice either by mail or by personal service on the Commission. The notice the Seller gives shall be effective when postmarked or, in case of personal service, when so served.

(c) The Commission and any Seller may, by prior written agreement, provide for any other reasonable means of giving notice.

(d) All notices shall be in writing.

(10) Assessment and Collection of A&P Tax Generally.

(a) (1) The Commission or its designated agent is authorized and required to make the inquiries, determinations, and assessments of the A&P Tax, including interest, and assessable penalties, imposed hereby.

(2) The assessment shall be made by recording the liability of the Seller in the Commission's office or in the office of its designated agent.

(b) (1) The Commission or its designated agent shall collect all A&P Taxes imposed by law.

(2) As soon as practicable after the making of assessment of the A&P Tax, the Commission or its designated agent shall give notice to each Person liable as a Seller of the unpaid tax, stating the amount of the assessment and demanding payment within ten (10) days.

(3) Upon receipt of notice and demand from the Commission or from its designated agent, the Seller liable for the A&P Tax shall pay the stated amount including any accrued interest, additions to tax, and assessable penalties at the place and time stated in the notice and demand.

(11) Proposed Assessments.

(a) (1) If any Seller fails to file any tax return as required hereunder, the Commission or its designated agent, from any information in its possession or obtainable by it, may determine the correct amount of A&P Tax for the taxable period. If a tax return has been filed, the Commission or its designated agent shall examine the tax return and make any audit or investigation that is considered necessary.

(2) When no tax return has been filed and the Commission or its designated agent determines that there is A&P Tax due for the taxable period or when a tax return has been filed and the Commission or its designated agent determines that the A&P Tax disclosed by the tax return is less than the tax disclosed by its examination, the Commission or its designated agent shall propose the assessment of additional A&P Tax plus penalties, as the case may be, and shall give notice of the proposed assessment to the Seller. The notice shall explain the basis for the proposed assessment and shall state that a final

assessment, as provided for herein, will be made if the Seller does not protest such proposed assessment as provided hereby. The Seller does not have to protest a proposed assessment to be entitled subsequently to exercise the right to seek a judicial review of any final assessment resulting therefrom.

(b) Any demand for additional payment of the A&P Tax which is made as the result of a verification of a mathematical error on the tax return shall not be deemed to be a proposed assessment under the provisions of this section and shall not be subject to the hearing or appeal provisions of this section.

(12) Seller's Right to Protest Proposed Assessment.

(a) Any Seller who wishes to seek administrative relief from a proposed assessment of A&P Taxes by the Commission or its designated agent shall follow the procedure provided by this section.

(b) (1) A Seller may at its option either request the Commission to consider its request for relief solely upon written documents furnished by the Seller or upon the written documents and any evidence produced by the Seller at a hearing.

(2) A Seller who requests the Commission to render its decision based on written documents is not entitled by law to any other administrative hearing prior to the Commission's rendering of its decision and, if necessary, the issuing of a final assessment and demand for payment or issuing of a certificate of indebtedness.

(c) Within thirty (30) days after service of notice of the proposed assessment, the Seller may file with the Commission a written protest under oath,

signed by Seller or Seller's authorized agent, setting forth the Seller's reasons for opposing the proposed assessment.

(d) The Commission may, in its discretion, extend the time for filing a protest for any period of time not to exceed an additional 90 day period.

(13) Hearing on Protest of Proposed Assessments.

(a) (1) The Commission or its designated agent or body shall serve as hearing officer to review all written protests submitted by Sellers, hold all hearings, and make written findings as to the applicability of the proposed assessment.

(2) The hearing on written protests of proposed assessments and determinations made by the hearing officer shall not be subject to the provisions of the Arkansas Administrative Procedure Act, A.C.A. §§ 25-15-201 *et seq.*

(b) The hearing on the written protest shall be held in the Commission's offices.

(c) (1) The hearing officer shall set the time and place for the hearing on the written protest and shall give the Seller reasonable notice thereof.

(2) At the hearing, the Seller may be represented by an authorized representative and may present evidence in support of its position.

(3) After the hearing, the hearing officer shall render a decision in writing and shall serve copies upon both the Seller and the Commission.

(4) (A) If the proposed assessment is sustained, in whole

or part, the Seller may request in writing, within twenty (20) days of the mailing of the decision, that the Commission revise the decision of the hearing officer.

(B) If the Commission refuses to make a revision or if the Seller does not make a request for revision, then a final assessment shall be made upon the final determination of the hearing officer.

(C) (i) In addition to the hearing procedures set out in this subsection, the Commission or the hearing officer may hold administrative hearings by telephone, video conference, or other electronic means if the Commission or the hearing officer determines that conducting the hearing in such a manner:

- (a) Is in the best interest of the Seller and the Commission;
- (b) Is agreed to by both parties; and
- (c) Is not fiscally unsound or administratively burdensome.

(ii) The Commission is authorized to contract with third parties for all services necessary to conduct hearings by telephone, video, or other electronic means.

(14) Injunction Proceedings.

When a tax return required under this Article has not been filed or does not furnish all the information required by the Commission or when the A&P Taxes imposed by law have not been paid or when any required license or permit has not been secured, the Commission may institute any necessary action or proceeding in a court of competent jurisdiction in Sebastian County to enjoin the Seller from continuing operations until the report or tax return has been filed, required licenses or permits secured, or A&P Taxes paid as required. The injunction shall be issued without a bond being required from the Commission.

(15) Settlement or Compromise of Liability Controversies.

(a) The Commission may enter into an agreement to compound, settle, or compromise any controversy relating to the A&P Tax when:

- (1) The controversy is over the amount of tax due; or
- (2) The inability to pay results from the insolvency of the Seller.

(b) The Commission may waive or remit the interest or penalty, or any portion thereof, ordinarily accruing because of a Seller's failure to pay the A&P Tax within the statutory period allowed for its payment:

- (1) If the Seller's failure to pay the tax is satisfactorily explained to the Commission; or
- (2) If the failure results from a mistake by the Seller of either the law or the facts subjecting him to such tax; or
- (3) If the inability to pay the interest or penalty results from the insolvency or bankruptcy of the Seller.

(c) In settling or compromising any controversy relating to the liability of a

Seller for the A&P Tax for any taxable period, the Commission is authorized to enter into a written closing agreement concerning the liability. When the closing agreement is signed by the Commission, it shall be final and conclusive, and, except upon a showing of fraud or misrepresentation of a material fact, no additional assessment or collection shall be made by the Commission for the applicable taxable period.

(d) The Commission shall promulgate rules and regulations establishing guidelines for determining whether a proposed offer in compromise is adequate and is acceptable to resolve a tax dispute.

(16) Release of Property from Lien.

(a) Upon written application by any Seller, the Commission may release any property from the lien imposed by any assessment, order, judgment, or certificate of indebtedness obtained by or from any levy made by it if:

(1) Either full payment is made to the Commission or its designated agent of the sum it considers adequate consideration for the release; or

(2) Adequate security deposit is made with the Commission or its designated agent to secure the payment of the debt evidenced by the lien.

(b) When the Commission determines that its lien or certificate of indebtedness is clouding the title of property because of an error in the description of properties or similarity in names, the Commission may issue a release without the payment of any consideration.

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(2) Adequate security deposit is made with the Commission or its designated agent to secure the payment of the debt evidenced by the lien.

(b) When the Commission determines that its lien or certificate of indebtedness is clouding the title of property because of an error in the description of properties or similarity in names, the Commission may issue a release without the payment of any consideration.

Section 13-125.3. Gross Receipts Tax - Enforcement Procedures.

With respect to enforcing any gross receipt taxes levied by the City pursuant to A.C.A. § 26-75-602, the Commission is authorized to and shall utilize the following provisions:

(1) Penalties and Interest.

(a) Assess penalties and interest against Sellers who fail to timely report or pay the A&P tax. The penalty for failure to timely report or pay the A&P Tax, which shall not exceed a total assessment of thirty-five percent (35%) of the unpaid A&P Tax, shall be as follows:

1-30 days delinquent. 5% of the Seller's unpaid tax amount;

31-89 days delinquent. 10% of the Seller's unpaid tax amount; and

90 or greater days delinquent . . . 15% of the Seller's unpaid tax amount.

(b) Provide for judicial relief from proposed assessments in accordance with subsection two (2) of this section; and

(c) Issue certificates of indebtedness in accordance with subsection three (3) of this section.

(2) Judicial Relief from Final Assessment.

(a) Within thirty (30) days of the issuance of the notice and demand for payment of a deficiency in A&P tax established by a final determination of the hearing officer, a Seller may seek judicial relief from the final determination by either:

(1) Paying under protest the amount of the deficiency, plus penalty and interest determined by the Commission or its designated agent to be due, and filing a suit to recover that amount within one (1) year from the

date of payment under protest; or

(2) (A) Filing with the Commission or its designated agent a bond in double the amount of the tax deficiency due and by filing suit within thirty (30) days thereafter to stay the effect of the Commission's determination.

(B) The bond shall be subject to the condition that the Seller shall file suit within thirty (30) days after filing the bond, shall faithfully and diligently prosecute the suit to a final determination, and shall pay any deficiency found by the court to be due and any court costs assessed against the Seller.

(C) A Seller's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by this subsection, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs.

(b) The method provided in this section is the exclusive method for seeking relief from a written decision of the Commission establishing a deficiency in A&P tax. No injunction shall issue to stay proceedings for assessment or collection of this tax.

(3) Certificates of Indebtedness.

(a) If a Seller does not timely and properly pursue its remedies seeking relief from a decision of the Commission and a final assessment is made against the Seller, or if the Seller fails to pay the deficiency assessed upon notice and demand, then the Commission as soon as practicable thereafter shall issue to the circuit clerk

of Sebastian County a certificate of indebtedness certifying that the Seller named therein is indebted to the Commission for the amount of the tax established by the Commission as due.

(b) The circuit clerk shall enter immediately upon the circuit court judgment docket:

- (1) The name of the delinquent Seller;
- (2) The amount certified as being due;
- (3) The name of the tax; and
- (4) The date of entry upon the judgment docket.

(c) The entry of the certificate of indebtedness shall have the same force and effect as the entry of a judgment rendered by the circuit court. This entry shall constitute the Commission's lien upon the title of any real and personal property of the Seller in any county where the certificate of indebtedness is recorded. The Commission shall have all remedies and may take all proceedings for the collection of the tax which may be taken for the recovery of a judgment at law.

(d) The certificate of indebtedness authorized by this subsection shall continue in force for ten (10) years from the date of recording and shall automatically expire after the ten-year period has run. Actions on the lien arising from the certificate of indebtedness shall be commenced within ten (10) years after the date of recording of the certificate, and not afterward.

Section 13-125.4. Administration of Gross Receipts Tax Collection and Enforcement.

The Commission, pursuant to the authority granted to it by A.C.A. § 26-75-603, shall promulgate rules and regulations and prescribe forms for the proper implementation and enforcement

of the Arkansas Gross Receipts Act of 1941, A.C.A §§ 26-52-101 *et seq.*, and the Arkansas Tax Procedure Act, A.C.A. §§ 26-18-101 *et seq.*, as practicably applicable, to any gross receipt taxes levied by the City pursuant to A.C.A. § 26-75-602.

SECTION II: Severability.

If any provision of this Ordinance or the application thereof to any Person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION III: Codification.

The codifier of the Fort Smith Code of Ordinances is instructed to codify this Ordinance within Chapter 13, Article V, of the Fort Smith Municipal Code.

SECTION IV: Emergency Clause.

It is hereby determined that an emergency exists requiring the immediate effectiveness of the tax collection procedures and authorizations adopted by this Ordinance in order to (1) ensure the smooth collection of gross receipts taxes levied by the City, and (2) better provide for the advertising and promotion of the City in order to promote employment and economic development essential to the health, safety, and welfare of the inhabitants of the City. Based on that declared emergency, this Ordinance will be in full force and effect on May 4, 2011.

This Ordinance adopted this ____ day of _____, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

W. J. ...
Assistant Attorney
Robert I. ...



**TO: Ray Gosack, Administrator
City of Fort Smith**

FROM: Claude Legris, Executive Director
Fort Smith Advertising & Promotion (A & P) Commission

COPY: A & P Commissioners

DATE: April 28, 2011

**REGARDING: Prepared Food Tax
Collection and Enforcement Procedure Ordinance**

Following review and input by an A & P Collection and Enforcement Committee made up of A & P Commissioners, staff, City Finance Department staff and attorneys for both organizations, the attached ordinance is submitted for consideration by the City Board of Directors.

This document formalizes the basic procedures for the enforcement and collection of the 1% gross receipt taxes on prepared foods previously approved by the Board. Pursuant to state statute, it also allows the A & P Commission to develop specific rules, regulations and forms to enable the Commission or its designated agents to establish and maintain the collection and enforcement program.

This very comprehensive document provides details on a wide range of program elements including but not limited to:

- Issuance of permits
- Procedures for collecting unpaid taxes
- Reporting of payments to the Commission
- A 2% discount to businesses who remit by the 20th of the month
- Penalties and interest for late payments
- Dispute resolution procedures

Following adoption of the rules, regulations and forms by the Commission, it is our intention, in close cooperation with the City of Fort Smith Finance Department, to begin an intensive series of training and information sessions with all Sellers who will fall under the new tax, to provide for as smooth transition as possible on the effective date of June 1, 2011.

We appreciate the continued support of the Board, the City Finance Department staff and the City Attorney office with the creation and implementation of this program to our mutual benefit.

Attachment

AN ORDINANCE CHANGING THE LOCAL NAME OF CLAYTON EXPRESSWAY TO RIVERFRONT DRIVE TO FURTHER THE ECONOMIC DEVELOPMENT AND MARKETING TO INVESTORS OF THE RIVERFRONT IN DOWNTOWN FORT SMITH

WHEREAS, the Arkansas Riverfront located in Downtown Fort Smith is a beautiful natural resource; and

WHEREAS, natural resources are frequently used to identify streets to assist in the furthering of development associated with the streets; and

WHEREAS, The City of Fort Smith supports and encourages additional development along the Riverfront in Downtown Fort Smith;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Directors of the City of Fort Smith, Arkansas that:

Section 1: The local name of Clayton Expressway is hereby changed to Riverfront Drive, while acknowledging that Riverfront Drive will remain a state highway designated as HWY 255.

Section 2: The City Administrator and his designated agents are hereby authorized to notify property owners and the Post Master of the name change and to cause all local signs for the naming of said street to be fabricated, installed and maintained.

This ORDINANCE adopted this _____ day of May, 2011.

Mayor

ATTEST: _____
City Clerk

Approved as to form



City Attorney
Publish 1 Time



MEMORANDUM

DATE: April 22 2011
TO: Ray Gosack, City Administrator
FROM: Jayne Hughes, Downtown Development Coordinator; CBID 
SUBJECT: Renaming Clayton Expressway – Riverfront Drive

As you will remember from the Board Info item dated February 3, 2011, we informed the board of the current discussions by the Central Business Improvement District Commissioners to rename the local street Clayton Expressway to Riverfront Drive. Since that time we have taken the necessary steps to notify the citizens of this proposed change. Ads were placed in the Legal Section for Public Notices of the Southwest Times Record on March 15th and again on March 22nd as required. We have also sent letters to property owners involved in the change. At this time we have not received any inquiry on this recommended change.

From an economic development concept we believe that the name Riverfront Drive will assist us in marketing our beautiful riverfront to possible investors. Riverfront Drive tells you immediately where it is located and showcases our natural resource which has been planned for development for many years. As we continue our discussions and grass roots efforts with these potential developers an atmosphere of interest is directly associated with Riverfront Drive. This includes beautiful sunsets from office windows, the intrigue of an active Arkansas River, an existing park which can be utilized, and additionally being located in an area which development is occurring everyday within walking distance of our Downtown core of a Live - Work - Play environment.

This comes to you by resolution from the Central Business Improvement District to change the name locally to Riverfront Drive. Riverfront Drive will remain identified as Hwy 255 by the State of Arkansas. If you have further questions please feel free to give me a call.

Office- 784-1001
Cell- 650-7001

cc: Joe Shipman, Arkansas Highway Department

ORDINANCE NO. _____

AN ORDINANCE ORDERING THE OWNERS OF CERTAIN DILAPIDATED AND SUBSTANDARD STRUCTURES TO DEMOLISH SAME, AUTHORIZING THE CITY ADMINISTRATOR TO CAUSE THE DEMOLITION OF SUCH STRUCTURES TO OCCUR, AND FOR OTHER PURPOSES.

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

WHEREAS, certain owners of real property have caused or allowed certain tracts of real property to deteriorate to the condition that such tracts of real property and the improvements thereon are now, and for several months prior hereto have been dilapidated, unsightly, unsafe, unsanitary, noxious and detrimental to the public welfare, and

WHEREAS, the condition of such tracts of property and the improvements located thereon are in violation of the City Ordinances and the statutes of the State of Arkansas.

NOW, THEREFORE,

SECTION 1: It is the opinion of the Board of Directors that the hereinafter described tracts of real property, and the improvements located there, are dilapidated, unsafe and otherwise detrimental to the public health and constitute structural, fire and health hazards:

STREET ADDRESS:

2801 ROYAL SCOTS WAY - LOT 600; FIANNA HILLS VI-VII

SECTION 2: The owners of the tracts of real property described in Section 1 are hereby ordered to remove or raze the improvements located on the said tracts of property and to remedy the unsightly and unsanitary conditions otherwise located on said tracts of real property within thirty (30) days from the date of this ordinance.

*Approval as to form
JSC
Published 1 time*

SECTION 3: With reference to said tracts of real property and improvements located there for which the order contained in Section 2 of this ordinance has not been complied with within thirty (30) calendar days from the date of passage of this ordinance, the City Administrator is hereby authorized to execute a contract, based on the bid(s) accepted on the date of this action or at a later date, for the removal or razing of the described improvements on the tracts of real property in order to remedy the unsightly and unsanitary conditions located on said tracts of property.

SECTION 4: The provisions of this ordinance are hereby declared to be severable to the extent that a decision by any court of competent jurisdiction determining that any portion of this ordinance or any application thereof is unconstitutional, invalid or otherwise illegal shall not affect the constitutionality, validity or legality of the other provisions and/or applications of the ordinance.

SECTION 5: Emergency Clause. It is hereby found and declared by the Board of Directors that the dilapidated, unsanitary condition of the tracts of real property and improvements described herein constitute an immediate menace to the health, welfare and safety of the citizens of the City so that an emergency is hereby declared and that this ordinance shall be effective from and after the date of its passage.

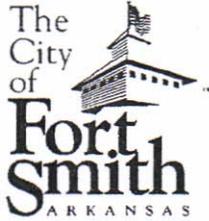
PASSED AND APPROVED this _____ day of _____ 2011.

APPROVED:

Mayor

ATTEST:

City Clerk



MEMORANDUM

Building Safety Division

TO: Ray Gosack, City Administrator
FROM: Jimmie Decker, Building Official
DATE: April 25, 2011
SUBJECT: Unsafe Structures

The following structures have been damaged and/or deteriorated to a condition that has caused the Building Department to condemn them. The property and the improvements, thereon are now, and for several months prior hereto, have been dilapidated, unsafe, unsightly, unsanitary, obnoxious and detrimental to the public welfare and are found to be in violation of the Ordinances of the City of Fort Smith.

The property descriptions and owners are:

2801 Royal Scots Way - Lot 600, Fianna Hills VI-VII

Owners:	Digna & Florencio Martinez	Arvest Bank
	2705 Ramsgate way	C/O Mortgage Dept
	Fort Smith, AR 72908	P.O. Box 1110
		Fort Smith, Ar 72917

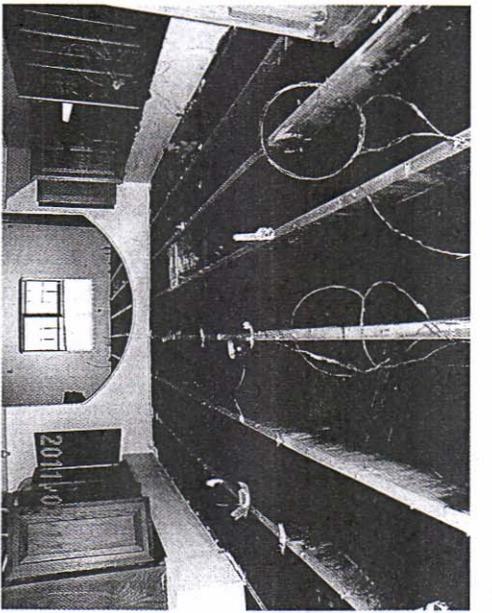
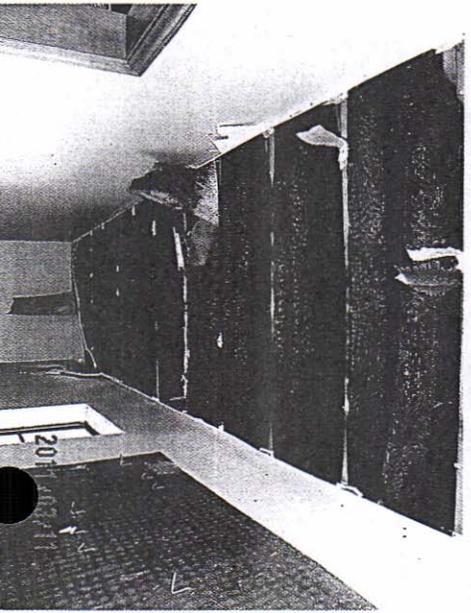
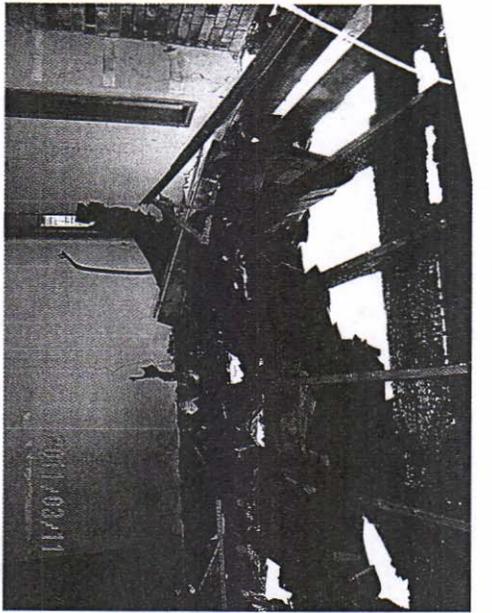
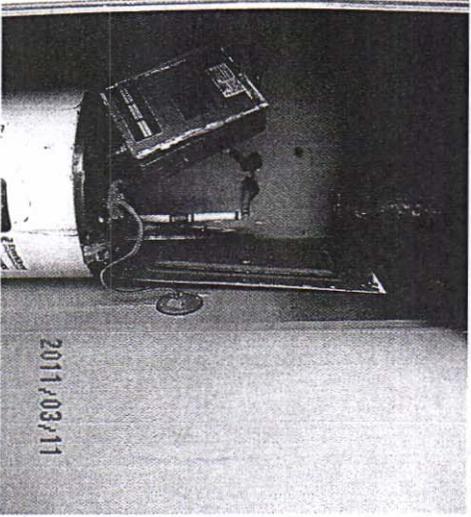
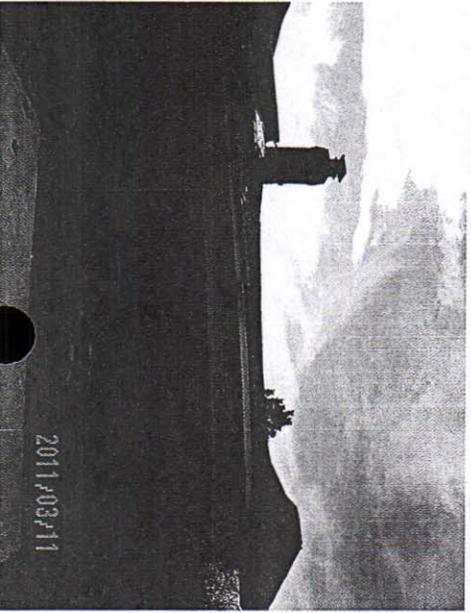
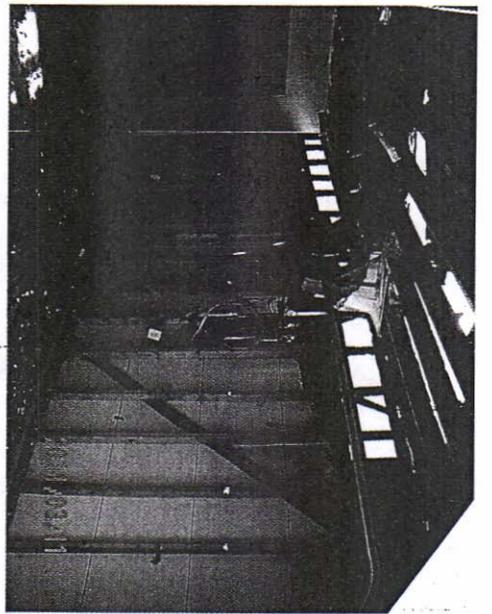
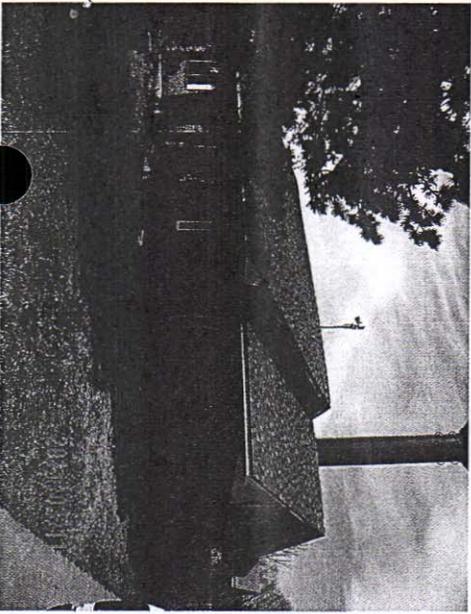
The owners of these properties have been notified according to the procedures outlined in Section 16-88 of the Fort Smith Municipal Code. The property owners were notified by certified mail and posting the same letters on the buildings. The letter or notice contains information concerning the appeal procedure outlined in Section 16-91 of the Municipal Code. The Code specifies that they must file any appeals within fifteen (15) days from the date of service. The owner(s) of the subject properties did not file an appeal within the fifteen (15) day period nor have they requested an appeal hearing since that deadline has passed.

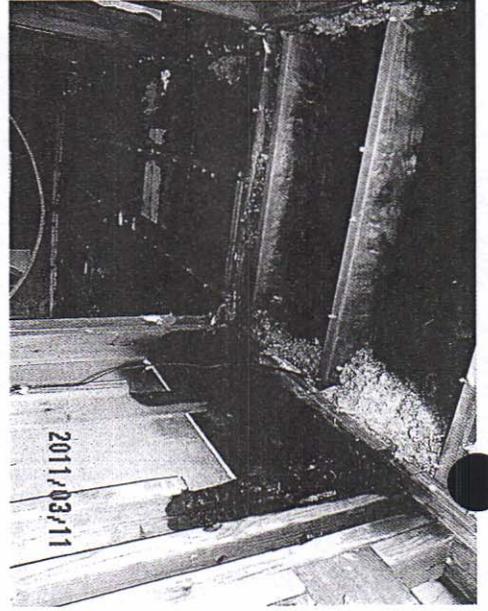
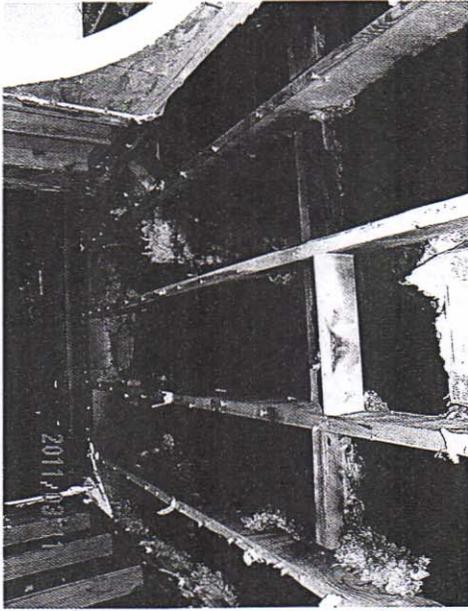
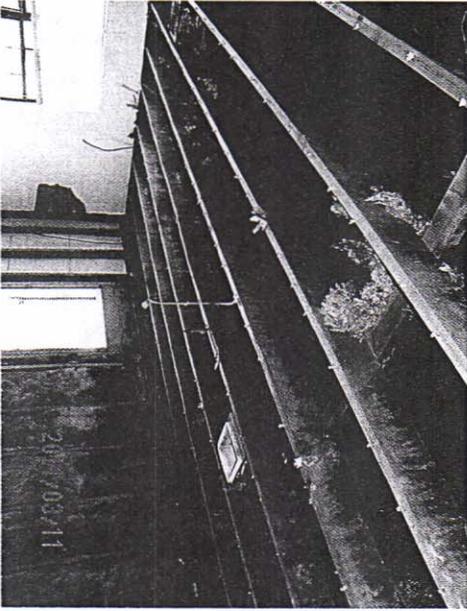
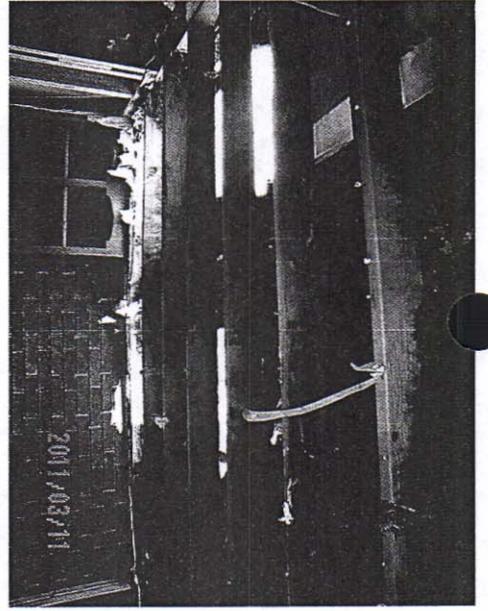
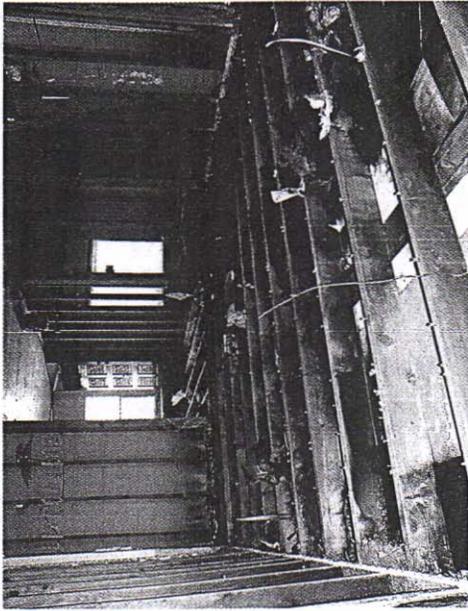
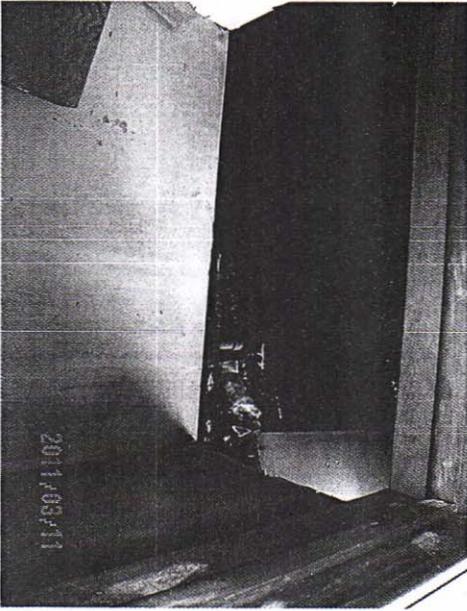
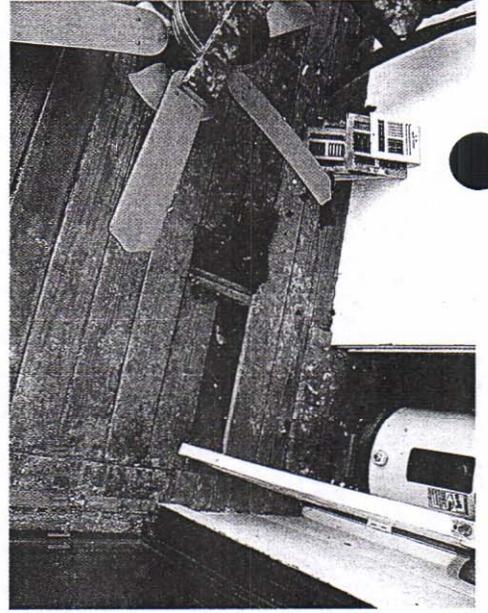
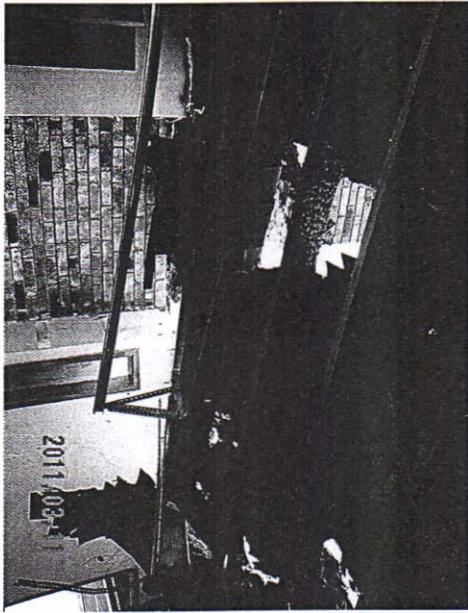
2801 Royal Scots Way - The structure burnt on September 4, 2010 and the has been without water service since September 17, 2011. The structure has been tied up in litigation but due to complaints from the neighborhood the property was posted and unsafe notices were sent out to the owners on March 15, 2011 and the notices were signed for on March 17, 2011. We have been in contact with the Attorneys and insurance company but as of today the owners have taken no action to repair or demolish the structure.

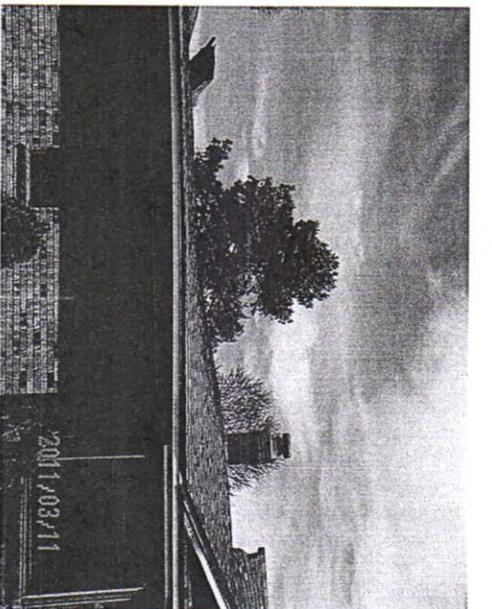
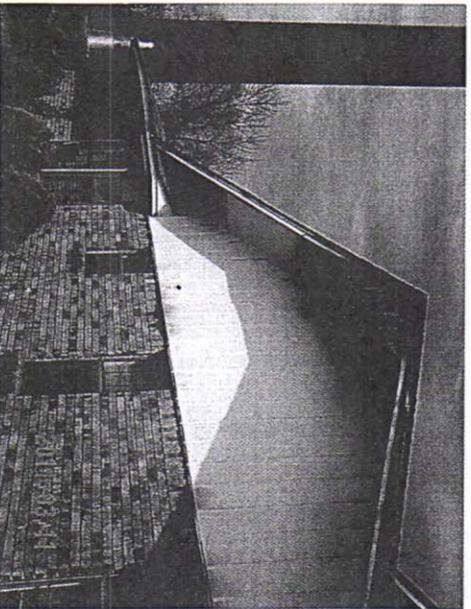
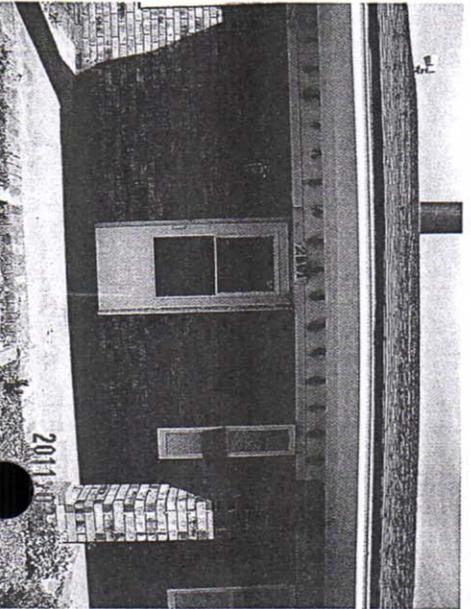
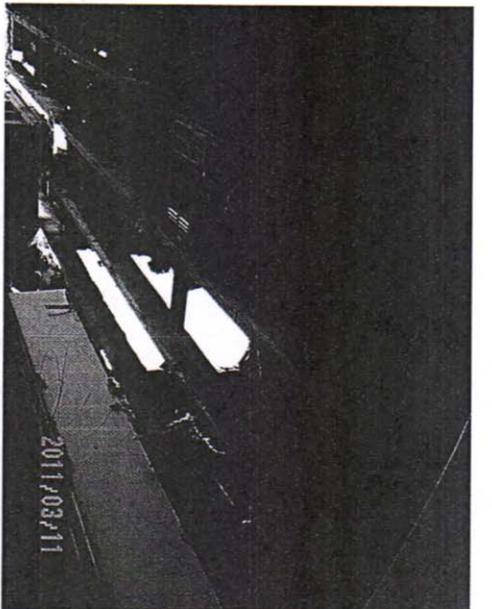
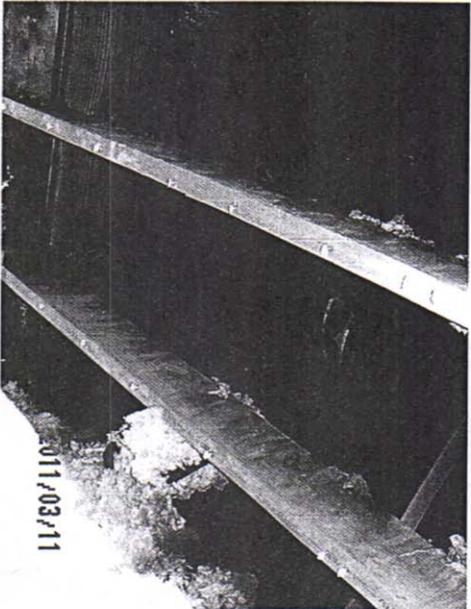
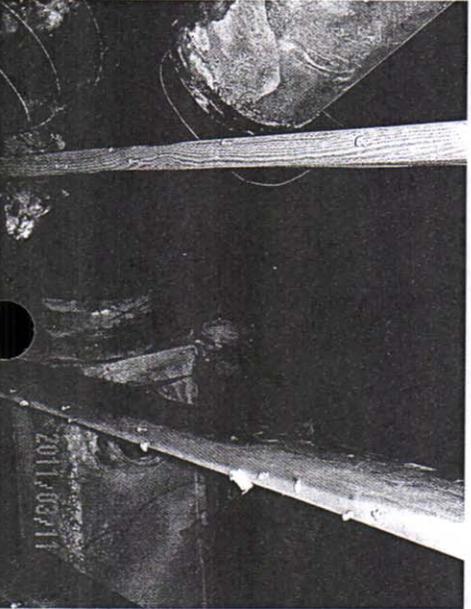
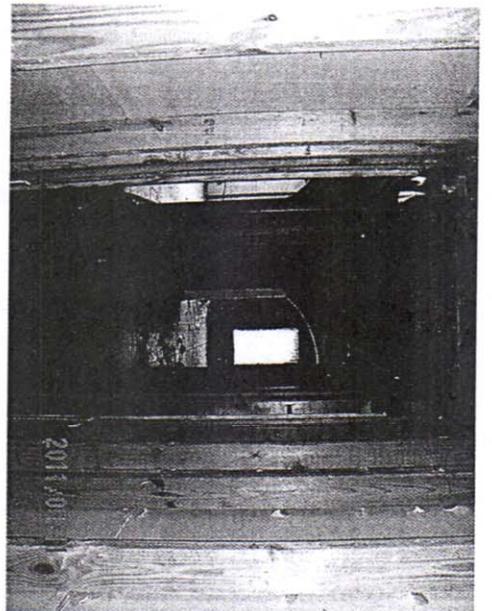
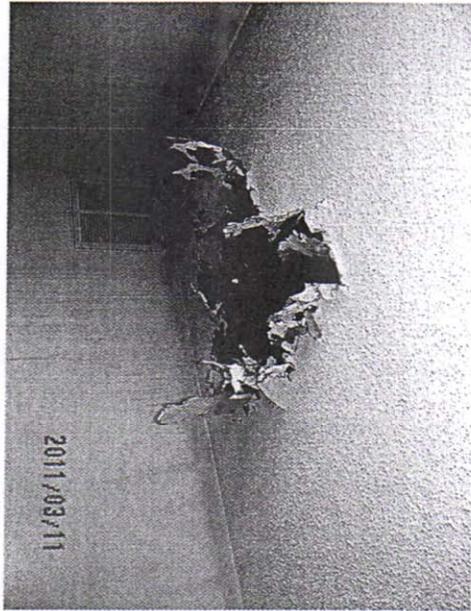
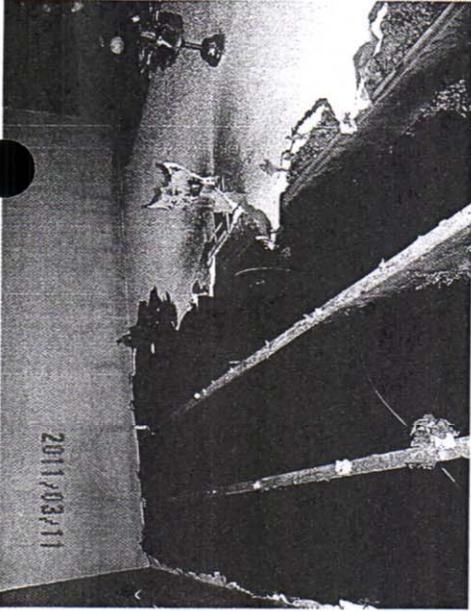
Therefore, I am recommending this matter be referred to the Board of Directors for their review. An Ordinance will be prepared that will order the property owners to demolish or repair the buildings within thirty (30) calendar days and if such work has not occurred, the staff will be authorized to have the structures removed.

Please contact me if you have any questions or if we need to discuss this matter in more detail.

CC: Wally Bailey









RESOLUTION NO. _____

A RESOLUTION AUTHORIZING PAYMENT OF
RETIREMENT BENEFITS TO MRS. NANCY BAKER

BE IT RESOLVED AND ENACTED BY THE BOARD OF DIRECTORS OF THE
CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: There is hereby authorized the payment of a retirement benefit of one-half the former Mayor's retirement benefit to Mrs. Nancy Baker for the remainder of her life or until such time as she remarries pursuant to A.C.A. § 24-12-123(b) (Supp. 2009).

SECTION 2: This benefit is to be paid retroactively for April 2011 and monthly thereafter.

THIS RESOLUTION ADOPTED THIS _____ DAY OF _____, 2011.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form

JSC

Publish 1 Time



MEMORANDUM

April 20, 2011

TO: Ray Gosack, City Administrator,

FROM : Kara Bushkuhl, Director of Finance

A handwritten signature in cursive script, appearing to read "Kara", positioned to the right of the "FROM:" line.

SUBJECT: Retirement Benefits-Mayor's Spouse

In accordance with state statute A.C.A 24-12-123(b) Mrs. Nancy Baker has requested that she be granted retirement benefits at a rate of one-half of Mayor Baker's retirement benefits (\$2,500 annually). Attached is Mrs. Baker's letter requesting the Board of Director's approval. If approved, Mrs. Baker will be entitled to receive the monthly benefit for the remainder of her life or until such time as she remarries.

In researching this matter, I requested an opinion from Jerry Canfield, a copy of which is attached. Also, a copy of the state law that governs the Mayor's retirement benefits is attached.

The proposed resolution will provide the retirement benefits as requested.

If you have any questions or require more information, please let me know.

FROM: NANCY BAKER
RE: RETIREMENT BENEFITS
April 12, 2011

I have been informed that I am entitled to $\frac{1}{2}$ of Ray's retirement benefit.

I have also been advised that to receive this benefit, the Board of Directors must approve the benefit.

I am requesting that the Board approve my receiving this benefit.

Thank you,

Nancy Baker

Nancy Baker

Copy; Ray Gosack

DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

JAMES E. WEST
PHILLIP E. NORVELL*
DALE CARLTON *

OF COUNSEL

HARRY P. DAILY (1886-1965)
JOHN P. WOODS (1886-1976)
JOHN S. DAILY (1912-1987)
BEN CORE (1924-2007)

WRITER'S E-MAIL ADDRESS
JCanfield@DailyWoods.com

JERRY L. CANFIELD, P.A.
THOMAS A. DAILY, P.A.
WYMAN R. WADE, JR., P.A.
DOUGLAS M. CARSON, P.A.
ROBERT R. BRIGGS, P.A. †*
C. MICHAEL DAILY, P.A. †
L. MATTHEW DAVIS, P.A. †
COLBY T. ROE

KMW BUILDING
58 SOUTH SIXTH STREET
P.O. BOX 1446
FORT SMITH, AR 72902
TELEPHONE (479) 782-0361
FAX (479) 782-6160

COMMERCE PARK II BUILDING
2049 EAST JOYCE BOULEVARD, SUITE 401
FAYETTEVILLE, AR 72703
TELEPHONE (479) 582-0361
FAX (479) 251-8111

* Fayetteville Office

† Also Licensed in Oklahoma

March 25, 2011

Ms. Kara Bushkuhl
Director of Finance
623 Garrison Avenue, 5th Floor
Fort Smith, AR 72901

Re: Mayor's Retirement Pay

Dear Ms. Bushkuhl:

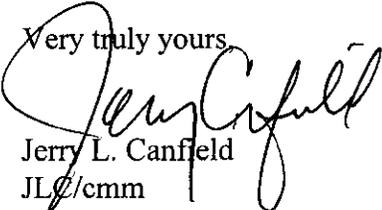
In response to your e-mail message of March 16, 2011, we have reviewed the provisions of legislation codified as A.C.A. § 24-12-123.

Because of service as mayor for a period longer than ten years and his age, upon retirement, former Mayor Baker was entitled to receive a retirement benefit paid by the general fund of the City, during the remainder of his natural life, payable at a rate of one-half of the salary payable to the mayor at the time of retirement. We understand that retirement benefit began to be paid in January of 2011. We concur in the comment of Mr. Gosack that it would be logical to pay the benefit for March, 2011 even though Mayor Baker passed away during that month (the statute has no provision for pro ration of monthly benefits).

Pursuant to A.C.A. § 24-12-123(b)(1), Nancy Baker could be paid a spousal benefit of one half of the retirement benefit during her natural life (subject to cessation upon remarriage), if the benefit is approved by the governing body of the City. The governing body of the City will have to take official action (resolution or ordinance) to approve the benefit.

Please advise if there are other questions regarding this matter.

Very truly yours,


Jerry L. Canfield

JLC/cmm

cc: Mr. Ray Gosack

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A.C.A. § 24-12-123 (Copy w/ Cite)

A.C.A. § 24-12-123

Pages: 3

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*** CURRENT THROUGH THE 2010 FISCAL SESSION ***

Title 24 Retirement And Pensions
Chapter 12 Local Officers And Employees -- Miscellaneous Provisions
Subchapter 1 -- General Provisions

A.C.A. § 24-12-123 (2010)

24-12-123. Mayors of cities of the first class.

(a) (1) (A) In all cities of the first class in this state, any person who shall serve as mayor of the city for a period of not less than ten (10) years, upon reaching age sixty (60), or any person who shall serve as mayor of the city for a period of not less than twenty (20) years, without regard to age, shall be entitled to retire at an annual retirement benefit during the remainder of the person's natural life, payable at the rate of one-half (1/2) of the salary payable to the mayor at the time of retirement.

(B) The governing body of the city may provide by ordinance that any person who has served as mayor for a period of not less than ten (10) years may retire upon reaching age fifty-five (55) with the benefits provided under this section.

(2) The retirement payments shall be paid monthly and shall be paid from the city general fund.

(3) However, a mayor who has served as an elected official or employee of that city prior to or after the person's service as mayor shall count his or her service as an elected official or employee of that city towards the mayor's retirement as follows:

(A) (i) At the rate of one (1) year of a mayor's retirement for each two (2) years served as an elected official or an employee of that city up to a maximum of an additional two (2) years' credit towards a mayor's retirement benefit;

(ii) If authorized by a city ordinance, at the rate of one (1) year of a mayor's retirement benefit for each two (2) years served as an elected official or an employee of that city up to a maximum of three (3) additional years' credit towards a mayor's retirement benefit if the person has not fewer than twenty (20) years of mayor's credit and is at least fifty-two (52) years of age; or

(iii) If authorized by a city ordinance, at the rate of one (1) year of a mayor's retirement benefit for each two (2) years served as an elected official or an employee of that city up to a maximum of four (4) additional years' credit towards a mayor's retirement benefit if the person has not fewer than twenty (20) years of mayor's credit and is at least fifty-four (54) years of age; and

(B) Service as an elected official or as an employee of the city that is also covered under

another retirement plan offered by the city or that is covered by another benefit provided for by law shall not be applied towards the mayor's retirement benefits provided for under this section.

(4) The minimum retirement benefits shall be two hundred fifty dollars (\$250) per month for both salaried and nonsalaried mayors.

(5) On January 1 of each year, if a retiree under this section has been retired for at least twelve (12) full months, up to a three percent (3%) cost-of-living increase will be added.

(6) Subdivision (a)(5) of this section applies only if approved by the governing body of the city.

(b) (1) On the death of any mayor retired under the provisions of subsection (a) of this section or any other acts of the General Assembly, or any mayor who dies in office after becoming eligible to retire under subsection (a) of this section or any other acts of the General Assembly, the spouse of the mayor married to the mayor for ten (10) years or longer may, at the option of the governing body of the city, receive one-half (1/2) of the retirement benefit the retired mayor was receiving or one-half (1/2) of the retirement benefit the mayor who died in office was entitled to receive.

(2) However, upon remarriage of the spouse, the benefits shall cease.

(3) The provisions of this subsection are retroactive to November 1, 1983, at the sole discretion of the governing body of the city.

(c) Any mayor retired prior to July 20, 1987, and receiving benefits under prior acts of the General Assembly shall be entitled to continue receiving benefits under the prior acts.

HISTORY: Acts 1987, No. 414, §§ 1-3; 1997, No. 212, § 1; 2001, No. 1615, § 1; 2001, No. 1700, § 1; 2007, No. 293, § 2.

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A.C.A. § 24-12-123 (Copy w/ Cite)

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ORDINANCE NO. _____

**AN ORDINANCE TO ABANDON A PORTION OF A PUBLIC UTILITY EASEMENT
LOCATED IN SPARKS REGIONAL MEDICAL CENTER,
AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS**

**BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE
CITY OF FORT SMITH, THAT:**

SECTION 1: The City of Fort Smith, Arkansas hereby releases, vacates and abandons all its rights together with the rights of the public generally to the public utility easement located in the hereinafter described real property:

Part of Lot 1, Sparks Regional Medical Center, an addition to the City of Fort Smith, Sebastian County, Arkansas, according to recorded plat filed April 25, 2007 plat no. P1780A, being more particularly described as follows:

Commencing at the SE corner of said Lot 1 on the north right of way line of South "J" Street; thence N87°01'31"W along the south line of said Lot 1, 30.00'; thence N03°10'46"E paralleling the east line of said Lot 1, 316.79' to the Point of Beginning; thence continuing N03°10'46"E 34.12'; thence S87°12'59"E 100.07'; thence S48°04'37"W 14.96'; thence N86°15'17"W 35.24'; thence S69°08'43"W 59.41' to the Point of Beginning, containing 1,628 square feet or 0.04 acre more or less.

The portion of the public utility easement being released, vacated and abandoned is no longer required for municipal corporate purposes.

*Approved as to form
JPC
No publication required*

SECTION 2: A copy of the Ordinance duly certified by the City Clerk shall be filed with the Office of the Recorder of the County and recorded in the deed records of the County.

**PASSED AND APPROVED THIS _____ DAY OF MAY
2011.**

APPROVED:

Mayor

ATTEST:

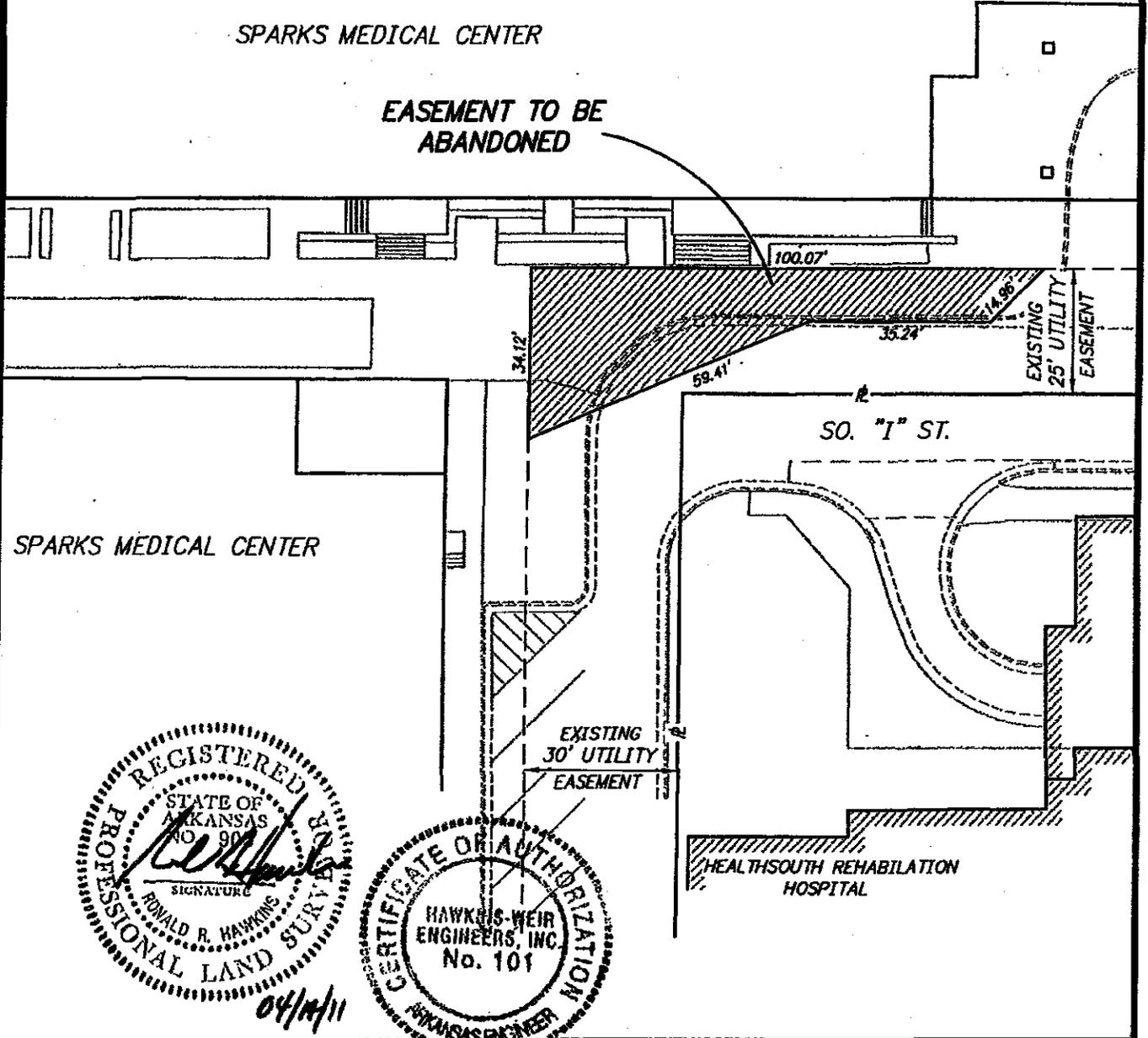
City Clerk



SCALE: 1"=30'

SPARKS MEDICAL CENTER

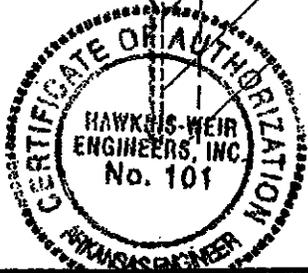
EASEMENT TO BE ABANDONED



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04/13/11



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200 River Market Ave. • Suite 250 • Little Rock, AR 72201 • (501) 374-4846
www.hawkins-weir.com

FORT SMITH, ARKANSAS
EASEMENT ABANDONMENT - EXHIBIT NO. 2
LOT 1, SPARKS REGIONAL MEDICAL CENTER ADDITION
FOR: SPARKS REGIONAL MEDICAL CENTER

DATE: 04/13/11	SCALE: 1"= 30'	JOB NO. 11009B
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Sparks Regional Medical Center
HWEI Project No. 11009B

Utility Easement
To Be Abandoned – Exhibit No. 2

Part of Lot 1, Sparks Regional Medical Center, an addition to the City of Fort Smith, Sebastian County, Arkansas, according to recorded plat filed April 25, 2007 plat no. P1780A, being more particularly described as follows:

Commencing at the SE corner of said Lot 1 on the north right of way line of South "J" Street; thence N87°01'31"W along the south line of said Lot 1, 30.00'; thence N03°10'46"E paralleling the east line of said Lot 1, 316.79' to the Point of Beginning; thence continuing N03°10'46"E 34.12'; thence S87°12'59"E 100.07'; thence S48°04'37"W 14.96'; thence N86°15'17"W 35.24'; thence S69°08'43"W 59.41' to the Point of Beginning, containing 1,628 square feet or 0.04 acre more or less.



Memo

To: Ray Gosack, City Administrator
From: Wally Bailey, Director of Development Services
Date: 4/28/2011
Re: Request for Abandonment of a Public Utility Easement
Sparks Regional Medical Center – 1001 Towson Avenue

The City is in receipt of a request from Melody Trimble, CEO, of the Sparks Health System, to abandon a public utility easement on Lot 1, Sparks Regional Medical Center. A copy of the request is enclosed.

The abandonment of the easement will facilitate a \$6.9 million project which will complete the hospital's surgery facilities on the second floor of the Renaissance building. For a summary of the entire project, please see the enclosed project description.

The project also includes an elevated building connector or bridge that connects the northeast corner of the Renaissance building to the former South "I" Street entrance of the Sparks Hospital building. The overhead connector and easement are located in the former South "I" Street right of way. The project is scheduled to be complete by the end of 2011. Please see the enclosed vicinity map - Exhibit 1, Exhibit 2, which shows the location of the easement proposed for abandonment, and Exhibit 3 showing the location of the elevated building connector.

The staff has had several meetings with the design team for this project. All concerns have been addressed with the current plans. The request to abandon the easement was also reviewed by the franchise utility companies. There are no objections to the request from the franchise utilities or City Departments.

Enclosed for the Board's consideration is an ordinance authorizing the abandonment of the public utility easement.

Please contact me if you have any questions regarding this item.

Enc.

CITY OF FORT SMITH, ARKANSAS
REQUEST FOR ABANDONMENT OF PUBLIC RIGHT-OF-WAY, ALLEY OR PUBLIC
EASEMENT

City Clerk

FILED 4-25-11

APPLICATION:

Indicate one contact person for application: _____ Applicant

Representative H. Faunt

Applicant (owner)

Representative (engineer, attorney, realtor, etc)

Name: Fort Smith HMA, LLC
DBA - Sparks Health System
Address: 1001 Towson Avenue
Fort Smith, AR 72901

Name: Chris Akers with
Littlejohn Engineering Assoc.
Address: 1935 21st Avenue South
Nashville, TN 37212

Telephone Number: 479-441-5431

Telephone Number: 615-385-4144

E-Mail: jeremy.drinkwitz@hma.com E-Mail: caakers@leainc.com

Site Address/Location: 1001 Towson Avenue, Fort Smith, AR 72901

Legal Description of area to be vacated (attach separate sheet if necessary): Refer to
Attachment for legal description and exhibit.

Assessor's Parcel Number for Subject Property: N/A

Reason for Request: Construction of elevated building Connector.

Current Status of Right-of-Way/Easement: Easement is currently dedicated
to the City of Fort 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 if it is determined following review of the application by city staff that ongoing utility interests must be protected through easement dedications, the applicant or his authorized agent shall be required to develop and submit a fully executed easement. Additionally, I understand that the applicant or agent will be required to execute a Memorandum of Understanding regarding any right-of-way abandonments and understand that no action will be taken by the Board of Directors on an abandonment request until said utility easement, if determined by staff is necessary, and Memorandum of Understanding are on file with the city.

I understand that I shall bear the expense of publication of notice given by the City in addition to the expense of publication of the ordinance after adoption by the Board of Directors.

Name: (printed)

Melody Trimble

Signature:

Melody Trimble

Date:

3/22/11

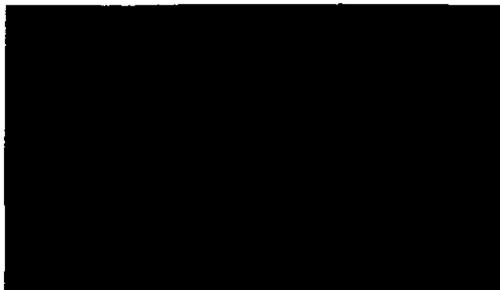
Property Owner(s)/Authorized Agent: *I/we certify under penalty of perjury that I am/we are the owner(s) of the property that is subject of this application and that I/we have read this application and consent to its filing.*

Note: If application is signed by authorized agent, all owners must sign and submit "Authorization of Agent" form.

Application Checklist:

- A list from the Sebastian County Assessor's Office showing all property owners within 300 feet of all perimeter points of the tract being considered for abandonment. *(County Assessor is located in Room 107 of the Sebastian County Courthouse).*
N/A
- Abstractor's Certificate of Ownership stating names of all owners of property abutting the property to be vacated
N/A
- Petition with signatures of all abutting property owners
N/A
- Metes and Bounds legal description of the area to be vacated (Provide hard copy and CD containing legal description in MS Word)
- Hard copy and PDF of survey of the site depicting the perimeter property lines and area within the property to be vacated
- Application Fee of \$150.00. This fee is non-refundable.

The Planning Department will post a sign like the one shown below at area proposed for vacation. Once the sign is posted, it must be left in place until the vacation is approved by the Board of Directors. The planning staff will remove the sign the following day after by the Board of Directors meeting.



SPARKS REGIONAL MEDICAL CENTER
RENAISSANCE BUILDING RENOVATION
PROJECT SUMMARY

Sparks Regional Medical Center proposes the renovation of the existing shell space located on the second floor of the 2006 Renaissance Building. The renovation includes approximately 37,650 sf of renovated shell space to include a new Surgical Suite, new Central Sterile Services department, new Pre-Op spaces, and a new PACU. Staff/Surgeon lockers and lounges are also included in the project. This includes a renovated Surgery Waiting Room.

In addition, approximately 6,000 sf of renovations will be undertaken in the adjacent Intensive Care Unit (ICU) to modify the existing concentration of 6 Isolation rooms into 6 standard ICU patient rooms. At the same time, 2 pairs of existing ICU rooms (total of 4 patient rooms) distributed across the ICU will be upgraded to Isolation rooms. A portion of the renovated shell space will be dedicated to adding support spaces for the adjacent ICU department including a second nurse station, a second staff toilet, a third Nourishment station, a new Monitoring room and expanded storage opportunities. This includes a renovated CCU Waiting Room.

Overall, the renovated area will house the following

- 10 new operating rooms and associated support spaces
- Relocated and expanded Central Sterile Services department capable of serving the entire facility
- 11 new Pre-Op locations including 1 Isolation Pre-Op room
- 18 new PACU locations including 1 isolation PACU room
- Expanded support spaces to serve the adjacent ICU department
- Renovations to existing waiting areas (adjacent to ICU) to create separate waiting rooms for families of Surgical patients and ICU patients
- Reserved shell space for future operating rooms & support spaces

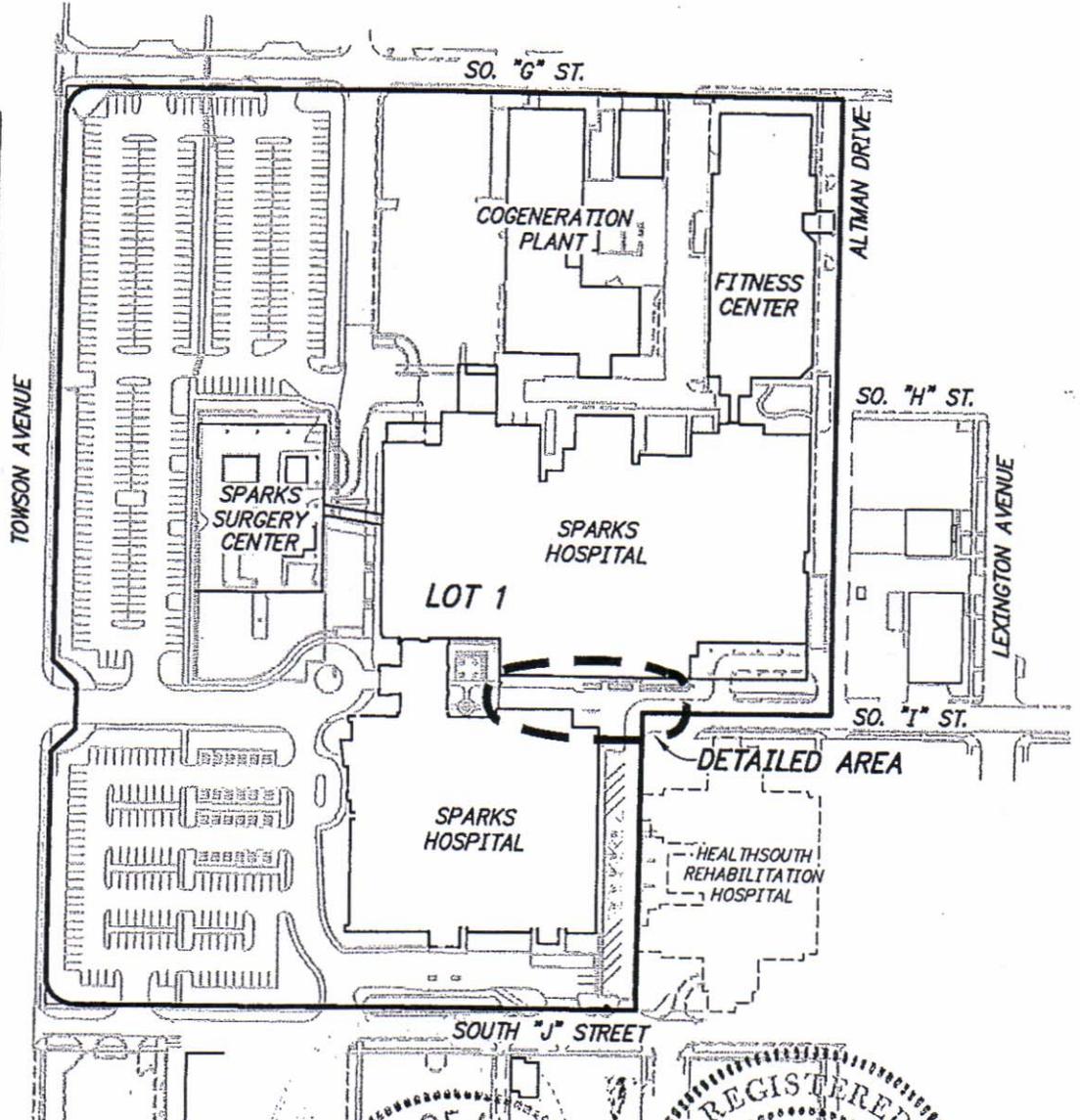
Also included in the project is 1,640 sf of new construction for an Elevated Connector Bridge connecting the northeast corner of the Renaissance Building to the southwest corner of the hospital's existing East Tower.

Total estimated cost of construction is \$6,935,000.

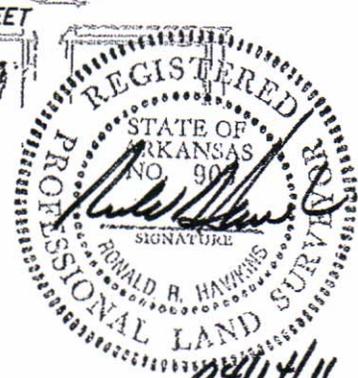
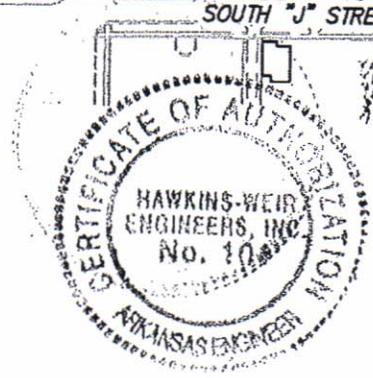
Construction is scheduled to complete by the end of 2011.



SCALE: 1"=200'



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FORT SMITH, ARKANSAS
VICINITY MAP - EXHIBIT NO. 1
LOT 1, SPARKS REGIONAL MEDICAL CENTER ADDITION
FOR: SPARKS REGIONAL MEDICAL CENTER

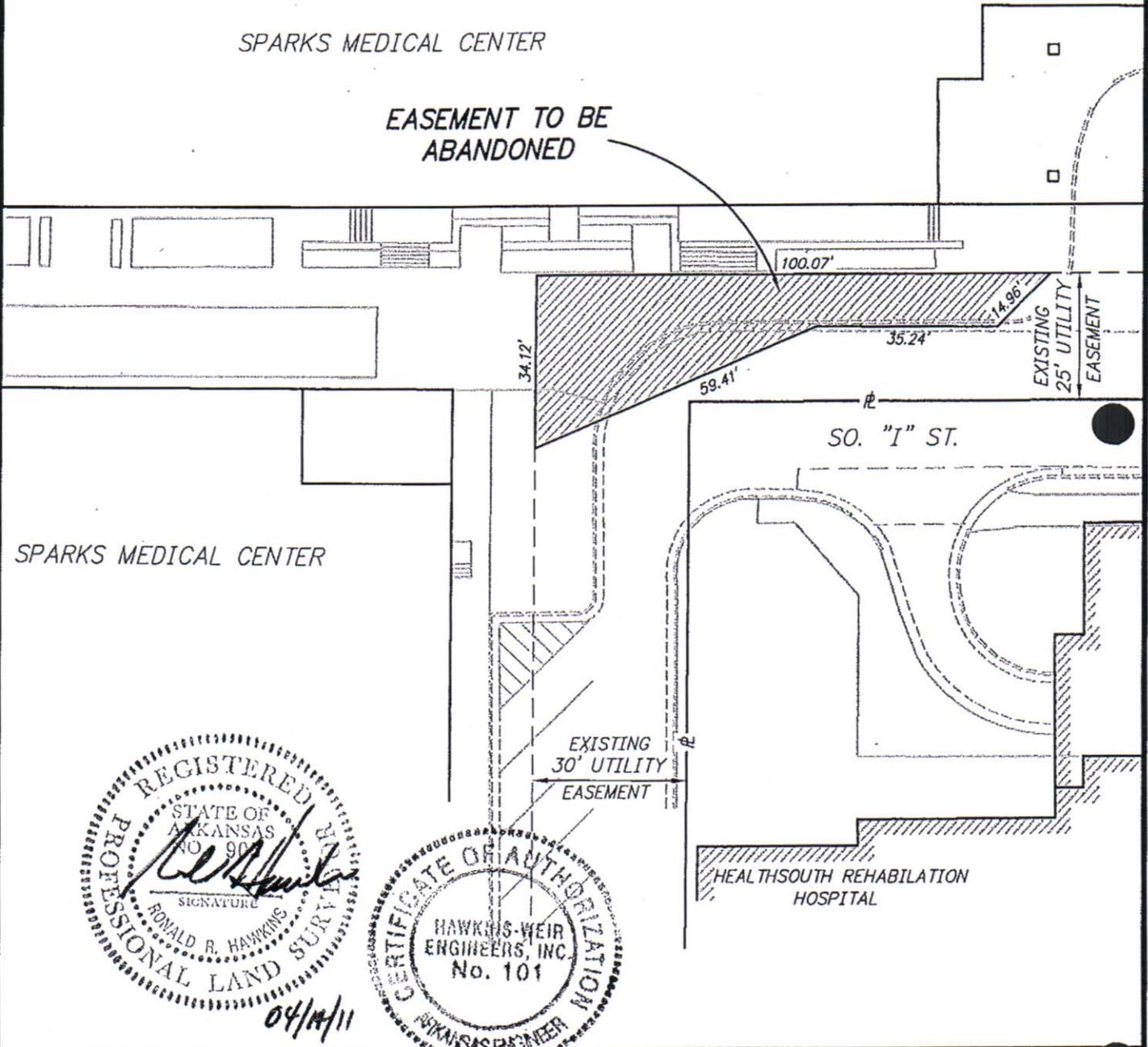
DATE: 04/13/11 SCALE: 1"= 200' JOB NO. 11009B



SCALE: 1"=30'

SPARKS MEDICAL CENTER

EASEMENT TO BE ABANDONED



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HW HAWKINS & WEIR ENGINEERS, INC.

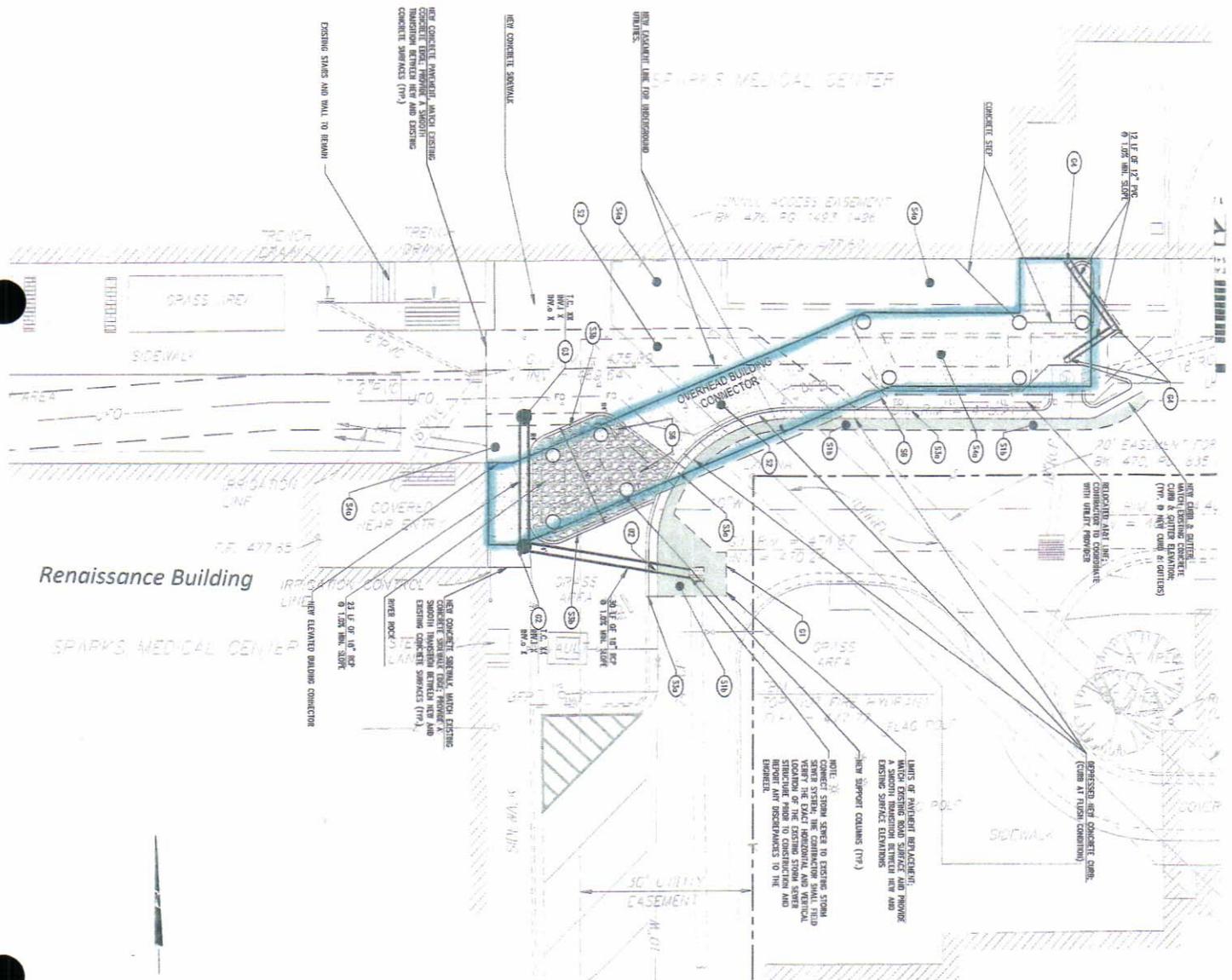
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FORT SMITH, ARKANSAS
EASEMENT ABANDONMENT – EXHIBIT NO. 2
LOT 1, SPARKS REGIONAL MEDICAL CENTER ADDITION
FOR: SPARKS REGIONAL MEDICAL CENTER

DATE: 04/13/11

SCALE: 1"= 30'

JOB NO. 11009B



Renaissance Building

SPARKS MEDICAL CENTER

SPARKS REGIONAL MEDICAL CENTER

OVERHEAD BUILDING CONNECTOR - EXHIBIT NO. 3

RESOLUTION _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH MICKLE WAGNER COLEMAN, INC. FOR ENGINEERING SERVICES ASSOCIATED WITH THE FORT SMITH LANDFILL SCALE PROJECT

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

The Agreement for engineering services with Mickle Wagner Coleman, Inc., for the design and construction observation associate with the landfill scale project is approved.

This Resolution adopted this 3rd day of May, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form

[Handwritten Signature]

- No Publication Required
- Publish _____ Times



MEMORANDUM

April 29, 2011

To: Ray Gosack, City Administrator

From:  T. Baridi Nkokheli, Director

Subject: Engineering Services Agreement – Landfill Scale Project

Our existing landfill scale house (photographs attached) was originally constructed in 2000 and was designed to effectively accommodate one attendant. Due to significant increases in landfill traffic volumes over the last eleven years and a 2004 requirement/recommendation from the internal auditor, a minimum of two attendants are now required to be present during all shifts for customer service and to maintain adequate financial controls.

The existing interior space is approximately 180 square feet and is too small to comfortably and efficiently accommodate two people. The building was constructed of a lightweight metal material that does not have adequate insulation to maintain a comfortable interior temperature for multiple staff during summer or winter months and was not constructed in a way that additional insulation could be added. The building also allows rain, dirt, and other contaminants (e.g. contaminated soil, biosolids) to penetrate the structure when being hauled over the scales.

The restroom is separated from the working area by an interior door. This layout does not provide a sanitary barrier from the work area or a significant privacy barrier when men and women are working together. The restroom is used for cash handling and safe storage out of sight of our customers. While this provides some security, it also provides poor financial control due to the inability to install cameras in the cash handling area as recommended in the 2010 cash handling audit.

Our inbound scale is 11 years old and the preexisting outbound scale is 17 years old. Both scales suffer from severe metal fatigue and are having frequent, reoccurring maintenance issues. We have spent over \$88,500 to repair the scale system (not including the building) over the past 5 years with the repair costs increasing each year. The old in-ground, scale technology renders the scales more vulnerable to the adverse effects of rain, snow, ice, and lightning strikes. The design materials used and openness of the facility's location has made the scales and building susceptible to repeated lightning strikes, which have "fried" telephones and computers, and main circuit boards and load cells used in the weighing system. Downtime due to these occurrences has lasted several hours to days resulting in severe delays to incoming and outgoing traffic. These maintenance problems routinely place at least one scale out of service resulting in long delays in service and creating traffic backups. Additional personnel is also required to "flag" traffic across the remaining operational scale which is required to weighed both incoming and

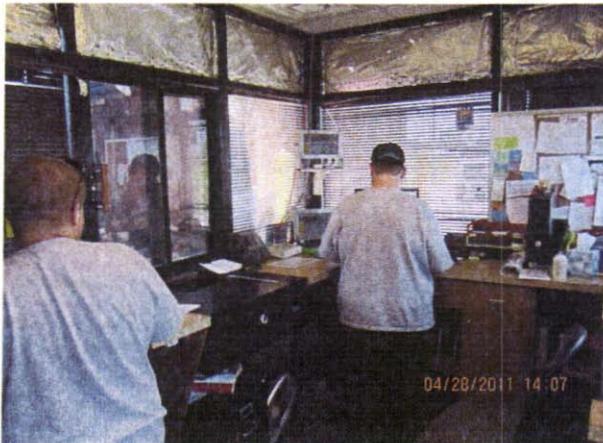
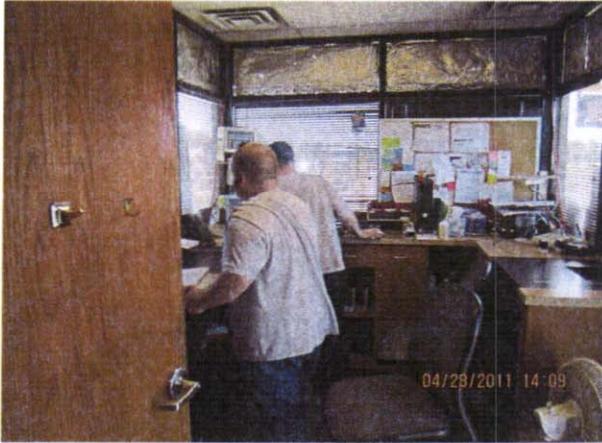
outgoing vehicles. We are currently operating with only one scale due to a lightning strike during the storm on the evening of April 26.

Funding for the scale project for \$2,080,000 was earmarked in the 2011 Budget in the Sanitary Landfill program (6305). The project includes a new scale house and three new scales. The new scale house will be built to accommodate two landfill attendants in a clean, healthy environment with separate/secure cash handling areas as well as other features to enhance security and financial controls (e.g. bulletproof glass, cameras, multilevel access control). The new scales will have concrete decks, which require little or no maintenance as compared to our in-ground (metal) models. A third, automated scale will be added to accommodate our department collection vehicles as well as our commercial haulers in order to improve the traffic flow into the landfill.

Submitted for Board consideration is an engineering agreement with Mickle Wagner Coleman, Inc., to provide the design and construction observation for the scale project. The maximum payment for the engineering services is set at \$260,000. Staff is recommending that the agreement be accepted and approved by Resolution.

Please contact me should you have any questions or would like additional information regarding this request.

Landfill Scale Facility Photographs



Landfill Scale Facility Photographs





ENGINEERS CONSULTANTS SURVEYORS

To City of Fort Smith – Sanitation
5900 Commerce Road
Fort Smith, AR 72916

Date March 22, 2011
Project _____

Via Courier

Attn: Mr. Baridi Nkokheli, Director

Subject Department of Sanitation Landfill Scale Project
Engineering Contract

Enclosed are the following:

No. of Copies	Description and Remarks
	Please find enclosed the Engineering Contract for the above referenced project, revised as discussed.

Copies to:

Sincerely,

Mickle Wagner Coleman, Engineers

Randy Coleman, P.E.

3/22/11

AGREEMENT
BETWEEN
CITY OF FORT SMITH, ARKANSAS
AND
MICKLE-WAGNER-COLEMAN, INC.
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of _____, 20 11 between the City of Fort Smith, Arkansas, 623 Garrison Avenue, P.O. Box 1908, Fort Smith, Arkansas 72901 (OWNER) and Mickle-Wagner-Coleman, Inc., P.O. Box 1507, Fort Smith, AR 72902 (ENGINEER). OWNER intends to construct new landfill entry road, scales, scale house, bathrooms and canopy (hereinafter called the Scale Project).

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

ENGINEER shall provide professional engineering services for OWNER in all phases of the Project to which this Agreement applies, serve as OWNER's professional engineering representative for the Project as set forth below and shall give professional engineering consultation and advice to OWNER during the performance of services hereunder.

SECTION 1 - BASIC SERVICE OF ENGINEER

1.1 General.

1.1.1 ENGINEER shall perform professional services as hereinafter stated which include customary civil, structural, mechanical and electrical engineering services and customary architectural services incidental thereto.

1.2 Preliminary Design Phase.

The Preliminary Design Phase will consist of two phases, namely, preparation of concept design documents and preparation of preliminary design documents. After written authorization to proceed with the Concept Design Phase, ENGINEER shall:

1.2.1 Develop a program for subsurface investigations and material testing and submit to OWNER for approval. Upon approval of program, conduct subsurface investigations including borings, subsurface explorations, sampling, laboratory and field tests, and professional interpretation of all of the foregoing subsurface data.

1.2.2 Perform all field surveys necessary for the design of the Project, including but not limited to cross-sections, topographic, and utility surveys. Erect or install sufficient control monuments, reference points and base lines to enable the Contractor(s) to proceed with the layout of the work.

1.2.3 Prepare concept plan documents consisting of topographic base sheets showing existing conditions, proposed concept plans, sections and details as outlined in Exhibit A.

1.2.4 Furnish up to three copies of the concept plans and documents and present and review them in person with OWNER.

1.2.5 After written authorization to proceed with Preliminary Design Phase, Engineer shall prepare preliminary design documents consisting of final design criteria, preliminary drawings, outline specifications, special conditions and design data.

1.2.6 Based on the information contained in the preliminary design documents, submit an opinion of probable Project Costs.

1.2.7 Furnish three copies of the above preliminary design documents and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Preliminary Design Phase are amended and supplemented as indicated in Exhibit A "Scale Project".

1.3 Final Design Phase.

After written authorization to proceed with the Final Design Phase, ENGINEER shall:

1.3.1 On the basis of the approved preliminary design documents and the opinion of probable Project Cost, prepare for incorporation in the Contract Documents final drawings to show the character and extent of the Project (hereinafter called "Drawings") and Specifications.

1.3.2 Furnish to OWNER such documents and design data as may be required for, and assist in the preparation of, the required documents so that OWNER may apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

1.3.3 Advise OWNER of any adjustments to the latest opinion of probable Project Cost caused by changes in extent or design requirements of the Project or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.

1.3.4 Prepare for review and approval by OWNER, his legal counsel and other advisors, bid forms, and Special Conditions of the contract. Also, assist in the preparation of other related documents.

1.3.5 Furnish three copies of the above documents and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Final Design Phase are amended and supplemental as indicated in Exhibit A "Scale Project".

1.4 Bidding or Negotiating Phase.

After written authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:

1.4.1 Upon request by OWNER, provide interpretation (to OWNER) of bid forms, plans and Special Conditions in response to questions by CONTRACTORS. Also, prepare Addenda to be issued prior to receipt of construction bids and attend the bid opening.

1.4.2 Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the bidding documents.

1.4.4 Assist OWNER in evaluating bids or proposals and in assembling and awarding contracts. The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase are amended and supplemented as indicated in Exhibit A "Scale Project".

1.5 Construction Phase.

During the Construction Phase ENGINEER shall:

1.5.1 Upon request by OWNER, consult with and advise OWNER on matters described in Articles 1 through 16, inclusive, of the Standard General Conditions of the Construction Contract of the City of Fort Smith, Arkansas.

1.5.2 Make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of Contractor(s) and to determine in general if such work is proceeding in accordance with the Contract Documents. ENGINEER shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). ENGINEER'S efforts will be directed toward providing a greater degree of confidence for OWNER that the completed work of Contractor(s) will conform to the Contract Documents, but ENGINEER shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents. During such visits and on the basis of on-site observations ENGINEER shall keep OWNER informed of the progress of the work, shall endeavor to guard OWNER against defects and deficiencies in such work and inform the OWNER of work failing to conform to the Contract Documents. The ENGINEER shall maintain a log of the site visits showing date, time of arrival and departure, purpose of the visit, and the person contacted (inspector, contractor, superintendent, etc.). A copy of the log shall be provided monthly to the OWNER.

1.5.3 Review and approve (or take the appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions) and samples, the results of tests and inspections and other data which each Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given to the Contract Documents (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto); and determine the acceptability of substitute materials and equipment proposed by Contractor(s).

1.5.4 Section deleted.

1.5.5 Compile and print contract documents, specifications and construction plans; receive, publicly open and read construction and testing services bids; evaluate bids; evaluate bidders and subcontractors with reference to qualifications and ability to perform the work; prepare a bid tabulation summary.

1.5.6 Compile contracts, bonds, certificates of insurance and other related contractual documents for review by the OWNER's legal counsel and execution by the appropriate parties.

1.5.7 Schedule and conduct the pre-construction conference and issue the construction notice to proceed.

1.5.8 Provide a full-time Resident Project Representative assigned to the project for the duration of the construction.

1.5.9 Prepare and obtain execution of periodic construction pay estimates, change orders, field change orders, final pay estimate and related documents.

1.5.10 Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the work has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder.

1.5.11 ENGINEER shall not be responsible for the acts or omissions of any Contractor, or subcontractor, or any of the Contractor(s)' or subcontractors' agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise performing any of the Contractor(s)' work; however, nothing contained in paragraphs 1.5.1 through 1.5.5, inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties undertaken by him in the Contract Documents.

1.5.12 Prepare for OWNER a set of reproducible original drawings or mylar copy of record prints of Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by OWNER or gathered by ENGINEER.

1.5.13 Prepare and publish an Advertisement for Bids.

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1 General

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary for Basic Services except to the extent provided otherwise in Exhibit A "Scale Project"; these will be paid for by OWNER as indicated in Section 5.

2.1.1 Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.1.2 Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, OWNERS's schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond ENGINEER's control.

2.1.3 Services resulting from the award of additional prime contracts for construction of the project, except where identified in the exhibits.

2.1.4 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of Contractor(s), (3) prolongation of the contract time of any prime contract by more than sixty days, (4) acceleration of the progress schedule involving services beyond normal working hours, and (5) default by Contractor(s).

2.1.5 Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.

2.1.6 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the Project (except as agreed to under Basic Services).

2.1.7 Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise provided for in this Agreement.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall:

3.1. Provide criteria and information as to OWNER's requirements for the Project, including design objectives and constraints, right-of-way, capacity and performance requirements, and any budgetary limitation; and furnish copies of design and construction standards which OWNER will require to be included in the Drawings and Specifications.

3.2. Assist ENGINEER by placing at his disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

3.3. Furnish to ENGINEER, as required for performance of ENGINEER's Basic Services (except to the extent provided otherwise in Exhibit A "Scale Project"), data prepared by or services of others, including hydrographic surveys, environmental assessment and impact statements, property descriptions, zoning, deed and other land use restriction and other special data or

consultations not covered in Section 2.

- 3.4 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.
- 3.5 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advise of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 3.6 Furnish approvals and permits from all governmental authorities, except ADEQ, having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 3.7 Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid to him under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule or regulation applicable to their performance of the work.
- 3.8 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER's services.
- 3.9 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect in the work of Contractor(s).
- 3.10 Furnish, or direct ENGINEER to provide, necessary Additional Services as stipulated in Section 2 of this Agreement or other services as required.
- 3.11 Bear all costs incident to compliance with the requirements of this Section 3.
- 3.12 Submit bid summary (prepared by Engineer), resolutions and other related legal documents to the OWNER's governing body for approval of construction and testing contracts.

SECTION 4 - PERIOD OF SERVICE

4.1 The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts and construction of the Project including extra work and required extensions thereto.

4.2 The services called for in the Concept Plan Phase of the Preliminary Design Phase will be completed and the data submitted within the stipulated period indicated in Exhibit A "Scale Project" after authorization to proceed with that phase of services.

4.3 After acceptance by OWNER of the Concept Plan Phase documents indicating any specific modifications or changes in the extent of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Preliminary Plan Phase, and shall submit preliminary design document and a revised opinion of probable Project Cost within the stipulated period indicated in Exhibit A "Scale Project" after authorization to proceed with that phase of services.

4.4 After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Project Cost, indicating any specific modifications or changes in the extent of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Final Design Phase; and shall deliver Contract Documents and a revised opinion of probable Project Cost for all work of Contractor(s) on the Project within the stipulated period indicated in Exhibit A "Scale Project" after authorization to proceed with that phase of services.

4.5 ENGINEER's services under the Preliminary Design Phase and Final Design phase shall each be considered complete at the earlier of (1) the date when the submissions for that phase have been approved by OWNER or (2) thirty days after the date when such submissions are delivered to OWNER for final approval, plus such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction over design criteria applicable to the Project.

4.6 After approval by OWNER of the ENGINEER's Drawings, Specifications and other Final Design Phase documentation including the most recent opinion of probably Project Cost and upon written authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Bidding or Negotiating Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of the negotiations with prospective Contractor(s).

4.7 The Construction Phase will commence with the execution of the first prime contract for the work of the Project or any part thereof, and will terminate upon written approval by OWNER of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involves more than one prime contract.

4.8 If OWNER has requested significant modifications or changes in the extent of the Project, the time of performance of ENGINEER's services and his various rates of compensation shall be adjusted appropriately.

4.9 If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within time schedule identified in Exhibit A, ENGINEER may request that his services be suspended under this Agreement.

4.10 If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than time lines indicated in Exhibit A for reasons beyond ENGINEER's control, ENGINEER shall on written request to OWNER (but without termination of this Agreement) be paid as provided in paragraph 5.3.1. If such delay or suspension extends for more than one year for reasons beyond ENGINEER's control, or if ENGINEER for any reason is required to render services more than one year after Substantial Completion, the various rates of compensation provided for in Exhibit A of this Agreement shall be subject to renegotiation.

4.11 In the event that the work designed or specified by ENGINEER is to be performed under more than one prime contract, OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating and Construction Phases in order to sequence and coordinate properly such services as applicable to the work under such separate contracts. This schedule is to be prepared whether or not the work under such contracts is to proceed concurrently and is to be included in Exhibit A "Scale Project", and the provisions of paragraphs 4.4 through 4.10 inclusive, will be modified accordingly.

SECTION 5 - PAYMENT TO ENGINEER

5.1 Methods of Payment for Services and Expenses of ENGINEER.

5.1.1 For Basic Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 an amount based on ENGINEER's Lump Sum Fee for services rendered by principals and employees assigned to the Project. For Basic Services rendered under paragraph 1.3.1 the OWNER shall pay the ENGINEER the amount billed to the ENGINEER times a factor of 1.00.

5.1.2 For Additional Services. OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows: (Any and all Additional Services must be approved in writing by OWNER prior to rendering of same).

5.1.2.1 General. For Additional Services rendered under paragraphs 2.1.1 through 2.1.7, inclusive on the basis of Hourly Rates as shown on the attached Exhibit B, "Engineer's Hourly Rates" for services rendered by principals and employees assigned to the Project.

5.1.2.2 Special Consultants. For services and reimbursable expenses of special consultants employed by ENGINEER pursuant to paragraph 2.1.7, the amount billed to ENGINEER therefor times a factor of 1.00.

5.1.2.3 Serving as a Witness. For the services rendered by principals and employees as consultants or witnesses in any litigation, hearing or proceeding in accordance with paragraph 2.1.6, at the Hourly Rates as shown on the attached Exhibit B, "Engineer's Hourly Rates". Compensation for time spent in preparing to appear in any such litigation, hearing or proceeding will also be the Hourly Rates as shown on the attached Exhibit B, "Engineer's Hourly Rates".

5.1.3 For Reimbursable Expenses. OWNER shall pay ENGINEER the actual costs of Reimbursable expenses incurred in connection with Basic and Additional Services but they are included in the Total Contract Amount delineated above. Reimbursable Expenses must be approved by the OWNER prior to the incurrence of such expenses.

5.1.4 The terms "Hourly Rates" and "Reimbursable Expenses" will have the meanings assigned to them in paragraph 5.4.

5.1.5 Maximum Payment. The maximum payment to the ENGINEER for Basic Services and *Reimbursable Expenses*, rendered under this Agreement is \$260,000 Lump Sum Fee.

5.2 Times of Payment.

5.2.1 ENGINEER shall submit statements no more than monthly for Basic and Additional Services rendered an amount based on % of ENGINEER's Lump Sum Fee and for additional services based on ENGINEER's Hourly Rates as shown on the attached Exhibit B, "Engineer's Hourly Rates" for principals and employees assigned to the Project and for Reimbursable Expenses incurred. When requested by OWNER, the monthly statements shall be accompanied by a copy of the time sheets for all personnel working on the project. OWNER shall make payment of approved amounts within 60 days after receipt of the statements.

5.3 Other Provisions Concerning Payments.

5.3.1 In the event of termination by OWNER under paragraph 6.1 upon the completion of

any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for approved services rendered during that phase on the basis of Hourly Rates as shown on the attached EXHIBIT B, "Engineer's Hourly Rates" for approved services rendered during that phase to date of termination by principles and employees assigned to the Project. In the event of any such termination, ENGINEER will be paid for all unpaid approved Additional Services and unpaid approved Reimbursable Expenses.

5.4 Definitions.

5.4.1 The Hourly Rates used as a basis for payment mean salaries and wages (basic and incentive) paid to all personnel engaged directly on the Project, including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical personnel, stenographers, typists and clerks; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto; plus all overhead costs, including, but not limited to, furnishing and maintaining office facilities, furniture, utilities, vehicles, equipment; plus profit.

5.4.2 Reimbursable Expenses mean the actual expenses incurred directly or indirectly for subcontractors, subconsultants and/or vendors in connection with the Project for: (1) subsurface investigations required in Sec. 1.2.1; (2) printing and reproduction costs in excess of that specified in Sec. 1; Any and all expenditures for Reimbursable Expenses must be approved by the OWNER prior to rendering or obtaining same.

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Termination.

The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

6.2 Reuse of Documents.

All documents including Drawings and Specifications prepared by ENGINEER pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER.

6.3 Controlling Law.

This Agreement is to be governed by the law of the City of Fort Smith, County of Sebastian and/or State of Arkansas.

6.4 Successors and Assigns.

6.4.1 OWNER and ENGINEER each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

6.4.2 Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 6.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

6.4.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER and ENGINEER.

6.5 Access To Records. The ENGINEER and any Subcontractors are to maintain all documents, accounting records and other evidence pertaining to cost incurred and to make such materials available at their respective offices at all reasonable times during the contract period, and for three (3) years from the date of final payment under the contract, for inspection by authorized representatives of the OWNER, or any governmental agency providing any portion of project funding, and copies thereof shall be furnished, if requested.

6.6 POLICY REGARDING WORKERS WHO ARE NOT CITIZENS OF THE UNITED STATES

6.6.1. The Engineer shall keep fully informed of all federal, state and local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority, which in any manner affect those engaged or employed in the work required by the Agreement, specifically including without limitation, laws and regulations pertaining to the employment of persons who are not citizens of the United States. Further, the Engineer shall at all times observe and comply with all such laws, ordinances, regulations, quarantines, orders, and decrees and shall protect and indemnify the city of Fort Smith and its representatives against any claim or liability

arising from or based on the violation of any such law, ordinance, regulation, order, or decree. The Engineer shall cause a similar provision to be placed in each subcontract entered into by the Engineer.

6.6.2. The Engineer agrees that the Engineer shall be subject to an administrative penalty of up to five hundred dollars (\$500.00) to be imposed by the City for any violation of the foregoing provisions or the required certification in the form provided in the Agreement. The Engineer shall be entitled to a due process hearing before the City Administrator if requested in writing within five (5) working days of the City's notification of potential imposition of administrative penalty.

SECTION 7 - EXECUTION

7.1 This Agreement (consisting of pages 1 through 14, inclusive), together with the Exhibits and schedules identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

ENGINEER:

Mickle Wagner Coleman, Inc.

ATTEST:

CITY OF FORT SMITH, ARKANSAS

BY: _____
Mayor

ATTEST:

City Clerk

EXHIBIT "A"

Description of Services

The City of Fort Smith Department of Sanitation Sanitary Landfill Scale Project shall consist of the professional services, architectural and engineering, to provide the design and construction observation for a new entry road, scales, scale house and scale house canopy, restrooms and parking lot for the Fort Smith Department of Sanitation at the Landfill at 5900 Commerce Road. The project preliminary plan is attached and included as Exhibit "C".

Professional services shall include surveying, civil engineering, architecture and the support engineering disciplines (Mechanical, Electrical, Structural, HVAC, etc)- all necessary utilities for a complete working facility as required above. The architecture and support engineering services for the design of the scale house, scale house canopy, and rest rooms will be supplied via subcontract by P. Jeffery Lee Architecture, under the prime contract with Mickle Wagner Coleman, Inc.. Contract services are based on construction cost estimate of \$2,170,000 and actual construction work being accomplished in 9 months after authorization to proceed.

Close coordination will be maintained with the owner and sub-consultants to provide a complete project from conception to the completed construction and start up of the facility.

EXHIBIT 'B'

**Entry Road, Scale, Scale House, Restrooms, Canopy
DEPARTMENT OF SANITATION SANITARY LANDFILL
SCALE HOUSE PROJECT
ENGINEER'S HOURLY RATES
APRIL, 2011**

Engineer/Principal Officer	\$128.00
Engineer III	\$108.00
Engineer II	\$ 96.00
Engineer I	\$ 78.00
Engineering Technician III	\$ 85.00
Engineering Technician II	\$ 75.00
Engineering Technician I	\$ 68.00
Drafting III	\$ 61.00
Drafting II	\$ 53.00
Drafting I	\$ 44.00
RLS	\$106.00
Clerical	\$ 50.00
Survey Party	
3 Person Crew	\$127.00
2 Person Crew	\$ 90.00

EXHIBIT "C"

The attached concept plan depicts the scope of work to be prepared under this contract and is included only as a reference. The Citizens Convenience Center is shown on the plan but is not included in this scope of work/contract but is for future (Phase 2) efforts.

f:/doc/contract/PSlandfill-2011.doc

RESOLUTION _____

**A RESOLUTION TO ACCEPT THE BIDS AND AUTHORIZE
CONTRACT FOR THE CONSTRUCTION OF
CARNALL SANITARY SEWER RELOCATION
PROJECT NO. 11-06-C**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: The bid of Goodwin & Goodwin, Inc., received April 19, 2011, for the construction of Carnall Sanitary Sewer Relocation, Project No. 11-06-C, in the amount of \$284,092.00 be accepted.

SECTION 2: The Mayor is authorized to execute a contract with Goodwin & Goodwin, Inc., subject to the terms set forth in Section 1 above.

SECTION 3: Payment for construction authorized by Section 1 is hereby authorized from the Sales Tax Fund (1105).

This resolution adopted this _____ day of May, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form

JSC

- No Publication Required
- Publish ___ Times

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

FROM: Stan Snodgrass, P.E., Director of Engineering *SS*

DATE: April 26, 2011

SUBJECT: Carnall Avenue Sanitary Sewer Relocation
Project No. 11-06-C

The CDM drainage study of the Town Branch and Carnall storm sewer systems identified a significant blockage within the Carnall outfall. The blockage of the 60 inch Carnall outfall is caused by a 15 inch sanitary sewer line which crosses through the lower half of the culvert. A photograph of the obstruction and a location map of the area are attached. Relocation of the 15 inch sanitary sewer line was identified by CDM as one of the first priorities to help reduce the flooding in the Town Branch and downtown areas.

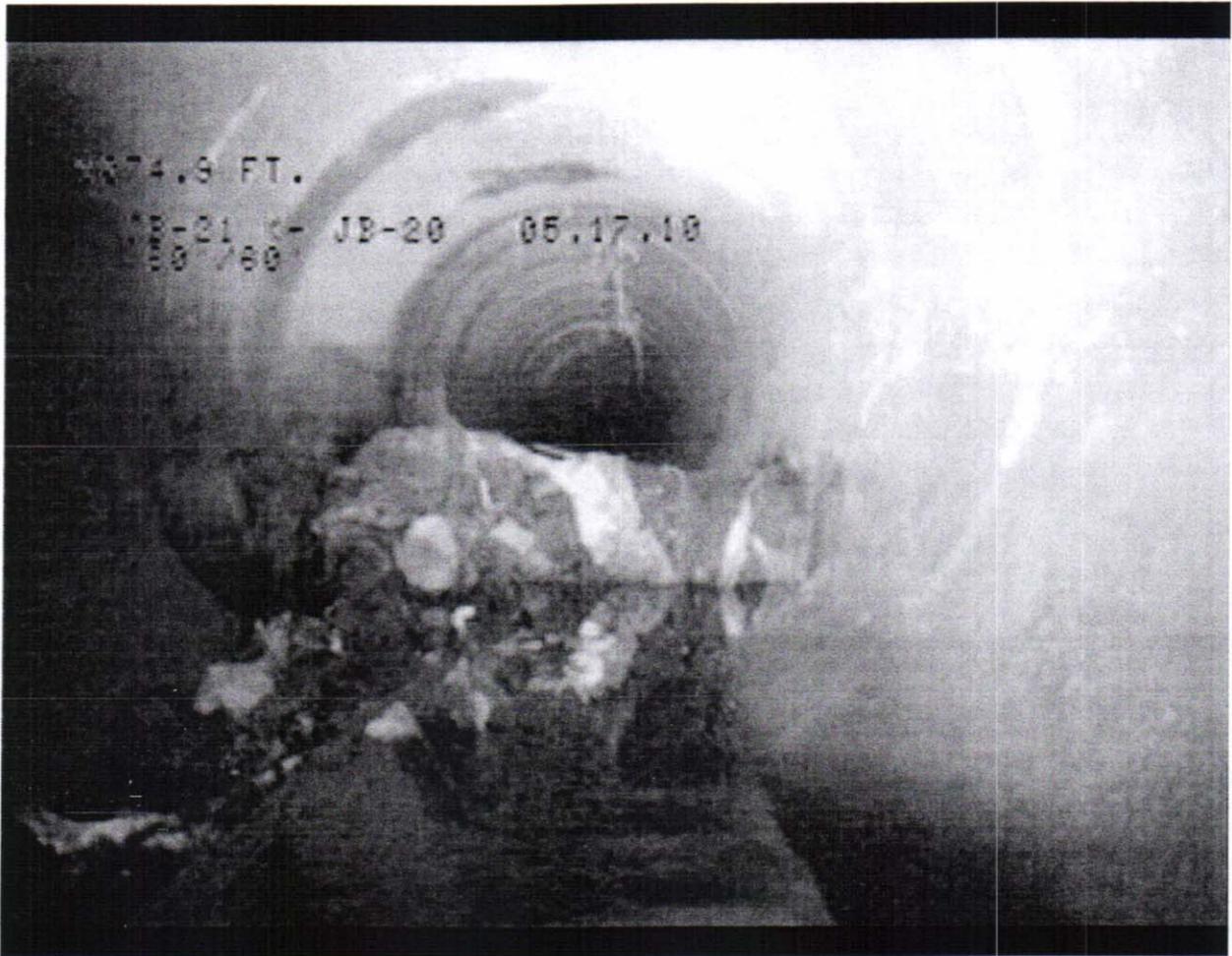
The sanitary sewer line will be relaid at a steeper slope for approximately 400 feet to allow the sanitary sewer line to cross under the storm sewer line. The majority of the sewer line (approximately 350 feet) will be installed by a trenchless or boring method.

Construction plans and specifications were prepared by Hawkins-Weir Engineers, Inc. of Van Buren, Arkansas. An advertisement was published and bids were received on April 19, 2011. Eight contractors requested plans and specifications and two bids were received which are summarized as follows:

<u>CONTRACTOR</u>	<u>AMOUNT</u>
Goodwin & Goodwin Fort Smith, AR	\$284,092.00
Forsgren, Inc. Fort Smith, AR	\$299,656.00
Engineer's Estimate	\$348,470.00

I recommend that the lowest bid be accepted and that the construction contract be awarded to Goodwin & Goodwin, Inc. The estimated notice to proceed date for this contract is June 6, 2011. Based on the contract duration of 90 days, the estimated completion date would be September 3, 2011.

Attached is a Resolution to accomplish the above recommendation. Funds are available in the Sales Tax Program (1105) for the construction.



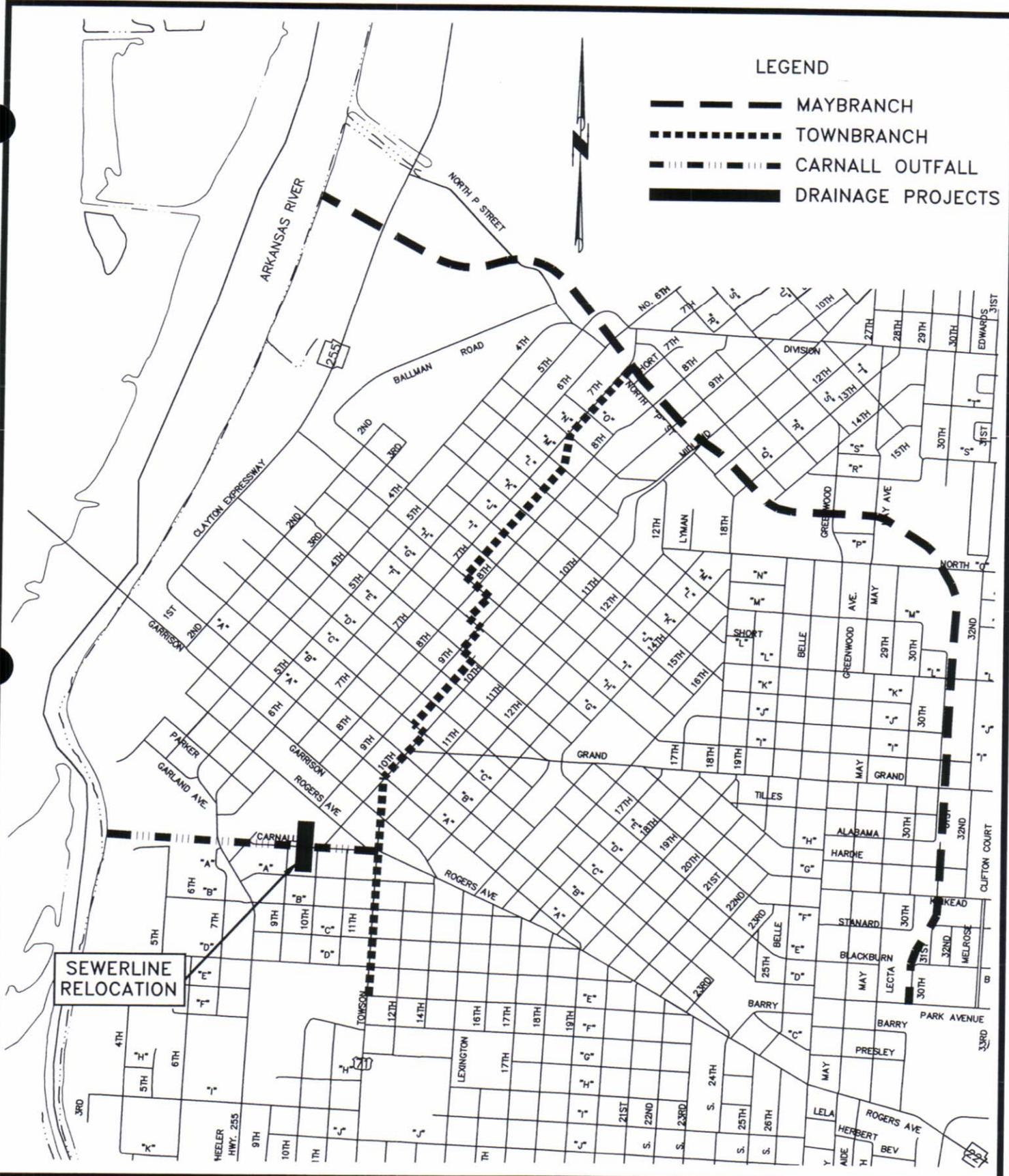
Carnall Storm Sewer Outfall, between South 9th and 10th Streets

Existing 60 inch storm sewer substantially blocked by intruding 15 inch sanitary sewer

C:\City of Smith\Engineering\Snodgrass\DRNG MAINS.dwg DRNG TB RBR 04/28/11-11:02

LEGEND

-  MAYBRANCH
-  TOWNBRANCH
-  CARNALL OUTFALL
-  DRAINAGE PROJECTS



SEWERLINE RELOCATION

2011 CAPITAL IMPROVEMENTS PROGRAM
 DRAINAGE IMPROVEMENTS
 MAYBRANCH & TOWN BRANCH



Project:	11-06-B
Date:	OCT. 2010
Scale:	NONE
Drawn By:	RBR

107

RESOLUTION NO. _____

**A RESOLUTION ACCEPTING BID FOR THE PURCHASE OF A
SKID STEER LOADER**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY
FORT SMITH, ARKANSAS, THAT:

The bid, as indicated by enclosure on the attached Bid Tabulation
6641-5302-SF-BA for the purchase of a skid steer for \$54,529.00 from Alma
Tractor, is accepted.

This Resolution adopted this _____ day of May, 2011.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form:

JSC

- No Publication Required
- Publish ____ Times

Interoffice Memorandum

TO: Ray Gosack, City Administrator
FROM: Alie Bahsoon, Purchasing Manager 
SUBJECT: Skid Steer Loader Bid Tabulation
DATE: April 29, 2011
BID TAB: 6641-5302-SF-BA



You will find attached the bid tabulation for a skid steer for use by the City of Fort Smith Street Department ("Street Construction", Program 5302).

Funding for this skid steer is available and has been appropriated for in the 2011 Budget out of the "Reserve for Street Equipment-Sinking Fund Account" in the amount of \$68,000.

I recommend that the bid noted by enclosure on the attached tabulations, be accepted.

Please let me know should you have any questions.

**Tabulation of Bids-City of Fort Smith Street Department
SKID STEER LOADER
Bid Tab 6641-5302-SF-BA**

Vendor Description	JA Riggs Fort Smith	Alma Tractor Bid #1	Alma Tractor Bid #2
Loader			
Year	2011	2011	2011
Make	Caterpillar	New Holland	GEHL
Model	279CA XPS HF	C232	CTL75
Cost	\$75,254.00	\$70,029.00	\$71,804.00
Trade-In			
Asset 3006	(\$8,900.00)	(\$15,500.00)	(\$15,500.00)
Freight	N/A	N/A	N/A
Delivery Terms	30 Days	90 Days	30 Days
Total Bid Price	\$66,354.00	\$54,529.00 ✓	\$56,304.00

Bids Advertised: 03/27/11

Bids Opened: 04/11/11

✓ Recommended Bid Award

Memo

Streets and Traffic Control

To: Alie Bahsoon

From: Bob Wright, Director of Streets and Traffic Control

Date: April 25, 2011

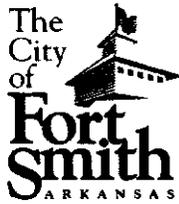
Re: Skid Steer Information

The Street Department is in need to replace a 2002 Case 85XT Skid Steer (Asset #3006). This unit is nine (9) years old with over 560 hours. It is in need of extensive costly repairs and has well met its useful life.

The skid steer is vital to the department's operation and will be used in the Street Construction Division (Program 5302). It's primary use is milling and sweeping streets for overlay projects. It is also equipped with a front-end loader attachment that is used for various tasks in yards, between houses, etc.

Funding for this unit is available in the Sinking Fund-Depreciation, account #6641-000-1101.

Please let me know if you have any questions.



CITY OF FORT SMITH

Submit Bids to:
Purchasing Department
P.O. Box 1908
623 Garrison Avenue, Suite 522
Fort Smith, AR 72902-1908

Bid No. 6641-5302-SF-BA

INVITATION TO BID

Closing Date:
April 11, 2011 @ 3:00 p.m.

BID ITEM: SKID STEER LOADER

QUANTITY: 1 (ONE)

Company Name [PRINT OR TYPE]
Federal Tax I.D. No. Signature*
Street Address Title
City Date
State Zip Code
*Authorized Signature: The signer declares under penalty of perjury that he/she is authorized to sign this document and bind the company or organization to the terms of this bid document.
Tel. No. Fax No.
E-Mail

SUBMITTED BIDS MUST HAVE AN ORIGINAL SIGNATURE

FOR CONSIDERATION AS A RESPONSIVE BID, THE FOLLOWING IS REQUIRED:

- 1. Bid must be submitted on this official City bid document; submit to the address above.
2. Bid must be in a sealed envelope with bid number clearly marked on envelope.
3. This cover page must be signed with an original signature.
4. Bid must be submitted on or before the exact closing date and time. Bids received after the exact closing date and time will NOT be opened nor considered.

For Further Information Concerning This Bid, Please Contact:
ALIE BAHSOON, Purchasing Manager
Phone: (479) 784-2267 Fax: (479) 784-2484 Email: abahsoon@FortSmithAR.gov

STREET DEPARTMENT - CITY OF FORT SMITH

It is the intention of the City of Fort Smith, Arkansas to solicit bids for **(1) ONE SKID STEER LOADER ("Loader")** suitable for use by the City of Fort Smith Street Department ("City"). This loader shall be new, current, and a standard production model with all of the manufacturer's standard warranties.

Any manufacturer's name, trade name, brand name, or catalog numbers used in these specifications are for the purpose of describing and establishing general quality levels. Such references are not intended to be restrictive. Any advertised specifications shall comply with A.S.A.E. engineering standards and OSHA approved standards. The loader shall be **equal to** a Case 445CT, Caterpillar 279C, John Deere 329D, New Holland C232, or an approved equal which meets or exceeds the quality of the specifications listed and approved by the City. This loader shall be bid **FOB Fort Smith, Arkansas**, and delivered to the Street Department at **3900 Kelley Highway, Fort Smith, Arkansas 72904**.

Loader and equipment listed herein shall comply with applicable Federal and State Safety, Emission and Pollution Control requirements in effect at the time of delivery.

Detailed specifications of the loader shall accompany the bid at the time of opening. Any and all standard equipment, supplies, parts and/or attachments not specifically mentioned but necessary to furnish a complete unit shall be included and installed by the successful bidder. Where any major unit other than specified by trade name is proposed to be furnished, the bidder must furnish specification comparisons of such units with that called for. All bids are subject to City Staff analysis. The City reserves the right to accept the best bid for the City, and is not required to accept the lowest priced bid. The items noted will be taken into consideration when analyzing the bid proposals and shall not be limited to the following: the availability of replacement parts, warranty services, customer service field support, and pricing.

The loader shall be ready for immediate use and delivered within 30 days or less (unless noted otherwise) to 3900 Kelly Highway, Fort Smith, Arkansas. **Any questions regarding TECHNICAL specifications shall be directed to Mr. Bob Wright, Director of Streets and Traffic Control at (479) 784-2360.**

The loader and equipment listed herein shall comply with applicable Federal and State safety, emission and pollution control requirements in effect at time of delivery. Standard manufacturer's warranties shall be furnished. Minimum warranty periods shall be no less than 1 year.

All bids submitted shall include descriptive literature of the unit being bid. The loader shall be new, manufactured the same year or succeeding year of the bid, of currently advertised and production model as commercially available. Standard features/options as published in the manufacturer's published literature shall be included in the bid unless otherwise noted. One copy of the manufacturer's published specification shall be included with the bid. The City reserves the right to reject any or all bids received. Awards will be made on the best value offered. The quality of the loader to be supplied, its conformity with the specifications, its suitability to requirements, delivery terms, warranty, and customer service agreement thresholds/costs shall be taken into consideration. The City, in addition to the right to reject any or all bids, reserves the right to waive any informality in bids, to accept in whole or part such bid or bids as may be deemed in the best interest of the City.

Though not anticipated, in the event that an addendum to this solicitation is necessary, all potential bidders will be notified by email. It shall be the bidder's responsibility to notify the Purchasing Manager of their intent to submit a bid. This shall be done by submitting an email to: abahsoon@fortsmithar.gov.

NOTE: Do not add any sales tax to this bid. Section GR-34 (E), of the Arkansas Sales & Use Tax Regulations exempts the City of Ft. Smith from paying taxes on such units (see also Arkansas Code 26-52-410 a))

- Indicate compliance with checking either a YES or NO answer.
- A "YES" answer indicates 100% compliance with the entire statement. Manufacturer's bid is allowed to meet, or exceed, stated specifications, unless otherwise quantified.

Explain all "NO" answers in detail on the "Exceptions Page" (Page 12), and clearly reference the relevance to the non-conforming item(s) by section and item number.

Every item must be checked as to whether or not it meets the specifications. Any item checked as "NO" shall contain a brief description on the "Explanation" line. If you feel that further information is to be conveyed regarding that Exception, please attach a separate sheet to explain the Exception noted with the corresponding item number. In the absence of such statements, the bid shall be accepted as in strict compliance with all terms, conditions, and specifications and the bidder shall be held liable for any deviations. The loader shall include all features listed as standard in printed specifications and literature as standard, unless noted otherwise by these specifications.

The City of Fort Smith wishes to trade-in 1 (one) 2002 Case 85XT skid steer with a bucket and rotor mill (Asset 3006). The trade-in is available for inspection at the Fort Smith Street Department. You may contact Mr. Bob Wright for assistance to inspect this equipment at (479) 784-2360. The cost of the new loader shall not include the cost for trade-in. The cost of the trade-in shall be listed separately and be independent of the cost of the new loader. Should the City accept the trade-in value proposed by the bidder, the trade-in value will be subtracted from the selling price upon purchase.

LOADER MINIMUM SPECIFICATIONS

A. ENGINE

1. 4 Cylinder Turbocharged Diesel, Liquid Cooled
 YES NO

Exception: _____

2. Gross Power shall be at least 82 HP
 YES NO

Exception: _____

3. Net Power shall be at least 76 HP
 YES NO

Exception: _____

4. Displacement not less than: 195 cu. Inch
 YES NO

Exception: _____

B. POWER TRAIN/TRANSMISSION

1. Tier III Compliant
 YES NO
Exception: _____
2. Planetary gear reduction final drive
 YES NO
Exception: _____
3. Hydrostatic drive pumps splined to the engine to power final drive motors
 YES NO
Exception: _____
4. Hand and foot throttles
 YES NO
Exception: _____
5. Maximum travel speed (F/R) at least 8.0 mph
 YES NO
Exception: _____
6. Hydrostatic transmission, 2 speed
 YES NO
Exception: _____

C. BRAKES

1. Wet Multi Disc parking brake
 YES NO
Exception: _____
2. Hydraulically released parking brake (to engage when arm bar is raised)
 YES NO
Exception: _____

D. STEERING

1. Single, hydraulically operated joystick to control F/R & steering directions
 YES NO
Exception: _____
2. Seat mounted/adjusted joystick controls
 YES NO
Exception: _____
3. Joystick to use an "S" control pattern
 YES NO
Exception: _____

E. HYDRAULIC SYSTEM

1. A single hydraulically operated joystick to control loader lift and tilt functions
 YES NO
Exception: _____
2. Operating load lift to 4 ft at an idle speed/no throttle
 YES NO
Exception: _____
3. Hydraulically driven fan
 YES NO
Exception: _____
4. Minimum total flow of 22 gpm
 YES NO
Exception: _____
5. Main relief pressure of at least 3000 psi
 YES NO
Exception: _____

F. AXLES

1. Heavy duty torsion axles for proper undercarriage suspension
 YES NO
Exception: _____
2. Shock absorbing axles
 YES NO
Exception: _____

G. UNDERCARRIAGE

1. Track shall consist of molded rubber with embedded steel bars to span the width of the track
 YES NO
Exception: _____
2. Track shall consist of continuous wound steel cables to provide tensile strength
 YES NO
Exception: _____
3. Shall not be directly mounted to machine frame; to be suspended on a torsion axle suspension system
 YES NO
Exception: _____
4. Shall contain a single flange steel rear idlers
 YES NO
Exception: _____

5. Unit to have a minimum ground clearance of no less than 9.1”
 YES NO
 Exception: _____
6. Ground pressure not to exceed 4.0 psi
 YES NO
 Exception: _____
7. Elevated positive track
 YES NO
 Exception: _____

H. OPERATOR STATION

1. To be equipped with deep skid-resistant, self-cleaning steps
 YES NO
 Exception: _____
2. Shall have no foot controls to operate loader arm, tilt function or auxiliary hydraulics
 YES NO
 Exception: _____
3. Air Ride seat with retractable seat belt
 YES NO
 Exception: _____
4. Sealed and pressurized cab
 YES NO
 Exception: _____
5. To be equipped with selectable boom/bucket speed control & travel speed control
 YES NO
 Exception: _____
6. An arm bar for added comfort and safety
 YES NO
 Exception: _____
7. To be equipped with ROPS/FOPS protective structure rated to at least 12,000 lbs.
 YES NO
 Exception: _____
8. In-cab heat and air conditioner
 YES NO
 Exception: _____
9. In-cab audible warning alarms
 YES NO
 Exception: _____

10. Convex, rearview mirror
 YES NO
 Exception: _____
11. Removable window requiring no tools to use for removal
 YES NO
 Exception: _____
12. AMICS equipped
 YES NO
 Exception: _____
13. Equipped with a standard 12V electrical socket
 YES NO
 Exception: _____
14. Sliding side windows (removable)
 YES NO
 Exception: _____

I. LOADER LINKAGES/STRUCTURES

1. Linkage to be of a radial lift style
 YES NO
 Exception: _____
2. To be equipped with a split style D-ring for simple auxiliary hose securing
 YES NO
 Exception: _____
3. To be equipped with two tilt cylinders
 YES NO
 Exception: _____
4. Shall have a tipping capacity of at least 6,000 lbs.
 YES NO
 Exception: _____
5. Dump angle of at least 40 degrees
 YES NO
 Exception: _____
6. Dump clearance at full height of discharge shall be at least 87.7"
 YES NO
 Exception: _____
7. Dump reach at full height of discharge shall be at least 23.4"
 YES NO
 Exception: _____

8. Bucket width shall be a minimum of 54"

YES NO

Exception: _____

J.

OTHER OPTIONS

1. Universal coupler interface

YES NO

Exception: _____

2. Hydraulic "quick" coupler to allow engagement/disengagement without exiting machine

YES NO

Exception: _____

3. A 78" GP bucket with bolt on cutting edges

YES NO

Exception: _____

4. A high flow cold planer with planetary drive; capable of variable speed, uni-direction, axial piston style hydraulic motor to a double reduction gear box; must have automatic self leveling for consistent depth control. Planer shall be a CAT PC210 or equal with a 38" cut.

YES NO

Exception: _____

5. Drive and hydraulic pumps shall not be actuated via any mechanical linkages

YES NO

Exception: _____

6. Equipped with grouped, spin-on fuel/water separator, engine oil & hydraulic filters

YES NO

Exception: _____

7. A guard to protect the radiator, oil cooler and grill

YES NO

Exception: _____

8. Sight gauges on for the hydraulic tank and radiator

YES NO

Exception: _____

9. Standard system pressure & fluid analysis ports

YES NO

Exception: _____

10. An electronic port for electronic diagnostics

YES NO

Exception: _____

11. Maintenance points that require lifting of the cab structure are not desired; points shall be grouped in easily accessible locations

YES NO

Exception: _____

12. Solid steel door with bumper guard to protect engine compartment components

YES NO

Exception: _____

13. Rear door shall open to have easy access to both sides of engine

YES NO

Exception: _____

14. Easily accessible filters

YES NO

Exception: _____

15. Shall have a cab that tilts to the rear using a single tool & shall expose pumps, motors, valves and lines and shall be held by a self latching mechanism

YES NO

Exception: _____

K. OPERATING WEIGHT

1. Shall be at least 9,600 lbs.

YES NO

Exception: _____

L. ELECTIRCAL

1. 12 volt electrical system

YES NO

Exception: _____

2. 90 ampere Alternator

YES NO

Exception: _____

3. Automatic glow plug activation

YES NO

Exception: _____

4. Ignition key start/stop switch

YES NO

Exception: _____

5. Backup audible alarm

YES NO

Exception: _____

6. Lights to include (but not limited to): gauge backlighting, rear tail lights, rear working lights, adjustable front halogen lights, and dome light

YES NO

Exception: _____

7. Heavy duty battery of at least 880 CCA

YES NO

Exception: _____

WARRANTY: The units shall be warrantied for a minimum period of 12 months or _____ hours full coverage warranty from the date delivery is made to the City. Warranty shall include all items covered under the manufacturer's standard warranty. Warranty repairs shall be performed at any authorized dealership of the manufacturer, within an acceptable distance from the City of Fort Smith Street Department. (State maximum distance in miles: _____).

MANUALS AND PARTS LIST: Successful bidder shall furnish one copy of each of the operator's manuals, shop service manuals and parts list.

Bidder Certification and Response

I certify that I have read and understand the minimum requirements for: **One (1) Skid Steer Loader with bucket and Cold Planer** and the loader offered and listed below meet all of the requirements:

- with exceptions (as noted on the Invitation to Bid) or;
- without exceptions

Bidder shall comply with all Invitation to Bid requirements for documentation and support.

Loader

-Year: _____

-Make: _____

-Model: _____

Loader Cost: \$ _____

Trade-In

Asset 3006 \$ _____

Other

Freight (if applicable) \$ _____

Total Bid Price: \$ _____

Anticipated time of delivery: _____

Signature of Bidder/Title

Company Name

EXCEPTIONS PAGE:

Explain all "NO" answers in detail on this page, and clearly reference the relevance to the non-conforming item(s) by section and item number. If needed, please use plain paper for any additional exceptions.

SECTION & ITEM #

Conditions for Bidding

1. Submit bid on this bid form in compliance with all conditions listed.
2. Address bids to: City of Ft. Smith Purchasing, PO Box 1908, 623 Garrison Ave # 522, Ft. Smith, AR 72902.
3. Do not include Federal Excise Tax in bid.
4. State Manufacturer, Brand Name, Model, etc. for each item where applicable.
5. Samples of items, when required, must be furnished free, and, if not called for within 30 days from date of bid opening will be disposed of by City.
6. Bids received after stated date and time will not be considered.
7. Be sure to read all conditions and verify amounts before submitting bids.
8. Guarantees and warranties should be attached as a part of the bid as they may be a consideration in awarding a contract.
9. Delivery and contract completion dates are to be shown as these dates may, where time is of the essence, determine the contract award. The City may nullify a contract award for non-compliance.
10. SIGNATURE REQUIRED. This bid MUST be signed with the firm name and by an authorized officer, employee, or agent.
11. Deviations from specifications and alternate bids must be clearly shown with complete information. They may or may not be considered.
12. Freight and other delivery charges to destination at designated City facility must be included in bid. Charges may not be added after the bid is opened.
13. DISCOUNTS. Show rate, total amount, and latest day any discount will be allowed after receipt of article and invoice; otherwise City will deduct allowed discount when payment is made.
14. If unit prices and extensions thereof do not coincide, the City will accept the unit price.
15. All prices quoted will remain firm for at least 90 days after date of the bid opening, unless otherwise specified by the City or bidder.
16. In the event of two or more identical low bids, the contract may be awarded arbitrarily or for any reason to any of such bidders or split in any proportion between said two or more bidders at discretion of City.
17. Any ambiguity in any bid as the result of omission, error, lack of clarity or non-compliance by the bidder with specifications, instructions, and all conditions of bidding shall be construed in the light most favorable to the City.
18. "All or None" bid must be considered only when bidder states on bid form. "All or None" bidding is considered an "alternate".
19. All contracts shall produce NEW commodities, fresh stock, latest model and design. Re-conditioned or re-manufactured items will not be accepted.
20. Latest specifications, drawings, sketches or other descriptive literature containing detailed information as to design, construction and operation shall be included.
21. All necessary parts, accessories and tools for satisfactory operations of the units shall be furnished whether or not they specifically mentioned in these specifications. Bidder shall submit a list of tools and equipment they propose to furnish.
22. Any protest of specifications or bidding process must be received in writing by the Purchasing Department at least five (5) days prior to the specified bid opening date.
23. Any protest of bid award must be in writing and received by the Purchasing Department no later than three (3) days after notice of intent to award has been made. If said item requires Board of Directors approval, written protest must be received by the Purchasing Department no later than five (5) days prior to the next Board of Directors meeting at which the recommended bid award will be considered.
24. The City will not be responsible for lost or misplaced bids due to vendor omission of bid item and/or bid opening date information on the outside of the sealed bid envelope. Failure by vendor to note said information on the bid envelope may result in the bid not being considered.

THE CITY RESERVES THE RIGHT TO ACCEPT PART OR ALL OF ANY SPECIFIC BID OR BIDS AND TO ACCEPT ANY BID OR BIDS WITH OR WITHOUT TRADE-IN. THE CITY FURTHER RESERVES THE RIGHT TO REJECT ALL BIDS, OR PART OR ALL OF ANY SPECIFIC BID OR BIDS.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT
WITH RJN GROUP, INC., FOR PROVIDING ENGINEERING SERVICES
ASSOCIATED WITH THE WASTEWATER COLLECTION
SYSTEM FLOW MONITORING SERVICES**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT
SMITH, ARKANSAS, that:

SECTION 1: An Agreement with RJN Group, Inc., for providing engineering services associated
with Year 2011 Wastewater Collection System Flow Monitoring Services, Project 11-01-E1, is hereby
approved.

SECTION 2: The Mayor is hereby authorized to execute an Agreement, in the amount of
\$87,604.00, for performance of said services.

This Resolution adopted this _____ day of May 2011.

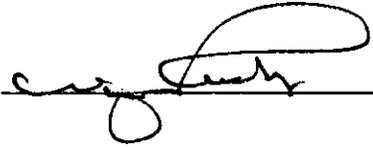
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: April 18, 2011

FROM: Steve Parke, Director of Utilities

SUBJECT: Year 2011 Wastewater Collection System Flow Monitoring

In support of our efforts to address wastewater collection system overflows that occur during periods of heavy rainfall, we have been conducting yearly flow monitoring within selected basins. This flow monitoring effort, together with the collection of rainfall data within the basin, both quantifies wet weather inflows prior to system rehabilitation and documents flow reduction following construction. For Year 2011 staff has identified four areas for which wastewater collection system flow monitoring are needed.

The first area will document flow reduction results following system rehabilitation within Sub-basin 10-2 recently completed under a contract authorized by the Board in January 2010. The second area will monitor flows within Sub-basins Z004 and Z005 which are located within Fianna Hills and contain manholes with documented wet weather overflows. This data will assist us in defining future, detailed collection system investigations and rehabilitation. The third area is located in the upper reaches of our Sunnymede Basin and include Sub-basins S007, S008 and S009. These sub-basins experience similar wet weather overflows but are too far upstream of recently reconstructed outfall sewer lines to benefit from those improvements.

Flow monitoring will guide our efforts in defining future line improvement projects to eliminate these problems. The final area for flow monitoring is the Riverlyn Basin which experiences a few, frequently occurring manhole overflows which impact water quality within Carol Ann Cross Lake. Flow monitoring will be followed by a separate contract for a sewer system evaluation study and rehabilitation recommendations that will be brought to the Board at a later date. I have attached four exhibits which provide more detail on each of the areas proposed for flow monitoring.

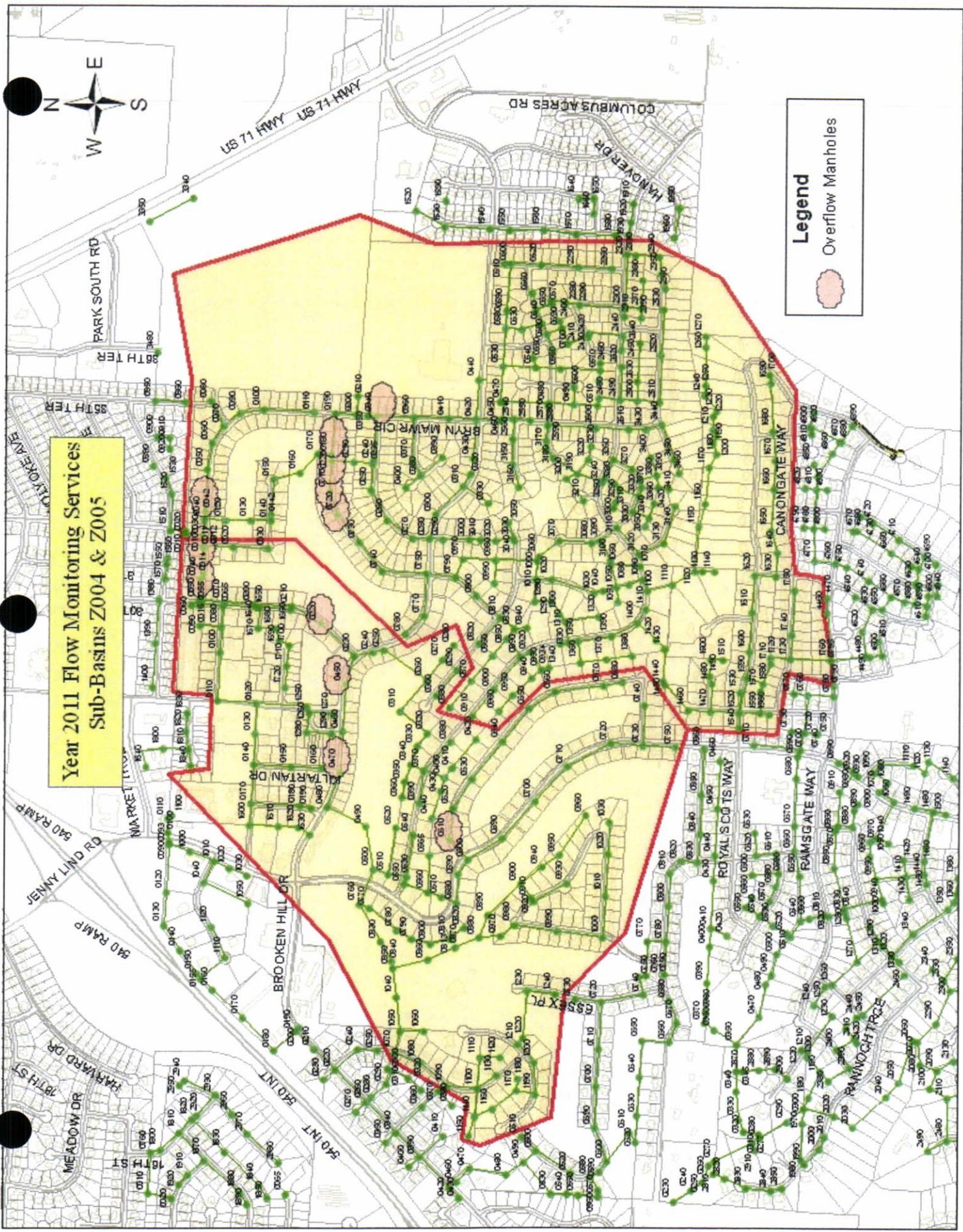
The attached Resolution authorizes an agreement with RGN Group, Inc., in the amount of \$87,604, for providing Year 2011 flow monitoring services. RJN Group has provided wastewater collection system flow monitoring, sewer collection system evaluations, and system rehabilitation design and inspection services for the city since July 2007. Funds for this service are available from the sales and use tax bond funds for wastewater improvements.

Should you or members of the Board have questions or need any additional information, please let me know.

attachment

Year 2011 Flow Monitoring Services Sub-Basin 10-2 Post Construction Monitoring



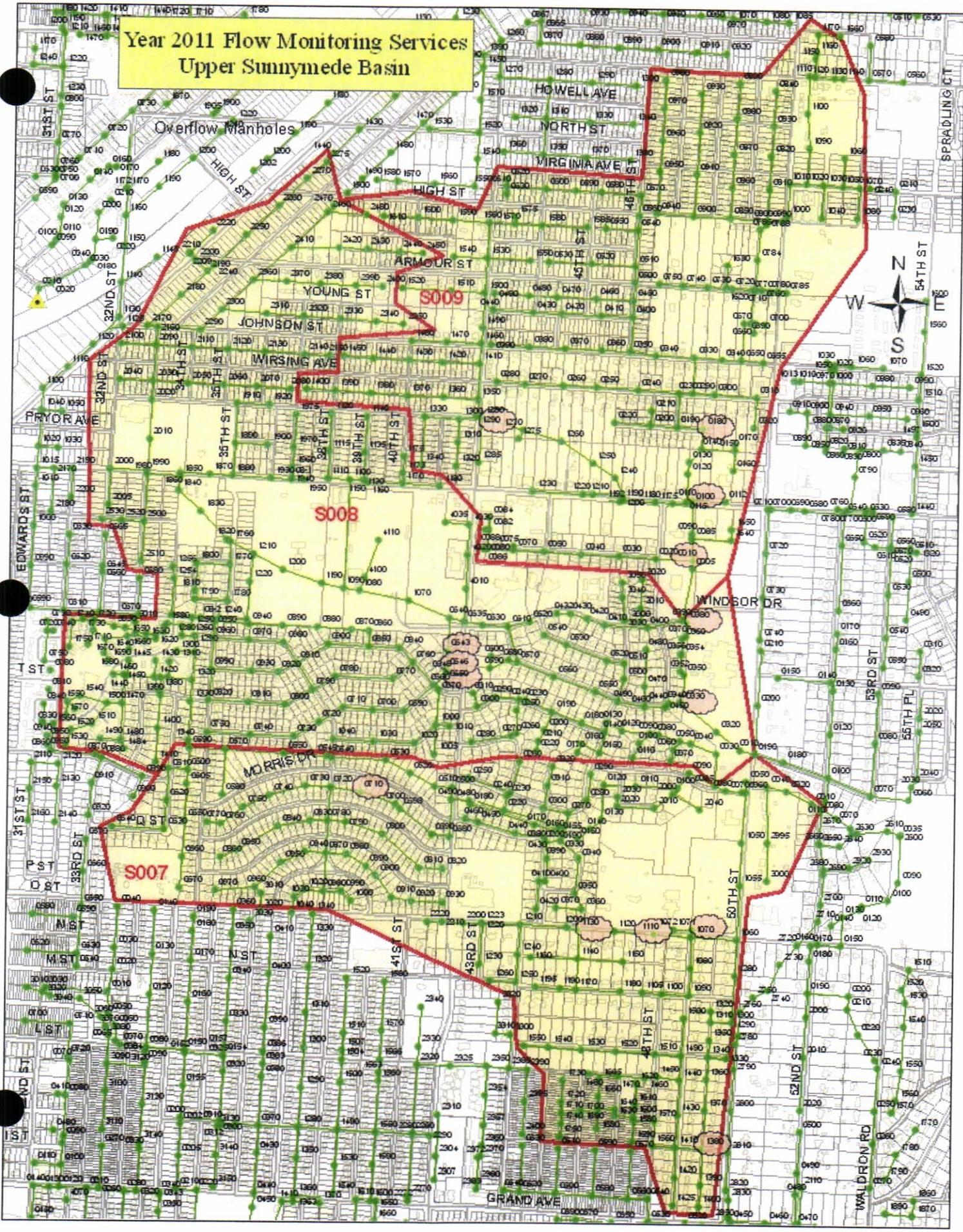


**Year 2011 Flow Monitoring Services
Sub-Basins Z004 & Z005**

Legend

- Overflow Manholes

Year 2011 Flow Monitoring Services Upper Sunnymede Basin



Year 2011 Flow Monitoring Services Riverlyn Basin



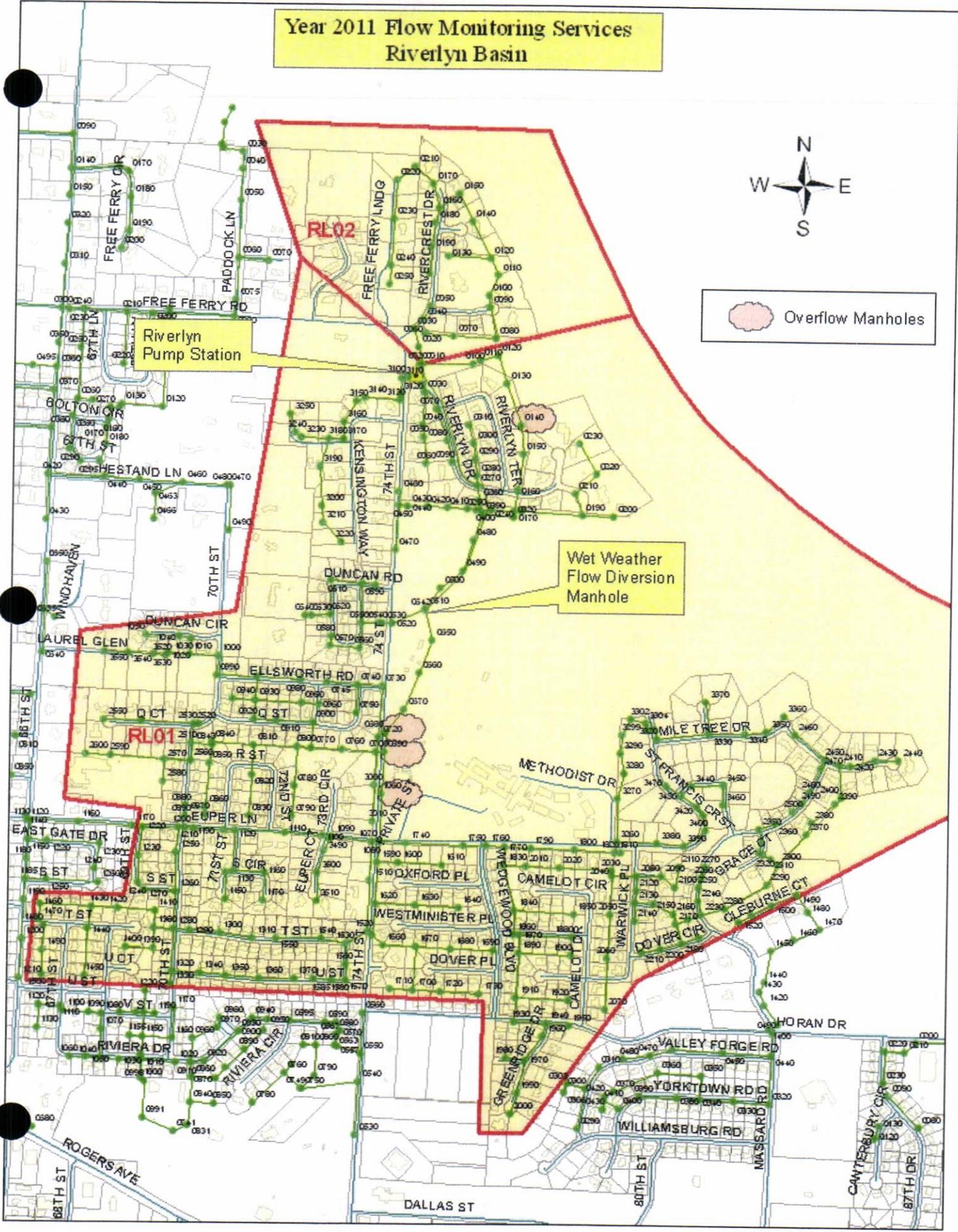
Overflow Manholes

RL02

Riverlyn Pump Station

Wet Weather
Flow Diversion
Manhole

RL01



RESOLUTION NO. _____

RESOLUTION AUTHORIZING CHANGE ORDER NUMBER TWO WITH THE BURGESS COMPANY, INC., FOR CONSTRUCTION OF THE LAKE FORT SMITH WATER TREATMENT PLANT CONTRACT 2 - RESIDUALS LAGOONS

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

Change Order Number Two with The Burgess Company, Inc., in the amount of \$30,164.70, adjusting the final contract amount to \$2,875,045.20, and adding 153 calendar days to the contract time, is hereby approved.

This Resolution adopted this ____ day of May 2011.

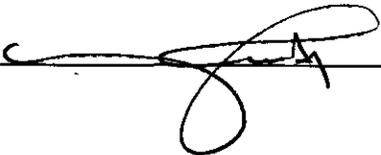
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

_____
npr

RESOLUTION NO. _____

10 G

RESOLUTION AUTHORIZING FINAL PAYMENT TO THE BURGESS COMPANY, INC.,
FOR CONSTRUCTION OF THE LAKE FORT SMITH WATER TREATMENT
PLANT CONTRACT 2 - RESIDUALS LAGOONS IMPROVEMENTS

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH,
ARKANSAS, that:

SECTION 1: The construction of the Lake Fort Smith Water Treatment Plant, Contract 2 -
Residuals Lagoons Improvements, Project Number 07-09-C2, is hereby accepted as complete.

SECTION 2: Final payment to The Burgess Company, Inc., in the amount of
\$116,749.64, is hereby approved.

This Resolution adopted this ____ day of May 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: APRIL 25, 2011

FROM: Steve Parke, Director of Utilities

SUBJECT: Lake Fort Smith Water Treatment Plant
Residuals Lagoons, Project No. 07-09-C2
Final Payment and Change Order Number Two

On May 5, 2009, the Board authorized a contract in the amount of \$2,789,307.50 with The Burgess Company, Inc., for construction of the Lake Fort Smith Water Treatment Plant Residuals Lagoons, Contract 2, Project Number 07-09-C2. The residual lagoons capture the filter backwash solids and sludge blowdown from process units allowing the organic and chemical residuals to settle out and not be discharged into the receiving stream. All work has been completed and a final pay request has been prepared.

Included with the final pay request is Change Order Number Two in the amount of \$30,164.70, adjusting the contract amount to \$2,875,045.20 and adding 153 calendar days to the contract time. Change Order Number Two adjusted final bid quantities for additional riprap for slope protection, underdrains and stone stabilization for the bottom of Lagoon number 2. Additional contract time reflects contractor's request for inclement weather and other delays experienced during construction of the project that can be substantiated by the project engineer's records and inspector's daily logs.

Even with the addition of 153 days, the contractor did not reach substantial completion of the project until 73 days beyond the adjusted contract completion date. The contract then allows 30 calendar days after substantial completion to complete all remaining items of work. The contractor took an additional 39 days beyond the 30 day period allowed to reach final completion. Consequently, the final pay application reflects a total of \$66,700.00 in liquidated damages deducted from final payment due.

Two Resolutions are attached for the Board's consideration. The first authorizes Change Order Number Two in the amount of \$30,164.70 and adds 153 days to the contract time. The second Resolution accepts the project as complete and authorizes final payment to Burgess Company in the amount of \$116,749.64. I have also attached a project summary sheet for your review.

Should you or members of the Board have questions or need any additional information, please let me know.

attachment

Project Summary

Project status: Complete

Project name: Lake Fort Smith Water Treatment Plant
Improvements - Contract 2

Today's date: April 25, 2011

Project number: **07-09-C2**

Staff contact name: Steve Parke

Project engineer: Burns & McDonnell, Inc.

Staff contact phone: 784-2231

Project contractor: The Burgess Company, Inc.

Notice to proceed issued: June 1, 2009

	Dollar Amount	Contract Time (Days)
Original contract	\$2,789,307.50	300
Change orders:		
1	\$55,573.00	5
2 (Pending)	\$30,164.70	153
Total change orders	\$85,737.70	<u>158</u>
Adjusted contract	<u>\$2,875,045.20</u>	<u>458</u>
Payments to date (as negative):	\$-2,691,595.56	
Liquidated damages (as negative)	-\$66,700.00	
Amount of this payment (as negative)	-\$116,749.64	
Contract balance remaining	\$0.00	
Amount over as a percentage	1.0%	

Final Comments:

ORDINANCE NO. _____

AN ORDINANCE DECLARING AN EXCEPTIONAL SITUATION AND WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING AND ACCEPTING THE BID OF AND AUTHORIZING A CONTRACT WITH THE HARRIS COMPANY OF FORT SMITH, INC., FOR COMPLETION OF RYE HILL SEWER OUTFALL SEWER IMPROVEMENTS - PHASE IV

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

WHEREAS, Wilson Brothers Construction Company, Inc., the original contractor for the Rye Hill Outfall Sewer Improvements - Phase IV, notified the city of business closing and inability to complete construction of the project; and,

WHEREAS, Surety for Wilson Brothers Construction Company, Inc., failed to complete solicitation of contractor pricing for completion of the project and otherwise submit an appropriate agreement for contract completion for City consideration; and,

WHEREAS, considerable time has elapsed since the original contractor's default leaving the project site in an unkept and unfinished condition resulting in unsightly conditions and numerous citizen complaints; and,

WHEREAS, it is necessary for the City to secure bid proposals from qualified contractors for completion of the project precluding the City from meeting all of the normal requirements of competitive bidding. Now, Therefore,

SECTION 1: An exceptional situation exists requiring the waiving of the normal conditions of competitive bidding, so that competitive bidding requirements are hereby waived with the reference to a contract to complete the Rye Hill Sewer Outfall Improvements - Phase IV. The bid of Harris Company of Fort Smith, Inc., is hereby accepted.

SECTION 2: The Mayor is hereby authorized to execute, his signature being attested by the City Clerk, a contract with Harris Company of Fort Smith, Inc., in the amount of \$346,630.50 for completion of the project.

This Ordinance adopted on this _____ day of May 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

_____
npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: APRIL 26, 2011

FROM: Steve Parke, Director of Utilities

SUBJECT: Rye Hill Sewer Outfall Phase IV

On February 15, 2011, the Board authorized the City Administrator to issue a notice of termination of services to Wilson Brothers Construction Company for construction of the Rye Hill Sewer Outfall Phase IV project. I have attached a copy of the February 8, 2011, memo for your reference.

Staff immediately contacted Wilson Brother's surety and provided, at their request, the names and contact information for local utility contractors that could complete the project. After six weeks of inactivity by surety and numerous calls and complaints from property owners inconvenienced by project's unsightly conditions, staff contacted four local contractors to determine their interest in submitting a bid to the city for completion of the work. Because of the length of time required for a normal bidding process and the need to expedite startup and completion of the project, the contractors who expressed an interest attended a pre-bid meeting detailing the scope of work remaining and were invited to submit sealed bids. On April 25, 2011, we received three bids for completion of the project. The low bid was submitted by Harris Company of Fort Smith, Inc., in the amount of \$346,630.50. A bid tabulation showing the bids received is attached. Funds remaining from the original Wilson Brothers contract total \$368,149.41 plus \$58,740.75 held as retainage from work previously completed.

An Ordinance declaring an emergency situation, waiving the requirements for competitive bidding, accepting the bid of Harris Company and authorizing the Mayor to execute a construction contract is attached. Under terms of the contract, Harris Company will have 90 consecutive calendar days to substantially complete the project plus an additional 20 days for full completion.

Should you or members of the Board have questions or need any additional information, please let me know.

attachment

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: February 8, 2011

FROM: Steve Parke, Director of Utilities

SUBJECT: Rye Hill Sewer Outfall Phase IV
Termination of Services with Wilson Brothers Construction Company, Inc.
Project Number 08-08-C4

On July 20, 2010, the Board authorized a contract with Wilson Brothers Construction Company, Inc., for construction of the Rye Hill Sewer Outfall Phase IV, Project No. 08-08-C4. Wilson Brothers was issued a notice to proceed effective September 1, 2010, and by contract given 120 days to substantially complete schedule 1 construction activities and 210 days to substantially complete schedule 2 construction activities. As of January 1, 2011, Wilson Brothers had completed 77% of schedule 1 and 61% of schedule 2.

On February 7, 2011, the city was notified that Wilson Brothers Construction Company, Inc., had closed their office and laid off all employees. Under terms of the contract general conditions this action by contractor allows the city to terminate the services of contractor after giving the contractor and his surety seven days written notice. Obligation to insure completion of the project becomes the responsibility of contractor's surety under terms of the Arkansas Performance and Payment Bond. Attached you will find a resolution authorizing the City Administrator to issue notice to the contractor and surety of the city's intent to terminate contractor's services and, further, to investigate all reasonable methods of obtaining completion of the contracted work.

Should you or members of the Board have any questions or need any additional information, please let me know.

attachment

Tabulation of Bids Received
Page 1 of 1

Project Name

Rye Hill Sewer Outfall Phase IV
Project No. 08-08-C4

Bid Opening

April 25, 2011
2:00 P.M.

Bids Received

Harris Company Fort Smith, AR	<u>\$ 346,630.50</u>
Forsgren, Inc. Fort Smith, AR	<u>\$ 398,612.00</u>
Kraus Construction Fort Smith, AR	<u>\$ 580,765.00</u>



April 28, 2011

TO: Members of the Board of Directors
Members of the Port Authority

RE: Appointments:

The term of Mr. Eddie Norman of the Port Authority will expire July 31, 2011. In accordance with Ordinance No. 2926 nominations for this prospective vacancy are now being received.

Please submit nominations to the city administrators office no later than the close of business on May 27, 2011. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to www.fortsmithar.gov and click on boards and commissions.

Sincerely,

A handwritten signature in black ink that reads "Ray Gosack". The signature is written in a cursive style.

Ray Gosack
City Administrator

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(479) 785-2801
Administrative Offices FAX (479) 784-2430



April 28, 2011

TO: Members of the Board of Directors
Members of the Mechanical Board of Adjustments and Appeals

RE: Appointments:

The term of Mr. Bob Hawkins of the Mechanical Board of Adjustments and Appeals will expire July 31, 2011. In accordance with Ordinance No. 2926 nominations for this prospective vacancy are now being received.

Please submit nominations to the city administrators office no later than the close of business on May 27, 2011. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to www.fortsmithar.gov and click on boards and commissions.

Sincerely,

A handwritten signature in black ink that reads "Ray Gosack".

Ray Gosack
City Administrator

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(479) 785-2801
Administrative Offices FAX (479) 784-2430



April 27, 2011

TO: Members of the Board of Directors
Members of the Historic District Commission

RE: Appointments:

The terms of Mr. Graham Sharum and Ms. Clara Jane Rubarth of the Historic District Commission will expire July 31, 2011. In accordance with Ordinance No. 2926 nominations for this prospective vacancy are now being received.

Please submit nominations to the city administrators office no later than the close of business on May 27, 2011. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to www.fortsmithar.gov and click on boards and commissions.

Sincerely,

A handwritten signature in black ink that reads "Ray Gosack".

Ray Gosack
City Administrator

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(479) 785-2801
Administrative Offices FAX (479) 784-2430



April 27, 2011

TO: Members of the Board of Directors
Members of the Transit Advisory Commission

RE: Appointments:

The term of Mr. Charles Mills of the Transit Advisory Commission will expire July 15, 2011. In accordance with Ordinance No. 2926 nominations for this prospective vacancy are now being received.

Please submit nominations to the city administrators office no later than the close of business on May 27, 2011. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to www.fortsmithar.gov and click on boards and commissions.

Sincerely,

A handwritten signature in black ink that reads "Ray Gosack". The signature is written in a cursive style.

Ray Gosack
City Administrator

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(479) 785-2801
Administrative Offices FAX (479) 784-2430



April 27, 2011

TO: Members of the Board of Directors
Members of the Oak Cemetery Commission

RE: Appointments:

Mr. Jerry Akins of the Oak Cemetery Commission will resign his position on May 13, 2011. In accordance with Ordinance No. 2926 nominations for this prospective vacancy are now being received.

Please submit nominations to the city administrators office no later than the close of business on May 27, 2011. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to www.fortsmithar.gov and click on boards and commissions.

Sincerely,

A handwritten signature in black ink that reads "Ray Gosack". The signature is written in a cursive, slightly slanted style.

Ray Gosack
City Administrator

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(479) 785-2801
Administrative Offices FAX (479) 784-2430

**MINUTES OF AIRPORT COMMISSION REGULAR MEETING
TUESDAY – MARCH 22, 2011
FORT SMITH REGIONAL AIRPORT CONFERENCE ROOM**

The regular meeting of the Fort Smith Airport Commission was called to order at 5:30 p.m. Commissioners Carter, Deramus, Devero, Haver, Melvin and Nordin were present. Commissioner Archer was absent. Chairman Nordin called the meeting to order. Also present were John Parker, Airport Director; Kathy Boze, Director of Administration; and Michael Griffin, Director of Operations.

ADOPTION OF MINUTES

On a motion by Commissioner Devero and second by Carter, the Commission approved the Minutes of the Regular Meeting of February 22, 2011. Voting aye: Carter, Deramus, Devero, Haver, Melvin and Nordin. Voting nay: none.

FINANCIAL STATEMENT

Staff presented an overview and answered questions regarding the financials for the period ending February 28, 2011.

ITEMS OF BUSINESS

1. Report on 2010 Audit. As required by Arkansas Statute, the 2010 Audit for the Fort Smith Regional Airport has been completed by the firm of BKD and was submitted for the commission's review. Joel Haaser and David Coleman, representatives of BKD, presented an overview of the Audit Report and Management Letter. Mr. Haaser and Mr. Coleman said the audit reflected no findings and in their opinion the financial records are very well maintained. Copies will be sent to the City Administrator, the FAA and the bond trustees at which time the Audit is accepted by the Commission. The auditors reminded the Commission there is a possible post-employment benefit liability that may be required in the future.

Commissioner Deramus made a motion and seconded by Carter to accept the Audit Report as stated. Voting aye: Carter, Deramus, Devero, Haver, Melvin and Nordin. Voting nay: none.

2. Airport Activities/Projects
 - A. Construction on the Airfield Electrical Project is complete with the exception of minor cleanup. The actual runway lighting system is installed and functional. The final inspection will be scheduled within the next two weeks in order to close out the project.
 - B. Design of Taxiway A West continues with the associated airspace review and environmental construction safety plans. Personnel from the air traffic control tower, Morrison-Shipley Engineers and the airport have discussed and developed the safety preliminaries for all of these items. Staff's intent is to establish a grant application and be in position to bid the first construction phase of the Taxiway Realignment project as the funding becomes available from the FAA.

Minutes of F.S.A.C. Regular Meeting

March 22, 2011

Page 2

- C. Digital advertising has been installed at the baggage claim area with two 50 inch Plasma screens and small wireless computers. The panels will rotate advertising and public address information throughout the day.
- D. New and re-upholstered seating was delivered and placed in the secured departure lounge.
- E. As part of our Wildlife Hazard Assessment project staff attended a wildlife hazards identification course instructed by Loomacres.
- F. Staff members attended the FAA Spring Partnership Conference and an Airport Finance and Administration Conference.
- G. Staff members will attend an AAAE Snow Symposium and a Passenger Facilities Charge (PFC) Conference in April.
- H. In response to a question concerning the development at Phoenix and McKennon Blvd., staff reported the proposed development will not occur but staff is still in negotiations with the developer.

NEXT COMMISSION MEETING

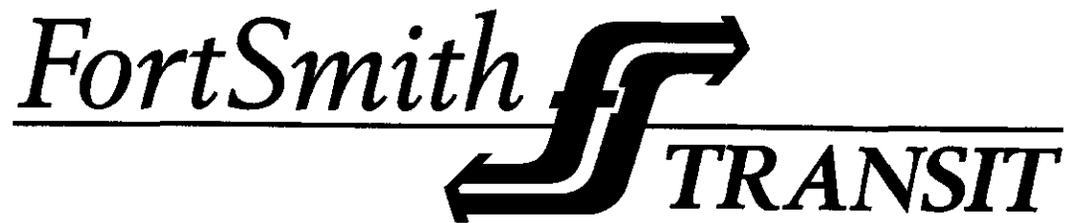
The next regularly scheduled meeting of the Fort Smith Airport Commission will be Tuesday, April 26, 2011 at 5:30 p.m. in the Fort Smith Regional Airport Conference Room.

ADJOURNMENT

On a motion by Commissioner Haver and second by Carter the meeting adjourned at 5:59 p.m.

Respectfully submitted,


John Parker
Airport Director



MEETING NOTICE

April 27, 2011

There will be a Transit Commission meeting at 12:00 noon on Thursday, May 19, 2011 in the public meeting room of the Fort Smith Transit office located at 6821 Jenny Lind. If you have any questions or need additional information regarding this meeting you may contact Fort Smith Transit at 783-6464.

May 2011

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday																																																																																																		
1	2	3 6:00 PM Board of Directors/FSM Public Schools Service Cntr.	4 11:30 AM Planning Com. Study Ses./Creekmore 12:00 PM Trails & Greenways Com./Creekmore	5 12:00 PM Housing Assistance Bd./Library	6	7																																																																																																		
8	9	10 12:00 PM Board of Directors/Study Ses./Library 5:30 PM Planning Com./Creekmore	11 11:30 AM Parks Com./Creekmore	12 12:00 PM Oak Cemetery Com./Creekmore 5:30 PM Historic Dist. Com./220 North 7 Street	13	14																																																																																																		
15	16	17 4:30 PM Library Board of Trustees/Main Library 6:00 PM Board of Directors/FSM Public Schools Serv. Cntr.	18	19	20	21																																																																																																		
22	23	24 12:00 PM Board of Directors Study Ses./Library 4:00 PM A & P Com./Miss Laura's 5:30 PM Airport Com./Airport-Adm. Office Conf. Rm.	25	26 5:30 PM Historic District Study Ses./220 North 7 Street	27	28																																																																																																		
29	30 CITY OFFICES CLOSED IN OBSERVANCE OF MEMORIAL DAY	31 12:00 PM Board of Directors Study Ses./Library (tentative)	<table border="1"> <thead> <tr> <th colspan="7">Apr 2011</th> <th colspan="7">Jun 2011</th> </tr> <tr> <th>S</th><th>M</th><th>T</th><th>W</th><th>T</th><th>F</th><th>S</th> <th>S</th><th>M</th><th>T</th><th>W</th><th>T</th><th>F</th><th>S</th> </tr> </thead> <tbody> <tr> <td></td><td></td><td></td><td></td><td></td><td>1</td><td>2</td> <td></td><td></td><td></td><td>1</td><td>2</td><td>3</td><td>4</td> </tr> <tr> <td>3</td><td>4</td><td>5</td><td>6</td><td>7</td><td>8</td><td>9</td> <td>5</td><td>6</td><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td> </tr> <tr> <td>10</td><td>11</td><td>12</td><td>13</td><td>14</td><td>15</td><td>16</td> <td>12</td><td>13</td><td>14</td><td>15</td><td>16</td><td>17</td><td>18</td> </tr> <tr> <td>17</td><td>18</td><td>19</td><td>20</td><td>21</td><td>22</td><td>23</td> <td>19</td><td>20</td><td>21</td><td>22</td><td>23</td><td>24</td><td>25</td> </tr> <tr> <td>24</td><td>25</td><td>26</td><td>27</td><td>28</td><td>29</td><td>30</td> <td>26</td><td>27</td><td>28</td><td>29</td><td>30</td><td></td><td></td> </tr> </tbody> </table>				Apr 2011							Jun 2011							S	M	T	W	T	F	S	S	M	T	W	T	F	S						1	2				1	2	3	4	3	4	5	6	7	8	9	5	6	7	8	9	10	11	10	11	12	13	14	15	16	12	13	14	15	16	17	18	17	18	19	20	21	22	23	19	20	21	22	23	24	25	24	25	26	27	28	29	30	26	27	28	29	30		
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