

Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Keith D. Lau

Ward 2 – Andre' Good

Ward 3 – Mike Lorenz

Ward 4 – George Catsavis

At Large Position 5 – Pam Weber

At Large Position 6 – Kevin Settle

At Large Position 7 – Philip H. Merry Jr.

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

1. Discuss mitigation of groundwater contamination (*request from Whirlpool Corporation*)
2. Review recommendations of the Animal Services Advisory Board
3. Discuss revenue allocation of county-wide sales tax
4. Review preliminary agenda for the February 19, 2013 regular meeting

Memorandum

To: Ray Gosack, City Administrator
From: Wally Bailey, Director of Development Services
Date: 2/8/2013
Re: Proposed Groundwater Well Prohibition Ordinance

Mr. Robert L. Jones, III, agent for Whirlpool Corporation contacted us concerning a proposal to restrict groundwater wells on the Whirlpool property and residential property north of the Whirlpool property.

Mr. Jones contacted the City asking that such an ordinance be considered as a measure to address the contamination of the soil and groundwater by a chemical known as trichloroethylene (TCE). The presence of TCE is a public health issue that needs to be addressed. Whirlpool has been working with the Arkansas Department of Environmental Quality (ADEQ) for several years on this issue. ADEQ has acknowledged the proposed ordinance is an acceptable method for Whirlpool to address the problem. Other Arkansas cities have passed and approved similar ordinances for contamination problems in their communities.

Mr. Jones has discussed this issue with several city staff persons and Jerry Canfield, city attorney. The staff has also reviewed this matter with ADEQ personnel. In addition to the proposed ordinance, Jerry Canfield has prepared an indemnity agreement for Whirlpool to sign that would indemnify the city from claims and expenses related to this issue.

Whirlpool representatives held a public meeting for the residents so they could discuss the issues and the current proposal. The neighborhood meeting was held on January 10, 2013. We received a letter from Jerome Flusche, a property owner within the area affected by the proposed ordinance, stating his opposition to the proposed ordinance.

Documents related to this matter have been placed at the Fort Smith public library and are available for inspection by anyone wanting detailed and technical information from ADEQ and other information. This information consists of about 1500 pages of information.

Attached to this memo are the following exhibits:

1. The proposed ordinance
2. The proposed indemnity agreement.
3. Information from Mr. Jones providing background and purpose for the request.
4. A summary of the neighborhood meeting.
5. Letter from Jerome Flusche indicating opposition to the proposed ordinance.

Mr. Jones , Robert Karwowski, Director of Environmental Health and Safety at Whirlpool, Greg Gillespie and Tamara House-Knight of ENVIRON, an environmental consulting firm will be in attendance at the February 12, 2013, study session to present and discuss information related to this request.

Please contact me if you have any questions.

ORDINANCE NO. _____

AN ORDINANCE TO
PROHIBIT THE INSTALLATION OF GROUNDWATER WELLS
BENEATH CERTAIN IDENTIFIED LANDS WITHIN THE CITY OF FORT SMITH,
ARKANSAS; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES

WHEREAS, Ark. Code Ann. § 14-55-102 authorizes the City of Fort Smith, Arkansas to adopt ordinances in order to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the City and the inhabitants thereof; and,

WHEREAS, the Board of Directors has determined that a ban on the installation of new groundwater wells on certain identified lands within Fort Smith is in the best interests of the citizens of the City of Fort Smith, Arkansas and will further the objectives listed above.

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

Section 1: Identification of Lands Subject to the Regulations of this Ordinance.

The lands affected by this ordinance are located within the area identified on the map attached as Exhibit B hereto and are more specifically described as all tracts of real property located in the Fort Smith District of the County of Sebastian, State of Arkansas, which are located:

North of Ingersoll Avenue, west of Jenny Lind Road, east of Ferguson Street and south of Brazil Avenue and the property formerly occupied by Whirlpool Corporation, as referenced in the legal description attached hereto as Exhibit A (collectively, the "Identified Area"). The Identified Area is depicted on the figure attached hereto as Exhibit B.

Section 2: A. Prohibition of Installation of New Groundwater Wells Within the Identified Area. The drilling, installation, or other construction of a new groundwater well within the Identified Area is expressly prohibited for any purpose other than those exceptions listed in Section 2B.

B. Exceptions for Monitoring, Remediation, Oil and Natural Gas Wells. This Ordinance shall not apply to monitoring wells constructed for groundwater quality monitoring, to wells constructed for the purpose of investigation, removal and/or remediation of any subsurface contaminate or suspected subsurface contaminate, nor to oil, natural gas exploration and production wells.

Section 3: Penalties. Any person determined to be guilty of a violation of Sections 2 or 3 of this Ordinance shall be deemed guilty of a misdemeanor and shall be subject to the penalties and fines set forth in Section 1-9 of the Fort Smith Municipal Code.

Section 4: Codification. The codifier of the Fort Smith Municipal Code shall codify the provisions of this Ordinance within Chapter 25 of the Code.

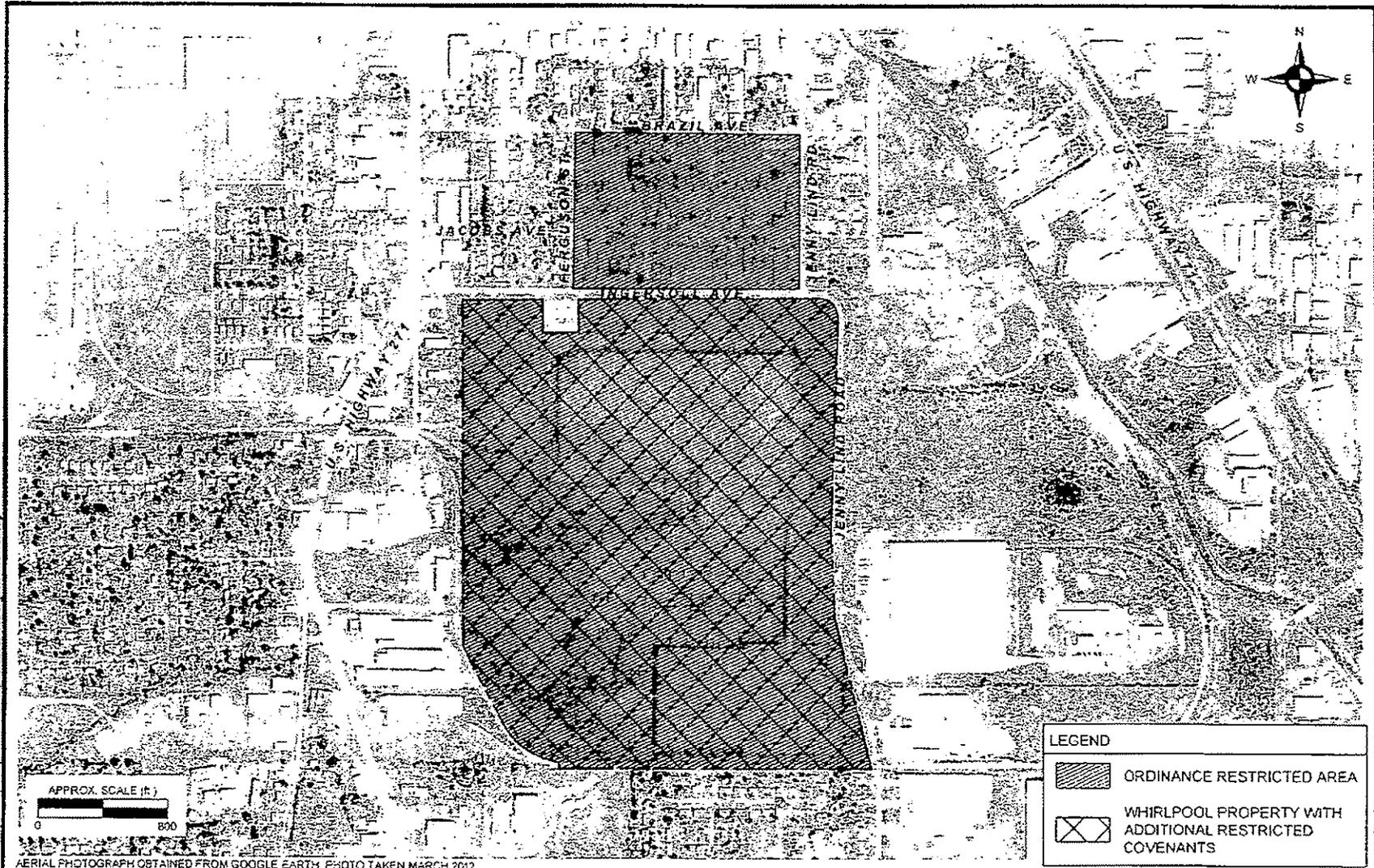
Section 5: Emergency Clause. The ability to assure the compliance of all landowners and other persons with these regulations of the use of groundwater beneath certain lands in the City is essential to the health, safety, and welfare of the City and its inhabitants; THEREFORE, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage and approval.

This Ordinance adopted this ____ day of _____, 2013.

Mayor

ATTEST:

City Clerk



LEGEND	
	ORDINANCE RESTRICTED AREA
	WHIRLPOOL PROPERTY WITH ADDITIONAL RESTRICTED COVENANTS

APPROX. SCALE (ft.)
 0 800

AERIAL PHOTOGRAPH OBTAINED FROM GOOGLE EARTH. PHOTO TAKEN MARCH 2012.

ENVIRON

RESTRICTED AREA
 WHIRLPOOL CORPORATION
 6400 JENNY LIND ROAD
 FORT SMITH, ARKANSAS

Figure
 2

Drafter: ELS

Date: 10/9/12

Contract Number: 21-29753B

Approved:

Revised:

L:\s00s\Projects\1148109_GAD_PILCO21\Whirlpool_Co_Vis_Oct06_Plan\2012_21-29753B\02_Rev\envi.dwg

INDEMNITY AGREEMENT

This Agreement made and entered into this ___ day of _____, 2013, by and between the City of Fort Smith, Arkansas, hereinafter identified as the "City," and Whirlpool Corporation, hereinafter identified as "Whirlpool."

WHEREAS, Whirlpool has for decades operated a Whirlpool Fort Smith manufacturing facility at 6400 Jenny Lind Avenue in Fort Smith; and

WHEREAS, a historical release of trichloroethylene (TCE) ("TCE Release") has been investigated and is regulated under the oversight of the Arkansas Department of Environmental Quality (ADEQ). The TCE Release may impact soil and groundwater on a portion of real properties within the Fort Smith District of the County of Sebastian, State of Arkansas:

North of Ingersoll Avenue, west of Jenny Lind Road, east of Ferguson Street and south of Brazil Avenue and the property formerly occupied by Whirlpool Corporation, as referenced in the legal description attached hereto as Exhibit A (collectively, the "Identified Area"). The Identified Area is depicted on the figure attached hereto as Exhibit B.

WHEREAS, as a part of its continued management of the TCE Release under supervision of ADEQ, Whirlpool has requested the City to adopt regulations that prohibit the installation of groundwater wells in the Identified Area;

WHEREAS, Ark. Code Ann. § 14-55-102 authorizes the City of Fort Smith, Arkansas to adopt ordinances in order to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the City and the inhabitants thereof; and,

WHEREAS, the Board of Directors has determined that a ban on the installation of new

groundwater wells is in the best interests of the citizens of the City of Fort Smith, Arkansas; and

WHEREAS, Whirlpool receives a benefit to its program of monitoring the TCE release and desires to affirm to the City that Whirlpool will be responsible for all legal and other reasonable costs incurred by the City with reference to the adoption of an ordinance to ban the installation of groundwater wells beneath the Identified Area (“City Ordinance”); and,

WHEREAS, Whirlpool desires to affirm to the City that Whirlpool will be responsible for costs reasonably associated with the handling of groundwater or soils in the Identified Area;

NOW, THEREFORE, in consideration of the mutual benefits received by the parties, which Whirlpool acknowledges to be good, valuable and sufficient consideration to support its undertakings in this Agreement, it is agreed as follows.

1. Groundwater Accumulating in Excavations in the Identified Area.

A. Notification of Ordinance. Upon execution of the Indemnity Agreement, Whirlpool shall notify the Ft. Smith Utility Department, Ft. Smith Transportation Department, all electric, gas, cable, water, and other utility companies operating within the Identified Area of the new groundwater well installation ban. A copy of the City Ordinance shall be provided to each entity notified.

B. Notification of Planned Excavation. The City shall notify Whirlpool prior to the commencement of any planned excavation to be performed by it or its contractors in the Identified Area at least three (3) business days prior to the commencement of excavation. The City shall notify Whirlpool as early as practicable of any emergency, unplanned excavation performed by the City or its contractors.

C. Groundwater Resulting from De-Watering of Excavations. In the event

the City or its contractors performing an excavation in the Identified Area needs to de-water an excavation for any reason, the City shall notify Whirlpool. Whirlpool within a reasonable time shall then advise the City as to the necessary reasonable steps for performing the de-watering and the proper collection and handling of the groundwater produced in the de-watering operation. The City shall then be responsible for performing the de-watering and shall collect and handle all groundwater produced in the de-watering operation substantially in accordance with Whirlpool's advice. Whirlpool shall reimburse the City for the reasonable costs associated with the de-watering operation. In the event the de-watering operation is not substantially performed in accordance with the standards reasonably set by Whirlpool, Whirlpool shall not be responsible for the associated costs or any resulting liabilities arising from the non-conforming performance.

D. Soil Excavation. In the event the City needs to relocate (not placed back into same excavation from which removed) and/or dispose of soils addressed with groundwater from 1.C above or otherwise affected by an excavation by the City or its contractors, the City shall notify Whirlpool. Within a reasonable time, Whirlpool shall then advise the City as to the recommended handling of the soil. The City shall then be responsible for performing the relocation and/or disposal of the soil substantially in accordance with Whirlpool's advice. Whirlpool shall reimburse the City for the reasonable costs associated with the soil operation. In the event the soil operation is not substantially performed in accordance with the standards reasonably set by Whirlpool, Whirlpool shall not be responsible for the associated costs or any resulting liabilities arising from the non-conforming performance.

E. De-Watering and Soil Excavation. The City shall perform soil excavations and de-watering of excavations as required by Section 1(B) by authorized employees or its

contractors. Whirlpool Corporation shall be responsible for notifications to ADEQ with reference to groundwater and soil collected and handled.

2. Indemnity – Third Party Claims. Whirlpool agrees that it shall defend, indemnify and hold harmless the City, its directors, administrators, employees and agents, from and against any and all claims, suits, liabilities, and judgments, including reimbursement for reasonable costs and attorney’s fees incurred by the City, in which any person or entity contends the City inappropriately has adopted the City Ordinance banning the installation of groundwater wells in the Identified Area specifically including, without limitation, any claim or judgment that the City’s action has constituted, in whole or in part, a taking of real property without just compensation or that the City is responsible for any expense incurred by an affected landowner or other person because of the groundwater use regulations of the City Ordinance.

3. Indemnity – Expenses Incurred by the City. If, during the term of the City Ordinance, the City incurs any reasonable expense arising from the required de-watering of an excavation or relocation of soils evacuated by the City or its contractor with reference to any City owned property or public project being performed by the City, Whirlpool agrees to be responsible for the payment of that expense or, if the expense has previously been paid by the City, to reimburse the City for such expense upon presentation of reasonable documentation of the incurred expense to Whirlpool.

4. Procedures for Indemnification – Third Party Claims. As promptly as reasonably practicable upon receipt of notification of a claim or litigation for which the City seeks defense and indemnity pursuant to Section 2, the City shall provide written notification of the claim or litigation to Whirlpool. The City may take reasonable actions to protect itself from any such

claim or litigation until such time as Whirlpool Corporation has notified the City of receipt of notification and its intention to be responsible for the defense and payment of the claim or litigation. Upon written notification that the claim or litigation has been accepted for defense and payment by Whirlpool, Whirlpool shall reimburse the City for defense costs incurred to that date and shall have the right to handle legal representation with reference to any such claim or litigation. The City, at its own expense, may retain its own legal counsel to assist in the handling of any claim or litigation accepted by Whirlpool for handling.

5. Procedures for Indemnification – Expenses Incurred by the City. Any claim for payment of expense or reimbursement of payment of expense presented by the City pursuant to Section 3 shall be made in writing to Whirlpool. Whirlpool shall notify the City in writing within fifteen (15) days of receipt of any such claim whether the claim will be paid by Whirlpool or disputed by Whirlpool. Whirlpool shall cause undisputed claims to be paid within thirty (30) days of notification by the City, and Whirlpool shall cause disputed claims to be paid within ten (10) days of final resolution in favor of the City, together with interest at six percent (6%) per annum and reasonable attorney's fees.

6. No Assumption of Liability. Whirlpool does not assume liability for claims made alleging negligence of the City or its employees, contractors, or agents or for claims made regarding the performance of the City or its employees, contractors, or agents in carrying out their duties or services under this Agreement. Whirlpool shall not be responsible for claims made by the City's employees, contractors or agents for injuries incurred while performing services under this Agreement.

7. Notification. Any notice required to be given by this Agreement by the City or

Whirlpool to the other shall be considered effectively delivered if delivered by mail, facsimile, or personal courier, and shall also be delivered by electronic mail, to the following addresses:

Fort Smith City Administrator
625 Garrison Avenue
Fort Smith, AR 72901
Gosack@FortSmithAR.com
(479)784-2430

Whirlpool - North American Region
Director of Environment , Health & Safety
600 W. Main St
Benton Harbor, MI 49022
Attn: R. Karwowski
Robert_J_Karwowski@whirlpool.com
(269) 923-3614
Fax: (269) 923-3929

8. Dispute Resolution. In the event Whirlpool disputes its obligation to provide defense and indemnity with reference to any claim or litigation or in the event that Whirlpool disputes its obligation to pay or reimburse any expense claim by the City pursuant to Section 3, Whirlpool shall give notice of its dispute within fifteen (15) days of receipt of notification of the claim, lawsuit or expense. Upon receipt of the dispute notification by Whirlpool, the City Administrator of the City shall arrange a telephone or in person conference to discuss the matter with Whirlpool within thirty (30) days of the dispute notification. If the conference has not been held within thirty (30) days or, if held, the conference does not resolve the dispute, either party may commence litigation in the Circuit Court of the Fort Smith District of Sebastian County.

9. Arkansas Law. This Agreement shall be governed, performed and interpreted under the laws of the State of Arkansas.

10. Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining terms of the Agreement.

11. Parties Bound. This Agreement applies to and is binding, jointly and severally, upon each party and its receivers, trustees, successors, and assigns. No change in the ownership

or corporate or business status of the Whirlpool Fort Smith manufacturing facility shall alter the responsibilities of Whirlpool, its receivers, trustees, successors and assigns, under this Agreement.

12. Representative Authority. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the parties to this Agreement.

13. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

Executed as of the date set forth above.

City of Fort Smith

Approved: _____
Mayor

Attest: _____
City Clerk

Whirlpool Corporation

By: _____

Bailey, Wally

From: Heather Sanford [HSanford@cwlaw.com] on behalf of Robert L. Jones III [BJones@cwlaw.com]
Sent: Wednesday, January 16, 2013 10:36 AM
To: Gosack, Ray
Cc: Bailey, Wally; jcanfield@dailywoods.com
Subject: Whirlpool ordinance
Attachments: 1-15-13 Detailed Overview.pdf; Ex-B_Restricted Area-D24x36 pdf.pdf; 2012-11-30 Whirlpool RRMP Limits Of GW Impact.pdf; 1-15-13 Ordinance.pdf; Neighborhood Meeting Notice.pdf

The City of Fort Smith Board of Directors will soon be requested to pass an ordinance, which will prohibit the installation of groundwater wells on the Whirlpool property and residential property to the north of the plant. Discussions concerning this proposed ordinance have been ongoing with employees of the City of Fort Smith and City Attorney Jerry Canfield for several months.

Here is information to give you some history and background concerning the need for this proposed ordinance:

1. Before 1980, Whirlpool was using a solvent (this was common practice at the time for most manufacturing operations) to degrease/clean parts prior to assembly. The solvent contained trichloroethylene (TCE).
2. In about 2001, Whirlpool learned that groundwater impacted by the solvent used prior to 1980 had migrated off the Whirlpool property to the North. Whirlpool notified the Arkansas Department of Environmental Quality (ADEQ)
3. Whirlpool and ADEQ have been investigating and monitoring this migration for over ten years. Monitoring wells have been established.
4. Whirlpool has tried to remove groundwater but due to the physical characteristics of the aquifer and the tightness of the soil, this was impossible.
5. Whirlpool then tried to chemically treat the groundwater but this was also unsuccessful.
6. The concentration of TCE has been steadily decreasing over the years.
7. The groundwater is over 7 feet underground. At this depth, it poses no threat to human health or environment.
8. The plume has not been moving and is stable.
9. Whirlpool has agreed to execute an indemnity agreement in favor of the City of Fort Smith. This agreement was drafted by me and City Attorney Jerry Canfield.

Accordingly, Whirlpool has determined that the best way to ensure the health and safety of Fort Smith residences that are in the impacted area is to pass an ordinance preventing the installation of groundwater wells. There are currently no documented groundwater wells in the impacted area and we would like to insure that none are installed. This proposed ordinance adds a level of protection that is not in place today.

For your consideration, I enclose the following:

1. A more detailed overview.
2. A map showing the area of the ordinance.
3. A map showing the plume.
4. A copy of the proposed ordinance.
5. A notice of a neighborhood meeting that was conducted at the Fort Smith senior center on January 10, 2013. Five citizens attended and asked questions.

We request that this information be distributed to the board of directors so they will have some background. I understand a study session has been set for February 12, 2013 at noon at the Fort Smith City Library where this proposed ordinance will be discussed.

At the study session, I will attend along with Amber Prince as attorneys for Whirlpool. Robert Karwowski, who is the director of environmental health and safety at Whirlpool will be attending. Tamara House-Knight and Greg Gillespie are consultants with ENVIRON, who will also be in attendance. This independent consulting firm specializes in environmental health and safety issues.

If there is any additional information you need before this study session, please let us know. We look forward to meeting with the board.

Robert L. Jones III
Attorney at Law



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www.cwlaw.com

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This message and any attachments may contain information that is highly confidential, privileged, and exempt from disclosure. Any recipient other than the intended recipient is advised that any dissemination, distribution, copying, or other use of this message is strictly prohibited.

If you have received this message in error, please notify the sender immediately.

Overview

The Whirlpool Fort Smith facility is located at 6400 Jenny Lind Road on the south side of Fort Smith, Arkansas. The facility manufactured side-by-side household refrigerators and trash compactors. The facility had been operated by Whirlpool for over 45 years and ceased production in June 2012.

The manufacturing processes at the Whirlpool-Fort Smith facility involved metal fabrication, plastic thermoforming and assembly operations. Dating back to approximately 1967, equipment degreasing operations utilizing trichloroethylene (TCE) were performed in the former degreaser building located near the northwestern corner of the main manufacturing building, west of the boiler house. The use of TCE was discontinued in 1981 and the degreaser building is not currently used for any cleaning operations.

TCE impacts were not known until well after the degreasing operations ceased. During unrelated construction activities in 1990 soil data indicated TCE impacts to soil and shallow groundwater. Additional soil and groundwater investigations were performed onsite. The data collected suggested soil and groundwater was impacted on site only. During additional investigations focused on the onsite issues, offsite TCE groundwater impacts were discovered in 2001 and immediately reported to ADEQ.

To address the impacts from historical releases both on and off site, Whirlpool entered into a Letter of Agreement (LOA) with the Arkansas Department of Environmental Quality (ADEQ), dated July 19, 2002. Under the LOA, Whirlpool is following the United States Environmental Protection Agency's (USEPA's) Corrective Action Strategy (CAS). To date Whirlpool has completed the following activities and submitted documents as required by the LOA:

ADEQ Document Overview

The documents listed below have been submitted and approved, or are currently under review by ADEQ.

Date	Document	Description
August 2002	Notice of Intent (NOI)	Notification to ADEQ that Whirlpool will conduct corrective action using a Risk Management Strategy (RMS) to address the impacted area that will be protective of human health and environment.
August 2002	Scoping Meeting	Meeting between Whirlpool and ADEQ at the Ft. Smith facility to develop a conceptual site model (CSM) that defines site conditions based on the site investigation activities, potential extent of affected media, and exposure scenarios.
August 2002	Risk Management Strategy (RMS) Work Plan	The RMS work plan in accordance with the LOA, presented the CSM, planned soil and groundwater data collection methods and schedule, and detail of how Whirlpool will implement the RMS.
June 2004	Corrective Action Strategy (CAS) Work Plan	The report in accordance with the LOA, presented Whirlpool's plan to address on-site soil and

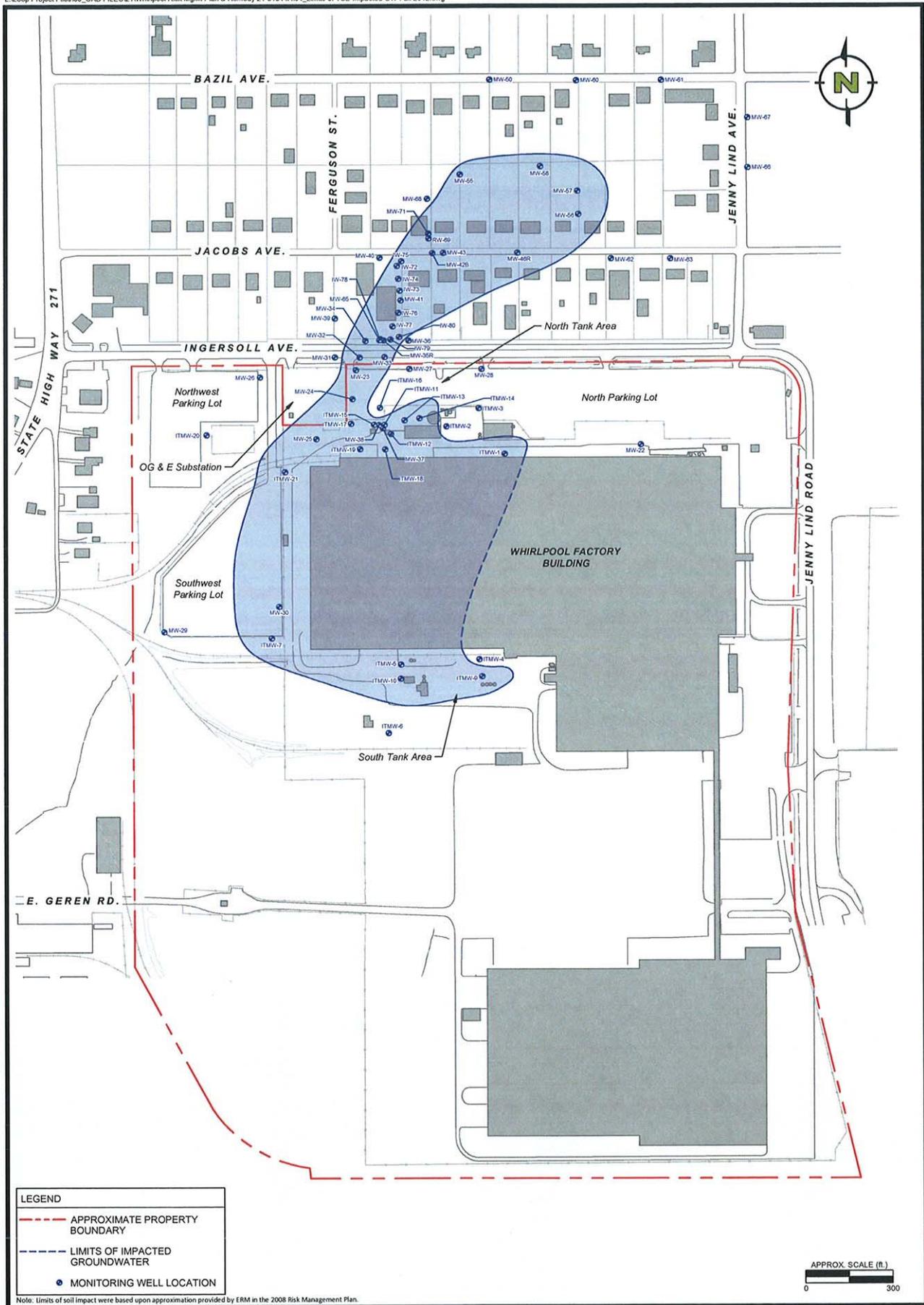
		groundwater impacts and off-site groundwater impacts to ADEQ.
August 2006	CAS Work Plan Addendum	The addendum to the CAS Work Plan addressed ADEQ's comments regarding the CAS Work Plan that included identification of impacted areas and data collection and evaluation.
September 2006	Facility Activities	Activities included measures identified by Whirlpool and agreed to by ADEQ in the CAS Work Plan and Addendum.
June 2007	Risk Evaluation Report	The report, in accordance with the LOA, summarized the Whirlpool site conditions, defined the extent of soil and groundwater contamination, and identified potential exposure routes for on-site soil and groundwater and off-site groundwater.
March 2008	Remedy Selection	This process as required by the LOA, identified and screened remedial technologies for potential use at the Whirlpool facility and selected the final remedy to address impacted soil and groundwater.
March 2008	Risk Management Plan	The report as required by the LOA, presented the selected remedy and schedule for implementation, established performance monitoring criteria, described contingency plans for additional corrective measures, and described the approach and schedule for project performance reviews.
March 2008	Interim Measure Work Plan	Outlined measures to be taken if Whirlpool or ADEQ determined that during the remediation, a release or potential release posed a short-term threat to human health or the environment
February 2010	Interim Measure Status Report	The report discussed the selection of chemically treating (permanganate) the TCE plume in groundwater as a remedial alternative.
July 2010	Interim Measure Status Report	The report presented results of the continued groundwater monitoring and discussed observations that pilot groundwater extraction operations were not effective in recovering contaminated groundwater from the aquifer and was not a practical clean-up remedy.
June 2012	Annual Groundwater Monitoring Report	The report provided ADEQ with results of the 2011/2012 sampling program that was implemented in 2002 to monitor the concentrations and distribution of affected groundwater associated with the historical TCE release at the Whirlpool facility.
November 2012	Revised Risk Management Plan (RRMP)	Under review by ADEQ – The report presents a summary of 15 years of investigative activities and data collection in order to identify, screen and select a final remedy that is protective of human health and the environment.

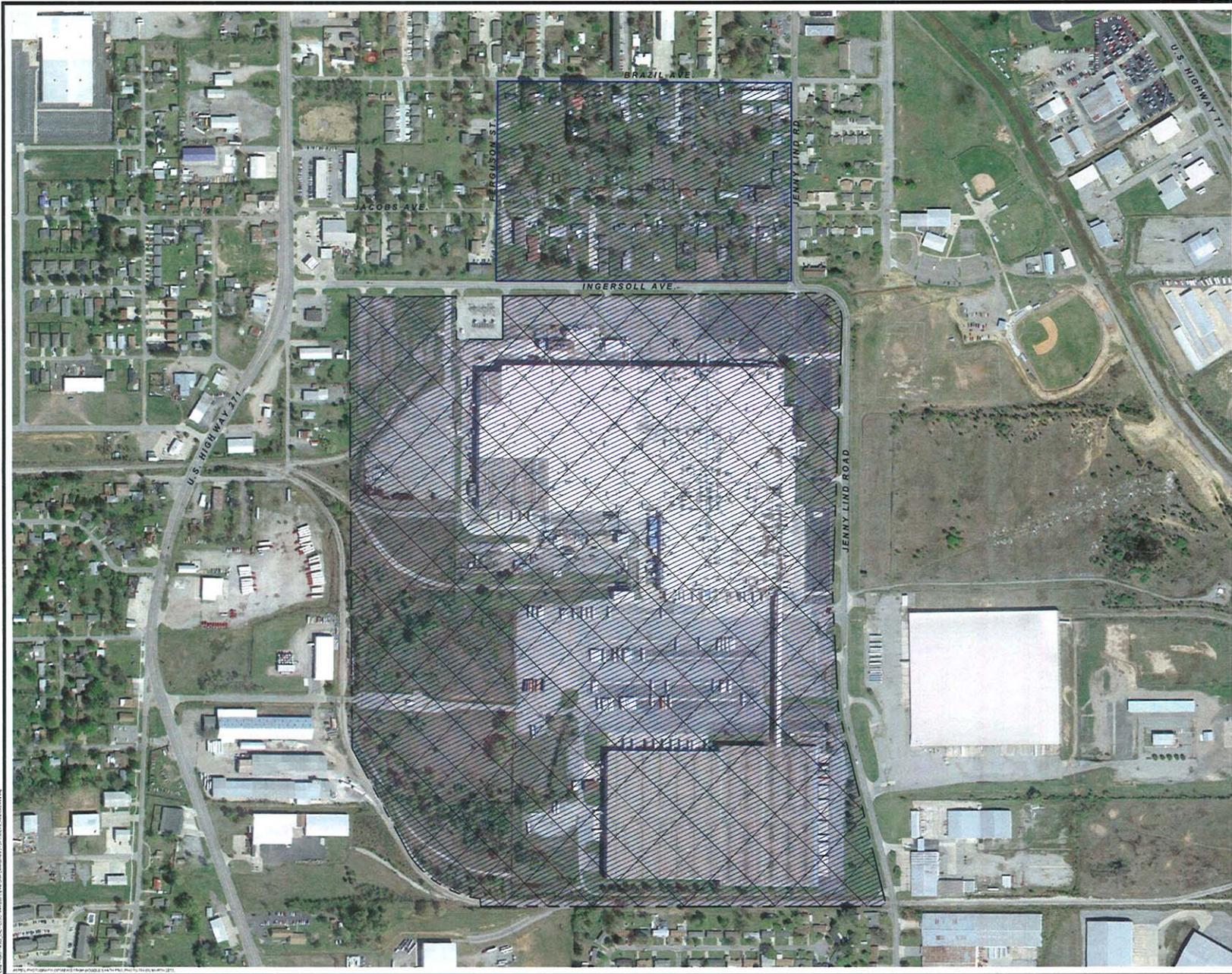
A public involvement plan will be implemented as part of the Risk Management Plan Whirlpool submitted to ADEQ in November 2012. The public involvement plan developed by Whirlpool includes a document repository that will be available at the Ft Smith Public Library. The repository will include all ADEQ Administrative Record documents since the beginning of the project. With ADEQ approval the repository will be accessible by the end of this month (January 2013) The public plan includes a 30 day comment period to ADEQ and a public meeting. The public meeting is in addition to the January 10, 2013 meeting for the well ordinance.

Summary

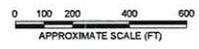
Upon discovery of subsurface impacts to soil and groundwater, Whirlpool voluntarily contacted ADEQ and began discussions with ADEQ and implemented actions as required under Arkansas Environmental Regulations. Whirlpool, with ADEQ review and oversight, has been addressing the impacts ever since.

Since the only potential exposure to the impacted groundwater is ingestion (drinking water from well), Whirlpool immediately completed a survey of the impacted area to determine if there were any existing or historical groundwater wells in the area. Based on the thorough review of the State of Arkansas Department of Health well data archives, interviews with Arkansas Department of Health, local well drillers / installers and the City of Ft Smith Water Utility department it was confirmed that no groundwater wells had or are currently in place within a one mile radius of the Whirlpool site. Since the only human health risk from the impacted groundwater is ingestion and there are no groundwater wells in the area, there is currently no human health exposure risk. Knowing there is no human health exposure risk Whirlpool is proceeding to move forward to address the impacts. The studies completed to date have shown that clean-up of the impacted groundwater will take time. In order to prevent future ingestion of groundwater in the impacted area, Whirlpool requested the City of Ft Smith codify an ordinance to ban the installation of groundwater wells in this area. The ordinance would provide the highest degree of protection to all impacted properties today and in the future





LEGEND	
	ORDINANCE RESTRICTED AREA
	WHIRLPOOL PROPERTY WITH ADDITIONAL RESTRICTED COVENANTS



RESTRICTED AREA
 WHIRLPOOL CORPORATION
 6400 JENNY LIND ROAD
 FORT SMITH, ARKANSAS

	EXHIBIT
	B
DRAFTED BY: ELS	DATE: 1/7/13
21-287538	

Robert L. Jones III | Attorney at Law
bjones@cwlaw.com

Conner & Winters, LLP
4375 N. Vantage Drive, Suite 405 | Fayetteville, AR 72703-4985
p (479) 582-5711 | f (479) 587-1426 | cwlaw.com

December 27, 2012

Property Owners

Re: Neighborhood Meeting for Proposed Ordinance

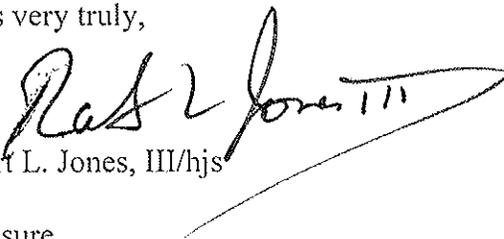
Dear Property Owners,

Whirlpool is planning to present the City of Fort Smith Board of Directors the enclosed ordinance which will prohibit the installation of groundwater wells in the Identified Area. We will hold a neighborhood meeting at the below time and location to discuss the proposed ordinance. We invite you to attend.

Neighborhood Meeting
Thursday, January 10, 2013
6:00 p.m. CST
Fort Smith Senior Activity Center
2700 Cavanaugh Road
Fort Smith, AR 72908

I look forward to visiting with you on this issue.

Yours very truly,



Robert L. Jones, III/hjs

Enclosure

cc: Wally Bailey (Fort Smith Director of Development Services)
Jerry Canfield (Fort Smith City Attorney)

Summary of Neighborhood Meeting on January 10, 2013

On January 10, 2013, Robert L. Jones, III and Amber Prince of Conner & Winters, Robert Karwowski of Whirlpool and Tamara House-Knight of Environ International conducted a neighborhood meeting to discuss the proposed ordinance to prohibit the installation of groundwater wells within an identified area with the property owners affected by the ordinance. The meeting was conducted at the Fort Smith Senior Activity Center located at 2700 Cavanaugh. Notice of the neighborhood meeting was mailed on December 27, 2012. A list of the property owners who were mailed a notice is attached hereto.

Five property owners attended the meeting. Specifically:

1. Debbie Keith, 1804 Jacobs Ave.
2. Ethel Fowler, 1504 Jacobs Ave.
3. Jerome Flusche, 2300 S 57th St.
4. Neal Morrison, 1409 Jacobs Ave.
5. James Travis Westpfahl, 1400 Brazil Ave.

Robert L. Jones, III opened the meeting at 6:02 p.m. He outlined the need for the ordinance due to groundwater impacts associated with the former Whirlpool facility. A commonly used solvent which contained trichloroethylene ("TCE") was used in the 1970s to "degrease" or clean equipment at the Whirlpool manufacturing facility. The solvent was commonly used during this time period by many manufacturing operations. In the mid-1980s, Whirlpool discovered the solvent had impacted groundwater below the Whirlpool property. Through additional site investigation it was discovered that groundwater offsite also contained levels of the same solvent. Whirlpool voluntarily notified the Arkansas Department of Environmental Quality ("ADEQ") and has been working under ADEQ guidance to address the problem since. Whirlpool retained environmental professionals to monitor and address the contamination. As a result of the extensive site investigation and monitoring, it has been determined the "plume" or area of contamination is contained and is no longer moving. However, soil characteristics in this general area are very dense. Multiple efforts to remediate the contaminate proved ineffective and we are now requesting the City pass an ordinance to prohibit the installation of a water well within the designated area to prevent the contaminated groundwater from being ingested. The groundwater is at least seven feet below the surface. Whirlpool will also notify all utility companies of the ordinance.

A question was asked regarding the well pump house that is located on one of the pieces of property. It was explained that this shed will be removed by Whirlpool. The structure enclosed equipment previously used in an attempt to remediate the problem. At one point, with ADEQ's concurrence, Whirlpool attempted to treat contaminates in the groundwater by injecting a counteracting chemical into the plume. At least one resident present at the meeting stated they saw steam and smelled an odor which was likely caused by the chemical being used to attempt

treatment of the contaminate. This effort proved ineffective due to the density of the soil. Additional efforts to enhance the treatment by pumping groundwater also proved ineffective due to the physical characteristics of the groundwater zone and tightness of the soil.

Several questions were asked regarding whether this would decrease the value of the resident's property and their ability to sell. One resident pointed out that on the residential disclosure form required as part of a property transaction, at least six questions would have to be answered "yes" due to the contamination. It was explained that the ordinance should not decrease their property value because there are no known groundwater wells in the area currently and the groundwater yield is so low due to the dense soil that a groundwater well would produce very little water. One resident mentioned that although there may be no harmful health effects, the perception associated with the impact may decrease their property values. Additionally, they do not believe Whirlpool should be telling them what they can or can't do with their own land. One resident mentioned that she is already prevented from building a driveway onto Ingersoll Avenue because of an agreement between Whirlpool and the City.

One resident stated she did not want her grandkids to play in her backyard and that she had four dogs die in the last several years that were otherwise healthy dogs. She also mentioned she had a swimming pool and they had considered installing a groundwater well to save on water utility costs.

The residents requested documentation of the monitoring efforts. Whirlpool has complied with this request by providing copies of multiple documents between ADEQ and Whirlpool to the Fort Smith Public Library for public review.

Residents asked about the effects of TCE. The common symptoms of TCE exposure were explained. Typical symptoms include dizziness, drowsiness and rash. These symptoms are only seen at very high levels, well above the levels at this site. It was also explained that TCE has been shown to be carcinogenic in animals at much higher levels than what is currently present. It has not been shown to be carcinogenic in humans. The most recent measures of the TCE showed 20mg/l to be the highest measure of concentration anywhere within the off-site plume. The concentration has come down dramatically over the years. The concentration may get to zero at some point but we do not know when that will be.

It was explained to the residences that surface water that may appear after precipitation is not contaminated. One resident mentioned that when it rains, her yard is damp for a while afterwards and was concerned that the surface water may pull up the groundwater. The impacts of precipitation and surface water were discussed, emphasizing that there is no likelihood of TCE impact to the visible surface water after rain events.

A question was asked whether Whirlpool was negligent in containing the contamination. While we do not know exactly when the contaminate migrated off-site, once Whirlpool was aware of

the problem it contacted ADEQ and began to investigate the problem under ADEQ guidance and approval.

Another question was asked why the residents were just now finding out about the problem. One resident stated they did give permission to drill a monitoring well eleven years ago but she claimed she did not know why they were drilling. Whirlpool has been attempting to understand and remedy the situation and did not want to speak before fully knowing what they were dealing with and how they were going to deal with the problem.

The property owners asked for the name of the project manager at ADEQ who has been working with Whirlpool and Environ on this problem and this information was given to the residents.

The source of the contamination was shown on a large map of the Whirlpool building, along with the area of impact.

A resident asked whether trees were affected. Trees are sometimes used to clean up the problem because they can vaporize the contaminate and release it cleanly into the air through leaves.

One resident in attendance will be working on the planned Jenny Lind Road expansion. He asked what protective measures were going to be in place for the road project. We explained that based on a written agreement with the city if groundwater is exposed, the first step is to notify Whirlpool. Whirlpool will send a consultant to look at the area. Based on that assessment if needed, Whirlpool will have the groundwater removed from the excavation and disposed offsite at its expense.

The property owners questioned whether Whirlpool was sure there was not another solution. It was explained that due to the subsurface soils and groundwater zone, the groundwater cannot be treated in place nor can it be pumped out and treated or disposed of.

If the ordinance does not pass, the ingestion risk will remain. Independent of the ordinance Whirlpool continues to work with ADEQ to address the impacts.

It was asked whether Whirlpool had to pay a fine for impact. Whirlpool has not been assessed or paid any fines.

The meeting concluded at approximately 7:00 p.m.

Kralicek & Flusche, LLC

2300 South 57th Street, Suite 4
Fort Smith, AR 72903
Phone: 479.452.0000
Fax: 479-.452-0028

City Clerk
FILED 1-11-13
H. James

January 10, 2013

City Administrator
The Board of Directors
City of Fort Smith
623 Garrison Avenue
Fort Smith, AR 72901

Re: Proposed Ordinance

Ladies and Gentlemen;

We are in receipt of a notice from Robert L. Jones III, attorney for Whirlpool Corporation. This letter states that Whirlpool is planning to ask the City of Fort Smith Board of Directors to pass an ordinance which prohibits groundwater wells in a specified area. The specified property is located north of the Whirlpool plant.

We own property within the proposed ban area and were unaware of any change/contamination of the ground water in this area. We believe that passing this ordinance rather than correcting the problem would adversely affect the value of our property. We are requesting full disclosure from Whirlpool regarding the tests that have been done on the sample wells along with the health concerns there may be.

Please review the attached Seller Property Disclosure (used when property is sold). There is a minimum of six questions that the seller would be required to answer negatively if this ordinance is passed.

Please consider the consequences of passing this ordinance. All property owners in this area would be adversely affected by this proposed ordinance if the contamination is not corrected.

If according to Ark. Code Ann. S 14-55-102to provide for safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the City and the inhabitants thereof... then how can the proposed ordinance be passed. It only covers up existing safety and health issues will not prosper property values and provides no convenience for the inhabitants i.e. property owners.

We respectfully request that this ordinance not be passed.

Sincerely,

Kralicek & Flusche, LLC

Jerome Flusche
Jerome Flusche
Partner

Seller Property Disclosure

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Form Serial Number: 015879-000135-7677500

TO BE COMPLETED BY SELLER: (Please Print)

Date: _____

Seller(s): _____

Seller is is not occupying the Property. (If Seller is occupying or has occupied the Property, give length of occupancy in years: _____)

Property Address: _____

Approximate finished, heated & cooled square footage (if applicable): _____

Approximate Date of Construction: _____

Please check the following boxes as they apply to the Property:

Water, and is provided by
 A rural water district or other non-municipal water system: _____
 A municipality or county: _____
 Well Other: _____

Natural gas, and is provided by: _____

Propane tank: Owned Rented from: _____

Electricity, and is provided by: _____

Sewer, and is provided by
 A non-municipal sewer system: _____
 A municipality or county: _____
 Septic system (See questions #4 & 5, following page). Type, if known: _____
 Other: _____

Mandatory Property Owner's Association Dues: Amount \$ _____ Frequency: _____
POA Contact Name _____ Phone Number _____

POA has 1st Right of Refusal Option

Covered by association fee (check all that apply):

Swimming pool Hot tub Playground Clubhouse Tennis courts
 Exterior maintenance Termite contract Grounds maintenance Fitness center
 Water Gas Garbage pickup Other: _____

Boat Slips Not applicable Number to be conveyed, if applicable:
 Covered boat slips (No. _____) Uncovered boat slips (No. _____)
 Lifts (No. _____) Other docks (No. _____)

Pool Aboveground Inground Gunite/Concrete Liner Other _____
 Salt Chlorine Other _____

Condominium/Town Home, total number of parking spaces:

Open (No. _____) Assigned (No. _____) Owned (No. _____)

These spaces are: Uncovered (No. _____) Covered (No. _____) Garage (No. _____)

Special Property Assessment: Amount \$ _____ Frequency: _____

Cable/satellite television, and is provided by: _____

Telephone, and is provided by: _____

Garbage pickup, and is provided by: _____

Fire protection, and is provided by: _____

Termite policy (current), and is provided by (Name of Company): _____

Homestead Tax Credit has been claimed for the tax year of _____

A Tax Benefit (tax assessment frozen) for over 65 or handicapped status has been claimed by Seller.

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Seller Property Disclosure

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Form Serial Number: 015879-000135-7677500

Purpose Of Statement: This is a statement of conditions and information concerning the Property. Unless otherwise advised, Seller does not possess any expertise in construction, architecture, engineering or any other specific areas related to the construction or condition of improvements on the Property or the Property itself, other than occupying or having ownership of the Property. Seller possesses no greater knowledge than that which could be obtained by inspection of the Property by potential buyers, lessees, tenants or their representatives. This statement is not a warranty of any kind by Seller, Listing Firm or any subagent of Listing Firm. **THIS DISCLOSURE IS NOT A SUBSTITUTE FOR INSPECTIONS. ANY POTENTIAL BUYER OF THE PROPERTY IS ENCOURAGED TO OBTAIN A PROFESSIONAL, PERSONAL OR OTHER INSPECTION PRIOR TO PURCHASING, LEASING, EXCHANGING, RENTING OR OFFERING TO PURCHASE THE PROPERTY.**

Instructions to Seller: (1) Complete this form yourself. (2) Report known conditions affecting the Property. (3) Attach additional pages with your signature if additional space is required. (4) Answer ALL questions. (5) If some items do not apply to Property, check "Not Applicable." (6) If you do not know the answer to a question or do not understand a question, check the answer "Unknown."

Seller's Statement: Even though this is not a warranty, Seller hereby specifically makes the following representations based on Seller's knowledge as of the above date. Seller agrees to immediately notify Listing Firm in writing and to modify this Seller Property Disclosure if any answer set forth below changes prior to Closing. Unless a potential buyer desires not to obtain a copy of this statement (as expressly set forth in a Real Estate Contract), Seller authorizes Listing Firm to provide a copy of this statement to any person or entity in connection with any possible, actual or anticipated sale, exchange, lease or rental of the Property.

ALL STATEMENTS MADE IN THIS DISCLOSURE ARE MADE BY SELLER AND ARE NOT REPRESENTATIONS OF ANY AGENT(S) AND/OR SUBAGENT(S) OF SELLER. THE STATEMENTS MADE BY SELLER ARE BASED SOLELY UPON SELLER'S KNOWLEDGE AND INFORMATION AND DO NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY BY SELLER AGAINST ANY CONDITIONS THAT MAY EXIST THAT ARE UNKNOWN TO SELLER. THE BUYER IS AGAIN STRONGLY ENCOURAGED TO CONDUCT AND OBTAIN INSPECTIONS OF THE PROPERTY.

Concerning the Property referenced above:

1.	To your knowledge, are there any features of the Property shared in common with adjoining landowners, such as walls, fences, driveways, septic systems, water wells, satellite dishes, or shared meters or shared utilities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
2.	To your knowledge, is there a Homeowners Association, historical preservation district, or architectural committee or board that has any authority over the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
3.	To your knowledge, are there any common areas such as pools, tennis courts, driveways, roads or walkways co-owned with or used by others.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
4.	To your knowledge, is there now or has there ever been a waste disposal maintenance and monitoring contract with maintenance personnel certified by the Arkansas Department of Health?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
5.	To your knowledge, have there been any problems with any private sewer or water system, septic system, <u>water well</u> , or other system or utility servicing the Property?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
6.	To your knowledge, are there any encroachments, easements, leases, liens, mortgages or deeds of trust, contracts for sale or installment land sales contracts, adverse possession claims or similar matters that affect the Property that a title search would not reveal?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
7.	To your knowledge, have there been any room additions, structural modifications or other alterations or repairs made to the Property since the Property was originally constructed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
8.	If the answer to Question 7 was "Yes," to you knowledge were such structural changes done following issuance of a permit and in compliance with building codes?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable

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9.	To your knowledge, are there any underground storage tanks of any kind located on the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
10.	To your knowledge, has there been any settling from any cause, or slippage, sliding or other poor soil conditions at the Property or at adjacent properties?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
11.	To your knowledge, has there been any flooding, drainage, grading problems, or has water ever stood on the Property or under any improvement constructed thereon?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
12.	To your knowledge, has there been any damage to the Property or any of the structures from fire, earthquake, storms, floods or landslides prior to or during your ownership?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
13.	To your knowledge, are there any Bills of Assurance, deed restrictions, other obligations, or other use restrictions for the Property that a title search would not reveal?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
14.	To your knowledge, are there any violations or nonconforming uses of the Property regarding zoning, land use restrictions or "setback" requirements or matters not disclosed in Questions 12 and 13?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
15.	To your knowledge, are there any notices of abatement or citations against the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
16.	To your knowledge, are there any lawsuits affecting this Property or judgments against Seller that would affect the title or sale of the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
17.	To your knowledge, are there any neighborhood noise problems or other nuisances that would not be normal for this type of Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
18.	To your knowledge, are there any defects in the appliances or the mechanical, electrical, plumbing, heating and air conditioning, water, sewer or septic systems of the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
19.	To your knowledge, are there any defects in the structure(s) or sub-structure(s) of any improvements located on the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
20.	To your knowledge, is any of the Property in the floodplain or floodway?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
21.	To your knowledge, has any lender required you to purchase flood insurance on the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
22.	To your knowledge, has there ever been a problem with the roof or any of the improvements on the Property, such as defective shingles, damaged shingles, leaking or otherwise?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
23.	To your knowledge, is there any infestation by termites or other wood-destroying insects?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
24.	To your knowledge, is there any damage from a previous infestation of this type on the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
25.	Do you have knowledge or have you ever received notice from a termite company or other person or entity concerning possible problems or potential problems with the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable

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Seller Property Disclosure

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26.	Have you ever filed or made an insurance claim, warranty claim, or other claim concerning the Property? <i>Seller is aware that insurance claims against this Property may affect the availability/affordability of a Buyer to obtain homeowner's insurance and/or mortgage.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
27.	Have you ever received a settlement of a claim and not made repairs to improvements on the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
28.	To your knowledge, has any person or entity ever refused to complete the purchase of the Property because of an actual or alleged problem with the condition of the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
29.	To your knowledge, are there any leases or rental Agreements (or parties other than Seller in possession) currently in effect on the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
30.	To your knowledge, has any part of the Property been designated as Wetlands?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
31.	To your knowledge, are there any persons or entities, other than those listed above as "Sellers," who claim or have ownership or leasehold interest or 1st right of refusal option on the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
32.	To your knowledge, are there any existing pipelines carrying oil, gas or chemicals underneath or adjacent to the Property or are there any pipeline rights-of-way or easements over or adjacent to the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
33.	To your knowledge, has there been an unsatisfactory percolation, groundwater, or soil test concerning the Property?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
34.	To your knowledge, has any boundary discrepancy or unsatisfactory condition concerning the Property been disclosed to you, including information obtained from a boundary survey, environmental report or property inspection of the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
35.	To your knowledge, are there any facts, circumstances or events on or around the Property which, if known to a potential buyer, could adversely affect in a material manner the value or desirability of the Property?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
36.	To your knowledge, have any of the improvements on the Property been constructed at another site then moved onto the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
37.	To your knowledge, does the Property contain any exterior insulation finish system (EIFS) or synthetic stucco or similar components?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
38.	To your knowledge, is there any surface or sub-surface mining or extraction for coal, gravel, rock, oil, gas, or other minerals on the Property or on adjacent properties?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
39.	To your knowledge, is there any person or entity claiming or possibly having the right to claim the right to extract any minerals, oil, natural gas, coal or other minerals from the surface or sub-surface of the Property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable

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Seller Property Disclosure

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If the presence of a registered sex offender is a matter of concern to Buyer, Buyer understands that Buyer must contact local law enforcement officials or access the State of Arkansas registered sexual offender website at <http://www.acic.org> regarding such information.

Buyer is strongly urged, as part of any pre-closing investigation desired by Buyer concerning the Property to:

(i) conduct testing for possible existence of chemical or drug substances in, on or about the Property, as desired by Buyer, and (ii) visit with applicable law enforcement authorities about possible prior illegal activity on or about the Property.

If the location of the Property being in a Flood or Flood Prone area is of concern to Buyer, Buyer may access FEMA (Federal Emergency Management Authority) at www.msa.fema.gov regarding such information.

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FORM SERIAL NUMBER: 015879-000135-7677500

SELLER HEREBY AUTHORIZES (UNLESS A POTENTIAL BUYER DESIRES NOT TO OBTAIN A COPY OF THE STATEMENT AS EXPRESSLY SET FORTH IN A REAL ESTATE CONTRACT) ALL AGENTS INVOLVED IN THE SALE, EXCHANGE, LEASE OR RENTAL OF THE PROPERTY TO DISTRIBUTE THIS SELLER PROPERTY DISCLOSURE TO PROSPECTIVE BUYERS, LESSEES OR TENANTS OF THE PROPERTY. THIS SELLER PROPERTY DISCLOSURE IS INCORPORATED INTO THE LISTING AGREEMENT EXECUTED BY SELLER AND LISTING FIRM. SELLER FURTHER CERTIFIES THAT THE INFORMATION HEREIN IS TRUE AND CORRECT TO THE BEST OF SELLER'S KNOWLEDGE AS OF THE ABOVE DATE. SELLER FURTHER AGREES TO NOTIFY IN WRITING BUYERS, LESSEES, TENANTS AND LISTING FIRM OF ANY CHANGES IN THIS DISCLOSURE THAT MAY BECOME KNOWN TO SELLER AFTER THE DATE SIGNED BY SELLER.

COUNTERPARTS: This Seller Property Disclosure may be executed in multiple counterparts each of which shall be regarded as an original hereof but all of which together shall constitute one in the same.

Submitted by:

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____

Seller

Seller

(month) _____ (day) _____, (year) _____, at _____ (a.m.) (p.m.)

WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS SELLER PROPERTY DISCLOSURE. WE UNDERSTAND THAT THE ABOVE STATEMENTS ABOUT THE PROPERTY ARE TRUE AND CORRECT TO THE BEST OF SELLER'S KNOWLEDGE AS OF THE ABOVE DATE. IT IS NOT A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENT AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS BUYER, LESSEE OR TENANT MAY WISH TO OBTAIN.

BUYER'S LEAD-BASED PAINT DISCLOSURE ACKNOWLEDGEMENT:

1.	Buyer has received copies of all records and reports pertaining to lead-based paint or lead-based paint hazards in or about the Property available to Seller.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable
2.	Buyer has received a copy of the pamphlet, "Protect Your Family From Lead In Your Home".	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable

Received by:

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____

Buyer

Buyer

(month) _____ (day) _____, (year) _____, at _____ (a.m.) (p.m.)

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2

Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: Ray Gosack, City Administrator

From: Kevin Lindsey, Chief of Police

Subject: Animal Services Advisory Board Review of Ordinance Recommendations

Date: February 8, 2013

Attachments: Animal Control Ordinance Revisions 021213
Animal Services Advisory Board Ordinance Comments 021213

The Animal Services Advisory Board (ASAB) has completed a comprehensive review of the animal ordinances. Some of the revised ordinances have been identified as needing further revision. Through coordination between members of the Animal Services Advisory Board and the City Attorney, the ASAB Chairperson Nichole Morgan will outline these requested changes to the Board of Directors at their regular Study Session on February 12, 2013.

These changes are outlined in the attached documents.

"Pride and Progress"

Animal Services Advisory Board Comments

Sec. 4-1

If adding “Is capable by electronic or similar means of restricting a dog to the owner's property,” stipulate in the event of a power outage, the owners are responsible for remaining in compliance with the applicable leash and enclosure laws.

Sec. 4-36 – Notice; redemption period; disposition

The city-approved animal impoundment facility shall keep all impounded animals, **excluding felines**, for a period of five (5) days from the date of impounding; the maximum hold period for **felines will be three (3) calendar days for domestic felines, and one (1) calendar day for feral felines....**

Sec. 4-97 – Animals as prizes

It shall be unlawful for any person or organization, whether for profit, nonprofit, charity or any other purpose to offer any animal, except fish, that is physically present as a prize in response to participation in a game, contest, drawing of chance, auction or raffle. **Cattle, swine, sheep, goats, and horses shall be exempt.**

Sec. 4-115

Why is A.5 being repealed? Would we not want to “prevent the entry of other animals and the general public, including children?”

Sec. 4-116 – Running at large (Leash Law)

Change:

A.3. The owner or harbinger will be issued a **written** warning for violation of the running at large ordinance and will receive a pamphlet as to animal ordinances.

A.3.a. Within fifteen (15) days of the written warning, an animal control officer will perform an inspection of the owner or harbinger's property.

Remove:

A.2. The dog and owner will be photographed

We would like to also suggest an alternative to the fine schedule.

Number of offense	Intact dog	Altered dog
First	Warning	Warning
Second	\$125.00	\$50.00
Third	\$250.00	\$100.00
Fourth	\$500.00	\$200.00

Animal Services Advisory Board Comments

This way we have raised the fine cost for intact dogs to create more incentive for the owners to get them altered and provide proof within the 30 day period, while still maintaining our stance of penalty for offenders.

Also, if possible, add some verbiage to allow standard community services to work off fines incurred, NOT limited to animal shelters.

ORDINANCE NO. _____

AN ORDINANCE AMENDING IDENTIFIED SECTIONS, ADDING SECTION 4-97, AND REPEALING SUBSECTION (a)(5) OF SECTION 4-115 OF THE FORT SMITH MUNICIPAL CODE TO AUTHORIZE CERTAIN CHANGES AND ADDITIONAL REGULATIONS PERTAINING TO DOMESTIC ANIMALS

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

SECTION 1: The definition of “secure enclosure” in Section 4-1 of the Fort Smith Municipal Code is amended to add the following:

6. Is capable by electronic or similar means of restricting a dog to the owner’s property.

SECTION 2: The first two sentences of Section 4-36 of the Fort Smith Municipal Code are condensed into one sentence and amended to read as follows:

The City-approved animal impound facility shall keep all impounded animals, except felines, for a period of five (5) days from the date of impounding; the maximum hold period for felines will be three (3) calendar days for domestic felines, and one (1) calendar day for feral felines; and, during the period of impoundment, the city-approved animal impoundment facility shall notify or make diligent effort to notify the owner of such impounding, and of the proposed destruction or sale of the animal.

SECTION 3: Section 4-90 of the Fort Smith Municipal Code is amended to read as follows:

It shall be unlawful for any person or pet shop or kennel to sell any animal to any person who is less than eighteen (18) years of age.

SECTION 4: The Fort Smith Municipal Code is amended to add the following section:

Section 4-97. It shall be unlawful for any person or entity, whether for profit, nonprofit, charity or any other purpose to offer any animal (except fish, cattle, swine, goats, and horses) that is physically present as a prize in connection with participation in a game , contest, drawing of chance, auction or raffle.

SECTION 5: Section 4-115(a)(5) of the Fort Smith Municipal Code is repealed.

SECTION 6: The first two sentences of Section 4-116 of the Fort Smith Municipal Code are amended and condensed into one sentence to read as follows:

It shall be unlawful for any dog owner to allow his/her dog to run at large, as defined in Section 4-1, within the corporate city limits.

Additionally, the chart in Section 4-116 of the Fort Smith Municipal Code, which identifies the fines to be assessed, is amended as follows:

Number of Offense	Intact Dog	Altered Dog
First	Warning	Warning
Second	\$125.00	\$50.00
Third	\$250.00	\$100.00
Fourth (and subsequent)	\$500.00	\$200.00

SECTION 7: Section 4-122 of the Fort Smith Municipal Code is amended by adding the phrase “on the public streets” so that the first sentence shall read, in part, as follows: “. . . when transporting an animal in an open air vehicle or truck bed, on the public streets. . . .”

SECTION 8: Emergency Clause. It is hereby determined that the provisions of this Ordinance should be immediately effective in order to provide for the regulation of animals within the City. Therefore, an emergency is declared to exist, and this Ordinance, being necessary for the protection of the health, safety and welfare of the inhabitants of the City, shall be of full force and effect from the date of its adoption.

PASSED AND APPROVED THIS _____ DAY OF _____, 2013.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to form:

 City Attorney
 Publish One Time



MEMORANDUM

February 8, 2013

TO: Mayor and Board of Directors

FROM : Ray Gosack, City Administrator

SUBJECT: County-wide Sales Tax

The county-wide sales tax will be presented to voters for renewal in May. The 1% tax was first approved in 1994 and re-approved in 2003. Voters will be asked to continue the tax for a third 10-year term.

The tax revenue is shared by all cities in Sebastian County and the county government. The revenue is divided on a per capita basis. In 2013, we estimate Fort Smith will receive nearly \$15.7 million from this tax. The revenue is vital to providing a variety of services to the citizens of Fort Smith and all of Sebastian County.

Attached is a resolution which states how Fort Smith expends its share of the revenue. Three-fourths of the revenue is used for police and fire services. Other uses include the library, parks capital projects, senior citizen services, downtown improvements, public transit, and replacement revenue for the elimination of business license fees. Attached is a spreadsheet which shows these allocations for 2013.

The resolution is important for the voter education effort. Each city and the county government will be passing similar resolutions over the next few weeks so that we can publicize to voters how the revenue will be spent if the tax is continued.

I recommend one minor change to Fort Smith's existing resolution. Item 4 in the resolution allocates 2.5% of the revenue for a variety of city-wide parks improvements. Last year, Fort Smith voters re-allocated an existing city sales tax. This re-allocation is providing significant funding for parks improvement projects. It's recommended that the county-wide

sales tax revenue previously earmarked for parks projects be changed to parks operations.

If the board concurs with this change, we'll have two resolutions pertaining to the county-wide sales tax for the February 19th board meeting.

- A resolution stating how Fort Smith intends to use its share of the county-wide sales tax revenue.
- A resolution encouraging Fort Smith voters to approve the continuation of the 1% county-wide sales tax. This resolution is necessary for the staff to be able to advocate passage of the tax.

Please contact me if there's any questions or a need for more information about the county-wide sales tax.

A handwritten signature in black ink, consisting of a short horizontal line followed by the name "Ray" in a cursive script.

2 Attachments

SM1

RESOLUTION NO. R-83-03

**A RESOLUTION BY THE
CITY OF FORT SMITH BOARD OF DIRECTORS
REGARDING THE PASSAGE AND USE
OF COUNTY-WIDE SALES TAX PROCEEDS**

WHEREAS, the Sebastian County Quorum Court has called a special election for continuing a one-cent county-wide sales tax first approved by voters in 1994; and

WHEREAS, the proceeds from the tax are dedicated to general municipal and county services; and

WHEREAS, the Board of Directors of the City of Fort Smith endorses and supports continuation of the one-cent county-wide sales tax, and in doing so, wishes to advise citizens of the plan for use of the City's share of the county-wide sales tax proceeds if the continuation of the tax is approved by a vote of the citizens;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Fort Smith, Arkansas that if the citizens approve continuation of the county-wide sales tax as described above, the Board of Directors currently plans to utilize the City's share of the tax proceeds as follows effective with the City's budget beginning January 1, 2005:

1. Police and Fire Services. Seventy-six percent (76%) of the revenues will be used to help the City maintain its staff of police officers and firefighters, operate its police and fire stations; and replace aging fire apparatus.
2. Library Programs. Six percent (6%) of the revenues will be used for programs, services, and acquisitions at the Fort Smith Public Libraries.
3. Senior Citizens Services. One and one-half percent (1.5%) of the revenues

will be used to help operate the two senior activity centers in Fort Smith by providing funding for meals and social programs.

4. Parks Projects. Two and one-half percent (2.5%) of the revenues will be used for a variety of city-wide parks improvements. Some of the funds will be used to help match federal, state, and other grants for park improvements.
5. Downtown, Riverfront, and Convention Center Improvements. Three percent (3%) of the revenues will be used to help finance capital improvements on the downtown area, along the Arkansas River front, and the Fort Smith Convention Center. Some of the funds will be used to help match federal, state, and other grants for downtown, riverfront, and similar area improvements.
6. Public Transportation. Three percent (3%) of the revenues will be used for public transportation services. This will allow the City to match federal and state grants for a transit system in Fort Smith.
7. Business License Replacement Tax. Eight percent (8%) of the revenues will be used to replace revenues lost by repeal of the City's privilege license requirement in 1994.

BE IT FURTHER RESOLVED that the Board of Directors of the City of Fort Smith agrees to ask the Sebastian County Quorum Court to call an election at the end of 10 years from the May 20, 2003 election for reconsideration of the county-wide sales tax by the citizens.

This Resolution adopted this 22^d day of April, 2003.



Mayor

ATTEST:



City Clerk

Approved on the form
Stet & Sean
NPR

9/6/2012

**City of Fort Smith
County Sales Tax Allocation
2013 Budget**

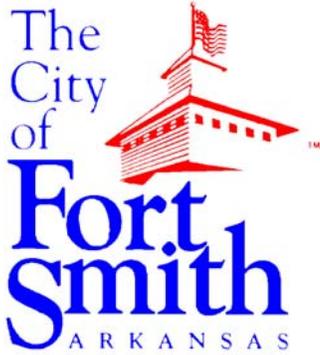
Estimated County Sales Tax for 2013	15,703,845	
Public Safety (76%)		<u>11,934,922</u>
Public Library (6%)		<u>942,231</u>
Parks Capital Maintenance (2.5%)		<u>392,596</u>
Senior Citizen Services (1.5%)		<u>235,558</u>
Senior Citizen Services -		
Area Agency on Aging	50,000	
Project Compassion	7,500	
SRCA, Inc. Social Services	<u>178,058</u>	
Total	<u>235,558</u>	
Downtown Improvements (3%)		<u>471,115</u>
4111/6206 Programs	<u>471,115</u>	
Sub - Total	<u>471,115</u>	
Public Transportation (3%)		<u>471,115</u>
General Fund (8%)		<u>1,256,308</u>
Total Allocation		<u>15,703,845</u>

9/27/2012

City of Fort Smith

**County Sales Tax Allocation
2013 Budget**

Estimated County Sales Tax for 2013	15,665,165	
Public Safety (76%)		<u>11,905,525</u>
Public Library (6%)		<u>939,910</u>
Parks Capital Maintenance (2.5%)		<u>391,629</u>
Senior Citizen Services (1.5%)		<u>234,977</u>
Senior Citizen Services -		
Area Agency on Aging	50,000	
Project Compassion	7,500	
SRCA, Inc. Social Services	<u>177,477</u>	
Total	<u>234,977</u>	
Downtown Improvements (3%)		<u>469,955</u>
4111/6206 Programs	<u>469,955</u>	
Sub - Total	<u>469,955</u>	
Public Transportation (3%)		<u>469,955</u>
General Fund (8%)		<u>1,253,213</u>
Total Allocation		<u>15,665,165</u>



Mayor – Sandy Sanders
City Administrator – Ray Gosack
City Clerk – Sherri Gard

Board of Directors

Ward 1 – Keith D. Lau
Ward 2 – Andre' Good
Ward 3 – Mike Lorenz
Ward 4 – George Catsavis
At Large Position 5 – Pam Weber
At Large Position 6 – Kevin Settle
At Large Position 7 – Philip H. Merry Jr.

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

1. Discuss mitigation of groundwater contamination *(request from Whirlpool Corporation)*
Good/Lorenz placed ordinance on March 5, 2013 regular meeting agenda
2. Review recommendations of the Animal Services Advisory Board
Lau/Merry placed ordinance without section pertaining to live auctions on the February 19, 2013 regular meeting agenda
3. Discuss revenue allocation of county-wide sales tax
Weber/Lorenz placed 2 resolutions on the February 19, 2013 regular meeting agenda.
 - a. Resolution identifying use of proceeds from the county-wide sales tax
 - b. Resolution endorsing continuation of county-wide sales tax
4. Review preliminary agenda for the February 19, 2013 regular meeting
 1. The Board opted to remove consideration of appointments to the Comprehensive Plan Steering Committee from the February 19, 2012 regular meeting and extended the deadline for applications for appointment to Friday, February 22, 2013. The Board did not wish to delay the Town Hall Meeting for an executive session at the March 5, 2013 regular meeting; therefore, a special meeting will be called to hold an executive session to consider appointments.
 2. Director Weber reiterated opposition to the urban deer hunt citing the Board could potentially allow deer stands to be closer to residential structures than billboards.