



Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

**Board of Directors**

Ward 1 – Keith D. Lau

Ward 2 – Andre' Good

Ward 3 – Mike Lorenz

Ward 4 – George Catsavis

At Large Position 5 – Pam Weber

At Large Position 6 – Kevin Settle

At Large Position 7 – Philip H. Merry Jr.

**AGENDA**  
**Fort Smith Board of Directors**  
**Study Session**  
**October 22, 2013 ~ 12:00 Noon**  
**Fort Smith Public Library Community Room**  
**3201 Rogers Avenue**

1. Report regarding Comprehensive Plan Update
2. Discuss the city's legal rights pertaining to the Whirlpool TCE contamination  
*~Weber/Merry requested at the October 15, 2013 regular meeting ~*
3. Review preliminary agenda for the November 5, 2013 regular meeting

# Memo

To: Ray Gosack, City Administrator  
From: Wally Bailey, Director of Development Services  
Date: October 17, 2013  
Subject: Comprehensive Plan Update Progress Report

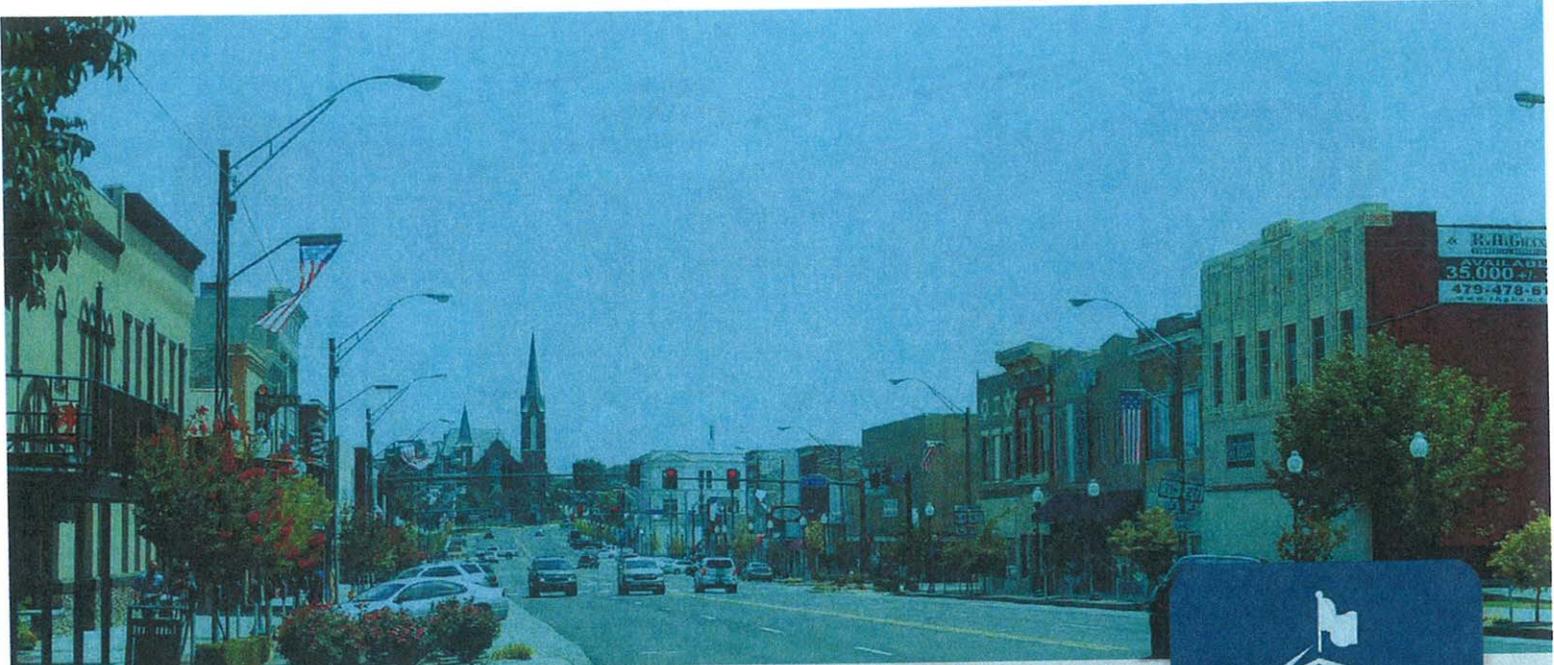
The Comprehensive Plan update has generated a lot of community participation. WRT and the Comprehensive Plan Steering Committee have hosted three Community Forums and twelve meetings in a box which gathered 1,600 ideas, 600 priorities, and included 415 residents that participated in the meetings. For anyone who was unable to attend a meeting, an online survey was made available to collect their ideas.

Attached you will find the Common Ground Working Paper. This document provides a summary of the results of those meetings which was used to develop the Vision Statement. Also, attached you will find the Draft Vision Statement. This document identifies where we want to be by 2035.

The second set of Community Forum's are slated for Monday, November 18<sup>th</sup> at 5:30 p.m. in the River Park Events Building and Tuesday, November 19<sup>th</sup> at 11:30 a.m. in the Rose Room at Creekmore Park, 3301 South "M" Street. This next Community Forum series will seek community consensus on *Imagining Alternative Futures*, framing how economic growth and redevelopment will be managed and incentivized to achieve the Vision.

At the Tuesday, October 22<sup>nd</sup>, Board study session, WRT will brief the Board of Directors on the project to date, the next steps and the remainder of the schedule.

If you have any questions please do not hesitate to contact me.



# DEFINING COMMON GROUND

Fort Smith Comprehensive Plan Update



# COMMON GROUND WORKING PAPER

Fort Smith Comprehensive Plan Update



## INTRODUCTION

The results of the Future Fort Smith Visioning Community Forum series, and subsequent local "Meetings-in-a-Box", as well as input received through an online survey have been tabulated and synthesized to identify areas of consensus and establish common ground as the basis of an overall vision for the update to the Fort Smith Comprehensive Plan. A diverse mix of over 415 residents were directly involved in this visioning process, each identifying their priorities for the future of Fort Smith. The themes identified through this effort will shape the Vision Statement and provide direction throughout the remainder of the comprehensive planning process.

The quality of public engagement and the input received throughout these visioning efforts will add value to the plan update process, and ultimately result in a sense of citizen "ownership" of, and support for the comprehensive plan for Fort Smith. This report summarizes the public engagement process, outlines how the input is synthesized, what the results and areas of consensus are, and how this information will be used to craft a Vision Statement.

The over-arching goal of this process was to explore the community's values and expectations for the future of Fort Smith, leading to a Vision Statement that says: "this is what we, the citizens want our City to be like in the future." In articulating the City's intended "destination", the Vision Statement will then be used to benchmark where Fort Smith stands, and where it is going based on the dynamics of expected growth and change, which will indicate the need for interventions through the comprehensive plan to put the community on the path to realizing the vision.

# COMMON GROUND WORKING PAPER

## Fort Smith Comprehensive Plan Update

### PUBLIC ENGAGEMENT PROCESS

A variety of opportunities for engagement were developed in order to maximize the potential for public input in the preparation of a vision for Fort Smith. Residents had several opportunities to participate in person at a series of Community Forums, as well as smaller Meeting-in-a-Box exercise hosted by a variety of organizations throughout the City. For anyone who was unable to attend a meeting, an online survey was made available to collect their priorities for the future of Fort Smith. The format of each public engagement type remained consistent in order to allow a final combination of all of the results and establish a common ground for a Vision Statement.

#### Community Forum Series 1:

Three public forum events were organized at a different locations within the City, and different times over a two-day period to make sure residents had a variety of options

to accommodate on their personal schedules. The format of each Community Forum event included a welcome by Mayor Sandy Sanders, followed by a brief introduction to the planning process by consultant team representatives from WRT. Following the presentation, each participant from the public joined a group of 8-10 fellow residents to engage in a round-table discussion facilitated by representatives from the Comprehensive Plan Steering Committee (CPSC), City staff, or the consultant team. The goal of the engagement at these forums was to solicit issues and aspirations from residents around the topics of Fort Smith's Strengths, Weaknesses, Opportunities, and Threats (SWOT).

In a facilitated discussion lasting about 15-minutes for each topic, every participant had the opportunity to offer their individual ideas. All of the ideas were recorded on a board so the group could see each other's ideas, discuss consolidating similar ideas, and prioritize the ideas that were the most important to them as individuals. At the end of each 15-minute topic discussion session, the group voted on which priorities were most important to them as a group. This process not only resulted in identifying a range of issues and aspirations that are important to residents as a basis for developing a Vision Statement, it also provided an opportunity for participants to hear a diverse range of ideas from other community members with whom they may not ordinarily interact.

Following the idea recording and prioritization process, each group worked on developing a draft Vision Statement that collectively addressed their priorities. At the end of each meeting, a representative from each group had the opportunity to report how the discussions at their table went, and share their group's Vision Statement. All of the ideas and Vision Statements were recorded, along with the list of priorities for each group.

**↑ COMMUNITY FORUM EVENTS**

Creekmore Park  
Rose Room  
3301 South M Street  
Monday, July 29th – 11:30 a.m.

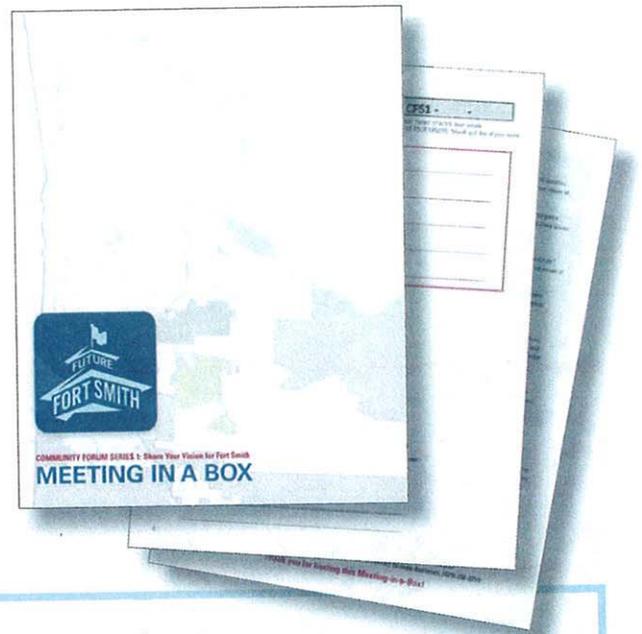
Fort Smith Public Library  
Community Room  
3201 Rogers Avenue  
Monday, July 29th – 5:30 p.m.

Fort Smith Senior Activity Center  
2700 Cavanaugh Road  
Tuesday, July 30th – 5:30 p.m.

## Meetings-in-a-Box

In the month following the Community Forum Series, residents of Fort Smith who were unable to attend were invited to participate in a series of smaller visioning sessions facilitated by local organizations. These "Meetings-in-a-Box" are designed to be a mobile version of the larger Community Forum events in order to expand the potential for public input, and reach groups who may not have had the opportunity to participate otherwise. The format of these smaller events are more flexible, but the goal of identifying strengths, weaknesses, opportunities, and threats remains the same. Most of the organizations that volunteered to host these meetings worked with Comprehensive Plan Steering Committee members who facilitated the discussion, and submitted the record of the group's results. The groups who facilitated their own meetings are indicated with an \* in the list below.

The results of discussion, prioritization, and draft Vision Statement were collected from each meeting and combined with the other public input.



## MEETINGS

Rotary Club of Fort Smith  
Holiday Inn  
700 Rogers Avenue  
July 24th & 31st 12:00 p.m.

Partners in Education  
Ramney Junior High School  
3201 Jenny Lind  
August 1st 9:00 a.m.

Fort Smith Historical Society  
Fort Smith Library Community Room  
3201 Rogers Avenue  
August 14th, 6:00pm

\* Facilitated their own meetings

Beautify Fort Smith\*  
August 20th

Hanna Oil & Gas\*  
August 21st

Fort Smith League of Women Voters  
Creekmore Park Community Center  
3301 South M Street

George McGill, State Representative  
McGill Center  
521 North 6th Street, 6:00 p.m.

Northside High School  
August 20th, 11:00 a.m.

Ramsey Junior High School  
August 23rd, 8:00 a.m.

Southside High School  
August 26th, 9:00 a.m.

Contractor Group  
Fort Smith Library  
September 5, 11:00am

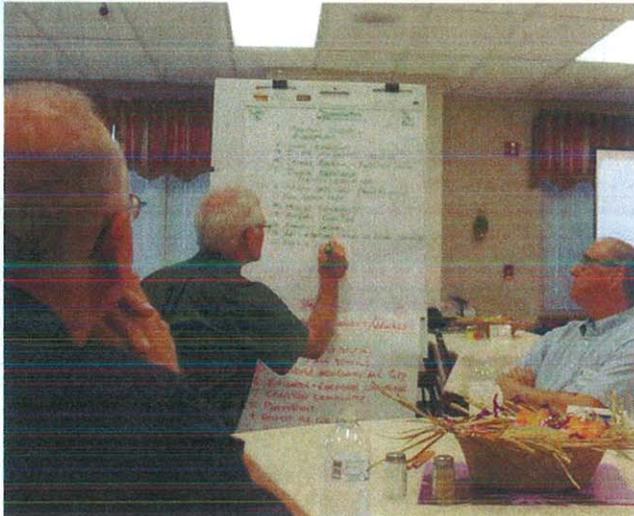
Arvest Bank  
4800 Kelley Highway  
September 12, 3:00pm

# COMMON GROUND WORKING PAPER

## Fort Smith Comprehensive Plan Update

### SYNTHESIZING THE INPUT

Over 1,000 ideas were collected directly from residents about Fort Smith's, strengths, weaknesses, opportunities, and threats. Each idea was recorded and transcribed into a spreadsheet, and grouped by topics to organize ideas into common themes. The ideas that were voted on as priorities were grouped to identify areas of consensus and form the basis of a common ground for a draft Vision Statement.



Community Visioning Forum

#### ACTIVITY QUESTIONS:

*"How do we perceive our community today?"*

*Take a few moments to think through your typical day, and what aspects of your day are most important to you, economically, transportation-related, cultural, or any other aspect of community life.*

1. **Strengths:** What present attributes of Fort Smith do we value? What values do we share and cherish?

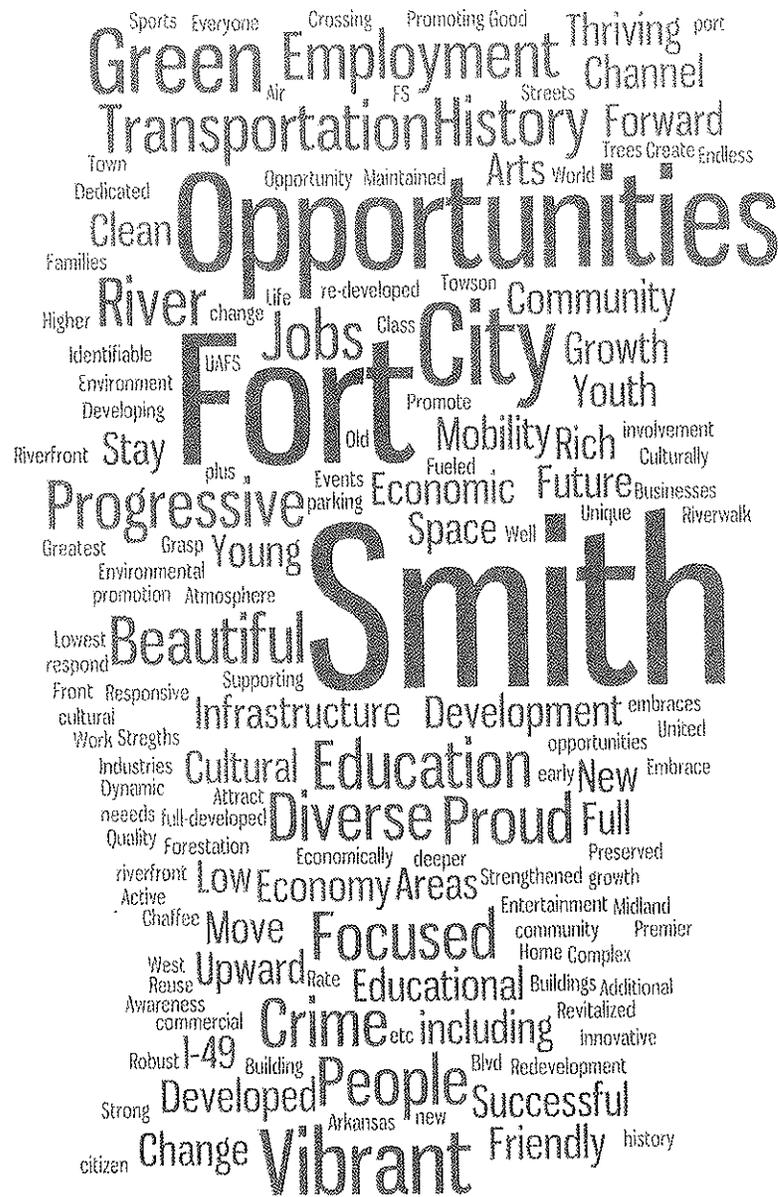
- great place to raise kids
- parks
- river
- slow pace of life
- UAFS
- natural resources/beauty
- healthcare
- I-49
- small
- sanit
- good
- hatur
- resto
- polic

Meeting in a Box

466 Deteriorating Properties	Yes	Redevelopment	Blight and Disuse	Weaknesses	Rose Roo
467 Land Available for Development (Infill & Expansion)	Yes	Redevelopment	Redevelopment	Opportunities	Rose Roo
468 Riverfront / Downtown (Pedestrian Mall - Fix Traffic Issues)	Yes	Redevelopment	Redevelopment	Opportunities	Rose Roo
469 Vacant Commercial Buildings	No	Redevelopment	Blight and Disuse	Weaknesses	Rose Roo
470 Denser Living (Closer to Wants & Needs)- Walking Community - Rezoning	Yes	Redevelopment	Redevelopment	Opportunities	Library
471 NWA	Yes	Redevelopment	Redevelopment	Threats	Library
472 Grayfields - Abandoned Buildings	Yes	Redevelopment	Blight and Disuse	Weaknesses	SC.C
473 Complete Revitalization Downtown	Yes	Redevelopment	Redevelopment	Opportunities	SC.C
474 Riverfront Development	No	Redevelopment	Redevelopment	Opportunities	SC.C
475 Potential areas for growth / development (Chaffee Crossing, Downtown)	No	Redevelopment	Redevelopment	Strengths	SC.C
476 Public Transit	Yes	Transportation / Infrastructure	Public Transportation	Strengths	Library
477 Infrastructure (Rails, Transportation)	Yes	Transportation / Infrastructure	Transportation / Infrastructure	Strengths	Library
478 Incomplete I-49 Project	No	Transportation / Infrastructure	Roads and Traffic	Weaknesses	Library
479 Barge & Rail Traffic	No	Transportation / Infrastructure	Transportation / Infrastructure	Opportunities	Library
480 High Access to Surroundings	No	Transportation / Infrastructure	Access and Mobility	Strengths	Library
481 Public Transportation	Yes	Transportation / Infrastructure	Public Transportation	Weaknesses	Library
482 Downtown Truck Traffic	No	Transportation / Infrastructure	Roads and Traffic	Weaknesses	Library
483 Capitalize on Central Access / Location	Yes	Transportation / Infrastructure	Access and Mobility	Opportunities	Library
484 Intermodal Transportation	Yes	Transportation / Infrastructure	Transportation / Infrastructure	Opportunities	Library
485 Central US Places (CUSP)	Yes	Transportation / Infrastructure	Access and Mobility	Opportunities	Library
486 I-49 Upon Completion	Yes	Transportation / Infrastructure	Roads and Traffic	Strengths	Rose Roo
487 Towson / Midland - Lack of Corridor Planning	No	Transportation / Infrastructure	Roads and Traffic	Weaknesses	Rose Roo

Tabulated Results

The draft Vision Statements that each group prepared were also recorded and transcribed to inform the development of a Vision Statement for the City. The statements were analyzed for common language or themes and compared to identify any areas of potential divergence.



# COMMON GROUND WORKING PAPER

## Fort Smith Comprehensive Plan Update

### ANALYZING THE RESULTS

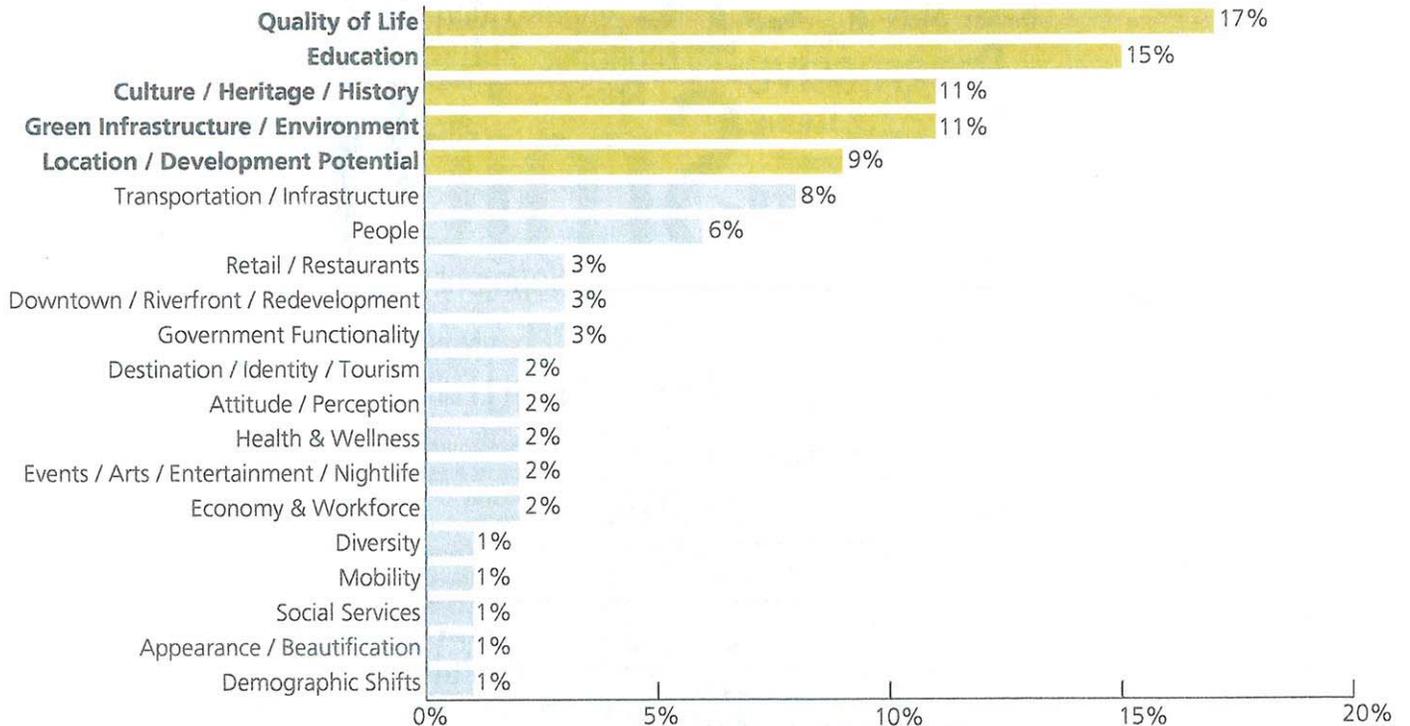
Once all of the ideas were collected and synthesized, the results were tabulated to identify common themes and priorities. Where several groups came to similar conclusions on priorities, common themes were identified in preparation for a Vision Statement. Within each theme are several specific concepts that represent the variety of values held by the community members who participated.

#### Strengths:

*What present conditions of Fort Smith do we value? What are our most important assets? What community qualities and values do we share and cherish?*

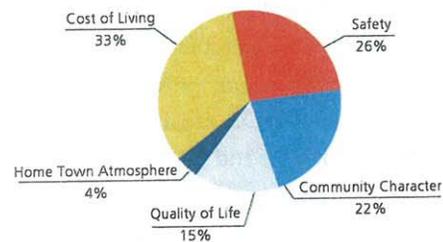
The most frequent theme to emerge from the community input related to Strengths was the quality of life enjoyed by residents of Fort Smith. This category included “strength” priorities such as a low cost of living, and public safety, in addition to other general positive aspects of living in the area. Many groups came to the consensus that the education system in Fort Smith was also strong, including the K-12 public schools, as well as the University of Arkansas at Fort Smith. Other common priorities are related to Fort Smith’s unique location, with rich natural and historic resources. Noticeably at the bottom of the list, are many issues that were raised as weaknesses, or potential threats; a lack of

#### Identified as Common Priorities:

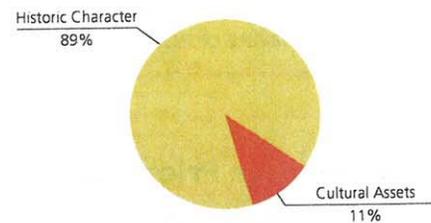


mobility, limited diversity, and recent or future demographic changes. Taking a closer look at the top five themes for each topic provides more detail to help come to a common ground for a Vision. The pie charts to the right represent what proportion individual ideas made up the total list of priorities for each theme. For example, the bar chart of Common Priorities indicates that 17% of all of the strengths identified as priorities by the community were related to the quality of life in Fort Smith. Out of these priorities that fall under the theme of quality of life, 33% related to the affordable cost of living, followed by 26% related to the level of safety in the area, 22% related to the character of the community, and so on. These priorities are grouped together under common themes, but the proportion of individual ideas will help inform the Vision Statement.

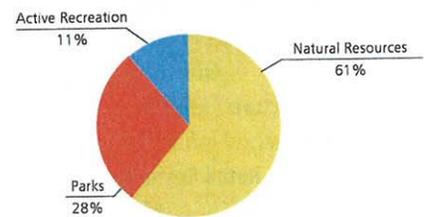
### Quality of Life



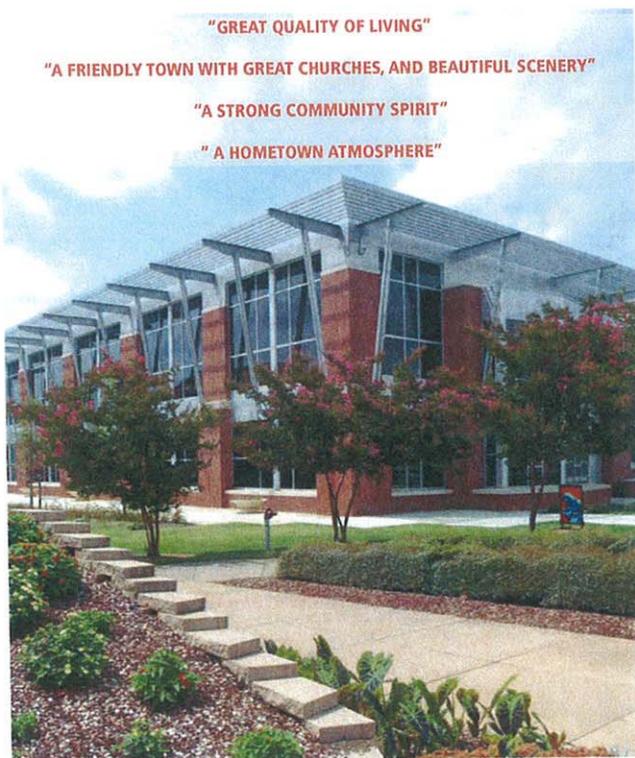
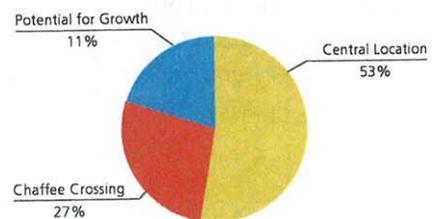
### Culture, Heritage, and History



### Green Infrastructure and Environment



### Location and Development Potential



University of Arkansas at Fort Smith (UAFS)

## ANALYZING THE RESULTS

### Weaknesses:

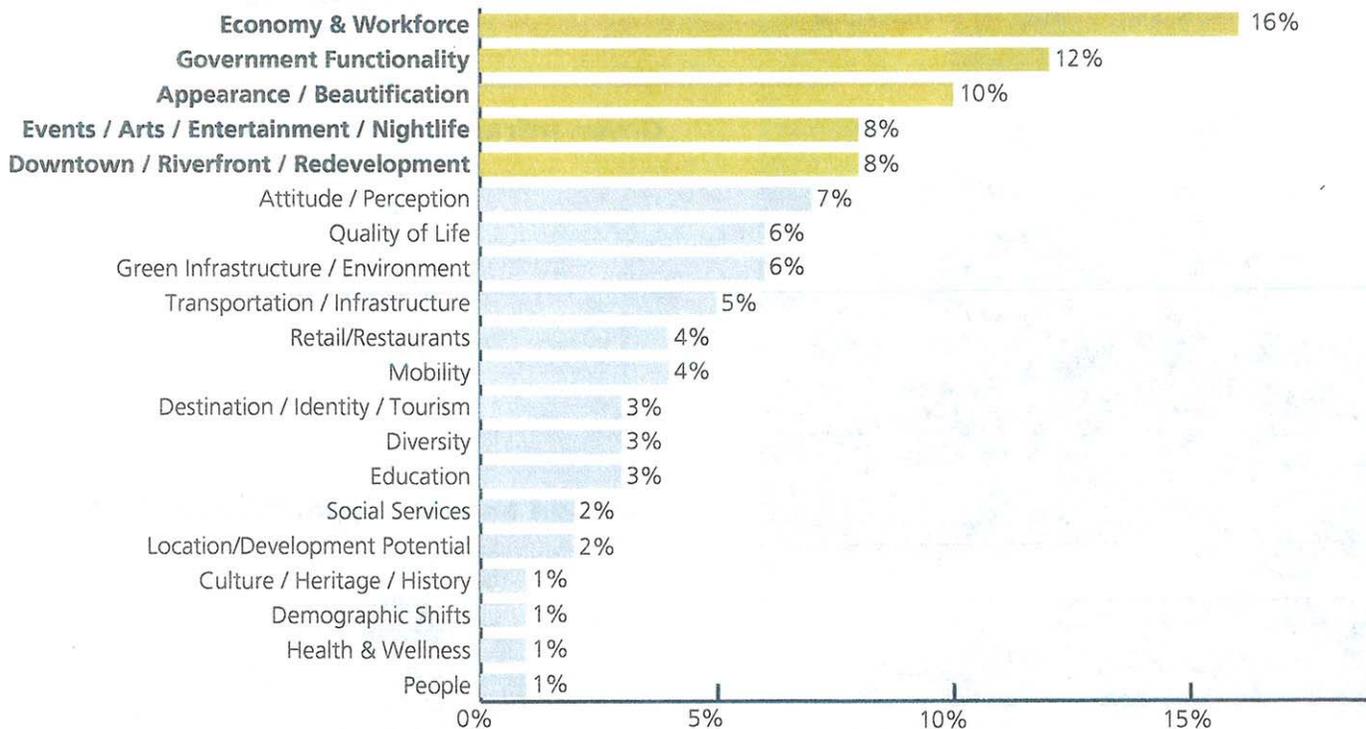
*What present conditions of our community do we characterize as problems requiring resolution? What negative aspects of our life here would we change?*

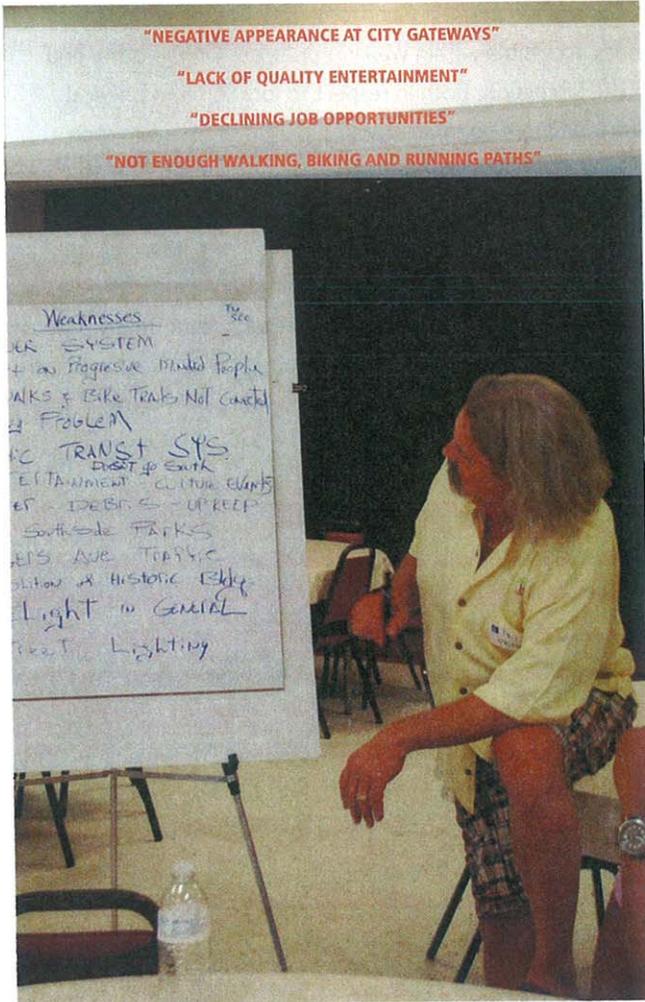
Most groups identified economic and workforce issues as significant weaknesses for the City of Fort Smith. These discussions included concerns raised by residents regarding a lack of employment opportunities, difficulty retaining a qualified workforce in Fort Smith, and making a transition from the former manufacturing based economy. There was also a consensus among groups that there may be functional problems, fiscal issues, or a failure of leadership within local

government that could limit Fort Smith's future potential for growth. Another common priority that was seen as a weakness by the community was the absence of activities for young adults, particularly related to events and entertainment within the downtown and riverfront areas. Residents see these lack of opportunities as contributing to a potential for future economic decline.

At the lower end of the list of weaknesses are aspects of Fort Smith that most groups found to either be strengths, or opportunities; including the people of Fort Smith, access to healthcare, and the City's unique historic and cultural heritage.

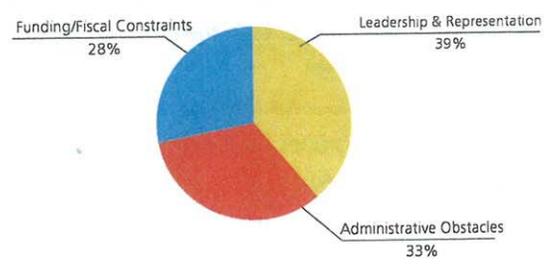
### Identified as Common Priorities:



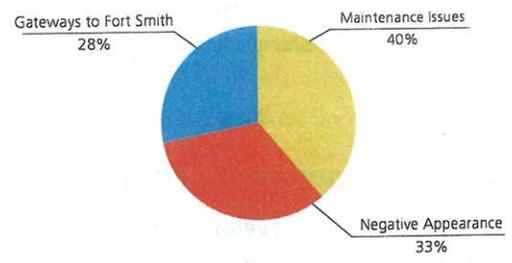


Community Forum Visioning Event: Fort Smith Senior Center

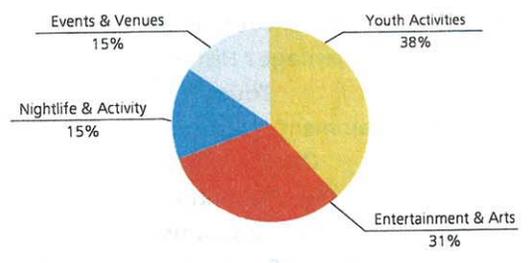
### Government Functionality



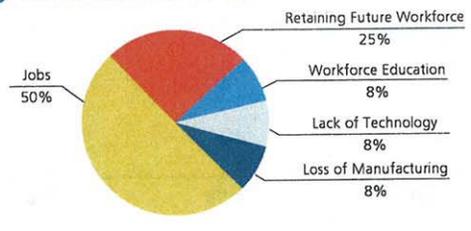
### Appearance and Beautification



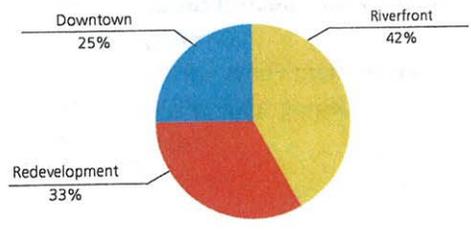
### Events, Arts, Entertainment & Nightlife



### Economy and Workforce



### Downtown & Riverfront Redevelopment



## ANALYZING THE RESULTS

### Opportunities:

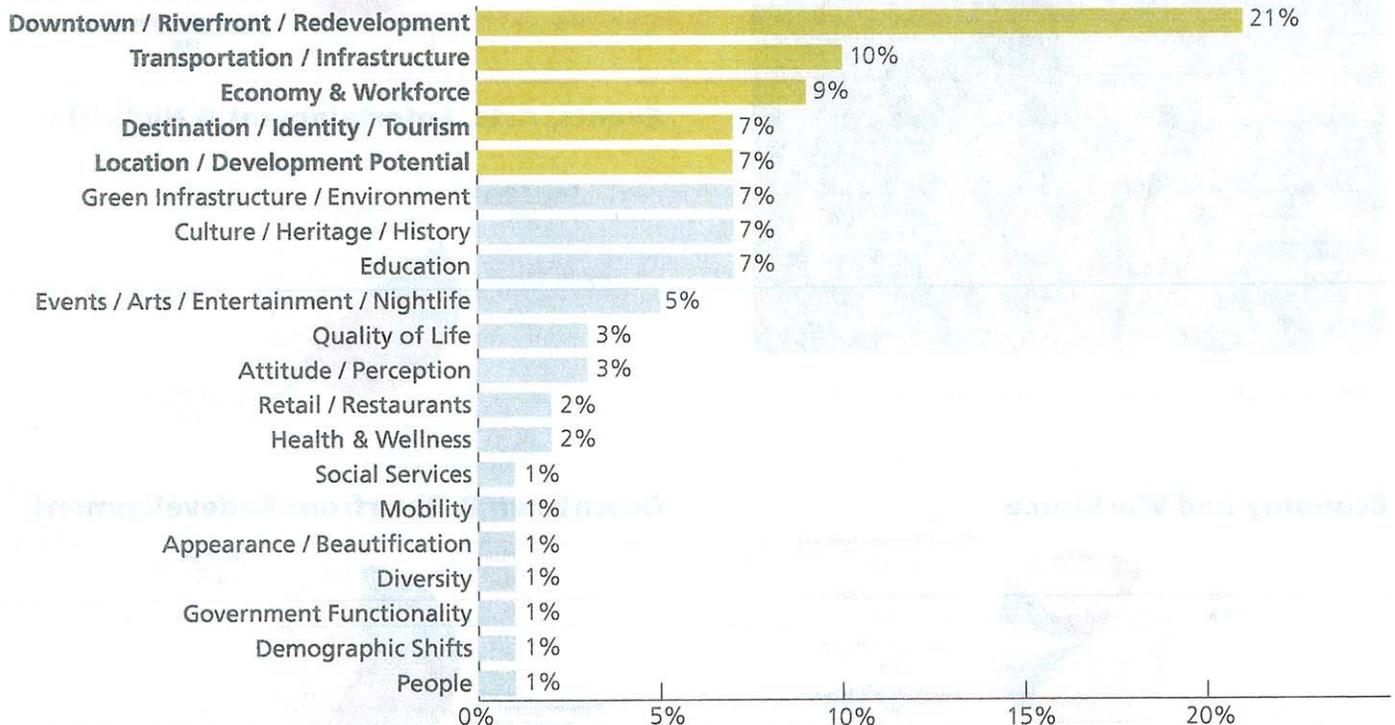
*What circumstances, conditions or trends should we capitalize on to make our community better in the future? How do we leverage such opportunities?*

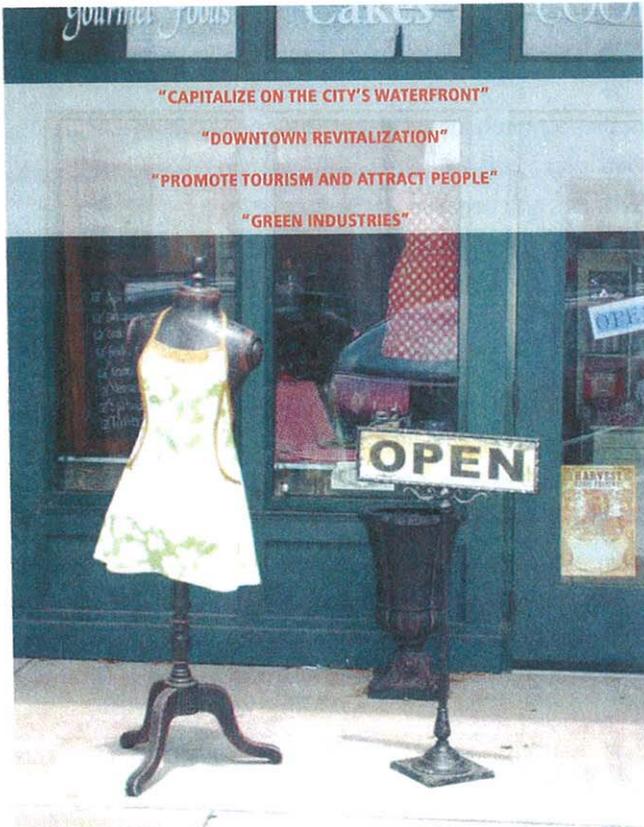
A significant majority of groups identified redevelopment and growth opportunities in Downtown Fort Smith and along the Riverfront as a common priority. Discussions within this theme included the opportunity for infill and re-use of vacant buildings, the potential to draw development along with the future U.S. Marshals Museum, and capitalize on the existing momentum already underway in the area. Residents suggested rebuilding, refurbishing, revitalizing, and renewal

of Downtown and the Riverfront, with denser living, and daily needs accessible within walking distance. On the other end of the discussion, both in respect to location and physical development type, many groups identified transportation investments, particularly 1-49 as a major opportunity for development in the area around Chaffee Crossing.

Although the current economic downturn was identified as a weakness, specifically related to unemployment, many groups agreed that this also represents an opportunity for job growth and business development.

### Identified as Common Priorities:



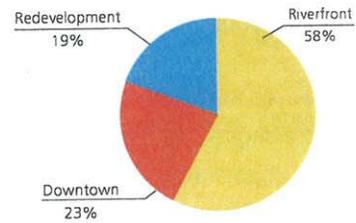


Downtown Fort Smith

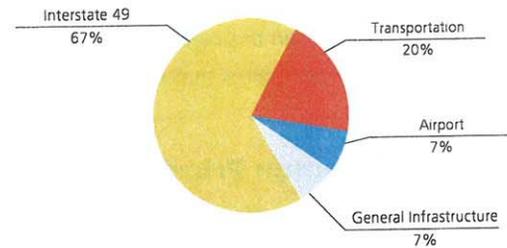


Community Forum Visioning Event

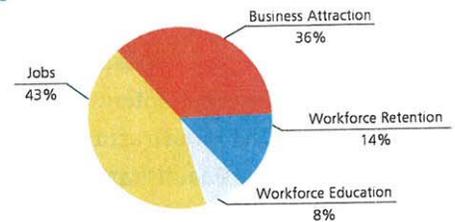
## Downtown & Riverfront Redevelopment



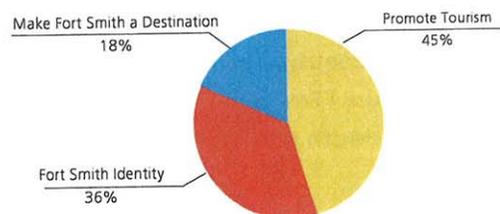
## Transportation & Infrastructure



## Economy and Workforce



## Destination, Identity, & Tourism



## ANALYZING THE RESULTS

### Threats:

*What potential challenges do we face in realizing the future we want? How will they impact us? How do we prepare for them - or prevent them?*

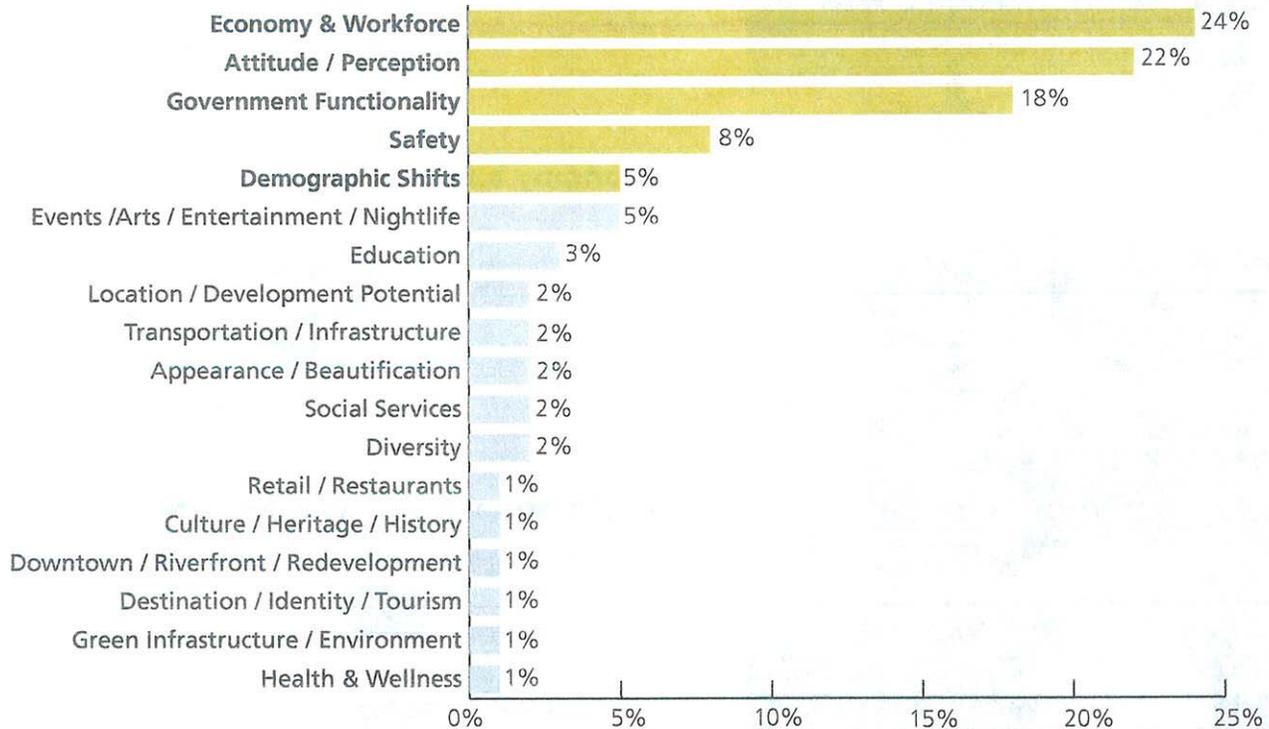
The economy was the most frequent theme to come out of community discussions about potential threats facing Fort Smith. Many groups came to the consensus that there are not sufficient job opportunities, and that even more jobs may be leaving the area in the future. An inability to retain a skilled and educated workforce was also seen as a direct threat to the economy, with young people leaving Fort Smith. Many priorities expressed within this category are also directly related to current demographic shifts that many also saw as

a potential threat; an aging population, loss of youth, and an increase in Hispanic population without an increase in jobs.

Another common theme identified as a potential challenge to realizing a better future was the existing perceptions of Fort Smith, and negative attitudes of residents. Many groups agreed that complacency, apathy, and fear of change are current problems that will continue to pose a threat moving forward.

The functionality of local government was also identified as a threat, particularly related to the financial constraints and funding challenges facing the City. Many groups agreed that there will be a lack of capacity to increase revenues in the future.

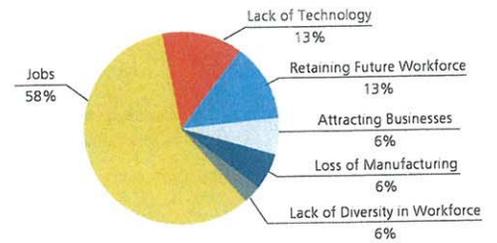
### Identified as Common Priorities:



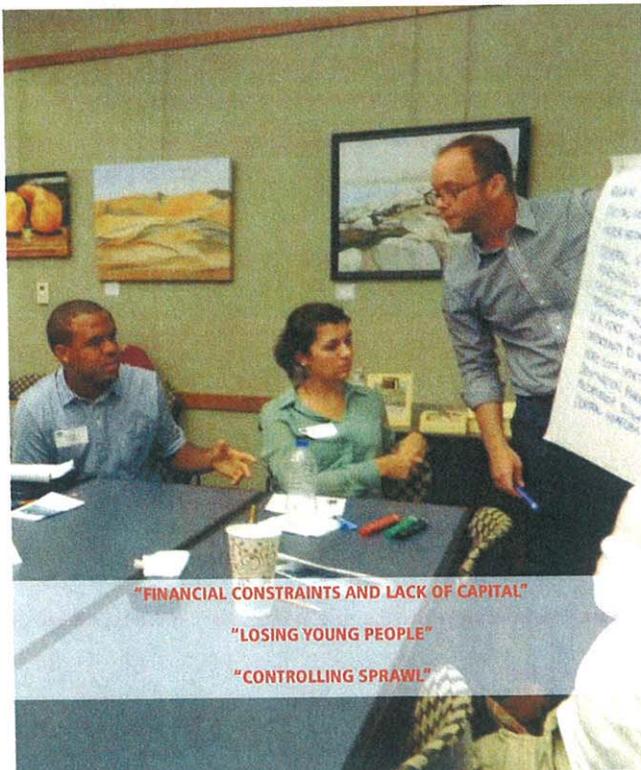
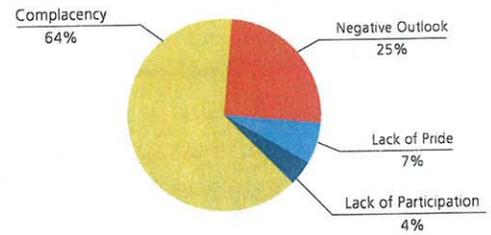


Community Forum Visioning Event

## Economy & Workforce

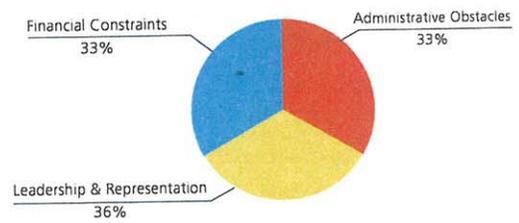


## Attitudes & Perceptions

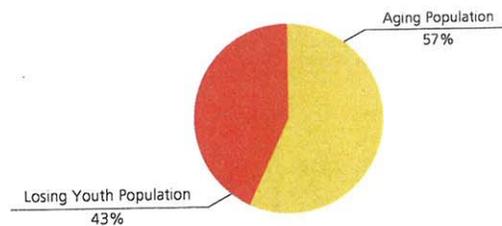


Downtown Fort Smith

## Government Functionality



## Demographic Shifts



# COMMON GROUND WORKING PAPER

## Fort Smith Comprehensive Plan Update



*University of Arkansas at Fort Smith*

## FINDING COMMON GROUND

### **Vision Statement Framework:**

The common themes identified through this summary lay the foundation for the development of a Vision Statement. The next step will be to take these themes, along with the detailed priorities and draft Vision Statements created by the community to draft a Vision Statement.

It is important to understand the perspective of a Vision Statement and its context and use in the update of the Comprehensive Plan. The Draft Vision Statement for Fort Smith will express aspirations for the future of the community as citizens would like it to exist twenty years from now. It will be written from a perspective of what the City aims to accomplish through the influence of an update to the Comprehensive Plan.

The Vision Statement itself is not the Comprehensive Plan, although as an articulation of the City's aspirational destination, it is one of its core building blocks. The Vision Statement expresses values and motivations – “what we intend to be” – while the strategies and actions laid out in the Comprehensive Plan will set out in detail “what we must do to achieve our vision.”



# VISION STATEMENT

Fort Smith Comprehensive Plan Update





## WHAT IS A VISION STATEMENT

The Vision Statement is an expression of the community's collective values and aspirations in the form of a description of what the community wants to become in the future. It answers the question "where do we want to be?" Ultimately, it is the destination for the comprehensive plan; the Vision Statement sets the stage for defining "how we get there."



## BY 2035...

**THE CITY OF FORT SMITH** is recognized throughout the region and the nation as an exceptional community, characterized by its authenticity and proud frontier heritage, its outstanding quality of life, home town character, vibrant downtown and scenic riverfront. This outstanding livability, coupled with our strategic location, affordability and skilled workforce, has fueled growth, investment and the diversification of our economy. Our success is a result of purposeful and coordinated actions to leverage our assets and overcome our shortcomings, motivated by our vision and guided by our comprehensive plan. With "True Grit" perseverance, a united front of local government, citizens, businesses, institutions and civic groups acting in partnership, realized our vision by advancing progress on four fronts:

- 1. RETAINING AND ENHANCING COMMUNITY CHARACTER AND QUALITY OF LIFE**
- 2. PROMOTING SOUND GROWTH AND DEVELOPMENT**
- 3. GROWING AND DIVERSIFYING OUR ECONOMY**
- 4. UNITING OUR PEOPLE, INSTITUTIONS AND GOVERNMENT**

## RETAINING AND ENHANCING OUR COMMUNITY CHARACTER AND QUALITY OF LIFE

### ⇒ BY 2035

- Fort Smith retains its authentic home-town atmosphere of safe, livable and well-maintained neighborhoods which provide a range of housing choices and convenient access to schools, parks, shopping and community facilities.
- We value the “green” in Fort Smith: our trees, river and streams and other irreplaceable natural scenic and recreational resources.
- Our network of parks, greenways and trails provide quality recreational opportunities, enhancing quality of life and property values, connecting neighborhoods and supporting healthy active lifestyles.
- We retain our proud frontier heritage and identity, protecting and promoting our historic districts, landmarks and cultural assets.
- Fort Smith enjoys enhanced community aesthetics achieved by raising the bar of expectations for appearance and upkeep; and through beautification efforts along our corridors and gateways, neighborhoods and activity centers.
- We promote our thriving cultural life – our museums, entertainment venues, festivals and special events, engage our youth, young adults and young at heart.

## 2 PROMOTING SOUND GROWTH AND DEVELOPMENT

### ➔ BY 2035

- Downtown Fort Smith and its scenic riverfront is activated with new housing, retail and entertainment attractions supporting day and nighttime activity and a vibrant urban lifestyle, one with a distinct flavor of historic Fort Smith.
- Fort Smith has responded to changing demographics and a diversifying population with a greater array of housing and lifestyle choices to serve our aging population and to attract and retain young adults and families.
- Our infrastructure systems: water, sewer, drainage and solid waste, are provided in a coordinated manner that ensures adequate capacity to meet long term needs, supports desired development patterns and conserves both natural and fiscal resources.
- We have reversed blight and obsolescence by promoting infill, redevelopment and adaptive re-use of buildings in downtown, and our older neighborhoods and commercial areas.
- Mobility has been enhanced with key linkages such as I-49, a deeper river channel, greater road network efficiency and connectivity and expanded mobility choices including transit, bicycle and pedestrian friendly streets and trails.
- The completion of I-49 has triggered and supported new investments, including development in Chaffee Crossing and new commercial, industrial, and residential development in strategic locations.

## **3** GROWING AND DIVERSIFYING OUR ECONOMY

### ➔ **BY 2035**

- Our economy has grown and prospered by taking advantage of our strategic location within the region and our crossroads position with multiple modes of travel on our interstate highways, railroads, river and airport.
- We have improved our workforce skills, readiness and retention by linking curricula in our Fort Smith School District high schools and the technical and industrial training programs at the University of Arkansas – Fort Smith with the workforce needs of present and desired future employers.
- We have retained our traditional manufacturing base, while transitioning to a more diversified economy by promoting home grown entrepreneurs, leveraging the research and brainpower at the University of Arkansas - Fort Smith and by maintaining the trained and motivated work force and the technology infrastructure necessary to attract new employers.
- Our expanded array of challenging and well-paying employment opportunities allows Fort Smith to retain its best and brightest youth and attract new families to make Fort Smith their home.
- The addition of the U.S. Marshals Museum, along with a transformed riverfront and the many historic and cultural attractions, festivals and entertainment venues in downtown, has placed our city on the national map as a heritage tourism destination.

# 4 UNITING OUR PEOPLE, INSTITUTIONS AND GOVERNMENT

## ➔ BY 2035

- We are a friendly, welcoming and caring community of citizens who embrace their diversity and who are actively engaged with their schools, houses of worship, civic organizations and their local government.
- We are a community with a shared identity, where pride and confidence in a bright future has overcome complacency.
- We have a business-friendly and citizen-friendly government, one with fair and transparent codes and regulations and with policies that align government priorities to reflect the needs and aspirations of the community.
- Fort Smith government prides itself on transparency and open communication, fiscally sound and resourceful funding of public facilities and services and its exercise of leadership to realize the vision of Fort Smith's future.

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October 18, 2013

Mr. Ray Gosack  
City Administrator  
City of Fort Smith  
623 Garrison Avenue, 3<sup>rd</sup> Floor  
Fort Smith, AR 72901

Re: Whirlpool TCE Release

Dear Mr. Gosack:

The following discussion of powers of the City may be beneficial as the Board of Directors studies the captioned topic. Taken from the language of a draft of a proposed indemnity agreement between the City and Whirlpool Corporation, this topic relates to an historical release of trichloroethylene (TCE) ("TCE Release") which has been investigated by and is regulated under the oversight of the Arkansas Department of Environmental Quality (ADEQ). The TCE Release may impact soil and groundwater on a portion of real properties within the City lying north of Ingersoll Avenue, west of Jenny Lind Road, east of Ferguson Street and south of Brazil Avenue, and property formerly occupied by Whirlpool Corporation.

The following municipal powers of the City of Fort Smith may be relevant.

1. Police Power. In a series of delegations including A.C.A. § 14-55-102, the City as a municipal corporation in this state has the "power to make and publish bylaws and ordinances, not inconsistent with the laws of this state, which . . . provide for the safety, preserve the health, promote the prosperity and the morals, order, comfort and convenience" of the City and its inhabitants. The City's police power could have many applications relevant to the TCE Release. For example, the City's police power was the stated authority for the proposed water well drilling ban once considered by the Board. By its police power, the City might be involved in traffic control or other police activities to provide protection of the inhabitants of the City related to the TCE Release.

As delegated, the City's police power must be exercised so as to not be inconsistent with the laws of the State of Arkansas. Pursuant to Chapter 7 of Title 8 of the Arkansas Code, the Department of Environmental Quality (ADEQ) is delegated extensive authority to deal with hazardous

substances such as are involved in the Whirlpool TCE Release. As we know, the ADEQ is actively involved in investigating and directing remedial action with reference to the TCE Release. The provisions of A.C.A. § 14-43-601 (sometimes referred to as the Home Rule Act) make clear that public health, pollution and safety matters come within the police power of the state. A.C.A. § 14-43-601(a)(1)(J). Pursuant to A.C.A. § 14-43-601(a)(2), a municipality, such as the City, may exercise legislative power upon such state affairs only if the City's action is not in conflict with state action. In the present circumstances involving the Whirlpool TCE Release, the ongoing investigation and direction of remediation efforts by ADEQ are manifestations of controlling state police power action, and thus any action by the City, whether more or less restrictive than action directed by ADEQ, would be in conflict with the current action of ADEQ.<sup>1</sup>

2. Streets. The City's governing body is delegated the power to provide for the "care, supervision, and control" of all public streets and alleys within the City. A.C.A. § 14-301-101. Other authorizations delegate to the City the power to operate public water and sanitary sewer utility systems which, according to established Arkansas municipal law, the facilities of which may be located at reasonable depths within public street rights-of-way. Thus, the City represents the public in controlling the uses of the public rights-of-way located in the areas affected by the Whirlpool TCE Release. This power may be relevant in several respects. There has been discussion of the location of a monitoring device within City street right-of-way, and the City will be involved in the approval of any such action. With ongoing utility work (replacement of a significant sanitary sewer line across the Whirlpool property) and street work (reconstruction of portions of Jenny Lind Avenue), the City and Whirlpool have discussed potential impact from the TCE Release. Although the depths of street and utility work are not expected to conflict with the TCE plume, the parties have discussed an indemnity agreement whereby Whirlpool and ADEQ would receive information regarding soil removal and dewatering operations by the City (or its contractors) and Whirlpool would accept responsibility for costs incurred by the City in evaluating whether there was an effect from the TCE Release.

Additional to the two discussed powers of the City, we have given consideration to the facts that the Whirlpool TCE Release may have at least temporary effect on values of property and on the development opportunities for the Whirlpool manufacturing facility. Each of those factors could affect tax collections in which the City shares. We are not aware of any law which would support a contention that the City has related regulatory power or a legal right to recover those

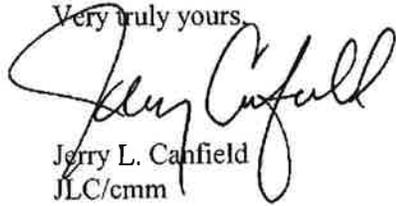
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<sup>1</sup>We do not intend to limit the right of the City to develop police power regulations more restrictive than state police power regulations. As indicated by A.C.A. § 14-430-601(a)(1)(J), the state police power may provide "minimum public health, pollution, and safety standards" and A.C.A. § 14-43-601(a)(2) allows City action if not in conflict with state law. Arguably, the City could develop hazardous substance prohibition and enforcement legislation with more stringent limits than minimum limits set by the state. That, however, is not the current situation. We do not view the City's current cleanup of lands ordinance (Code of Ordinances Chapter 16) or sanitary sewer discharge limitations (Code of Ordinances Chapter 25, Art. VI) to provide a source of City action in this situation.

economic losses potentially resulting from the TCE Release.<sup>2</sup>

Thank you for your attention to this matter.

Very truly yours,



Jerry L. Canfield  
JLC/cmm

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<sup>2</sup>We have not explored circumstances in which municipal authorities on behalf of their citizens have participated in presenting environmental claims and, through settlement agreement, provide the service of distributing a portion of agreed compensation. Such situations may exist with reference to, for example, the Gulf/BP oil spill or manufacturing process hazardous material spills.



October 14, 2013

TO: Members of the Board of Directors  
Members of the Animal Services Advisory Board

RE: Appointments:

Ms. Brook Borengasser has resigned her position on the Animal Services Advisory Board effective October 8, 2013. In accordance with Ordinance No. 2926 applications for this prospective vacancy are now being received. Applicants must be residents and registered voters in the City of Fort Smith.

Please submit applications to the city administrator's office no later than the close of business on November 6th, 2013. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to [www.fortsmithar.gov](http://www.fortsmithar.gov) and click on boards and commissions.

Sincerely,

A handwritten signature in blue ink that reads "Ray Gosack".

Ray Gosack  
City Administrator

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