



# ***AGENDA***

## **FORT SMITH BOARD OF DIRECTORS REGULAR MEETING**

***JULY 6, 2010 ~ 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 AND 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 JUNE 15, 2010 REGULAR MEETING**

### **ITEMS OF BUSINESS:**

Presentation of the 2009 Audit

1. Ordinance amending the Master Land Use Plan map from Not Classified to General Commercial and rezoning identified property from Unzoned to Commercial-3 by extension *(12200 Highway 71 South)*
2. Ordinance amending the Master Land Use Plan map from Residential Detached and Mixed Use Employment to Industry and rezoning identified property from Industrial-2 to Industrial Heavy (I-3) by extension *(2622 North 17<sup>th</sup> Street)*
3. Ordinance amending Chapter 20, Article II of the Fort Smith City Code of Ordinances regulating alarm systems
4. Resolution of the City of Fort Smith certifying local government endorsement of business to participate in the Tax Back Program (as authorized by Section 15-4-2706(d) of the Consolidated Incentive Act of 2003) *(Mitsubishi Power Systems Americas, Inc. )*

5. Consent Agenda

- A. Resolution granting a temporary revocable license for the placement of an automatic teller machine (ATM) in a drainage easement and authorizing Mayor to execute agreement (*Zero Mart, Inc. / 4300 South Zero Street*)
- B. Resolution authorizing the execution of a memorandum of understanding concerning mobile data support between the City of Fort Smith, Arkansas and the City of Van Buren, Arkansas
- C. Resolution authorizing acquisition of real property interests for the Lake Fort Smith Water Supply Project (\$276,600.00)
- D. Resolution accepting the project as complete and authorizing final payment to Forsgren, Inc. for construction of Wet Weather Line Capacity Improvements, South "O" Street (\$491,395.15)

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

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

**EXECUTIVE SESSION**

Performance evaluation: 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 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 June 8, 2010, that said change be made; and,

WHEREAS, the 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. 9-6-10 to rezone certain properties hereinafter described, and, having considered said request, recommended on June 8, 2010, 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 Unclassified to General Commercial and the Master Land Use Plan Map is hereby amended to reflect said amendment to-wit:

A part of the Southwest Quarter (SW ¼) of the Southwest Quarter (SW ¼) of Section 24, Township 7 North, Range 32 West, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at a found rebar at the Southwest Corner of said Southwest Quarter (SW ¼) of the Southwest Quarter (SW ¼) of Section 24; thence North 02°19'31"

Approved As to Form:

  
\_\_\_\_\_  
City Attorney  
*Publish 1 time*

East along the West line of said Southwest Quarter (SW ¼) of the Southwest Quarter (SW ¼) a distance of 651.32 feet to an existing PK nail; thence leaving said West line, South 87°48'11" East and along the South line of Didier Commercial Park, Lots 1A & 1B, as filed for record March 17, 2008, a distance of 290.36 feet to a set ½" rebar and the POINT OF BEGINNING; thence South 87°48'11" East along said South line a distance of 39.43 feet to a found ½" rebar, thence North 62°18'47" East along said South line a distance of 174.52 feet to a found ½" rebar at the Southeast corner of Lot 1B, Didier Commercial Park; thence South 27°41'13" East along the Westerly right-of-way line of U. S. Highway No. 71 a distance of 416.00 feet to a set ½" rebar; thence leaving said Westerly right-of-way line, South 62°18'47" West a distance of 208.71 feet to a set ½" rebar; thence North 27°41'13" West a distance of 435.64 feet to the Point of Beginning, containing 87,159 square feet or 2.00 acres more or less, and being subject to any public road rights-of-way, or easements of record.

more commonly known as 12200 Highway 71 South is hereby amended on the Master Land Use Plan from Not Classified to General Commercial.

**SECTION 2:** The hereinafter described property is hereby rezoned from Not Zoned to Commercial Moderate (C-3) by Extension:

A part of the Southwest Quarter (SW ¼) of the Southwest Quarter (SW ¼) of Section 24, Township 7 North, Range 32 West, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at a found rebar at the Southwest Corner of said Southwest Quarter (SW ¼) of the Southwest Quarter (SW ¼) of Section 24; thence North 02°19'31" East along the West line of said Southwest Quarter (SW ¼) of the Southwest Quarter (SW ¼) a distance of 651.32 feet to an existing PK nail; thence leaving said West line, South 87°48'11" East and along the South line of Didier Commercial Park, Lots 1A & 1B, as filed for record March 17, 2008, a distance of 290.36 feet to a set ½" rebar and the POINT OF BEGINNING; thence South 87°48'11" East along said South line a distance of 39.43 feet to a found ½" rebar, thence North 62°18'47" East along said South line a distance of 174.52 feet to a found ½" rebar at the Southeast corner of Lot 1B, Didier Commercial Park; thence South 27°41'13" East along the Westerly right-of-way line of U. S. Highway No. 71 a distance of 416.00 feet to a set ½" rebar; thence leaving said Westerly right-of-way line, South 62°18'47" West a distance of 208.71 feet to a set ½" rebar; thence North 27°41'13" West a distance of 435.64 feet to the Point of Beginning, containing 87,159 square feet or 2.00 acres more or less, and being subject to any public road rights-of-way, or easements of record.

more-commonly known as 12200 Highway 71 South, should be, and is hereby rezoned from

Not Zoned to Commercial Moderate (C-3) by Extension.

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

**PASSED AND APPROVED THIS \_\_\_\_ DAY OF JULY, 2010.**

**APPROVED:**

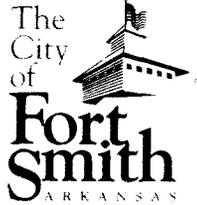
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**Mayor**

**ATTEST:**

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**City Clerk**



June 29, 2010

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

**Re: Master Land Use Plan Amendment from Not Classified to General Commercial and Rezoning #9-6-10; A request by Neal Morrison, agent, for Planning Commission consideration of a zoning change from Not Zoned to Commercial Moderate (C-3) by Extension located at 12200 Highway 71 South.**

On June 8, 2010, the City Planning Commission held a public hearing to consider the above requests.

Ms. Brenda Andrews read the staff reports for these items. Ms. Andrews stated that the purpose of these requests is to facilitate the construction of a restaurant with a beer garden on the proposed Didier Commercial Park, Lot 2 property. Ms. Andrews stated that a traffic information statement was provided by the applicant and reviewed by the Fort Smith Engineering Department and the information provided concerning the proposed Didier Commercial Park, Lot 2 was acceptable to the Engineering Department. However, it was noted that any future development on proposed Lots 3 and 4 would require an additional traffic information statement or traffic impact analysis.

Ms. Andrews noted that a neighborhood meeting was held on June 1, 2010, at 6:00 p.m. at the Rye Hill Fire Station with no neighboring property owners attending the meeting. She did note, however, that a letter had been received from Ms. Sue Morgan expressing her opposition to the outdoor beer garden. The proposed restaurant has an outdoor dining and drinking area which meets the definition of a beer garden. Ms. Andrews stated that since the letter from Ms. Morgan was received, the developer, Mr. Jimmie Didier, had met with Ms. Morgan to explain the development to her. Ms. Andrews stated that Ms. Morgan notified the planning department that she had withdrawn her objections to the requests.

A conditional use / development plan was also reviewed by the Planning Commission. The development plan included a review of the outdoor dining issue as well as other site related issues. A copy of the development plan is included. An issue related to the development plan concerned the proper and safe location of driveways. After discussion and future analysis the driveway will be relocated to the median cut. This will be the only driveway for this development.

Mr. Neal Morrison was present to speak on behalf of these requests.

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

Several Commissioners expressed their concerns relative to the driveways, safety and traffic issues.

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

Following a discussion by the Commission, Chairman Griffin then called for the vote on the Master Land Use Plan Amendment. The Master Land Use Plan Amendment was approved by a vote of 9 in favor and 0 opposed.

Chairman Griffin then called for the vote on the rezoning request. The vote was 9 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.

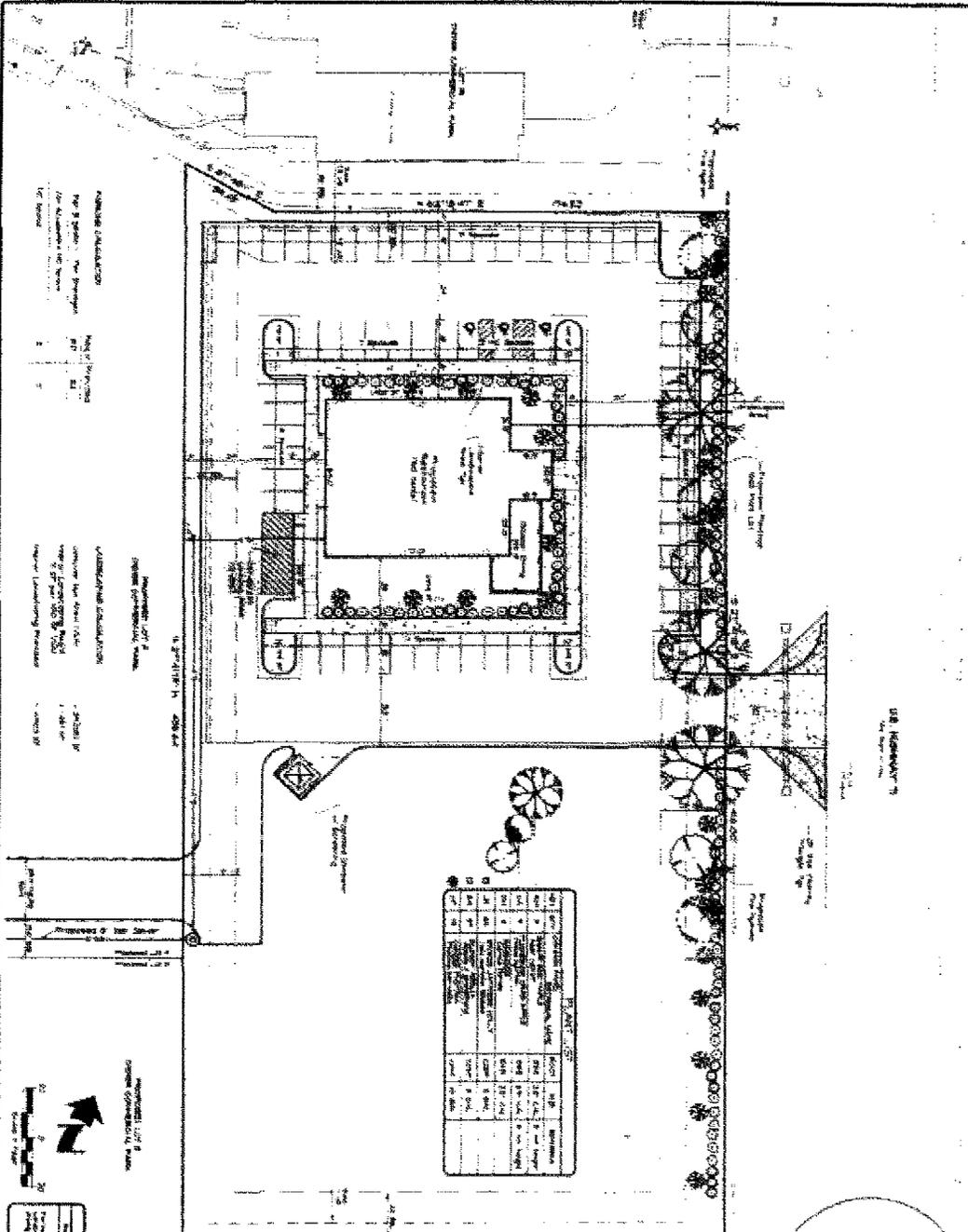
Respectfully Submitted,

CITY PLANNING COMMISSION

Steve Griffin, Chairman

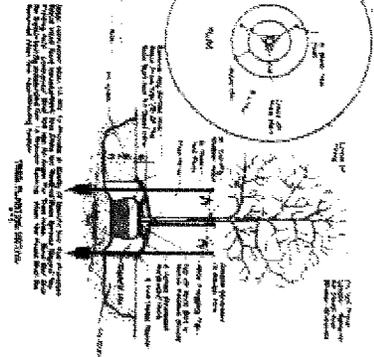
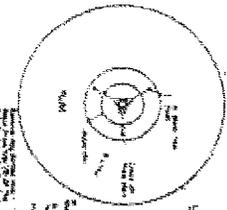
SG/lp

cc: File  
City Administrator



SEE REVISIONS 7

NO.	DESCRIPTION	DATE	BY	CHKD.
1	ISSUED FOR PERMIT	11/15/11	JMS	JMS
2	REVISIONS	11/15/11	JMS	JMS
3	REVISIONS	11/15/11	JMS	JMS
4	REVISIONS	11/15/11	JMS	JMS
5	REVISIONS	11/15/11	JMS	JMS
6	REVISIONS	11/15/11	JMS	JMS
7	REVISIONS	11/15/11	JMS	JMS
8	REVISIONS	11/15/11	JMS	JMS
9	REVISIONS	11/15/11	JMS	JMS
10	REVISIONS	11/15/11	JMS	JMS



**NOTES:**

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
2. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL GOVERNMENT AND STATE AGENCIES.
3. THE DEVELOPER SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
4. THE DEVELOPER SHALL MAINTAIN ALL EXISTING UTILITIES AND STRUCTURES UNLESS OTHERWISE NOTED.
5. THE DEVELOPER SHALL MAINTAIN ALL EXISTING TREES AND LANDSCAPE UNLESS OTHERWISE NOTED.
6. THE DEVELOPER SHALL MAINTAIN ALL EXISTING DRIVEWAYS AND PAVEMENT UNLESS OTHERWISE NOTED.
7. THE DEVELOPER SHALL MAINTAIN ALL EXISTING FENCES AND WALLS UNLESS OTHERWISE NOTED.
8. THE DEVELOPER SHALL MAINTAIN ALL EXISTING SIGNAGE UNLESS OTHERWISE NOTED.
9. THE DEVELOPER SHALL MAINTAIN ALL EXISTING UTILITIES AND STRUCTURES UNLESS OTHERWISE NOTED.
10. THE DEVELOPER SHALL MAINTAIN ALL EXISTING TREES AND LANDSCAPE UNLESS OTHERWISE NOTED.

NO.	DESCRIPTION	DATE	BY	CHKD.
1	ISSUED FOR PERMIT	11/15/11	JMS	JMS
2	REVISIONS	11/15/11	JMS	JMS
3	REVISIONS	11/15/11	JMS	JMS
4	REVISIONS	11/15/11	JMS	JMS
5	REVISIONS	11/15/11	JMS	JMS
6	REVISIONS	11/15/11	JMS	JMS
7	REVISIONS	11/15/11	JMS	JMS
8	REVISIONS	11/15/11	JMS	JMS
9	REVISIONS	11/15/11	JMS	JMS
10	REVISIONS	11/15/11	JMS	JMS

**MORRISON SHIPLEY**

ENGINEERS & SURVEYORS

1000 W. 10th Street, Suite 100, Oklahoma City, Oklahoma 73106

Phone: (405) 521-1100

Fax: (405) 521-1101

www.morrisonshiple.com

**Didler Commercial Park**

Proposed Lot 2

Four South, Seatonville County Address

**DEVELOPMENT PLAN**

(Issued for Review)

**T**RAFFIC  
**E**NGINEERING  
**C**ONSULTANTS

*Serving Your Transportation Needs  
Since 1984*

June 18, 2010

Mr. Stan Snodgrass, P.E.  
City of Fort Smith  
P.O. Box 1908  
623 Garrison Ave.  
Fort Smith, AR 72901

RE: Didier Commercial Park Lot 2 Application

Dear Stan:

At your request, I have reviewed the proposed site plan for a restaurant to be constructed on Lot 2 of the Didier Commercial Park and the proposed driveway locations. In particular, I reviewed the proposed driveway to U.S. 71.

The site plan shows the proposed construction of the restaurant on the north half of two parcels. It is my understanding that the land use for the south parcel has not yet been determined. U.S. 71 would be classified as a Boulevard in this area which requires driveway spacing of 300 feet. The frontage of both the north parcel and the south parcel is approximately 420 feet. One driveway should serve both parcels of land.

Additionally, U.S. 71 has a median in this area. The already established median break is located on the south parcel of land. I would recommend that the driveway proposed for Lot 2 be located at the median break for U.S. 71. The driveway will also serve the south parcel when constructed. This will provide the best two-way access from U.S. 71.

The location of the driveway as currently proposed will create a situation where traffic exiting the driveway wishing to go north, will have to cross the two southbound lanes in a short distance to gain access to the southbound left turn lane. The exiting traffic would then make a U-Turn to go north. By aligning the driveway with the median cut, the exiting traffic could make a simple left turn onto U.S. 71.

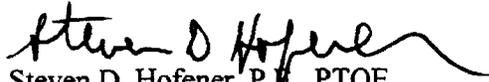
The other issue with the proposed driveway location would be northbound traffic may occasionally travel north in the southbound lanes of U.S. 71 to gain access to the driveway with it that close to the median break. This would be a very undesirable traffic movement. This movement is eliminated by aligning the driveway with the median cut.

Traffic Engineering Consultants, Inc.  
6000 S. Western, Suite 300 • Oklahoma City, OK 73139 • 405.720.7721 • 405.720.9848 Fax  
6931 S. 66th E. Ave., Suite 100 • Tulsa, OK 74133 • 918.481.8484 • 918.481.3163 Fax  
website: tecokc.com

The owner can either construct a temporary drive to the median cut, or continue the east curb line and parking to the relocated driveway in anticipation of future construction on the south parcel. The curb and parking would be the preferred solution as it would set the traffic pattern the way it will be in the future.

If you should have questions, please feel free to contact me.

Sincerely,



Steven D. Hofener, P.E., PTOE  
Principal

SDH/tm

T-1341B

# MEMO

**To:** City Planning Commission  
**From:** Planning Staff  
**Date:** June 3, 2010  
**Subject:** Proposed Master Land Use Plan Amendment at 12200 U.S. Highway 71 South from Not Classified to General Commercial (companion item to item #'s 3, 4, 6 & 7)

The Planning Department is in receipt of an application from Neal Morrison, agent, to amend the *Master Land Use Plan* to facilitate the construction of a restaurant with a beer garden at 12200 U.S. Highway 71 South (proposed Didier Commercial Park, Lot 2). The property currently does not have a land use classification. The applicant has proposed a General Commercial land use classification.

The subject property is located on the west side of U.S. Highway 71 South approximately 1,000 feet south of the intersection of U.S. 71 South and Old Highway 71. The lot contains two acres with 416 feet of road frontage on U.S. Highway 71 South.

The property is currently not zoned. A companion application (#9-6-10) proposes a zoning classification of Commercial Moderate (C-3) by extension. The *Master Land Use Plan* is a guide to zoning and development and must be considered with 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 not classified and is developed as commercial property (car wash and liquor store).

The area to the east across U.S. Highway 71 South is classified as ETJ Light Commercial Office and is developed as single-family residential.

The area to the south is not classified and is undeveloped.

The area to the west is not classified and is undeveloped.

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

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

5A

**Land Uses:** Retail establishments of all types, 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                                                                 | 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 U.S. Highway 71 South as a Major Arterial Street.

**STAFF COMMENTS**

The subject property proposed for a Master Land Use Plan amendment meets the criteria for designation as General Commercial. Staff recommends approval of the proposed Master Land Use Plan amendment.

**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: Neal Morrison		
Firm Name: Morrison-Shipley Engineers, Inc.		
Address: P.O. Box 10064, Fort Smith, AR 72917		
Phone # (day): 479-452-1933	Phone # (cell):	Fax #: 479-452-1939
Owner Name: Darla Vandermillion		
Owner Address: 12727 Old Highway 71, Fort Smith, AR 72916		
Phone # (day):	Phone # (cell):	Fax #:
Property Address (subject property): 12200 US HWY 71 S		
<b>Subject Property</b>		
Current Land Use: PASTURE		
Existing MLUP Classification: UNCLASSIFIED		
Proposed MLUP Classification: GENERAL COMMERCIAL		
Existing Zoning Classification: UNZONED		
Proposed Zoning Classification: C-3		
<b>Surrounding Property</b>		
Current Land Use: north- COMMERCIAL PROPERTY		
south- PASTURE		
east- RESIDENTIAL		
west- PASTURE		
Existing MLUP Classification: north: UNCLASSIFIED		
south: UNCLASSIFIED		
east: UNCLASSIFIED		
west: UNCLASSIFIED		
Existing Zoning Classification: north: C-3-P		
south: UNZONED		
east: ETJ-01		
west: UNZONED		
Pre-Application Meeting Date: MAY 11, 2010		

**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).  
Proposed Lot 2, Didier Commercial Park. See Attached Exhibit A
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 Drawing
3. The area dimensions of the property in square feet or acres.  
2.0 Acres
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:  
See Attached Separate Sheet for Answers

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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:  
See Attached Separate Sheet for Answers

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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:  
See Attached Separate Sheet for Answers

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7. Identify any known or anticipated environmental concerns:  
None

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**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:

See Attached Separate Sheet for Answers

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

See Attached Separate Sheet for Answers

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

See Attached Separate Sheet for Answers

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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:

See Attached Separate Sheet for Answers

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**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:

## ANSWERS TO QUESTIONS 4 THROUGH 9

Master Land Use Plan Amendment

Didier Commercial Park, Lot 2

4. The proposed development will be built on existing U.S. Highway 71 (southbound) frontage, with a secondary drive that will provide access to Old Highway 71 and the traffic signal at Riley Park Drive. No new roads will be constructed as a result of this project.

U.S. Highway 71 is a 4-lane divided, semi controlled access facility that is classified as a "boulevard" on the Master Street Plan, and will be the primary access. Old 71 is a 2-lane road that is classified as a "local road," and will serve as a secondary access. The traffic volume generated by the proposed development should not have a significant detrimental impact on these two existing roads.

5. Public utility service demands for the proposed development will be met by an existing 12-inch water main along the Highway 71 frontage, and by an existing 10-inch sanitary sewer line along Old 71 via a proposed 8-inch sanitary sewer extension.
6. The proposed development has an area of 2.00 acres, which (with parking) will support approximately 10,000 square feet of floor area for general commercial and service oriented businesses.
7. None.
- 8.a. The existing development pattern has already been established along the U.S. Highway 71 corridor. This development will be a continuation of that pattern.
- 8.b. Presently, the property is unzoned. Previously unzoned property to the north was rezoned to C-3-P in 2007.
- 8.c. The extreme southerly portion of the Fort Smith metropolitan area is currently underserved in terms of quality sit-down restaurants. The proposed development will endeavor to meet the need for this type of service.
9. The U.S. Highway 71 South corridor has experienced significant development in the last 15 years. This accelerated rate of development was initiated by Riley Farm, and the public and private utility infrastructure that came with it. Properties in this area will continue to develop due to the economic impact of the increased population and the residents will benefit from increased availability of local goods and services. With the pending extension of Interstate 49 that will intersect U.S. 71 approximately 1 mile south of this project, the development trend will continue or even accelerate.

## **EXHIBIT A**

### **Legal Description**

A part of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 24, Township 7 North, Range 32 West, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at a found rebar at the Southwest Corner of said Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 24; Thence North  $02^{\circ} 19' 31''$  East along the West line of said Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) a distance of 651.32 feet to an existing PK nail; Thence leaving said West line, South  $87^{\circ} 48' 11''$  East and along the South line of Didier Commercial Park, Lots 1A & 1B, as filed for Record March 17, 2008, a distance of 290.36 feet to a set 1/2" rebar and the POINT OF BEGINNING; Thence South  $87^{\circ} 48' 11''$  East along said South line a distance of 39.43 feet to a found 1/2" rebar; Thence North  $62^{\circ} 18' 47''$  East along said South line a distance of 174.52 feet to a found 1/2" rebar at the Southeast corner of Lot 1B, Didier Commercial Park; Thence South  $27^{\circ} 41' 13''$  East along the Westerly Right-of-Way line of U.S. Highway No. 71 a distance of 416.00 feet to a set 1/2" rebar; Thence leaving said Westerly Right-of-Way line, South  $62^{\circ} 18' 47''$  West a distance of 208.71 feet to a set 1/2" rebar; Thence North  $27^{\circ} 41' 13''$  West a distance of 435.64 feet to the Point of Beginning, containing 87,159 Square Feet or 2.00 Acres more or less, and being subject to any public road rights-of-way, or easements of record.

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.

Neil M. Morris

5-19-10

Signature (Agent/Owner)

Date

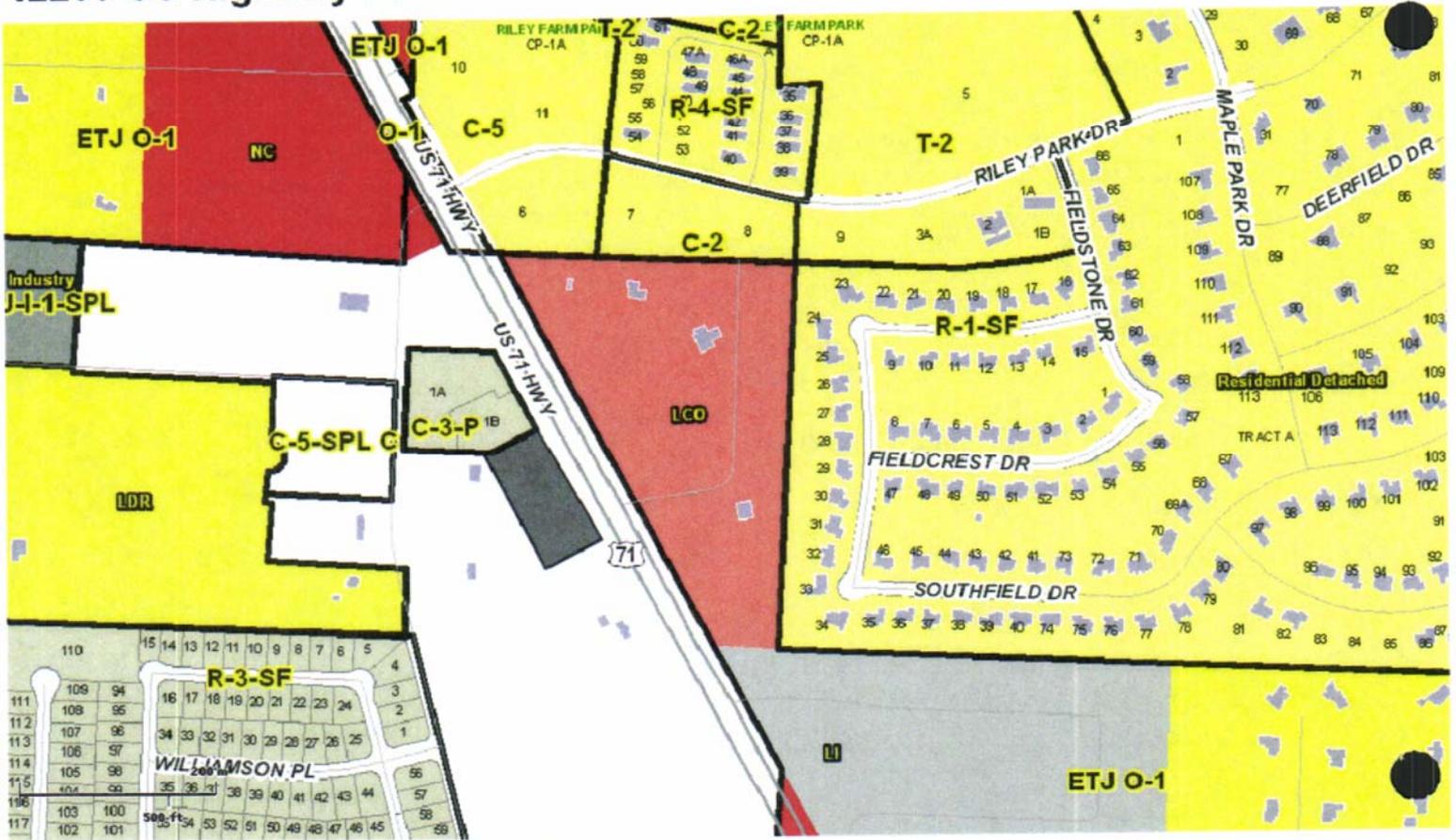
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The City of Fort Smith requires complete applications. If your application does not include all of the information required for submission, it will not be processed.

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# Master Land Use Amendment

12200 US Highway 71



2009 City of Fort Smith, AR. Printed on Tue Jun 1 2010 11:52:55 AM.

51

# Memo

To: City Planning Commission

From: Planning Staff

Date: June 3, 2010

Subject: Rezoning #9-6-10; A request by Neal Morrison, agent, for Planning Commission consideration of a zoning change from Not Zoned to Commercial Moderate (C-3) by extension at 12200 U.S. Highway 71 South (companion item to item #'s 3, 4, 5 & 7)

## **PROPERTY LOCATION AND SIZE**

The subject property is located on the south west side of U.S. Highway 71 South approximately 1,000 feet south of the intersection of U.S. 71 South and Old Highway 71. The lot contains two acres with 416 feet of road frontage on U.S. Highway 71 South.

## **EXISTING ZONING**

The property is currently Not Zoned.

## **REQUESTED ZONING**

The requested zoning classification is Commercial Moderate (C-3). Characteristics of the Commercial Moderate (C-3) zone are as follows:

**Purpose:** To provide for general commercial activities, offices, and service for the community. The C-3 zoning district promotes a broad range of commercial activities, operations, and services that are dispersed through the city and designed at a smaller scale than a regional center. The C-3 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 religions institutions, restaurants with beer gardens, auto glass, muffler, and seat cover shop, museums are examples of uses permitted as conditional uses.

## **Bulk & Area Regulations:**

Minimum Lot Size for Rezoning to C-3 – 2 acres.  
Maximum Building Size – 60,000 s.f.

6A

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/Zoning – 30 feet  
Minimum Lot Width - 75 feet  
Maximum Height - 35 feet (1+1)  
Maximum Lot Coverage - 60%

### **SURROUNDING ZONING AND LAND USE**

The area to the north is zoned as Commercial Moderate (C-3) and is developed as a liquor store and carwash.

The area to the east across U.S. Highway 71 South is zoned ETJ-Open 1 and is developed as single-family residential.

The area to the south is not zoned and is undeveloped.

The area to the west is not zoned and is undeveloped.

### **PROPOSED REZONING**

Approval of the zoning request to Commercial Moderate (C-3) will allow the site to be developed as a restaurant with a beer garden. Restaurants with beer gardens are permitted as a conditional use in the C-3 zone. A companion conditional use application (#11-6-10) has been submitted by the application.

### **LAND USE PLAN COMPLIANCE**

This property currently does not have a *Master Land Use Plan* classification. However, the applicant has submitted a companion application requesting a Master Land Use Plan amendment to classify the property as General Commercial.

The General Commercial land use classification provides opportunities for business transactions and activities, and meet the consumer needs of the community. Appropriate uses include retail establishments of all types, professional, technical and financial services.

### **TRAFFIC INFORMATION STATEMENT**

A Traffic Information Statement was provided by the applicant and reviewed by the Fort Smith Engineering Department. The information provided concerning the proposed Didier Commercial Park, Lot 2 was acceptable to the Engineering Department. However, future development on proposed lots 3 and 4 will require an additional Traffic Information Statement or Traffic Impact Analysis.

### **STAFF COMMENTS AND RECOMMENDATIONS**

A neighborhood meeting was held on June 1, 6:00 p.m. at the Rye Hill Fire Station. No

6B

neighboring property owners attended the meeting. The attendance record and meeting summary are enclosed.

Staff recommends approval of the rezoning request on the condition that the Master Land Use Plan Amendment request is approved.

6C

MEMORANDUM

To: File

CC: Brenda Andrews, Jimmy Didier

From: Neal Morrison, P.E.

Date: June 1, 2010

Re: Didier Commercial Park, Lot 2  
Neighborhood Meeting for Master Land Use Amendment, Rezoning and Conditional Use  
Permit Applications

---

In Attendance:

*Morrison-Shiple Engineers*

Neal Morrison

*Didier Properties*

Jimmy Didier

*City of Fort Smith*

Brenda Andrews

*Owner*

Roger Cook (representing Darla Vandermillion)

*Meeting Summary:*

The meeting was assembled at approximately 6:00 P.M., and a sign in sheet was distributed (see attachment). None of the invited surrounding property owners were in attendance, so the meeting was adjourned at 6:30 P.M. with no discussion.

6 D

**ATTENDANCE LIST FOR NEIGHBORHOOD MEETING**

List the names, addresses & telephone numbers of all residents/property owners who attended the meeting.

**Meeting Location** White Bluff - Rye Hill Fire Station, 5325 Spring Mountain Rd  
Fort Smith, AR 72916

**Meeting Time & Date** 6:00PM June 1, 2010

**Meeting Purpose** Didier Commercial Park, Lot 2 Rezoning, Conditional Use, and  
Master Land Use Plan Amendment Applications

	<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>
1.	<i>Julie K. [unclear]</i>	<i>12102 Highway 71, Scott, AR</i>	<i>479-424-1100</i>
2.	<i>[unclear]</i>	<i>[unclear]</i>	<i>479-432-0016</i>
3.	<i>Nick Morrison</i>	<i>P.O. Box 10064, 72917</i>	<i>479-452-9333</i>
4.	<i>BONNIE HISAW</i>	<i>2806 E Hwy 45 72916</i>	<i>484-7800</i>
5.	<i>Brenda Anderson</i>	<i>Fort Smith Planning Dept</i>	
6.			
7.			
8.			
9.			
10.			
11.			



# MORRISON SHIPLEY

ENGINEERS • SURVEYORS

May 17, 2010

Mr. Stan Snodgrass, P.E.  
City of Fort Smith  
P.O. Box 1908  
Fort Smith, Arkansas 72902

**RE: *Didier Commercial Park Traffic Impact Statement***

Dear Stan:

Per the requirements of the UDO, please accept this letter as a Traffic Impact Statement for the proposed Didier Commercial Park development located between U.S. Highway 71 and Old 71. This information is being submitted to support the preliminary plat for the development. FYI, we are also planning to submit a final plat, rezoning, conditional use and land use amendment for proposed Lot 2 (which will be the site of new restaurant) for the June meeting of the Planning Commission.

The traffic generated by the proposed development should have a minimal impact on the traffic patterns that currently exist on both U.S. Highway 71 and Old 71. Currently, the affected reach of U.S. Highway 71 has a 2009 ADT of 24,000 vehicles per day (vpd).

Trip generation calculations are presented below for proposed Lots 2, 3 and 4. Since the exact use of Lots 3 and 4 is unknown at this time, they are assumed to be "business park" for the purposes of estimating trip generation.

Lot 2:

Sit Down High Turnover Restaurant: 150 seats x 4.83 trips per seat = 725 trips per day  
P.M. peak hour = 71.

6 F

5704 Euper Lane • Suite 200  
Fort Smith, AR • 72903  
P.O. Box 10064 • 72917  
479.452.1933 • Fax 479.452.1939  
morrisonshipley.com

Mr. Stan Snodgrass, P.E.  
May 17, 2010  
Page 2 of 2

Lots 3 and 4:

Business Park:           6.65 acres x 149.79 trips per acre = 996 trips per day  
                                  A.M. peak hour = 125  
                                  P.M. peak hour = 112

Please review this information and let me know if you have any questions or if you require additional information.

Sincerely,  
**Morrison-ShIPLEY Engineers, Inc.**

  
\_\_\_\_\_  
Neal T. Morrison, P.E.

66

**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 Exhibit A

- 2. Address of property: 12200 US Hwy 71 S., Fort Smith, AR 72916

- 3. The above described property is now zoned: Unzoned

- 4. Application is hereby made to change the zoning classification of the above described property to C-3 by Extension.  
(Extension or classification)

- 5. Why is the zoning change requested?

To allow a planned commercial development which will include  
a restaurant with outdoor beer garden. This restaurant will  
not have live music at the establishment.

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

Signed:

Neal Morrison  
 Owner or Agent Name  
 (please print)

\_\_\_\_\_  
Owner

P.O. Box 10064  
Fort Smith, AR 72917  
 Owner or Agent Mailing Address

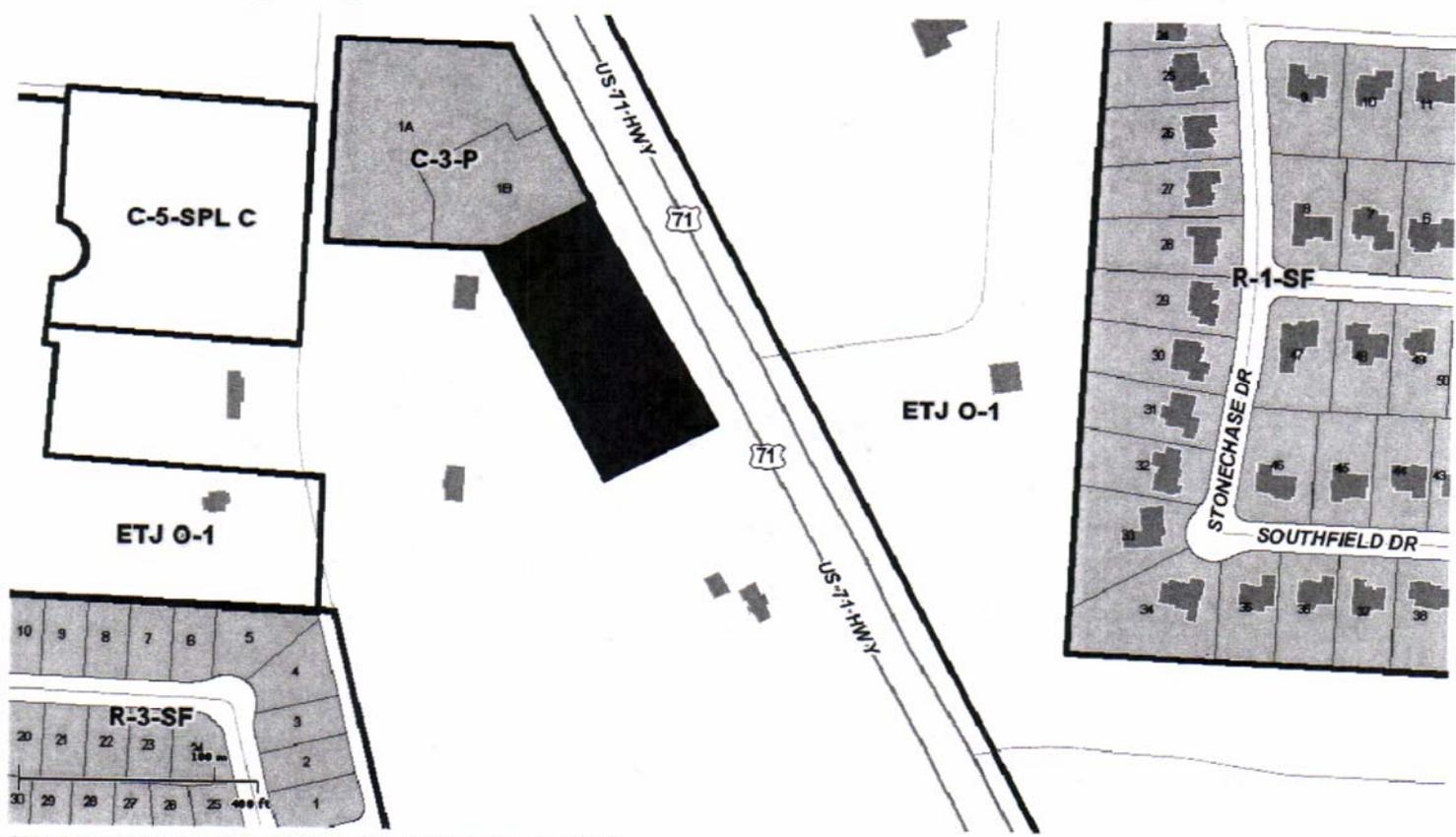
or  
  
 \_\_\_\_\_  
 Agent

(479) 452-1933  
 Owner or Agent Phone Number

6H

# Rezoning #J-6-10: From Not Zoned to Commercial Moderate (C-3)

12200 US Highway 71

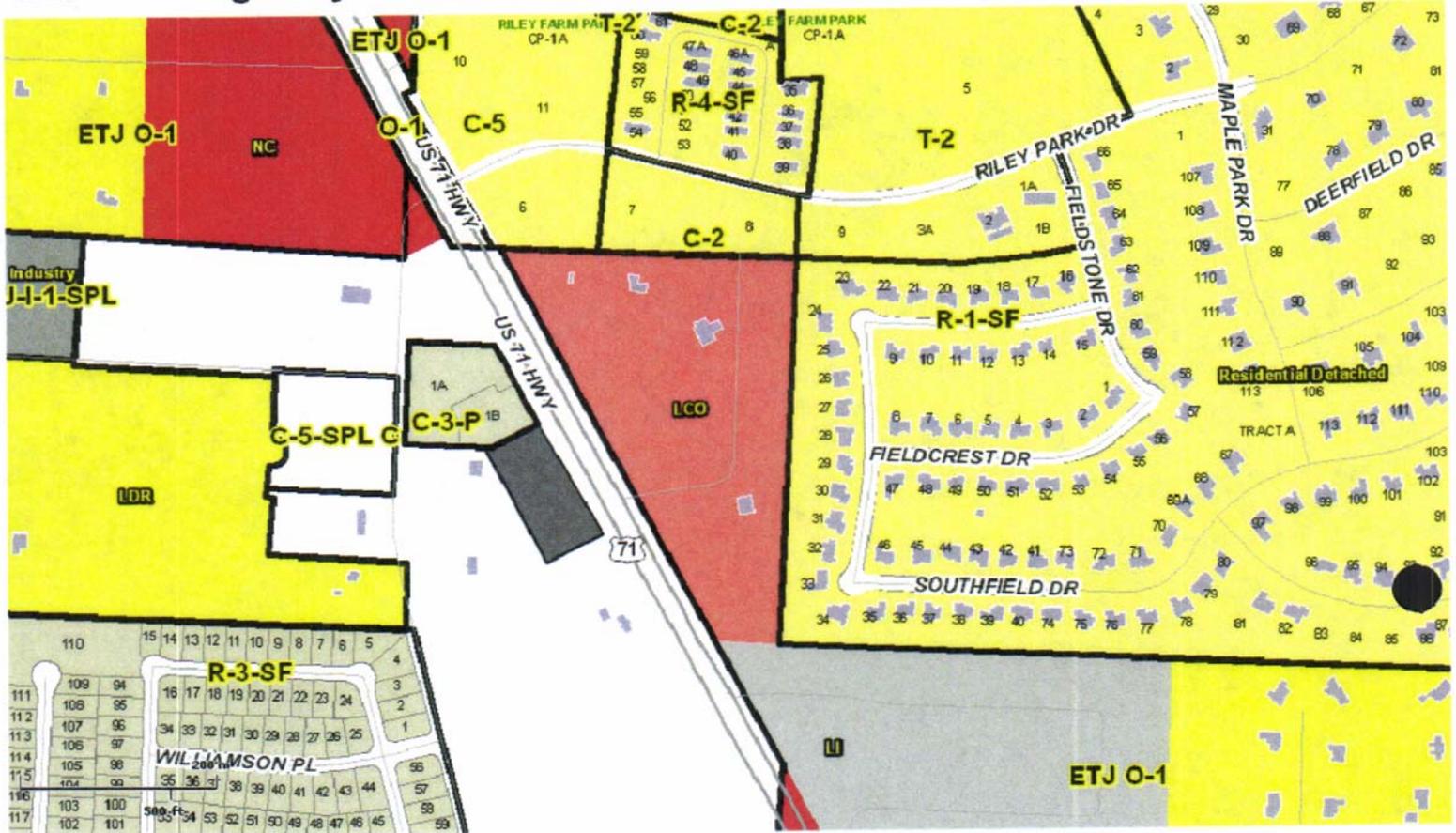


2009 City of Fort Smith, AR. Printed on Tue Jun 1 2010 11:12:58 AM.

67

# Master Land Use Map for Rezoning #9-6-10: From Not Zoned to Commercial Moderate (C-3)

12200 US Highway 71



2009 City of Fort Smith, AR. Printed on Tue Jun 1 2010 11:57:56 AM.

65

Fields Properties Limited Partners  
P. O. Box 362  
Van Buren, AR 72957

William D. White  
8401 Rosewood Drive  
Fort Smith, AR 72903

James W. Butler  
12317 S. Highway 71  
Fort Smith, AR 72916

Bill & Shirley Walters  
1405 W. Center  
Greenwood, AR 72936

Felix Vozel & Mary Krutsch  
1808 Fianna Way  
Fort Smith, AR 72908

**DRAFT**

**Planning Commission Meeting Minutes  
June 8, 2010**

- 3. Preliminary Plat – Didier Commercial Park – Lots 2 thru 4 – Morrison-Shipley (companion item to items #4, #5, #6 & #7)**
- 4. Final Plat – Didier Commercial Park – Lot 2 – Morrison-Shipley (companion item to items #3, #5, #6 & #7)**
- 5. Master Land Use Plan Amendment from Unclassified to General Commercial located at 1220 Highway 71 South. (companion item to items #3, #4, #6 & #7)**
- 6. Rezoning #9-6-10; A request by Neal Morrison, agent, for a zone change from Unzoned to Commercial-3 by Extension located at 12200 Highway 71 South. (companion item to items #3, #4, #5 & #7)**
- 7. Conditional Use #11-6-10; A request by Neal Morrison, agent, for a conditional use for a restaurant with an outdoor beer garden located at 12200 Highway 71 South. (companion item to items #3, #4, #5 & #6)**

Ms. Brenda Andrews read the staff reports. Ms. Andrews noted that these items would be discussed together but would be voted on separately. Ms. Andrews stated that the purpose of these requests is to facilitate the construction of a restaurant with a beer garden on the proposed Didier Commercial Park, Lot 2 property. Ms. Andrews stated that a traffic information statement was provided by the applicant and reviewed by the Fort Smith Engineering Department and the information provided concerning the proposed Didier Commercial Park, Lot 2 was acceptable to the Engineering Department. However, it was noted that any future development on proposed Lots 3 and 4 would require an additional traffic information statement or traffic impact analysis.

Ms. Andrews noted that a neighborhood meeting was held on June 1, 2010, at 6:00 p.m. at the Rye Hill Fire Station with no neighboring property owners attending the meeting. She did note, however, that a letter had been received from Ms. Sue Morgan expressing her opposition to the outdoor beer garden. The proposed restaurant has an outdoor dining and drinking area which meets the definition of a beer garden. Ms. Andrews stated that since the letter from Ms. Morgan was received, the developer, Mr. Jimmie Didier, had met with Ms. Morgan to explain the development to her. Ms. Andrews stated that Ms. Morgan notified the planning department this afternoon that she had withdrawn her objections to the requests.

Mr. Neal Morrison was present to speak on behalf of these requests.

Several Commissioners expressed their concerns relative to the driveways, safety and traffic issues.

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

DRAFT

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

**3. Preliminary Plat – Didier Commercial Park – Lots 2 thru 4 – Morrison-Shipley (companion item to items #4, #5, #6 & #7)**

Chairman Griffin called for the vote on the preliminary plat. The vote was 9 in favor and 0 opposed with approval contingent upon the following:

- The developer must agree to meet all franchise and City utility easement requirements.
- The preliminary and final plat must comply with the City's Subdivision Design and Improvement Standards and the Standard Specifications for Public Works Construction.

**4. Final Plat – Didier Commercial Park – Lot 2 – Morrison-Shipley (companion item to items #3, #5, #6 & #7)**

Chairman Griffin called for the vote on the final plat. The vote was 9 in favor and 0 opposed with approval contingent upon 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.

**5. Master Land Use Plan Amendment from Unclassified to General Commercial located at 12200 Highway 71 South. (companion item to items #3, #4, #6 & #7)**

Chairman Griffin called for the vote on the Master Land Use Plan Amendment. The vote was 9 in favor and 0 opposed.

**6. Rezoning #9-6-10; A request by Neal Morrison, agent, for a zone change from Unzoned to Commercial-3 by Extension located at 12200 Highway 71 South. (companion item to items #3, #4, #5 & #7)**

Chairman Griffin called for the vote on the rezoning request. The vote was 9 in favor and 0 opposed.

**7. Conditional Use #11-6-10; A request by Neal Morrison, agent, for a conditional use for a restaurant with an outdoor beer garden located at 12200 Highway 71 South. (companion item to items #3, #4, #5 & #6)**

Chairman Griffin called for the vote on the conditional use request. Motion was made by Commissioner Weber, seconded by Commissioner Lorenz and carried unanimously to make approval of this conditional use subject to the following conditions:

- Any existing or proposed trash containers must be screened and gated with a 6' tall, wood or masonry, opaque screen fence.
- Interior landscaping (shrubs, trees or grass) is required within the parking islands at the time of Building Permit review in compliance with the design guideline requirements.
- Landscaping must be maintained with an automatic irrigation system or a maintenance plan provided specifying the method of keeping the plants alive.
- Any additional area and security lighting shall be designed and installed so as not to create any adverse affects on surrounding developments.
- Any new signs will require separate permits.
- A building permit application shall be reviewed and approved by all required city departments. The approval of the conditional use does not relieve the applicant of complying will applicable development codes, ordinances and standards.
- Approval of the development plan dated 5/19/10.
- A meeting to be held between the developers and City to determine a reasonable and safe location for the driveways for this development.

Chairman Griffin then called for the vote on the conditional use request as amended. The vote was 9 in favor and 0 opposed.

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

- 8. Variance #11-6-10; A request by Lewis Eady for a variance from 10 feet to 7.8 feet rear yard setback located at 4709-A & 4709-B South 32<sup>nd</sup> Street.**

Ms. Brenda Andrews read the staff report indicating that the purpose of this variance request is due to the fact that the applicant is seeking permanent financing for the existing duplex and the lending institution requires that the duplex be on a stand alone lot. Ms. Andrews stated that Board approval of the variance would allow the owner to replat the property into two lots so that the duplex is on a separate lot. Ms. Andrews noted that one telephone call from a neighboring property owner was received in opposition to the variance. Ms. Andrews stated that if this variance is approved, staff is recommending that the plat be submitted for review and filed within thirty (30) days.

Mr. Lewis Eady was present to speak on behalf of this request.

Ms. Peggy Davis, 3208 Phoenix, was present to speak in opposition to this request. Ms. Davis expressed her concerns to the Board of Zoning Adjustment relative to the property being in such close proximity to her property and feels the lot should have been split prior to the construction of the existing duplexes.

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 June 8, 2010, that said change be made; and,

WHEREAS, the 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. 7-6-10 to rezone certain properties hereinafter described, and, having considered said request, recommended on June 8, 2010, 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 & Mixed Use Employment to Industry and the Master Land Use Plan Map is hereby amended to reflect said amendment to-wit:

W ½ of Lots 12 thru 14 and W ½ , N ½ of Lot 11, Block 5, Oak Bluff Addition City of Fort Smith, Arkansas

more commonly known as 2622 North 17<sup>th</sup> Street is hereby amended on the Master Land Use Plan from Residential Detached & Mixed Use Employment to Industry.

Approved As to Form:

  
\_\_\_\_\_  
City Attorney  
*Publish 1 time*

**SECTION 2:** The hereinafter described property is hereby rezoned from Industrial Moderate (I-2) to Industrial Heavy (I-3) by Extension:

W ½ of Lots 12 thru 14 and W ½, N ½ of Lot 11, Block 5, Oak Bluff Addition City of Fort Smith, Arkansas

more commonly known as 2622 North 17<sup>th</sup> Street, should be, and is hereby rezoned from Industrial Moderate (I-2) to Industrial Heavy (I-3) by Extension.

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

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF JULY, 2010.**

**APPROVED:**

\_\_\_\_\_  
**Mayor**

**ATTEST:**

\_\_\_\_\_  
**City Clerk**



June 29, 2010

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

**Re: Master Land Use Plan Amendment from Residential Detached & Mixed Use Employment to Industry and Rezoning #7-6-10; A request by Leo Faulkner, agent, for Planning Commission consideration of a zoning change from Industrial Moderate (I-2) to Industrial Heavy (I-3) by Extension located at 2622 North 17<sup>th</sup> Street.**

On June 8, 2010, the City Planning Commission held a public hearing to consider the above requests.

Mr. Wally Bailey read the staff reports for these items. Mr. Bailey stated that the purpose of these requests is to allow the applicant to operate a vehicle storage yard to be used in conjunction with his existing auto body shop business located on North "O" Street. Mr. Bailey noted that a neighborhood meeting was held on Tuesday, May 18, 2010, with Jerry & Patricia Branson, 2615 North 17<sup>th</sup> Street, Erich Diener, 1599-1801 N. Johnson Street and Raul Sanabria, 2622 North 17<sup>th</sup> Street were in attendance. Mr. Bailey stated that the Branson's were not objecting to the storage of the vehicles on this site but were opposed to ingress/egress from North 17<sup>th</sup> Street. Mr. Diener was opposed to any more vehicles in this area.

Mr. Leo Faulkner was present to speak on behalf of these requests. Mr. Faulkner stated that this site would be utilized for storage of vehicles and parts only and no business would be operated from this location.

Mr. Jerry Branson addressed the Commission with his concerns relative to parking, blocking of roadway and traffic issues. Mr. Branson was advised that he should contact the Police or Planning Departments about any existing or future problems with illegal parking or blocking the road.

The applicant stated that he did not anticipate being at this location more than 2 or 3 times a month and there would be no street traffic at this location.

Following a discussion by the Commission, Chairman Griffin then called for the vote on the Master Land Use Plan Amendment. The Master Land Use Plan Amendment was approved by a vote of 8 in favor and 1 opposed (Woodrome).

Chairman Griffin then called for the vote on the rezoning request. The vote was 8 in favor and 1 opposed (Woodrome).

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

Additionally, the Board of Zoning Adjustment approved a variance for the minimum lot size from 20,000 square feet to 12,250 square feet and from locating on a local street instead of a major arterial.

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 Coffin, Chairman

SG/lp

cc: File  
City Administrator

# MEMO

**To:** City Planning Commission  
**From:** Planning Staff  
**Date:** May 28, 2010  
**Subject:** Proposed Master Land Use Plan Amendment at 2622 North 17<sup>th</sup> Street from Residential Detached and Mixed Use Employment to Industry (companion item to items #2 and #9).

The Planning Department is in receipt of an application from Leo Faulkner, agent, to amend the *Master Land Use Plan* to allow the use of a salvage yard. The proposed change is from Residential Detached and Mixed Use Employment to Industry. The subject property is located on the east side of North 17<sup>th</sup> Street north of Kelley Highway. The tract contains an area of 12,250 square feet (0.28 acres). The tract has approximately 175 feet of road frontage on North 17<sup>th</sup> Street.

The existing zoning of the site is Industrial Moderate (I-2). A companion application (#7-6-10) proposes a change in the zoning classification to Industrial Heavy (I-3) by extension. 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 Industry and is developed as a salvage yard.

The area to the east is classified as Residential Detached and Mixed Use Employment and is developed as a salvage yard.

The area to the south and west is classified as Mixed Use Employment and is developed as a salvage yard.

The proposed land use classification of Industry is described as follows:

**Purpose:** To provide for high intensity, potentially hazardous, noisy or noxious manufacturing, distribution and warehouse activities.

**Characteristics and Use:** Potentially hazardous, noisy, very active or visually unappealing manufacturing, distribution, sorting and repair operations; facilities with high air emissions or pollution, or potentially noxious odors; those businesses requiring high truck or rail traffic; landfills and hazardous utility installations.

1A

**Criteria for Designation:**

**Compliance Noted**

- Located to avoid residential areas, schools, libraries, and medical facilities
- Sufficient land area to provide a buffer for different adjacent uses

YES

NO \*

\* *The applicant has submitted a companion variance application requesting a variance from 20,000 square feet to 12,250 square feet minimum lot size required for proposed Industrial-3 zoning district*

**MASTER STREET PLAN CLASSIFICATIONS**

The Fort Smith Master Street Plan classifies North 17<sup>th</sup> Street as a local road.

**STAFF COMMENTS**

The applicant held a neighborhood meeting on Tuesday, May 18, 4:30 p.m. Three adjacent property owners attended the meeting. The attendance records and meeting summary are attached.

Staff recommends approval of the proposed Master Land Use Plan amendment.



**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).  
w 1/2 of lots 12 thru 14 + w 1/2 N. 1/2 of lots 11 Block 5
2. A map of the property which includes the scaled distance, legal description, and general vicinity map inset showing the property's location.
3. The area dimensions of the property in square feet or acres. 12,250 S.F. • 281 A
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 conditions on North 17th include  
gravel and asphalt
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:  
Water
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:  
N/A
7. Identify any known or anticipated environmental concerns:  
None

**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:

None

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

SAME AS NEIGHBORHOOD

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

For Use of Storage of Parts. (Automotive)

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:

No CHANGE

**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.

*Raul Anabio*      5-5-10

Signature (Agent/Owner)

Date

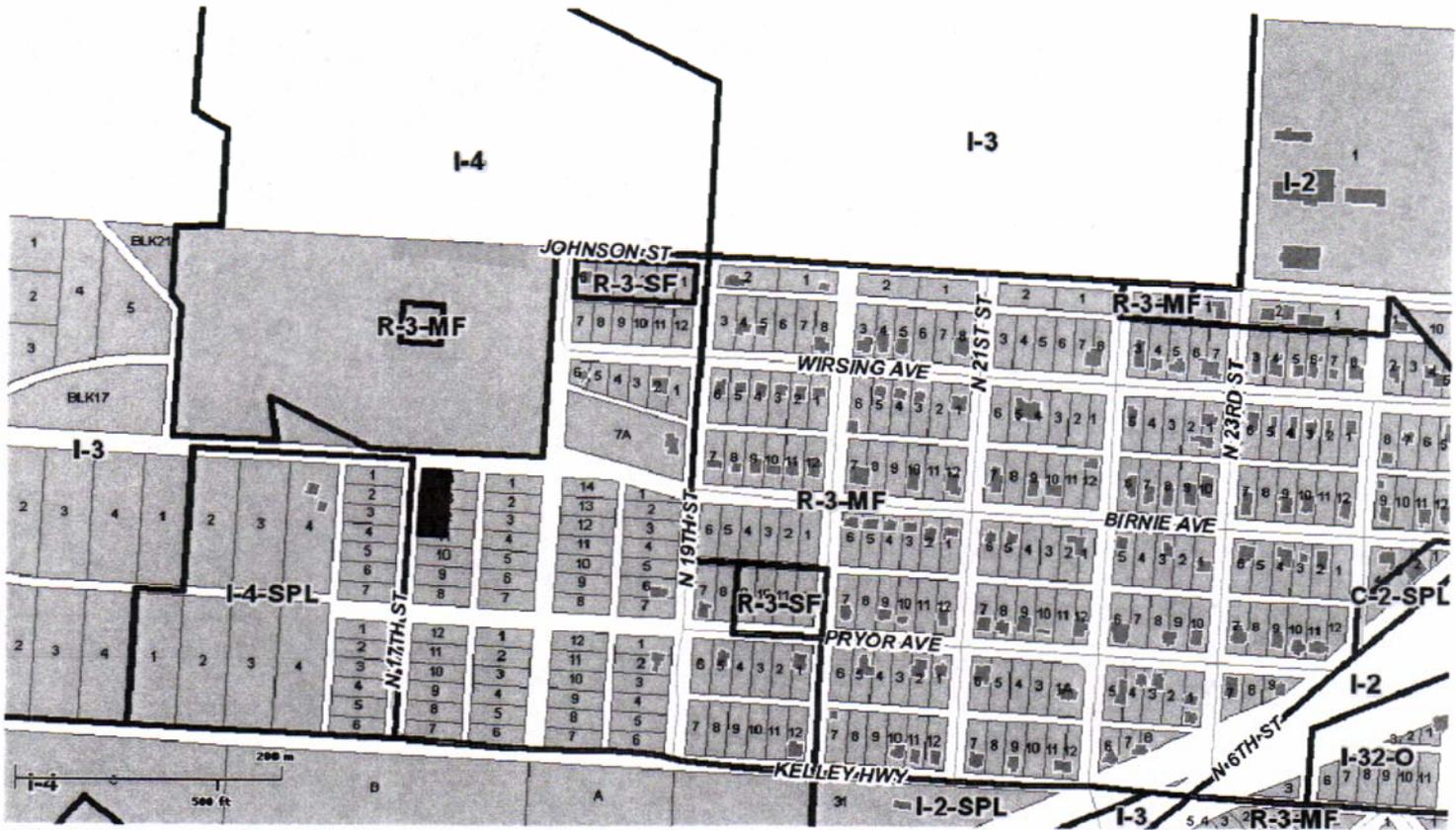
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The City of Fort Smith requires complete applications. If your application does not include all of the information required for submission, it will not be processed.

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# Master Land Use Amendment - From Residential Detached & Mixed Use Employment to Industry

2622 North 17th Street



2009 City of Fort Smith, AR. Printed on Thu May 20 2010 10:41:08 AM.

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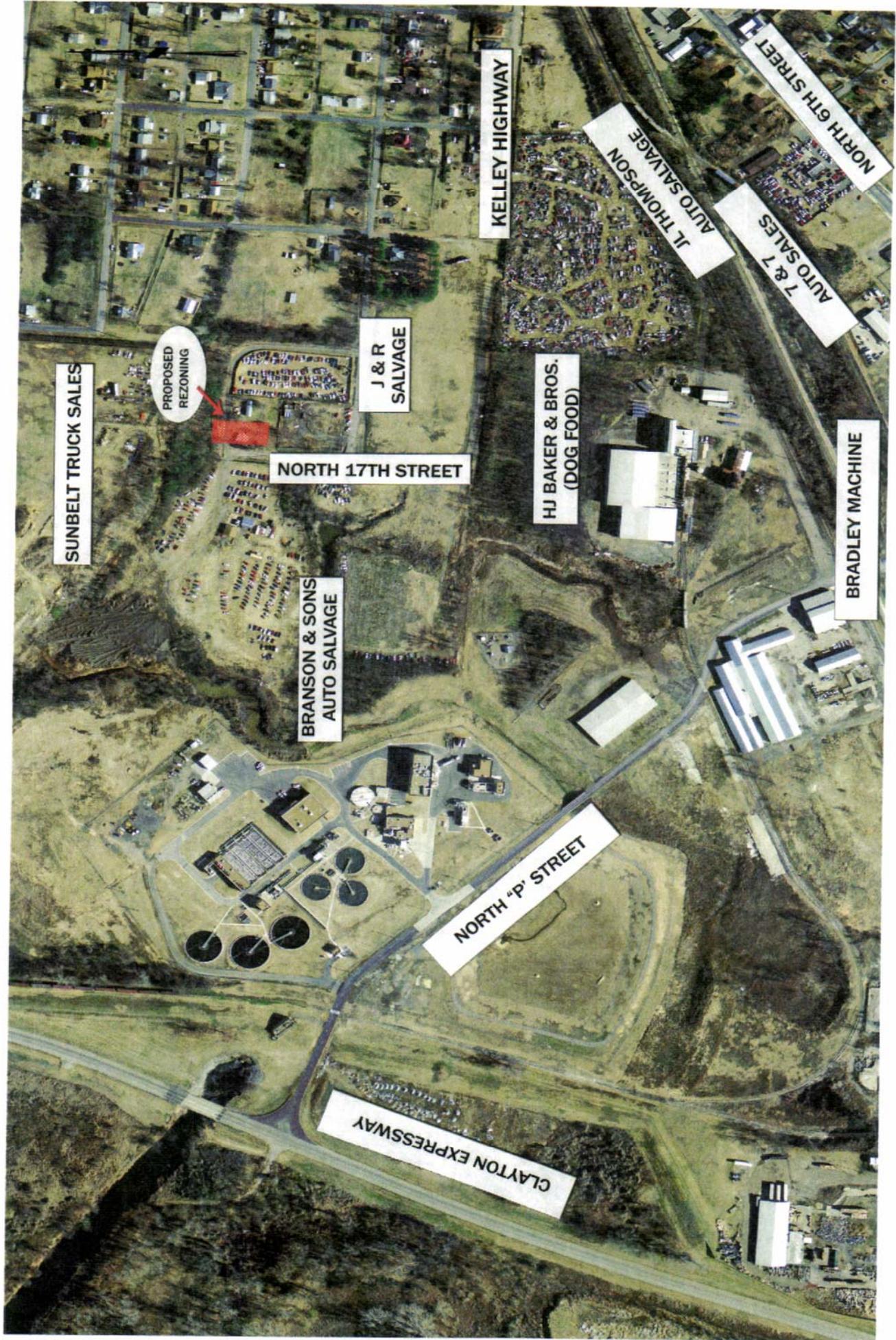
# Master Land Use Amendment - From Residential Detached & Mixed Use Employment to Industry

2622 North 17th Street

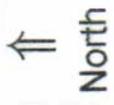


2009 City of Fort Smith, AR. Printed on Thu May 20 2010 10:42:01 AM.

111



Existing Industrial Uses



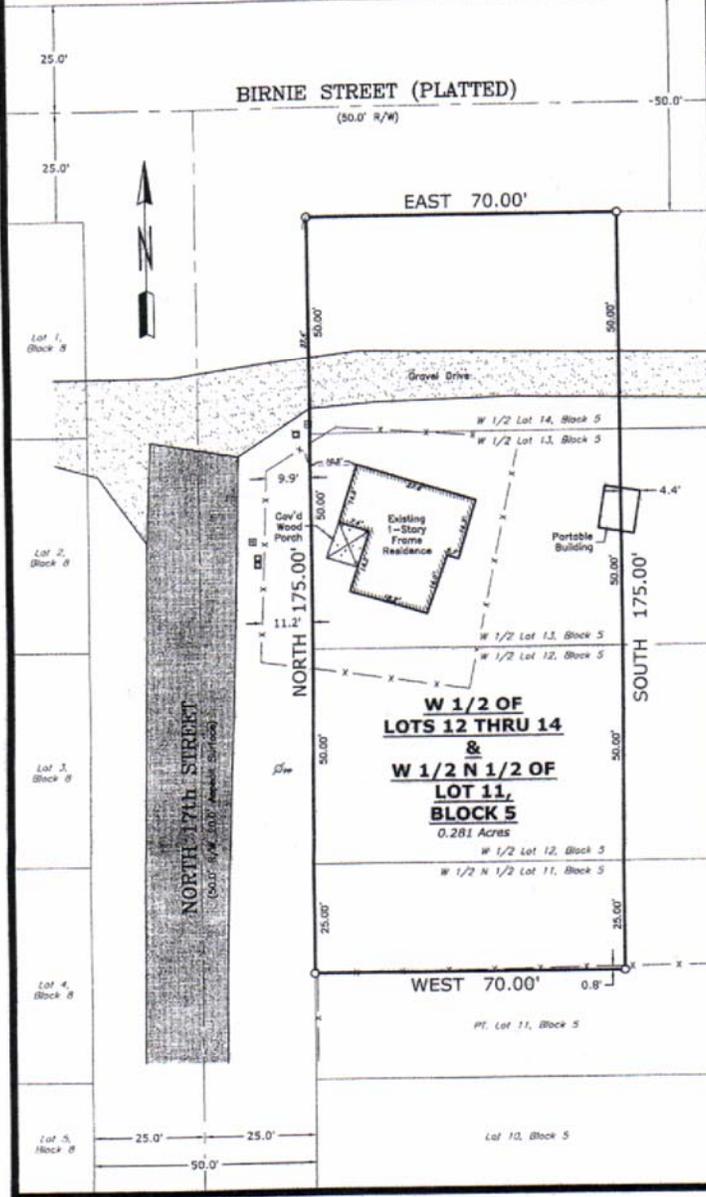
North

**SURVEY DESCRIPTION:**  
 THE WEST HALF (W 1/2) OF LOTS 12 THRU 14  
 & THE WEST HALF (W 1/2) OF THE  
 NORTH HALF (N 1/2) OF LOT 11,  
 ALL IN BLOCK 5, OAK BLUFF ADDITION,  
 AN ADDITION TO THE CITY OF FORT SMITH,  
 SEBASTIAN COUNTY, ARKANSAS.

**FLOOD INFORMATION:**  
 PROPERTY IS NOT IN 100 YEAR FLOOD ZONE  
 COMMUNITY PANEL NO. 055013 0010 D  
 DATED: JULY 16, 1991



**ANDERSON SURVEYING INC.**  
 Arkansas — Oklahoma  
 P.O. Box 129  
 Van Buren, AR 72957  
 (479) 474-4247  
 Fax (479) 410-5333  
 e-mail: andersonsurveying@cox.net



**FORT SMITH, SEBASTIAN COUNTY, ARKANSAS**  
 SURVEY OF  
 W 1/2 OF LOTS 12 THRU 14 & W 1/2 N 1/2 OF LOT 11, BLOCK 5,  
 OAK BLUFF ADDITION

DATE: 3-16-2010  
 JOB NO: 10-03-03  
 SCALE: 1"=30'

FOR USE ONLY:  
 2023 North 17th Street  
 Fort Smith, AR 72904

**SURVEYORS CERTIFICATION**

I HEREBY CERTIFY THAT THE HEREIN LATTER AND DESCRIBED SURVEY WAS COMPLETED UNDER MY SUPERVISION ON THE DATE INDICATED AND TO THE BEST OF MY KNOWLEDGE AND ABILITY. THIS SURVEY IS MADE FOR THE EXCLUSIVE USE OF THE INDIVIDUALS OR ENTITIES NAMED HEREON AND I WILL NOT HOLD THEM OR GUARANTEE THE TITLE THEREON, WITHIN ONE YEAR FROM DATE HEREOF, AND AS TO THEIR WARRANTY THE ACCURACY OF THE SURVEY.

ANTHONY D. ANDERSON AR PLS. 1272

**LEGEND**

- SET RAILROAD SPIKE
- SET 1/2" NAIL
- EXISTING IRON PIN
- EXISTING CONCRETE NAIL
- FENCE POST
- SET 1/2" NAIL
- SET 1/2" NAIL
- WATER METER
- 4" GAS METER
- EXISTING FENCE
- OVERHEAD ELECTRIC

REVISIONS	DATE

Scale in Feet

17

# Memo

To: City Planning Commission

From: Planning Staff

Date: May 28, 2010

Subject: Rezoning #7-6-10; A request by Leo Faulkner, agent, for Planning Commission consideration of a zone change from Industrial Moderate (I-2) to Industrial Heavy (I-3) by extension at 2622 North 17<sup>th</sup> Street.

## LOT LOCATION AND SIZE

The requested rezoning area is north of Kelley Highway on the east side of North 17<sup>th</sup> Street. The area to be rezoned is approximately 12,250 square feet with approximately 175 feet of frontage on North 17<sup>th</sup> Street.

## EXISTING ZONING

The property is currently zoned Industrial Moderate (I-2). Characteristics of the I-2 zone are as follows:

To provide for industrial land uses which can be operated in a clean and quiet manner that shall not be obnoxious to adjacent land uses, and shall have relatively limited environmental impacts. The land uses within an I-2 are primarily contained indoors and have heavier traffic generation than Industrial-1 uses.

### Permitted uses:

Auto & Vehicle Impoundment or holding yard (no salvage)  
Warehousing and Mini-storage  
Cabinet and Woodwork Shop  
Contractors shops and yards  
Auto Body Shop

### Bulk and Area Regulations:

Front Yard Setback - 50 feet  
Exterior Side Yard - 50 feet

Interior Side Yard - 25 feet  
Rear Yard Setback - 20 feet  
Side/Rear Setback Adjoining single-family residential District/Development - 100 feet  
Minimum Lot Size – 20,000 square feet  
Maximum height at setback – 45 feet (1+1)  
Maximum lot coverage - 60%  
Rezoning by classification minimum lot area – 10 acres  
Rezoning by extension minimum lot area by extension – 20,000 square feet

### **REQUESTED ZONING**

The requested zoning on the tract is Industrial-3. Characteristics of this zone are as follows:

Purpose: To accommodate a wide variety and intensity of industrial uses, some of which may have significant external impacts. This may include areas of heavy and concentrated fabrication, manufacturing, and industry. The I-3 zone must be located so as to minimize conflicts with other land uses.

#### Permitted Uses:

Auto Repair and Assembly (Salvage)  
Asphalt or Concrete Batching Plant (permanent)  
Sanitary Landfill  
Tire Retreading

#### Area Regulations:

Front Yard Setback - 100 feet  
Exterior Side Yard - 100 feet  
Interior Side Yard - 50 feet  
Rear Yard Setback - 20 feet  
Side/Rear Setback Adjoining single-family residential District/Development - 100 feet  
Minimum Lot Size – 20,000 square feet  
Maximum height at setback – 45 feet (1+1)  
Maximum lot coverage - 60%  
Rezoning by classification minimum lot area – 20 acres  
Rezoning by extension minimum lot area by extension – 20,000 square feet

### **SURROUNDING ZONING AND LAND USE**

The areas to the north and west are zoned Industrial Heavy (I-3) and are developed as a salvage yard.

The areas to the south and east are zoned Industrial Moderate (I-2) and are developed as legal nonconforming salvage yards.

### **PROPOSED REZONING**

The applicant states the requested zone change is for wrecked vehicle storage to use in conjunction with his auto body shop on North "O" Street.

**LAND USE PLAN COMPLIANCE**

The Master Land Use Plan classifies this site as Mixed Use Employment and Residential Detached.

The Residential Detached land use classification is intended to create and maintain stable neighborhoods, provide safe, attractive family environments, and protect property values.

The Mixed Use Employment classification is intended to provide for a dense compatible mix of retail, residential, employment and production activities designed for all modes of transportation.

A *Master Land Use Plan* amendment is required and has been requested to support this rezoning.

**MASTER STREET PLAN CLASSIFICATION**

The Master Street Plan classifies North 17<sup>th</sup> Street as a Local Road.

**STAFF COMMENTS AND RECOMMENDATIONS**

The proposed rezoning is to allow for inoperable vehicle storage for the applicant's auto body business on North "O" Street. This application is a companion item to a Variance application and a Master Land Use Amendment.

A neighborhood meeting was held on Tuesday, May 18, 2010. A summary of the meeting is enclosed.

Staff recommends approval of the requested rezoning on condition that the companion Master Land Use Plan Amendment and variance applications are approved.

20

# LEO FAULKNER, REALTY

Commercial, Industrial, Residential, Real Estate  
LEO FAULKNER, BROKER  
(501) 452-3223 • Res. 452-2787  
FAX (501) 484-0038  
P.O. Box 10153 • Fort Smith, AR 72917-0153

May 21, 2010

Maggie Rice  
City of Fort Smith Planning Department  
P.O. Box 1908  
Fort Smith, AR 72902

REF: Neighborhood Meeting  
May 18, 2010, 4:30 PM  
R C Auto Sales, 3100 N. "O" St.  
Fort Smith, AR

#### ATTENDANCE:

Jerry & Patrica Branson, 2615 N. 17th St. 785-4273.  
Erich Driver, 1599-1801 N. Johnson St. 785-9669.  
Raul Sanabria, 2622 N. 17th St. 783-1831.

#### SUMMARY OF NEIGHBORHOOD MEETING:

The Branson's do not object to storage of vehicles on this site. They object to ingress/egress from N. 17th Street.  
NOTE: This is the only street by this property.

Erich Driver objects to any more vehicles in this area. He said he was told by the Planning Department that this would <sup>not</sup> happen.

Meeting adjourned at 5:05 PM.

Sincerely,



Leo Faulkner  
Agent for Mr. Sanabria

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)

W 1/2 of Lots 12 thru 14 & W 1/2 N 1/2 of Lot 11, Block 5 Oak Bluff Addition - City of Fort Smith, AR

2. Address of property: 2622 N. 17 St Fort Smith AR 72904

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

4. Application is hereby made to change the zoning classification of the above described property to Industrial Heavy (1-3) by extension (Extension or classification)

5. Why is the zoning change requested?

The zoning Right Now does not meet the qualification of what needed to be used for. (Store vehicles awaiting to be repaired.)

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

Signed:

RAUL SANABRIA  
Owner or Agent Name  
(please print)

Raul Sanabria  
Owner

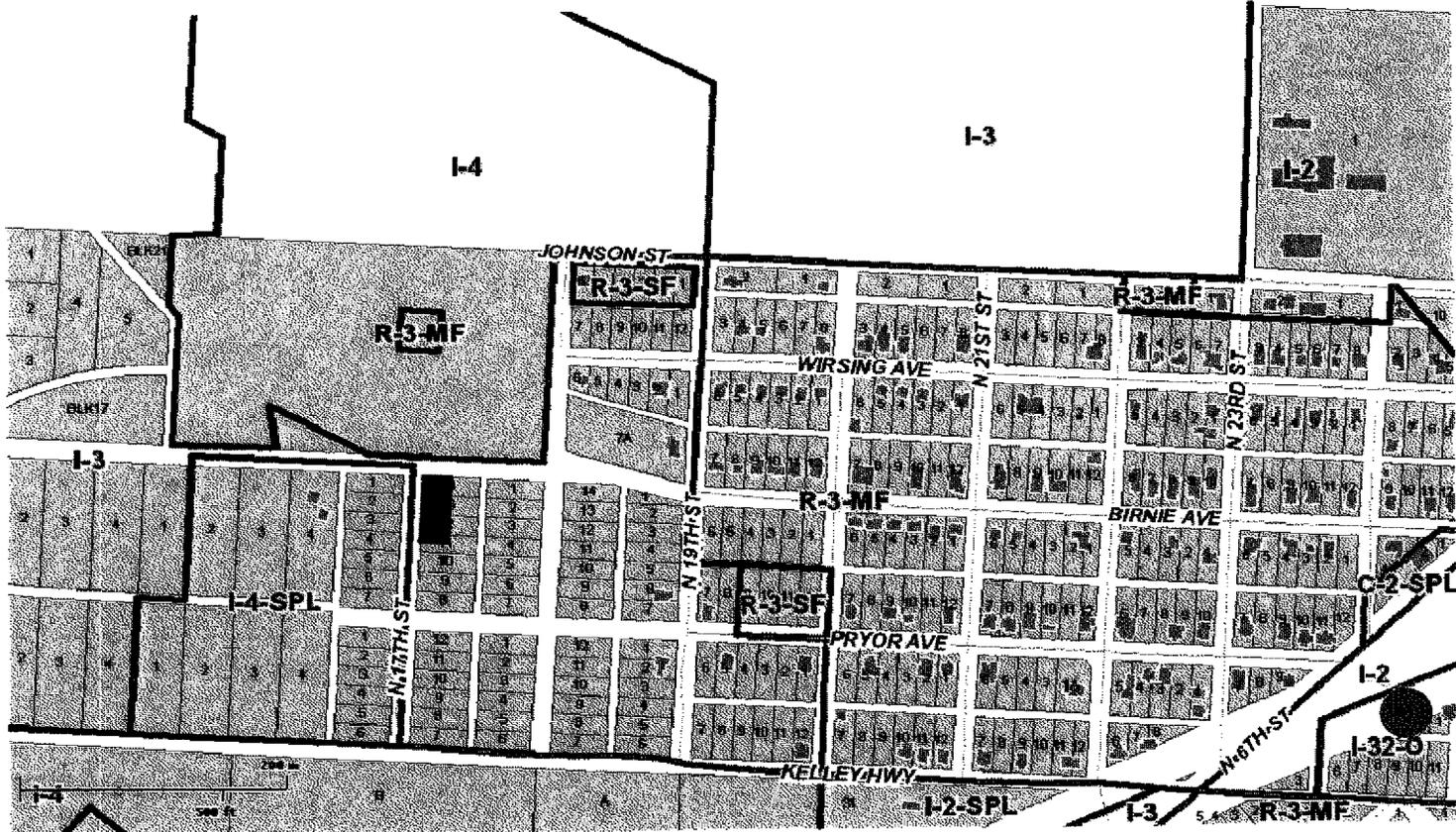
3000 Cliff Dr. Ft. Smith AR  
Owner or Agent Mailing Address 72901

Lee Paulson  
or  
Agent

479-739-1831  
Owner or Agent Phone Number

# Rezoning # 7-6-10: From Industrial-2 to Industrial Heavy (I-3)

2622 North 17th Street



2009 City of Fort Smith, AR. Printed on Thu May 20 2010 10:36:21 AM.

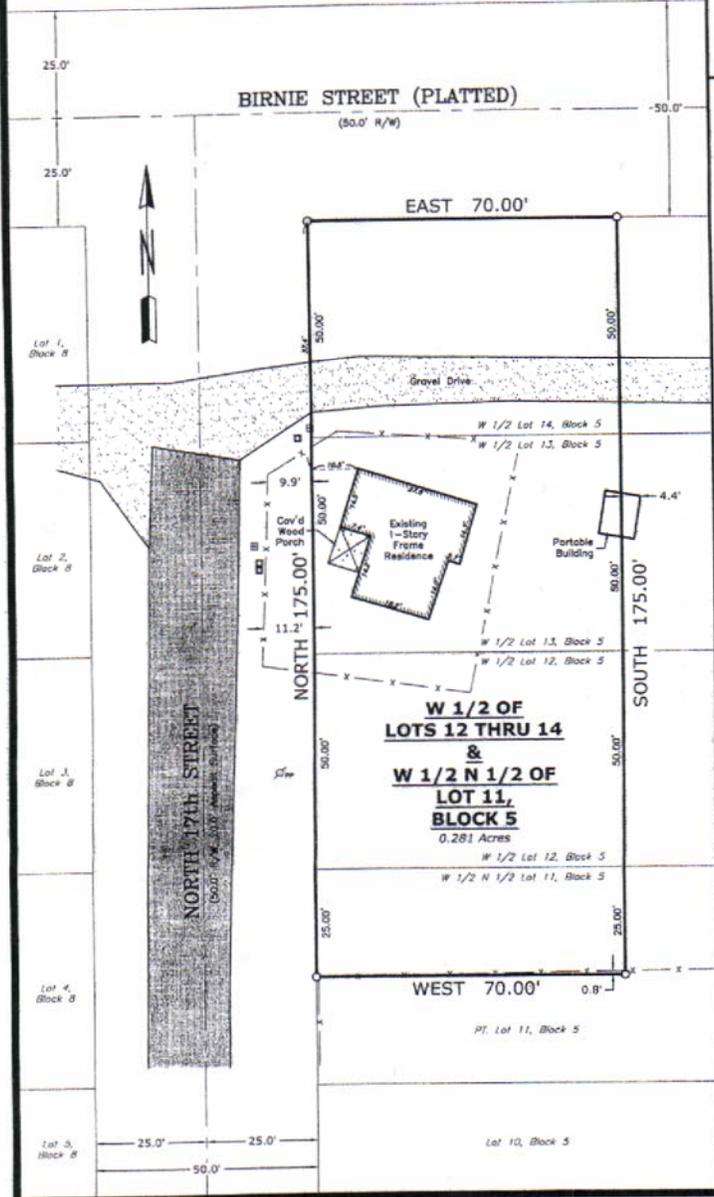
2F

**SURVEY DESCRIPTION:**  
 THE WEST HALF (W 1/2) OF LOTS 12 THRU 14  
 & THE WEST HALF (W 1/2) OF THE  
 NORTH HALF (N 1/2) OF LOT 11,  
 ALL IN BLOCK 5, OAK BLUFF ADDITION,  
 AN ADDITION TO THE CITY OF FORT SMITH,  
 SEBASTIAN COUNTY, ARKANSAS.

**FLOOD INFORMATION:**  
 PROPERTY IS NOT IN 100 YEAR FLOOD ZONE  
 COMMUNITY PANEL NO. 055013 0010 D  
 DATED: JULY 16, 1991



**ANDERSON SURVEYING INC.**  
 Arkansas -- Oklahoma  
 P.O. Box 129  
 Van Buren, AR 72957  
 (479)-474-4247  
 Fax (479)-410-5333  
 e-mail: andersonsurveying@cox.net



**FORT SMITH, SEBASTIAN COUNTY, ARKANSAS**  
 SURVEY OF  
 W 1/2 OF LOTS 12 THRU 14 & W 1/2 N 1/2 OF LOT 11, BLOCK 5,  
 OAK BLUFF ADDITION

DATE: 3-16-2010  
 JOB NO: 10-03-03  
 SCALE: 1"=20'

FOR USE BY:  
 2623 North 17th Street  
 Fort Smith, AR 72904

**SURVEYORS CERTIFICATION**  
 I HEREBY CERTIFY THAT THE PERSON PLATTED AND DESCRIBED  
 SURVEY WAS COMPLETED UNDER MY SUPERVISION ON THE  
 TO THE BEST OF MY KNOWLEDGE AND ABILITY.  
 THIS SURVEY IS MADE FOR THE EXCLUSIVE USE OF THE  
 PARTIES TO THIS SURVEY AND DOES NOT CONSTITUTE A  
 WARRANTY OR GUARANTEE OF THE TITLE THEREIN, WITHIN  
 ONE YEAR FROM DATE HEREOF, AND AS TO THOSE I WARRANT  
 THE ACCURACY OF THE SURVEY.

ANTHONY J. ANDERSON AR PLS. 1272

- LEGEND**
- SET BALKENHARD SPIKE
  - SET 1/2" REBAR
  - EXISTING IRON PIN
  - EXISTING CONC. NAIL
  - EXISTING SURVEY
  - SET IRON
  - WATER METER
  - GAS METER
  - EXISTING FENCE
  - OVERHEAD ELECTRIC

REVISIONS	DATE

Scale in Feet  
 0 20  
 20

C:\Project\10-03-03\10-03-03.dwg, 3/16/2010 3:07:33 PM, Z.J.W.

26



Sooner Limited  
917 North 10<sup>th</sup> Street  
Fort Smith, AR 72901

Erich Diener  
1599 N. Johnson Street  
Fort Smith, AR 72901

Billy & Arletha Springs  
315 North 9<sup>th</sup> Street  
Fort Smith, AR 72901

Ricky or Shelia Roller  
4211 Jenny Lind Road  
Fort Smith, AR 72901

Albert Casey  
2622 North 17<sup>th</sup> Street  
Fort Smith, AR 72904

Robert Dale Allen  
P. O. Box 6664  
Fort Smith, AR 72906

Nancy Vezina  
2605 North 19<sup>th</sup> Street  
Fort Smith, AR 72904

RD & Nancy Casey  
3009 Ramsgate Way  
Fort Smith, AR 72908

Nancy Casey  
2621 North 17<sup>th</sup> Street  
Fort Smith, AR 72901

Jerry & Patricia Branson  
5814 Leisurely Drive  
Rudy, AR 72952

Sengchanh & Khonh Sengsirivanh  
5205 North "O" Street  
Fort Smith, AR 72904

Jerry Mayberry  
1525 North 5<sup>th</sup> Street  
Fort Smith, AR 72901

Robert & Ethel Dye  
2621 North 17<sup>th</sup> Street  
Fort Smith, AR 72901

DRAFT

**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT  
AGENDA  
ROSE ROOM  
CREEKMORE PARK COMMUNITY CENTER  
5:30 P.M.  
JUNE 8, 2010**

On roll call, the following Commissioners were present: Keith Lau, Pam Weber, Jennifer Parks, Steve Griffin, Mike Lorenz, Travis Stephens, Jennifer Canada, Walton Maurras and Brandon Woodrome.

Chairman Griffin then called for the vote on the minutes from the June 8, 2010, Planning Commission meeting. Motion was made by Commissioner Parks, seconded by Commissioner Lorenz and carried unanimously to approve the minutes as written.

Mr. Wally Bailey spoke on the procedures.

- 1. Master Land Use Plan Amendment from Residential Detached & Mixed Use Employment to Industry located at 2622 North 17<sup>th</sup> Street. (companion item to items #2 & #9)**
- 2. Rezoning #7-6-10; A request by Leo Faulkner, agent, for a zone change from Industrial-2 to Industrial Heavy (I-3) located at 2622 North 17<sup>th</sup> Street. (companion item to items #1 & #9)**
- 9. Variance #12-6-10; A request by Leo Faulkner, agent, for a variance from 20,000 square feet to 12,250 square feet minimum lot area and from major arterial or higher street access to local street access located at 2622 North 17<sup>th</sup> Street. (companion item to items #1 & #2)**

Mr. Bailey read the staff reports for these items. He noted that these items would be discussed together but would need to be voted on separately, with the requested variance being voted on prior to the vote on the rezoning request. Mr. Bailey stated that the purpose of these requests is to allow the applicant to operate a vehicle storage yard to be used in conjunction with his existing auto body shop business located on North "O" Street. Mr. Bailey noted that the applicant has indicated his hardship relative to the variance request is that part of the lot is in the floodplain and it is currently smaller than what zoning standards allow. Mr. Bailey also noted that a neighborhood meeting was held on Tuesday, May 18, 2010. Jerry & Patricia Branson, 2615 North 17<sup>th</sup> Street, Erich Diener, 1599-1801 N. Johnson Street and Raul Sanabria, 2622 North 17<sup>th</sup> Street were in attendance. The Branson's were not objecting to the storage of the vehicles on this site but were opposed to ingress/egress from North 17<sup>th</sup> Street. Mr. Diener was opposed to any more vehicles in this area.

Mr. Leo Faulkner was present to speak on behalf of these request. Mr. Faulkner stated that this site would be utilized for storage of vehicles and parts only and no business would be operated from this location.

Mr. Jerry Branson addressed the Commission with his concerns relative to parking, blocking of roadway and traffic issues.

The applicant stated that he did not anticipate being at this location more than 2 or 3 times a month and there would be no street traffic at this location.

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

- 1. Master Land Use Plan Amendment from Residential Detached & Mixed Use Employment to Industry located at 2622 North 17<sup>th</sup> Street. (companion item to items #2 & #9)**

Chairman Griffin called for the vote on the Master Land Use Plan Amendment. The vote was 8 in favor and 1 opposed (Woodrome).

Following the vote, Chairman Griffin advised the applicant to notify the Planning Department if traffic or parking becomes an issue at this location.

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

- 9. Variance #12-6-10; A request by Leo Faulkner, agent, for a variance from 20,000 square feet to 12,250 square feet minimum lot area and from major arterial or higher street access to local street access located at 2622 North 17<sup>th</sup> Street. (companion item to items #1 & #2)**

Chairman Griffin called for the vote on the variance request. The vote was 8 in favor and 1 opposed. (Woodrome)

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

- 2. Rezoning #7-6-10; A request by Leo Faulkner, agent, for a zone change from Industrial-2 to Industrial Heavy (I-3) located at 2622 North 17<sup>th</sup> Street. (companion item to items #1 & #9)**

Chairman Griffin called for the vote on the rezoning request. The vote was 8 in favor and 1 opposed. (Woodrome)

- 3. Preliminary Plat – Didier Commercial Park – Lots 2 thru 4 – Morrison-Shipley (companion item to items #4, #5, #6 & #7)**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 20, ARTICLE II, OF THE FORT SMITH CITY CODE OF ORDINANCES REGULATING ALARM SYSTEMS**

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

Sections 20-31, 20-33, and 20-34 of Chapter 20, Article II (Alarm Systems), of the Fort Smith Municipal Code are amended to read as follows and said Chapter is also amended to add Section 20-35:

**Sec. 20-31. Definitions.**

For the purpose of this article, certain words and phrases shall be defined as specified below:

**Alarm system** shall mean any mechanical, electrical or other device that is arranged, designed or used to signal the occurrence in the city of a burglary, robbery or other criminal activity requiring urgent attention and to which police personnel are expected to respond ("police alarm system") and any mechanical, electrical or other device that is arranged, designed or used to signal the occurrence in the city of a fire requiring urgent attention and to which fire personnel are expected to respond ("fire alarm system"). Alarm systems include those through which police or fire personnel are notified directly or indirectly by way of a third party which monitors alarm systems and reports such signals to the police or fire department, or those designed to register a signal which is audible, visible or in other ways perceptible outside a protected building, structure or facility so as to notify persons in the neighborhood beyond the lot where the signal is located who in turn may notify the police department or fire department of the signal. Alarm systems do not include those affixed to automobiles or auxiliary devices installed by telephone companies to protect telephone equipment or systems which might be damaged or disrupted by the use of an alarm system. Alarms in separate structures or locations are to be counted as separate systems even though owned, leased, contracted for or controlled by the same person or entity.

**Alarm User** shall mean any person who purchases, leases, contracts for or otherwise obtains and operates an alarm system.

**Responsible Individual** shall mean an individual who is able and has agreed to:

- (1) Receive notification of an Alarm System activation at any time;
- (2) Respond to the Alarm Site within 30 minutes at any time; and,
- (3) Grant access to the Alarm Site and deactivate the Alarm System upon request.

**False alarm** shall mean an alarm signal eliciting a response by the police department or fire department when a situation requiring a response by the police department or fire department

does not in fact exist. False alarm does not include an alarm signal caused by conditions of nature or other extraordinary circumstances not reasonably subject to control by the alarm system operator or alarm system customer. Alarms resulting from the following conditions are not considered false alarms:

- (1) Criminal activity or unauthorized entry;
- (2) Fire;
- (3) Telephone or cable line cut or malfunction, verified in writing to the city by at least a first-line telephone or cable company supervisor;
- (4) Electrical service interruption, verified in writing to the city by the local power company;
- (5) Communication to the police department or fire department before a unit arrives to investigate clearly indicating that the alarm resulted from authorized entry, authorized system test or other noncriminal or nonfire cause;
- (6) An alarm caused on the reasonable but mistaken belief that a burglary, robbery or other criminal offense or fire emergency is in progress;
- (7) Fire alarm activated by pull box or other similar device; and,
- (8) Alarms generated during a grace period not longer than thirty (30) days during the original installation or during substantial modifications to an alarm system (verified by alarm system installer).

**Sec. 20-33. Charges for excessive false alarms.**

- (a) The police or fire personnel at the scene, or subsequently the designee of the chief of the police or fire department, shall provide written notice to the alarm system user on each false alarm at a given location. The notification may take the form of a written report left at the location of the alarm. The written report shall advise the alarm user of the following: it is the alarm user's responsibility to take proper corrective action to reduce false alarms, the false alarm charge as provided in this article, and that on the fourth and subsequent false alarm at the same location during each calendar year the alarm user will be billed as provided in this article.
- (b) Upon the fourth and upon each subsequent false alarm at the same location during any calendar year period, the notice provided for in (a) above shall include notice of the assessment of the following charge applicable to the fourth and applicable to each subsequent false alarm at the same location during a calendar year period: \$100.00 for each such false alarm.
- (c) Additional to any notice provided pursuant to (a) and (b), a copy of any notice issued pursuant to (b) above shall be provided to the alarm system user at any address for the customer

provided by the alarm system company which installed or which provides maintenance or other services for the alarm system user.

(d) Within ten (10) days of receipt of any notice provided for in this section, including the notice of charge for false alarm provided for in (b) and (c) above, the alarm system user shall have the right to a hearing at which the alarm system user may produce any information to indicate that the determination of false alarm or the determination of charge for false alarm is improper. In addition, the alarm user may request a hearing to submit proof that the defect in the alarm system which caused the false alarm has been repaired and, with such proof, to request a waiver of the charge. A request for hearing regarding a false alarm responded to by the police department shall be presented to the chief of police or to another city employee designated by the chief of police. A request for hearing regarding a false alarm responded to by the fire department shall be presented to the fire chief or to another city employee designated by the chief. Within five (5) days of receipt of such request for hearing, the chief, or his or her designee, shall advise the alarm system user of a time and place for the hearing. The hearing officer shall determine the false alarm and charge issues and, in addition, upon submission of proof that the faulty equipment causing the false alarm has been repaired so that the system is in proper working order, may waive the charge. Within five (5) days following the hearing, the chief, or the chief's designee, shall issue a notice to the alarm system user of the final determination of the city regarding the matter.

(e) After reasonable efforts have been made to collect from the alarm system user the charge referred to in subsection (b) above, the city administrator, or his or her designated agent, shall be authorized to refer any unpaid account of thirty (30) or more days to the qualified and licensed attorneys at law contracted to provide legal services pursuant to sections 2-111--2-113 of this Code for the purpose of filing an action in a court of appropriate jurisdiction to collect the unpaid charges.

**Sec. 20-34. Provision of current address for alarm system customers.**

(a) It shall be unlawful for any person or entity that has installed or that provides maintenance or other services for an alarm system owned by an alarm system user to refuse to provide a current address for any alarm system customer to the city police or fire departments upon written request.

(b) Any person or entity determined to have violated the provisions of this section shall be deemed guilty of a misdemeanor and shall be subject to punishment as provided in section 1-9 of the Code of Ordinances.

**Sec. 20-35. Duties of the Alarm User.**

- (1) Maintain the Alarm Site and the Alarm System in a manner that will minimize or eliminate False Alarms.**
- (2) Make every reasonable effort to have a Responsible Individual available at the Alarm Site within thirty (30) minutes after an Alarm Dispatch Request.**
- (3) Not activate an Alarm System for any reason other than an occurrence of an event that the Alarm System was intended to report.**

This Ordinance adopted this \_\_\_\_ day of \_\_\_\_\_, 2010.

**APPROVED:**

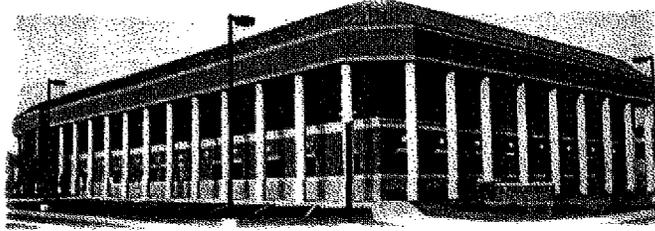
\_\_\_\_\_  
**Mayor**

**ATTEST:**

\_\_\_\_\_  
**City Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**City Attorney**  
**Publish 1 time**



## **Fort Smith Police Department**

Kevin Lindsey, Chief of Police

### **INTERDEPARTMENTAL MEMORANDUM**

**To: Dennis Kelly, City Administrator**

**From: Kevin Lindsey, Chief of Police**

**Subject: Alarm Ordinance Revision**

**Date: June 29, 2010**

**Attachments:**

The purpose of this memorandum is to present changes to the Alarm Ordinance, Section 20-31 et. seq. of the Fort Smith Municipal Code, to the Board of Directors as requested at their June 22<sup>nd</sup>, 2010 Study Session.

According to police records, from 2007 to early March of 2010, the police department responded to 18,404 alarm calls within the City of Fort Smith. Of the 18,404 responses, 17,858 (97%) were considered false alarms. The average number of alarms per year for 2007 through 2009 was 5,843. In 2009, out of 142 locations where alarms occurred, 127 were commercial alarms with fifteen being residential alarms. Only one (1) residence had seven (7) or more false alarms, which was the minimum number to be fined under the current ordinance. A conservative estimate of \$28.00 per hour was utilized to figure an estimated cost for response to alarms per year, which includes officer and telecommunicator time. Based upon this hourly estimate, the average cost per year for 2007 through 2009 for responding to alarm calls was calculated to be \$44,751.

Our current ordinance calls for fines to be levied on the seventh (7<sup>th</sup>) false alarm, increasing the fines incrementally through the tenth (10<sup>th</sup>) and subsequent false alarms. Current revenues generated for false alarms per year average about \$9,500.00. Under the proposed ordinance, fines would be levied at the fourth (4<sup>th</sup>) and subsequent false alarms, incurring a fine of \$100.00 per false alarm. Estimated revenue is expected to increase by at least three times to an average of over \$32,000.00 per year, based upon current false alarm calls.

Four cities—Jonesboro, Springdale, Fayetteville, and North Little Rock—were contacted regarding their current alarm ordinance. The city our department more closely resembles is the City of Fayetteville's ordinance.

Based upon feedback from Directors at the recent Study Session, the following changes have been included in the proposed alarm ordinance for consideration by the Board of Directors:

- Change the number of false alarms within a calendar year reaching the level of a fine from the seventh (7<sup>th</sup>) and subsequent to the fourth (4<sup>th</sup>) and subsequent; and instead of an incremental fine schedule of \$25 - \$100, implement a constant fine of \$100.00 per false alarm.
- Minor wording adjustments were proposed that reflect an 'Alarm User' versus 'Alarm Customer' throughout the ordinance.
- A section was proposed outlining the responsibilities of the alarm user. Specifically, a reasonable effort to have a person available at an alarm site within 30 minutes.
- In addition, definitions were added for, 'Alarm User' and 'Responsible Individual.'

Two local alarm companies, Guardtronic and Alert, were represented at the Study Session, and contributed information and support for the proposed changes to the existing alarm ordinance.

Staff firmly believes that the proposed changes to the ordinance will greatly benefit the total efficiency of both the police and fire departments, and will hold monitored alarm users more accountable for the proper operation of their alarm system. In addition, during certain circumstances, it will allow emergency personnel to return to service more expeditiously, resulting in more availability to serve residents of our city. Staff recommends approval and adoption of the ordinance revisions.

# DRAFT

## ARTICLE II. ALARM SYSTEMS\*

### Sec. 20-31. Definitions.

For the purpose of this article, certain words and phrases shall be defined as specified below: *Alarm system* shall mean any mechanical, electrical or other device that is arranged, designed or used to signal the occurrence in the city of a burglary, robbery or other criminal activity requiring urgent attention and to which police personnel are expected to respond ("police alarm system") and any mechanical, electrical or other device that is arranged, designed or used to signal the occurrence in the city of a fire requiring urgent attention and to which fire personnel are expected to respond ("fire alarm system"). Alarm systems include those through which police or fire personnel are notified directly or indirectly by way of a third party which monitors alarm systems and reports such signals to the police or fire department, or those designed to register a signal which is audible, visible or in other ways perceptible outside a protected building, structure or facility so as to notify persons in the neighborhood beyond the lot where the signal is located who in turn may notify the police department or fire department of the signal. Alarm systems do not include those affixed to automobiles or auxiliary devices installed by telephone companies to protect telephone equipment or systems which might be damaged or disrupted by the use of an alarm system. Alarms in separate structures or locations are to be counted as separate systems even though owned, leased, contracted for or controlled by the same person or entity.

*Alarm User Customer* shall mean any person who purchases, leases, contracts for or otherwise obtains and operates an alarm system.

*Responsible Individual* shall mean an individual who is able and has agreed to:

- (1) Receive notification of an Alarm System activation at any time;
- (2) Respond to the Alarm Site within 30 minutes at any time; and,
- (3) Grant access to the Alarm Site and deactivate the Alarm System upon request.

*False alarm* shall mean an alarm signal eliciting a response by the police department or fire department when a situation requiring a response by the police department or fire department does not in fact exist. False alarm does not include an alarm signal caused by conditions of nature or other extraordinary circumstances not reasonably subject to control by the alarm system operator or alarm system customer. Alarms resulting from the following conditions are not considered false alarms:

- (1) Criminal activity or unauthorized entry;
- (2) Fire;
- (3) Telephone or cable line cut or malfunction, verified in writing to the city by at least a first-line telephone or cable company supervisor;
- (4) Electrical service interruption, verified in writing to the city by the local power company;
- (5) Communication to the police department or fire department before a unit arrives to investigate clearly indicating that the alarm resulted from authorized entry, authorized system test or other noncriminal or nonfire cause;

# DRAFT

- (6) An alarm caused on the reasonable but mistaken belief that a burglary, robbery or other criminal offense or fire emergency is in progress;
- (7) Fire alarm activated by pull box or other similar device; and
- (8) Alarms generated during a grace period not longer than thirty (30) days during the original installation or during substantial modifications to an alarm system (verified by alarm system installer).

(Code 1976, § 24-16; Ord. No. 15-00, § 1, 4-4-00)

**Cross references:** Definitions and rules of construction generally, § 1-2.

## Sec. 20-33. Charges for excessive false alarms.

(a) The police or fire personnel at the scene, or subsequently the designee of the chief of the police or fire department, shall provide written notice to the alarm system user on each false alarm at a given location. The notification may take the form of a written report left at the location of the alarm. The written report shall advise the alarm user ~~eustomer~~ that; it is the alarm user's ~~eustomer's~~ responsibility to take proper corrective action to reduce false alarms, shall inform ~~the customer~~ of the false alarm charge as provided in this article, and shall inform ~~the eustomer~~ that on the ~~seventh~~ fourth and subsequent false alarm at the same location during each calendar year the alarm user ~~eustomer~~ will be billed as provided in this article.

(b) Upon the fourth and upon each subsequent false alarm at the same location during any calendar year period, the notice provided for in (a) above shall include notice of the assessment of the following charge applicable to the fourth and applicable to each subsequent false alarm at the same location during a calendar year period: \$100.00 for each such false alarm.

~~Upon the seventh and subsequent false alarms at the same location during any calendar year period, the notice provided for in (a) above shall include notice of the assessment of the following charges applicable to the seventh and subsequent false alarms at the same location during a calendar year period:~~

- ~~(1) Charge for seventh false alarm . . . \$25.00~~
- ~~(2) Charge for eighth false alarm . . . 50.00~~
- ~~(3) Charge for ninth false alarm . . . 75.00~~
- ~~(4) Charge for tenth and all subsequent false alarms . . . 100.00~~

(c) Additional to any notice provided pursuant to (a) and (b), a copy of any notice issued pursuant to (b) above shall be provided to the alarm system user ~~eustomer~~ at any address for the customer provided by the alarm system company which installed or which provides maintenance or other services for the alarm system user. ~~eustomer~~.

(d) Within ten (10) days of receipt of any notice provided for in this section, including the notice of charge for false alarm provided for in (b) and (c) above, the alarm system user shall have the right to a hearing at which the alarm system user ~~eustomer~~ may produce any information to indicate that the determination of false alarm or the determination of charge for false alarm is improper. In addition, the alarm user ~~eustomer~~ may request a hearing to submit proof that the defect in the alarm system which caused the false alarm has been repaired and, with such proof, to request a waiver of the charge. A request for hearing regarding a false alarm responded to by the police department shall be presented to the chief of police or to another city

# DRAFT

employee designated by the chief of police. A request for hearing regarding a false alarm responded to by the fire department shall be presented to the fire chief or to another city employee designated by the chief. Within five (5) days of receipt of such request for hearing, the chief, or designee, shall advise the alarm system user customer of a time and place for the hearing. The hearing officer shall determine the false alarm and charge issues and, in addition, upon submission of proof that the faulty equipment causing the false alarm has been repaired so that the system is in proper working order, may waive the charge. Within five (5) days following the hearing, the chief, or designee, shall issue a notice to the alarm system user customer of the final determination of the city regarding the matter.

(e) After reasonable efforts have been made to collect from the alarm system user customer the charge referred to in subsection (b) above, the city administrator, or his designated agent, shall be authorized to refer any unpaid account of thirty (30) or more days to the qualified and licensed attorneys at law contracted to provide legal services pursuant to sections 2-111--2-113 of this Code for the purpose of filing an action in a court of appropriate jurisdiction to collect the unpaid charges.

(Code 1976, § 24-18; Ord. No. 15-00, § 3, 4-4-00; Ord. No. 3-02, § 5, 1-22-02)

## Sec. 20-34. Provision of current address for alarm system customers.

(a) It shall be unlawful for any person or entity, which has installed or which provides maintenance or other services for an alarm system owned by an alarm system user customer, to refuse to provide a current address for any alarm system customer to the city police or fire departments upon written request.

(b) Any person determined to have violated the provisions of this section shall be deemed guilty of a misdemeanor and shall be subject to punishment as provided in section 1-9 of the Code of Ordinances.

(Ord. No. 15-00, § 4, 4-4-00)

## Sec. 20-35. Duties of the Alarm User

(1) Maintain the Alarm Site and the Alarm System in a manner that will minimize or eliminate False Alarms.

(2) Make every reasonable effort to have a Responsible Individual available at the Alarm Site within thirty (30) minutes after an Alarm Dispatch Request.

(3) Not activate an Alarm System for any reason other than an occurrence of an event that the Alarm System was intended to report.

# Tax Back

4

Resolution



RESOLUTION NO. \_\_\_\_\_

***A RESOLUTION OF THE CITY OF FORT SMITH CERTIFYING LOCAL GOVERNMENT ENDORSEMENT OF BUSINESS TO PARTICIPATE IN THE TAX BACK PROGRAM (AS AUTHORIZED BY SECTION 15-4-2706(d) OF THE CONSOLIDATED INCENTIVE ACT OF 2003).***

***WHEREAS***, in order to be considered for participation in the Tax Back Program, the local government must endorse a business to participate in the Tax Back Program; and

***WHEREAS***, the local government must authorize the refund of local sales and use taxes as provided in the Consolidated Incentive Act of 2003; and

***WHEREAS***, said endorsement must be made on specific form available from the Arkansas Department of Economic Development; and

***WHEREAS*** Mitsubishi Power Systems Americas, Inc. to be located at 8201 Chad Colley Blvd. in Fort Smith has sought to participate in the program and more specifically has requested benefits accruing from the construction and equipping of the specific facility; and

***WHEREAS***, Mitsubishi Power Systems Americas, Inc. has agreed to furnish the local government all necessary information for compliance;

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

1. Mitsubishi Power Systems Americas, Inc. be endorsed by the City of Fort Smith for benefits from the sales & use tax refunds as provided by Section 15-4-2706(d) of the Consolidated Incentive Act of 2003.
2. **The Department of Finance and Administration is authorized to refund local sales and use taxes to Mitsubishi Power Systems Americas, Inc.**
3. This resolution shall take effect immediately.

\_\_\_\_\_  
Mayor

Date Passed: July 5, 2010

Attest:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

A handwritten signature in dark ink, appearing to be "JSC", written over a horizontal line.

No publication required



## MEMORANDUM

July 1, 2010

**TO:** Dennis Kelly, City Administrator

**FROM:** Ray Gosack, Deputy City Administrator

**SUBJECT:** Mitsubishi Power Systems Americas

One of the incentives which attracted Mitsubishi Power Systems Americas to locate in Fort Smith is the state *tax back* program. This program allows a new industry to request refunds of sales taxes paid on manufacturing equipment and building materials.

Mitsubishi will manufacture the nacelle component of windmills in Fort Smith in a 200,000 square foot facility. The investment in the Fort Smith project is estimated to be \$100 million. Mitsubishi expects to employ 335 persons.

The sales tax refund is a state and local incentive to attract new manufacturers to Arkansas. The incentive will apply to only initial capital purchases, not to ongoing purchases once the company begins operations. The majority of the incentive will be derived from the state sales tax rate. However, in order to participate in the program, the local governments must also agree to the sales tax refund.

Attached is a resolution supporting the participation of Mitsubishi Power Systems Americas in the *tax back* program. The staff recommends approval. This action will support one of the board's top goals: economic development and jobs creation.

*Ray*

Attachment

cc: Jonathan Wang, Mitsubishi Power Systems Americas  
Cheryl Garner, Fort Smith Regional Chamber of Commerce

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION GRANTING A TEMPORARY REVOCABLE LICENSE FOR THE  
PLACEMENT OF AN AUTOMATIC TELLER MACHINE (ATM) IN A  
DRAINAGE EASEMENT  
AND  
AUTHORIZING MAYOR TO EXECUTE AGREEMENT**

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

**SECTION 1:** A Temporary Revocable License is hereby granted to Zero Mart, Inc., their successors or assigns for the placement and maintenance of an Automatic Teller Machine (ATM) at 4300 South Zero Street in a drainage easement as shown in Exhibit "A" and located on the following described property:

Part of Lot 1, Regions Business Park, Fort Smith, Arkansas, as filed for record October 12, 2000, and being more particularly described as follows:

Commencing at the Northeast corner of said Lot 1; thence N 87°54'27" W, along the north line of said Lot 1, 322.15 feet; thence continuing along said north line N 88°13'05" W, 77.95 feet to the eastern edge of a drainage easement; thence S 03°17'33" W along said easement, 32.0 feet to the Point of Beginning; thence continuing S 03°17'33" W, 21.0 feet; thence N 88°13'05" W, 12.0 feet; thence N 03°17'33" E, 21.00 feet; thence S 88°13'05" E, 12.0 feet to the Point of Beginning, containing 252 square feet more or less.

**SECTION 2:** The Mayor is authorized to execute the agreement for the above-captioned Temporary Revocable License.

*Approved as to form  
JLC  
No publication required*

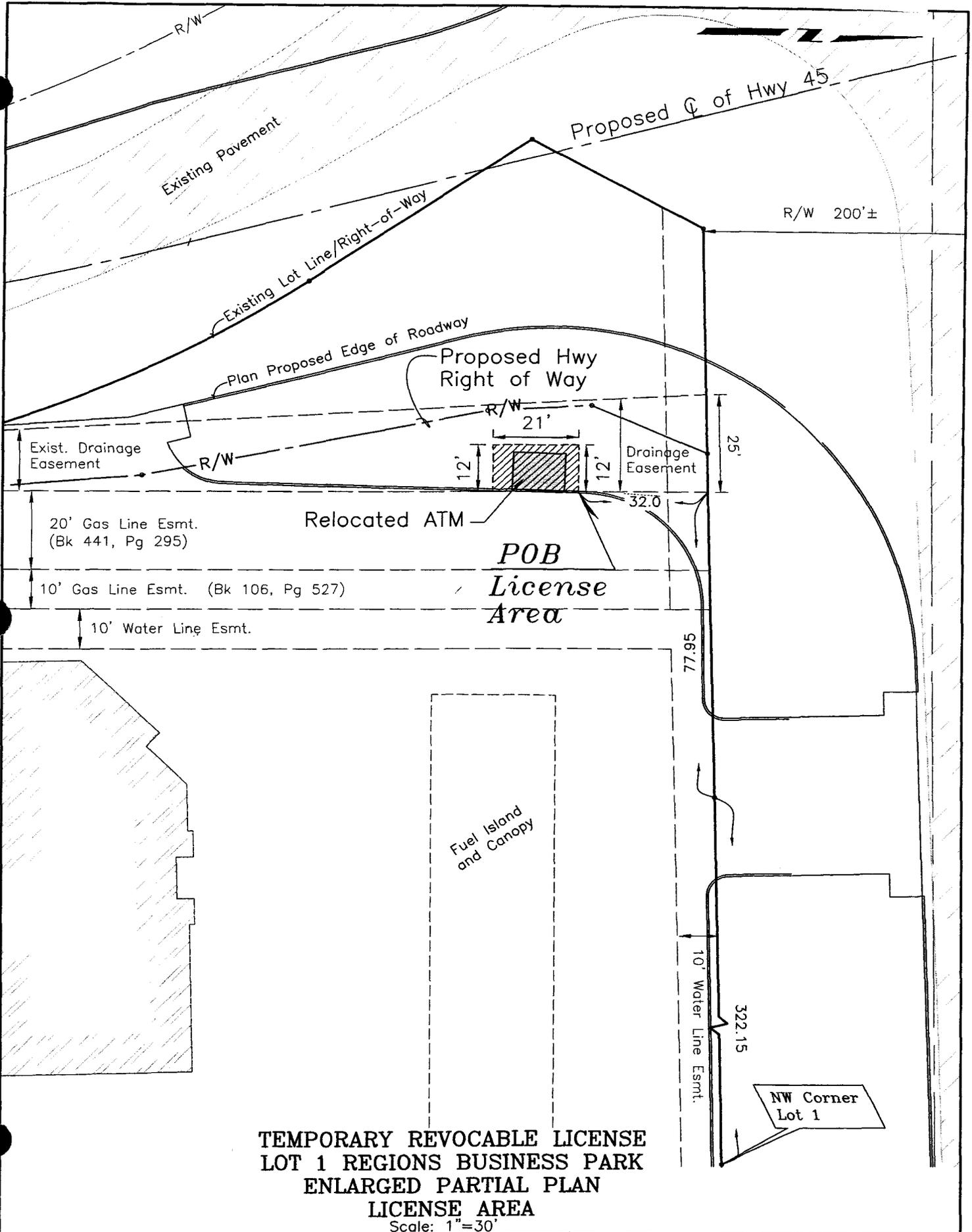
THIS RESOLUTION ADOPTED THIS \_\_\_\_\_ DAY OF JULY 2010.

**APPROVED:**

\_\_\_\_\_  
**Mayor**

**ATTEST:**

\_\_\_\_\_  
**City Clerk**



**TEMPORARY REVOCABLE LICENSE  
 LOT 1 REGIONS BUSINESS PARK  
 ENLARGED PARTIAL PLAN  
 LICENSE AREA  
 Scale: 1"=30'**

# Memo

**To:** Dennis Kelly, City Administrator  
**From:** Wally Bailey, Director of Development Services  
**Date:** June 29, 2010  
**Subject:** Temporary Revocable License for the Placement of an Automatic Teller Machine (ATM) in a Drainage Easement at 4300 South Zero Street

Patrick Mickle, agent, for Zero Mart, Inc., has requested a Temporary Revocable License for the placement of an Automatic Teller Machine (ATM) in a twenty five (25) foot drainage easement at 4300 South Zero Street also know as Lot 1, Regions Business Park as shown in the attached Exhibit A.

The ATM will occupy a 12' x 21' area inside the drainage easement. The request to relocate the ATM within the drainage easement is due to the Arkansas State Highway 45 widening project. The AHTD has acquired portions of the Zero Mart property for the highway widening project, which requires the relocation of the existing ATM.

The plans for the AHTD project include the construction of a new storm drain that is located in the new Highway 45 right of way. When the widening project is completed the existing storm drain will be taken out of service and the drainage easement can be abandoned.

The request was reviewed by the appropriate city departments and the franchise utility companies. We received no objections to the request.

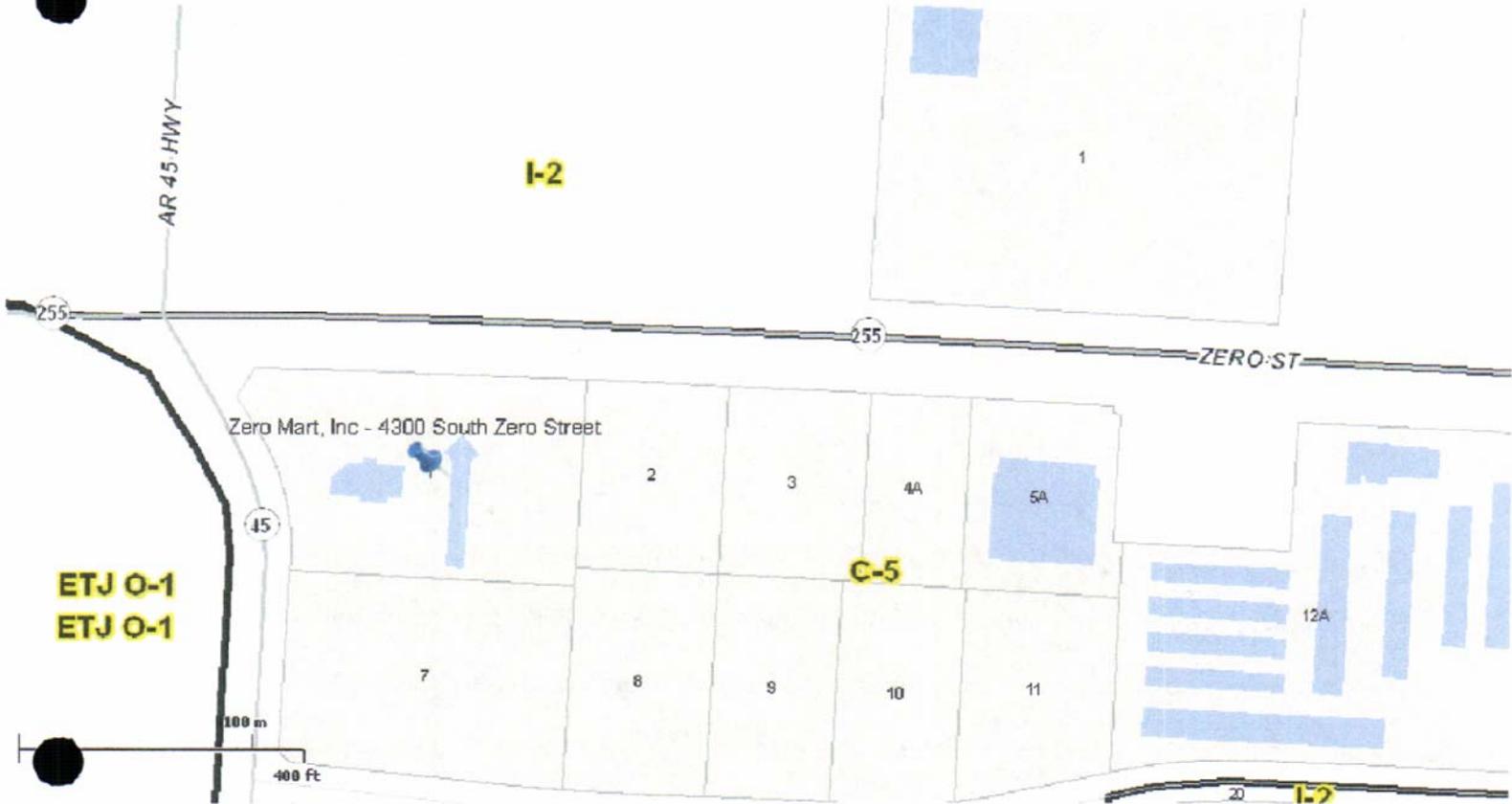
A copy of the Temporary Revocable License Agreement is enclosed. The document has been signed by Chris Whitt, President of Zero Mart, Inc.

Attached for the Board's consideration is a Resolution granting the Temporary Revocable License and authorizing Mayor Baker to sign the agreement.

Enc.

# 4300 South Zero Street

## Vicinity Map



## TEMPORARY REVOCABLE LICENSE AGREEMENT

**SECTION 1:** On \_\_\_\_\_, 2010, the Board of Directors passed Resolution No. \_\_\_\_\_ granting a temporary revocable license to Zero Mart, Inc., their successors or assigns, which, subject to the terms and conditions expressed in this Agreement, temporarily allows the placement and maintenance of an Automatic Teller Machine (ATM) at 4300 South Zero Street in a drainage easement as shown in Exhibit "A" and adjacent to the following described property:

Part of Lot 1, Regions Business Park, Fort Smith, Arkansas, as filed for record October 12, 2000, and being more particularly described as follows:

Commencing at the Northeast corner of said Lot 1: thence N 87°54'27" W, along the north line of said Lot 1, 322.15 feet; thence continuing along said north line N 88°13'05" W, 77.95 feet to the eastern edge of a drainage easement; thence S 03°17'33" W along said easement, 32.0 feet to the Point of Beginning; thence continuing S 03°17'33" W, 21.0 feet; thence N 88°13'05" W, 12.0 feet; thence N 03°17'33" E, 21.00 feet; thence S 88°13'05" E, 12.0 feet to the Point of Beginning, containing 252 square feet more or less.

**Section 2:** It is agreed that the City shall have no responsibility for the maintenance of the Automatic Teller Machine (ATM). If the Automatic Teller Machine (ATM) is damaged in any manner, same shall be removed by the licensee, or any successor or assignee, at the licensee's sole cost and expense (or at the sole cost of any successor or assignee) in a manner meeting the approval of the City Administrator. Upon thirty (30) days notice from the City Administrator, the licensee (or any successor or assignee) shall remove the Automatic Teller Machine (ATM) from the drainage

easement at the licensee=s sole cost and expense (or at the sole cost of any successor or assignee) and in a manner meeting the approval of the City Administrator. The licensee, their successor or assignees, shall hold the City harmless from and indemnify the city for all expenses, losses, cost, causes of action and judgments, including legal expense, arising from the placement and maintenance of said improvements. Should any City department or utility company require access to the drainage easement for any purpose, said City department or utility company shall have no duty to give prior notice to the licensee in emergency situations. For routine or scheduled maintenance, reasonable notice shall be given if the work may affect any improvement by the licensee. Under any circumstance, the City shall have no responsibility to protect or replace any improvements the temporary placement of which is authorized by the license granted by the City.

**SECTION 3:** The terms of this temporary license are deemed accepted by the licensee by the licensee's signature below and by any successor or assignee of the licensee by the acquisition of or reliance on the rights to the temporary license granted by the City.

In witness whereof, this document is executed this \_\_\_\_ day of \_\_\_\_\_, 2010.

**CITY OF FORT SMITH, ARKANSAS**

BY: \_\_\_\_\_  
Ray Baker, Mayor of Fort Smith

Attest:

\_\_\_\_\_  
City Clerk

**ZERO MART, INC.**

BY:  \_\_\_\_\_  
Chris Witt, President

ACKNOWLEDGEMENT

STATE OF ARKANSAS    )  
                                  )SS  
COUNTY OF SEBASTIAN )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned notary public, personally appeared, Ray Baker, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged the execution of the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

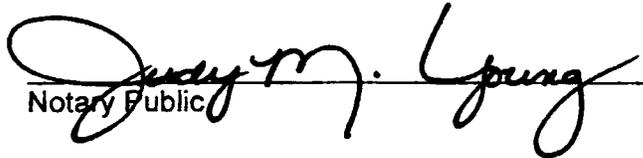
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ACKNOWLEDGEMENT

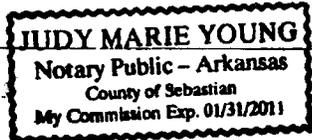
STATE OF ARKANSAS    )  
                                  )SS  
COUNTY OF SEBASTIAN )

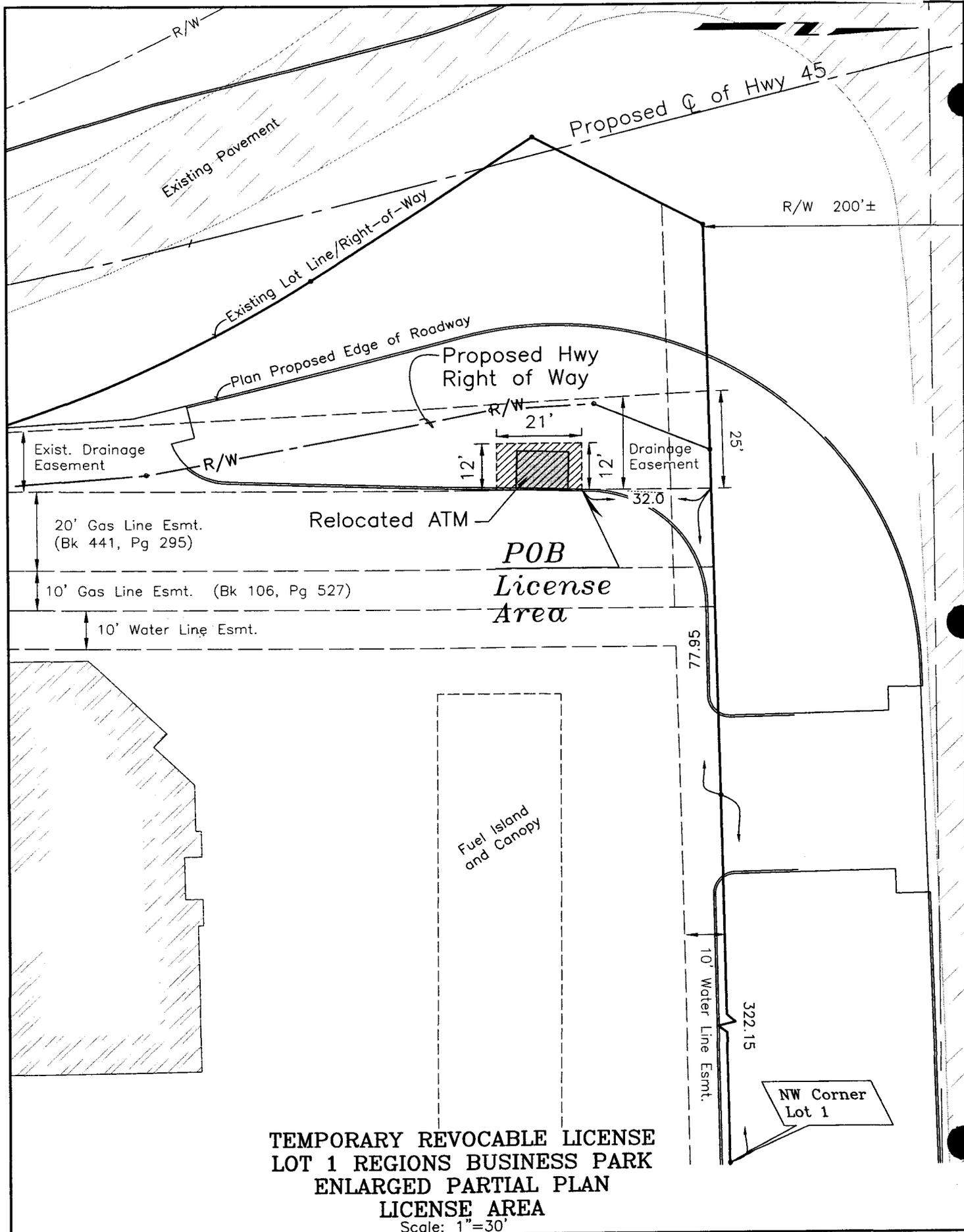
On this 30 day of June, 2010, before me, the undersigned notary public, personally appeared, Chris Whitt, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged the execution of the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
Notary Public

My Commission Expires:





K:\Work\Orders\Regions Bus Park 1 & 7 - 1141\Map\PRINT Exhibit 30 scale.dwg, Layout1, 2/11/2010 4:31:48 PM, Layer, 1:1

**TEMPORARY REVOCABLE LICENSE  
 LOT 1 REGIONS BUSINESS PARK  
 ENLARGED PARTIAL PLAN  
 LICENSE AREA**

Scale: 1"=30'

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING CONCERNING MOBILE DATA SUPPORT BETWEEN THE CITY OF FORT SMITH, ARKANSAS AND THE CITY OF VAN BUREN, ARKANSAS**

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

Section 1. The Memorandum of Understanding between the City of Fort Smith and the City of Van Buren, Arkansas, which shall be substantially in the form attached hereto, is hereby approved and provides for the terms, conditions, and mutual understandings for the operation of mobile data systems between the two parties.

Section 2. The Mayor, his signature being attested by the City Clerk, is hereby authorized to execute this Memorandum of Understanding to which the City of Fort Smith is a party.

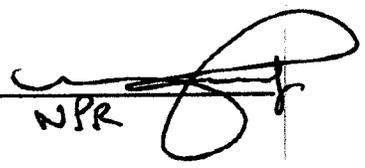
**THIS RESOLUTION ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.**

**APPROVED:**

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

Approved as to form:   
NPR

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE CITY OF FORT SMITH, ARKANSAS AND**  
**THE CITY OF VAN BUREN, ARKANSAS**

This agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Van Buren, AR (City of VB) and City of Fort Smith, AR (City of FS).

**WHEREAS**, the purpose of this Agreement is to define responsibilities of the Fort Smith Police Department (the Hosting Agency) and Van Buren Police Department (the Van Buren PD) concerning use of Mobile Data Computers (MDC) connected to the Fort Smith Police Mobile Data network; and

**WHEREAS**, the City of VB has entered into all necessary supporting contracts and / or Agreements to effectuate this agreement and will cooperate with any future requirements; and

**WHEREAS**, the City of VB understands that entering into this agreement will result in certain recurring annual replacement costs and maintenance fees in support of the Mobile Data systems and network infrastructure and that those costs and fees shall be borne entirely by the City of VB;

**NOW, THEREFORE, the CITY of FORT SMITH and the CITY of VAN BUREN agree as follows:**

**Section 1**

Administration

1. The Hosting Agency will administer and maintain all MDC and network infrastructure used on the Hosting Agency Mobile Data Network (RVMD);
2. The Hosting Agency Network Manager and staff will administer all MDC equipment and installation of software for the Van Buren PD;
3. All software installation and configuration activities for MDC equipment connected to the Hosting Agency Network Infrastructure will be performed under the direction of the Hosting Agency Network Manager and staff, except as specified below in Section 4 paragraph 1;
4. The Hosting Agency Mobile Data Network Manager will administer all MDC user security accounts for the Van Buren PD;

5. Van Buren PD law enforcement personnel using the Hosting Agency Mobile Data Network will abide by all applicable Hosting Agency policies and IT Security Policies, including but not limited to, the Acceptable Use Policy of IT Resources;
6. The Van Buren PD will ensure that only authorized law enforcement personnel operate MDCs connected to the Hosting Agency Mobile Data Infrastructure;
7. The Van Buren PD will notify the Hosting Agency Network Manager within 24 hours of a status change concerning the eligibility of any Van Buren PD law enforcement personnel to operate a Van Buren PD MDC by reason of separation, suspension, or other status change under this agreement. The Hosting Agency Network Manager will immediately disable such member's MDC security account;
8. Either the Host Agency or the Van Buren PD can suspend connectivity pending resolution of any issue that may impact the confidentiality, integrity or availability of their respective systems;
9. In the event the Van Buren PD MDC equipment requires service, the Van Buren PD will contact and transport the equipment to the Hosting Agency Network Manager;
10. The Hosting Agency Network Manager will notify a member designated by the Van Buren PD of any planned or discovered un-planned interruption of the Mobile Data services.

## **Section 2**

### Arkansas Crime Information Center (ACIC)

1. The Van Buren PD will ensure that only law enforcement personnel or staff members currently certified by the Arkansas State Police or ACIC/NCIC access operate MDCs connected to the Hosting Agency Mobile Data Infrastructure;
2. Violation of ACIC/NCIC policies will result in immediate suspension of connectivity.

## **Section 3**

### Audits

1. At regular intervals, the Hosting Agency will conduct audits of mobile data message traffic to ensure member compliance with established use policies. Mobile Data message traffic from Van Buren PD law enforcement personnel or staff members is subject to review during these audits;
2. If a Van Buren PD member is identified as having violated established Hosting Agency use policies, the Host Agency Chief of Police, or his/her designee, will contact the Van Buren PD Chief of Police or his/her designee and make notification of the violation;

3. The Hosting Agency Chief of Police will provide the Van Buren PD Chief of Police or a designated member, upon request, audits of Van Buren PD law enforcement personnel mobile message traffic, and any other security logs available.

#### **Section 4**

##### Technology Upgrade

1. To maintain the operational efficiency of the Hosting Agency Mobile Data Network, the Hosting Agency Network Manager regularly updates server hardware and software on MDC equipment and network systems. The Van Buren PD agrees to access and install these hardware and software updates and to transport MDC equipment to the Hosting Agency Mobile Data Coordinator for update installation, in instances when updates cannot be efficiently transmitted to MDC equipment wirelessly;
2. To maintain the operational efficiency of the Hosting Agency Mobile Data Network, the Hosting Agency has established a five-year hardware refresh schedule for MDC equipment that includes Mobile Data servers, software, and supporting network equipment. The Van Buren PD agrees to provide to the Hosting Agency the installation date for all Van Buren PD MDC equipment. The Hosting Agency Network Manager will notify a member designated by the Van Buren PD, at least ninety days in advance, that the Van Buren PD equipment is approaching the obsolescence date. No connectivity will be permitted for MDC equipment beyond the equipment obsolescence date. The Van Buren PD will be responsible for acquiring and funding replacement MDC equipment, servers, software and network equipment, specified by the Hosting Agency Network Manager.

#### **Section 5**

##### Regional Mobile Data Federal Grants

By accepting Regional Mobile Data equipment procured by the Fort Smith Police Department using federal grants, the recipient agrees to and understands:

- A. The equipment remains the property of the City of Fort Smith by the terms of the grant.
- B. The recipient is responsible for proper care and maintenance of the equipment while it is in the recipient's possession. The recipient cannot modify or alter the equipment without prior express written permission of the Fort Smith Police Chief or his/her designee. This includes removal of any inventory or identification tags.
- C. The recipient may not sell, barter, trade, pawn, loan, dispose of in any way, or otherwise encumber the equipment at any time. The equipment must be returned to the City of Ft. Smith for proper disposition.

- D. The above requirements are the result of federal grant mandates. They are non-negotiable.

## Section 6

### Fees

1. Year 2010 total support fees: \$6,480

#### Terms:

- The Hosting Agency will allow Van Buren PD to join the River Valley Mobile Data system (RVMD) at the lowest entry fees per MDT of \$800 for Support and \$240 for Internet for a total of \$1,040 per MDT. Van Buren PD has a grant for \$6,480 and would like to apply these funds towards the MOU fees in 2010. These fees would cover the support fees for a term of 12 months starting on the day the MOU is approved.
  - The Hosting Agency will allow Van Buren PD in 2010 to operate up to 9 MDTs on the system in 2010 for the support cost of 6.
  - The Hosting Agency agrees to allow continued use of four licenses until the federal grant funding becomes available. Once the RVMD federal grant money becomes available, Fort Smith PD will purchase for the Van Buren PD up to 10 mobile cop licenses. Additional licensing requirements above 10 will be the responsibility of Van Buren PD to purchase and maintain the annual software fees.
  - The City of VB understands it will bear sole responsibility for any annual maintenance fees for software or hardware purchased through the RVMD grant or through Van Buren PD budget.
  - It is understood by the City of VB that federal grants may not cover the cost of acquiring RSA tokens (which allow two-factor authentication to access NCIC), and, in such case, the financial responsibility for acquiring such tokens for use by the Van Buren PD will be that of the City of VB.
2. Year 2011 and each year thereafter total support fees for 9 MDCs will total \$9,360.00

#### Terms:

- The Van Buren PD has requested support for 9 MDCs in 2011 and agrees to pay the Hosting Agency fees associated with the rendering of MDC service as follows:
  - a. An internet usage fee of \$240.00 per MDC unit per year totaling \$2160.00

b. A support fee of \$800.00 per MDC unit per year totaling \$7,200.00

This equates to a total annual fee of \$9,360.00

**Section 7**

**Renewal**

This agreement shall have a term of one year upon its enactment and shall be renewed on a yearly basis. Either party not wishing to renew the agreement shall give written notice to the respective Chief of Police, or their designee, at least ninety (90) days in advance of the termination date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

  
\_\_\_\_\_  
ROBERT FREEMAN, MAYOR

CITY OF VAN BUREN, AR

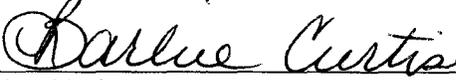
DATE 6-21-10

\_\_\_\_\_  
RAY BAKER, Mayor

CITY OF FORT SMITH, AR

DATE \_\_\_\_\_

ATTEST:

  
\_\_\_\_\_  
Barbie Curtis  
City Clerk

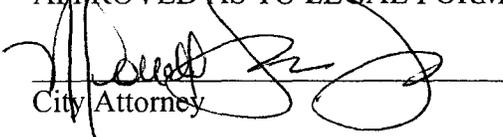
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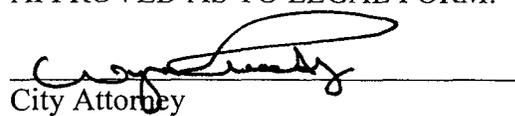
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City Clerk

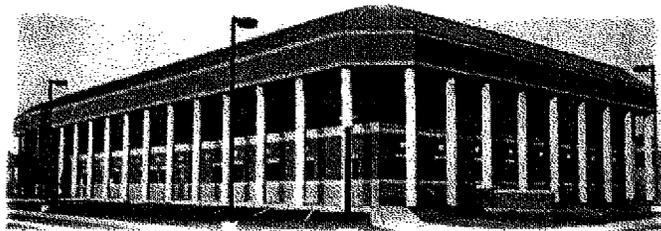
DATE: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

  
\_\_\_\_\_  
City Attorney

APPROVED AS TO LEGAL FORM:

  
\_\_\_\_\_  
City Attorney



## **Fort Smith Police Department**

Kevin Lindsey, Chief of Police

### **INTERDEPARTMENTAL MEMORANDUM**

**To:** Dennis Kelly, City Administrator

**From:** Kevin Lindsey, Chief of Police

**Subject:** Memorandum of Understanding between the City of Fort Smith and the City of Van Buren, Arkansas concerning Mobile Data Computers

**Date:** June 28, 2010

The Fort Smith Police Department continues its drive towards becoming a regional leader in communications and information dissemination. As part of this process the Department is able to supply the communication needs of other jurisdictions and receive compensation for those services. Monies received can then be reinvested in the technical infrastructure required to maintain the informational network thus benefiting not only the purchaser of services but also the citizens of Fort Smith.

The Department is proposing that the City enter into a Memorandum of Understanding that would allow the Department to collect revenue from the City of Van Buren, Arkansas for Mobile Data services. This is one of many such agreements that the Department has been able to enter into and is an important step in continuing the development of the Department's Information Technology and Communications goals.

Please contact me if you have questions or need additional information.

RESOLUTION AUTHORIZING ACQUISITION OF REAL PROPERTY  
INTERESTS FOR THE LAKE FORT SMITH WATER SUPPLY PROJECT

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

SECTION 1: The following appraised values for the acquisition of watershed protection easements for the Lake Fort Smith Water Supply, Project Number 99-01, are approved and acquisition of the easements for the appraisal amounts, is hereby authorized:

<u>Tract Number</u>	<u>Property Owner</u>	<u>Appraised Value</u>
25-6	Giles France, Sr., and Bennie Sue France	\$ 26,000.00
25-6A	Giles France, Sr., and Bennie Sue France	\$ 15,000.00
25-8	Giles France, Sr., and Bennie Sue France	\$ 20,000.00
25-11	Giles France, Sr., and Bennie Sue France	\$ 1,400.00
25-13	Giles France, Sr. and Bennie Sue France	\$ 45,000.00
25-13A	Giles France, Sr., Bennie Sue France & Nerissa France	\$ 18,000.00
25-14/19	Giles France, Sr., Bennie Sue France & Jeffrey France	\$ 45,000.00
25-18	Giles France, Sr., and Bennie Sue France	\$ 29,000.00
25-31	Giles France, Sr., and Bennie Sue France	\$ 34,000.00
25-31A	Giles France, Sr., and Bennie Sue France	\$ 1,200.00
24-12	Larson Family Revocable Trust	\$ 30,000.00
25-10	Larson Family Revocable Trust	\$ 6,000.00
25-21	Larson Family Revocable Trust	\$ 6,000.00

SECTION 2: The City Administrator, or his designated agent, and the City Attorney are hereby authorized to acquire the watershed protection easements for the above listed appraisal amounts. All such actions previously taken for this project, are hereby confirmed.

This Resolution adopted this \_\_\_\_ day of July 2010.

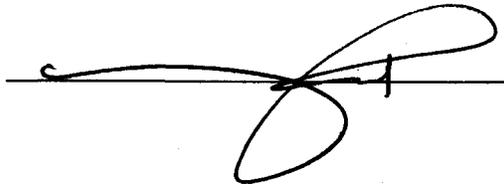
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
npr

**INTER-OFFICE MEMO**

**TO:** Dennis Kelly, City Administrator

**DATE:** June 29, 2010

**FROM:** Steve Parks, Director of Utilities

**SUBJECT:** Watershed Protection Acquisitions  
Lake Fort Smith Water Supply

Over the past few months staff has been discussing with the France and Larson families about the need to acquire watershed protection for Lake Fort Smith on their property. All of these properties are within the watershed boundary area around the lake that the city proposes to acquire for watershed protection, either by a watershed protection easement or by fee title acquisition. The city's appraiser, Matthews and Associates, has set the reasonable compensation to the property owners in exchange for the development and use restrictions placed on each of these thirteen properties at approximately 20 percent of the total fee valuation of the land and improvements. The value of the watershed protection easement for each tract is shown on the attached Resolution. This appraisal valuation is similar to previous appraisals of watershed protection easements in the area. Staff believes this valuation to be reasonable compensation. The city's watershed protection easement would limit the number of new residential structures which could be constructed and also limit other activities which would adversely affect the water quality within the lake. Exhibits are attached which show the property owner's name, tract number and general location of the property.

France Family Properties  
Tracts 25-6, 6A, 8, 11, 13, 13A, 14/19, 18, 31 and 31A

The France Family own 10 separate tracts of land that total approximately 159 acres. The properties are located on Boston Mountain Road approximately one mile from its intersection with Highway 71 north of Mountainburg, Arkansas. The France Family reside on the property utilizing three single family dwellings, with the remaining acreage currently being used for a small cattle/sawmill operation. The northern portions of the property have areas suitable for several additional home sites, but the southern portion is generally very steep and drains directly into the lake. The property is served by the Winslow Rural Water Association which is one of the city's wholesale customers.

Larson Family Revocable Trust Properties  
Tracts 24-12, 25-10 and 21

The Larson Family Revocable Trust own three separate parcels of land that total approximately 6.2 acres. The lands are located on Boston Mountain Road near the France Properties. Two of the parcels have single family dwellings in place and one parcel is vacant. The property is served by the Winslow Rural Water Association which is one of the city's wholesale customers.

Attached is a Resolution granting the City Administrator or his designated agent, the authority to make the offer to acquire the watershed protection easements and real properties listed above for their respective appraised values. It is my recommendation that this matter is submitted to the Board for their consideration at their next scheduled meeting.

Should you or members of the Board have any questions or desire additional information, please let me know.

attachment

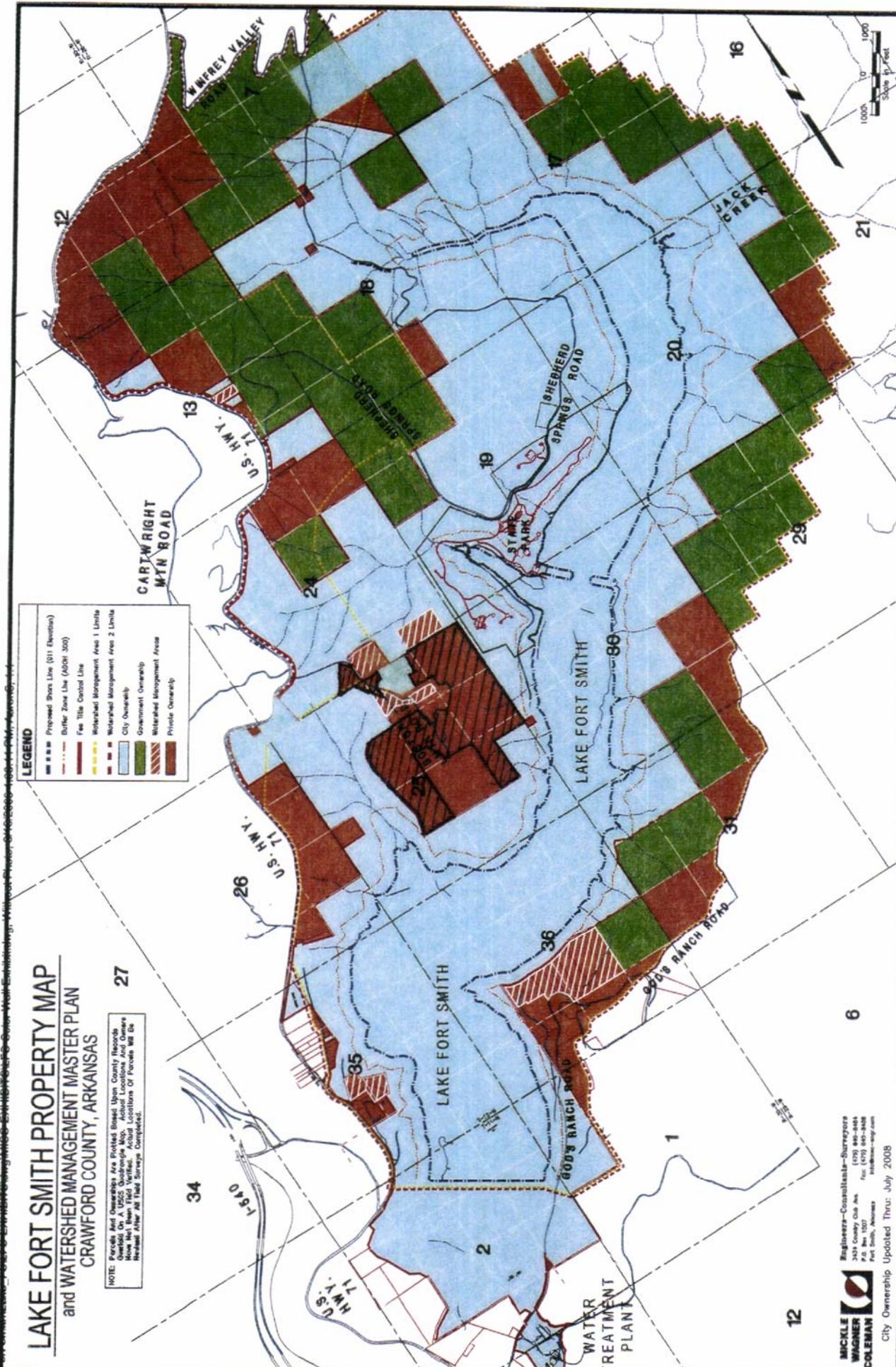
pc: Ray Gosack

# LAKE FORT SMITH PROPERTY MAP and WATERSHED MANAGEMENT MASTER PLAN CRAWFORD COUNTY, ARKANSAS

NOTE: Parcels And Ownerships Are Fictitious Based Upon County Records  
As Of 1/1/2008. All Boundaries, Areas, Accretions, Locations And Owners  
Shown Herein 1990. Verifications And Corrections Of Parcels Will Be  
Required After All Field Surveys Completed.

## LEGEND

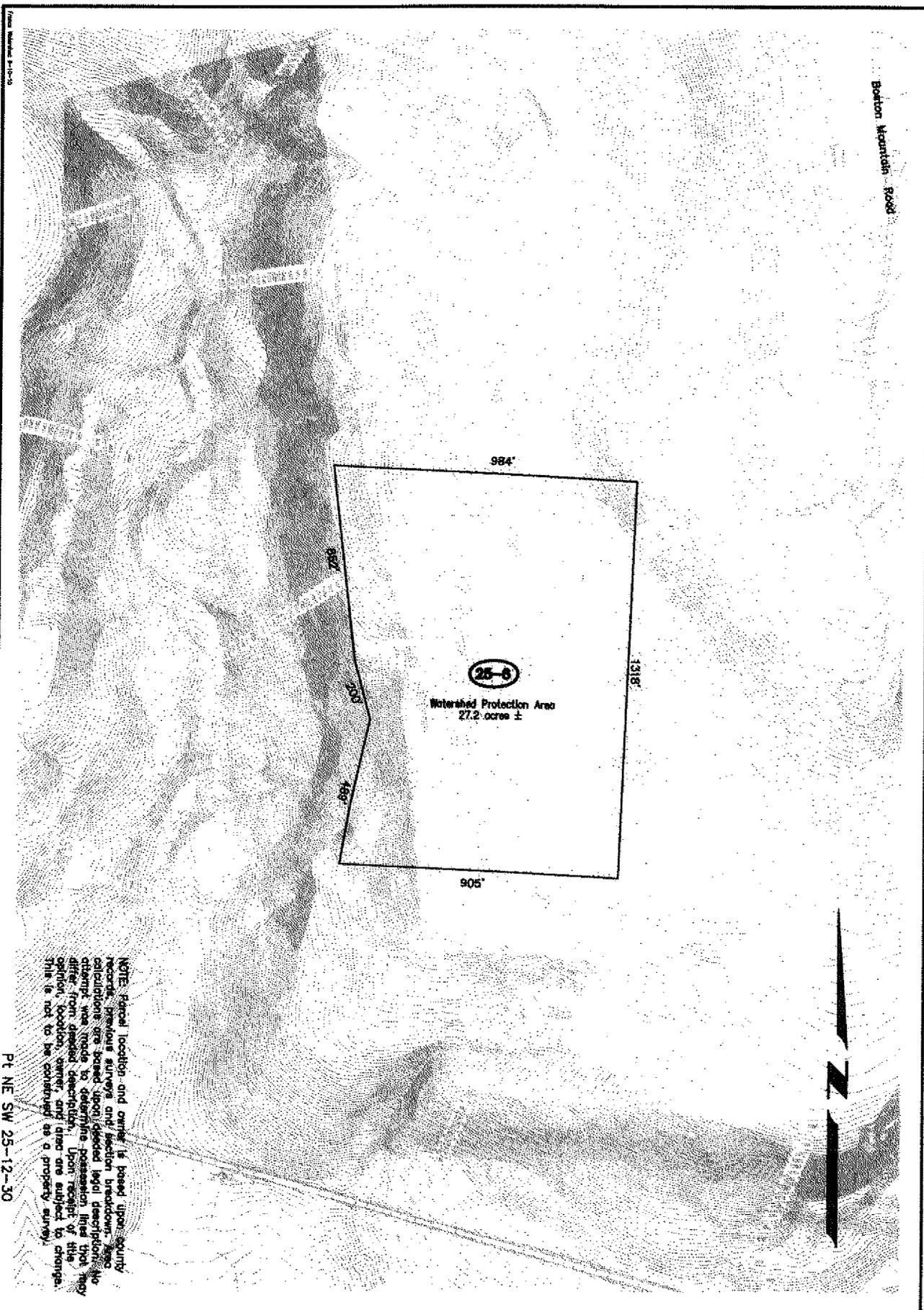
- Proposed Shock Line (311 Elevations)
- Buffer Zone Line (ASOT 300)
- Fee Title Control Line
- Waterbed Management Area 1 Limits
- Waterbed Management Area 2 Limits
- City Ownership
- Government Ownership
- Waterbed Management Areas
- Private Ownership





**WATERSHED PROTECTION AREA  
LAKE FORT SMITH EXPANSION PROJECT  
Sec 24 & 25, T-12N, R-30W**

Boston Mountain Road

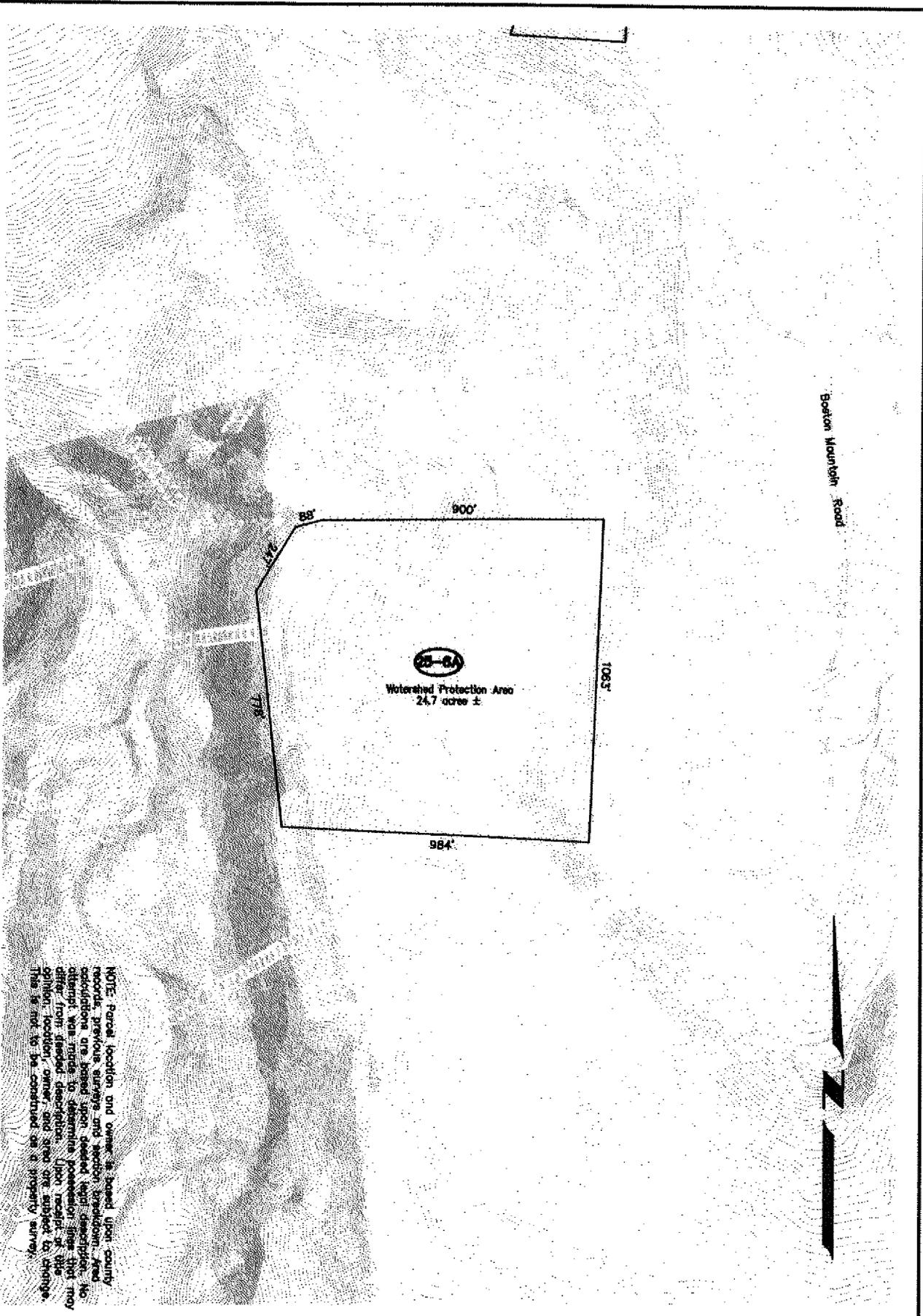


NOTE: Parcel location and owner is based upon county records, previous surveys and section breakdowns. Any calculations are based upon divided legal descriptions. No attempt was made to determine possession lines that may differ from actual descriptions. Upon receipt of this notice, location, owner, and area are subject to change. This is not to be construed as a property survey.

Pt. NE SW 25-12-30

Exhibit		DATE		REVISION		BY
25-6						
France, Glee D. Sr. & Bernie Sue						
CUMBERLAND COUNTY, ARKANSAS						
<b>NICKLE WAGNER COLEMAN</b> 		<b>Engineers-Consultants-Surveyors</b> 3434 Country Club Ave. P.O. Box 1007 Fort Smith, Arkansas		(501) 646-8484 Fax: (501) 646-8486 info@nwc-ecr.com		

From Standard Article 10



**25-8A**  
 Watershed Protection Area  
 24.7 acres ±

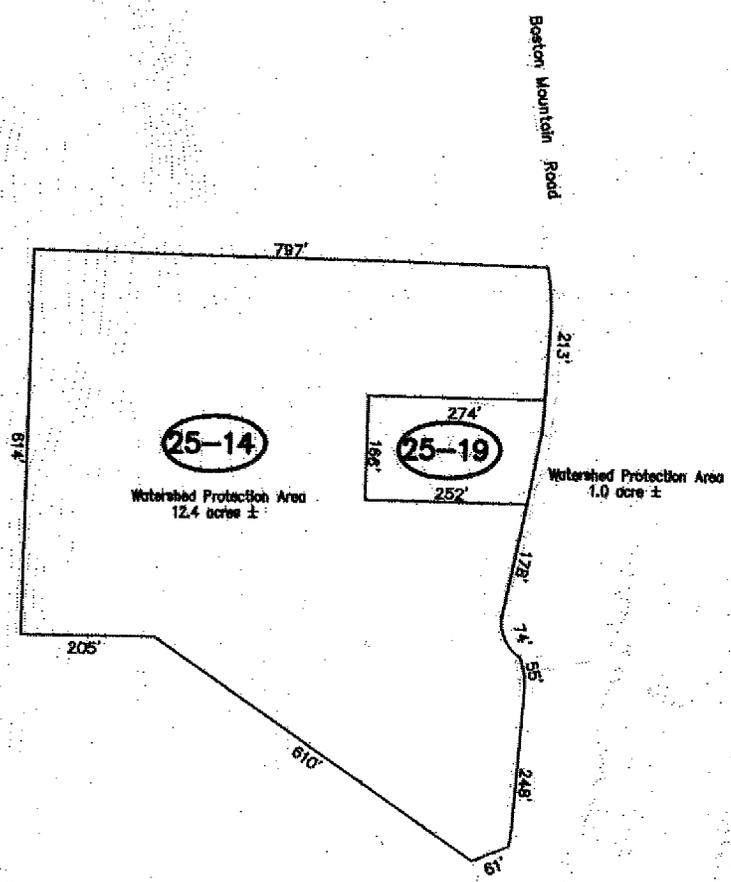
NOTE: Parcel location and owner is based upon county records, previous surveys and section boundaries. Parcel boundaries are based upon deeded legal descriptions. No attempt was made to determine possession lines that may differ from stated descriptions. Upon receipt of the opinion, location, owner, and area are subject to change. This is not to be construed as a property survey.

Pt SE NW 25-12-30

Exhibit		MICKLE WAGNER COLEMAN	Engineers-Geologists-Surveyors 2434 Country Club Ave. (501) 848-8484 P.O. Box 1507 Ft. Smith, Arkansas Fax: (501) 848-8485 info@mwo-sngr.com	DATE	REVISION	BY
25-8A	France, Olee D. Sr. & Bernie Sue CRAWFORD COUNTY, ARKANSAS					







NOTE: Parcel location and owner is based upon county records, previous surveys and section breakdown. Area calculations are based upon stated legal description. Any discrepancy was made to determine possession lines that may differ from deed description. Upon receipt of this opinion, location, owner, and area are subject to change. This is not to be construed as a property survey.

PL SW NE 25-12-30

DATE	REVISION	BY

NO.	DATE	BY
1	10/24/07	
2		
3		
4		
5		

**Exhibit**  
**25-14, 25-19**  
**France, et al**  
**CRIMFORD COUNTY, ARKANSAS**

**MICKLE WAGNER COLEMAN**   
**Engineers-Consultants-Surveyors**  
 3434 Country Club Ave. (501) 648-8484  
 P.O. Box 1807 Fort Smith, Arkansas Fax: (501) 648-8486  
 info@mwc-engr.com







Eastern Mountain Road

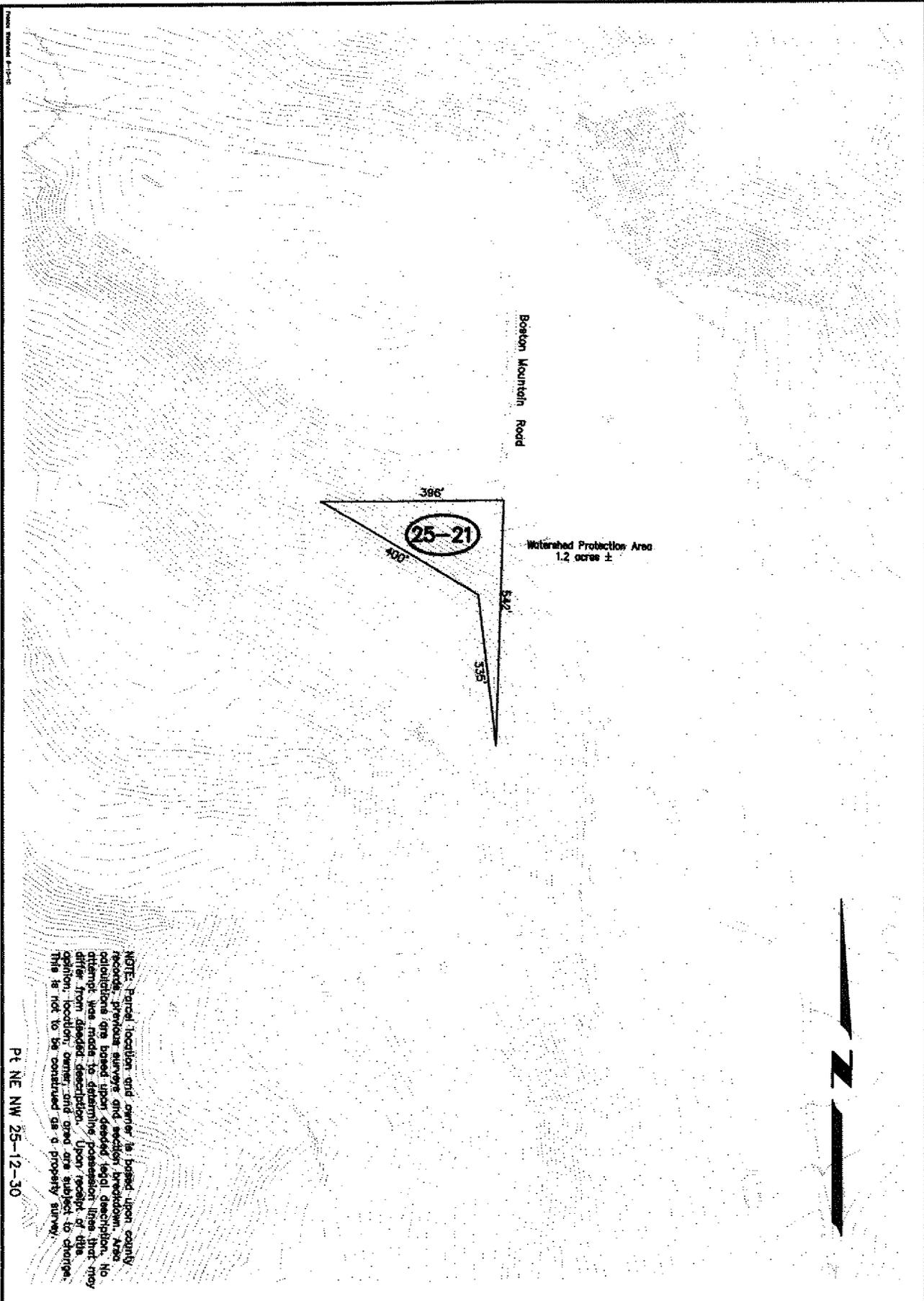


NOTE: Parcel location and owner is based upon county records, previous surveys, and section breakdown. Area calculations are based upon deeded legal description. No attempt was made to determine possession lines that may differ from deeded description. Upon receipt of title opinion, location, owner, and area are subject to change. This is not to be construed as a property survey.

Pt SE SW 24-12-30

SHEET NO. OF NO. SHEETS 1 1	<b>Exhibit</b> <b>24-12</b> <b>Lorson Family Revocable Trust</b> CRAWFORD COUNTY, ARKANSAS	<b>NECKLE WAGNER COLEMAN</b>  <b>Engineers-Consultants-Surveyors</b> 3434 Country Club Ave. P.O. Box 1907 Fort Smith, Arkansas (501) 848-8484 Fax: (501) 848-8488 Info@nwc-enr.com	DATE	REVISION	BY





Scale: 1" = 100'

NOTE: Parcel location and owner is based upon county records, previous surveys and section breakdown. Area calculations are based upon desired legal description. No attempt was made to determine possession lines that may differ from desired description. Upon receipt of this opinion location, owner and area are subject to change. This is not to be construed as a property survey.

Pt NE NW 25-12-30

<p><b>Exhibit</b></p> <p><b>25-21</b></p> <p><b>Loren Family Revocable Trust</b></p> <p><b>CRAWFORD COUNTY, ARKANSAS</b></p>		<p><b>MICKLE WAGNER COLEMAN</b></p> <p><b>Engineers-Geologists-Surveyors</b></p> <p>3434 Country Club Ave. (501) 548-8484          P.O. Box 1807 Fax (501) 548-8485          Fort Smith, Arkansas info@mwc-engr.com</p>	<p>DATE</p>	<p>REVISION</p>	<p>BY</p>
<p>DATE</p>	<p>REVISION</p>		<p>BY</p>		

RESOLUTION NO. \_\_\_\_\_

5 D

RESOLUTION ACCEPTING THE PROJECT AS COMPLETE AND AUTHORIZING  
FINAL PAYMENT TO FORSGREN, INC., FOR CONSTRUCTION OF WET  
WEATHER LINE CAPACITY IMPROVEMENTS SOUTH "O" STREET

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

SECTION 1: The construction of the Wet Weather Line Capacity Improvements  
South "O" Street, Project 09-11-C1, is accepted as complete.

Section 2: Final payment to Forsgren, Inc., in the amount of \$491,395.15, is  
hereby approved.

This Resolution adopted this \_\_\_\_\_ day of July 2010.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
npr

**INTER-OFFICE MEMO**

**TO:** Dennis Kelly, City Administrator

**DATE:** June 29, 2010

**FROM:** Steve Parke, Director of Utilities

**SUBJECT:** Wet Weather Line Capacity Improvements  
South "O" Street Sewer - Project Number 09-11-C1

The South "O" Street wet weather sewer line capacity project replaced approximately 1,200 feet of badly deteriorated 12-inch diameter pipe with 18-inch diameter sewer main from the east side of Towson Avenue to the west right-of-way of Wheeler Avenue. This segment of sewer main had recurring problems with blockages and lack of capacity which caused sewer overflows to occur. An exhibit indicating the project location is attached.

The project is now complete and ready for final payment. The work was completed for an amount of \$5,088.08 less than the adjusted contract amount. The original project cost was increased due to three unforeseen conditions. The first was the collapse of the sewer line under Towson Avenue prior to the start of construction. The second was the discovery that the existing sewer line had been trenched into hard shale which required a change in pipe bursting technique. The third was the need to fill a large void found under the railroad tracks created by a defect in the old sewer line where it crossed under the tracks.

A Resolution is attached accepting the project as complete and authorizing final payment to Forsgren, Inc., in the amount of \$491,395.15. Should you or members of the Board have any questions or need additional information, please let me know.

attachment

pc: Ray Gosack

DATA\Exhibits\Callison\09-11-E1\_So-O-St-SSrehab.dwg, 6/9/2010 12:04:52 PM, \\WY1PR01\UTL\_HPLJ8150.D

N "O" ST

N 52ND ST

GRAND AVE

KINKEAD AVE

ROGERS AVE

FREE FERRY RD

N WALDRON RD

WHEELER AVE

S "O" ST

TOWSON AVE

S "W" ST

JENNY LIND RD

PHOENIX AVE



**SOUTH "O" STREET  
SEWER LINE IMPROVEMENTS  
PROJECT 09-11-E1**

City of Fort Smith  
Project Status: Complete

Today's date: 07/06/2010

Staff contact name: Steve Parke

Staff phone number: 784-2231

Contract time (no. of days): 145

Notice to proceed issued: 03/10/2010

Project name: Wet Weather Line Capacity Improvements South "O" Street

Project number: 09-11-C1

Project engineer: Utility Department

Project contractor: Forsgren, Inc.

	Dollar Amount	Date
Original at approval	542,813.18	1/5/2010
Change orders:		
1		
2	259,646.00	3/16/2010
3		
	<u>259,646.00</u>	
Final contract amount:	<u>802,459.18</u>	
Payments to date (as negative):	-305,975.95	38.1% of Final Contract Amount
Amount of this payment	-491,395.15	
Contract balance remaining	0.00	0.0% of Final Contract Amount
Retainage held	0.00	
Amount Over (under) original as a percentage	46.90%	

Note:

The final payment to Contractor underran the final contract amount by \$5,088.08.

# **AGENDA** ~ **Summary**

## **FORT SMITH BOARD OF DIRECTORS REGULAR MEETING**

***JULY 6, 2010 ~ 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 AND PLEDGE OF ALLEGIANCE**

### **ROLL CALL**

***All present***

### **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)***

***Information available by viewing rebroadcast of the meeting on City Access Channel 6 or City website***

### **APPROVE MINUTES OF THE JUNE 15, 2010 REGULAR MEETING**

***Unanimously approved as written***

### **ITEMS OF BUSINESS:**

Presentation of the 2009 Audit

***Presentation by Director of Finance Kara Bushkuhl***

1. Ordinance amending the Master Land Use Plan map from Not Classified to General Commercial and rezoning identified property from Unzoned to Commercial-3 by extension *(12200 Highway 71 South)*  
***Approved 7 in favor, 0 opposed / Ordinance No. 29-10***
2. Ordinance amending the Master Land Use Plan map from Residential Detached and Mixed Use Employment to Industry and rezoning identified property from Industrial-2 to Industrial Heavy (I-3) by extension *(2622 North 17<sup>th</sup> Street)*  
***Approved 7 in favor, 0 opposed / Ordinance No. 30-10***

3. Ordinance amending Chapter 20, Article II of the Fort Smith City Code of Ordinances regulating alarm systems  
The Board voted 7 in favor, 0 opposed to table the ordinance for 2 weeks in order for staff to review and suggest revised language in Section 20-34
4. Resolution of the City of Fort Smith certifying local government endorsement of business to participate in the Tax Back Program (as authorized by Section 15-4-2706(d) of the Consolidated Incentive Act of 2003) (*Mitsubishi Power Systems Americas, Inc.*)  
Approved 7 in favor, 0 opposed / Resolution No. R-131-10
5. Consent Agenda
  - A. Resolution granting a temporary revocable license for the placement of an automatic teller machine (ATM) in a drainage easement and authorizing Mayor to execute agreement (*Zero Mart, Inc. / 4300 South Zero Street*)  
Approved 7 in favor, 0 opposed / Resolution No. R-132-10
  - B. Resolution authorizing the execution of a memorandum of understanding concerning mobile data support between the City of Fort Smith, Arkansas and the City of Van Buren, Arkansas  
Approved 7 in favor, 0 opposed / Resolution No. R-133-10
  - C. Resolution authorizing acquisition of real property interests for the Lake Fort Smith Water Supply Project (\$276,600.00)  
Approved 7 in favor, 0 opposed / Resolution No. R-134-10
  - D. Resolution accepting the project as complete and authorizing final payment to Forsgren, Inc. for construction of Wet Weather Line Capacity Improvements, South "O" Street (\$491,395.15)  
Approved 7 in favor, 0 opposed / Resolution No. R-135-10

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

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

Information available by viewing rebroadcast of the meeting on City Access Channel 6 or City website

**EXECUTIVE SESSION**

Performance evaluation: City Administrator

The Mayor announced that another evaluation will occur in 3 months - October 2010.

**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)*

*Information available by viewing rebroadcast of the meeting on City Access Channel 6 or City website*

**ADJOURN**

## MINUTES OF BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ JULY 6, 2010 ~ 6:00 P.M.

### FORT SMITH PUBLIC SCHOOLS SERVICE CENTER

The meeting was called to order by Mayor Ray Baker, presiding. Invocation was given by Director Don Hutchings, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Steve Tyler, Andre' Good, Don Hutchings, Bill Maddox, Kevin Settle, Gary Campbell, and Cole Goodman. A quorum was declared present.

Mayor Baker inquired if any Board member had an item of business to present that was not already on the agenda. There was none presented.

The minutes of the June 15, 2010 regular meeting were presented for approval. Settle, seconded by Campbell, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

With regard to the time limit policy for persons wishing to address the Board, Mayor Baker communicated that five (5) minutes per side would be extended on controversial items with three (3) minutes for rebuttal per side.

Mayor Baker called upon Director of Finance Kara Bushkuhl for presentation of the 2009 Audit.

Ms. Bushkuhl extended appreciation to members of her staff, the audit advisory committee, and to Joel Haaser and Don DeSoto of the auditing firm Baird Kurtz & Dobson (BKD). She advised that the audit received a "clean opinion" from BKD. She reviewed the audit report and topics of discussion from the audit committee's June 24 meeting:

- ◆ **General Fund declining balance**  
Declined by \$2.2 million between 2008 and 2009. A significant

portion of the decrease was due to the decline in county sales tax revenue (9.4%) and the decrease in franchise fees (18.7%) between years.

◆ **Water & Sewer Fund unrestricted net asset (deficit) and bond covenant noncompliance**

This fund continues to report a deficit balance in unrestricted net assets. The deficit for 2009 is \$9.2 million. Additionally, in 2009, the water and sewer system produced net revenues of only 104% of current year debt service. The bond covenants require that rates be sufficient to produce revenues of at least 110% of the current year's debt service on all system bonds (revenue bonds). The City has contracted with Burns & McDonnell for a water and sewer rate study that is due to be completed later this summer.

◆ **Police and Fire Pension Plan contribution rate increases and future funding plans**

For the past several years, the City's contribution rates to the police and fire retirement plan have continued to rise. Benefit increases approved by the state legislature have impacted the contribution rates. The audit advisory committee is reviewing this situation and will provide a report to the Board in the near future.

◆ **Other post employment benefit (OPEB) liabilities**

The application of OPEB accounting standards was made for the second year in the 2009 CAFR. The OPEB liabilities increased from \$2.3 million in 2008 to \$3.5 million in 2009. The audit advisory committee plans to prepare a report about future funding so the Board may respond to the needs of the plan.

Ms. Bushkuhl then called upon Ken Pyle, chairman of the audit advisory committee, for comments. Mr. Pyle also extended appreciation to BKD, and City staff involved in the audit. He spoke to the issues as outlined above by Ms. Bushkuhl, stating specifically that water and sewer rates are not sufficient to provide operations and capital improvements. He also spoke regarding staffing level in the finance department, advising that it continues to operate at the same level it did 20 years ago. The audit advisory committee also

recommends that during preparation of the 2011 budget, the Board consider the issue and ways to improve the staffing level in the finance department.

Item No. 1 as an ordinance amending the master land use plan and rezoning identified property and amending the zoning map ~ 12200 Hwy. 71 South from Not Zoned to Commercial Moderate (C-3) by Extension.

Wally Bailey, Director of Development Services, briefed the members on the item. The purpose of the requests is to facilitate the construction of a restaurant with a beer garden on the proposed Didier Commercial Park, Lot 2 property. A conditional use/development plan was also reviewed by the Planning Commission. The development plan included a review of the outdoor dining issue as well as other site related issues. An issue related to the development plan concerned the proper and safe location of driveway. The developer has agreed to relocate the driveway to the median cut.

There were no persons present to speak in opposition at the Planning Commission meeting. The Planning Commission recommended approval of both the master land use plan amendment and the rezoning request by a vote of 9 in favor and 0 opposed.

Hutchings, seconded by Good, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance for its readings, and the members all voting affirmatively, the Mayor declared the motion carried, and the ordinance was adopted and given No. 29-10.

Item No. 2 was an ordinance amending the master land use plan map and rezoning identified property and amending the zoning map ~ 2622 North 17<sup>th</sup> Street from Residential Detached & Mixed Use Employment to Industry ~

Wally Bailey, Director of Development Services, briefed the members on the item. The purpose of the requests is to allow the applicant to operate a vehicle storage yard to be used in conjunction with his existing auto body shop business located on North "O" Street. The applicant proposes to use the property for storage of vehicles and parts only and will not be conducting a business there. At the Planning Commission meeting, there was an issue raised about illegal parking, and staff advised that the Planning and/or Police Departments should be contacted when a problem occurs. The Planning Commission recommended approval of both the master land use plan amendment and rezoning request by a vote of 8 in favor and 1 opposed.

The following individual was present to address the item:

- ◆ Eric Arthur  
815 North B Street

He questioned if EPA had been consulted regarding soil contamination by the salvage yard as such might affect development of property for other use in the future.

Mr. Bailey responded that EPA had not been consulted; this request has been reviewed as a land use item only. There are already several heavy industrial uses in the immediate area.

There was brief discussion, and following, Good, seconded by Maddox, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption, and for the readings to occur on the same date. The City Clerk read the ordinance for its readings, and the members all voting affirmatively, the Mayor declared the motion carried, and the ordinance was adopted and given No. 30-10.

Item No. 3 was an ordinance amending Chapter 20, Article II of the Fort Smith Code of Ordinances regulating alarm systems.

Police Chief Kevin Lindsey briefed the members on the item as such was reviewed at the June 22, 2010 study session, and outlined the following revisions to the ordinance that were suggested by the Board at that time:

- Change the number of false alarms within a calendar year reaching the level of a fine from the 7<sup>th</sup> and subsequent to the 4<sup>th</sup> and subsequent; and instead of an incremental fine schedule of \$25 - \$100, implement a constant fine of \$100 per false alarm.
- Minor wording adjustments were proposed that reflect an 'alarm user' versus 'alarm customer' throughout the ordinance.
- A section was proposed outlining the responsibilities of the alarm user. Specifically, a reasonable effort to have a person available at an alarm site within 30 minutes.
- In addition, definitions were added for 'alarm user' and 'responsible individual.'

According to police records, from 2007 to early March 2010, the police department responded to 18,404 alarm calls within the city of Fort Smith. Of that number, 17,858 (97%) were considered false alarms. In 2009, out of 142 locations where alarms occurred, 127 were commercial alarms with 15 being residential alarms. Only one (1) residence had seven (7) or more false alarms, which was the minimum number to be fined under the current ordinance. Chief Lindsey stated that the overall changes proposed in the ordinance will greatly benefit the total efficiency of both the police and fire departments, and will hold monitored alarm users more accountable for the property operation of their alarm system.

There was considerable discussion by the Board regarding Section 20-34(a) which states *it shall be unlawful for any person or entity that has installed or that provides maintenance or other services for an alarm system owned by an alarm user to refuse to*

*provide a current address for any alarm system customer to the city police or fire departments upon written request.* There was concern that such information becomes a matter of public record.

Chief Lindsey responded that particularly in the case of a fire, public safety personnel may not feel comfortable leaving the scene if the structure has not been secured or inspected. It is a public safety issue; such doesn't happen often, but, such is necessary to have the information as an additional tool for follow-up. He further advised that the provisions of Section 20-34 for the written request is in the current ordinance and has worked well.

The following individuals were present to address the item:

- Walton Maurras  
2801 Charlotte Lane

He spoke in opposition to Section 20-34 noting that once a list of fire alarm owners is given to the police, it becomes subject to FOIA. The list can then be used as a "shopping list."

- Paul Speer  
Charleston, Arkansas

Echoed comments of Mr. Maurras regarding information being subject to FOIA.

- Jerry Hamel  
4618 Wheeler Avenue

Questioned legality of the ordinance. Suggested that the owner of the equipment, i.e., the fire alarm company, is the responsible party.

Maddox moved to table the ordinance for two (2) weeks in order for staff to review and suggest revised language in Section 20-34. The members all voting affirmatively, the Mayor declared the motion carried.

Item No. 4 was a resolution of the City of Fort Smith certifying local government endorsement of business to participate in the Tax Back Program (as authorized by Section 15-4-2706(d) of the Consolidated Incentive Act of 2003) ~ Mitsubishi Power Systems Americas, Inc. ("Mitsubishi") ~

Deputy Administrator Gosack briefed the members on the item. He advised that the state tax back program was one of the incentives which attracted Mitsubishi to locate in Fort Smith. This program allows a new industry to request refunds of sales taxes paid on manufacturing equipment and building materials. The incentive applies only to the initial capital purchases, not to ongoing purchases once the company begins operations. The resolution supports Mitsubishi's participation in the tax back program, and approval of the resolution will also support one of the Board's top goals: economic development and job creation.

Campbell, seconded by Hutchings, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Campbell, moved adoption of Section 3, the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried, and the resolution and emergency clause was adopted and numbered R-131-10.

The Consent Agenda (Item No. 5) was introduced for consideration, the items being as follows:

- A. Resolution granting a temporary revocable license for the placement of an automatic teller machine (ATM) in a drainage easement and authorizing Mayor to execute agreement (*Zero Mart, Inc. / 4300 South Zero Street*)
- B. Resolution authorizing the execution of a memorandum of understanding concerning mobile data support between the City of Fort Smith and City of Van Buren

- C. Resolution authorizing acquisition of real property interests for the Lake Fort Smith Water Supply Project (\$276,600.00)
- D. Resolution accepting the project as complete and authorizing final payment to Forsgren, Inc. for construction of Wet Weather Line Capacity Improvements, South "O" Street (\$491,395.15)

There were brief questions regarding item C.

Director Settle questioned which funds were being utilized for the acquisitions, and if the acquisitions were necessary at this time.

Director of Utilities Steve Parke responded that funds are available from the bond issue which financed the lake expansion, and the acquisitions were identified in the bond fund for such purpose. He also advised that the acquisitions are necessary at this time for protection of the water system, now and in the future.

Good, seconded by Maddox, moved adoption of the Consent Agenda. The members all voting affirmatively, the Mayor declared the motion carried, and the resolutions were adopted and numbered R-132-10 through R-135-10 respectively.

Mayor Baker opened the Officials Forum with the following comments offered:

- Mayor Baker welcomed in attendance representatives from Boy Scouts Troop 19

Mayor Baker also advised that he has instructed the city finance department to hold one-half of his "219 account" (mayoral expenses) in reserve until the financial issues in the general fund are resolved, and if cuts are made to city employee salaries, then his \$10,000 annual salary is to be cut as well.

- Director Goodman - commented relative to the false alarm ordinance (item No. 3) and believes the \$100 fine as noted in Sec. 20-33 is more than adequate and should get everyone's attention.

- Director Tyler - noted that several cities in Arkansas have received energy efficiency grants, and inquired if Fort Smith applied for such. Administrator Kelly responded that the city received a grant in 2009.

An executive session was held regarding performance evaluation of the city administrator. After reconvening, Mayor Baker announced that another evaluation will occur in three (3) months ~ October 2010.

With regard to the time limit policy for persons wishing to address the Board, Mayor Baker communicated that two (2) minutes will be allotted for those participating in the Citizens Forum.

Mayor Baker opened the Citizens Forum with the following individuals present to address the Board:

- Eric Arthur  
815 North B Street

City needs to consider where the money is being spent, and suggested a slow down of expenses for capital projects.

- John Hamel  
3301 Old Greenwood Avenue

In reference to the alarm system item, believes the police are suppose to answer alarms. Public safety should come first to serve and protect" not "revenue agent."

Extended thanks to Mayor Baker for proposing cuts to the mayor's budget

- Jerry Hamel  
4618 Wheeler Avenue

Commented that the city has been aware for some time now of financial forecast, and questioned what percentage of the budget goes to debt service.

Administrator Kelly responded that about 40% goes to debt service

- Louis Vincent  
(No address given)

Spoke regarding illegal immigration and need of the city to make sure contractors are in compliance by hiring legal immigrants.

- Tammy Trouillon  
8000 Holly Avenue

Spoke regarding dogs running at large in the city and the need for a fencing ordinance.

- Michael King  
1402 North 49<sup>th</sup> Street

Spoke regarding city budget and annual cost of leasing space for city offices in the Stephens Building. He suggested that the former library building a/k/a/ convention center annex be considered as possible site for city offices.

He also spoke in support of the recently adopted board meeting procedures.

There being no further business to come before the Board, Maddox moved that the meeting adjourn. The motion was seconded by Good, and the members all voting aye, the Mayor declared the motion carried, and the meeting stood adjourned.

**APPROVED:**



**MAYOR**

**ATTEST:**



**CITY CLERK**