



AGENDA

**FORT SMITH BOARD OF DIRECTORS
REGULAR MEETING**

NOVEMBER 2, 2010 ~ 6:00 P.M.

**FORT SMITH PUBLIC SCHOOLS
SERVICE CENTER
3205 JENNY LIND ROAD**

5:30 p.m. - Reception for out-going Ward 4 Director Bill Maddox

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 OCTOBER 19, 2010 REGULAR MEETING

ITEMS OF BUSINESS:

1. Presentation
 - Plaque of Appreciation to out-going Ward 4 Director Bill Maddox
2. Public hearing and ordinance authorizing the issuance of Airport Refunding Revenue Bonds; providing for the payment of the principal of and interest on the bonds; and prescribing other matters relating thereto
3. Presentation of proposed 2011 City Budget
4. Items relative to Middleton Farms annexation
 - A. Resolution approving a pre-annexation agreement with Richard Griffin, Bradley Kidder, Bennie Westphal and Patsy Bateman for the Middleton Farms Subdivision

- B. Ordinance accepting certain territory into the city of Fort Smith, Arkansas (327 acres)
- 5. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan - Extra Territorial Jurisdiction Low Density Residential to Residential Detached, Residential Attached and Commercial Neighborhood; Rezoning - Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RS-3 by extension; RS-4, RS-5, RM-3, RSD-3 and Commercial-2 by classification / 12905 Rye Hill Road, Middleton Farms*)
- 6. Ordinance amending the Master Street Plan of the City of Fort Smith, Arkansas
- 7. Ordinance rezoning identified property and amending the zoning map (*Industrial 1 to Commercial-5 by extension / 5504 Wheeler Avenue*)
- 8. Ordinance rezoning identified property and amending the zoning map (*Commercial-2 to Residential Multi-Family High Density (RM-4) by extension / 1115 South 17th Street*)
- 9. Ordinance rezoning identified property and amending the zoning map (*Transitional to Commercial-2 by extension / 5311 South 28th Street and 2851 South Xavier Street*)
- 10. Consent Agenda
 - A. Resolution authorizing engineering service agreements for the design of projects in the 2011 Sales Tax Program (\$786,035.00 / various projects)
 - B. Resolution authorizing a time extension, assessing liquidated damages, accepting completion of and authorizing final payment for the construction of Street Overlays/Reconstruction, Project No. 09-03-B (\$67.63)
 - C. Resolution authorizing a time extension, assessing liquidated damages, accepting completion of and authorizing final payment for the construction of Street Overlays/Reconstruction, Project No. 09-03-D (\$211.18)
 - D. Resolution authorizing a time extension, assessing liquidated damages, accepting completion and authorizing final payment for the construction of 2009 Sidewalk Program, Project No. 09-20-B, CDBG Project No. 8930 (\$234.33)
 - E. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding for the repairs to the D7R Caterpillar dozer at the City Landfill (\$50,770.98)

- F. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding for the purchase of ten police vehicles for the Police Department (\$247,456.00)

**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 AUTHORIZING THE ISSUANCE OF AIRPORT REFUNDING REVENUE BONDS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the Fort Smith Airport Commission (the "Commission") owns and operates an airport known as the "Fort Smith Regional Airport," together with related properties and facilities (the "Airport") on behalf of the City of Fort Smith, Arkansas (the "City"); and

WHEREAS, pursuant to Ordinance No. 60-99, adopted September 21, 1999 (the "1999 Ordinance"), the City has issued its Airport Refunding and Improvement Revenue Bonds, Series 1999 in the outstanding principal amount of \$3,315,000 (the "Refunded Bonds"); and

WHEREAS, the Commission and the Board of Directors of the City have determined that it is in the best interest of the City to refund the Refunded Bonds; and

WHEREAS, the City can obtain the necessary funds to accomplish the refunding of the Refunded Bonds (the "Refunding"), fund a debt service reserve and pay costs of issuing bonds by issuing its Airport Refunding Revenue Bonds, Series 2010 (the "Series 2010 Bonds"), and by appropriating funds of the City held pursuant to the 1999 Ordinance; and

WHEREAS, the City is making arrangements for the sale of the Series 2010 Bonds to Stephens Inc. (the "Purchaser") pursuant to a Bond Purchase Agreement (the "Agreement") which has been presented to and is before this meeting; and

WHEREAS, the Preliminary Official Statement offering the Series 2010 Bonds for sale (the "Preliminary Official Statement") has been presented to and is before this meeting; and

WHEREAS, the Continuing Disclosure Agreement between the City and BancorpSouth Bank, Stuttgart, Arkansas, as Dissemination Agent (the "Disclosure Agreement"), providing for the ongoing disclosure obligations of the City with respect to the Series 2010 Bonds, has been presented to and is before this meeting;

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

Section 1. The Refunding is hereby authorized so long as the present value debt service savings is at least 7.5% of the principal amount of the Refunded Bonds outstanding. The Mayor and other officials of the City are hereby authorized to take, or cause to be taken, all action necessary to accomplish the Refunding and to execute all required contracts. The Refunded Bonds shall be called for redemption on the earliest practical date after the Series 2010 Bonds are issued.

Section 2. The Preliminary Official Statement is hereby approved and the use of the Preliminary Official Statement by the Purchaser in connection with the sale of the Series 2010 Bonds is hereby in all respects approved, and the Mayor is hereby authorized and directed, for and on behalf of the City, to execute the Preliminary Official Statement and the final Official Statement in the name of the City for use in connection with the sale of the Series 2010 Bonds.

Section 3. The Disclosure Agreement, in substantially the form submitted to this meeting, is approved, and the Mayor is hereby authorized and directed to execute and deliver the Disclosure Agreement on behalf of the City. The Mayor and the Manager of the Airport (the "Manager") are authorized and directed to take all action required on the part of the City to fulfill the City's obligations under the Disclosure Agreement.

Section 4. The sale of the Series 2010 Bonds to the Purchaser at an underwriter's discount not in excess of 2.0% of the par amount of the Series 2010 Bonds is hereby approved. The Bond Purchase Agreement is hereby approved and the Mayor is authorized, upon meeting the terms and conditions of Sections 1 and 6 hereof, to execute and deliver it on behalf of the City and to take all action required on the part of the City to fulfill the City's obligations under the Bond Purchase Agreement.

Section 5. It is understood and agreed that the Commission, acting for and on behalf of the City, has custody of and control over the Airport, owns, operates, maintains and repairs the Airport and collects and handles Airport Revenues. Therefore, it is understood and agreed that even though there are some express references to the Commission, all references herein to the City shall, when appropriate in view of the authority and responsibility of the Commission, be construed to mean and include the Commission.

Section 6. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Arkansas Code of 1987 Annotated, Title 14, Chapter 360, Subchapter 3 and Title 14, Chapter 164, Subchapter 4, City of Fort Smith, Arkansas Airport Refunding Revenue Bonds, Series 2010 are hereby authorized and ordered issued in the maximum aggregate principal amount of \$3,350,000 for the purpose of accomplishing, along with other

available funds, the Refunding, funding a debt service reserve and paying necessary expenses incidental thereto and to the authorization and issuance of the Series 2010 Bonds. The Series 2010 Bonds shall be dated December 1, 2010, with interest payable semiannually on April 1 and October 1 of each year, commencing April 1, 2011, shall be numbered consecutively from 1 upward, in order of issuance, and shall be in the denomination of \$5,000 or an integral multiple thereof. Principal of the Series 2010 Bonds shall be payable on October 1 of each year. The Series 2010 Bonds shall have a final maturity of October 1, 2026 and shall have an average coupon rate not greater than 5.40%.

Payment of each installment of interest shall be made to the person in whose name the Series 2010 Bond is registered on the registration books of the City maintained by BancorpSouth Bank, Stuttgart, Arkansas, as Trustee (the "Trustee"), at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of any such Bond subsequent to such Record Date and prior to such interest payment date.

The Series 2010 Bonds shall be registered initially in the name of Cede & Co., as nominee for the Depository Trust Company ("DTC"), which shall be considered to be the registered owner of the Series 2010 Bonds for all purposes under this Ordinance, including, without limitation, payment by the City of principal of, redemption price, premium, if any, and interest on the Series 2010 Bonds, and receipt of notices and exercise of rights of registered owners. There shall be one certificated, typewritten Series 2010 Bond for each stated maturity date which shall be immobilized in the custody of DTC with the beneficial owners having no right to receive the Series 2010 Bonds in the form of physical securities or certificates. DTC and its participants shall be responsible for maintenance of records of the ownership of beneficial interests in the Series 2010 Bonds by book-entry on the system maintained and operated by DTC and its participants, and transfers of ownership of beneficial interests shall be made only by DTC and its participants, by book-entry, the City having no responsibility therefor. DTC is expected to maintain records of the positions of participants in the Series 2010 Bonds, and the participants and persons acting through participants are expected to maintain records of the purchasers of beneficial interests in the Series 2010 Bonds. The Series 2010 Bonds as such shall not be transferable or exchangeable, except for transfer to another securities depository or to another nominee of a securities depository, without further action by the City.

If any securities depository determines not to continue to act as a securities depository for the Series 2010 Bonds for use in a book-entry system, the City may establish a securities depository/book-entry system relationship with another securities depository. If the City does not or is unable to do so, or upon request of the beneficial owners of all outstanding Series 2010 Bonds, the

City and the Trustee, after the Trustee has made provision for notification of the beneficial owners by the then securities depository, shall permit withdrawal of the Series 2010 Bonds from the securities depository, and authenticate and deliver Series 2010 Bond certificates in fully registered form (in denominations of \$5,000 or integral multiples thereof) to the assigns of the securities depository or its nominee, all at the cost and expense (including costs of printing definitive Series 2010 Bonds) of the City, if the City fails to maintain a securities depository/book-entry system, or of the beneficial owners, if they request termination of the system.

Prior to issuance of the Series 2010 Bonds, the City shall have executed and delivered to DTC a written agreement (the "Representation Letter") setting forth (or incorporating therein by reference) certain undertakings and responsibilities of the City with respect to the Series 2010 Bonds so long as the Series 2010 Bonds or a portion thereof are registered in the name of Cede & Co. (or a substitute nominee) and held by DTC. Notwithstanding such execution and delivery of the Representation Letter, the terms thereof shall not in any way limit the provisions of this Section or in any other way impose upon the City any obligation whatsoever with respect to persons having interests in the Series 2010 Bonds other than the registered owners, as shown on the registration books kept by the Trustee. The Trustee shall take all action necessary for all representations of the City in the Representation Letter with respect to the Trustee to at all times be complied with.

The authorized officers of the Trustee and the City shall do or perform such acts and execute all such certificates, documents and other instruments as they or any of them deem necessary or advisable to facilitate the efficient use of a securities depository for all or any portion of the Series 2010 Bonds; provided that neither the Trustee nor the City may assume any obligations to such securities depository or beneficial owners of Series 2010 Bonds that are inconsistent with their obligations to any registered owner under this Ordinance.

Each Series 2010 Bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from December 1, 2010, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time of authentication thereof interest is in default thereon, in which event it shall bear interest from the date to which interest has been paid.

Only such Series 2010 Bonds as shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in Section 8

hereof (the "Certificate") duly executed by the Trustee shall be entitled to any right or benefit under this Ordinance. No Series 2010 Bond shall be valid and obligatory for any purpose unless and until the Certificate shall have been duly executed by the Trustee, and the Certificate upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Ordinance. The Certificate on any Series 2010 Bond shall be deemed to have been executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the Certificate on all of the Series 2010 Bonds.

In case any Series 2010 Bond shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and the Trustee may authenticate and deliver a new Series 2010 Bond of like date, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Bond, or in lieu of and in substitution for such Series 2010 Bond destroyed or lost, upon the owner paying the reasonable expenses and charges of the City and Trustee in connection therewith, and, in the case of a Series 2010 Bond destroyed or lost, his filing with the Trustee evidence satisfactory to it that such Series 2010 Bond was destroyed or lost, and of his ownership thereof, and furnishing the City and Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new Series 2010 Bond. In the event any such Series 2010 Bond shall have matured, instead of issuing a new Series 2010 Bond, the City may pay the same without the surrender thereof. Upon the issuance of a new Series 2010 Bond under this Section, the City may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

The City shall keep, or cause to be kept, books for the registration and for the transfer of the Series 2010 Bonds as provided herein and in the Series 2010 Bonds. The Trustee shall act as the bond registrar. Each Series 2010 Bond is transferable by the registered owner thereof or by his attorney duly authorized in writing at the principal office of the Trustee. Upon such transfer a new fully registered Series 2010 Bond or Bonds of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange therefor.

No charge shall be made to any owner of any Series 2010 Bond for the privilege of transfer or exchange, but any owner of any Series 2010 Bond requesting any such transfer or exchange shall pay any tax or other governmental charge required to be paid with respect thereto. Except as otherwise provided in the immediately preceding sentence, the cost of preparing each new Series 2010 Bond upon each exchange or transfer and any other expenses of the City or the Trustee incurred in connection therewith shall

be paid by the City. The City shall not be required to transfer or exchange any Series 2010 Bonds selected for redemption in whole or in part.

The person in whose name any Series 2010 Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or premium, if any, or interest of any Series 2010 Bond shall be made only to or upon the order of the registered owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2010 Bond to the extent of the sum or sums so paid.

In any case where the date of maturity of interest on or principal of the Series 2010 Bonds or the date fixed for redemption of any Series 2010 Bonds shall be a Saturday or Sunday or shall be in the State a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal (and premium, if any) need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after the date of maturity or date fixed for redemption.

Section 7. The Series 2010 Bonds shall be executed on behalf of the City by the Mayor and City Clerk and shall have impressed or imprinted thereon the seal of the City. The Series 2010 Bonds may be signed by the facsimile signatures of the Mayor and the City Clerk. The Series 2010 Bonds, together with interest thereon, are secured by and are payable solely from all revenues derived from the operation of the Airport (the "Airport Revenues"). Airport Revenues include particularly, without limitation, airline revenues (including landing fees and terminal rent), gasoline sales, fuel flowage fees, landing fees paid by non-scheduled airlines, office, hangar and other space rentals, operators' fees, parking lot concessions and passenger facilities charges). Airport Revenues are hereby pledged and mortgaged for the equal and ratable payment of the Series 2010 Bonds. The term "Bonds" herein refers to the Series 2010 Bonds and any additional bonds issued on a parity of security with the Series 2010 Bonds pursuant to Section 19 hereof.

The Series 2010 Bonds shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 8. The Series 2010 Bonds shall be in substantially the following form and the Mayor and City Clerk are hereby expressly authorized and directed to make all recitals contained therein:

(Form of Bond)

REGISTERED

REGISTERED

No. _____

\$ _____

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF SEBASTIAN
CITY OF FORT SMITH
AIRPORT REFUNDING REVENUE BOND
SERIES 2010

Interest Rate: _____ %
Dated Date: December 1, 2010

Maturity Date: October 1, _____

Registered Owner: _____
Principal Amount: _____ Dollars
CUSIP No.: _____

KNOW ALL MEN BY THESE PRESENTS:

That the City of Fort Smith, Arkansas (the "City"), for value received, hereby promises to pay, but solely from the source as hereinafter provided and not otherwise, to the Registered Owner shown above, upon the presentation and surrender hereof at the principal corporate office of BancorpSouth Bank, in Stuttgart, Arkansas, or its successor or successors, as Trustee (the "Trustee"), on the Maturity Date shown above, the Principal Amount shown above, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and to pay by check or draft interest thereon, but solely from the source as hereinafter provided and not otherwise, in like coin or currency, at the Interest Rate per annum shown above, payable semiannually on the first days of April and October of each year, commencing April 1, 2011, until payment of such principal sum or, if this bond or a portion hereof shall be duly called for redemption, until the date fixed for redemption, and to pay interest on overdue principal and interest (to the extent legally enforceable) at the rate borne by this bond. Payment of each installment of interest shall be made to the person in whose name this bond is registered on the registration books of the City maintained by the Trustee at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of this bond subsequent to such Record Date and prior to such interest payment date. Interest on this bond is payable from the interest payment date next preceding the date on which this bond is authenticated unless this bond is authenticated on an interest payment date, in which case it shall bear interest from such date, or unless this bond is authenticated prior to April 1, 2011, in which case it shall bear interest from the Dated Date shown above, or unless this bond is authenticated during the period from the Record Date to the next

interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time of authentication of this bond interest is in default hereon, in which case it shall bear interest from the date to which interest has been paid.

Unless this bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Trustee for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is required by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

This bond is one of an issue of City of Fort Smith, Arkansas Airport Refunding Revenue Bonds, Series 2010, aggregating _____ Dollars (\$_____) in principal amount (the "Series 2010 Bonds"), and is issued for the purpose of refunding the City's outstanding Airport Refunding and Improvement Revenue Bonds, Series 1999, which financed, along with available funds, the costs of the acquisition, construction and equipping of additions and improvements to the municipal airport, together with related properties and facilities (the "Airport"), funding a debt service reserve and paying necessary expenses incidental thereto and to the authorization and issuance of the Series 2010 Bonds.

THE SERIES 2010 BONDS ARE ISSUED PURSUANT TO AND IN FULL COMPLIANCE WITH THE CONSTITUTION AND LAWS OF THE STATE OF ARKANSAS, INCLUDING PARTICULARLY TITLE 14, CHAPTER 360, SUBCHAPTER 3 AND TITLE 14, CHAPTER 164, SUBCHAPTER 4 OF THE ARKANSAS CODE OF 1987 ANNOTATED AND PURSUANT TO ORDINANCE NO. _____, DULY ADOPTED ON _____, 2010, AS SUPPLEMENTED BY ORDINANCE NO. _____, DULY ADOPTED ON _____, 2010 (COLLECTIVELY, THE "AUTHORIZING ORDINANCE"); AND DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN ANY CONSTITUTIONAL OR STATUTORY LIMITATION. The Series 2010 Bonds are not general obligations of the City but are special obligations payable solely from the revenues derived from the operation of the Airport as described in the Authorizing Ordinance ("Airport Revenues"). An amount of Airport Revenues sufficient to pay the principal of and interest on the Series 2010 Bonds has been duly pledged and set aside into the Airport Revenue Bond Fund established by the Authorizing Ordinance. Reference is hereby made to the Authorizing Ordinance for a detailed statement of the terms and conditions upon which the Series 2010 Bonds are issued, of the nature and extent of the security for the Series 2010 Bonds, the reservation of the power to

issue additional (parity) bonds, and the rights and obligations of the City, the Trustee and the owners of the Series 2010 Bonds.

The Series 2010 Bonds shall be subject to redemption at the option of the City, from funds from any source, in whole at any time or in part on any interest payment date on and after October 1, 2020, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date. If fewer than all of the Series 2010 Bonds shall be called for redemption, the particular maturities to be redeemed shall be selected by the City in its discretion. If fewer than all of the Series 2010 Bonds of any one maturity shall be called for redemption, the particular Series 2010 Bonds or portion thereof to be redeemed from such maturity shall be selected by lot by the Trustee.

Notice of redemption identifying the Series 2010 Bonds or portions thereof (which shall be \$5,000 or a multiple thereof) to be redeemed shall be given by the Trustee, not less than 30 nor more than 60 days prior to the date fixed for redemption, by mailing a copy of the redemption notice by first class mail, postage prepaid; or by other standard means, including facsimile transmissions and electronic communications, to all registered owners of Series 2010 Bonds to be redeemed. Failure to mail an appropriate notice or any such notice to one or more registered owners of Series 2010 Bonds to be redeemed shall not affect the validity of the proceedings for redemption of other Series 2010 Bonds as to which notice of redemption is duly given in proper and timely fashion. All such Series 2010 Bonds or portions thereof thus called for redemption and for the retirement of which funds are duly provided in accordance with the Authorizing Ordinance prior to the date fixed for redemption will cease to bear interest on such redemption date. With respect to notice of redemption of the Series 2010 Bonds, unless moneys sufficient to pay the principal of an premium, if any , and interest on the Series 2010 Bonds to be redeemed shall have been received by the Trustee prior to the giving of such notice, such notice shall state that such redemption shall be conditional upon the receipt of such moneys by the Trustee on or prior to the date fixed for such redemption.

The City and the Trustee may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, hereon and interest due hereon and for all other purposes, and neither the City nor the Trustee shall be affected by any notice to the contrary.

The Series 2010 Bonds are issuable only as fully registered bonds in the denomination of \$5,000, and any integral multiple thereof. Subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, Series 2010 Bonds may be exchanged for a like aggregate principal

amount of Series 2010 Bonds of the same maturity of other authorized denominations.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Series 2010 Bonds do exist, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by the Series 2010 Bonds, together with all obligations of the City, does not exceed any constitutional or statutory limitation; and that the above referred to Airport Revenues pledged to the payment of the principal of and premium, if any, and interest on the Series 2010 Bonds as the same become due and payable will be sufficient in amount for that purpose.

This Series 2010 Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Authorizing Ordinance until the Certificate of Authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the City of Fort Smith, Arkansas has caused this bond to be executed by its Mayor and City Clerk, thereunto duly authorized, and its corporate seal to be impressed or imprinted on this bond, all as of the Dated Date shown above.

CITY OF FORT SMITH, ARKANSAS

ATTEST:

By _____
Mayor

City Clerk

(SEAL)

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds designated Airport Refunding Revenue Bonds, Series 2010, in and issued under the provisions of the within mentioned Authorizing Ordinance.

**BANCORPSOUTH BANK
TRUSTEE**

By _____
Authorized Signature

Date of Authentication: _____

(A Form of Assignment shall be
attached to each Series 2010 Bond.)

Section 9. The City covenants that it will cause the Airport to be operated as a revenue producing undertaking and that the rates, rents and charges for services at the Airport shall be fixed in amount from time to time that will produce Net Revenues at least equal to 110% of the aggregate average annual principal and interest requirements on all outstanding bonds payable from Airport Revenues ("Airport Bonds"). "Net Revenues" shall mean Airport Revenues less the amounts required to pay the costs of operation, maintenance and repair, including all expense items properly attributable to the operation and maintenance of the Airport in accordance with generally accepted accounting principles, excluding depreciation and interest expenses.

Section 10. The Treasurer of the Commission shall be custodian of the Airport Revenues and shall give bond for the faithful discharge of his or her duties as such custodian, in such amount as is fixed and approved by the Commission. All Airport Revenues and proceeds of the Bonds received by the Commission Treasurer shall be deposited by him or her in such depository or depositories for the Commission as may be lawfully designated from time to time; subject, however, to the giving of security as now or hereafter may be required by law, and provided that such depository or depositories shall hold membership in the Federal Deposit Insurance Corporation ("FDIC") or any successor entity. All deposits shall be in the name of the Commission and shall be so designated as to indicate the particular fund to which the Airport Revenues or proceeds belong. Any deposit in excess of the amount insured by the FDIC shall be secured by direct or fully guaranteed obligations of the United States of America or other securities authorized by Arkansas law to secure public deposits, unless invested as herein authorized.

Section 11. All Airport Revenues shall be deposited into a special fund designated "Airport Revenue Fund," in a bank selected by the Commission that is a member of the FDIC. Airport Revenues in the Airport Revenue Fund are pledged and shall be applied to the payment of the principal of and interest on the Bonds, to the maintenance of debt service reserves at required levels, to the payment of the reasonable and necessary expenses of operation and maintenance of the Airport and otherwise as described herein.

Section 12. (a) There shall first be transferred and paid from the Airport Revenue Fund into a special fund designated "Airport Revenue Bond Fund" (the "Bond Fund") in a bank selected by the Commission that is a member of the FDIC, the sums in the amounts and at the times described below.

(b) There shall be paid into the Bond Fund until all outstanding Bonds, with interest thereon, have been paid in full or provision made for such payment, on the first business day of each month, a sum equal to 1/6 of the next installment of interest plus 1/12 of the installment of principal due during the then next twelve months (either at maturity or in accordance with any mandatory redemption provisions) on all outstanding Bonds, plus an amount sufficient to provide for Trustee's fees, on all outstanding Bonds; provided, however, that approximately level payments shall be made for the interest payment due in April 1, 2011 and for the principal payment due October 1, 2011. If additional bonds are issued, payments into the Bond Fund shall be increased to provide for monthly amortization of such additional bonds. The City shall receive a credit against monthly payments from the Airport Revenue Fund to the extent of deposits from other sources and interest earnings.

(c) There is established and shall be maintained within the Bond Fund a "Debt Service Reserve," initially funded with Series 2010 Bond proceeds in an amount equal to the Required Level (defined below). If additional bonds are issued on a parity with the Bonds, the Debt Service Reserve must be increased upon the issuance of such additional bonds, so that the amount thereof is equal to the Required Level. The Debt Service Reserve shall be established and maintained in an amount equal to the least of (1) 10% of the original proceeds of the Bonds, (2) the maximum annual debt service on all Bonds or (3) 1.25 times the average annual debt service on all Bonds outstanding (the "Required Level").

The Debt Service Reserve shall be valued by the Trustee, at market value, no less frequently than annually, and any surplus therein (in excess of the Required level) shall be promptly transferred to the Bond Fund and used as a credit against monthly payments from the Airport Revenue Fund. Any deficiency in the Debt Service Reserve on account of the value thereof shall be corrected by the deposit therein from the Airport Revenue Fund of monthly

amounts equal to not less than the amounts sufficient to cure such deficiency in twelve equal deposits.

(d) If the Airport Revenues are insufficient to make the required payment on the first business day of any month into the Bond Fund, the amount of any such deficiency in the payment made shall be added to the amount otherwise required to be paid into the Bond Fund on the first business day of the next month.

(e) If for any reason there shall be a deficiency in the payments made into the Bond Fund so that there are unavailable sufficient moneys therein to pay the principal of and interest on the Bonds as the same become due, any sums then held in the Debt Service Reserve shall be used to the extent necessary to pay such principal and interest.

(f) If a surplus shall exist in the Bond Fund over and above the amount required for making all principal and interest payments during the next succeeding twelve month period and in excess of the Required Level of the Debt Service Reserve, such surplus shall be applied, at the direction of the Commission, to the payment of the principal of and interest on the Bonds that may be called for redemption prior to maturity or shall be deposited into the Airport Revenue Fund. Otherwise, moneys in the Bond Fund shall be used solely for the payment of principal, premium, if any, and interest on the Bonds, Trustee's fees and otherwise as described herein.

(g) The Treasurer of the Commission shall withdraw from the Bond Fund and deposit with the Trustee at least one business day before the due date of any Bond or interest payable therefrom, at maturity or redemption prior to maturity, an amount equal to the amount of such Bond or interest payment for the sole purpose of paying the same, together with the Trustee's fee.

(h) The Bonds shall be specifically secured by a pledge of all Airport Revenues. This pledge in favor of the Bonds is hereby irrevocably made according to the terms of this Ordinance, and the City and the Commission and their officers and employees shall execute, perform and carry out the terms hereof in strict conformity with the provisions of this Ordinance.

Section 13. After the required payments have been made into the Bond Fund, there shall be paid from the Airport Revenue Fund into a fund designated "Airport Operation and Maintenance Fund" (the "Operation and Maintenance Fund"), on the first business day of each month, an amount sufficient to pay the reasonable and necessary monthly expenses of operation, repair and maintenance of the Airport for such month and from which disbursements shall be made only for those purposes. Fixed annual charges such as insurance premiums and the cost of major repair and maintenance

expenses may be computed and set upon an annual basis, and one-twelfth (1/12) of the amount thereof may be paid into the Operation and Maintenance Fund each month.

If in any month for any reason there shall be a failure to transfer and pay the required amount into the Operation and Maintenance Fund, the amount of the deficiency shall be added to the amount otherwise required to be transferred and paid into the fund the next succeeding month. If in any fiscal year a surplus shall be accumulated in the Operation and Maintenance Fund over and above the amount which shall be necessary to defray the reasonable and necessary costs of operation and maintenance during the remainder of the then current fiscal year and the next ensuing fiscal year, such surplus may be transferred into the Airport Revenue Fund.

Section 14. The City hereby expressly pledges, and covenants to use, all Airport Revenues to make all required deposits under this Ordinance into the Bond Fund and the Operation and Maintenance Fund. Any surplus in the Airport Revenue Fund, after making all required disbursements and making full provision for required funds, may be used, at the option of the Commission, for the redemption of Bonds; for constructing additions and improvements to the Airport; or for the maintenance or operation of the Airport.

Section 15. It is hereby covenanted and agreed by the City with the owners of the Bonds that the City and the Commission will faithfully and punctually perform all duties with reference to the Airport required by the Constitution and laws of the State and by this Ordinance, including the charging and collecting of sufficient rates and charges for the use of the Airport, as herein specified and covenanted, the segregating of the Airport Revenues pledged hereby and the applying of the Airport Revenues to the respective funds created hereby.

Section 16. The City will cause the Commission to keep proper books of accounts and records (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the operation of the Airport, and such books shall be available for inspection by the registered owner of any of the Bonds at reasonable times and under reasonable circumstances. The City agrees that the Commission will have these records audited by an independent certified public accountant not in the regular employ of the City that is selected by the Commission ("Accountant") at least once each year, which audit may be a part of the annual audit of the financial records of the City, and a copy of the audit shall be delivered to the Trustee and made available to registered owners requesting the same in writing. In the event that the Commission fails or refuses to make the audit, the Trustee or any registered owner of the Bonds may have the audit made, and the cost thereof shall be charged against the Operation and Maintenance Fund.

Section 17. The City covenants that it will cause the Commission to maintain the Airport in good condition and operate the same in an efficient manner and at reasonable cost. While any of the Bonds are outstanding, the City agrees that, to the extent that comparable protection is not otherwise provided to the satisfaction of the Trustee, it will cause the Commission to keep the properties of the Airport insured against loss or damage, in an amount and against such risks as are usually insured against in connection with similar facilities and undertakings as the Airport. The City further covenants, to the extent comparable protection is not otherwise provided to the satisfaction of the Trustee, that it will cause the Commission to maintain adequate fidelity insurance or bonds on all officers or employees responsible for handling funds of the Airport. All insurance required by this Ordinance (unless comparable protection is provided) shall be effected with reputable insurance companies selected by the Commission, which usually insure risks similar in nature and monetary exposure. Satisfactory evidence of insurance is to be placed in the custody of the Trustee. In the event of loss, the proceeds of such insurance shall be applied solely toward the reconstruction, replacement or repair of the Airport, and in such event the City will, with reasonable promptness, cause to be commenced and completed the reconstruction, replacement and repair work. If such proceeds are more than sufficient for such purposes, the balance remaining shall be deposited to the credit of the Airport Revenue Fund, and if such proceeds shall be insufficient for such purposes the deficiency shall be supplied first from moneys in the Operation and Maintenance Fund and second from surplus moneys in the Airport Revenue Fund.

Section 18. So long as any of the Bonds are outstanding, the Commission shall not mortgage, pledge or otherwise encumber the Airport, or any part thereof essential to the proper operation of the Airport or to the maintenance of Airport Revenues. The City will not create, or permit the creation of, any pledge, lien, charge or encumbrance upon the Airport Revenues except as permitted hereby. The City will not sell or otherwise dispose of all or any substantial portion of the Airport. Nothing in this Section shall be construed to prohibit the City from leasing its properties or from disposing of worn out or obsolete properties or from disposing of properties not being used and not useful in the operation of the Airport, provided that all revenues derived from the disposition of such properties shall be deposited in the Airport Revenue Fund.

Section 19. (a) So long as any Bonds are outstanding, the City shall not issue or attempt to issue any bonds claimed to be entitled to a priority of lien on Airport Revenues over the lien securing the Bonds.

(b) The City reserves the right to issue additional bonds, to finance or refinance the cost of constructing any future extensions or improvements to the Airport secured by a pledge of Airport Revenues ranking,

with respect to Airport Revenues, on a parity with the Bonds, provided that there shall have been procured and filed with the Trustee a statement by an Accountant reciting the opinion, based upon necessary investigation, that (i) Net Revenues of the Airport for the fiscal year immediately preceding the fiscal year in which it is proposed to issue such additional bonds shall equal not less than 125% of the maximum annual principal and interest requirements on all the then outstanding Airport Bonds, and the additional bonds then proposed to be issued, or (ii) Net Revenues of the Airport for each of the two fiscal years next succeeding the fiscal year in which the proposed project to be funded is completed shall equal not less than 130% of the maximum annual principal and interest requirements on all the then outstanding Airport Bonds and the additional bonds then proposed to be issued.

In addition, the City may also issue additional bonds for any extensions or improvements to the Airport secured by Airport Revenues so long as the lien and pledge in favor of such bonds is subordinate to the lien and pledge in favor of the Bonds.

Section 20. (a) Moneys held for the credit of the Bond Fund shall be continuously invested and reinvested pursuant to the direction of the Commission in direct obligations, or obligations the principal and interest on which are unconditionally guaranteed by the United States of America ("Government Securities") and certificates of deposit of banks which are members of FDIC, all of which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than (i) seven (7) years after the date of investment or the final maturity date of the Bonds, whichever is earlier in the case of the Debt Service Reserve and (ii) the date the moneys will be needed for the payment of principal and interest in case of other moneys in the Bond Fund.

(b) Moneys held for the credit of any other fund shall be continuously invested and reinvested pursuant to the direction of the Commission in Government Securities or other investments as may, from time to time, be permitted by law, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when the moneys held for the credit of the particular fund will be required for the purposes intended.

(c) Obligations so purchased as an investment of moneys in any fund shall be deemed at all times to be a part of such fund and the interest accruing thereon and any profit realized from such investments shall be credited to such fund, and any loss resulting from such investment shall be charged to such fund; provided, however, that earnings on the Debt Service Reserve in excess of the Required Level shall be credited against the City's monthly payment obligations into the Bond Fund.

(d) Moneys so invested in Government Securities or in certificates of deposit of banks to the extent insured by FDIC, need not be secured by the depository bank or banks.

Section 21. The Series 2010 Bonds shall be subject to redemption prior to maturity in accordance with the terms set out in the bond form.

Section 22. Any Bond shall be deemed to be paid within the meaning of this Ordinance when payment of the principal of and interest on such Bond (whether at maturity or upon redemption as provided herein, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) cash sufficient to make such payment and/or (2) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America ("Investment Securities") (provided that such deposit will not affect the tax exempt status of the interest on any of the Bonds or cause any of the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code")), maturing as to principal and interest in such amounts and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

On the payment of any Bonds within the meaning of this Ordinance, the Trustee shall hold in trust, for the benefit of the owners of such Bonds, all such moneys and/or Investment Securities.

When all the Bonds shall have been paid within the meaning of this Ordinance, and if the Trustee has been paid its fees and expenses, the Trustee shall take all appropriate action to cause (i) the pledge and lien of this Ordinance to be discharged and cancelled, and (ii) all moneys held by it pursuant to this Ordinance and which are not required for the payment of such Bonds to be paid over or delivered to or at the direction of the City. In determining the sufficiency of the deposit of Investment Securities there shall be considered the principal amount of such Investment Securities and interest to be earned thereon until the maturity of such Investment Securities.

Section 23. If there be any default in the payment of the principal of or interest on any of the Bonds, or if the City defaults in any Bond Fund requirement or in the performance of any of the other covenants contained in this Ordinance, the Trustee may, and upon the written request of the registered owners of not less than 10% in principal amount of the then outstanding Bonds, shall, by proper suit, compel the performance of the duties of the officials of the City under the laws of Arkansas. And in the case of a

default in the payment of the principal of and interest on any of the Bonds, the Trustee may and upon written request of the registered owners of not less than 10% in principal amount of the then outstanding Bonds, shall apply in a proper action to a court of competent jurisdiction for the appointment of a receiver to administer the Airport on behalf of the Commission and the registered owners of the Bonds with power to charge and collect (or by mandatory injunction or otherwise to cause to be charged and collected) rates sufficient to provide for the payment of the expenses of operation, maintenance and repair and to pay any Bonds and interest outstanding and to apply Revenues in conformity with the laws of Arkansas and with this Ordinance. When all defaults in principal and interest payments have been cured, the custody and operation of the Airport shall revert to the Commission.

No registered owner of any of the outstanding Bonds shall have any right to institute any suit, action, mandamus or other proceeding in equity or at law for the protection or enforcement of any power or right unless such owner previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the registered owners of not less than 10% in principal amount of the Bonds then outstanding shall have made written request of the Trustee after the right to exercise such power or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers granted to the Trustee, or to institute such action, suit or proceeding in its name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time. Such notification, request and offer of indemnity are, at the option of the Trustee, conditions precedent to the execution of any remedy. No one or more registered owners of the Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right thereunder except in the manner herein described. All proceedings at law or in equity shall be instituted, had and maintained in the manner herein described and for the benefit of all registered owners of the outstanding Bonds.

No remedy conferred upon or reserved to the Trustee or to the registered owners of the Bonds is intended to be exclusive of any other remedy or remedies, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Ordinance or by law.

The Trustee may, and upon the written request of the registered owners of not less than 50% in principal amount of the Bonds then outstanding shall, waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the

enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

All rights of action under this Ordinance or under any of the Bonds enforceable by the Trustee, may be enforced by it without the possession of any of the Bonds, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the benefit of all the registered owners of such Bonds, subject to the provisions of this Ordinance.

No delay or omission of the Trustee or of any registered owners of the Bonds to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Ordinance to the Trustee and to the registered owners of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

In any proceeding to enforce the provisions of this Ordinance any plaintiff Bondholder shall be entitled to recover from the City all costs of such proceeding, including reasonable attorneys' fees.

Section 24. (a) The terms of this Ordinance shall constitute a contract between the City and the registered owners of the Bonds and no variation or change in the undertaking herein set forth shall be made while any of the Bonds are outstanding, except as hereinafter set forth in subsections (b) and (c).

(b) The Trustee may consent to any variation or change in this Ordinance to cure any ambiguity, defect or omission in this Ordinance or any amendment hereto or any other change that the Trustee determines is not to the material prejudice of the Bondholders or the Trustee without the consent of the owners of the outstanding Bonds.

(c) The owners of not less than 75% in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance supplemental hereto as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Ordinance or in any supplemental ordinance; provided, however, that nothing contained in this Section shall permit or be construed as permitting (a) an extension of the maturity of the principal of or the interest on any Bond, or (b) a reduction in the principal amount of any Bond or the rate of interest thereon, or (c) the creation of a lien or pledge superior to the lien and pledge created by this Ordinance, or (d) a

privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance.

Section 25. When the Series 2010 Bonds have been executed and sealed as herein provided, they shall be delivered to the Trustee. The Trustee shall authenticate the Series 2010 Bonds and deliver them to or at the direction of the Purchaser upon payment of the purchase price as set forth in the Agreement. The accrued interest shall be deposited into the Bond Fund. A sufficient amount of the sale proceeds, along with other available funds appropriated hereby, shall be deposited with the trustee for the Refunded Bonds and used to accomplish the Refunding. The amount necessary to fund the Debt Service Reserve at the Required Level shall be deposited into the Debt Service Reserve. The expenses of issuing the Series 2010 Bonds as set forth in the delivery instructions to Trustee signed by the Mayor and City Clerk shall also be paid from the sale proceeds. The remainder of the sale proceeds, if any, shall be deposited into a special account in the name of the City in the Trustee designated "Cost of Issuance Fund". The moneys in the Cost of Issuance Fund shall be disbursed solely in payment of the costs of issuing the Series 2010 Bonds. Disbursements shall be on the basis of requisitions which shall contain at least the following information: the person to whom payment is being made; the amount of the payment; and the purpose by general classification of the payment. Each requisition must be signed by the Manager or such other person or persons designated by the Commission.

If moneys remain in the Cost of Issuance Fund on January 31, 2011, any remaining balance shall be transferred by the Trustee to the Commission for deposit into the Bond Fund.

Section 26. The Trustee shall only be responsible for the exercise of good faith and reasonable prudence in the execution of its trust. The recitals in this Ordinance and in the face of the Bonds are the recitals of the City and not of the Trustee. The Trustee shall not be required to take any action as Trustee unless it shall have been requested to do so in writing by the registered owners of not less than 10% in principal amount of the Bonds then outstanding and shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. The Trustee may resign at any time by 60 days' notice in writing to the City Clerk and to the registered owners of the Bonds, and the majority in value of the registered owners of the outstanding Bonds or the City, if it is not in default hereunder, at any time, with or without cause, may remove the Trustee. In the event of a vacancy in the office of Trustee, either by resignation or by removal, the City shall appoint a new Trustee, such appointment to be evidenced by a written instrument or instruments filed with the City Clerk. The original Trustee and any successor Trustee shall file a written acceptance and agreement to execute the trust imposed upon it or them by this Ordinance, but

only upon the terms and conditions set forth in this Ordinance and subject to the provisions of this Ordinance, to all of which the respective registered owners of the Bonds agree. Such written acceptance shall be filed with the City Clerk and a copy thereof shall be placed in the Bond transcript. Every successor Trustee shall be a trust company or bank duly authorized to exercise trust powers and subject to examination by federal or state authority, having a reported capital and surplus of not less than \$10,000,000. Any successor Trustee shall have all the powers herein granted to the original Trustee. The Trustee's resignation shall not become effective until the acceptance of the trusts by the successor trustee.

Section 27. In the event the office of Mayor, City Clerk, Commission, Manager, Commission Treasurer or Board of Directors shall be abolished, or any two or more of such offices shall be merged or consolidated, or in the event the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officer succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law.

Section 28. (a) The City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the Series 2010 Bonds to be subject to federal income taxation. Without limiting the generality of the foregoing, the City represents and covenants that the proceeds of the Series 2010 Bonds and Airport Revenues will not be used directly or indirectly in such manner as to cause the Series 2010 Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code.

(b) The City covenants that it will take no action which would cause the Series 2010 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code. Nothing in this Section shall prohibit investments in bonds issued by the United States Treasury.

(c) The City covenants that it will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Series 2010 Bonds are issued, the statement required by Section 149(e) of the Code.

(d) The City covenants that it will, in compliance with the requirements of Section 148(f) of the Code, pay with moneys in the Airport Revenue Fund to the United States Government in accordance with the

requirements of Section 148(f) of the Code, from time to time, an amount equal to the sum of (1) the excess of (A) the amount earned on all Nonpurpose Investments (as therein defined) attributable to the Series 2010 Bonds, other than investments attributable to such excess over (B) the amount which would have been earned if such Nonpurpose Investments attributable to the Series 2010 Bonds were invested at a rate equal to the Yield (as defined in the Code) applicable to the Series 2010 Bonds, plus (2) any income attributable to the excess described in (1), subject to the exceptions set forth in Section 148 of the Code. The City further covenants that in order to assure compliance with its covenants herein, it will employ a qualified consultant to advise the City in making the determination required to comply with this subsection. Anything herein to the contrary notwithstanding, this provision may be modified or rescinded if in the opinion of Bond Counsel such modification or rescission will not affect the tax-exempt status of the Series 2010 Bonds for federal income tax purposes.

(e) Not less than 95% of the net proceeds (within the meaning of Section 144(a) of the Code and regulations thereunder) from the sale of the Refunded Bonds were used to provide an "airport" within the meaning of Section 142(a) of the Code. An "airport" includes storage and training facilities which are directly related and ancillary to an airport (determined without regard to this clause). An "airport" includes office space only if all but a de minimis amount (less than 5%) of the functions to be performed at such office are directly related to the day-to-day operations at such airport and such office space is located on the premises of such airport.

(f) The facilities financed by the Refunded Bonds (the "Improvements") will, so long as the Series 2010 Bonds are outstanding, be owned by the Commission. In this regard, any lease of the Improvements will be within the following terms:

(i) the lessee shall make an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit with respect to such property;

(ii) the lease term (as defined in section 168(i)(3) of the Code) will be not more than 80 percent of the reasonably expected economic life of the Improvements (as determined under section 147(b) of the Code), and

(iii) the lessee shall have no option to purchase the property other than at fair market value (as of the time such option is exercised).

(g) The Improvements have not and will not include any of the following to be used in a private business use (as defined in Section 141(b)(6) of the Code):

(i) any lodging facility;

(ii) any retail facility (including food and beverage facilities) in excess of a size necessary to serve passengers and employees at the Airport;

(iii) any retail facility (other than parking) for passengers or the general public located outside the Airport terminal;

(iv) any office building for individuals who are not employees of the City or the Commission; and

(v) any industrial park or manufacturing facility.

(h) The average maturity of the Series 2010 Bonds (within the meaning of Section 147(b) of the Code) will not exceed 120% of the average reasonably expected remaining economic life of the Improvements (within the meaning of Section 147(b) of the Code), determined with respect to any facility as of the date on which the Series 2010 Bonds are issued.

(i) No more than 25% of the proceeds of the Refunded Bonds have been or will be used to provide (A) land or (B) a facility the primary purpose of which is one of the following: retail, food and beverage services, automobile sales or service, or the provision of recreation or entertainment.

(j) No portion of the proceeds of the Refunded Bonds have been or will be used, to provide or acquire any of the following: (i) any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility, racetrack, airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, store the principal business of which is the sale of alcoholic beverages for consumption off premises; (ii) land to be used for farming purposes; or (iii) residential real property for family units.

(k) No portion of the proceeds of the Refunded Bonds were applied to acquire or install previously used property, the first use of which was not solely with the City within the meaning of Section 147(d) of the Code.

(l) No portion of the Series 2010 Bond proceeds in excess of 2% of the proceeds of the Series 2010 Bonds will be used to finance costs of issuance of the Series 2010 Bonds.

Any provision of this Section may be modified or rescinded in the event that there is delivered to the Trustee an opinion of nationally recognized municipal bond counsel acceptable to the Trustee, to the effect that such modification or rescission (A) is necessary to preserve the exclusion from gross income of interest on the Series 2010 Bonds for federal income tax purposes or (B) will not adversely affect such exclusion from gross income.

The provisions of this Section shall remain in full force and effect notwithstanding the payment or defeasance of the Series 2010 Bonds hereunder.

Section 29. All moneys in the Airport Revenue Bond Fund established by the 1999 Ordinance are hereby appropriated and shall be used for the accomplishment of the Refunding.

Section 30. The provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of this Ordinance.

Section 31. All ordinances and resolutions or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

PASSED: _____, 2010.

APPROVED:

ATTEST:

City Clerk

Mayor

(SEAL)

CERTIFICATE

The undersigned, City Clerk of the City of Fort Smith, Arkansas, hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. _____, adopted at a regular session of the Board of Directors of the City, held at the regular meeting place of the Board of Directors in the City at _____ p.m., on the _____ day of _____, 2010, and that said Ordinance is of record in Ordinance Record Book No. _____, Page _____, now in my possession.

GIVEN under my hand and seal this _____ day of _____, 2010.

City Clerk

(SEAL)



MEMORANDUM

October 28, 2010

TO: Dennis Kelly, City Administrator

FROM: Ray Gosack, Deputy City Administrator

SUBJECT: Airport Bonds

Earlier this year, the airport commission identified the potential to reduce its annual debt service payments by refunding its outstanding bonds. The bonds were issued in 1999 for the terminal project at a time when interest rates were higher than they are now. Today's lower interest rates will save the airport a minimum of \$250,000 over the remaining life of the bonds.

The original plan for the bond refunding was to offer the new bonds to the market on October 28th. Because of an oversupply of Arkansas bonds in the market, the airport and its underwriter have determined to postpone the offering for a few weeks. (This is one of the advantages of the negotiated sale process. The timing of the bond offering can be quickly adjusted to take advantage of more favorable market conditions.) However, the airport would like to proceed with approval of the bond ordinance at this time. Although the airport is solely responsible for the repayment of the bonds, Arkansas law requires that the board of directors approve the issuance of the bonds.

The bond ordinance normally specifies the interest rates of the bonds. Since the final interest rates won't be known until the bonds are marketed, the ordinance has parameters for the interest rates. This assures that the bonds won't be issued unless they achieve the minimum savings of \$250,000 over the remaining life of the bonds. The net present value savings will be at least 7.5%, which is consistent with the bond refunding resolution passed by the airport commission in September (copy attached).

Attached for the board of directors' consideration are the following:

- ▶ **Ordinance authorizing the issuance of \$3,350,000 in**

series 2010 airport refunding revenue bonds. The airport will be solely responsible for the repayment of these bonds.

- ▶ **A preliminary bond offering statement.** This is the document which investors rely upon when making bond purchase decisions.
- ▶ **A bond purchase agreement.** This is the agreement between the issuer and the underwriter for the sale of the bonds.
- ▶ **A continuing disclosure agreement.** This agreement requires that certain financial information be filed regularly with national repositories.

The staff recommends approval of the bond ordinance and the accompanying documents. This will allow the airport to lower its debt service payments.

Attachments

cc: John Parker, Fort Smith Regional Airport
Dennis Hunt, Stephens Inc.
Shep Russell, Friday Eldredge & Clark

RESOLUTION NO. 2010-5

A RESOLUTION APPROVING THE ISSUANCE OF AIRPORT REFUNDING REVENUE BONDS BY THE CITY OF FORT SMITH, ARKANSAS.

BE IT RESOLVED, that the Fort Smith Airport Commission (the "Commission") hereby approves the proposed issuance by the City of Fort Smith, Arkansas (the "City") of its Airport Refunding Revenue Bonds, Series 2010 (the "Bonds") to refund the City's outstanding Airport Refunding and Improvement Revenue Bonds, Series 1999 (the "1999 Bonds"), provided that the net present value debt service savings is at least 7.5% of the principal amount of the 1999 Bonds being refunded.

FURTHER RESOLVED, that the 1999 Bonds shall be called for redemption on the date the Bonds are issued or the first practical date thereafter.

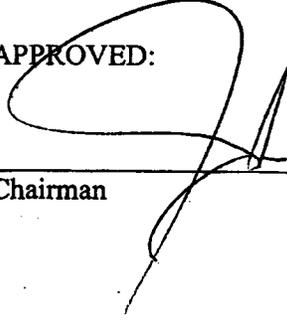
FURTHER RESOLVED, that the Commission approves the pledging and use of a sufficient amount of revenues derived from the operation of the Fort Smith Regional Airport to retire the Bonds.

FURTHER RESOLVED, that the Commission hereby approves the sale of the Bonds to Stephens Inc. at an underwriter's discount not greater than 2% and engaging the firm of Friday, Eldredge & Clark to serve as bond counsel.

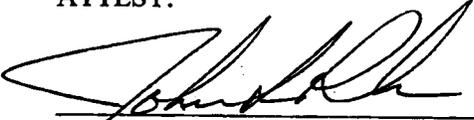
FURTHER RESOLVED, that the Commission and its officials and employees shall perform their obligations under the City's ordinance which will authorize the issuance of the Bonds.

PASSED AND APPROVED by the Fort Smith Airport Commission this 28th day of September, 2010.

APPROVED:


Chairman

ATTEST:


Secretary

To save paper and copying expense, the documents for the bond financing haven't been provided in many board packets. The documents are available with the electronic board packet on the city's website (www.fortsmithar.gov Click on "Government" and then "Board Meetings"). If you would like to receive any or all of these documents, contact Wendy Beshears at 784-2201. The documents not included in your packet are:

Bond Ordinance	25 pages
Preliminary Official Statement	31 pages
Bond Purchase Agreement	10 pages
Continuing Disclosure Agreement	7 pages



MEMORANDUM

October 29, 2010

TO: Mayor, Board of Directors, City Administrator,

FROM : Kara Bushkuhl, Director of Finance *Kara*

SUBJECT: Presentation of Proposed 2011 Budget

The Proposed 2011 Budget and Supplement documents will be distributed to you Tuesday night at the meeting.

#4 (A & B)

Memo

To: Dennis Kelly, City Administrator

From: Wally Bailey, Director of Development Services

Date: 10/29/2010

Re: Middleton Farm Master Land Use Plan and Rezoning Request – 12905 Rye Hill Road

On behalf of the developers of Middleton Farm, please find enclosed a letter from Bobby Aldridge, P.E., with Mickle-Wagner-Coleman requesting that the Board table the items pertaining to the annexation, master land use plan amendment, and rezoning of this property.

Enc.

ba



Patrick J. Mickle, P.E.
Neal B. Wagner, PLS
Randell C. Coleman, P.E.
Andrew J. Dibble, P.E.

October 29, 2010

Ms. Brenda Andrews, Senior Planner
City of Fort Smith Planning Department
P. O. Box 1908
Fort Smith, Arkansas 72902

Re: Middleton Farm's Petition for Annexation, Master Land Use Plan Amendment,
and Rezoning Request

Dear Brenda,

As we have previously discussed, the Middleton Farm developers are in the process of restructuring their individual partnerships into a Limited Liability Corporation (LLC). Due to logistics and unforeseen circumstances, the LLC will not be in place prior to the November 2, 2010 Board meeting. Additionally, there are some issues with the negotiations of the proposed pre-annexation agreement that must be resolved prior to consideration by the Board. Given the short time line involved, we do not believe these concerns can be satisfactorily addressed prior to the Tuesday Board meeting. We, Mickle Wagner Coleman Inc., agent for the developers, respectfully request that the Petition for Annexation, Master Land Use Plan Amendment and Rezoning Request be tabled until the formation of the LLC is completed and the pre-annexation agreement resolved. We will provide the City formal notice upon resolution of these matters so that consideration by the Board can be rescheduled.

We apologize for any inconvenience this may cause. Should you have any questions concerning this matter, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "Bobby Aldridge". The signature is fluid and cursive, written over a white background.

Bobby Aldridge, P.E.

cc: Middleton Farms via Richard Griffin

F:\DOCLetters\Middleton Farms 10-29-10 to CFS.doc

MICKLE WAGNER COLEMAN, INC.

3434 Country Club Avenue 72903 • P O Box 1507 72902 • Fort Smith, Arkansas • (479) 649-8484 • Fax (479) 649-8486
info@mwc-engr.com

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 October 12, 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. 19-10-10 to rezone certain properties hereinafter described, and, having considered said request, recommended on October 12, 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 Extra Territorial Jurisdiction Low Density Residential to Residential Detached, Residential Attached and Commercial Neighborhood and the Master Land Use Plan Map is hereby amended to reflect said amendment to-wit:

From Extra Territorial Jurisdiction Low Density Residential to Residential Detached

Part of Government Lot 1 of the Northwest Quarter, part of the Northwest Quarter of the Northeast Quarter, the Northeast Quarter of the Northeast Quarter, part of the Southeast Quarter of the Northeast Quarter, and part of the Southwest Quarter of the Northeast Quarter, all in Section 30, Township 7 North, Range 31 West, The Northwest Quarter of the Northwest Quarter, and part of the Southwest Quarter of the Northwest

*Approved to form
JSL
Publish 1 time*

Quarter of Section 29, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Beginning at the Northwest Corner of said Northwest Quarter of the Northeast Quarter of Section 30; Thence along the north line of said Northwest Quarter of the Northeast Quarter, S86°08'44"E, 1329.23 feet to the Northeast Corner of said Northwest Quarter of the Northeast Quarter; Thence along the north line of said Northeast Quarter of the Northeast Quarter, S86°41'44"E, 1321.55 feet to the Northeast Corner of said Northeast Quarter of the Northeast Quarter; Thence along the north line of said Northwest Quarter of the Northwest Quarter of Section 29, S86°44'04"E, 1325.07 feet to the Northeast Corner of said Northwest Quarter of the Northwest Quarter; Thence along the east line of said Northwest Quarter of the Northwest Quarter, S03°34'55"W, 1343.45 feet to the Southeast Corner of said Northwest Quarter of the Northwest Quarter; Thence along the east line of said Southwest Quarter of the Northwest Quarter of Section 29, S03°12'38"W, 1044.33 feet; Thence leaving said east line, N86°51'02"W, 600.90 feet; Thence S84°22'24"W, 429.34 feet; Thence N04°41'44"W, 126.82 feet; Thence N89°15'01"W, 809.29 feet; Thence N83°21'46"W, 450.94 feet; Thence N70°19'06"W, 405.83 feet; Thence S87°23'35"W, 271.81 feet; Thence S66°49'17"W, 172.10 feet; Thence S86°49'14"W, 749.68 feet; Thence N86°10'19"W, 189.69 feet; Thence N80°04'49"W, 281.45 feet; Thence N74°54'11"W, 188.49 feet; Thence N64°07'09"W, 177.92 feet; Thence N58°21'53"W, 244.95 feet; Thence N38°16'52"W, 314.77 feet; Thence S87°32'29"W, 203.36 feet to a point on the west line of said Government Lot 1 of the Northwest Quarter of Section 30; Thence along said west line, N03°03'47"E, 554.59 feet; Thence continuing along said west line, N03°47'08"E, 1363.07 feet to the Northwest Corner of said Government Lot 1; Thence along the north line of said Government Lot 1, S88°18'29"E, 1307.32 feet; Thence continuing along said north line, S88°18'09"E, 18.01 feet to the Point of Beginning, containing 282.61 acres, more or less.

LESS AND EXCEPT

Part of Government Lot 1 of the Northwest Quarter, and part of the Northwest Quarter of the Northeast Quarter, all in Section 30, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at the Northwest Corner of said Government Lot 1; Thence along the west line of said Government Lot 1, S03°47'08"W, 707.53 feet to the centerline of Howard Hill Road; Thence along said centerline the following courses: 90.59 feet along the arc of a curve to the right, said curve having a radius of 925.68 feet and being subtended by a chord of

N74°59'53"E, 90.56 feet; N79°10'39"E, 83.08 feet; N81°15'44"E, 87.49 feet; N82°27'45"E, 241.28 feet to the Point of Beginning; Thence continuing along said centerline the following courses: 311.05 feet along the arc of a curve to the left, said curve having a radius of 525.19 feet and being subtended by a chord of N65°40'48"E, 306.53 feet; N48°48'01"E, 192.94 feet; N47°49'44"E, 207.43 feet; 333.81 feet along the arc of a curve to the right, said curve having a radius of 700.00 feet and being subtended by a chord of N61°29'25"E, 330.65 feet to the centerline of Rye Hill Road South; Thence along said centerline of Rye Hill Road South, S20°29'40"E, 304.56 feet; Thence leaving said centerline, S60°44'54"W, 308.17 feet; Thence S59°07'23"W, 435.81 feet; Thence S72°42'46"W, 145.91 feet; Thence S81°43'08"W, 169.21 feet; Thence N08°16'52"W, 178.71 feet to the Point of Beginning, containing 6.22 acres, more or less.

CONTAINING A NET AREA OF 276.39 ACRES, MORE OR LESS.

From Extra Territorial Jurisdiction Low Density Residential to Residential Attached

Part of the Southwest Quarter of the Northwest Quarter of Section 29, Township 7 North, Range 31 West, Part of the Southeast Quarter of the Northeast Quarter, part of the Southwest Quarter of the Northeast Quarter, and part of Government Lot 1 of the Northwest Quarter, all in Section 30, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Beginning at the Southeast Corner of said Southwest Quarter of the Northwest Quarter of Section 29; Thence along the south line of said Southwest Quarter of the Northwest Quarter, N87°13'02"W, 1326.33 feet to the Southwest Corner of said Southwest Quarter of the Northwest Quarter; Thence along the south lines of said Southeast Quarter of the Northeast Quarter of Section 30, said Southwest Quarter of the Northeast Quarter of Section 30, and said Government Lot 1 of the Northwest Quarter of Section 30, N87°07'50"W, 3975.99 feet to the Southwest Corner of said Government Lot 1; Thence along the west line of said Government Lot 1, N03°03'47"E, 765.37 feet; Thence leaving said west line, N87°32'29"E, 203.36 feet; Thence S38°16'52"E, 314.77 feet; Thence S58°21'53"E, 244.95 feet; Thence S64°07'09"E, 177.92 feet; Thence S74°54'11"E, 188.49 feet; Thence S80°04'49"E, 281.45 feet; Thence S86°10'19"E, 189.69 feet; Thence N86°49'14"E, 749.68 feet; Thence N66°49'17"E, 172.10 feet; Thence N87°23'35"E, 271.81 feet; Thence S70°19'06"E, 405.83 feet; Thence S83°21'46"E, 450.94 feet; Thence S89°15'01"E, 809.29 feet; Thence S04°41'44"E, 126.82 feet; Thence N84°22'24"E, 429.34 feet; Thence S86°51'02"E, 600.90 feet to

the east line of said Southwest Quarter of the Northwest Quarter of Section 29; Thence along said east line, S03°12'38"W, 278.37 feet to the Point of Beginning, containing 44.58 acres, more or less.

AND

Part of Government Lot 1 of the Northwest Quarter of Section 30, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at the Northwest Corner of said Government Lot 1; Thence along the west line of said Government Lot 1, S03°47'08"W, 707.53 feet to the centerline of Howard Hill Road; Thence along said centerline the following courses: 90.59 feet along the arc of a curve to the right, said curve having a radius of 925.68 feet and being subtended by a chord of N74°59'53"E, 90.56 feet; N79°10'39"E, 83.08 feet; N81°15'44"E, 87.49 feet; N82°27'45"E, 241.28 feet to the Point of Beginning; Thence continuing along said centerline the following courses: 311.05 feet along the arc of a curve to the left, said curve having a radius of 525.19 feet and being subtended by a chord of N65°40'48"E, 306.53 feet; N48°48'01"E, 192.94 feet; N47°49'44"E, 117.55 feet; Thence leaving said centerline, S41°50'26"E, 292.22 feet; Thence S59°07'23"W, 435.81 feet; Thence S72°42'46"W, 145.91 feet; Thence S81°43'08"W, 169.21 feet; Thence N08°16'52"W, 178.71 feet to the Point of Beginning, containing 3.59 acres, more or less.

CONTAINING IN THE AGGREGATE, 48.17 ACRES, MORE OR LESS.

From Extra Territorial Jurisdiction Low Density Residential to Commercial Neighborhood

Part of Government Lot 1 of the Northwest Quarter, and part of the Northwest Quarter of the Northeast Quarter, all in Section 30, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at the Northwest Corner of said Government Lot 1; Thence along the west line of said Government Lot 1, S03°47'08"W, 707.53 feet to the centerline of Howard Hill Road; Thence along said centerline the following courses: 90.59 feet along the arc of a curve to the right, said curve having a radius of 925.68 feet and being subtended by a chord of N74°59'53"E, 90.56 feet; N79°10'39"E, 83.08 feet; N81°15'44"E, 87.49 feet; N82°27'45"E, 241.28 feet; 311.05 feet along the arc of a curve to the left, said curve having a radius of 525.19 feet and being subtended by a chord of N65°40'48"E, 306.53 feet; N48°48'01"E, 192.94 feet; N47°49'44"E, 117.55 feet to the Point of Beginning; Thence continuing

along said centerline N47°49'44"E, 89.88 feet; Thence continuing along said centerline, 333.81 feet along the arc of a curve to the right, said curve having a radius of 700.00 feet and being subtended by a chord of N61°29'25"E, 330.65 feet to the centerline of Rye Hill Road South; Thence along said centerline of Rye Hill Road South, S20°29'40"E, 304.56 feet; Thence leaving said centerline, S60°44'54"W, 308.17 feet; Thence N41°50'26"W, 292.22 feet to the Point of Beginning, containing 2.63 acres, more or less.

more commonly known as 12905 Rye Hill Road (Middleton Farms).

SECTION 2: The hereinafter described property is hereby rezoned from Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RS-3 by Extension and to RS-4, RS-5, RM-3, RSD-3 and Commercial-2 by Classification, subject to a development plan for the Commercial-2 site being submitted and reviewed by the Planning Commission prior to the issuance of a building permit.

From Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RS-3

Part of Government Lot 1 of the Northwest Quarter, part of the Northwest Quarter of the Northeast Quarter, part of the Northeast Quarter of the Northeast Quarter, part of the Southeast Quarter of the Northeast Quarter, and part of the Southwest Quarter of the Northeast Quarter, all in Section 30, Township 7 North, Range 31 West, and part of the Southwest Quarter of the Northwest Quarter of Section 29, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Beginning at the Northwest Corner of said Northwest Quarter of the Northeast Quarter of Section 30; Thence along the north line of said Northwest Quarter of the Northeast Quarter, S86°08'44"E, 1329.23 feet to the Northeast Corner of said Northwest Quarter of the Northeast Quarter; Thence along the north line of said Northeast Quarter of the Northeast Quarter, S86°41'44"E, 1278.32 feet; Thence leaving said north line, S02°50'40"W, 242.43 feet; Thence S15°45'30"W, 72.53 feet; Thence S36°00'08"W, 287.25 feet; Thence S21°55'32"W, 649.40 feet; Thence 97.17 feet along the arc of a curve to the right, said curve having a radius of 200.00 feet and being subtended by a chord of S54°59'11"E, 96.22 feet; Thence S37°05'56"E, 223.07 feet; Thence 32.36 feet along the arc of a curve to the right, said curve having a radius of 499.95 feet and being subtended by a chord of S35°07'20"E, 32.36 feet; Thence 76.84 feet along the arc of a curve to the right, said curve having a radius of 500.00 feet

and being subtended by a chord of S28°51'54"E, 76.77 feet; Thence S24°27'44"E, 96.17 feet; Thence 283.91 feet along the arc of a curve to the right, said curve having a radius of 1000.00 feet and being subtended by a chord of N73°40'17"E, 282.96 feet; Thence N81°48'17"E, 122.01 feet; Thence S11°04'40"E, 125.15 feet; Thence S76°36'09"E, 226.09 feet; Thence S72°46'06"E, 150.61 feet; Thence S76°27'31"E, 215.60 feet; Thence S84°11'19"E, 156.48 feet; Thence S66°38'11"E, 123.84 feet; Thence S88°32'08"E, 135.73 feet to the east line of said Southwest Quarter of the Northwest Quarter of Section 29; Thence along said east line, S03°12'38"W, 659.65 feet; Thence leaving said east line, N86°51'02"W, 600.90 feet; Thence S84°22'24"W, 429.34 feet; Thence N04°41'44"W, 126.82 feet; Thence N89°15'01"W, 809.29 feet; Thence N83°21'46"W, 450.94 feet; Thence N70°19'06"W, 405.83 feet; Thence S87°23'35"W, 231.63 feet; Thence N27°29'13"W, 487.39 feet; Thence S62°21'57"W, 209.19 feet; Thence S69°57'26"W, 159.64 feet; Thence S76°54'10"W, 139.91 feet; Thence S82°25'32"W, 135.34 feet; Thence S88°31'35"W, 145.62 feet; Thence N85°06'33"W, 147.48 feet; Thence N78°51'01"W, 140.75 feet; Thence N72°48'41"W, 137.38 feet; Thence N66°35'12"W, 149.29 feet; Thence N60°28'01"W, 151.39 feet; Thence N50°14'24"W, 138.64 feet; Thence N38°41'03"W, 322.78 feet; Thence S78°12'13"W, 386.86 feet to the west line of said Government Lot 1 of the Northwest Quarter of Section 30; Thence along said west line, N03°03'47"E, 294.59 feet; Thence continuing along said west line, N03°47'08"E, 1363.07 feet to the Northwest Corner of said Government Lot 1; Thence along the north line of said Government Lot 1, S88°18'29"E, 1307.33 feet; Thence S88°18'29"E, 18.01 feet to the Point of Beginning, containing 206.02 acres, more or less.

LESS AND EXCEPT

Part of the Northwest Quarter of the Northeast Quarter, part of the Southwest Quarter of the Northeast Quarter, and part of Government Lot 1 of the Northwest Quarter, all in Section 30, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at the Northwest Corner of said Northwest Quarter of the Northeast Quarter; Thence along the west line of said Northwest Quarter of the Northeast Quarter, S02°35'45"W, 47.95 feet to the centerline of Rye Hill Road South; Thence along said centerline, S20°29'40"E, 288.19 feet; Thence continuing along said centerline, S19°54'00"E, 258.72 feet to the Point of Beginning; Thence continuing along said centerline, S19°49'55"E, 1163.85 feet; Thence leaving said centerline, S68°22'57"W, 247.05 feet; Thence 270.94 feet along the arc of a curve to the right, said curve having a radius of 500.00 feet and being subtended by a chord of S83°54'22"W, 267.63 feet; Thence N81°04'17"W, 279.42 feet; Thence

115.10 feet along the arc of a curve to the right, said curve having a radius of 300.00 feet and being subtended by a chord of N71°22'46"W, 114.40 feet; Thence N60°23'16"W, 170.71 feet; Thence N29°36'44"E, 52.51 feet; Thence 121.47 feet along the arc of a curve to the left, said curve having a radius of 200.00 feet and being subtended by a chord of N09°20'17"E, 119.61 feet; Thence N08°03'41"W, 232.23 feet; Thence 80.00 feet along the arc of a curve to the left, said curve having a radius of 1000.00 feet and being subtended by a chord of N10°21'12"W, 79.98 feet; Thence N12°38'43"W, 164.82 feet; Thence 300.00 feet along the arc of a curve to the left, said curve having a radius of 600.00 feet and being subtended by a chord of N63°01'50"E, 296.89 feet; Thence N48°42'22"E, 253.67 feet; Thence 185.26 feet along the arc of a curve to the right, said curve having a radius of 500.00 feet and being subtended by a chord of N59°19'14"E, 184.20 feet; Thence N70°10'05"E, 61.51 feet to the Point of Beginning, containing 19.44 acres, more or less.

ALSO LESS AND EXCEPT

Part of Government Lot 1 of the Northwest Quarter, and part of the Northwest Quarter of the Northeast Quarter, all in Section 30, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at the Northwest Corner of said Government Lot 1; Thence along the west line of said Government Lot 1, S03°47'08"W, 707.53 feet to the centerline of Howard Hill Road; Thence along said centerline the following courses: 90.59 feet along the arc of a curve to the right, said curve having a radius of 925.68 feet and being subtended by a chord of N74°59'53"E, 90.56 feet; N79°10'39"E, 83.08 feet; N81°15'44"E, 87.49 feet; N82°27'45"E, 241.28 feet to the Point of Beginning; Thence continuing along said centerline the following courses: 311.05 feet along the arc of a curve to the left, said curve having a radius of 525.19 feet and being subtended by a chord of N65°40'48"E, 306.53 feet; N48°48'01"E, 192.94 feet; N47°49'44"E, 207.43 feet; 333.81 feet along the arc of a curve to the right, said curve having a radius of 700.00 feet and being subtended by a chord of N61°29'25"E, 330.65 feet to the centerline of Rye Hill Road South; Thence along said centerline of Rye Hill Road South, S20°29'40"E, 304.56 feet; Thence leaving said centerline, S60°44'54"W, 308.17 feet; Thence S59°07'23"W, 435.81 feet; Thence S72°42'46"W, 145.91 feet; Thence S81°43'08"W, 169.21 feet; Thence N08°16'52"W, 178.71 feet to the Point of Beginning, containing 6.22 acres, more or less.

CONTAINING A NET AREA OF 180.36 ACRES, MORE OR LESS.

From Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RS-4

Part of Government Lot 1 of the Northwest Quarter, and part of the Southwest Quarter of the Northeast Quarter, all in Section 30, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at the Southwest Corner of said Government Lot 1; Thence along the west line of said Government Lot 1, N03°03'47"E, 765.37 feet to the Point of Beginning; Thence continuing along said west line, N03°03'47"E, 260.00 feet; Thence leaving said west line, N78°12'13"E, 386.86 feet; Thence S38°41'03"E, 322.78 feet; Thence S50°14'24"E, 138.64 feet; Thence S60°28'01"E, 151.39 feet; Thence S66°35'12"E, 149.29 feet; Thence S72°48'41"E, 137.38 feet; Thence S78°51'01"E, 140.75 feet; Thence S85°06'33"E, 147.48 feet; Thence N88°31'35"E, 145.62 feet; Thence N82°25'32"E, 135.34 feet; Thence N76°54'10"E, 139.91 feet; Thence N69°57'26"E, 159.64 feet; Thence N62°21'57"E, 209.19 feet to the centerline of Rye Hill Road South; Thence along said centerline, S27°29'13"E, 487.39 feet; Thence leaving said centerline, S87°23'35"W, 40.18 feet; Thence S66°49'17"W, 172.10 feet; Thence S86°49'14"W, 749.68 feet; Thence N86°10'19"W, 189.69 feet; Thence N80°04'49"W, 281.45 feet; Thence N74°54'11"W, 188.49 feet; Thence N64°07'09"W, 177.92 feet; Thence N58°21'53"W, 244.95 feet; Thence N38°16'52"W, 314.77 feet; Thence S87°32'29"W, 203.36 feet to the Point of Beginning, containing 20.10 acres, more or less.

AND

The Northwest Quarter of the Northwest Quarter, and part of the Southwest Quarter of the Northwest Quarter, all in Section 29, Township 7 North, Range 31 West, Part of the Southeast Quarter of the Northeast Quarter, and part of the Northeast Quarter of the Northeast Quarter all in Section 30, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Beginning at the Northeast Corner of said Northwest Quarter of the Northwest Quarter of Section 29; Thence along the east line of said Northwest Quarter of the Northwest Quarter, S03°34'55"W, 1343.45 feet to the Southeast Corner of said Northwest Quarter of the Northwest Quarter; Thence along the east line of said Southwest Quarter of the Northwest Quarter of Section 29, S03°12'38"W, 384.68 feet; Thence leaving said east line, N88°32'08"W, 135.73 feet; Thence N66°38'11"W, 123.84 feet; Thence N84°11'19"W, 156.48 feet; Thence N76°27'31"W, 215.60 feet; Thence N72°46'06"W, 150.61 feet; Thence N76°36'09"W, 226.09 feet; Thence N11°04'40"W, 125.15 feet; Thence S81°48'17"W, 122.01 feet; Thence 283.91 feet along the arc of a curve to the left, said

curve having a radius of 1000.00 feet and being subtended by a chord of S73°40'17"W, 282.96 feet; Thence N24°27'44"W, 96.17 feet; Thence 76.84 feet along the arc of a curve to the left, said curve having a radius of 500.00 feet and being subtended by a chord of N28°51'54"W, 76.77 feet; Thence 32.36 feet along the arc of a curve to the left, said curve having a radius of 499.95 feet and being subtended by a chord of N35°07'20"W, 32.36 feet; Thence N37°05'56"W, 223.07 feet; Thence 97.17 feet along the arc of a curve to the left, said curve having a radius of 200.00 feet and being subtended by a chord of N54°59'11"W, 96.22 feet; Thence N21°55'32"E, 649.40 feet; Thence N36°00'08"E, 287.25 feet; Thence N15°45'30"E, 72.53 feet; Thence N02°50'40"E, 242.43 feet to the north line of said Northeast Quarter of the Northeast Quarter of Section 30; Thence along said north line of the Northeast Quarter of the Northeast Quarter of Section 30, S86°41'44"E, 43.22 feet to the Northeast Corner of said Northeast Quarter of the Northeast Quarter of Section 30; Thence along the north line of said Northwest Quarter of the Northwest Quarter of Section 29, S86°44'04"E, 1325.07 feet to the Point of Beginning, containing 56.49 acres, more or less.

CONTAINING IN THE AGGREGATE, 76.59 ACRES, MORE OR LESS.

From Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RS-5

Part of the Northwest Quarter of the Northeast Quarter, part of the Southwest Quarter of the Northeast Quarter, and part of Government Lot 1 of the Northwest Quarter, all in Section 30, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at the Northwest Corner of said Northwest Quarter of the Northeast Quarter; Thence along the west line of said Northwest Quarter of the Northeast Quarter, S02°35'45"W, 47.95 feet to the centerline of Rye Hill Road South; Thence along said centerline, S20°29'40"E, 288.19 feet; Thence continuing along said centerline, S19°54'00"E, 258.72 feet to the Point of Beginning; Thence continuing along said centerline, S19°49'55"E, 1163.85 feet; Thence leaving said centerline, S68°22'57"W, 247.05 feet; Thence 270.94 feet along the arc of a curve to the right, said curve having a radius of 500.00 feet and being subtended by a chord of S83°54'22"W, 267.63 feet; Thence N81°04'17"W, 279.42 feet; Thence 115.10 feet along the arc of a curve to the right, said curve having a radius of 300.00 feet and being subtended by a chord of N71°22'46"W, 114.40 feet; Thence N60°23'16"W, 170.71 feet; Thence N29°36'44"E, 52.51 feet; Thence 121.47 feet along the arc of a curve to the left, said curve having a radius of 200.00 feet and being subtended by a chord of N09°20'17"E, 119.61 feet; Thence N08°03'41"W, 232.23 feet; Thence 80.00 feet along the arc of a curve to the left, said curve having a radius of

1000.00 feet and being subtended by a chord of N10°21'12"W, 79.98 feet; Thence N12°38'43"W, 164.82 feet; Thence 300.00 feet along the arc of a curve to the left, said curve having a radius of 600.00 feet and being subtended by a chord of N63°01'50"E, 296.89 feet; Thence N48°42'22"E, 253.67 feet; Thence 185.26 feet along the arc of a curve to the right, said curve having a radius of 500.00 feet and being subtended by a chord of N59°19'14"E, 184.20 feet; Thence N70°10'05"E, 61.51 feet to the Point of Beginning, containing 19.44 acres, more or less.

From Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RM-3

Part of the Southwest Quarter of the Northwest Quarter of Section 29, Township 7 North, Range 31 West, Part of the Southeast Quarter of the Northeast Quarter, part of the Southwest Quarter of the Northeast Quarter, and part of Government Lot 1 of the Northwest Quarter, all in Section 30, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Beginning at the Southeast Corner of said Southwest Quarter of the Northwest Quarter of Section 29; Thence along the south line of said Southwest Quarter of the Northwest Quarter, N87°13'02"W, 1326.33 feet to the Southwest Corner of said Southwest Quarter of the Northwest Quarter; Thence along the south lines of said Southeast Quarter of the Northeast Quarter of Section 30, said Southwest Quarter of the Northeast Quarter of Section 30, and said Government Lot 1 of the Northwest Quarter of Section 30, N87°07'50"W, 3975.99 feet to the Southwest Corner of said Government Lot 1; Thence along the west line of said Government Lot 1, N03°03'47"E, 765.37 feet; Thence leaving said west line, N87°32'29"E, 203.36 feet; Thence S38°16'52"E, 314.77 feet; Thence S58°21'53"E, 244.95 feet; Thence S64°07'09"E, 177.92 feet; Thence S74°54'11"E, 188.49 feet; Thence S80°04'49"E, 281.45 feet; Thence S86°10'19"E, 189.69 feet; Thence N86°49'14"E, 749.68 feet; Thence N66°49'17"E, 172.10 feet; Thence N87°23'35"E, 271.81 feet; Thence S70°19'06"E, 405.83 feet; Thence S83°21'46"E, 450.94 feet; Thence S89°15'01"E, 809.29 feet; Thence S04°41'44"E, 126.82 feet; Thence N84°22'24"E, 429.34 feet; Thence S86°51'02"E, 600.90 feet to the east line of said Southwest Quarter of the Northwest Quarter of Section 29; Thence along said east line, S03°12'38"W, 278.37 feet to the Point of Beginning, containing 44.58 acres, more or less.

From Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RSD-3

Part of Government Lot 1 of the Northwest Quarter of Section 30, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at the Northwest Corner of said Government Lot 1; Thence along the west line of said Government Lot 1, S03°47'08"W, 707.53 feet to the centerline of Howard Hill Road; Thence along said centerline the following courses: 90.59 feet along the arc of a curve to the right, said curve having a radius of 925.68 feet and being subtended by a chord of N74°59'53"E, 90.56 feet; N79°10'39"E, 83.08 feet; N81°15'44"E, 87.49 feet; N82°27'45"E, 241.28 feet to the Point of Beginning; Thence continuing along said centerline the following courses: 311.05 feet along the arc of a curve to the left, said curve having a radius of 525.19 feet and being subtended by a chord of N65°40'48"E, 306.53 feet; N48°48'01"E, 192.94 feet; N47°49'44"E, 117.55 feet; Thence leaving said centerline, S41°50'26"E, 292.22 feet; Thence S59°07'23"W, 435.81 feet; Thence S72°42'46"W, 145.91 feet; Thence S81°43'08"W, 169.21 feet; Thence N08°16'52"W, 178.71 feet to the Point of Beginning, containing 3.59 acres, more or less.

From Extra Territorial Jurisdiction Open-1 (ETJ O-1) to Commercial-2

Part of Government Lot 1 of the Northwest Quarter, and part of the Northwest Quarter of the Northeast Quarter, all in Section 30, Township 7 North, Range 31 West, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at the Northwest Corner of said Government Lot 1; Thence along the west line of said Government Lot 1, S03°47'08"W, 707.53 feet to the centerline of Howard Hill Road; Thence along said centerline the following courses: 90.59 feet along the arc of a curve to the right, said curve having a radius of 925.68 feet and being subtended by a chord of N74°59'53"E, 90.56 feet; N79°10'39"E, 83.08 feet; N81°15'44"E, 87.49 feet; N82°27'45"E, 241.28 feet; 311.05 feet along the arc of a curve to the left, said curve having a radius of 525.19 feet and being subtended by a chord of N65°40'48"E, 306.53 feet; N48°48'01"E, 192.94 feet; N47°49'44"E, 117.55 feet to the Point of Beginning; Thence continuing along said centerline N47°49'44"E, 89.88 feet; Thence continuing along said centerline, 333.81 feet along the arc of a curve to the right, said curve having a radius of 700.00 feet and being subtended by a chord of N61°29'25"E, 330.65 feet to the centerline of Rye Hill Road South; Thence along said centerline of Rye Hill Road South, S20°29'40"E, 304.56 feet; Thence leaving said centerline, S60°44'54"W, 308.17 feet; Thence N41°50'26"W, 292.22 feet to the Point of Beginning, containing 2.63 acres, more or less.

more commonly known as 12905 Rye Hill Road (Middleton Farms).

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

PASSED AND APPROVED THIS ____ DAY OF NOVEMBER 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

Memo

To: Dennis Kelly, City Administrator

From: Wally Bailey, Director of Development Services

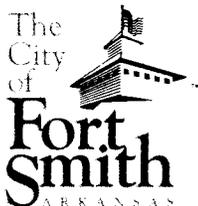
Date: 10/29/2010

Re: Middleton Farm Master Land Use Plan and Rezoning Request – 12905 Rye Hill Road

As the result of the request by Bobby Aldridge with Mickle-Wagner-Coleman to table the Middleton Farm Annexation, we request that the Master Land Use Plan and rezoning requests be tabled.

Enc.

ba



October 25, 2010

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

RE: Master Land Use Plan Amendment from Extra Territorial Jurisdiction Low Density Residential to Residential Detached, Residential Attached and Commercial Neighborhood and Rezoning #19-10-10; A request by Bobby Aldridge, agent, for a zone change from Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RS-3 by Extension; RS-4, RS-5, RM-3, RSD-3 & Commercial-2 by Classification located at 12905 Rye Hill Road (Middleton Farms)

On October 12, 2010, the City Planning Commission held a public hearing to consider the above master land use plan amendment and rezoning request.

Mr. Bailey stated that the purpose of these requests is to facilitate the annexation and development of a proposed residential subdivision known as Middleton Farms. Mr. Bailey noted that the subject property is located approximately 1.5 miles east of U. S. Highway 71 and is situated generally south of the intersection of Howard Hill Road and Rye Hill Road. He noted that the proposed subdivision has four phases with approximately 820 lots and the developer anticipates that the development will be a long-term development that will be constructed over a period of 10-20 years.

Mr. Bailey stated that a neighborhood meeting was held on July 22nd at the Rye Hill Baptist Church and was attended by eight property owners. Mr. Aldridge and Mr. Pat Mickle with Mickle-Wagner-Coleman presented maps showing the proposed location of the subdivision as well as the proposed master land use classifications, zoning and development. The developer's intent to annex the subdivision into Fort Smith was also discussed at this meeting.

Mr. Bobby Aldridge and Mr. Pat Mickle of Mickle-Wagner-Coleman were present to speak on behalf of these requests.

Commissioners Maurras and Weber expressed concerns that the Commercial-2 zone permitted multi-family. Commissioner Weber stated that she liked the idea of a neighborhood store on the property located at the Howard Hill Road and Rye Hill Road intersection proposed for C-2 zoning but was opposed to any multi-family development at that site. In response to Commissioner Maurras, Mr. Aldridge stated that he would commit to placing a restrictive covenant prohibiting any multi-family development on the site proposed for C-2 zoning. Mr.

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

Aldridge also agreed that the restriction would be in place prior to submitting a development plan to the planning commission for review.

The following persons spoke in opposition to these requests:

Mr. Bill Ginger, 6313 Howard Hill Road; Ms. Barbara Gunton, 11820 Donahoe Bend; Mr. Paul Post, 9115 Howard Hill Road, Mr. David Harris, 2025 South "V" Street and Mr. James Wright, 8331 Howard Hill Road.

A summary of their concerns regarding the proposed development are as follows:

- Increased litter and traffic on Howard Hill Road
- Had contact been made with AHTD regarding the need for a stop light at U.S. Highway 71 and Howard Hill Road intersection
- Safety and sight distance concerns at intersection at Howard Hill Road and Rye Hill Road
- Need for a stop light at Howard Hill Road and Rye Hill Road intersection
- Concern that proposed amenities, such as a park, will not be developed
- Convenience store with gasoline sales in the C-2 zone will create traffic problems
- Concerns that widening the eastern portion of Howard Hill will take in property owners yards
- Possible future industrial uses south of the proposed development will create traffic problems for the area
- Some property owners within 300 feet of the development did not receive notice of the requests
- Owners further than 300 feet from the development should have been notified of the requests

Mr. Aldridge stated that to address the concerns about a dangerous curve near the intersection of Howard Hill and Rye Hill Roads, the developers intend to shift Howard Hill Road slightly to the south and lower the grade by 2.5 feet to 3 feet, which would improve the safety and sight distance of the intersection. He noted that work on the curve would likely be triggered by traffic volumes there and the number of developed lots in the subdivision.

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

Chairman Griffin called for the vote on the master land use plan amendment request. The vote was 7 in favor and 0 opposed. The request was approved subject to the annexation of the property by the City Board of Directors.

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

- Future annexation of the property by the City Board of Directors.
- The Commercial-2 zone request approval is conditioned on a development plan for this site being submitted and reviewed by the Planning Commission prior to the issuance of a building permit.

Chairman Griffin then called for the vote on the rezoning request as amended. The vote was 7 in favor and 0 opposed.

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

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

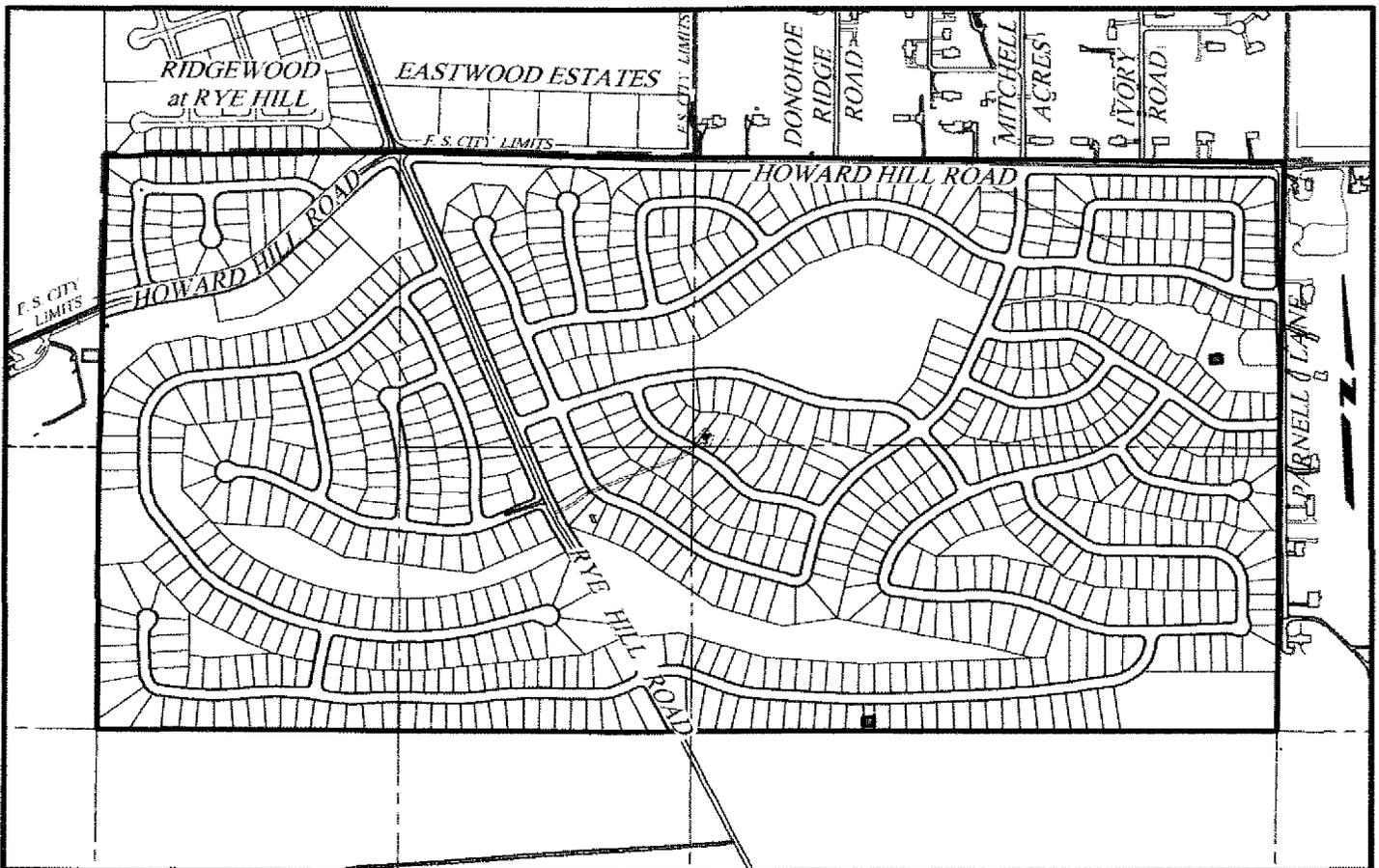
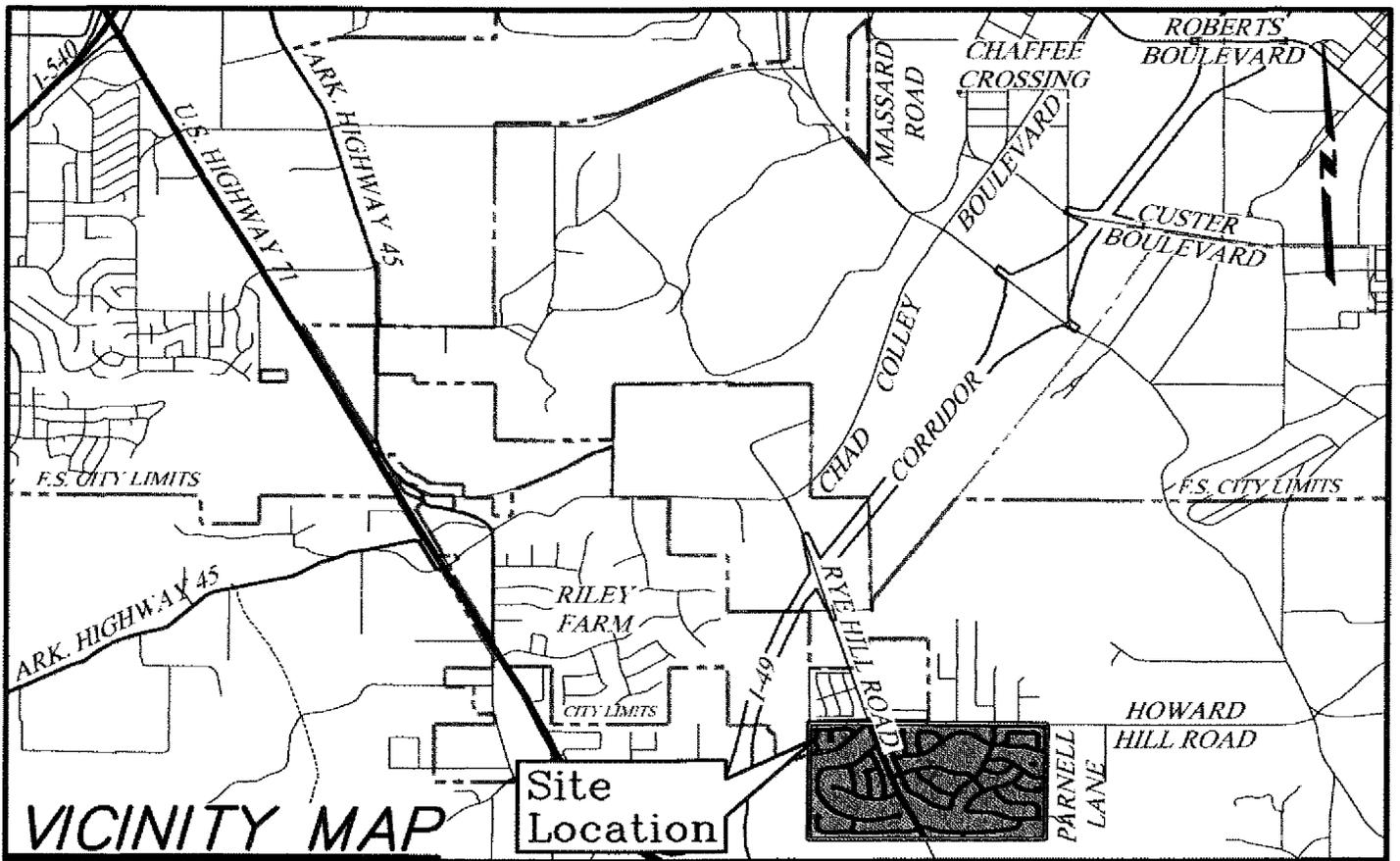
Respectfully Submitted,

CITY PLANNING COMMISSION

Steve Griffin, Chairman

ba

pc: File
City Administrator



MEMO

To: City Planning Commission

From: Planning Staff

Date: October 6, 2010

Subject: Proposed Master Land Use Plan Amendment from ETJ Low Density Residential to Residential Detached, Residential Attached, and Commercial Neighborhood at 12905 Rye Hill Road (companion item to items #5 and #6)

The Planning Department is in receipt of an application from Bobby Aldridge, P.E., with Mickle-Wagner-Coleman, agent, to amend the *Master Land Use Plan* to facilitate the annexation and development of a proposed residential subdivision known as Middleton Farms.

The subject property is located approximately 1.5 miles east of U.S. Highway 71 and is situated generally south of the intersection of Howard Hill Road and Rye Hill Road. The tract contains 327 acres with 5,302 feet of frontage on Howard Hill Road, approximately 2,560 feet of frontage on Rye Hill Road, and 2,666 of frontage on Parnell Lane.

The proposed subdivision has four phases with approximately 820 lots. The developer anticipates that the development will be a long-term development that will be constructed over a period of 10-20 years.

The existing Master Land Use classification for the property is ETJ Low Density Residential. The applicant has proposed a change to the following classifications: 1) Residential Detached; 2) Residential Attached; and 3) Neighborhood Commercial.

The existing zoning of the site is ETJ-Open 1. A companion application (#19-10-10) proposes a change in the existing zoning to the following five zoning districts: 1) Commercial Light (C-2) by classification; 2) Residential Single Family- Duplex Medium/High Density (RSD-3) by classification; 3) Residential Single Family Medium/High Density by extension; 4) Residential Single Family High Density (RS-4) by classification; 5) Residential single Family Rowhouse and Zero Lot Line District (RS-5) by classification; and Residential Multi Family Medium Density (RM-3) by classification.

The *Master Land Use Plan* is a guide to zoning and development and must be considered with the other zoning application.

ADJACENT LAND USE CLASSIFICATIONS AND USES

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

The areas to the north across Howard Hill Road are classified as Residential Detached and Low Density Residential and are developed as single family residential.

The area to the south is classified as Low Density Residential and is utilized as pasture.

The area to the east is classified as Low Density Residential and is developed with single-family residential and pasture.

The area to the west is classified as Low Density Residential and is developed with single-family residential and pasture.

Following is a description of each of the proposed land use classifications:

Neighborhood Commercial:

Purpose: To provide convenience goods and services in a residentially compatible design, for surrounding neighborhoods, and to provide appropriate uses for sites on arterials and collectors unsuitable for residential development due to lot configuration safety and noise.

Characteristics and Use: These areas are small in scale and designed to meet the immediate needs of people living or working within a half-mile radius. Ice cream, coffee shops, movie rentals, specialty retail, small grocery, drug, and personal and professional services are appropriate. Parking in these locations are limited and drive-thru uses are prohibited.

Criteria for Designation:

Compliance Noted

- | | |
|---|-----|
| • Located on a collector or arterial street | YES |
| • Land generally surrounded by residential types, but may occur within areas of large employers, or students | YES |
| • Parcels of less than an acre would not be classified as NC unless designed as a complex of compatible goods and services for a pedestrian environment | YES |

Residential Detached:

Purpose: To create and maintain stable neighborhoods, provide safe, attractive family environments, and protect property values.

Characteristics and Use: Single family residential development from zero lot line developments up to one unit per acre developments.

Criteria for Designation:

Compliance Noted

- Located within stable, predominantly single-family YES
- Adjacent to low-impact industry and commercial developments YES *

**U.S. Highway 71 is approximately 1.5 miles west of the proposed development*

Residential Attached:

Purpose: To provide for diverse populations and households, by supporting variety and options in living environments, and housing, while protecting and improving property values.

Characteristics and Use: Duplex, triplex, fourplex, townhouse, single and multiple story apartments and condominiums.

Criteria for Designation:

Compliance Noted

- Land adjacent to/or within regional centers YES*
- Land within walking distance to commercial, office, low impact industry, regional institutions or parks NO
- Located on high-volume roadway YES
- Planned as part of a mixed-use development YES**

** U.S. Highway 71 is approximately 1.5 miles west of the proposed development*

*** The proposed development is predominantly single-family residential, but does include neighborhood commercial and multi-family areas.*

MASTER STREET PLAN CLASSIFICATIONS

The Fort Smith Master Street Plan classifies Howard Hill Road as a minor arterial and Rye Hill Road as a major collector.

STAFF COMMENTS

The applicant held a neighborhood meeting on July 22, at the Rye Hill Baptist Church. The meeting was attended by eight property owners. Bobby Aldridge and Pat Mickle with Mickle-Wagner-Coleman presented maps showing the proposed location of the subdivision as well as the proposed master land use classifications, zoning, and

AC

development plan. The developer's intent to annex the subdivision into the Fort Smith city limits was also discussed. The attendance records and a summary of all questions, concerns, and comments addressed at the meeting are attached.

Proposed Land Use Classifications – Based on proposed uses, location, existing roadways, and topography, the proposed land use classifications are appropriate.

Traffic Impact Statement – A Traffic Impact Statement was submitted by the developer and has been reviewed by the city engineering department. Discussions for a pre-annexation agreement pertaining to street improvements to accommodate the anticipated vehicle and pedestrian traffic on Howard Hill Road and Rye Hill Road are on-going.

Utilities – Detailed comments relating to water and sewer extensions within and to the proposed subdivision, along with future impact fees, will be developed when construction plans for each phase are submitted.

Police – The Police Department anticipates that response times for emergency services would be similar to response times to the Riley Farm area.

Fire Protection – The proposed subdivision would be served by Fire Station #10 on Burrough Road.

Parks – A proposal has been made for the city to accept an existing pond and land around the pond as a city park. The Parks Department will continue to analyze the proposal and its impact.

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).

See Attached.

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

See Attached Exhibit.

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

327 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.

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.

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.

7. Identify any known or anticipated environmental concerns:

See Attached.

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.

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

See Attached.

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

See Attached.

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.

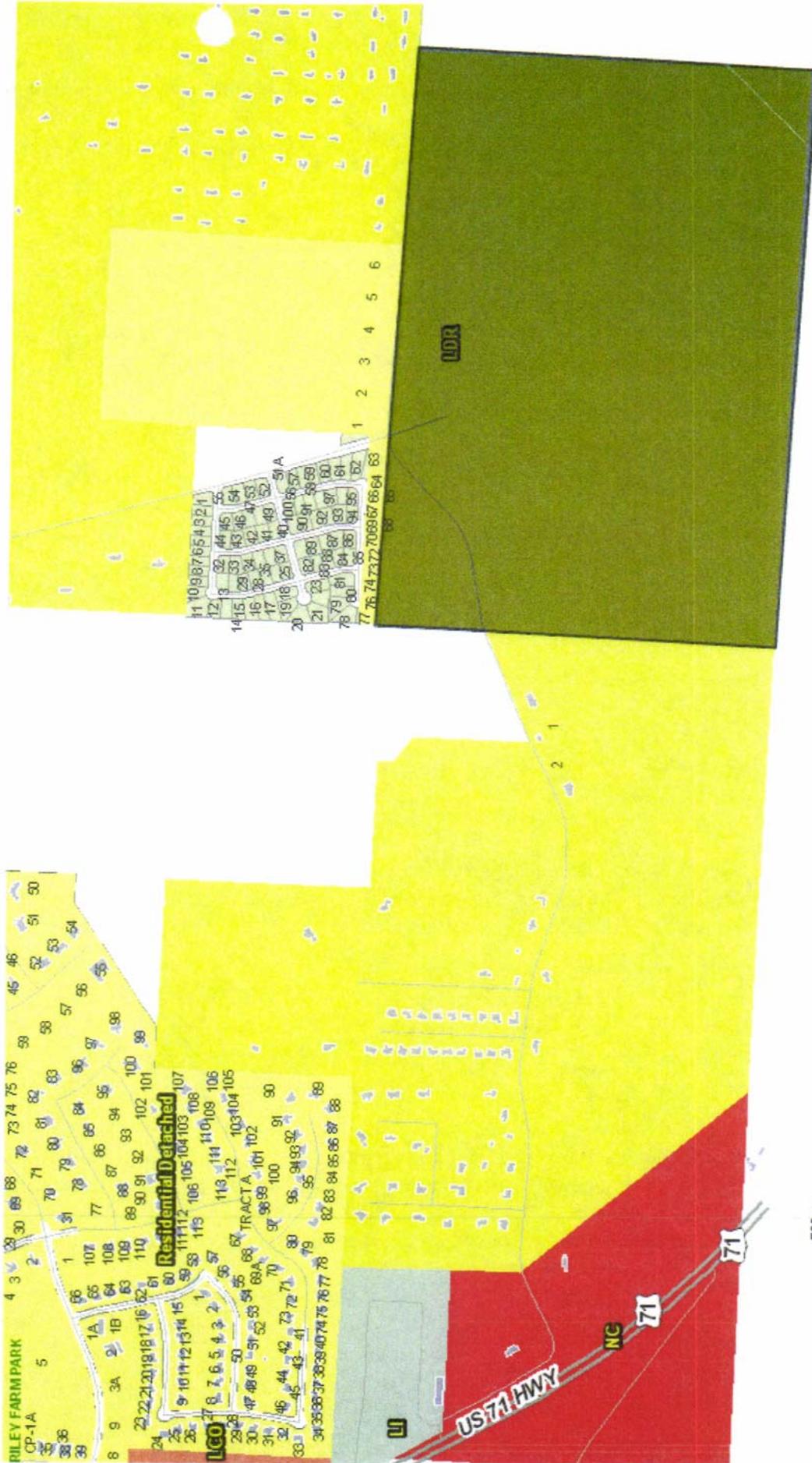
For a Comprehensive Plan-Text Amendment only, please attach the following information. Provide answers on a separate sheet and attach it to this application:

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:

Master Land Use Map

12905 Rye Hill Road



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ATTENDANCE LIST FOR NEIGHBORHOOD MEETING

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

Meeting Location Rye Hill Baptist Church

Meeting Time & Date Thursday, July 22, 2010, 5:30 p.m.

Meeting Purpose Middleton Farms Annexation, Master Land Use Amendment, and Rezoning

NAME	ADDRESS	PHONE #
1. <u>Les Barker</u>	<u>8813 Howard Hill Road</u>	<u>646-6311</u>
2. <u>Jan Barker</u>	<u>8813 Howard Hill Road</u>	<u>646-6311</u>
3. <u>Connie Post</u>	<u>9115 Howard Hill Road</u>	<u>996-7897</u>
4. <u>James Roller</u>	<u>623 Garrison Avenue</u>	<u>783-4191</u>
5. <u>Stephen C. Smith</u>	<u>P. O. Box 10205, Ft. Smith, AR 72917</u>	<u>782-1001</u>
6. <u>Lisa Mundai</u>	<u>9407 Howard Hill Road</u>	<u>629-0550</u>
7. <u>Richard Griffin</u>	<u>3008 Dallas Drive</u>	<u>783-5191</u>
8. <u>Brenda Andrews</u>	<u>Fort Smith Planning Dept.</u>	<u>784-2216</u>
9. <u>Wally Bailey</u>	<u>CFS</u>	<u>784-2216</u>
10. <u>Paul Post</u>	<u>9115 Howard Hill Road</u>	<u>452-5693</u>
11. <u>Denise Bailey</u>	<u>Mitchell Bend</u>	<u>646-4122</u>
12. <u>Pat Mickle</u>	<u>3434 Country Club Avenue</u>	<u>649-8484</u>
13. <u>Bobby Aldridge</u>	<u>3434 Country Club Avenue</u>	<u>649-8484</u>



Patrick J. Mickle, P.E.
Neal B. Wagner, PLS
Randell C. Coleman
Andrew J. Dibble,

Summary of Middleton Farms Neighborhood Meeting

Meeting Time and Date: Thursday, July 22, 2010, 5:30 p.m.
Meeting Location: Rye Hill Baptist Church
Meeting Purpose: Middleton Farms Annexation, Master Land Use Plan Amendment, Zoning, and Preliminary Development Plan

See attached attendance list.

Meeting began at approximately 5:35 p.m. Bobby Aldridge of Mickle Wagner Coleman, Inc., agent for Middleton Farms, began the meeting with a presentation of the proposed development. Mr. Aldridge then discussed the owners desire to annex the property into the City of Fort Smith along with a description of the annexation process. The existing Land Use and Zoning of the subject properties and surrounding properties along with the proposed changes of the Land Use and Zoning designations were also discussed. Exhibit maps were utilized that showed the existing and proposed Land Use as well as the existing and planned Zoning Classifications. Each proposed Land Use and Zoning Classification was discussed. The proposed land uses for the property are Residential Detached, Residential Attached, and Commercial Neighborhood. The accompanying proposed zoning classifications include Residential Single Family (RS-3, 4, and 5); Residential Single Family Duplex (RSD-3); Residential Multi-family (RM-3); and light commercial (C-2). The proposed development would consist of approximately 825 residential lots and one neighborhood commercial lot.

Pat Mickle discussed the Development Plan. He indicated landscaping would be installed along the perimeter streets of the proposed subdivision as a result of the City's new Development Ordinance. Mr. Mickle further explained some of the other features of the proposed development such as internal sidewalks on each street, street layout and connectivity, and proposed designated green space corridors/buffer areas.

After the presentation of the proposed development, Mr. Aldridge asked if anyone had any questions or comments. Before, during and after the presentation several questions and/or comments were asked and/or discussed.

1. Prior to the meeting, Mr. Les Barker was concerned that his property was going to be annexed with this proposal action. Mr. Aldridge discussed this with him and explained that the Middleton Farm property was the only property being annexed with this action.

MICKLE WAGNER COLEMAN, INC.

AL

2. In response to questions asked both before and during the meeting by Mr. Paul Post and Mr. Barker, Pat Mickle discussed the phasing of the subdivision, utilities serving the subdivision and those that would be constructed within the subdivision. Mr. Mickle explained that the development would be a long term 10 to 15 year development, the length of time being a function of the housing market, and discussed the existing utilities and corresponding phasing of the utilities during the development construction. The twelve acres in the northwest corner of the Howard Hill Road and Rye Hill Road intersection would likely be the first phase developed (38 lots).
3. Mr. Barker asked about access to and driveways along Howard Hill Road. Mr. Mickle explained that east of Rye Hill Road there would be no driveway access from the individual lots to Howard Hill Road and that the development plan only has one street access, opposite Mitchell Acres. The other internal streets would utilize two access points on Parnell Lane and two points on the eastside of Rye Hill Road with three streets proposed to Rye Hill Road from the western side of the development. During this discussion, the Master Street Plan classifications of Rye Hill Road and Howard Hill Road was discussed along with their current conditions and their future classified widths per the Master Street Plan.
4. Mr. Barker asked what the widening plan was for Howard Hill Road. Mr. Mickle again explained the Master Street Plan classification of Howard Hill Road being a Minor Arterial and requiring 100' of right-of-way. According to the traffic analysis performed, widening of Howard Hill Road was not required as the result of the proposed development. Mr. Mickle discussed his understanding of the City's ultimate desire to add a center turn lanes on both Howard Hill Road and Rye Hill Road, at their intersection.
5. Ms. Lisa Mundai commented that the traffic along Howard Hill Road is bad and seems to have progressively gotten worse.
6. Ms. Mundai was concerned that if the widening of Howard Hill Road was to occur, would the City acquire the additional right-of way. Mr. Mickle explained that Middleton Farms would dedicate 50' right-of-way from the existing centerline of Howard Hill Road to the south. If the City chose to widen the road that additional right-of-way to the north would be acquired by the City. Mr. Mickle explained that this may or may not happen and if so it would probably be some time before it would.

7. Ms. Jan Barker asked what the procedures of the annexation were and if they would be notified of future meetings. Mr. Mickle explained that it is anticipated that the annexation request be presented to the Board of Directors as an informational item at the August 10th study session, presented to the Planning Commission in a public hearing in September, and finally presented to the Board of Directors for consideration in October. Mr. Aldridge advised that all property owners within 300' of the development would again be notified, advertisements in the paper would be placed, and signs on the property would be placed notifying that a public hearing is to be held.
8. Mr. Paul Post inquired as to the timing of the project and housing prices for the RS-3 and RS-4 zoning areas. Mr. Mickle indicated that the first phase (38 lots) would likely begin construction in the spring of 2011 with the start of the subsequent phases being dependent upon the success of phase 1. The RS-3 areas would be similar in size and type to that of Ridgewood at Rye Hill and being \$175,000 to \$250,000. The RS-4 area would be of like construction to the RS-3 but would be smaller and estimated to be in the \$125,000 to \$225,000 range. All this, however, would be dependent upon market conditions, timing, and success of phase 1.
9. Mr. Post also asked about the type of structures anticipated for the Residential Single Family Duplex (RSD-3) zoning classification along Howard Hill Road. Mr. Mickle explained that the property sloped sharply away from the street and that the street classification of Howard Hill Road is minor arterial. This street classification limits the number of direct driveway access to the street and thus a common or shared driveway would be necessary. Shared driveway use is typically undesirable for single family detached residences as is fronting a house on a major street. In order to best utilize the limited building sites, duplexes are anticipated. These duplexes would be architecturally compatible with the single family residence in the neighborhood.
10. An inquiry was also made as to what type of development might occur on the commercial zone classification in the southwest quadrant of the Rye Hill Road and Howard Hill Road intersection. First, it was pointed out that because of the anticipated traffic at the intersection of a major collector and a minor arterial street this lot would not be conducive to single family residences. While the ultimate use of this site is uncertain it is anticipated that the lot may be utilized for a neighborhood convenience store. The property slopes sharply to the rear and any type use would be limited. The light commercial zoning of this lot would allow for a neighborhood store, a business office, or insurance office.

Mr. Aldridge then asked if there were any further comments or questions and offered his contact information to anyone if they had additional questions or comments at a later date. The meeting was then concluded at 6:20 p.m.


Bobby Aldridge, P.E.
Mickle Wagner Coleman, Inc.

F:\DOC\MISC\Summary of Middleton Farms Neighborhood Meeting.doc

MEMO

To: City Planning Commission

From: Planning Staff

Date: October 6, 2010

Subject: Rezoning #19-10-10; a request for Bobby Aldridge, P.E., with Mickle-Wagner-Coleman, agent, for consideration of a zoning change from ETJ-Open-1 to the following five zoning districts: 1) Commercial Light (C-2) by classification; 2) Residential Single Family- Duplex Medium/High Density (RSD-3) by classification; 3) Residential Single Family Medium/High Density by extension (RS-3) ;4) Residential Single Family High Density (RS-4) by classification; 5) Residential Single Family Rowhouse and Zero Lot Line District (RS-5) by classification; and Residential Multi Family Medium Density (RM-3) by classification at 12905 Rye Hill Road (companion item to items #4 and #6)

TRACT LOCATION AND SIZE

The subject property is located approximately 1.5 miles east of U.S. Highway 71 and is situated generally south of the intersection of Howard Hill Road and Rye Hill Road. The tract contains 327 acres with 5,302 feet of frontage on Howard Hill Road, approximately 2,560 feet of frontage on Rye Hill Road, and 2,666 of frontage on Parnell Lane.

EXISTING ZONING

The existing zoning of the site is ETJ-Open 1. Characteristics of this zone are as follows:

Characteristics: A zone to protect the undeveloped areas within the city's extraterritorial zoning jurisdiction from incompatible land uses or other specific uses that may constitute a nuisance to the residents therein or uses that may create an endangerment to health, safety, or general welfare of the jurisdiction's population. The ETJ Open-1 zone designation may be utilized as a zoning classification for properties until a distinct land utilization pattern is developed in keeping with the city's comprehensive plan and other land use policies.

Permitted Uses: Single-Family homes, duplexes, fire and police stations, parks, playgrounds, and other open spaces.

Conditional Uses: Accessory farm buildings and guest houses.

REQUESTED ZONING DISTRICTS:

COMMERCIAL LIGHT (C-2)

Characteristics of the Commercial Light (C-2) zone are as follows:

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

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

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

Area Regulations:

Minimum Lot Size - 7,000 square feet	Maximum Lot Coverage - 60%
Minimum Lot Width - 50 feet	
Minimum Street Frontage - 20 feet	
Maximum Building size - 30,000 square feet	
Front Setback - 25 feet	
Interior Side Yard Setback - 10 feet	
Street Side Setback - 10 feet	
Rear Yard Setback - 10 feet	
Separation of Buildings - Determined by current city building and fire code.	
Maximum Height - 35 feet (1+1)	

RESIDENTIAL SINGLE-FAMILY DUPLEX MEDIUM/HIGH DENSITY (RSD-3)

Purpose: To provide for medium-to-high density, compact single family detached and duplex development on new sites or as infill construction. Adequate public services and facilities shall be available with sufficient capacity to serve the proposed development. This zoning district is intended to serve as a transition between the lower density single family-duplex districts and the multi-family or commercial districts. The RSD-3 zoning district is appropriate in the Residential Detached and Residential Attached classifications of the Master Land Use Plan.

Permitted Uses: single family and duplex dwellings, and family group home.

Conditional Uses: commercial communication towers, amateur radio transmitting towers, utility substations, and country clubs.

Bulk & Area Regulations:

Minimum Lot Size – 6,500 s.f.
Maximum Density – 6.7 Dwelling Units/Acre
Front Yard Setback - 25 feet
Side Yard on Street Side of Corner Lot - 25 feet
Side Yard Setback – 7.5 feet
Rear Yard Setback - 10 feet
Minimum Lot Width at Building Line – 60 feet
Minimum Street Frontage – 20 feet
Distance between Buildings - 10 feet
Maximum Height - 35 feet (1+1)
Maximum Lot Coverage - 60%

RESIDENTIAL SINGLE FAMILY MEDIUM/HIGH DENSITY (RS-3)

Purpose: To provide for medium-to-high density, compact single family detached development on new sites or as infill construction. Adequate public services and facilities shall be available with sufficient capacity to serve the proposed development. This zoning district is intended to serve as a transition between the lower density single family-duplex districts and the multi-family or commercial districts. The RS-3 zoning district is appropriate in the Residential Detached classification of the Master Land Use Plan.

Permitted Uses: single family and family group-home.

Conditional Uses: commercial communication towers, amateur radio transmitting towers, utility substations, and country clubs.

Bulk & Area Regulations:

Minimum Lot Size – 6,500 s.f.
Maximum Density – 6.7 Dwelling Units/Acre
Front Yard Setback - 25 feet
Side Yard on Street Side of Corner Lot - 25 feet
Side Yard Setback – 7.5 feet
Rear Yard Setback - 10 feet
Minimum Lot Width at Building Line – 60 feet
Minimum Street Frontage – 20 feet
Distance between Buildings - 10 feet
Maximum Height - 35 feet (1+1)
Maximum Lot Coverage - 60%

RESIDENTIAL SINGLE FAMILY HIGH DENSITY (RS-4) BY CLASSIFICATION;

Purpose: To provide for very dense single family detached housing as either new or infill development. The RS-4 zoning district is appropriate in higher density residential areas near the downtown, in mixed use/density areas, and as a transitional buffer zone between lower density residential development and multi-family or commercial uses. The RS-4 zoning district is appropriate in the Residential Detached classification of the Master Land Use Plan.

Permitted Uses: single family and family group-home.

Conditional Uses: commercial communication towers, amateur radio transmitting towers, utility substations, and country clubs.

Bulk & Area Regulations:

Minimum Lot Size – 5,000 s.f.
Maximum Density – 8.7 Dwelling Units/Acre
Front Yard Setback - 20 feet
Side Yard on Street Side of Corner Lot - 20 feet
Side Yard Setback - 5 feet
Rear Yard Setback - 10 feet
Minimum Lot Width at Building Line – 50 feet
Minimum Street Frontage – 20 feet
Distance between Buildings - 10 feet
Maximum Height - 35 feet (1+1)
Maximum Lot Coverage - 65%

RESIDENTIAL SINGLE FAMILY ROWHOUSE AND ZERO LOT LINE DISTRICT (RS-5)

Purpose: To achieve a more efficient use of land as compared with the typical single-family development, making available needed housing at a more affordable cost. By placing the dwelling against one (1) or more property lines, the outdoor space is essentially grouped and utilized to its maximum benefit to provide high density attached homes, including multi-story residential building in those areas where such building types already exist or where such buildings would be consistent with an area's established development pattern and character. The RS-5 zoning district is appropriate in the Residential Attached, Residential Detached, Mixed Use Employment, or Mixed Use Residential classifications of the Master Land Use Plan.

Permitted Uses: Detached, row house, and zero lot line dwelling units.

Conditional Uses: commercial communication towers, amateur radio transmitting towers, utility substations, and country clubs.

Bulk & Area Regulations:

Minimum Lot Size – Row House - 2,200 s.f. /Zero Lot Line dwellings - 5,000 s.f.
Maximum Density – Row House – maximum of 8 dwelling units in each row
Front Yard Setback – 20 feet
Side Yard on Street Side of Corner Lot Row house - 20 feet;
Zero Lot Line dwellings - 15 feet
Side Yard Setback – Row House – n/a; Zero Lot Line - no minimum setback on one side of the lot and ten (10) feet on the opposite side of the lot
Rear Yard Setback - 10 feet (20 feet if adjacent to single-family zoning district or developed as single family)
Minimum Lot Width at Building Line – Row House – 22 feet;
Zero Lot Line – 50 feet
Minimum Street Frontage – 20 feet
Maximum Height - 35 feet (1+1)
Maximum Lot Coverage - 60%

RESIDENTIAL MULTI FAMILY MEDIUM DENSITY (RM-3)

Purpose: To provide for medium density attached homes, including multi-unit residential buildings in areas where such development already exists or is planned for the future. The RM-3 zoning district is appropriate in the Residential Attached, Mixed Use Employment, or Mixed-Use Residential classifications of the Master Land Use Plan.

Permitted Uses: single family, duplex, multi-unit buildings, family group-home, and neighborhood group home.

Conditional Uses: commercial communication towers, amateur radio transmitting towers, utility substations, and country clubs.

Bulk & Area Regulations:

Minimum Lot Size – 6,500 s.f.
Maximum Density – 20 Dwelling Units/Acre
Front Yard Setback - 25 feet
Side Yard on Street Side of Corner Lot - 15 feet
Side Yard Setback – 7.5 feet (30 feet if adjacent to single-family zoning district or developed as single family)
Rear Yard Setback - 10 feet (30 feet if adjacent to single-family zoning district or developed as single family)
Minimum Lot Width at Building Line – 60 feet
Minimum Street Frontage – 20 feet
Distance between Buildings - 10 feet
Maximum Height - 40 feet (1+1)
Maximum Lot Coverage - 65%

SURROUNDING ZONING AND LAND USES

The areas to the north across Howard Hill Road are zoned Residential Single Family Medium/High Density (RS-3) and ETJ Open-1 and are developed as single family residential.

The area to the south is classified is zoned ETJ Open-1 and is utilized as pasture.

The area to the east is zoned ETJ Open-1 and is developed with single-family residential and pasture.

The area to the west is zoned ETJ Open-1 and is developed with single-family residential and pasture.

PROPOSED ZONE CHANGE

The proposed zoning request and companion applications will facilitate the annexation and development of a proposed 327 acre residential subdivision known as Middleton Farms. The subdivision has four phases with approximately 820 lots. The developer anticipates that the development will be a long-term development that will be constructed over a period of 10-20 years.

LAND USE COMPLIANCE

The Master Land Use Plan classifies this property as Low Density Residential. The applicant has submitted a companion application requesting an amendment to the Master Land Use Plan that changes the existing classification to Residential Detached, Residential Attached, and Commercial Neighborhood land use classifications.

MASTER STREET PLAN CLASSIFICATIONS

The Fort Smith Master Street Plan classifies Howard Hill Road as a minor arterial and Rye Hill Road as a major collector.

STAFF COMMENTS

The applicant held a neighborhood meeting on July 22, at the Rye Hill Baptist Church. The meeting was attended by eight property owners. Bobby Aldridge and Pat Mickle with Mickle-Wagner-Coleman presented maps showing the proposed location of the subdivision as well as the proposed master land use classifications, zoning, and development plan. The developer's intent to annex the subdivision into the Fort Smith city limits was also discussed. The attendance records and a summary of all questions, concerns, and comments addressed at the meeting are attached.

Proposed Residential Zoning Districts - Based on proposed uses, location, existing roadways, and topography, the proposed zoning districts are appropriate.

Commercial Zoning District – An approximate 1.67 acres located southwest of the intersection of Howard Hill Road and Rye Hill Road is proposed as a Commercial Light (C-2) zone. Because of it is surrounded by residential and its topography, staff recommends that the C-2 zone request be approved on the condition that a development plan for this site be submitted to and reviewed by the Planning Commission prior to issuance of a building permit.

Traffic Impact Statement – A Traffic Impact Statement was submitted by the developer and has been reviewed by the city engineering department. Discussions for a pre-annexation agreement pertaining to street improvements to accommodate the anticipated vehicle and pedestrian traffic on Howard Hill Road and Rye Hill Road are on-going.

Utilities – Detailed comments relating to water and sewer extensions within and to the proposed subdivision, along with future impact fees, will be developed when construction plans for each phase are submitted.

Police – The Police Department anticipates that response times for emergency services would be similar to response times to the Riley Farm area.

Fire Protection – The proposed subdivision would be served by Fire Station #10 on Burrough Road.

Parks – A proposal has been made for the city to accept an existing lake and land around the lake as a city park. The Parks Department will continue to analyze the proposal and its impact.

Staff recommends approval of the proposed zoning request on the condition that a development plan for the proposed C-2 zoning district is submitted to the planning commission for review and approval prior to issuance of a building permit.

PETITION FOR CHANGE IN ZONING MAP

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

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

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

The West Half (W 1/2) of the Northwest Quarter (NW 1/4) of Section 29, Township 7 North, Range 31 West, and the Northeast Quarter (NE 1/4) and the East Half (E 1/2) of the Northwest Quarter of Section 30, T-7-N, R-31-W, all in Sebastian County, Arkansas. Containing 327 acres more or less.

2. Address of property: 12905 Rye Hill Road

3. The above described property is now zoned: ETJ O-1

4. Application is hereby made to change the zoning classification of the above described property to RS-3, RS-4, RS-5; RM-3, RSD-3, & C-2 by Extension & Classification.
(Extension or classification)

5. Why is the zoning change requested?

To facilitate the development of a mixed use residential development

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

Signed:

Bobby Aldridge, P.E.
Mickle Wagner Coleman, Inc.

Owner or Agent Name
(please print)

Owner .

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

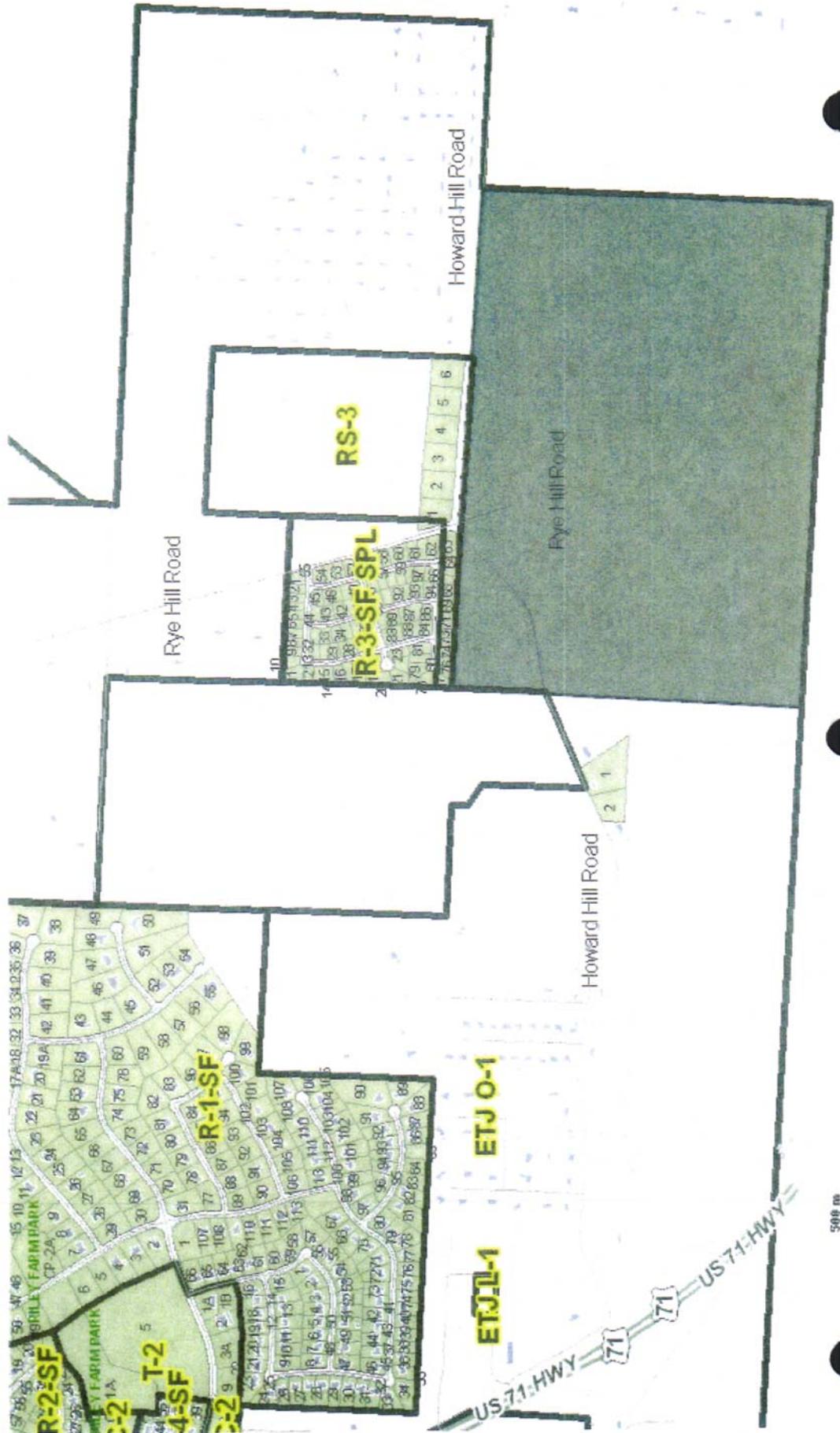
or

Bobby Aldridge P.E.
Agent

(479) 649-8484
Owner or Agent Phone Number

Rezoning #19-10-10: From ETJ Open-1 to Residential Single Family Medium/High Density (RS-3), Residential Single Family High Density (RS-4), Residential Single Family Rowhouse and Zero Lot Line District (RS-5), Residential Multifamily Medium Density (RM-3), Residential Single Family Duplex Medium/High Density (RSD-3), Commercial Light (C-2)

12905 Rye Hill Road



OK Farms, Inc.
2720 Hemlock Court-Suite B
Broken Arrow, OK 74011

Junior & Betty Layne
8723 Howard Hill Road
Fort Smith, AR 72916

Wally & Denise Bailey
12218 Mitchell Bend
Fort Smith, AR 72916

Benjamin D. Hewes
9101 Howard Hill Road
Fort Smith, AR 72916

Loren Schmidt
P. O. Box 180115
Fort Smith, AR 72908

Josh Sullivan
12303 Ivory Place
Fort Smith, AR 72916

Melissa Mundai Sartin
9407 Howard Hill Road
Fort Smith, AR 72916

Randy & Mary Corbell
12725 Parnell Lane
Fort Smith, AR 72916

Jerry & Carolyn Parnell
13020 Parnell Lane
Fort Smith, AR 72916

Wat Arkansas Buddhavanaram
20890 Blythe Road
Mansfield, AR 72944

Bransen Harris Properties, LLC
P. O. Box 113
Alma, AR 72921

Leslie & Janet Barker
8813 Howard Hill Road
Fort Smith, AR 72916

Don Dodson & Emma Lavon Family
9009 Howard Hill Road
Fort Smith, AR 72916

Paul & Connie Post
9115 Howard Hill Road
Fort Smith, AR 72916

Virgil & Christopher Wald
12306 Ivory Place
Fort Smith, AR 72916

Rose & Kerhikar Vodisek
9305 Howard Hill Road
Fort Smith, AR 72916

Paul Cotta & Rosemary Haag
3523 Tree Line Drive
Alma, AR 72921

Boby Yeakley
12811 Parnell Lane
Fort Smith, AR 72916

Billy & Nancy Vaughn
12919 Parnell Lane
Fort Smith, AR 72916

AW & Jackie Mitchael
8719 Howard Hill Road
Fort Smith, AR 72916

Grady White, Jr.
8919 Howard Hill Road
Fort Smith, AR 72916

Charles Mitchael
12504 White Bluff Road
Fort Smith, AR 72916

Greenwood School Board
Attn: Dr. Kay Johnson
420 North Main
Greenwood, AR 72936

Lonnie & Tammy Gobin
12308 Mitchell Bend
Fort Smith, AR 72916

Richard Borengasser
12219 Mitchell Bend
Fort Smith, AR 72916

William David Hudgins
9211 Howard Hill Road
Fort Smith, AR 72916

William Clark
9319 Howard Hill Road
Fort Smith, AR 72916

Haag Family Trust
Regions Morgan Keegan Trust
723 Garrison Avenue
Fort Smith, AR 72901

Charles & Melissa Yeakley
12901 Parnell Lane
Fort Smith, AR 72916

Stephens Production
P. O. Box 2407
Fort Smith, AR 72902

James Wright
8331 Howard Hill Road
Fort Smith, AR 72916

Chuck Cramer
11814 Rye Hill Road South
Fort Smith, AR 72916

Carolyn Plank
1014 North 12th Street
Fort Smith, AR 72901

Ricardo Velez
10613 Steep Hill Cutoff
Fort Smith, AR 72916

Bill & Sharon Ginger
6313 Howard Hill Road
Fort Smith, AR 72916

Gary Winesburg
12009 Donahoe Ridge Road
Fort Smith, AR 72916

Ronald & Barbara Gunton
11820 Donahoe Bend
Fort Smith, AR 72916

**Planning Commission Meeting Minutes
October 12, 2010
Draft**

- 4. Master Land Use Plan Amendment from Extra Territorial Jurisdiction Low Density Residential to Residential Detached, Residential Attached and Commercial Neighborhood located at 12905 Rye Hill Road (Middleton Farms). (companion item to items #5 & #6).**
- 5. Rezoning #19-10-10; A request by Bobby Aldridge, agent, for a zone change from Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RS-3 by Extension; RS-4, RS-5, RM-3, RSD-3 & Commercial-2 by Classification located at 12905 Rye Hill Road (Middleton Farms). (companion item to items #4 & #6)**
- 6. Development Plan – Mixed Use Residential Development – 12905 Rye Hill Road (Middleton Farms). (companion item to items #4 & #5)**

Mr. Wally Bailey read the staff reports. Mr. Bailey stated that the purpose of these requests is to facilitate the annexation and development of a proposed residential subdivision known as Middleton Farms. Mr. Bailey noted that the subject property is located approximately 1.5 miles east of U. S. Highway 71 and is situated generally south of the intersection of Howard Hill Road and Rye Hill Road. He noted that the proposed subdivision has four phases with approximately 820 lots and the developer anticipates that the development will be a long-term development that will be constructed over a period of 10-20 years.

Mr. Bailey stated that a neighborhood meeting was held on July 22nd at the Rye Hill Baptist Church and was attended by eight property owners. Mr. Aldridge and Mr. Pat Mickle with Mickle-Wagner-Coleman presented maps showing the proposed location of the subdivision as well as the proposed master land use classifications, zoning and development. The developer's intent to annex the subdivision into Fort Smith was also discussed at this meeting.

Mr. Bobby Aldridge and Mr. Pat Mickle of Mickle-Wagner-Coleman were present to speak on behalf of these requests.

Commissioners Maurras and Weber expressed concerns that the Commercial-2 zone permitted multi-family. Commissioner Weber stated that she liked the idea of a neighborhood store on the property located at the Howard Hill Road and Rye Hill Road intersection proposed for C-2 zoning but was opposed to any multi-family development at that site. In response to Commissioner Maurras, Mr. Aldridge stated that he would commit to placing a restrictive covenant prohibiting any multi-family development on the site proposed for C-2 zoning. Mr. Aldridge also agreed that the restriction would be in place prior to submitting a development plan to the planning commission for review.

Mr. Bill Ginger, 6313 Howard Hill Road; Ms. Barbara Gunton, 11820 Donahoe Bend; Mr. Paul Post, 9115 Howard Hill Road, Mr. David Harris, 2025 South "V" Street and Mr. James Wright, 8331 Howard Hill Road.

A summary of their concerns regarding the proposed development are as follows:

- Increased litter and traffic on Howard Hill Road
- Had contact been made with AHTD regarding the need for a stop light at U.S. Highway 71 and Howard Hill Road intersection
- Safety and sight distance concerns at intersection at Howard Hill Road and Rye Hill Road
- Need for a stop light at Howard Hill Road and Rye Hill Road intersection
- Concern that proposed amenities, such as a park, will not be developed
- Convenience store with gasoline sales in the C-2 zone will create traffic problems
- Concerns that widening the eastern portion of Howard Hill will take in property owners yards
- Possible future industrial uses south of the proposed development will create traffic problems for the area
- Some property owners within 300 feet of the development did not receive notice of the requests
- Owners further than 300 feet from the development should have been notified of the requests

Mr. Aldridge stated that to address the concerns about a dangerous curve near the intersection of Howard Hill and Rye Hill Roads, the developers intend to shift Howard Hill Road slightly to the south and lower the grade by 2.5 feet to 3 feet, which would improve the safety and sight distance of the intersection. He noted that work on the curve would likely be triggered by traffic volumes there and the number of developed lots in the subdivision.

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

4. Master Land Use Plan Amendment from Extra Territorial Jurisdiction Low Density Residential to Residential Detached, Residential Attached and Commercial Neighborhood located at 12905 Rye Hill Road (Middleton Farms). (companion item to items #5 & #6)

Chairman Griffin called for the vote on the master land use plan amendment request. The vote was 7 in favor and 0 opposed. The request was approved subject to the annexation of the property by the City Board of Directors.

5. Rezoning #19-10-10; A request by Bobby Aldridge, agent, for a zone change from Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RS-3 by Extension; RS-4, RS-5, RM-3, RSD-3 & Commercial-2 by Classification located at 12905 Rye Hill Road (Middleton Farms). (companion item to items #4 & #6)

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

- Future annexation of the property by the City Board of Directors.
- The Commercial-2 zone request approval is conditioned on a development plan for this site being submitted and reviewed by the Planning Commission prior to the issuance of a building permit.

Chairman Griffin then called for the vote on the rezoning request as amended. The vote was 7 in favor and 0 opposed.

6. Development Plan – Mixed Use Residential Development – 12905 Rye Hill Road (Middleton Farms). (companion item to items #4 & #5)

Chairman Griffin called for the vote on the development plan. The vote was 7 in favor and 0 opposed. The development plan was approved subject to the annexation of the property by the City Board of Directors.

7. Conditional Use #19-10-10; A request by Aaron Beasley for a conditional use for a cremation and embalming service located at 805 South 10th Street.

Ms. Brenda Andrews read the staff report indicating that the purpose of the conditional use request is to allow the existing building to be used as a human cremation and embalming facility. Ms. Andrews noted that the landscaping, screening and parking were all addressed previously when application was made for a pet crematory in June of 2007. Ms. Andrews stated that a neighborhood meeting was held on October 5th and no neighboring property owners were in attendance.

Mr. Aaron Beasley, 13820 Heritage Place, was present to speak on behalf of this request.

Following a discussion by the Commission, 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 amend this request to make approval subject to the following:

- All visitors to the facility must park in the parking lot or any future approved parking lot.
- Parking in the street for any patrons, visitors or employees is not permitted.

Chairman Griffin then called for the vote on the conditional use request as amended. The vote was 7 in favor and 0 opposed.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE MASTER STREET PLAN OF
THE CITY OF FORT SMITH, ARKANSAS**

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

SECTION 1: Ordinance 18-05 of the City of Fort Smith, adopting the Master Street Plan (2005), is hereby amended to reduce the street classification from Minor Arterial to Major Collector for the section of Howard Hill Road east of Highway 71.

SECTION 2: EMERGENCY CLAUSE: It is hereby found and determined that an emergency exists with reference to the City's regulation of the Master Street Plan, relative to the reclassification of a certain street. An emergency is therefore declared to exist and this Ordinance, being necessary for the preservation of health, safety and welfare of the inhabitants of the City, shall be effective from and after the date of its passage.

PASSED AND APPROVED THIS _____ DAY OF NOVEMBER, 2010.

APPROVED:

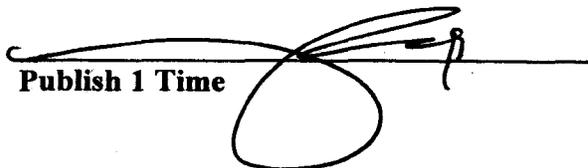
Mayor

ATTEST:

City Clerk

Approved as to Form

Publish 1 Time



INTEROFFICE MEMORANDUM

To: Dennis Kelly, City Administrator
From: Stan Snodgrass, P.E., Director of Engineering 
Subject: Amendment to the Master Street Plan(2005)
Date: October 29, 2010

As the result of the request by Bobby Aldridge with Mickle Wagner Coleman Engineers to table the Middleton Farm items, we request that the ordinance amending the Master Street Plan be tabled.

G:\SSnodgrass\My Documents\Board Resolution and Items\Table Memo for Master Street Plan ammendment 110210.wpd

The City of Fort Smith Arkansas
Engineering Department
623 Garrison Avenue • P.O. Box 1908
Fort Smith, Arkansas 72902
Phone: 479-784-2225 • Fax: 479-784-2245

INTEROFFICE MEMORANDUM

To: Dennis Kelly, City Administrator
From: Stan Snodgrass, P.E., Director of Engineering 
Subject: Amendment to the Master Street Plan(2005)
Date: October 28, 2010

The Master Street Plan is primarily a planning tool to reserve corridors for potential future roadways as the need develops. The Master Street Plan does not identify specific projects for construction. Specific projects are determined as the need arises and would be part of the five year work plan developed annually and approved by the Board of Directors.

During the review of the proposed Middleton Farm subdivision, we revisited the classification of Howard Hill Road east of Highway 71 as shown on the attached exhibit. This street section is currently classified as a Minor Arterial which is a four lane street section with 100 feet of right of way. This section of Howard Hill Road is anticipated to primarily serve residential developments. There is also no proposed interchange of Howard Hill Road with I-49. As such we recommend reclassifying the section of Howard Hill Road east of Hwy 71 to a Major Collector which is a three lane street section with 70 feet of right of way. We also checked with Steve Hofener of Traffic Engineering Consultants who was instrumental in the development of the Master Street Plan (2005) about the street reclassification recommendation. Mr. Hofener agrees with the proposed reclassification as noted on the attached letter from him.

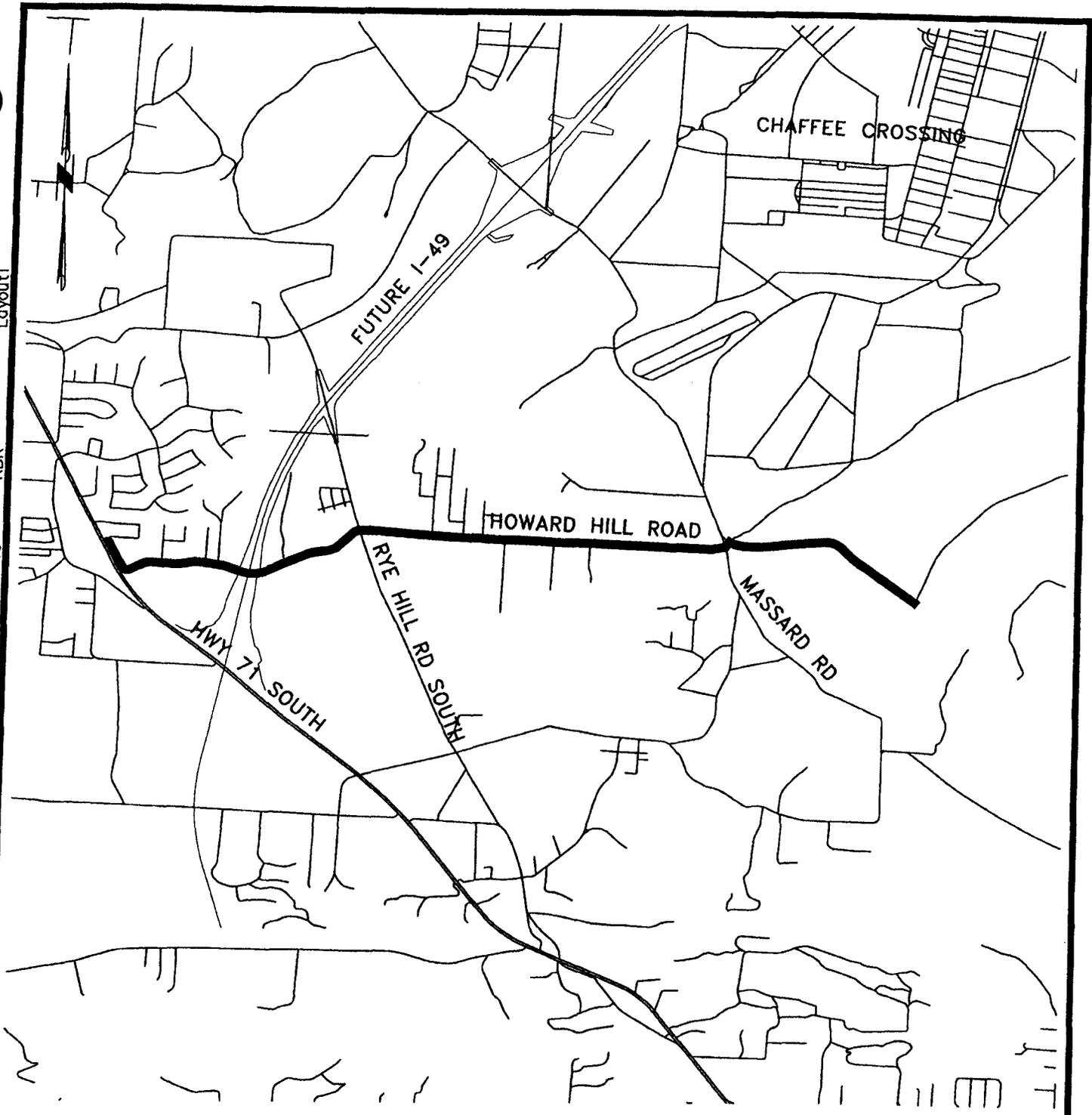
Attached is an Ordinance to amend the Master Street Plan (2005) for the above noted street reclassification. I recommend the Ordinance be adopted by the Board at the next regular meeting. Should you or any members of the Board need any additional information please contact me.

Enclosures

G:\SSnodgrass\My Documents\Board Resolution and Items\ORDINANCE for Master Street Plan ammendment 110210.wpd

The City of Fort Smith Arkansas
Engineering Department
623 Garrison Avenue • P.O. Box 1908
Fort Smith, Arkansas 72902
Phone: 479-784-2225 • Fax: 479-784-2245

C:\City of Fort Smith\Engineering\Snodgrass\Howard Hill Rd.dwg
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RBR
Layout1



REDUCE STREET CLASSIFICATION FROM MINOR ARTERIAL TO MAJOR COLLECTOR

MASTER STREET PLAN AMENDMENT
HOWARD HILL ROAD
FORT SMITH, ARKANSAS

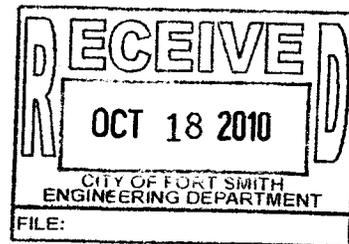


Project:	
Date:	NOV. 2, 2010
Scale:	NONE
Drawn By:	RBR

TRAFFIC
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October 13, 2010



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

RE: Master Street Plan Classification for Howard Hill Road

Dear Stan:

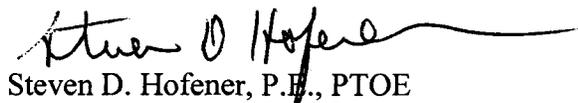
I have reviewed the street classification in the Master Street Plan for Howard Hill Road. Howard Hill Road is currently classified as a Minor Arterial. The portion of Howard Hill Road east of Hwy 71 is a short segment serving primarily residential development. It has no major freeway interchanges now or planned.

This section of Howard Hill Road can be reclassified as a Major Collector street. The reclassification should only be for the section east of Hwy 71.

The section west of Hwy 71 joins two highways and is a much longer segment of roadway. It should remain classified as a Major Arterial.

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

Sincerely,


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

SDH/tm

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

ORDINANCE NO. _____

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

WHEREAS, the City Planning Commission has heretofore held a public hearing upon request No. 16-10-10 to rezone certain properties hereinafter described, and, having considered said request, recommended on October 12, 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: That the following property to-wit:

Part of the Southwest Quarter of the Southeast Quarter of Section 32, Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas, being more particularly described as follows: Commencing at the Northeast Corner of said Southwest Quarter of the Southeast Quarter, thence North 87 degrees 48 minutes 18 seconds West, 32.23 feet to a set iron pin on the Westerly right-of-way of Wheeler Avenue and the Point of Beginning, thence South 02 degrees 38 minutes 30 seconds West along said Westerly right-of-way, 150.00 feet to an existing iron pin, thence North 87 degrees 48 minutes 21 seconds West, 564.79 feet to an existing iron pin, thence North 02 degrees 13 minutes 04 seconds East, 150.00 feet to a set iron pin, thence South 87 degrees 48 minutes 18 seconds East, 565.90 feet to the Point of Beginning, except public roads and rights-of-way. Less and except minerals and mineral rights.

More commonly known as 5504 Wheeler Avenue, should be, and is hereby rezoned from Industrial Light (I-1) to Commercial Heavy (C-5) by Extension.

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

PASSED AND APPROVED THIS _____ DAY OF NOVEMBER, 2010.

ATTEST:

APPROVED:

City Clerk

Mayor

Approved as to Form:

JSL

City Attorney
Publsh Time



October 25, 2010

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

Re: Rezoning #16-10-10; A request by Steve Delassus, agent, for a zone change from Industrial Light (I-1) to Commercial Heavy (C-5) by Extension located at 5504 Wheeler Avenue.

On October 12, 2010, the City Planning Commission held a public hearing to consider the above rezoning request.

Ms. Brenda Andrews read the staff report indicating that the purpose of this rezoning request is to permit an indoor amusement center to occupy the structure. Ms. Andrews stated that this building previously had been occupied by uses that are allowed in the Commercial Heavy zoning classification which included Cheer Xtreme and an auto dealer. Ms. Andrews noted that a neighborhood meeting was held on September 23rd and no neighboring property owners were in attendance.

Mr. Steve DeLassus, 5504 Wheeler Avenue, was present to speak on behalf of this request. Mr. DeLassus stated that this facility would provide multi party rooms with bouncearounds.

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

Following a discussion by the Commission, Chairman Griffin called for the vote on this rezoning request.. The vote was 7 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

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

Memo

To: City Planning Commission
From: Planning Staff
Date: October 6, 2010
Re: Rezoning # 16-10-10; a request by Steve DeLassus, agent, for consideration of a zoning change from Industrial Light (I-1) to Commercial Heavy (C-5) by extension at 5504 Wheeler Avenue.

LOT LOCATION AND SIZE

The proposed rezoning request site is located on the west side of Wheeler Avenue between Vicksburg Street and Xavier Street. The subject property is approximately 2 acres in size and has approximately 150 feet of street frontage on Wheeler Avenue.

EXISTING ZONING

The existing zoning on this tract is Industrial-1 (Industrial Light). Characteristics of this zone are as follows:

Characteristics of the I-1 zone are as follows:

Purpose: The I-1 zone provides for a mixture of light manufacturing, office park, research and development, and limited retail/service retail land uses in an attractive, business park setting. The Industrial Light District may be used as a zoning buffer between mixed uses, commercial uses and heavier industrial uses. The I-1 Zoning District is appropriate with the Office, Research, and Light Industrial (ORLI) classification of the Master Land Use Plan.

Uses: Light fabrication and assembly, warehousing and mini-storage, machine and welding shops, contractors shops and yards, boat sales and service, auto repair, convenience stores, restaurants, mini storage warehouses, sports complex

Area Regulations:

Minimum Lot Size - 20,000 square feet
Front Setback - 25 feet
Side Yard Setback - 10 feet
Street Side Setback-15 feet
Rear Yard Setback -10 feet
Separation of Buildings – current building/fire code
Maximum Height -45 feet
Minimum Street Frontage-n/a

Density Regulations:

Maximum Lot Coverage - 75%

REQUESTED ZONING

The requested zoning is Commercial Heavy (C-5).

Characteristics of the C-5 zone are as follows:

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

Land uses allowed in this zone include a variety of retail establishments, professional offices, and medical facilities.

Examples of Conditional Uses in the C-5 zone include schools and religious institutions, homeless shelters, and restaurants with beer gardens.

Bulk & Area Regulations:

Minimum Lot Size - 14,000 s.f.

Front Yard Setback – 25 feet

Side Yard Setback – 20 feet

Side Yard on Street Side of Corner Lot - 15 feet

Rear/Side Yard Adjoining Single-Family Residential District/Zoning – 30 feet

Minimum Lot Width - 100 feet

Maximum Height - 45 feet (1+1)

Maximum Lot Coverage - 75%

SURROUNDING ZONING AND LAND USE

The property to the north, south, and west is zoned Industrial Light and is developed as body shops, warehouses, machine shops, and a mini-storage facility.

The property to the east is zoned Commercial Heavy (C-5) and Residential Multifamily Medium Density (RM-3) and is developed as single family residences.

PROPOSED ZONING CHANGE

The applicant has requested rezoning the property to Commercial Heavy (C-5) to permit an indoor amusement center to occupy the structure.

LAND USE COMPLIANCE

The Master Land Use Plan classifies this development as Office Research and Light Industrial. This classification provides opportunities for clean, indoor, minimum impact, research, development, assembly, manufacturing etc.

STREET CLASSIFICATION

The Master Street Plan classifies Wheeler Avenue as a Major Arterial street.

STAFF COMMENTS AND RECOMMENDATIONS

A neighborhood meeting was held on September 23rd and no neighboring property owners were in attendance.

This rezoning would permit an amusement center indoor to operate on the property. Previously, this building has been occupied by uses that are allowed in the Commercial Heavy zoning classification. An example of these uses includes Cheer Xtreme and an auto dealer.

Staff recommends approval of the requested zone change.

PETITION FOR CHANGE IN ZONING MAP

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

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

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

See attached.

- 2. Address of property: 5504 Wheeler Avenue

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

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

- 5. Why is the zoning change requested?

To allow for an "indoor amusement park" type of business to obtain a business license for operation in Fort Smith, AR.

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

Signed:

Steve Delassus

Owner or Agent Name
(please print)

4315 Webb Way

Fort Smith, AR 72916
Owner or Agent Mailing Address

479-459-2596

Owner or Agent Phone Number

Tim Brown

Owner

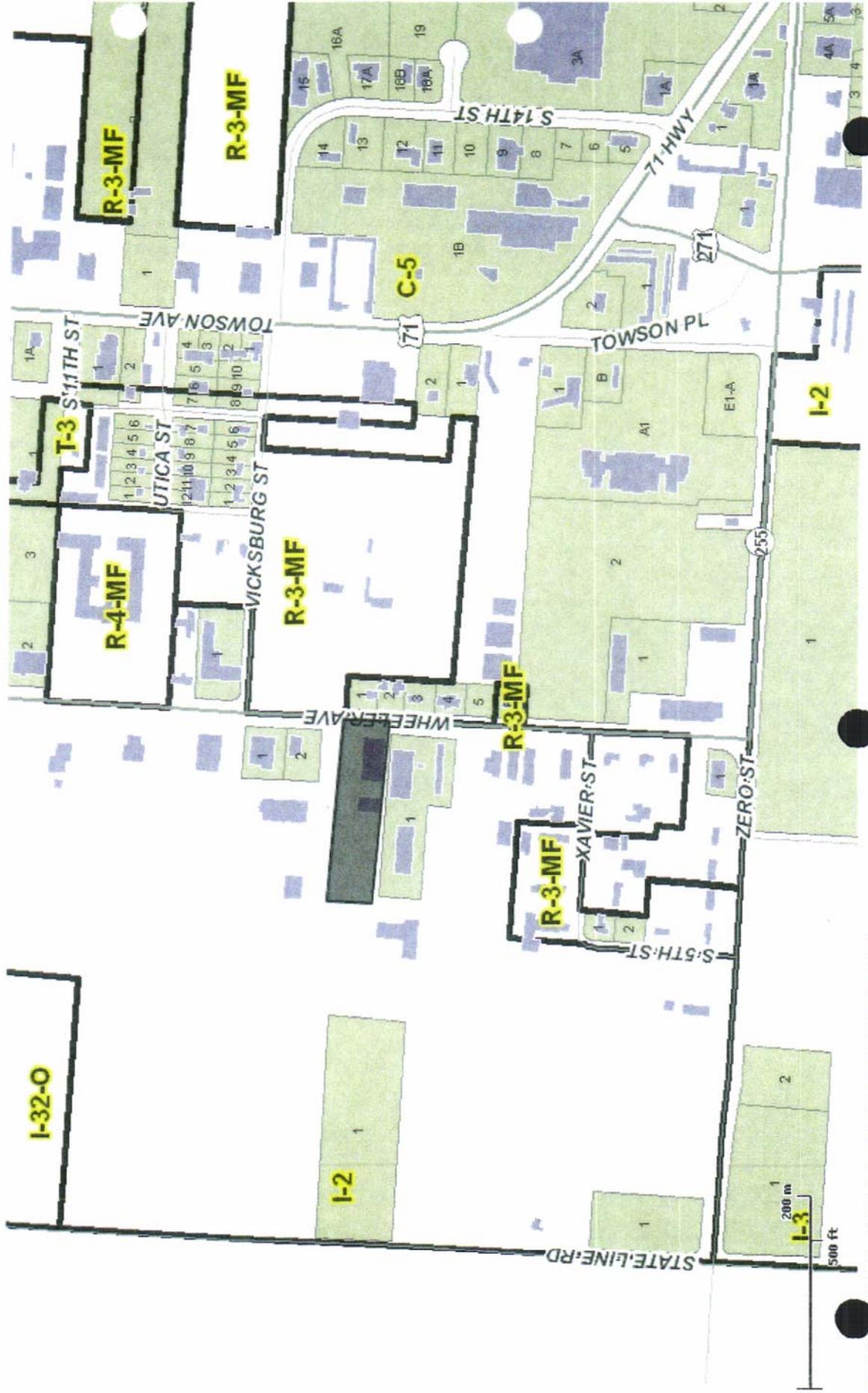
or

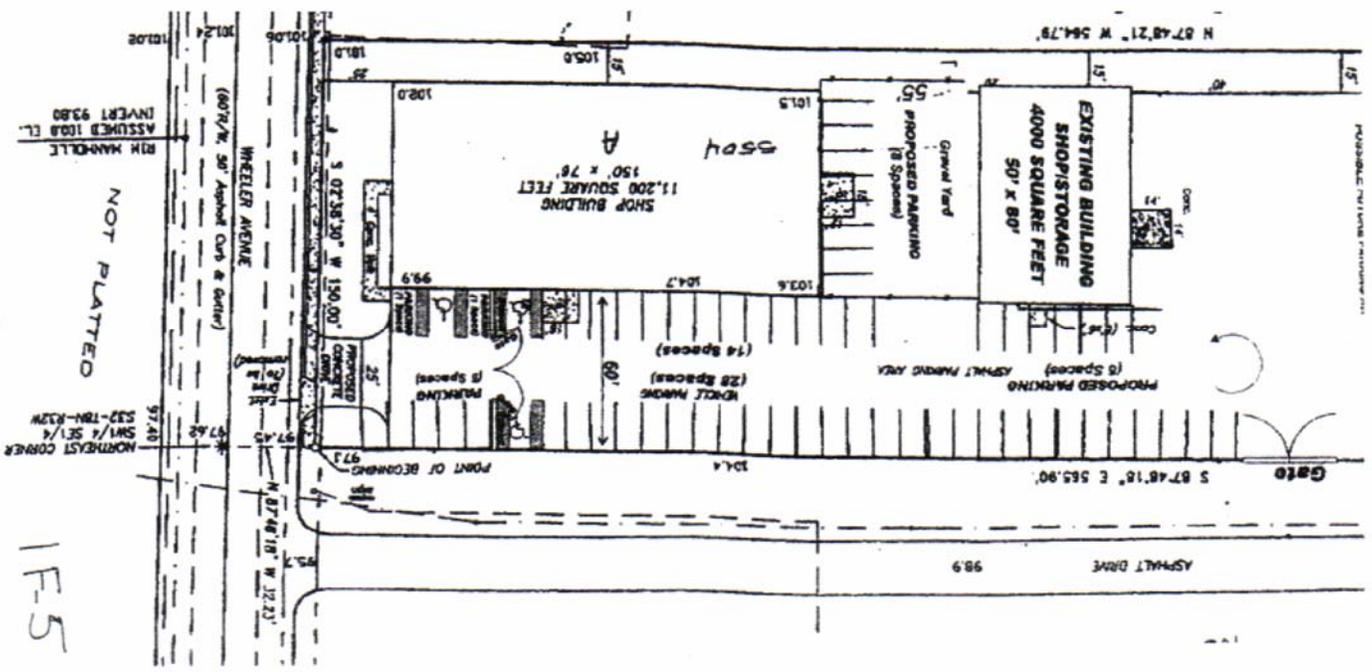
Steve J. Delassus

Agent

Rezoning #16-10-10: Industrial-1 to Commercial Heavy (C-5)

5504 Wheeler Avenue





NOT PLATTED

NORTHEAST CORNER
SMT/SE 1/4
S22-T8N-R32W

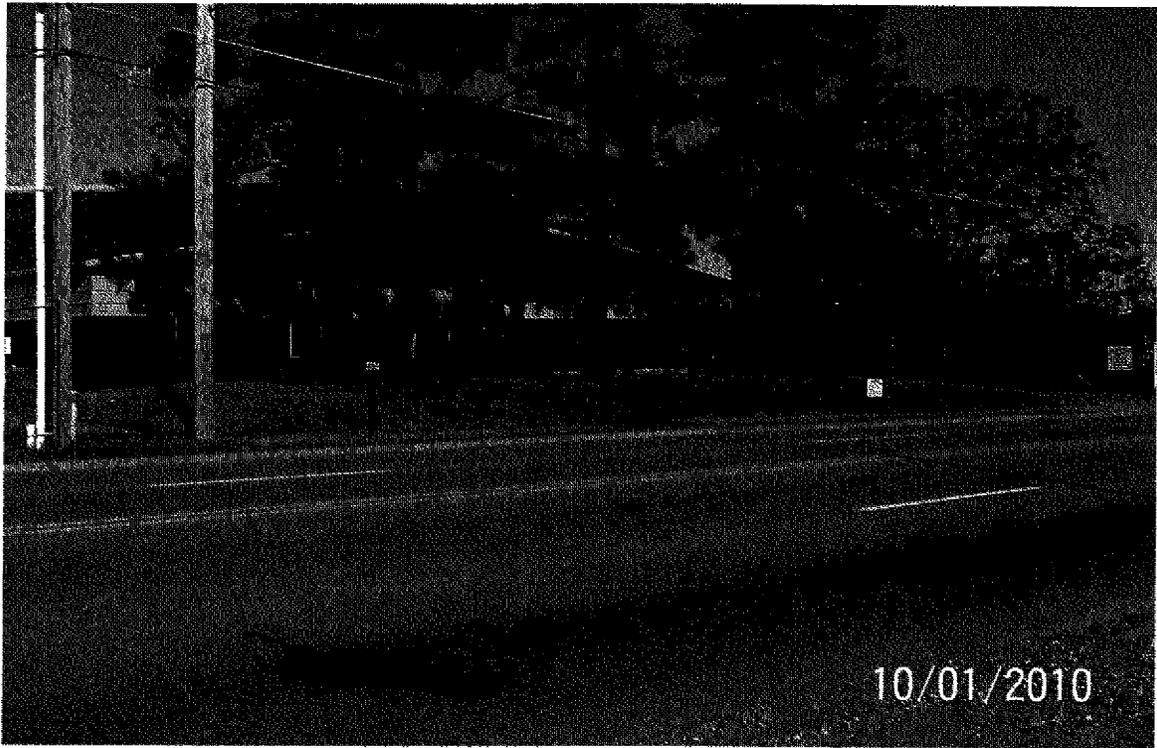
1E-5

IF

Master Land Use Map for Rezoning #16-10-10: Industrial-1 to Commercial Heavy (C-5)

5504 Wheeler Avenue





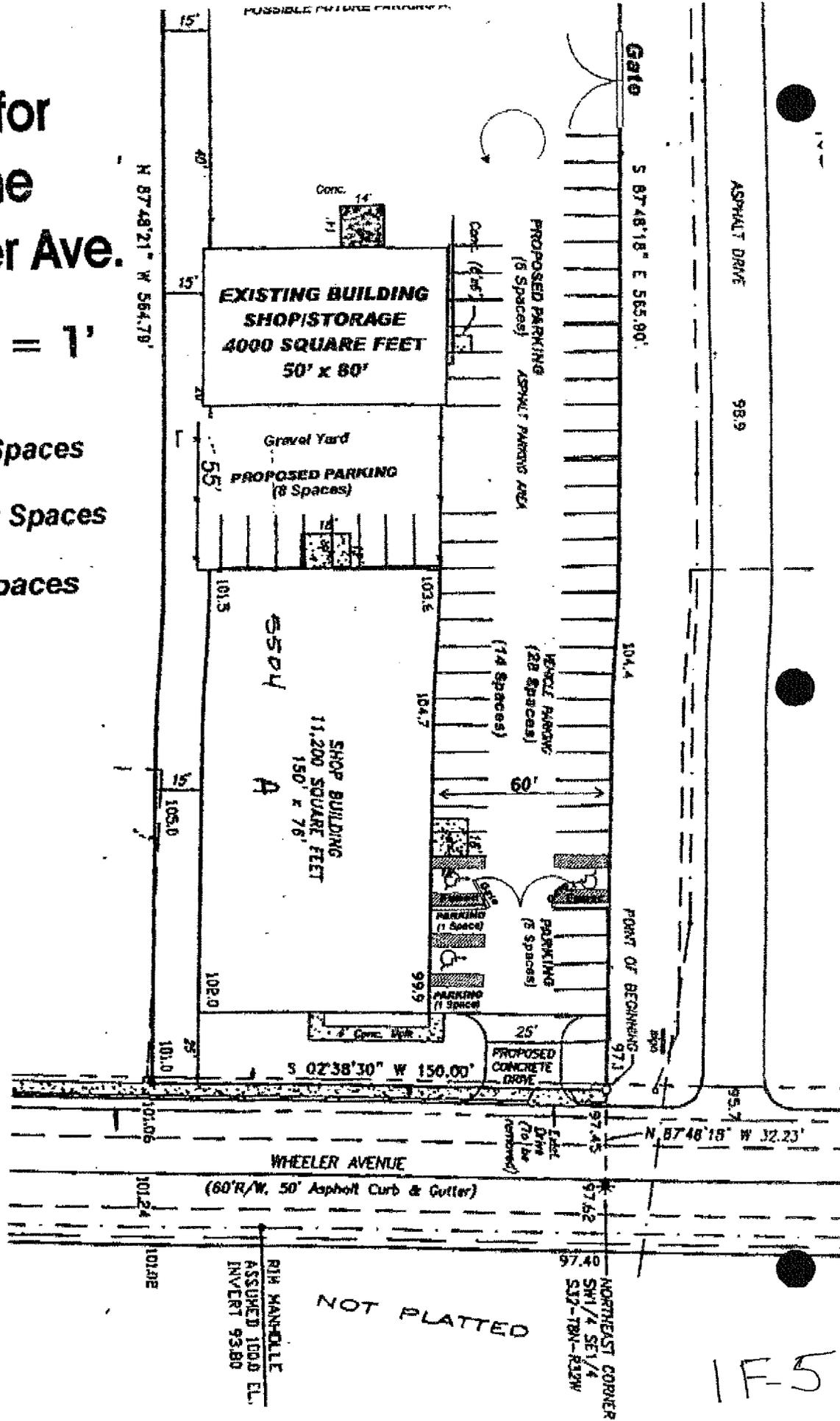
Parking Plan for Cheer X-treme 5504 Wheeler Ave.

Scale: .5mm = 1'

50 Existing Parking Spaces

14 Proposed Parking Spaces

64 Total Parking Spaces



Robert Bearden Trust
5546 Wheeler Avenue
Fort Smith, AR 72901

Robert Plunkett Trust
10909 Greyfriar Lane
Fort Smith, AR 72908

James & Cathy Barnes
22 Wynona
Fort Smith, AR 72901

Margaret Flocks
P. O. Box 6152
Fort Smith, AR 72906

J. Kelley, Inc.
10615 Hwy. 253
Fort Smith, AR 72916

John Settle
5550 Wheeler Avenue
Fort Smith, AR 72901

Charles Anderson
P. O. Box 3786
Fort Smith, AR 72913

Jim Israel
P. O. Box 577
Fort Smith, AR 72901

Jim & Letha Israel
8300 North Shore Drive
Hackett, AR 72937

Khilling Properties
1315 South 11th Street
Fort Smith, AR 72901

Silmon & Silmon Rentals
6606 LBJ Freeway
Dallas, TX 75240

Arkoma Machine Shop
P. O. Box 330
Gainesville, FL 76240

G & G Properties, LLC
5520 Wheeler Avenue
Fort Smith, AR 72901

Timothy Brown
P. O. Box 1735
Van Buren, AR 72956

Marvin & Dorothy Silmon
P. O. Box 10987
Fort Smith, AR 72917

**A. PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT
MINUTES
ROSE ROOM
CREEKMORE PARK COMMUNITY CENTER
5:30 P.M.
OCTOBER 12, 2010**

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

Chairman Griffin then called for the vote on the minutes from the September 14, 2010, Planning Commission meeting. Commissioner Sharpe noted a correction to the minutes. He noted that on Item #9, Page 9 the minutes reflect that he voted in opposition to the request. He stated that the minutes should show that Commissioner Maurras voted in opposition. Motion was then made by Commissioner Sharpe, seconded by Commissioner Maurras and carried unanimously to approve the minutes as corrected.

Mr. Wally Bailey spoke on the procedures.

Mr. Bailey noted that an e-mail had been received from Mr. Harold Corley requesting the withdrawal of the variance request (item #10) for the property located at 5907 Jenny Lind. Mr. Bailey stated that the applicant had found another location and would no longer need the variance.

1. Rezoning #16-10-10; A request by Steve DeLassus, agent, for a zone change from Industrial-1 to Commercial-5 by Extension located at 5504 Wheeler Avenue.

Ms. Brenda Andrews read the staff report indicating that the purpose of this rezoning request is to permit an indoor amusement center to occupy the structure. Ms. Andrews stated that this building previously had been occupied by uses that are allowed in the Commercial Heavy zoning classification which included Cheer Xtreme and an auto dealer. Ms. Andrews noted that a neighborhood meeting was held on September 23rd and no neighboring property owners were in attendance.

Mr. Steve DeLassus, 5504 Wheeler Avenue, was present to speak on behalf of this request. Mr. DeLassus stated that this facility would provide multi party rooms with bouncearounds.

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

Chairman Griffin then called for the vote on the rezoning request. The vote was 7 in favor and 0 opposed.

ORDINANCE NO. _____

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

WHEREAS, the City Planning Commission has heretofore held a public hearing upon request No. 17-10-10 to rezone certain properties hereinafter described, and, having considered said request, recommended on October 12, 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: That the following property to-wit:

Lot 4, Block 97, Fitzgerald Addition

More commonly known as 1115 South 17th Street, should be, and is hereby rezoned from Commercial Light (C-2) to Residential Multi-Family High Density (RM-4) by Extension.

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

PASSED AND APPROVED THIS _____ DAY OF OCTOBER, 2010.

ATTEST:

APPROVED:

City Clerk

Mayor

Approved as to Form:

JSC

City Attorney
Publish time



October 25, 2010

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

Re: Rezoning #17-10-10; A request by Mont Sagely, agent, for a zone change from Commercial Light (C-2) to Residential Multi-Family High Density (RM-4) located at 1115 South 17th Street.

On October 12, 2010, the City Planning Commission held a public hearing to consider the above rezoning request.

Ms. Brenda Andrews read the staff report indicating that the purpose of this rezoning request is to allow for a duplex to be constructed on the property.

Commissioner Maurras expressed his concerns relative to a duplex being placed in an area of single family residences. Ms. Maggie Rice noted that there is an existing duplex on South 18th Street, as well as some apartments and a tri-plex in the area as well.

Mr. Mont Sagely was present to speak on behalf of this request.

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

Commissioner Maurras stated that he is opposed to duplexes in single family residential neighborhoods. He noted that he feels they destroy the quality of life in neighborhoods.

Mr. Mont Sagely stated that there are other multi-family across the street from the proposed duplex and he did not feel this would change the landscape of the area.

Following a discussion by the Commission, Chairman Griffin called for the vote on this rezoning request. The vote was 5 in favor, 1 opposed (Maurras) and 1 abstention (Huffman).

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

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

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

Respectfully Submitted,

CITY PLANNING COMMISSION

Steve Griffin, Chairman

SG/lp

cc: File
City Administrator

Memo

To: City Planning Commission
From: Planning Staff
Date: October 6, 2010
Re: Rezoning # 17-10-10; a request by Mont Sagely, agent, for consideration of a zoning change from Commercial Light (C-2) to Residential Multifamily High Density (RM-4) at 1115 South 17th Street.

LOT LOCATION AND SIZE

The proposed rezoning request site is located on South 17th Street north of Dodson Avenue. The subject property is 7,000 square feet (.16 acres) in size and has approximately 50 feet of street frontage on South 17th Street.

EXISTING ZONING

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

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

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

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

Area Regulations:

Minimum Lot Size - 7,000 square feet	Maximum Lot Coverage - 60%
Street Right-of-Way Setback - 25 feet	
Interior Side Yard Setback - 10 feet	
Rear Yard Setback - 10 feet	
Separation of Buildings – Determined by current city building and fire code.	
Maximum Height – 35 feet	

REQUESTED ZONING

Characteristics of the Residential Multifamily High Density (RM-4) zone are as follows:

Purpose: To provide high density attached homes, including multi-story residential buildings

ZA

is appropriate in urban areas in the Residential Attached, Mixed Use Residential, or Mixed Use Employment categories of the Master Land Use Plan.

Permitted Uses: Permitted uses include single family dwellings, duplex dwellings, row houses, zero lot line dwelling units, apartments/condominiums, family group home, and neighborhood group home.

Conditional Uses: Schools and religions institutions as permitted as conditional uses.

Bulk & Area Regulations:

Minimum Lot Size – 5,000 s.f.
Maximum Density – 30 Dwelling Units/Acre
Front Yard Setback - 20 feet
Side Yard on Street Side of Corner Lot - 15 feet
Side Yard Setback - 5 feet
Rear Yard Setback - 5 feet
Minimum Lot Width at Building Line – 50 feet
Minimum Street Frontage – 20 feet
Distance between Buildings - 10 feet
Maximum Height - 40 feet (1+1)
Maximum Lot Coverage - 70%

SURROUNDING ZONING AND LAND USE

The property to the north is zoned Residential Multifamily High Density (RM-4) and Transitional and is developed as single family residences and apartment complexes.

The property to the south, east, and west is zoned Commercial Light (C-2) and is developed as single family residences, commercial buildings, and a pharmacy.

PROPOSED ZONING CHANGE

The applicant has requested rezoning the property to Residential Multifamily High Density (RM-4) to allow for a duplex to be built on the property.

LAND USE COMPLIANCE

The Master Land Use Plan classifies this development as Residential Detached. This classification provides for safe, stable neighborhoods and attractive family environments. Approval of the rezoning will have no effect on the Master Land Use Plan.

STREET CLASSIFICATION

The Master Street Plan classifies South 17th Street as a Local Road.

2B

STAFF COMMENTS AND RECOMMENDATIONS

A neighborhood meeting was held on October 6, 2010 at 9:00 a.m., at the site on South 17th Street. One neighbor attended the meeting and was able to get her questions answered.

This property has been vacant for approximately 3-years since a single family home was demolished. The actual land uses along the Dodson Avenue corridor, though zoned Commercial-2, represent a mixture of office, retail, and residential. The proposed zoning change will not alter the character of the area.

This rezoning would allow a duplex to be built. Staff recommends approval of the requested zone change.

PETITION FOR CHANGE IN ZONING MAP

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

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

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

Lot 4, Blk 97 Fitzgerald Addition

- 2. Address of property: 1115 South 17th Street

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

- 4. Application is hereby made to change the zoning classification of the above described property to ~~R-4 MF~~ RM-4 by EXTENSION.
(Extension or classification)

- 5. Why is the zoning change requested?

To Build A Duplex On The Property.

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

MONT SAGELY

Owner or Agent Name
(please print)

Signed:

Owner

3101 Rogers Avenue, Fort Smith, AR 72903

Owner or Agent Mailing Address

MS
or
Agent

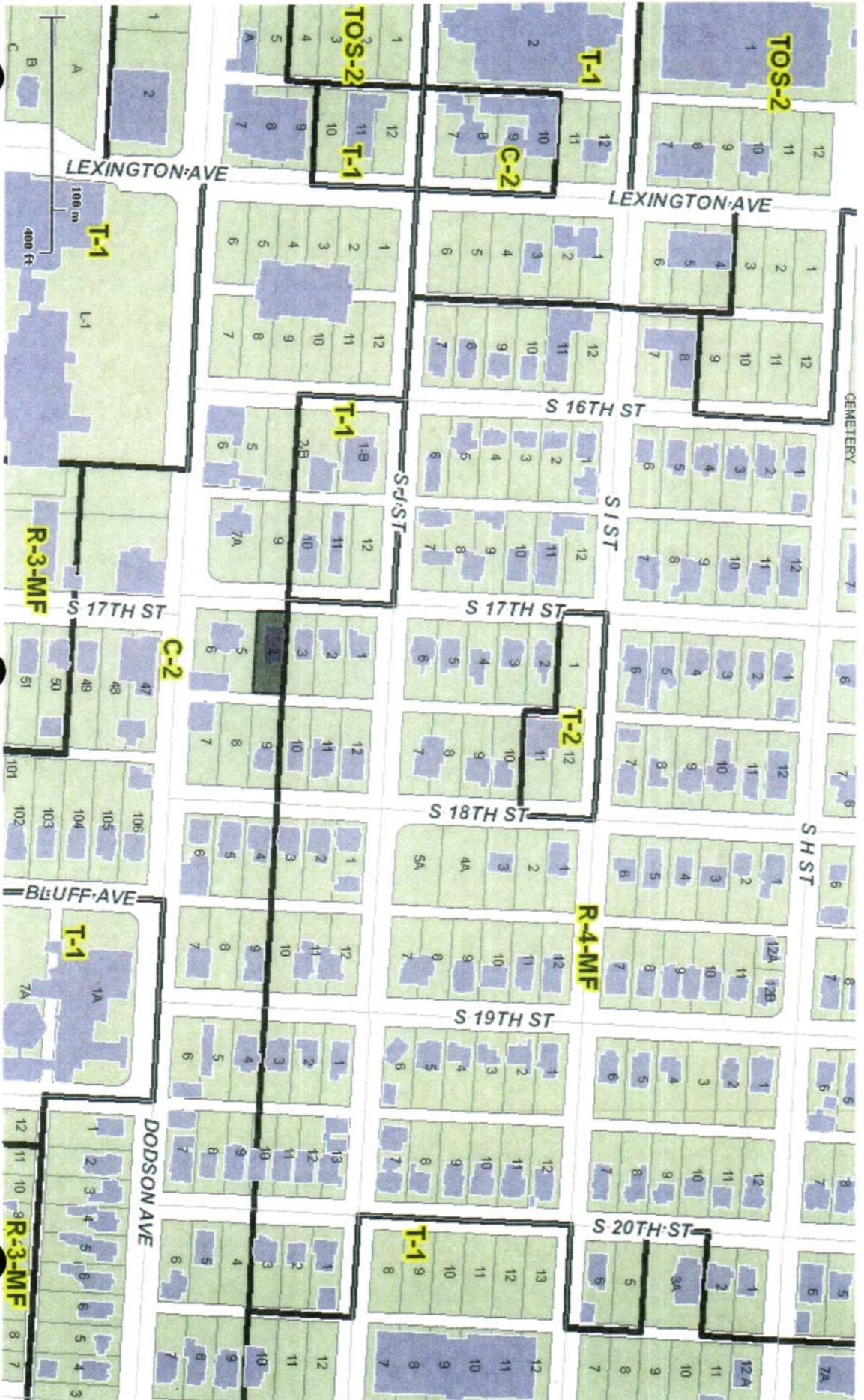
Agent

479-462-5514

Owner or Agent Phone Number

Rezoning #17-10-10: From Commercial-2 to Residential Multifamily High Density (RM-4)

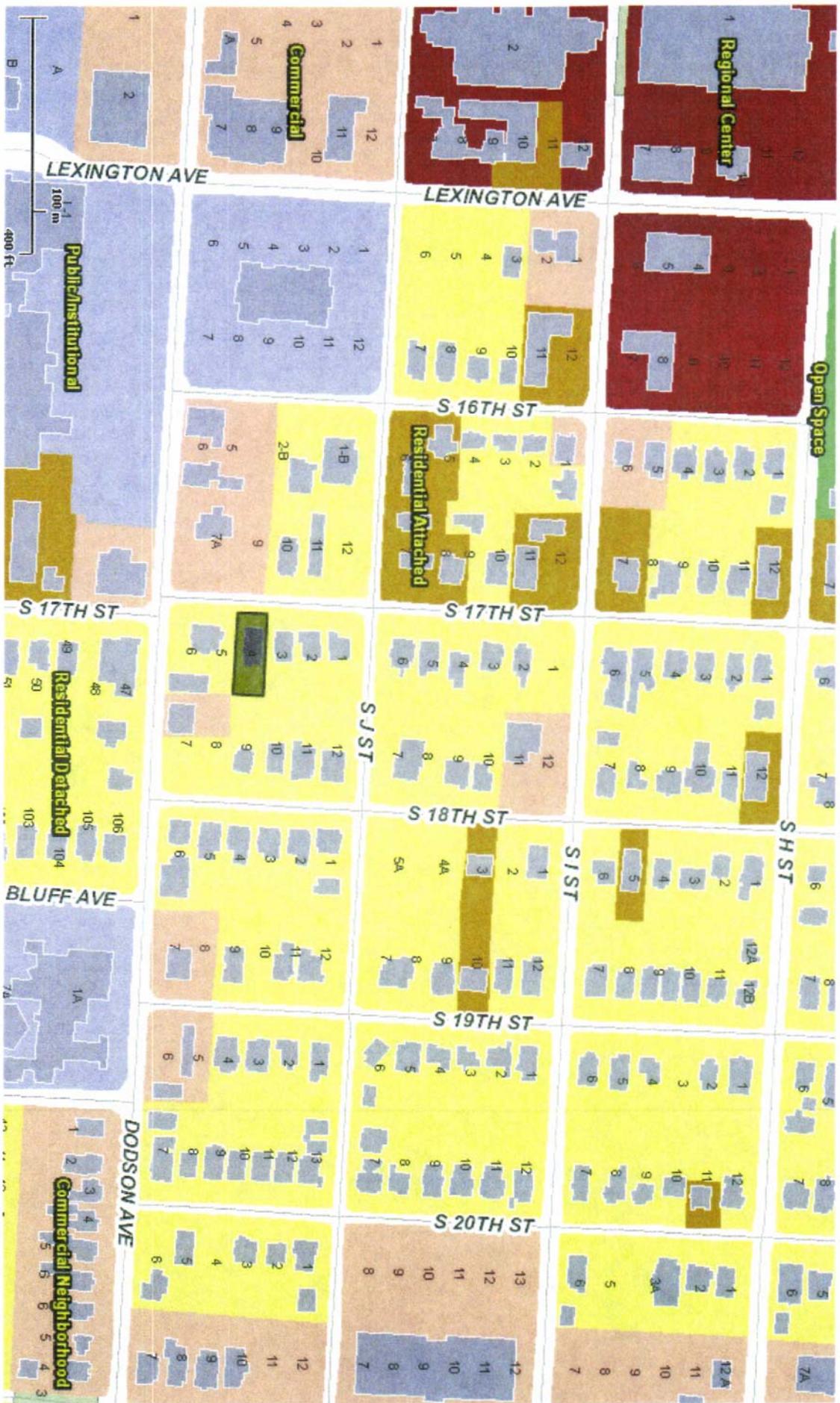
1115 South 17th Street



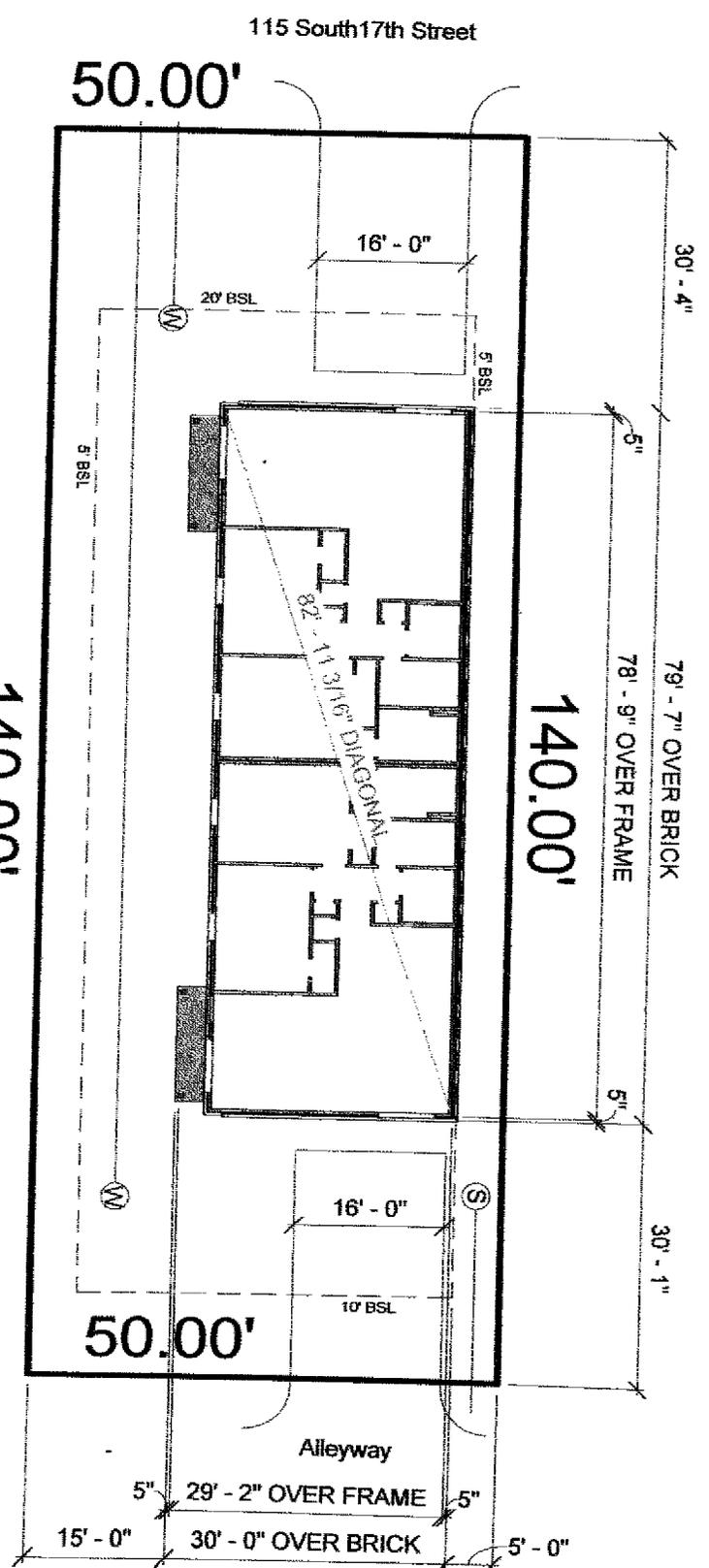
ZE

Master Land Use Map for Rezoning #17-10-10: From Commercial-2 to Residential Multifamily High Density (RM-4)

1115 South 17th Street



27



1115 South 17th Street

1" = 20'-0"

Carrington Creek Homes

www.carringtoncreek.com

Status	Preliminary Drawing
Revision Needed	
Final Drawing	
Customer Signature	



Larry Beam
P. O. Box 1029
Van Buren, AR 72957

Melissa Roberts
1210 Bluff Avenue
Fort Smith, AR 72901

James McCoy & Jane Dumas
1204 S. Bluff Avenue
Fort Smith, AR 72901

Black Diamond, LLC
P. O. Drawer 400
Mulberry, AR 72947

Robert & Patricia Canfield
159 Shipley Drive
Bonneville, AR 72927

Fort Smith HMA, LLC
5811 Pelican Bay Blvd-Suite 500
Naple, FL 34108

Helen Roberson
P. O. Box 10108
Fort Smith, AR 72917

Lucile Caldwell
1714 Dodson Avenue
Fort Smith, AR 72901

Trung Le & Huong Le
1213 South 17th Street
Fort Smith, AR 72901

Opportunity Properties, LLC
6825 Hobbtown Road
Rudy, AR 72952

Chan Holcombe Trust
1521 N Waldron Road
Fort Smith, AR 72904

Western Arkansas Youth Found.
1606 South "J" Street
Fort Smith, AR 72901

Western Arkansas Regional Mgmt.
1109 South 16th Street
Fort Smith, AR 72901

TGP Rentals, LLC
3809 Free Ferry Road
Fort Smith, AR 72903

Jeff Fenwick
1615 Dodson Avenue
Fort Smith, AR 72901

Raymond & Denise Golden
1701 Dodson
Fort Smith, AR 72901

Maham LLC
4200 Jenny Lind-Suite B
Fort Smith, AR 72901

John Leonard Weindel
423 North 7th Street
Fort Smith, AR 72901

John & Michael Polinsky
3706 Rogers Avenue
Fort Smith, AR 72903

Azlo Real Property #6, LLC
P. O. Box 10202
Fort Smith, AR 72917

Carolyn Bull
2319 Lakeside Drive
Greenwood, AR 72936

Jacqueline Williams
1112 South 18th Street
Fort Smith, AR 72901

Joshua Baker
1108 South 18th Street
Fort Smith, AR 72901

Marco Dominguez
2913 Kendall Avenue
Fort Smith, AR 72908

Charles & Pamela Wolfendale
1100 South 18th Street
Fort Smith, AR 72901

Dennis Marriott
1015 South 17th Street
Fort Smith, AR 72901

Ordonez McFarland
1021 South 17th Street
Fort Smith, AR 72901

Carlos & Maria Castaneda
1013 South 17th Street
Fort Smith, AR 72901

Gretchen Smallwood
1020 South 18th Street
Fort Smith, AR 72901

WEL, LLC
P. O. Box 3949
Fort Smith, AR 72913

Patricia Wise
1105 South 18th Street
Fort Smith, AR 72901

Patricia Wise
1105 South 18th Street
Fort Smith, AR 72901

Sandra Moreno
1109 South 18th Street
Fort Smith, AR 72901

Van Quy Tran
9712 Weddington Road
Fort Smith, AR 72903

Verlon & Roberta McKay
2405 South "M" Street
Fort Smith, AR 72901

Elim Martinez
1021 South 18th Street
Fort Smith, AR 72901

**Planning Commission Meeting Minutes
October 12, 2010**

- 2. Rezoning #17-10-10; A request by Mont Sagely, agent, for a zone change from Commercial-2 to Residential Multifamily High Density (RM-4) by Extension located at 1115 South 17th Street.**

Ms. Brenda Andrews read the staff report indicating that the purpose of this rezoning request is to allow for a duplex to be constructed on the property.

Commissioner Maurras expressed his concerns relative to a duplex being placed in an area of single family residences. Ms. Maggie Rice noted that there is an existing duplex on South 18th Street as well as some apartments and a tri-plex in the area as well.

Mr. Mont Sagely was present to speak on behalf of this request.

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

Commissioner Maurras stated that he is opposed to duplexes in single family residential neighborhoods. He noted that he feels they destroy the quality of life in neighborhoods.

Mr. Mont Sagely stated that there are other multi-family across the street from the proposed duplex and he did not feel this would change the landscape of the area.

Chairman Griffin then called for the vote on the rezoning request. The vote was 5 in favor, 1 opposed (Maurras) and 1 abstention (Huffman).

- 3. Rezoning #18-10-10; A request by Jake Files, agent, for a zone change from Transitional to Commercial-2 by Extension located at 5311 South 28th Street and 2851 South Xavier Street.**

Ms. Brenda Andrews read the staff report indicating that the purpose of the rezoning request is to allow for some limited retail commercial uses to be interspersed within the existing office development which is located to the west of the existing multi-family residential (apartments) development.

Mr. Jake Files was present to speak on behalf of this request.

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

Chairman Griffin then called for the vote on the rezoning request. The vote was 7 in favor and 0 opposed.

- 4. Master Land Use Plan Amendment from Extra Territorial Jurisdiction Low Density Residential to Residential Detached, Residential Attached and Commercial**

ORDINANCE NO. _____

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

WHEREAS, the City Planning Commission has heretofore held a public hearing upon request No. 18-10-10 to rezone certain properties hereinafter described, and, having considered said request, recommended on October 12, 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: That the following property to-wit:

The East 300 feet of Block 10, and part of the South 29th Street right-of-way abandoned by City Ordinance #48-97, South Fort Smith Addition, Fort Smith, Sebastian County, Arkansas.

More commonly known as 5311 South 28th Street and 2851 South Xavier Street, should be, and is hereby rezoned from Transitional (T) to Commercial Light (C-2) by Extension.

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

PASSED AND APPROVED THIS _____ DAY OF OCTOBER, 2010.

ATTEST:

APPROVED:

City Clerk

Mayor

Approved as to Form:

Jsl

City Attorney
Publisk time



October 25, 2010

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

Re: Rezoning #18-10-10; A request by Jake Files, agent, for a zone change from Transitional (T) to Commercial Light (C-2) by Extension located at 5311 South 28th Street and 2851 South Xavier Street.

On October 12, 2010, the City Planning Commission held a public hearing to consider the above rezoning request.

Ms. Brenda Andrews read the staff report indicating that the purpose of this rezoning request is to allow for some limited retail commercial uses to be interspersed within the existing office development which is located to the west of the existing multi-family residential (apartments) development.

Mr. Jake Files was present to speak on behalf of this request.

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

Following a discussion by the Commission, Chairman Griffin called for the vote on this rezoning request.. The vote was 7 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

623 Garrison Avenue
P. O. Box 1908
Fort Smith, Arkansas 72902
(501) 783-2801
Administrative Offices FAX (501) 783-2467



Memo

To: City Planning Commission
From: Senior Planner
Date: October 12, 2010
Re: Rezoning # 18-10-10; a request by Jake Files, agent, for Foster, Files & Harris, LLC, for Planning Commission consideration of a zoning change from Transitional (T) to Commercial Light (C-2) by extension at 5311 South 28th Street & 2851 South Xavier Street.

LOT LOCATION AND SIZE

The proposed rezoning request site is located three blocks north of Zero Street at the southwest corner of South 28th Street and Xavier Street. The subject property is 2.476 acres in size and is divided into Lot 1 (apartments) & Lot 2 (offices). The property has 360 feet of road frontage on Xavier Street and 300 feet of road frontage on South 28th Street.

EXISTING ZONING

The existing zoning for the property is Transitional (T). Characteristics are as follows:

Purpose: A buffer zone that allows the gradual conversion of residential, on the fringe of a commercial area, into uses that are incidental to the businesses but not harmful to the residential character of the neighborhoods.

Permitted Uses: Single family detached, and attached residential, duplexes, family group home, retirement housing, banking establishments, offices.

Conditional Uses: Assisted living, bed & breakfast inn, utility substation, country club, park or playground, college, library, primary and secondary school, business professional schools, fire and rescue station, emergency response station, police substation, daycare homes, hospital, substance abuse treatment facility, senior citizen center, churches.

Area Regulations:

- Minimum Lot Area - 5,000 square feet
- Front Yard Setback - 20 feet
- Side Yard Setback - 5 feet
- Side Yard on Street Side of Corner Lot - 20 feet
- Rear Yard Setback - 10 feet
- Density – 3 Dwelling Units/Acre single family homes, 6 Dwelling Units/Acre two-family homes
- Separation of Buildings - 10 feet-Residential/Per current building-Fire code-Non-Residential
- Maximum Height - 35 feet

REQUESTED ZONING

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

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

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

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

Area Regulations:

Density Regulations

Minimum Lot Size - 7,000 square feet
Street Right-of-Way (Front) Setback - 25 feet
Interior Side Yard Setback - 10 feet
Rear Yard Setback - 10 feet
Separation of Buildings – Determined by current city building and fire code.
Maximum Height – 35 feet

Maximum Lot Coverage - 60%

SURROUNDING ZONING AND LAND USE

The area to the north of the subject property is zoned Residential Multifamily Medium Density (RM-3). Development is single family residential including one church. This area is separated from the subject property by Waco Street and a 100' railroad right-of-way. The area to the south is zoned Commercial Heavy (C-5). Development includes mixed use residential and the Wal-Mart Supercenter to the southwest. The area to the east is zoned Industrial Light (I-1) and is developed with vacant warehouses. The area to the west is zoned Commercial Light (C-2) and is undeveloped.

PROPOSED ZONING CHANGE

The applicant has requested rezoning the property to Commercial Light (C-2) to allow for some limited retail commercial uses to be interspersed within the existing office development which is located to the west of the existing multi-family residential (apartments) development.

LAND USE COMPLIANCE

The site is classified as Mixed Use Residential by the Master Land Use Plan. The proposed rezoning will be in compliance with the Master Land Use Plan as it will facilitate multi-family residential, office and commercial mixed uses.

STREET CLASSIFICATION

The Master Street Plan classifies Xavier and South 28th Streets as Local Roads.

STAFF COMMENTS AND RECOMMENDATIONS

A neighborhood meeting was held on October 5th, at 9 a.m., at the offices of Foster, Files & Harris, LLC. at 3203 Waco Street. No neighboring property owners or citizens attended the meeting. Planning Staff and the applicant were present.

The property proposed for the rezoning is surrounded and contiguous to properties that are zoned Industrial-2, Commercial-5 and Commercial-2. The proposed rezoning will not have an impact on the neighboring zoning districts and appears to be compatible.

The requested rezoning to Commercial-2 will be compatible with the intent of the Mixed Use Residential Land use classification for the property which emphasizes residential uses with some limited office and light retail commercial development.

Staff recommends the rezoning request.

PETITION FOR CHANGE IN ZONING MAP

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

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

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

The East 300 feet of Block 10, and part of the South 29th Street right-of-way abandoned by city ordinance #48-97, South Fort Smith Addition, Fort Smith, Sebastian County, Arkansas
Proposed South Fort Smith Addition, Block 10, Lots 1 & 2

2. Address of property: 5311 South 28th Street and 2851 South Xavier Street

3. The above described property is not zoned: Transitional

4. Application is hereby made to change the zoning classification of the above described property to C-2 by Extension (Extension or classification)

5. Why is the zoning change requested?

To accommodate existing multi-family development and to allow retail uses in existing business office

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

Signed:

Jake Files

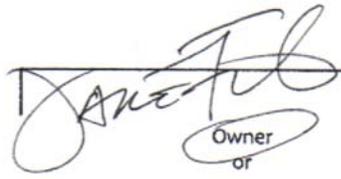
Owner or Agent Name (please print)

3203 South Waco, Fort Smith, AR 72901

Owner or Agent Mailing Address

479-648-9216

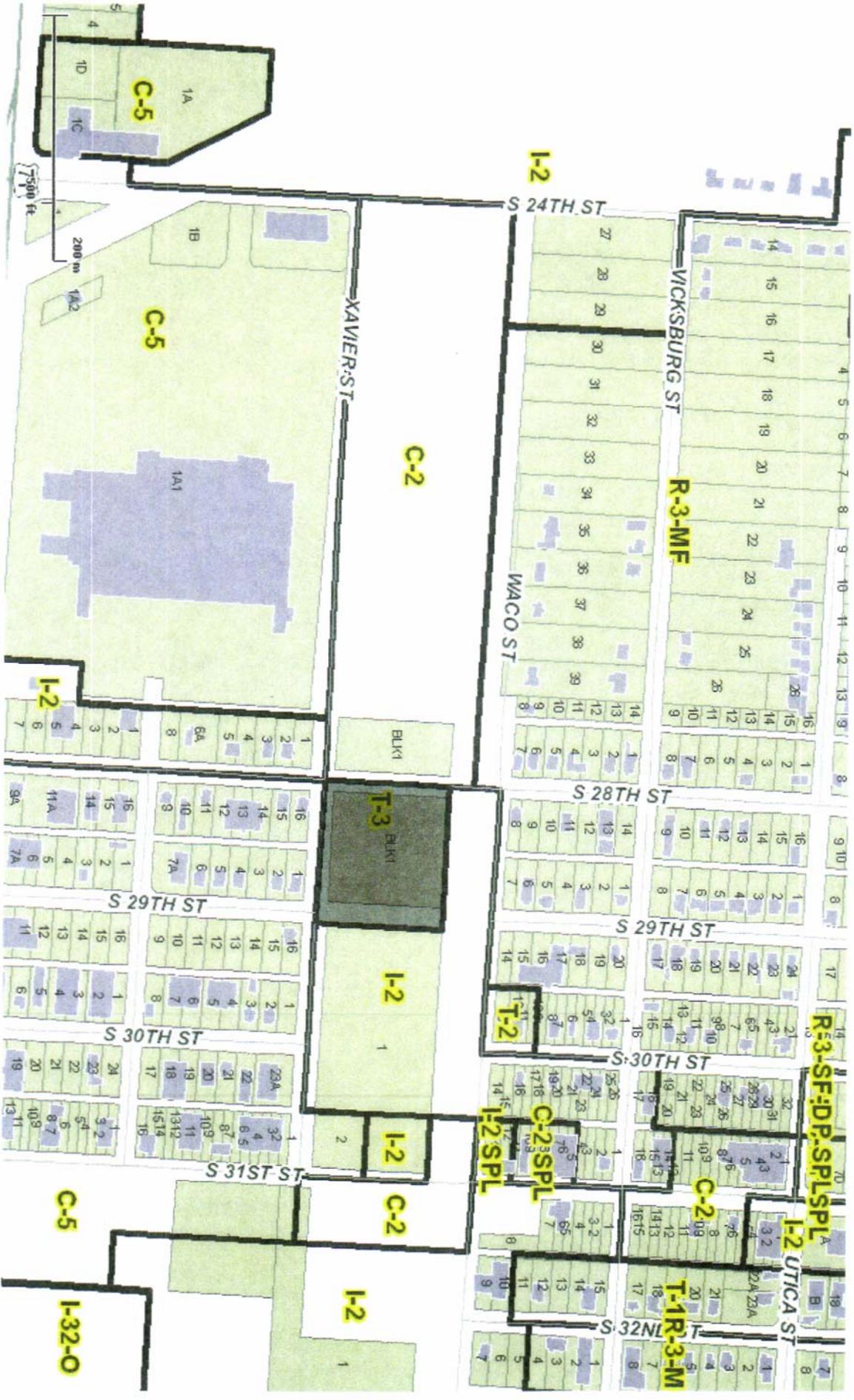
Owner or Agent Phone Number


Owner
OF

Agent

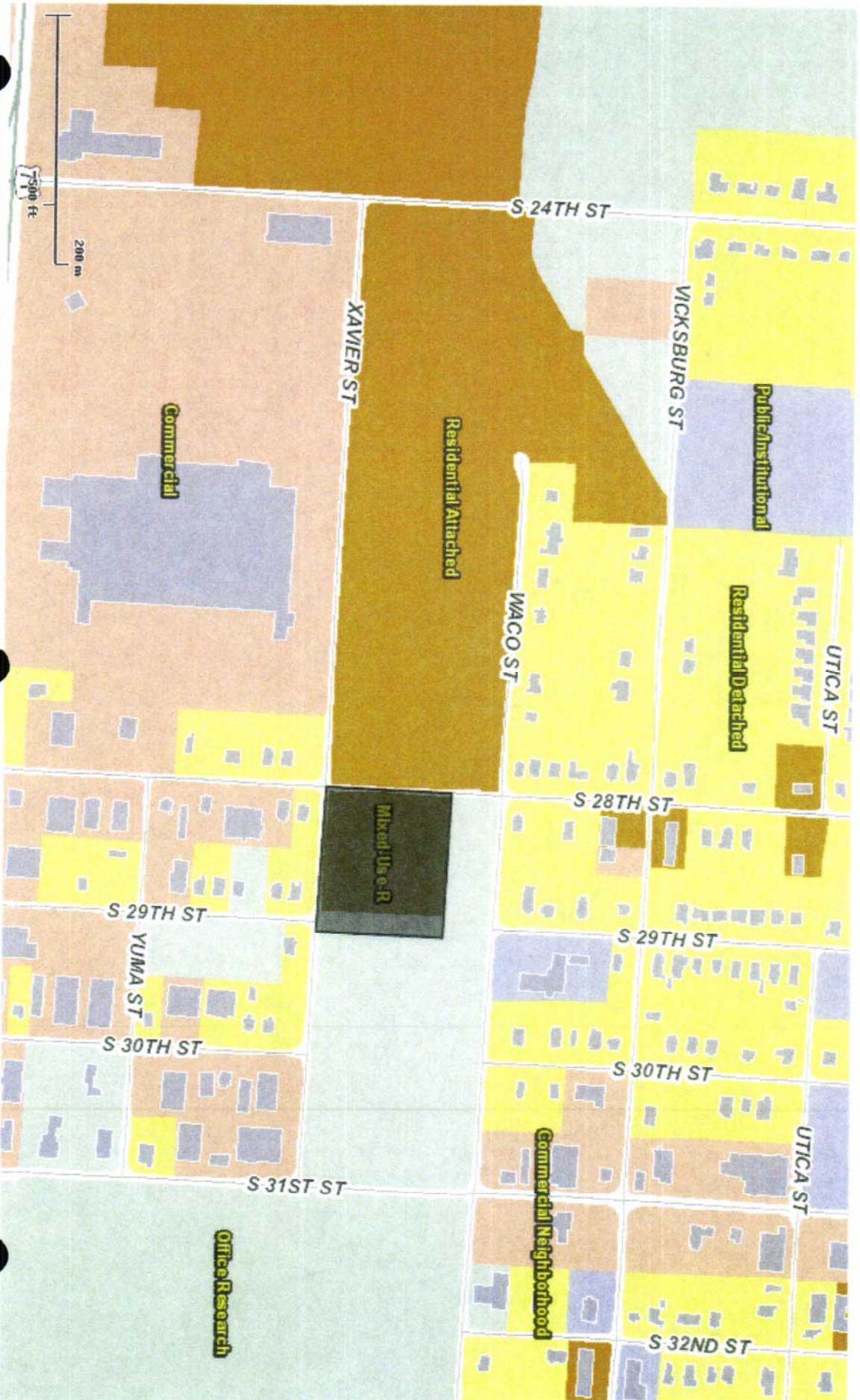
Rezoning #18-10-10: From Transitional to Commercial Light (C-2)

5311 South 28th Street & 2851 Xavier Street



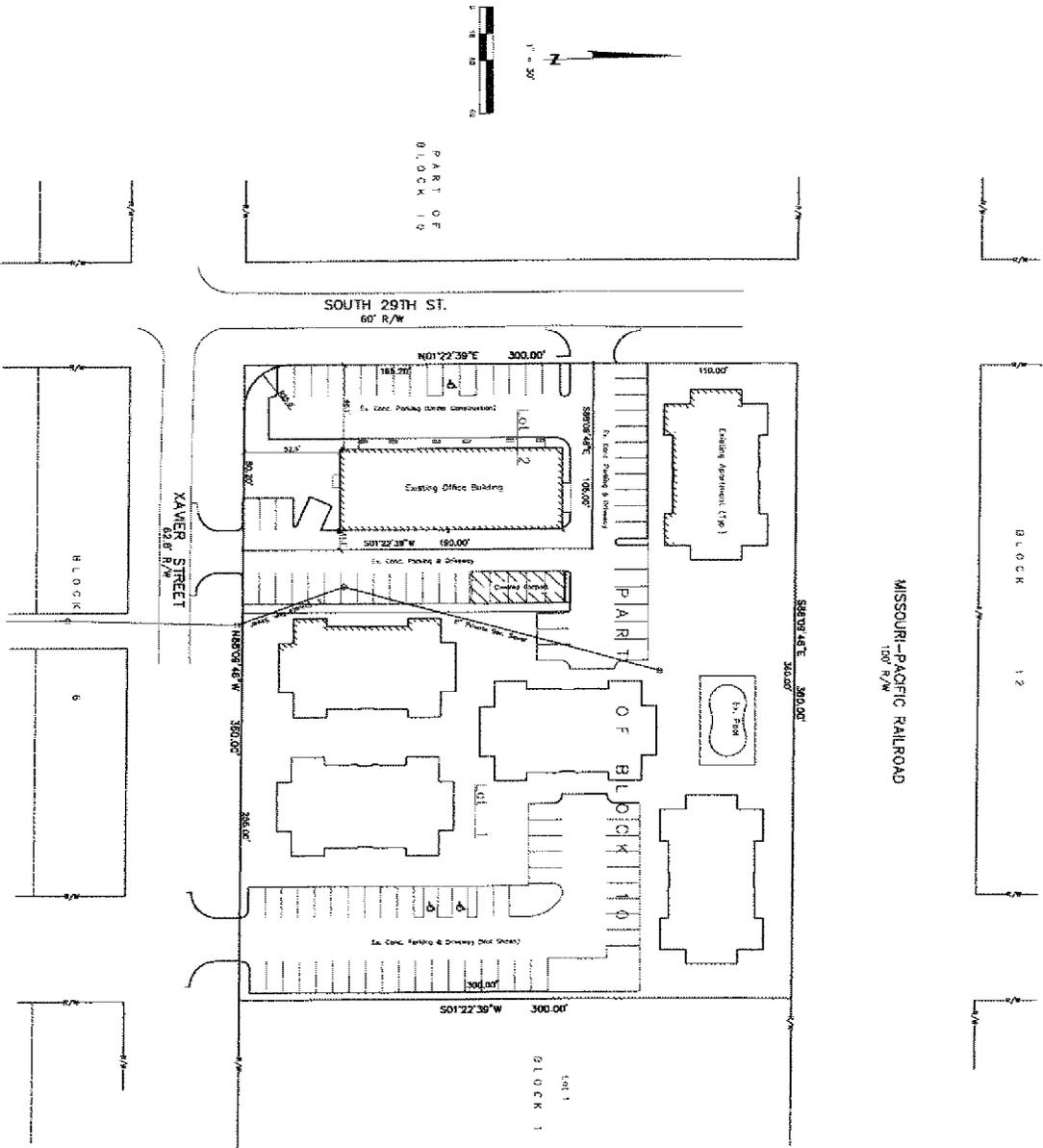
Master Land Use Map for Rezoning #18-10-10: From Transitional to Commercial Light (C-2)

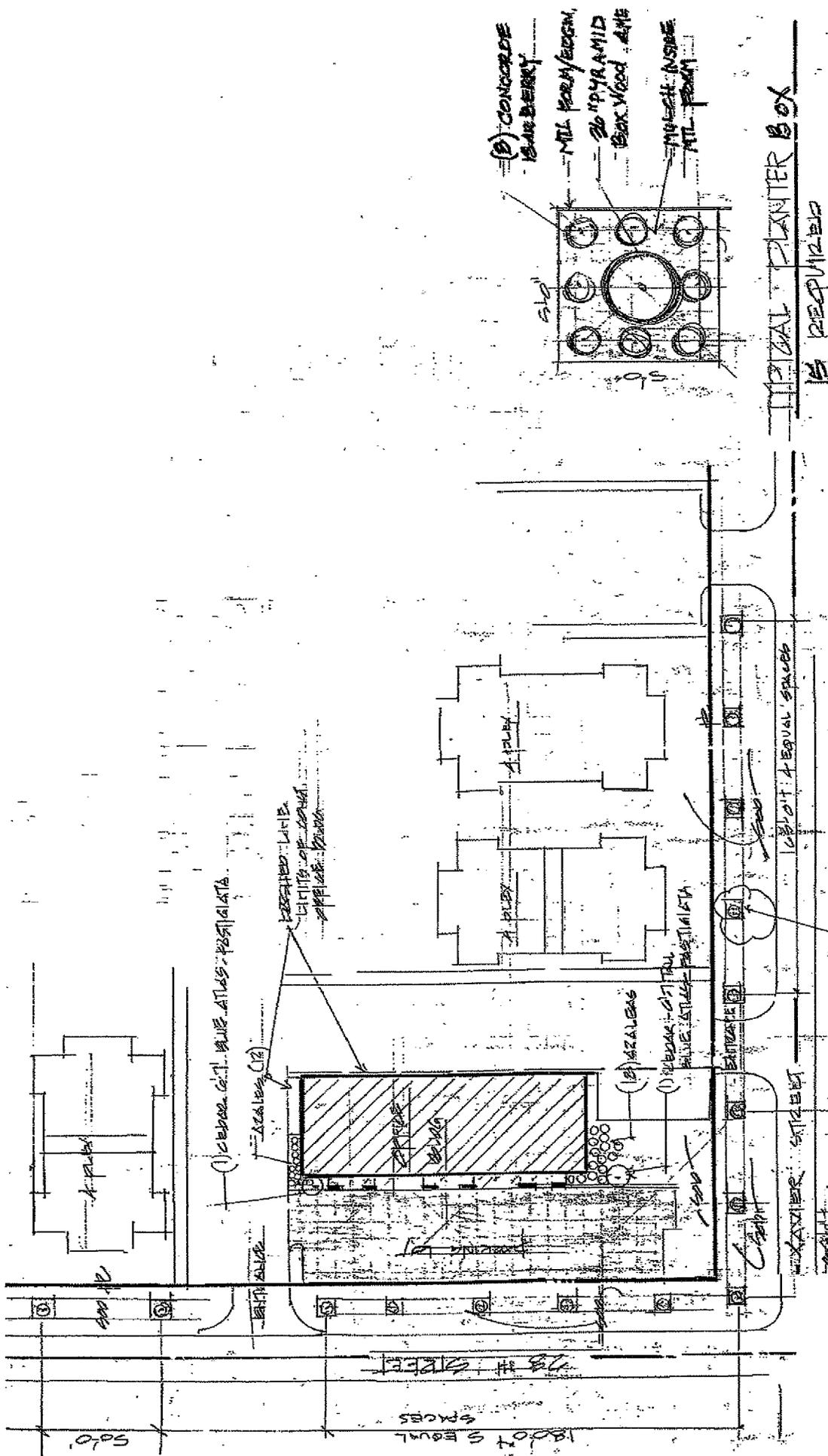
5311 South 28th Street & 2851 Xavier Street



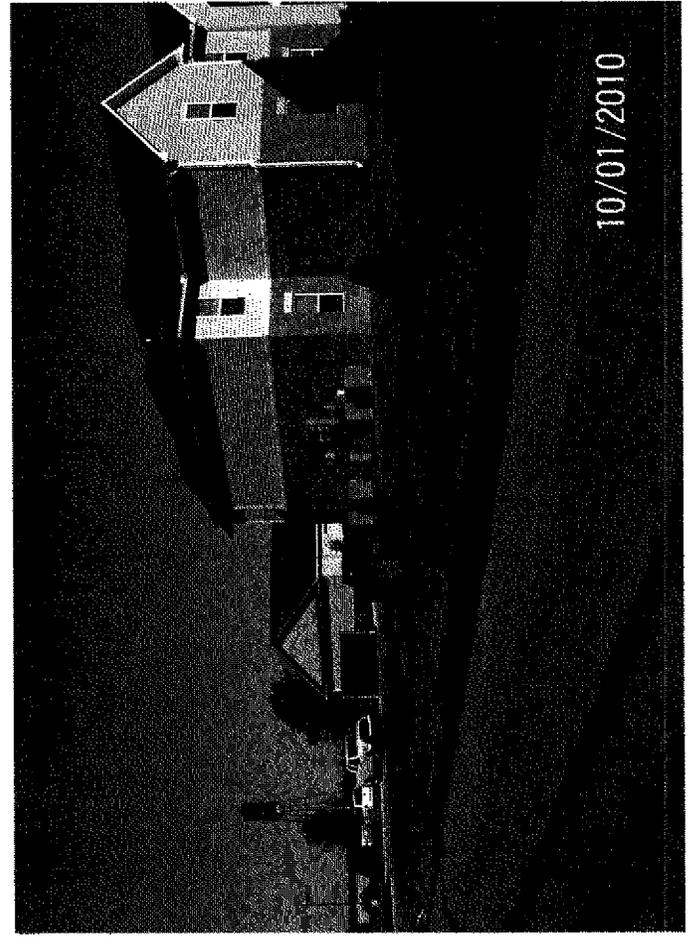
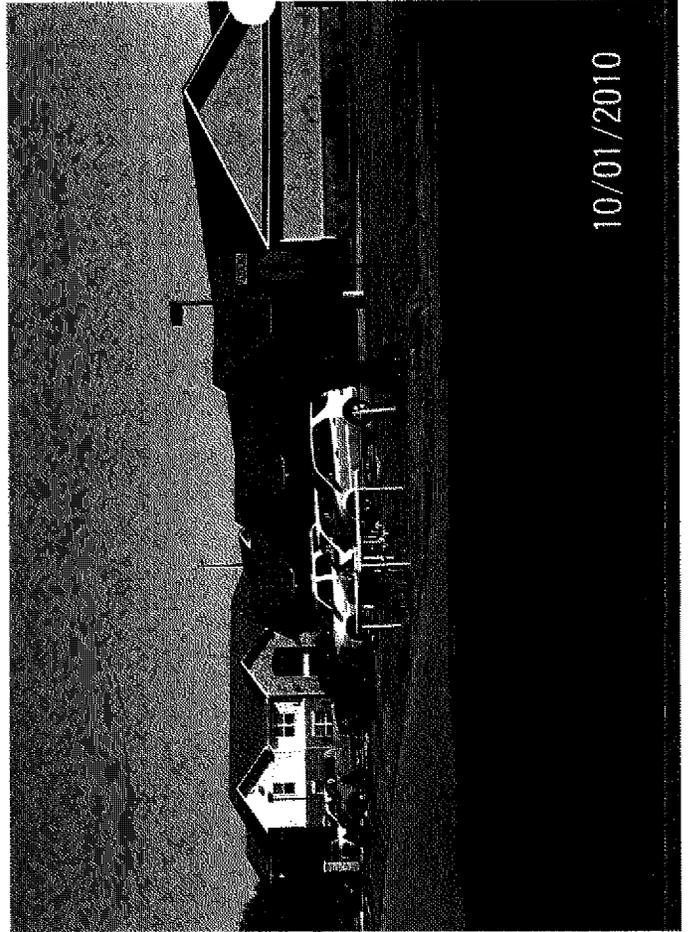
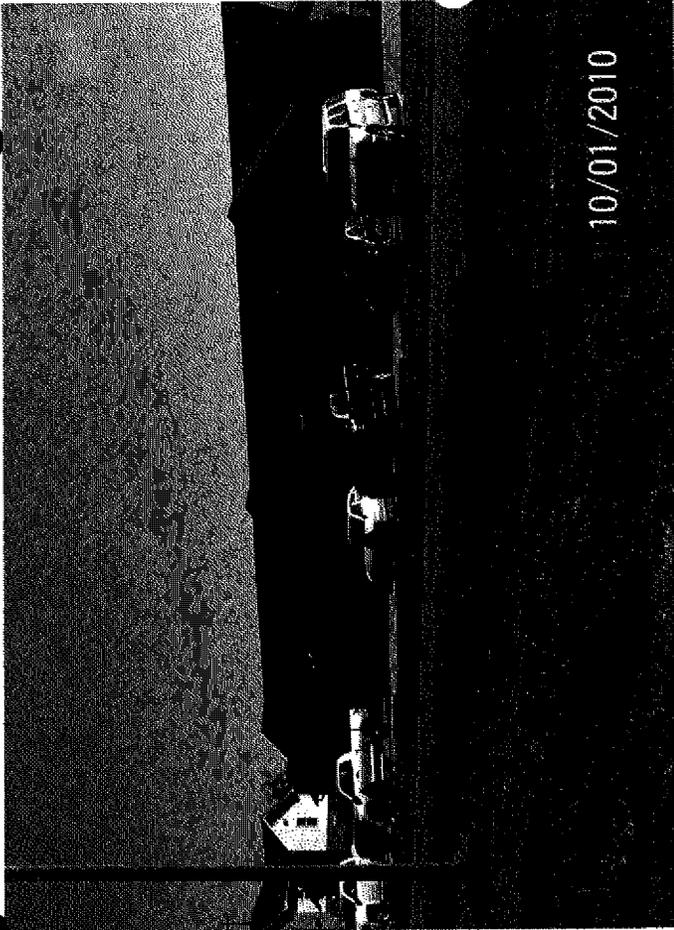
09/14/2010

PROPOSED MINOR PLAT - LOTS 1 AND 2, BLOCK 10, SOUTH FORT SMITH ADDITION, FORT SMITH, ARKANSAS
ZONED: TRANSITIONAL





PLANTER & PLANT PLAN



Ed & Barbara Clifton
5413 South 28th Street
Fort Smith, AR 72901

Widmer Place LLC
109 North 6th Street
Fort Smith, AR 72901

Robert Westphal
109 North 6th Street
Fort Smith, AR 72901

JASC, LLC
P. O. Box 6505
Fort Smith, AR 72906

Bill Campbell
5216 South 28th Street
Fort Smith, AR 72901

Lawrence & Pat Brautigan
6019 Mount Zion
Hackett, AR 72936

Phyllis Ann Pulley
P. O. Box 548
Huntsville, AR 72740

Judy Bui
5123 South 29th Street
Fort Smith, AR 72901

Bill Neal
5224 South 28th Street
Fort Smith, AR 72901

Phyllis Diane Nix
P. O. Box 1316
Fort Smith, AR 72902

Richard James
5216 South 29th Street
Fort Smith, AR 72901

James & Dena Rego
5210 South 29th Street
Fort Smith, AR 72901

Andy & Heather James
3214 Tulsa
Fort Smith, AR 72903

Kenneth Swilling
9087 Rock Island Road
Mansfield, AR 72944

Christian Vineyard Fellowship
5211 South 29th Street
Fort Smith, AR 72901

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

Kathryn Wright
2705 Waco Street
Fort Smith, AR 72901

Harness Rentals
415 South Main
Harrison, AR 72601

Vallerie Norris
5406 South 30th Street
Fort Smith, AR 72901

Structural Systems
2817 Yuma Street
Fort Smith, AR 72901

Hill Irrevocable Living Trust
5403 South 28th Street
Fort Smith, AR 72901

Homer Langston
25704 Hwy. 22 W, Route 3
Charleston, AR 72933

CE McGatha
5406 South 29th Street
Fort Smith, AR 72901

DRAFT

**Planning Commission Meeting Minutes
October 12, 2010**

- 2. Rezoning #17-10-10; A request by Mont Sagely, agent, for a zone change from Commercial-2 to Residential Multifamily High Density (RM-4) by Extension located at 1115 South 17th Street.**

Ms. Brenda Andrews read the staff report indicating that the purpose of this rezoning request is to allow for a duplex to be constructed on the property.

Commissioner Maurras expressed his concerns relative to a duplex being placed in an area of single family residences. Ms. Maggie Rice noted that there is an existing duplex on South 18th Street as well as some apartments and a tri-plex in the area as well.

Mr. Mont Sagely was present to speak on behalf of this request.

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

Commissioner Maurras stated that he is opposed to duplexes in single family residential neighborhoods. He noted that he feels they destroy the quality of life in neighborhoods.

Mr. Mont Sagely stated that there are other multi-family across the street from the proposed duplex and he did not feel this would change the landscape of the area.

Chairman Griffin then called for the vote on the rezoning request. The vote was 5 in favor, 1 opposed (Maurras) and 1 abstention (Huffman).

- 3. Rezoning #18-10-10; A request by Jake Files, agent, for a zone change from Transitional to Commercial-2 by Extension located at 5311 South 28th Street and 2851 South Xavier Street.**

Ms. Brenda Andrews read the staff report indicating that the purpose of the rezoning request is to allow for some limited retail commercial uses to be interspersed within the existing office development which is located to the west of the existing multi-family residential (apartments) development.

Mr. Jake Files was present to speak on behalf of this request.

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

Chairman Griffin then called for the vote on the rezoning request. The vote was 7 in favor and 0 opposed.

- 4. Master Land Use Plan Amendment from Extra Territorial Jurisdiction Low Density Residential to Residential Detached, Residential Attached and Commercial**

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING ENGINEERING SERVICES AGREEMENTS FOR THE DESIGN OF PROJECTS IN THE 2011 SALES TAX PROGRAM

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

SECTION 1: The Mayor is authorized to execute engineering services agreements for the design of the following projects in the 2011 Sales Tax Program utilizing the one cent sales tax proceeds.

Project No.	Description	Engineering Firm	Maximum Fee
11-03-A	Street Overlays / Reconstruction, Phase A	McGuire Engineering Fort Smith, AR	\$71,200
11-03-B	Street Overlays / Reconstruction, Phase B	Hawkins-Weir Engineers Van Buren, AR	\$55,000
11-03-C	Street Overlays / Reconstruction, Phase C	Brixy Engineering Fort Smith, AR	\$52,000
11-03-D	Street Overlays / Reconstruction, Phase D	Morrison Shipley Fort Smith, AR	\$51,760
11-06-A	Neighborhood Drainage - Phase "A"	Phil Leraris, PE, LS Fort Smith, AR	\$96,680
11-06-B	Town Branch Detention Basins	CDM Little Rock, AR	\$250,155
11-06-C	Carnall Outfall Sanitary Sewer Relocation	Hawkins-Weir Engineers Van Buren, AR	\$54,000
11-06-D	Fort Smith Levee Repair	Mickle Wagner Coleman Fort Smith, AR	\$80,240
11-09-A	Traffic Signal Improvements	TEC Oklahoma City, Ok	\$75,000

SECTION 2: Payment for engineering services authorized by Section 1 is hereby authorized from the Sales Tax Fund (1105).

This Resolution adopted this _____ day of November, 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form

Jll

NPR

INTER-OFFICE MEMO

TO: Dennis Kelly, City Administrator

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

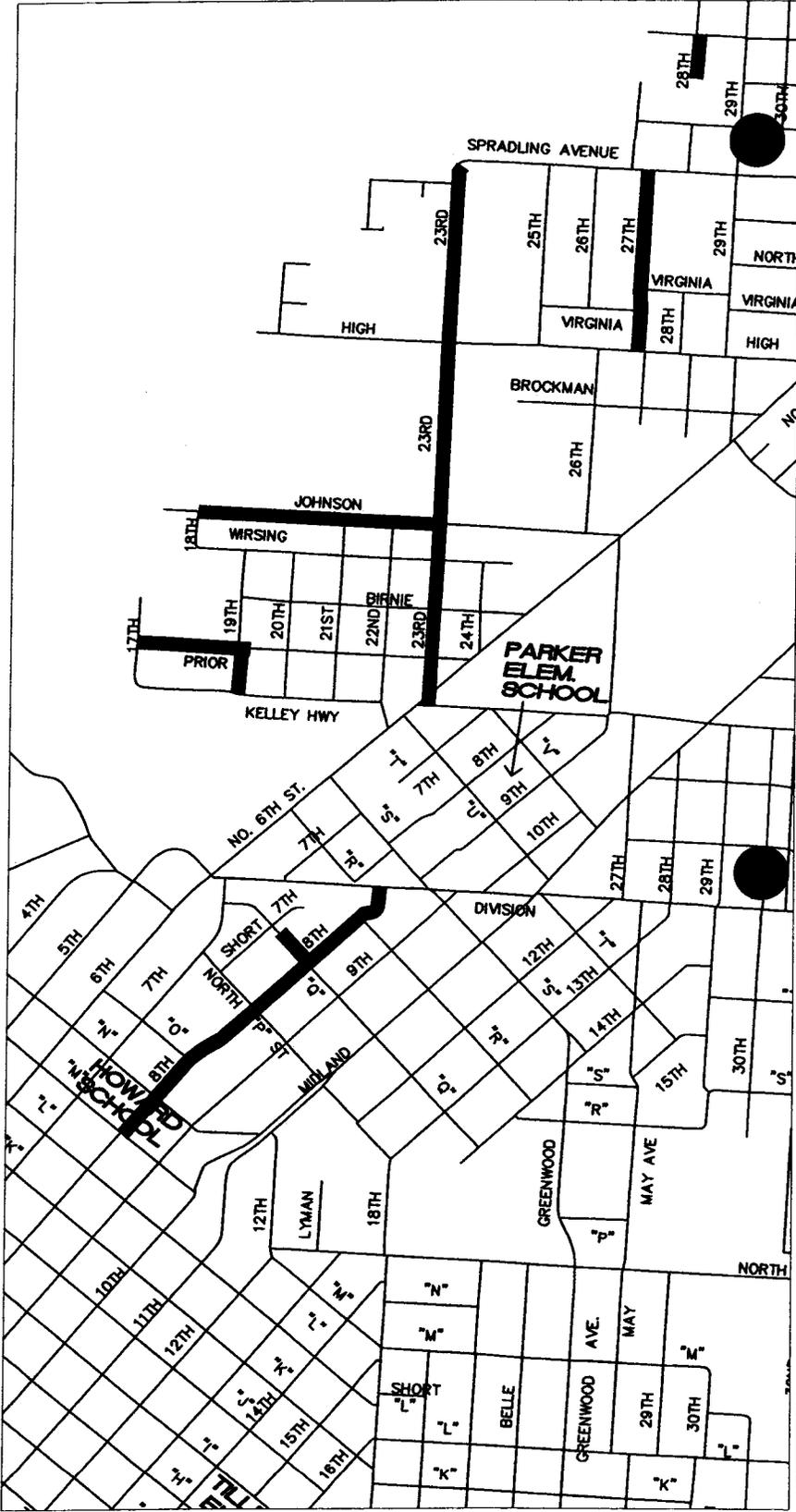
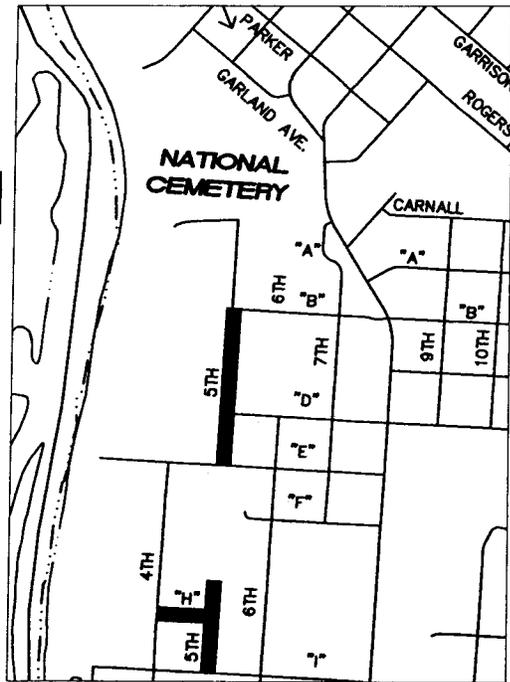
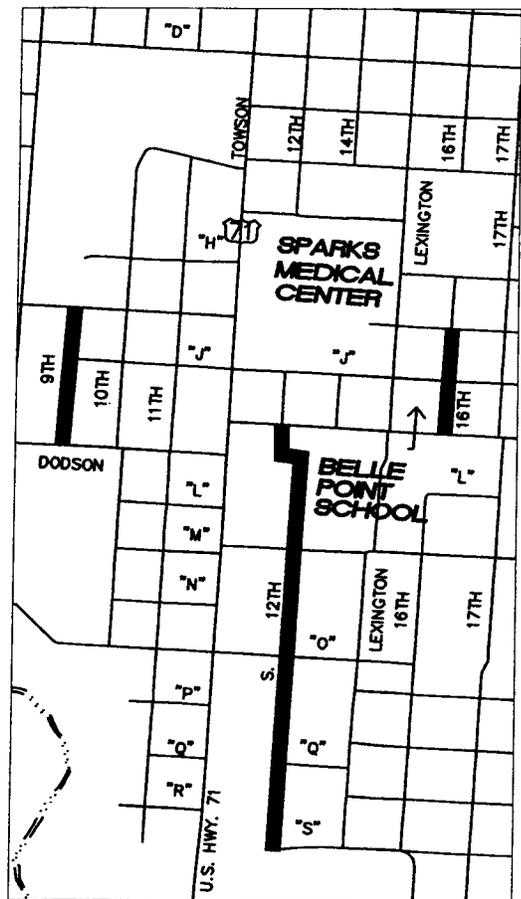
DATE: October 27, 2010

SUBJECT: 2011 Sales Tax Program
Engineering Services Agreements

The attached Resolution authorizes the Mayor to execute engineering services agreements for projects in the 2011 Sales Tax Program for streets, bridges and related drainage improvements. The locations of these projects are shown on the attached exhibits.

The professional services qualifications on file were reviewed and a summary of the selected firms is attached. The cost for the engineering services is set at a maximum not to exceed fee as noted on the resolution.

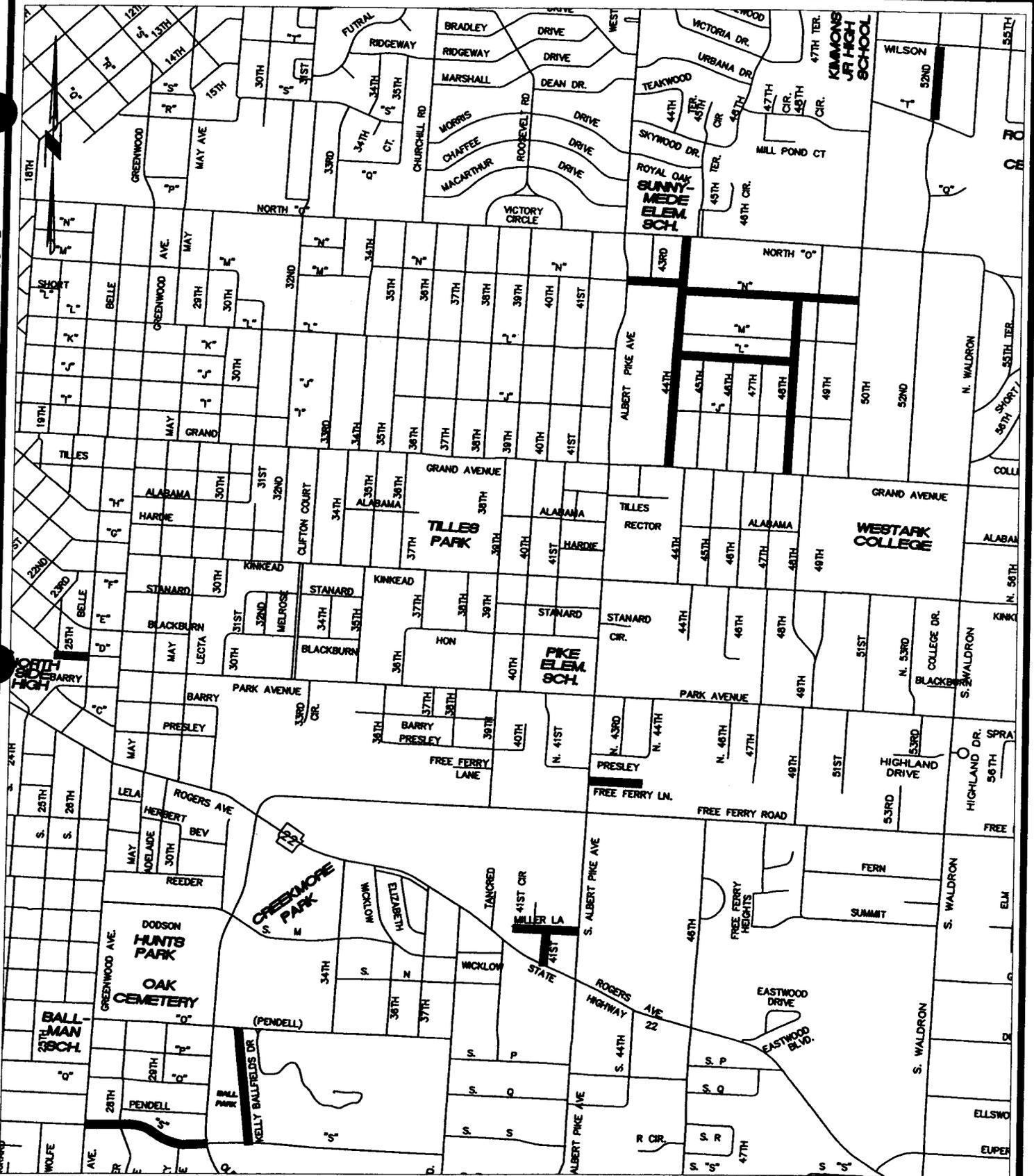
I recommend that the Resolution be adopted by the Board at the next regular meeting.



2011 CAPITAL IMPROVEMENTS PROGRAM
STREET OVERLAYS/RECONSTRUCTION



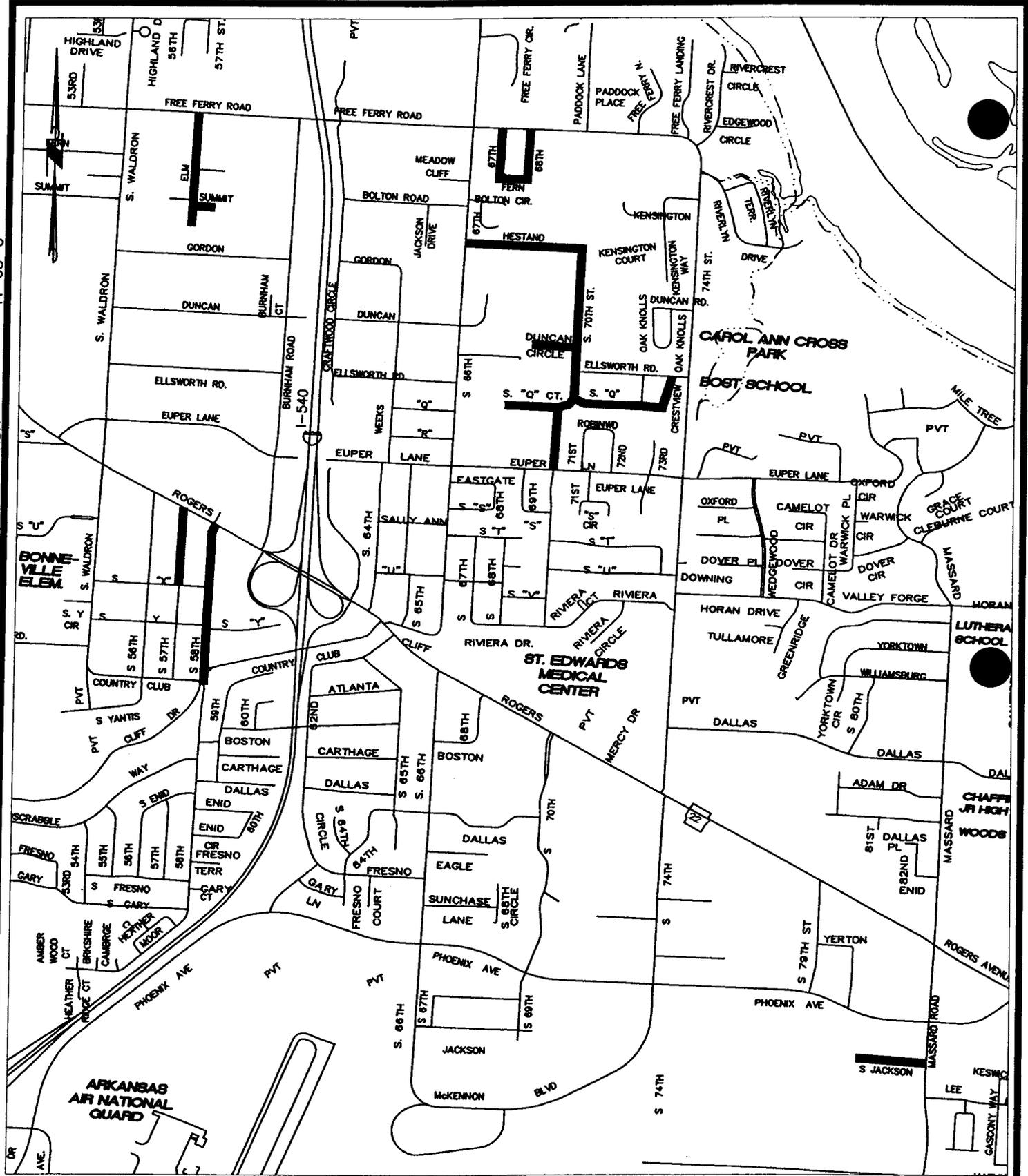
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Date: OCT. 2010
Scale: NONE
Drawn By: RBR



2011 CAPITAL IMPROVEMENTS PROGRAM
STREET OVERLAYS/RECONSTRUCTION



Project: 11-03-B
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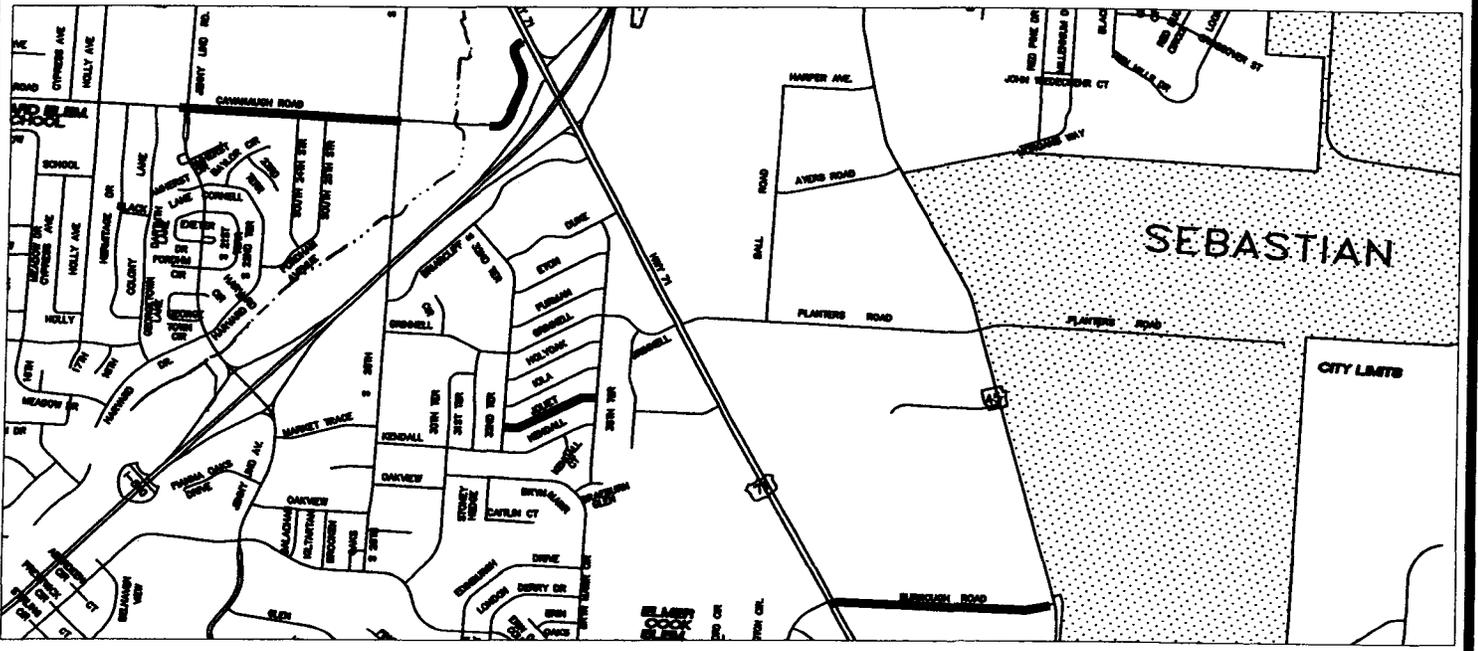
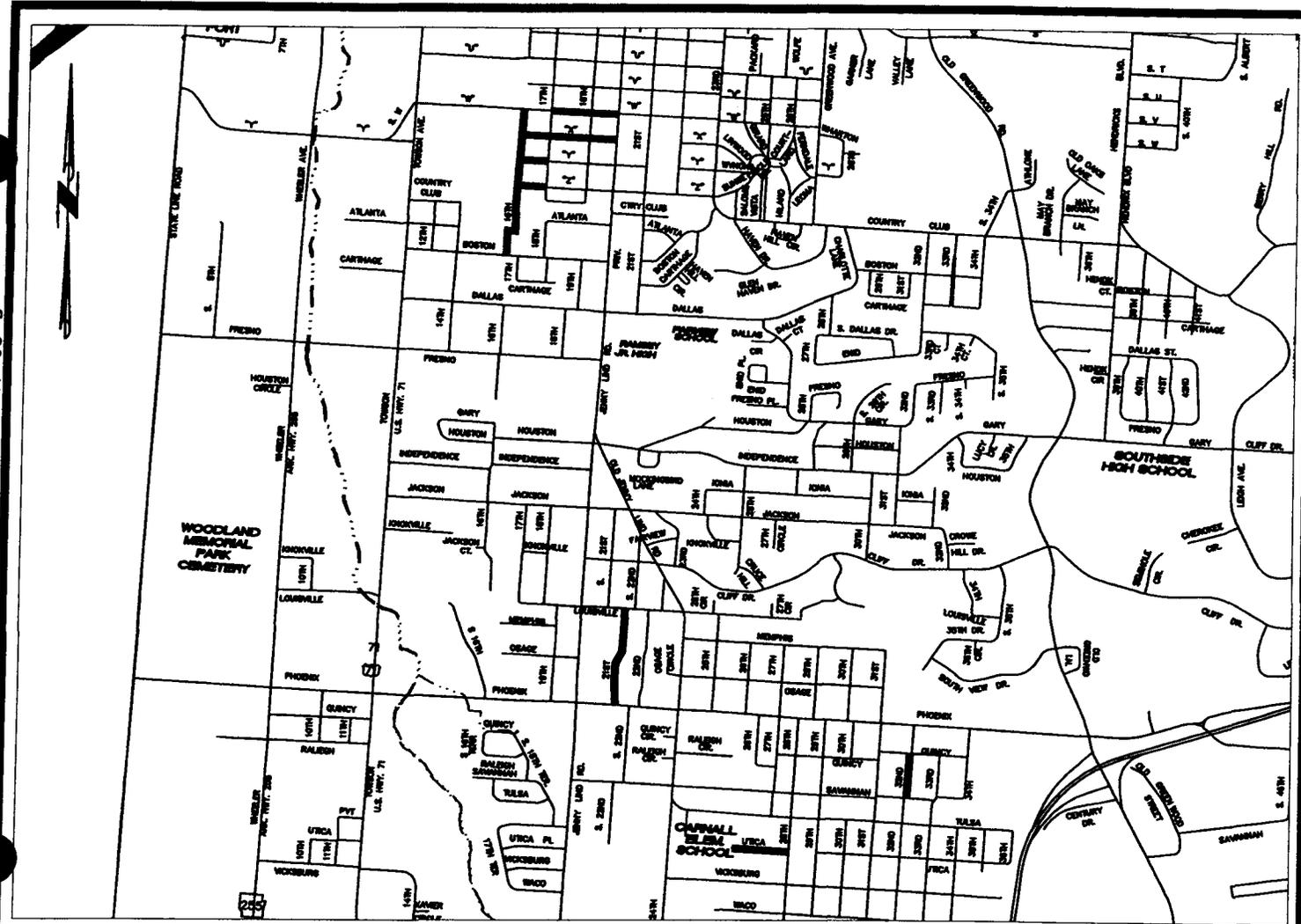


2011 CAPITAL IMPROVEMENTS PROGRAM
STREET OVERLAYS/RECONSTRUCTION



Project: 11-03-C
Date: OCT. 2010
Scale: NONE
Drawn By: RBR

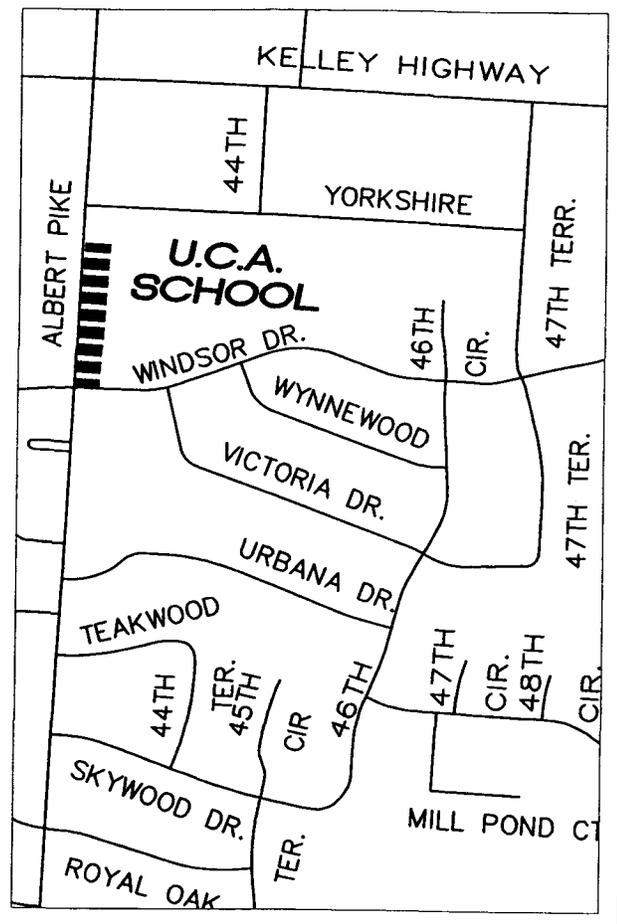
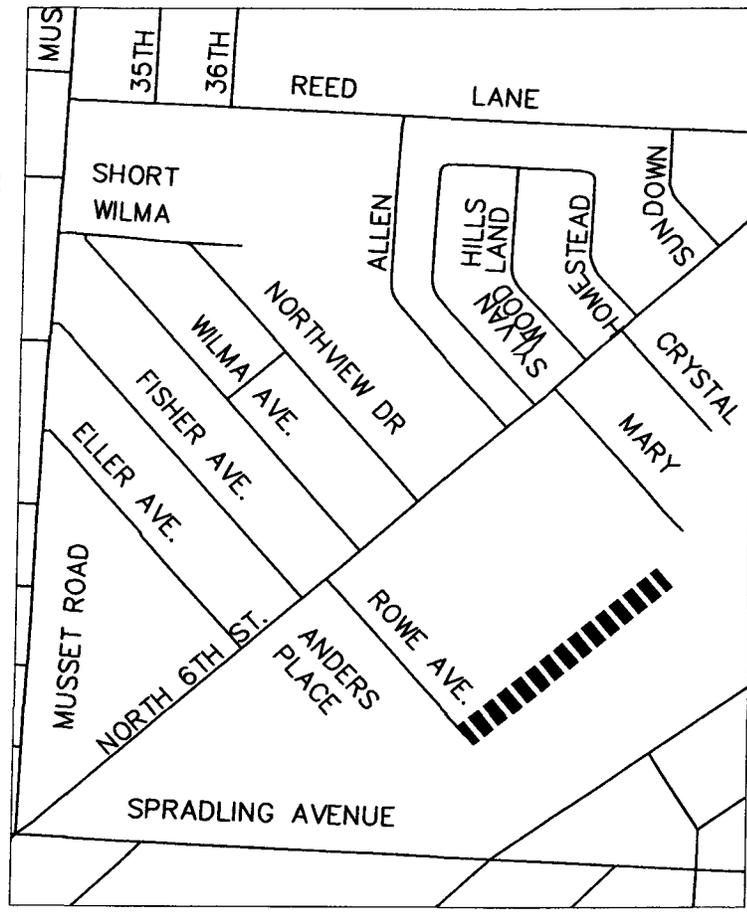
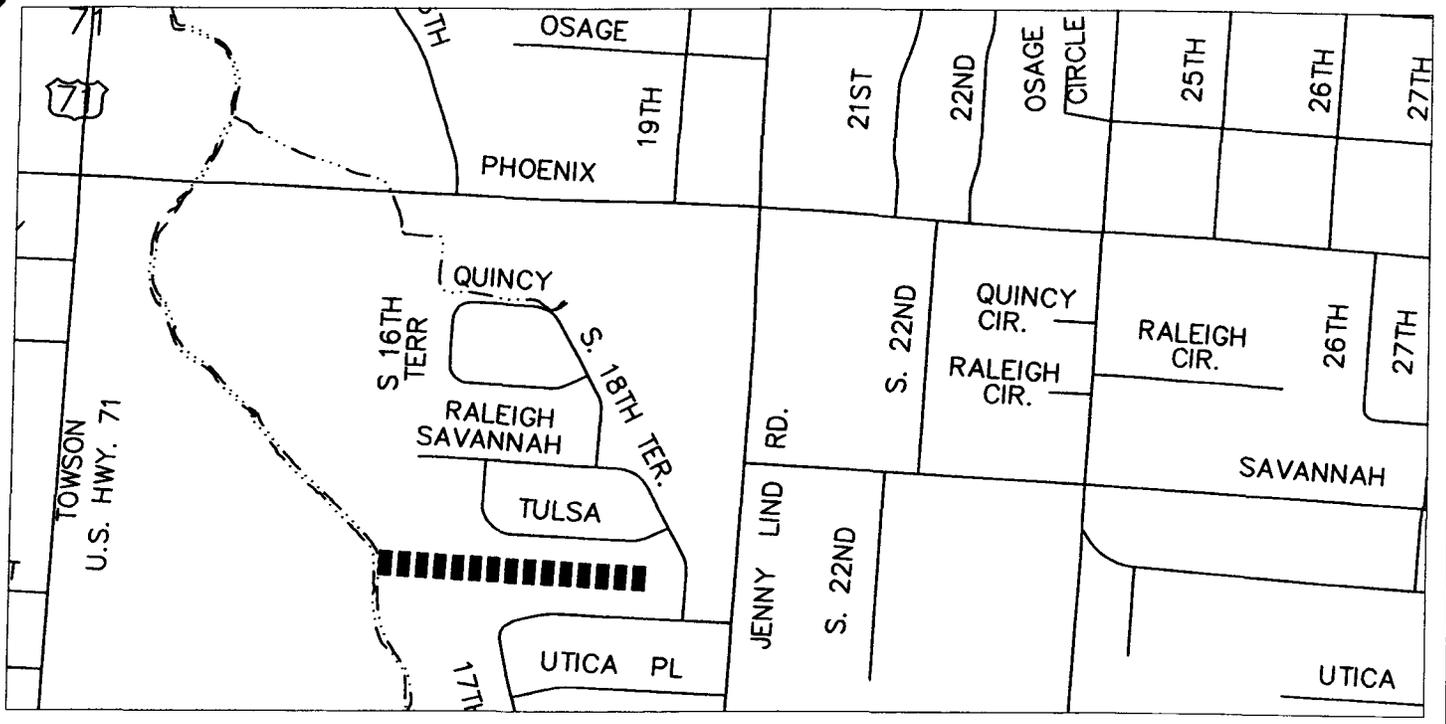
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2011 CAPITAL IMPROVEMENTS PROGRAM
STREET OVERLAYS/RECONSTRUCTION



Project:	11-03-D
Date:	OCT. 2010
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Drawn By:	RBR

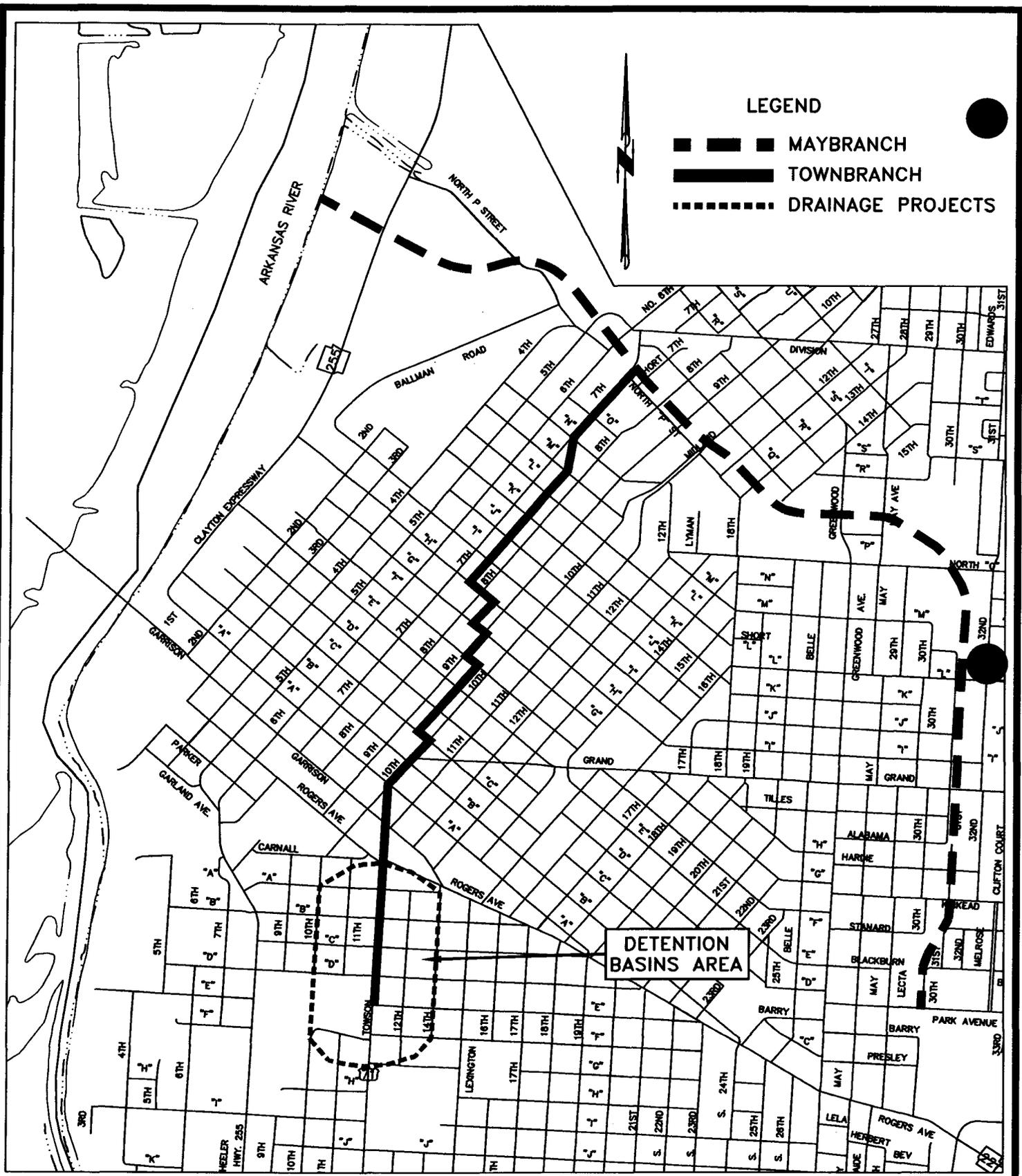


2011 CAPITAL IMPROVEMENTS PROGRAM
DRAINAGE IMPROVEMENTS



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

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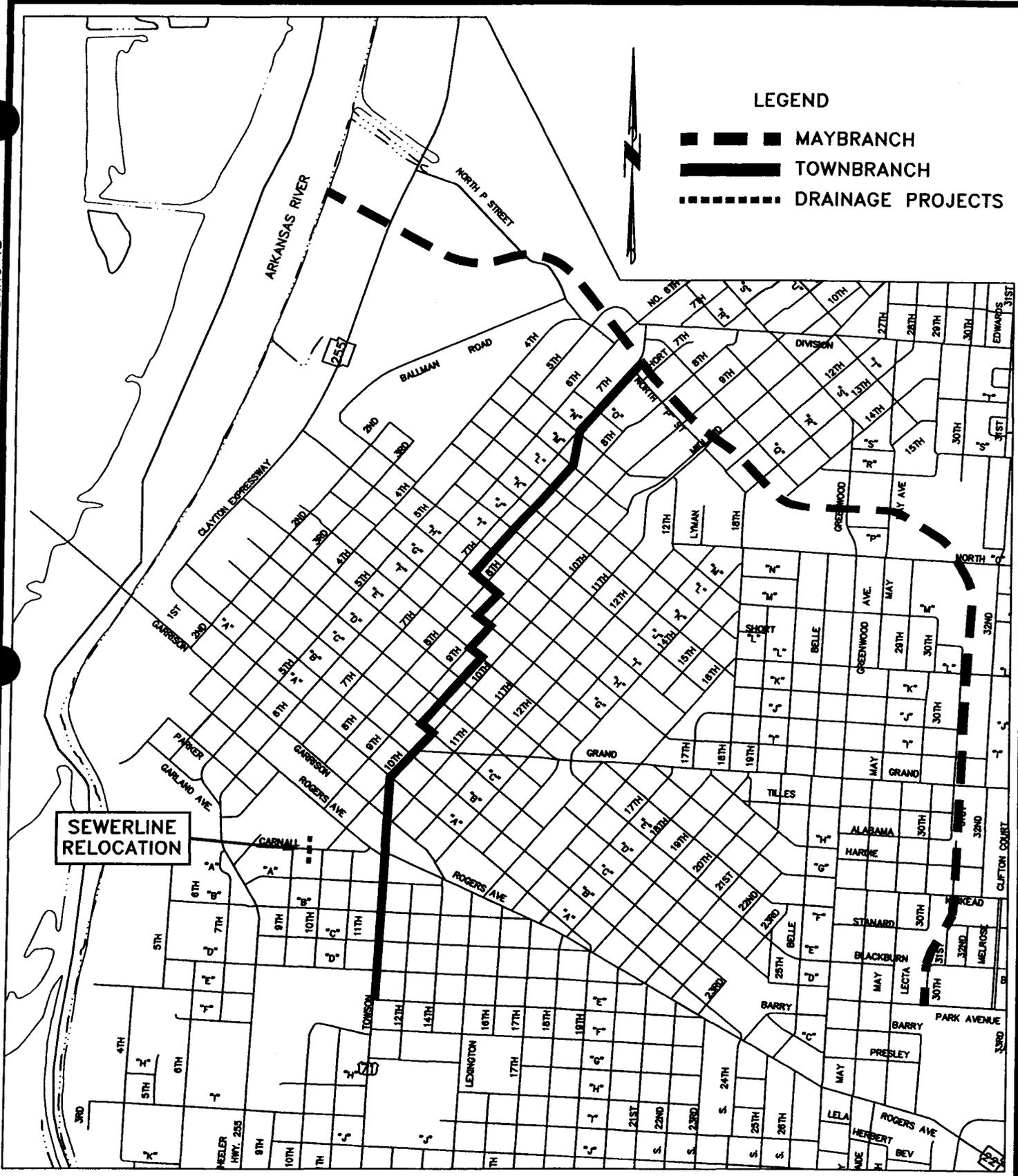
2011 CAPITAL IMPROVEMENTS PROGRAM
 DRAINAGE IMPROVEMENTS
 TOWN BRANCH DETENTION BASINS



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

LEGEND

-  MAYBRANCH
-  TOWNBRANCH
-  DRAINAGE PROJECTS

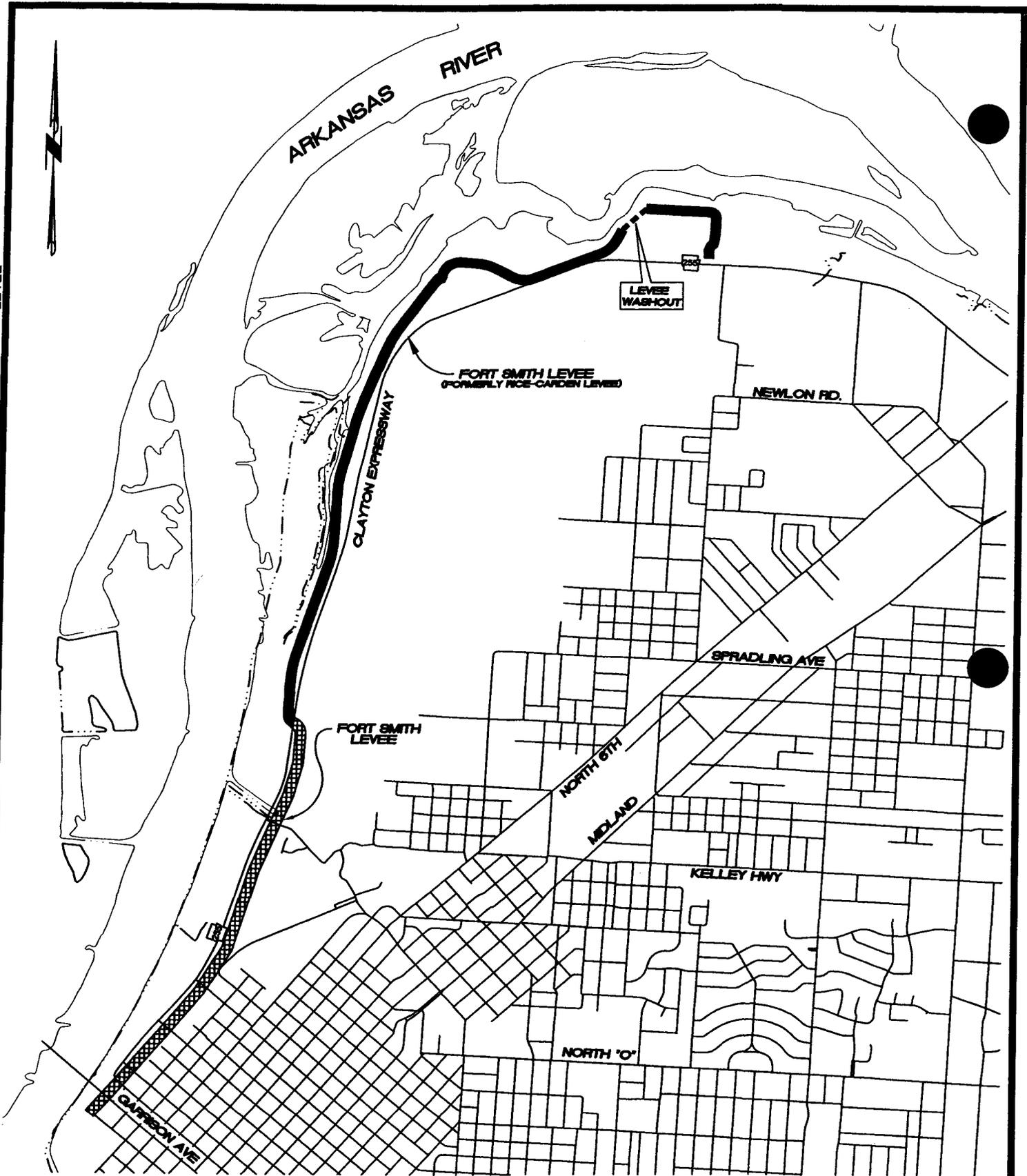


SEWERLINE RELOCATION

2011 CAPITAL IMPROVEMENTS PROGRAM
 DRAINAGE IMPROVEMENTS
 CARNALL OUTFALL



Project: 11-06-C
 Date: OCT. 2010
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 Drawn By: RBR

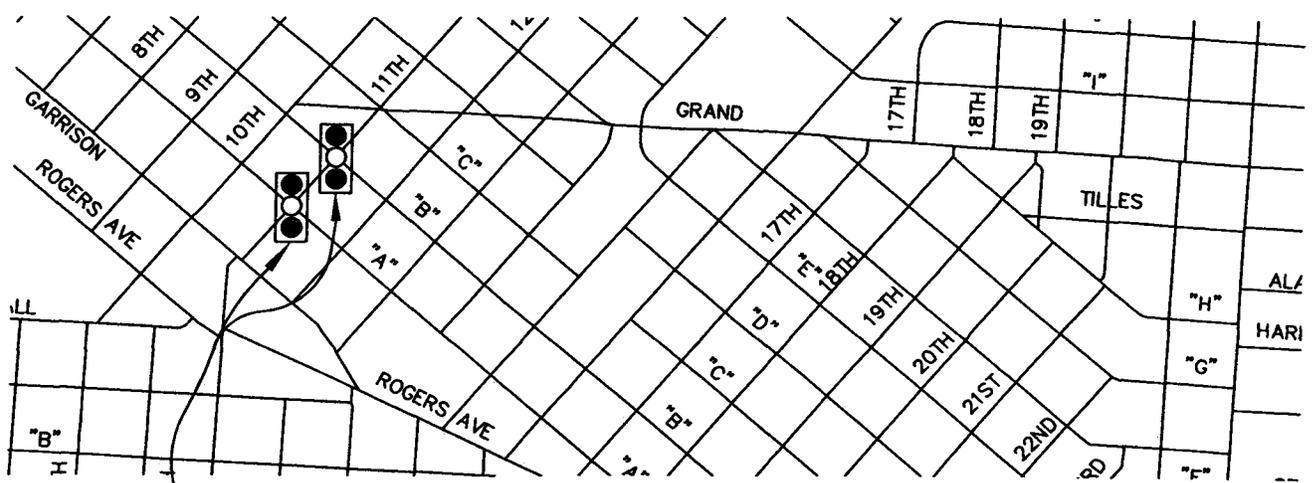


2011 CAPITAL IMPROVEMENTS PROGRAM
 LEVEE CERTIFICATION & REPAIR
 FORT SMITH, ARKANSAS

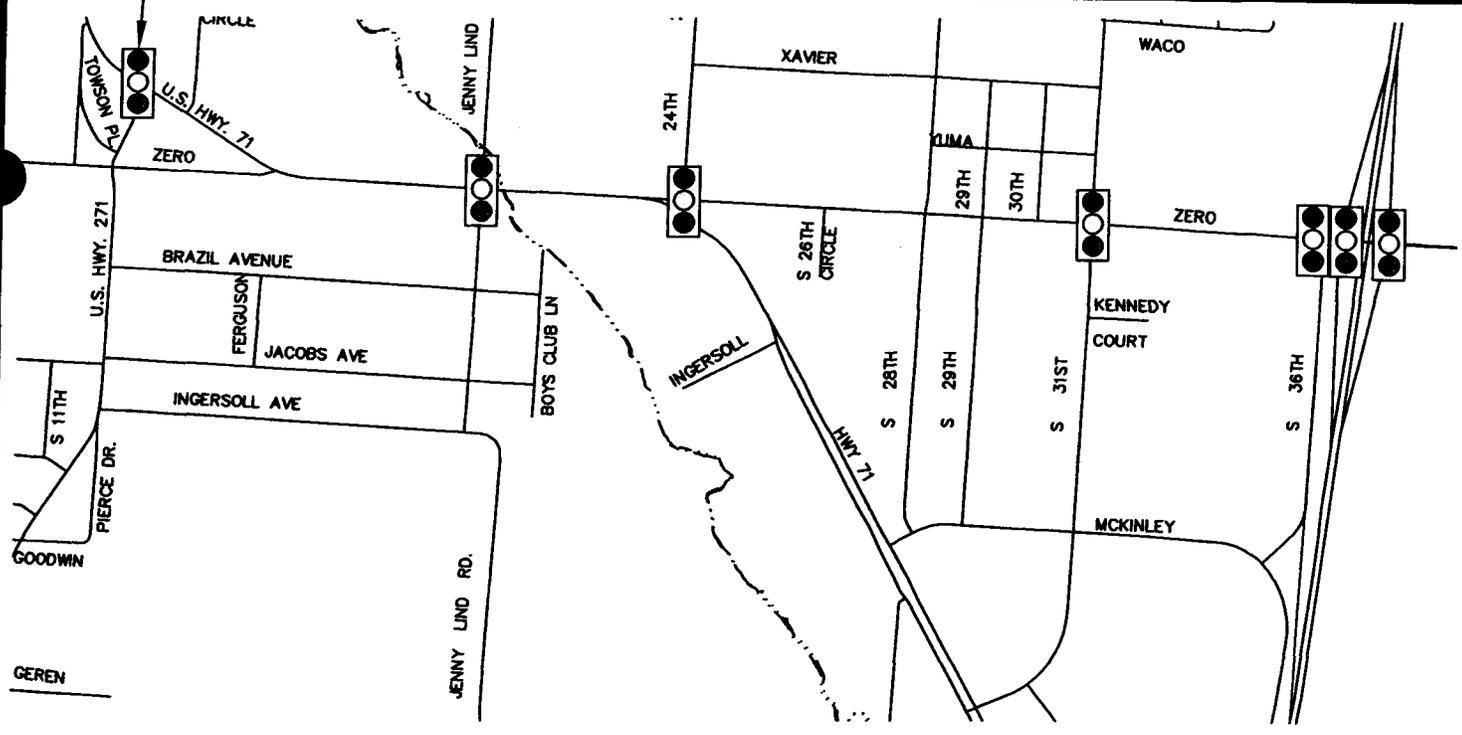


Project:	11-06-D
Date:	OCT. 2010
Scale:	NONE
Drawn By:	RBR

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 SIG EX1



PROPOSED
 SIGNAL
 REPLACEMENT



PROPOSED
 SIGNAL
 INTRECONNECT

2011 CAPITAL IMPROVEMENTS PROGRAM
 SIGNAL IMPROVEMENTS



Project:	11-09-A
Date:	OCT. 2010
Scale:	NONE
Drawn By:	RBR

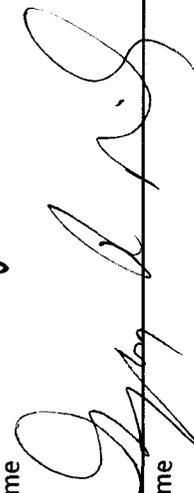
ENGINEERING CONSULTANT SELECTION - 2011 CAPITAL IMPROVEMENTS PROGRAM

Project No.	Description	Selected Firm	Qualified Firm	Qualified Firm
11-03-A	Street Overlays / Reconstruction, Phase A	McGuire	Hawkins Weir	Morrison Shipley
11-03-B	Street Overlays / Reconstruction, Phase B	Hawkins Weir	Mickle Wagner Coleman	McGuire
11-03-C	Street Overlays / Reconstruction, Phase C	Brixey	McGuire	Morrison Shipley
11-03-D	Street Overlays / Reconstruction, Phase D	Morrison Shipley	Brixey	Hawkins Weir
11-06-A	Neighborhood Drainage - Phase "A"	Leraris	Morrison Shipley	Hawkins Weir
11-06-B	Town Branch Detention Basins	CDM	Hawkins Weir	Mickle Wagner Coleman
11-06-C	Carnall Outfall Sanitary Sewer Relocation	Hawkins Weir	Morrison Shipley	Mickle Wagner Coleman
11-06-D	Fort Smith Levee Repair	Mickle Wagner Coleman	Hawkins Weir	Morrison Shipley
11-09-A	Traffic Signal Improvements	TEC	Garver	USI

Determination of the selected firm based upon review of consultant qualifications statements on file in the City Clerk's office, considering experience with respect to the type of services required, capacity and capability to perform the work, past record of performance and familiarity with the area in which the project is located.


 Name _____


 Name _____


 Name _____

RESOLUTION _____

A RESOLUTION AUTHORIZING A TIME EXTENSION, ASSESSING LIQUIDATED DAMAGES, ACCEPTING COMPLETION OF AND AUTHORIZING FINAL PAYMENT FOR THE CONSTRUCTION OF STREET OVERLAYS/RECONSTRUCTION PROJECT NO. 09-03-B

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

SECTION 1: A time extension with Township Builders, Inc., for Street Overlays/Reconstruction, Project No. 09-03-B, which increases the contract time by 62.5 calendar days, is hereby approved.

SECTION 2: The City of Fort Smith hereby assesses liquidated damages for 143.5 calendar days in the amount of \$71,750.00 on Street Overlays/Reconstruction, Project No. 09-03-B.

SECTION 3: The City of Fort Smith hereby accepts the construction of Street Overlays/Reconstruction, Project No. 09-03-B, as complete.

SECTION 4: Final payment is hereby authorized in the amount of \$67.63 to the contractor, Township Builders, Inc., for Street Overlays/Reconstruction, Project No. 09-03-B.

This Resolution adopted this _____ day of November, 2010.

APPROVED:

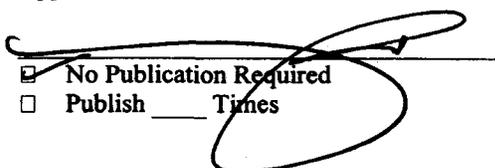
Mayor

ATTEST:

City Clerk

Approved as to Form

- No Publication Required
- Publish _____ Times



INTER-OFFICE MEMO

TO: Dennis Kelly, City Administrator

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

DATE: October 26, 2010

SUBJECT: Street Overlays/Reconstruction
Project No. 09-03-B

The above subject project consisted of asphalt street overlays, reconstruction and minor drainage improvements to the streets listed on the attached sheet and shown on attached exhibit. The total length of streets improved was approximately 3 miles. A project summary sheet is attached.

Attached is a Resolution to increase the contract time, assess liquidated damages, accept the project as complete and authorize final payment to the contractor. I recommend that the Resolution be accepted by the Board at the next regular meeting.

Enclosures

SUMMARY SHEET

City of Fort Smith
 Project Status: Complete
 Today's Date: 10/26/2010
 Staff contact name: Stan Snodgrass
 Staff contact phone: 784-2225
 Contract time (no of days): 210
 Notice to proceed issued: 7/22/2009

Project name: Street Overlays/Reconstruction
 Project number: 09-03-B
 Consultant engineer: Mickle-Wagner-Coleman, Inc.
 Project contractor: Township Builders, Inc.

	Dollar Amount	Bid Date	Contract Completion Date
Original bid award	\$1,759,442.00	6/9/2009	2/16/2010
Contract Revisions:			
1 Time extension 62.5 days			
143.5 days liquidated damages @ \$500/day	(\$71,750.00)		
2			
3			
Adjusted contract amount	\$1,687,692.00		
Payments to date (as negative):	\$1,364,534.97		
Amount of this payment	\$67.63		
Contract balance remaining	\$323,089.40		
Retainage held		0%	
Final payment	\$67.63		
Amount under adjusted contract amount as a percentage		19.1%	

Final Comments:

The project was substantially complete 206 days beyond the contract completion date. The contractor has requested that a time extension be granted due to inclement weather and adjustments in the field. The staff concurs that 62.5 additional days are warranted and recommends assessment of liquidated damages for the remaining 143.5 days. The contract specifies liquidated damages in the amount of \$500.00 per day which results in a decrease in the final payment to the contractor in the amount of \$71,750.00.

RESOLUTION _____

A RESOLUTION AUTHORIZING A TIME EXTENSION, ASSESSING LIQUIDATED DAMAGES, ACCEPTING COMPLETION OF AND AUTHORIZING FINAL PAYMENT FOR THE CONSTRUCTION OF STREET OVERLAYS/RECONSTRUCTION PROJECT NO. 09-03-D

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

SECTION 1: A time extension with Township Builders, Inc., for Street Overlays/Reconstruction, Project No. 09-03-D, which increases the contract time by 37.5 calendar days, is hereby approved.

SECTION 2: The City of Fort Smith hereby assesses liquidated damages for 57.5 calendar days in the amount of \$28,750.00 on Street Overlays/Reconstruction, Project No. 09-03-D.

SECTION 3: The City of Fort Smith hereby accepts the construction of Street Overlays/Reconstruction, Project No. 09-03-D, as complete.

SECTION 4: Final payment is hereby authorized in the amount of \$211.18 to the contractor, Township Builders, Inc., for Street Overlays/Reconstruction, Project No. 09-03-D.

This Resolution adopted this _____ day of November, 2010.

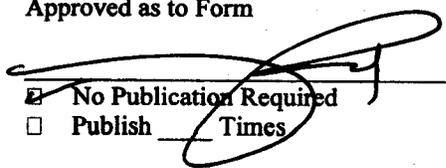
APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form



 No Publication Required
 Publish _____ Times

INTER-OFFICE MEMO

TO: Dennis Kelly, City Administrator

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

DATE: October 26, 2010

SUBJECT: Street Overlays/Reconstruction
Project No. 09-03-D

The above subject project consisted of asphalt street overlays, reconstruction and minor drainage improvements to the streets listed on the attached sheet and shown on attached exhibit. The total length of streets improved was approximately 2.3 miles. A project summary sheet is attached.

Attached is a Resolution to increase the contract time, assess liquidated damages, accept the project as complete and authorize final payment to the contractor. I recommend that the Resolution be accepted by the Board at the next regular meeting.

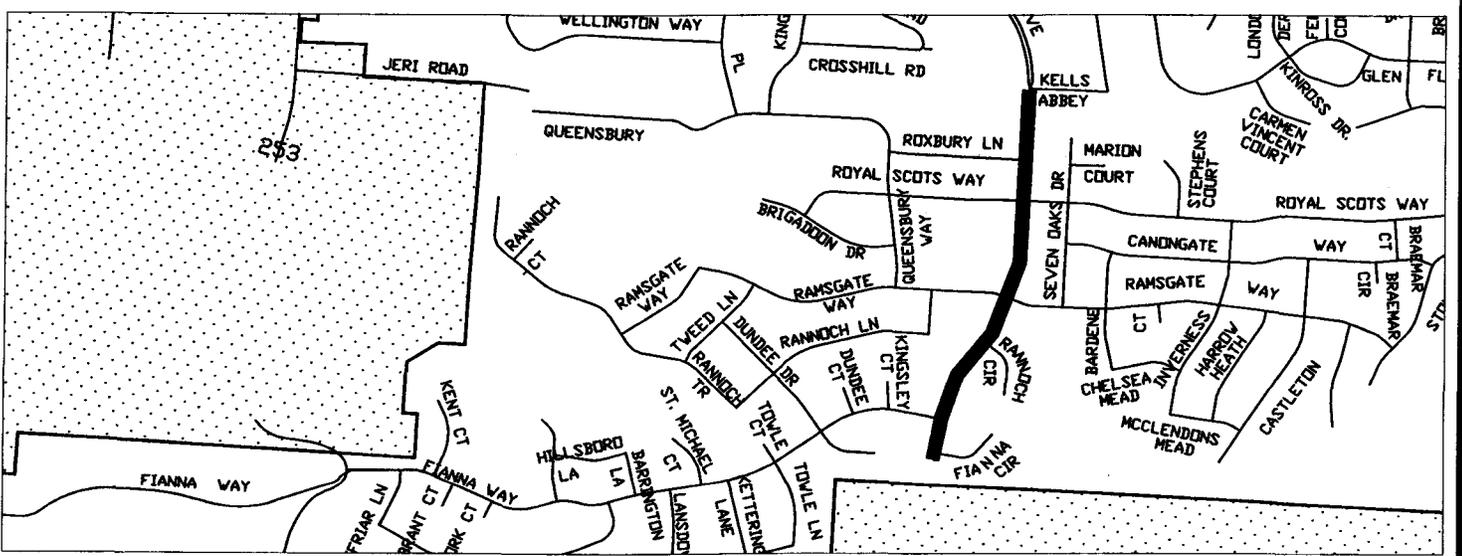
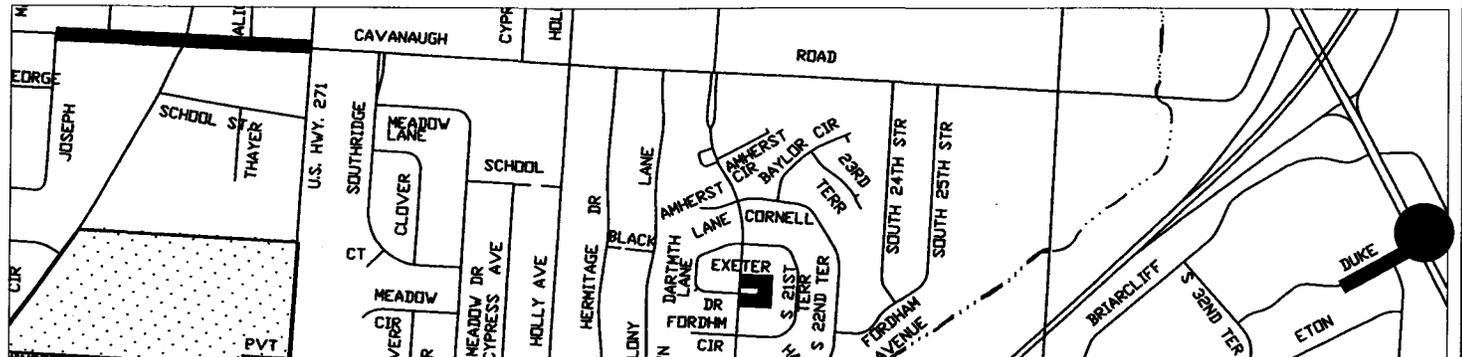
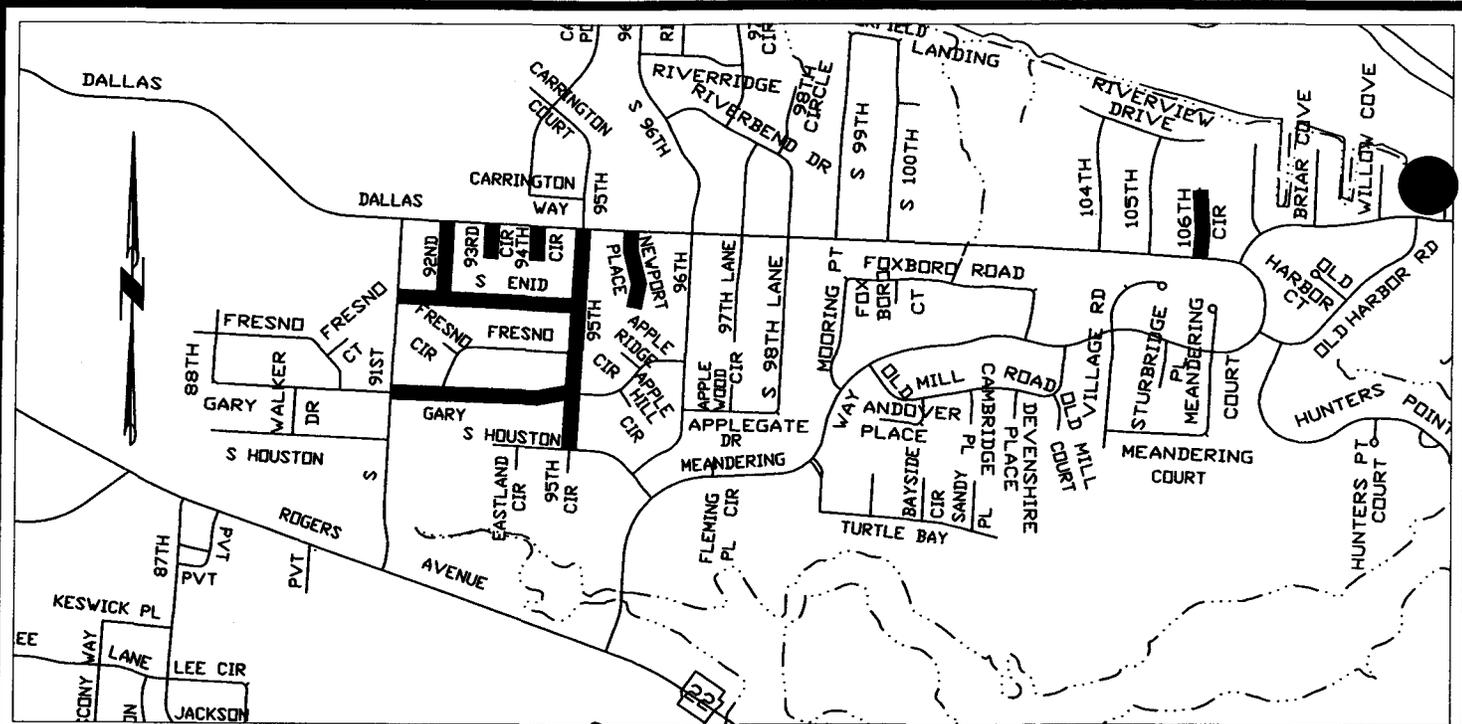
Enclosures

11/13/08-10:25

AREA D

RBR

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2009 CAPITAL IMPROVEMENTS PROGRAM
STREET OVERLAYS/RECONSTRUCTION



Project:	09-03-D
Date:	NOV. 2008
Scale:	NONE
Drawn By:	RBR

SUMMARY SHEET

City of Fort Smith
 Project Status: Complete
 Today's Date: 10/26/2010
 Staff contact name: Stan Snodgrass
 Staff contact phone: 784-2225
 Contract time (no of days): 210
 Notice to proceed issued: 6/22/2009

Project name: Street Overlays/Reconstruction
 Project number: 09-03-D
 Consultant engineer: Brixey Engineering
 Project contractor: Township Builders, Inc.

	Dollar Amount	Bid Date	Contract Completion Date
Original bid award	\$1,741,991.00	5/12/2009	1/17/2010
Contract Revisions:			
1 Time extension 37.5 days			
57.5 days liquidated damages @ \$500/day	(\$28,750.00)		
2			
3			
Adjusted contract amount	\$1,713,241.00		
Payments to date (as negative):	\$1,419,098.16		
Amount of this payment	\$211.18		
Contract balance remaining	\$293,931.66		
Retainage held		0%	
Final payment	\$211.18		
Amount under adjusted contract amount as a percentage		17.2%	

Final Comments:

The project was substantially complete 95 days beyond the contract completion date. The contractor has requested that a time extension be granted due to inclement weather and adjustments in the field. The staff concurs that 37.5 additional days are warranted and recommends assessment of liquidated damages for the remaining 57.5 days. The contract specifies liquidated damages in the amount of \$500.00 per day which results in a decrease in the final payment to the contractor in the amount of \$28,750.00.

RESOLUTION _____

A RESOLUTION AUTHORIZING A TIME EXTENSION, ASSESSING LIQUIDATED DAMAGES, ACCEPTING COMPLETION OF AND AUTHORIZING FINAL PAYMENT FOR THE CONSTRUCTION OF 2009 SIDEWALK PROGRAM, PROJECT NO. 09-20-B CDBG PROJECT #8930

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

SECTION 1: A time extension with Township Builders, Inc., for 2009 Sidewalk Program, Project No. 09-20-B, CDBG Project #8930, which increases the contract time by 26 calendar days, is hereby approved.

SECTION 2: The City of Fort Smith hereby assesses liquidated damages for 13 calendar days in the amount of \$6,500.00 on 2009 Sidewalk Program, Project No. 09-20-B, CDBG Project #8930.

SECTION 3: The City of Fort Smith hereby accepts the construction of 2009 Sidewalk Program, Project No. 09-20-B, CDBG Project #8930, as complete.

SECTION 4: Final payment is hereby authorized in the amount of \$234.33 to the contractor, Township Builders, Inc., for 2009 Sidewalk Program, Project No. 09-20-B, CDBG Project #8930.

This Resolution adopted this _____ day of November, 2010.

APPROVED:

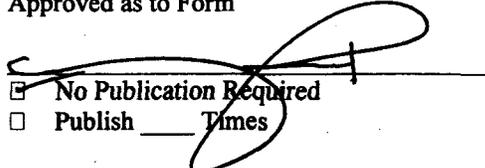
Mayor

ATTEST:

City Clerk

Approved as to Form

- No Publication Required
- Publish _____ Times



INTER-OFFICE MEMO

TO: Dennis Kelly, City Administrator

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

DATE: October 26, 2010

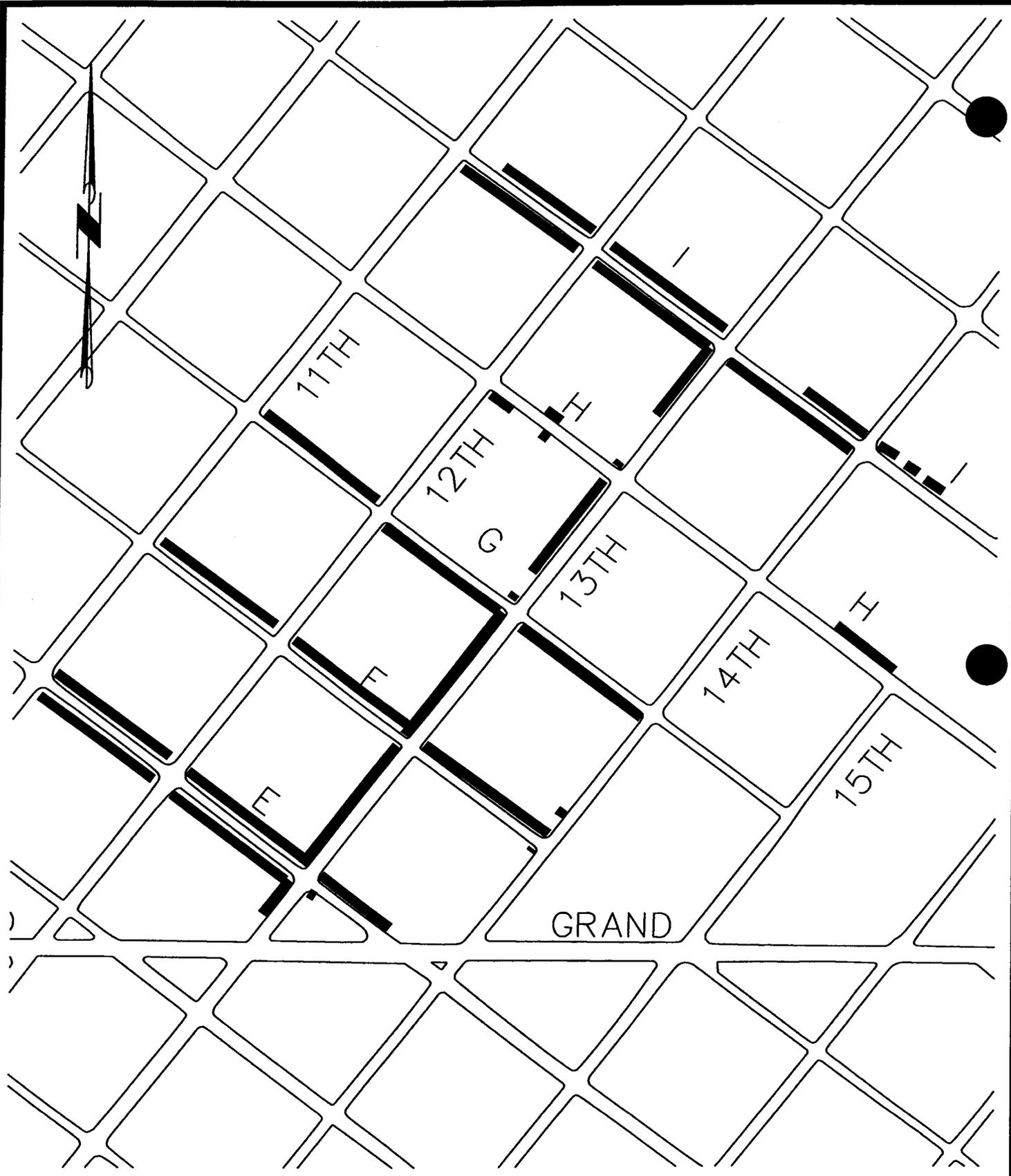
SUBJECT: 2009 Sidewalk Program
Project No. 09-20-B
CDBG Project #8930

This project included the repair and replacement of sidewalks and handicap ramps in the area bounded by North "I" Street, Grand Avenue, North 11th Street and North 15th Street as shown on the attached map. This sidewalk project received Community Development Block Grant - Recovery Funds (CDBG-R) in the amount of \$223,294 to assist with the project. The remainder of the funds for these sidewalk repairs were provided through the Sidewalk Construction Fund (6101). A project summary sheet is attached.

Attached is a Resolution to increase the contract time, assess liquidated damages, accept the project as complete and authorize final payment to the contractor. I recommend that the Resolution be accepted by the Board at the next regular meeting.

Enclosures

G:\DRAWINGS\CIP\00-00 CIPALL\Sidewalks\2009_09-20-B\Quantities & Notes.dwg 06/19/09-08:29 RBR EXHIBIT



2009 SIDEWALK IMPROVEMENTS
 LOCATION MAP
 FORT SMITH, ARKANSAS



Project:	09-20-B
Date:	JUNE 2009
Scale:	NONE
Drawn By:	RBR

SUMMARY SHEET

City of Fort Smith
 Project Status: Complete
 Today's Date: 10/26/2010
 Staff contact name: Stan Snodgrass
 Staff contact phone: 784-2225
 Contract time (no of days): 180
 Notice to proceed issued: 09/28/2009

Project name: 2009 Sidewalk Program (CDBG)
 Project number: 09-20-B, CDBG Project #8930
 Consultant engineer: City of Fort Smith
 Project contractor: Township Builders, Inc.

	Dollar Amount	Bid Date	Contract Completion Date
Original bid award	\$405,987.00	6/16/2009	3/27/2010
Contract Revisions:			
1 Time extension 26 days			
13 days liquidated damages @ \$500/day	(\$6,500.00)		
2			
3			
Adjusted contract amount	<u>\$399,487.00</u>		
Payments to date (as negative):	\$329,982.23		
Amount of this payment	\$234.33		
Contract balance remaining	\$69,270.44		
Retainage held	0%		
Final payment	\$234.33		
Amount under adjusted contract amount as a percentage	17.3%		

Final Comments:

The project was substantially complete 39 days beyond the contract completion date. The contractor has requested that a time extension be granted due to inclement weather and adjustments in the field. The staff concurs that 26 additional days are warranted and recommends assessment of liquidated damages for the remaining 13 days. The contract specifies liquidated damages in the amount of \$500.00 per day which results in a decrease in the final payment to the contractor in the amount of \$6,500.00.

10E

ORDINANCE NO. _____

AN ORDINANCE DECLARING AN EXCEPTIONAL SITUATION AND WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING FOR THE REPAIRS TO THE D7R CATERPILLAR DOZER AT THE CITY LANDFILL

WHEREAS, the Landfill Division of the Department of Sanitation, in order to conduct business efficiently and in a timely manner and to fully and adequately provide for the compacting of refuse and the spread of waste evenly in layers over the landfill, on behalf of the inhabitants of the City, and,

WHEREAS, J.A. Riggs Tractor Company, a provider of primary component parts, materials, and services for this dozer, is a certified dealer of such parts and services and is an approved City vendor and is able to provide these repair services in order for the Landfill Division to conduct and maintain uninterrupted daily operations at the landfill.

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

SECTION 1: An exceptional situation exists requiring the waiving of the conditions of competitive bidding, so that competitive bidding requirements are hereby waived, and the repairs to the dozer for \$50,770.98 from J.A. Riggs Tractor Company, are approved.

Passed and approved this _____ day of November, 2010.

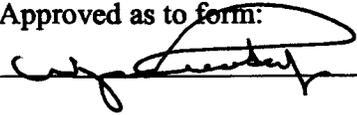
APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form:



No Publication Required

Publish ____ Times

Interoffice Memorandum

TO: Dennis Kelly, City Administrator
COPY TO: Baridi Nkokheli, Director-Department of Sanitation
FROM: Alie Bahsoon, Purchasing Manager *AB*
SUBJECT: Repairs to Asset 4017 (Landfill Dozer)
DATE: October 29, 2010
BID TAB: N/A



The 2004 Caterpillar D7R dozer used at the City landfill has experienced transmission failure and is in need of immediate repairs.

As indicated by the enclosed memorandum from the Department of Sanitation, the dozer was taken to the Caterpillar dealer, J.A. Riggs Tractor Company for evaluation and analysis. The repair estimate was for \$50,770.98.

The purpose of this memorandum and ordinance is to meet and fulfil our Purchasing requirements as mandated in the Fort Smith Municipal Code, **Section 2-182(B)(5)**, "*All purchases or contracts where the expenditure is forty thousand dollars (\$40,000.00) or more may be made with the approval of the board of directors after the securing of competitive bids*" and, **Section 2-185 Same-Waiver**: "*The board of directors, by ordinance, may waive the requirement of competitive bidding in exceptional situations where such procedure is not feasible, but such exceptional situation being lacking, the board of directors may not except any particular bid from the requirement of competitive bidding.*"

I am recommending approval in accordance with the repair estimate as noted. Funding for these repairs are available out of the Landfill 2010 Budget, *Repair of Equipment Account (6305-207)* and a Purchase Order will be issued on 11/03/10.

Please let me know if you should require any additional information.



MEMORANDUM

October 29, 2010

To: Dennis Kelly, City Administrator

From: T. Baridi Nkokheli, Director

Subject: Repairs to Landfill Dozer (Asset 4017)

Our 2004 Caterpillar D-7R dozer (Asset 4017) recently developed shifting and drive train overheating issues and is in need of immediate repairs. Our fleet division mechanics attempted to troubleshoot the dozer but found that a Caterpillar dealer would need to complete the troubleshooting due to the need for proprietary software. Therefore, the machine was sent to J.A. Riggs Tractor Company (Riggs Tractor) for evaluation.

Riggs Tractor had to disassemble a portion of the dozer's drive train during their assessment. The unit's transmission requires rebuilding because of bearing and clutch failures. These failures caused contaminants to pollute the drive train and its components. The left and right final drives also require rebuilding.

The total estimated cost of the repairs is \$50,770.98. In the meantime, we are renting a dozer from another local dealer for \$8,412.25 per month. You will find enclosed an ordinance for your review to waive the competitive bidding process for this particular repair since the machine is already disassembled at a dealership and to reduce our overall cost. Obtaining an additional bid would require reassembly and transportation to another dealer's facility as well as increased down time requiring extended equipment rental.

Funding for these repairs are available and have been appropriated in the 2010 Landfill Budget and a Purchase Order will be issued following Board approval. We recommend that the proposed ordinance be accepted by the Board of Directors at the next regular meeting.

Please let me know if you should require additional information.

NK

ORDINANCE NO. _____

AN ORDINANCE DECLARING AN EXCEPTIONAL SITUATION AND WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING FOR THE PURCHASE OF TEN POLICE VEHICLES FOR THE POLICE DEPARTMENT

WHEREAS, the Patrol Division of the City of Fort Smith Police Department is in need of 10 new police vehicles in order to conduct business efficiently and in a timely manner and to adequately serve and protect the citizens of Fort Smith, and,

WHEREAS, Reliable Chevrolet of Richardson Texas is an authorized General Motors dealer and a provider of law enforcement fleet vehicles

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

SECTION 1: An exceptional situation exists requiring the waiving of the conditions of competitive bidding, so that competitive bidding requirements are hereby waived, and the purchase of 10 (ten) police vehicles for \$247,456.00 from Reliable Chevrolet Company, is approved.

SECTION 2: There is hereby authorized an appropriation in the amount of \$247,456 from the undesignated balance of the General Fund to 4704-301 to purchase the 10 (ten) police vehicles identified in Section 1.

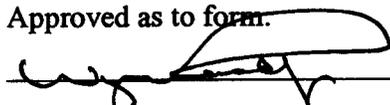
Passed and approved this _____ day of November, 2010.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form.


No Publication Required

Publish ____ Times

Interoffice Memorandum

TO: Dennis Kelly, City Administrator
COPY TO: Ray Gosack, Deputy City Administrator
Kevin Lindsey, Chief of Police
FROM: Alie Bahsoon, Purchasing Manager *AB*
SUBJECT: Ordinance to Purchase Ten Police Vehicles
DATE: October 27, 2010
BID TAB: N/A

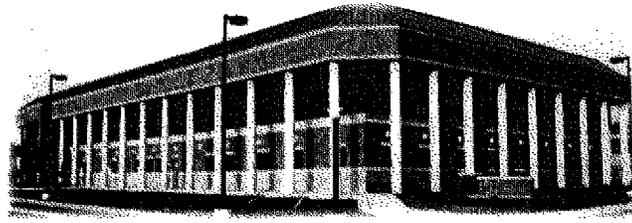


You will find attached a memorandum from Captain Levi Risley of the Fort Smith Police Department regarding the need to purchase 10 (ten) new police vehicles for the Patrol Division of the Fort Smith Police Department. The Department is looking at acquiring these vehicles from Reliable Chevrolet of Richardson, Texas.

In order to take advantage of the dealer incentives, the enclosed ordinance is to request approval from the Board to purchase these vehicles by waiving the competitive bidding process and to authorize an appropriation of funds out of the existing 2010 General Fund Balance. In doing so, the 10 vehicles requested from next year's budget will be deleted from the 2011 Budget and the 2010 Budget will reflect the capital purchase of \$247,456 in program 4704 (Patrol Division).

The purpose of this memorandum and ordinance is to meet and fulfil our Purchasing requirements as mandated in the Fort Smith Municipal Code, *Section 2-182(B)(5)*, "All purchases or contracts where the expenditure is forty thousand dollars (\$40,000.00) or more may be made with the approval of the board of directors after the securing of competitive bids" and, *Section 2-185 Same-Waiver*: "The board of directors, by ordinance, may waive the requirement of competitive bidding in exceptional situations where such procedure is not feasible, but such exceptional situation being lacking, the board of directors may not except any particular bid from the requirement of competitive bidding."

Please let me know if you or any of the Board members should have any questions.



Fort Smith Police Department

Kevin Lindsey, Chief of Police

Inter-Office Memorandum

To: Mr. Dennis Kelly, City Administrator

From: Captain Levi Risley

Subject: Patrol Vehicle Purchase

Date: October 27th, 2010

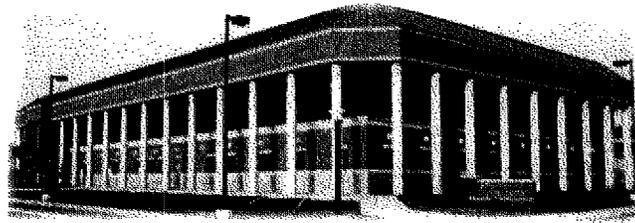
The proposed 2011 budget was going to include the replacement of 10 patrol vehicles. The Fort Smith Police Department has become aware of an opportunity to acquire these vehicles immediately at a lower cost. We request that the purchase be moved from the 2011 budget to the 2010 budget, that the 2010 budget be amended for this purchase, and that competitive bidding be waived.

The Fort Smith Police Department has located ten (10) Chevrolet Tahoe Police Package Vehicles (PPV) from Reliable Chevrolet, Richardson Texas. The purchase request is for the immediate acquisition of vehicles from the dealership. The prospective vehicles are being offered to the City at a cost of \$24,745.60 each. This represents a savings of \$640.40 per vehicle when compared to the current 2010 State of Arkansas Contact price (which is no longer available) and \$1,190.40 less per vehicle than the anticipated 2011 State of Arkansas Contact price.

The vehicles, if purchased from Reliable Chevrolet, would be ready for immediate delivery, instead of waiting five (5) to six (6) months after January 2011 for the delivery of vehicles purchased under the State of Arkansas Contact. With immediate purchase of the vehicles, the expected deployment time will be less than one month. This rapid deployment will avoid costs of maintaining the older vehicles being replaced. The savings in maintenance cost is estimated at \$11,500.00. The ten (10) new vehicles will replace four (4) vehicles that have already been sold in the 2010 City Auction and six (6) older patrol vehicles with an average age of six (6) years and average mileage of 124,482 miles.

During the 2010 budget year, the Fort Smith Police Department's Patrol Division has sought out cost saving ideas and methods to address a struggling economy and remain good stewards of taxpayers' dollars. Four (4) such methods involved realigning patrol shifts, doubling-up officers when possible to save fuel, shutting off police unit motors when

"Pride and Progress"

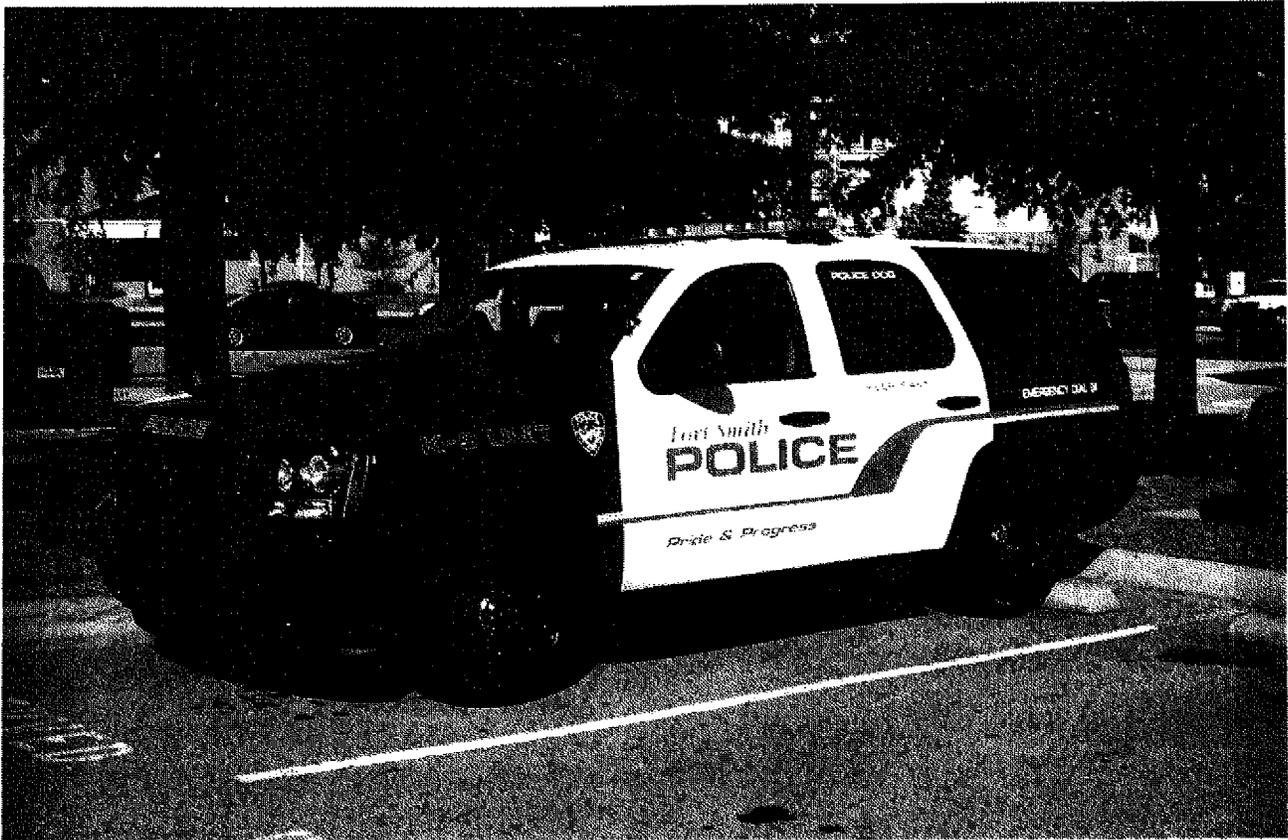


Fort Smith Police Department

Kevin Lindsey, Chief of Police

unoccupied and significantly reducing the amount of court overtime costs. In keeping with these practices, we sought out a police vehicle with the lowest life-cycle costs and found it to be the Chevrolet Tahoe PPV. The Tahoe, which is rated for police use, addresses a number of logistical concerns unique to our current situation. The City's expanding southern boundaries cause our police officers to drive greater distances to adequately cover both residential and business locations. For example, traveling from the police department to the southern edge of the city limits is approximately eleven (11) miles. Logically, officers must have more available vehicle space to meet on-hand equipment needs. Increased technology like the mobile data terminals, in-car audio/video recording equipment and automatic vehicle license plate readers require additional space in the automobile's cabin, so there is less and less space for the officer and/or a passenger. The Chevrolet Tahoe PPV is rated at 14 miles per gallons (mpg) city and 20 mpg highway, while the Ford Crown Victoria is rated 14 mpg city and 21 mpg highway, therefore we found no significant difference between the two but we anticipate less maintenance costs in the 2011 budget. Our K-9 officer has utilized a Chevrolet Tahoe PPV for one year and the only maintenance costs it has incurred has been routine service.

"Pride and Progress"



AGENDA ~ **Summary**

FORT SMITH BOARD OF DIRECTORS REGULAR MEETING

NOVEMBER 2, 2010 ~ 6:00 P.M.

**FORT SMITH PUBLIC SCHOOLS
SERVICE CENTER
3205 JENNY LIND ROAD**

5:30 p.m. - Reception for out-going Ward 4 Director Bill Maddox

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 OCTOBER 19, 2010 REGULAR MEETING

Unanimously approved as written

ITEMS OF BUSINESS:

1. Presentation
 - Plaque of Appreciation to out-going Ward 4 Director Bill Maddox
Presentation only
2. Public hearing and ordinance authorizing the issuance of Airport Refunding Revenue Bonds; providing for the payment of the principal of and interest on the bonds; and prescribing other matters relating thereto
Approved 7 in favor, 0 opposed / Ordinance No. 53-10
3. Presentation of proposed 2011 City Budget
Presentation only

4. Items relative to Middleton Farms annexation
The Board voted 7 in favor, 0 opposed to table Items No. 4A, 4B and Item 6 to a later date yet to be determined, but after reconsideration of Item No. 5 by the Planning Commission.
 - A. Resolution approving a pre-annexation agreement with Richard Griffin, Bradley Kidder, Bennie Westphal and Patsy Bateman for the Middleton Farms Subdivision
 - B. Ordinance accepting certain territory into the city of Fort Smith, Arkansas (327 acres)
5. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan - Extra Territorial Jurisdiction Low Density Residential to Residential Detached, Residential Attached and Commercial Neighborhood; Rezoning - Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RS-3 by extension; RS-4, RS-5, RM-3, RSD-3 and Commercial-2 by classification / 12905 Rye Hill Road, Middleton Farms*)
Referred back to the Planning Commission by vote of 7 in favor, 0 opposed (*This is a companion item to Items No. 4A & 4B*)
6. Ordinance amending the Master Street Plan of the City of Fort Smith, Arkansas
This item was included within the motion to table Items No. 4A & 4B. (*This is a companion item to Items No. 4A & 4B*)
7. Ordinance rezoning identified property and amending the zoning map (*Industrial 1 to Commercial-5 by extension / 5504 Wheeler Avenue*)
Approved 7 in favor, 0 opposed / Ordinance No. 54-10
8. Ordinance rezoning identified property and amending the zoning map (*Commercial-2 to Residential Multi-Family High Density (RM-4) by extension / 1115 South 17th Street*)
Approved 7 in favor, 0 opposed / Ordinance No. 55-10
9. Ordinance rezoning identified property and amending the zoning map (*Transitional to Commercial-2 by extension / 5311 South 28th Street and 2851 South Xavier Street*)
Approved 7 in favor, 0 opposed / Ordinance No. 56-10
10. Consent Agenda
 - A. Resolution authorizing engineering service agreements for the design of projects in the 2011 Sales Tax Program (\$786,035.00 / various projects)
Approved 7 in favor, 0 opposed / Resolution No. R-197-10
 - B. Resolution authorizing a time extension, assessing liquidated damages, accepting completion of and authorizing final payment for the construction of Street Overlays/Reconstruction, Project No. 09-03-B (\$67.63)
Approved 7 in favor, 0 opposed / Resolution No. R-198-10

- C. Resolution authorizing a time extension, assessing liquidated damages, accepting completion of and authorizing final payment for the construction of Street Overlays/Reconstruction, Project No. 09-03-D (\$211.18)
Approved 7 in favor, 0 opposed / Resolution No. R-199-10
- D. Resolution authorizing a time extension, assessing liquidated damages, accepting completion and authorizing final payment for the construction of 2009 Sidewalk Program, Project No. 09-20-B, CDBG Project No. 8930 (\$234.33)
Approved 7 in favor, 0 opposed / Resolution No. R-200-10
- E. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding for the repairs to the D7R Caterpillar dozer at the City Landfill (\$50,770.98)
Approved 7 in favor, 0 opposed / Ordinance No. 57-10
- F. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding for the purchase of ten police vehicles for the Police Department (\$247,456.00)
Approved 7 in favor, 0 opposed / Ordinance No. 58-10

**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
By vote of 4 in favor, 3 opposed (Good, Hutchings and Goodman), the Board dismissed City Administrator Dennis Kelly and appointed Deputy Administrator Ray Gosack as Acting City Administrator until a new City Administrator is selected.

**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 ~ NOVEMBER 2, 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 Cole Goodman, 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, Gary Campbell, Kevin Settle and Cole Goodman. The Mayor declared a quorum present.

The Mayor 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 October 19, 2010 regular meeting were presented for approval. Settle, seconded by Hutchings, 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.

Item No. 1 was a presentation to out-going Director Bill Maddox.

Mayor Baker presented a "Plaque of Appreciation", along with a rose, to Director Maddox for multiple years of service as City Director Ward Four and contributions to the citizens of Fort Smith from November 1982 to December 1988 and January 2005 to November 2010. A reception was held prior to the meeting in honor of Director Maddox.

(Director Maddox resigned with two (2) years remaining in his current term.)

November 2, 2010 Regular Meeting

Director Maddox conveyed much appreciation to members of his family for their support throughout his directorship, as well as the citizens of Fort Smith for their confidence in allowing him to represent them.

Mayor Baker announced that this was the time and place set for a public hearing regarding the issuance of Airport Refunding Revenue Bonds; providing for the payment of the principal of and interest on the bonds; and prescribing other matters relating thereto. Notice of the public hearing was duly published as required by law. Following the public hearing, consideration of an ordinance authorizing same would be given (Item No. 2).

Attorney Shepherd Russell (bond counsel) briefed the Board on the item. In 1999, bonds were issued for improvements to the Fort Smith Municipal Airport terminal. At that time, the interest rates were much higher than the current interest rate. Upon approval, at today's interest rate, the refinancing of the 1999 bonds will result in a substantial cost savings for the airport. Repayment of the bonds will come solely from airport revenues; therefore, the City maintains no financial obligation for payment on the bonds.

Director Hutchings questioned the anticipated cost savings for refinancing the 1999 bonds.

Mr. Russell advised a minimum of \$250,000 over the remaining life of the bonds; however, he reiterated such is only the minimum and the cost savings could be greater.

There being no individual present to speak, Mayor Baker closed the public hearing.

Campbell, seconded by Good, moved to suspend the rules 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 members all voting affirmatively, the Mayor declared the motion carried and the

November 2, 2010 Regular Meeting

City Clerk read the ordinance for its readings. Hutchings, seconded by Settle, moved adoption of the ordinance. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 53-10.

Item No. 3 was presentation of the proposed 2011 City Budget

Deputy Administrator Ray Gosack advised that copies of the proposed budget had been provided to the Mayor and Board prior to the meeting. The budget review sessions are scheduled for November 8, 9 and 15 at 6:00 p.m. each evening in the Bartlett Community Room of the Fort Smith Police Department.

Administrator Kelly also addressed the Board and presented a memo from Director of Utilities Steve Parke regarding budget cuts in the Utility Department to ensure the water/wastewater bond debt coverage ratio was increased to the required 110%. Such was accomplished via the removal of multiple projects as well as the elimination of nine (9) employee positions.

He also distributed a memo to the Board with recommendations for the 2011 budget to address the loss of revenue for the convention center. The recommendation consisted of two (2) tiers of employee position eliminations and/or layoffs with each tier representing approximately \$500,000. If the Board opts to close the convention center, only the first tier would be required and terminations/layoffs would be effective July 2011. If the Board opts to continue to operate the convention center, the second tier would also be required. Such would result in the required \$1 million and the first tier would still be effective July 2011 and the second tier effective January 2012.

Mr. Kelly provided an alternate option which consisted of an "across the board"

November 2, 2010 Regular Meeting

salary reduction to all employees. To attain the \$500,000 required to maintain the convention center in a closed down state, a 1.13% salary reduction would be required; however, if the convention center remains open, a 2.26% salary reduction for all employees would be required.

There was extensive discussion whereby Mayor Baker and Directors Maddox, Campbell and Good conveyed much disappointment and opposition to the recommendations citing penalizing the employees via layoffs or salary reductions is not the option to address the convention center revenue crisis. The convention center is a valued sales tax revenue stream; therefore, it is imperative that the convention center remain open.

Regarding the Utility Department budget cuts, Director Maddox noted that the budget cuts are solely to meet water/wastewater bond debt service payment requirements; therefore, he requested staff initiate the process to determine the feasibility of refinancing said bonds.

Mr. Gosack noted that such was recently reviewed and determined that such was not feasible. Due to the cost to refinance the bonds, the savings would be very minimal, if any; however, due to the severity of the budget shortfalls, Director Maddox requested such be reviewed again.

Director Settle also spoke in opposition to the recommendations and requested staff review and prepare a list of all non-essential projects and expenditures such as the Mayor's 4th of July fireworks celebration, mowing of I-540 interchange, etc.

Mayor Baker requested a brief status of sales tax revenue numbers.

November 2, 2010 Regular Meeting

Deputy Administrator Ray Gosack advised recent reports have indicated that although sales tax revenue has not increased, it has “stopped declining”. He further noted that due to the county-wide property tax reappraisal, the City’s portion of property tax revenues are expected to increase by approximately 7% to 8% in 2011.

Director Tyler inquired if the water rate analysis has been obtained whereby Mr. Gosack advised preliminary numbers are included within the proposed budget.

Mayor Baker announced that the below Items 4A, 4B, 5 and 6 are all companion items and the applicant for annexation has requested Items 4A & 4B be tabled to a date yet to be determined. The purpose of such is to allow the applicants to restructure their individual partnerships into a Limited Liability Corporation (LLC) and resolve issues within the pre-annexation agreement.

Item No. 4 consisted of the following items relative to Middleton Farms annexation:

- A. Resolution approving a pre-annexation agreement with Richard Griffin, Bradley Kidder, Bennie Westphal and Patsy Bateman for the Middleton Farms Subdivision
- B. Ordinance accepting certain territory into the city of Fort Smith, Arkansas (327 acres)

Item No. 5: Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan - Extra Territorial Jurisdiction Low Density Residential to Residential Detached, Residential Attached and Commercial Neighborhood; Rezoning - Extra Territorial Jurisdiction Open-1 (ETJ O-1) to RS-3 by extension; RS-4, RS-5, RM-3, RSD-3 and Commercial-2 by classification / 12905 Rye Hill Road, Middleton Farms*)

Item No. 6: Ordinance amending the Master Street Plan of the City of Fort Smith, Arkansas

November 2, 2010 Regular Meeting

Settle, seconded by Good, moved to postpone consideration of Items No. 4A, 4B, 5 and 6 until the applicant/developer is ready to proceed. Prior to the vote, Director Goodman noted that the Board received a petition from a surrounding property owner alleging multiple property owners were not properly notified of a public hearing before the Planning Commission (regarding Item No. 5). Due to such, he questioned the feasibility of referring the matter back to the Planning Commission to ensure all property owners are properly notified and provided the opportunity to be heard.

If the matter was referred back to the Planning Commission, Director Settle questioned if the matter would be presented to the Board in December or January.

Director of Development Services Wally Bailey noted that staff has not received a copy of the aforementioned petition; however, if the Board refers the matter back to the Planning Commission, it would be January before it would come back before the Board of Directors. He further noted that property owners within 300 feet (provided by the applicant) were forwarded a certified letter, the public hearing notice was published in the paper and notice was posted on the property.

The following individuals were present to address the Board:

- James Wright
8331 Howard Hill Road

Re: Advised he provided the aforementioned petition to the Board and alleged he and other neighbors were not notified of the public hearing before the Planning Commission. He feels certain such is because the records within Sebastian County Assessor's Office website are not regularly updated. He purchased his home in May 2010 and their records were just recently updated to identify him as the owner. In order to

November 2, 2010 Regular Meeting

properly notify all interested parties, he recommended the matter be referred back to the Planning Commission as such will require the re-initiation of the notification process.

Director Settle questioned if the applicant had any objection to the matter being referred back to the Planning Commission.

- Bobby Aldridge, agent
3434 Country Club Avenue

Re: Advised Mr. Wright, as well as other neighbors, were present at the Planning Commission public hearing and were heard; however, he conveyed no objection to the referral.

Directors Settle and Good amended the previous motion to refer the items back to the Planning Commission to ensure proper notification. The members all voting affirmatively, the Mayor declared the motion carried.

Mr. Bailey clarified that only Item No. 5 should be referred back to the Planning Commission and Items No. 4A, 4B and 6 should be tabled pending reconsideration of Item No. 5 by the Planning Commission.

Goodman, seconded by Maddox, moved to table consideration of Items No. 4A, 4B and 6 pending reconsideration of Item No. 5 by the Planning Commission. The members all voting affirmatively, the Mayor declared the motion carried.

Item No. 7 was an ordinance rezoning identified property and amending the zoning map (*Industrial 1 to Commercial-5 by extension / 5504 Wheeler Avenue*)

Mr. Bailey briefed the Board on the item advising such is per the request of Steve Delassus, agent. The purpose of the rezoning request is to permit an indoor amusement

November 2, 2010 Regular Meeting

center to occupy the structure. The structure has previously been utilized by Cheer Xtreme and an auto dealer, both allowed within the proposed Commercial Heavy (C-5) zone. A neighborhood meeting was held on September 23 with no neighboring property owners in attendance. The Planning Commission held a public hearing on October 12, 2010 with no individual present to speak in opposition. The Planning Commission approved the request by a vote of seven (7) in favor and zero (0) opposed.

Campbell, 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. 54-10.

Item No. 8 was an ordinance rezoning identified property and amending the zoning map (*Commercial-2 to Residential Multi-Family High Density (RM-4) by extension / 1115 South 17th Street*)

Mr. Bailey briefed the Board on the item advising such is per the request of Mont Sagely, agent. The purpose of the rezoning request is to allow for a duplex to be constructed on the property. Other multi-family dwellings are located in close proximity of the subject property. The Planning Commission held a public hearing on October 12, 2010 with no individual present to speak in opposition; however, Planning Commissioner Walton Maurras conveyed his opposition to duplexes being located within single family residential neighborhoods. The Planning Commission approved the rezoning request by a vote of five (5) in favor, one (1) opposed (Maurras) and one (1) abstention (Huffman).

November 2, 2010 Regular Meeting

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. 55-10.

Item No. 9 was an ordinance rezoning identified property and amending the zoning map (*Transitional to Commercial-2 by extension / 5311 South 28th Street and 2851 South Xavier Street*)

Mr. Bailey briefed the Board on the item advising such is per the request of Jake Files, agent. The purpose of the rezoning request is to allow for some limited retail commercial uses to be interspersed within the existing office development which is located to the west of the existing multi-family residential (apartments) development. The Planning Commission held a public hearing on October 12, 2010 with no individual present to speak in opposition. The Planning Commission approved the rezoning request by a vote of seven (7) in favor and zero (0) opposed.

Campbell, seconded by Goodman, 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. 56-10.

The Consent Agenda (Item No. 10) was introduced for consideration, the items being as follows:

November 2, 2010 Regular Meeting

- A. Resolution authorizing engineering service agreements for the design of projects in the 2011 Sales Tax Program (\$786,035.00 / various projects)
- B. Resolution authorizing a time extension, assessing liquidated damages, accepting completion of and authorizing final payment for the construction of Street Overlays/Reconstruction, Project No. 09-03-B (\$67.63)
- C. Resolution authorizing a time extension, assessing liquidated damages, accepting completion of and authorizing final payment for the construction of Street Overlays/Reconstruction, Project No. 09-03-D (\$211.18)
- D. Resolution authorizing a time extension, assessing liquidated damages, accepting completion and authorizing final payment for the construction of 2009 Sidewalk Program, Project No. 09-20-B, CDBG Project No. 8930 (\$234.33)
- E. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding for the repairs to the D7R Caterpillar dozer at the City Landfill (\$50,770.98)
- F. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding for the purchase of ten police vehicles for the Police Department (\$247,456.00)

Regarding Item No. 10F, Director Settle questioned if the vehicles are currently available now or within 30 to 60 days.

Police Chief Kevin Lindsey advised the vehicles are ready to be picked up and upon approval, staff will be traveling to Texas (in a matter days) to obtain the vehicles.

Hutchings, seconded by Campbell, moved approval of all consent agenda items. The members all voting affirmatively, the Mayor declared the motion carried and the ordinances and resolutions were adopted with the ordinances numbered 57-10 and 58-10 respectively and the resolutions numbered R-197-10 through R-200-10 respectively.

November 2, 2010 Regular Meeting

Mayor Campbell opened the Officials Forum with the following comment offered:

▶ **Mayor Baker**

Re: Extended much appreciation to Director Campbell for presiding at the meetings during his recent extended absence.

Mayor Baker announced an executive session would be held; however, while those in attendance were leaving the room, Times Record reporter Ben Boulden questioned the legality of holding an executive session to conduct a performance evaluation for the City Administrator. He alleged the Freedom of Information Act (FOIA) only allows an executive session to be held to consider employment or appointment.

City Attorney Jerry Canfield addressed the Board and confirmed the FOIA allows executive sessions for “employment” or “appointment”; however, the Arkansas Attorney General recently opined that, for purposes of executive sessions under the FOIA, the term “employment” should be narrowly read as “hiring” only. Regardless, he feels that it would be redundant under the FOIA if “employment” and “appointment” were both restricted solely to the process of hiring. It is his opinion that the Board may conduct a performance evaluation in executive session, as it relates to an annual review of the City Administrator, because his performance warrants continued employment. He conveyed confidence that such would be upheld in the Arkansas Supreme Court if litigation were pursued.

The executive session was held and after reconvening, Mayor Baker announced the Board’s desire to dismiss City Administrator Dennis Kelly and appoint Deputy Administrator Ray Gosack as Acting Administrator until a new City Administrator is selected.

Campbell, seconded by Tyler, moved to dismiss Administrator Kelly and appoint

November 2, 2010 Regular Meeting

Ray Gosack as Acting Administrator pending the employment of a new City Administrator. Prior to the vote, Director Hutchings conveyed opposition to the motion whereby Mayor Baker concurred.

The motion remaining on the floor, the members voted as follows: ayes - Tyler, Maddox, Campbell and Settle; nays - Good, Hutchings and Goodman. The Mayor declared the motion carried.

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

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

- Liz Armstrong
141 North 51st Street

- Re:
1. Advised of her recent concern with the continual property cleanup violations at Roselawn-Holy Cross Cemetery and conveyed much appreciation to City staff for requiring the owners to abate the violations.
 2. Regarding the nearby ditches, she discovered that the City currently mows the areas 4 times a year; therefore, she requested the City increase the mowing schedule to ensure City maintained properties are not allowed to become overgrown.
 3. Advised a family cleanup day for the cemetery has been scheduled for Saturday, November 6 and invited all interested parties to participate.

- Pauline Novak
5200 Johnson

November 2, 2010 Regular Meeting

- Re: 1. Conveyed much appreciation to out-going Directors Bill Maddox, Gary Campbell and Cole Goodman, as well as Mayor Baker, for their dedicated service to the city of Fort Smith.
2. She further conveyed much appreciation to the Police and Fire Departments citing they are a very valuable asset to the citizens of Fort Smith; therefore, she extended much gratitude to the directors who spoke in opposition to the employee layoffs.

- David Harris
2025 South "V" Street

Re: Noted his approval of the Board's comments regarding the budget and their insistence to "cut to the bone"; however, he recommended the Board consider eliminating their car allowances.

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

APPROVED:



Mayor

ATTEST:



CITY CLERK