



City of Jonesboro

900 West Monroe
Jonesboro, AR 72401

Council Agenda City Council

Tuesday, December 20, 2011

6:30 PM

Huntington Building

PUBLIC SAFETY COMMITTEE MEETING AT 5:30 P.M.

City Council Chambers, Huntington Building

NOMINATING & RULES COMMITTEE MEETING AT 6:00 P.M.

City Council Chambers, Huntington Building

PUBLIC HEARING AT 6:15 P.M.

*Regarding the abandonment of a 15' utility easement located at 2416 Sea Island Drive
as requested by Mr. Murray Benton*

SPECIAL CALLED FINANCE COMMITTEE MEETING AT 6:25 P.M.

City Council Chambers, Huntington Building

1. CALL TO ORDER BY MAYOR PERRIN AT 6:30 P.M.

2. PLEDGE OF ALLEGIANCE AND INVOCATION

3. ROLL CALL BY CITY CLERK DONNA JACKSON

4. SPECIAL PRESENTATIONS

COM-11:087 Special recognition presentation by the Mayor

Sponsors: Mayor's Office

COM-11:088 City of Distinction presentation to Mayor Perrin from Paul Phillips of Crews & Associates

Sponsors: Mayor's Office

5. CONSENT AGENDA

*All items listed below will be voted on in one motion unless a council member requests
a separate action on one or more items.*

MIN-11:105 Minutes for the City Council meeting on December 6, 2011

Attachments: [Minutes](#)

- RES-11:202** A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO ACCEPT THE LOW BID AND ENTER INTO A CONTRACT WITH ASPHALT PRODUCERS, LLC FOR THE VINEY SLOUGH TRIBUTARY STRUCTURES - JOB NO. 2011:41
- Sponsors:** Engineering
- Attachments:** [Specifications.pdf](#)
[Bid Tab.pdf](#)
- Legislative History**
- | | | |
|---------|-----------------------------------|------------------------|
| 12/6/11 | Public Works Council
Committee | Recommended to Council |
|---------|-----------------------------------|------------------------|
- RES-11:203** A RESOLUTION TO ACCEPT A MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES FOR JAMESTOWN PHASE III, A RESIDENTIAL SUBDIVISION
- Sponsors:** Engineering
- Attachments:** [Maintenance Agreement.pdf](#)
- Legislative History**
- | | | |
|---------|-----------------------------------|------------------------|
| 12/6/11 | Public Works Council
Committee | Recommended to Council |
|---------|-----------------------------------|------------------------|
- RES-11:204** A RESOLUTION TO ACCEPT A MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES WILLIAMS REPLAT OF LOT 2, HURST ACRES, A COMMERCIAL DEVELOPMENT
- Sponsors:** Engineering
- Attachments:** [Maintenance Agreement.pdf](#)
- Legislative History**
- | | | |
|---------|-----------------------------------|------------------------|
| 12/6/11 | Public Works Council
Committee | Recommended to Council |
|---------|-----------------------------------|------------------------|
- RES-11:206** A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO CONTINUE A JOINT FUNDING AGREEMENT WITH THE U.S. GEOLOGICAL SURVEY, UNITED STATES DEPARTMENT OF THE INTERIOR FOR THE OPERATION AND MAINTENANCE OF TWO STREAMGAGES IN JONESBORO
- Sponsors:** Engineering
- Attachments:** [2012 Agreement.pdf](#)
- Legislative History**
- | | | |
|---------|-----------------------------------|------------------------|
| 12/6/11 | Public Works Council
Committee | Recommended to Council |
|---------|-----------------------------------|------------------------|
- RES-11:207** A RESOLUTION TO AUTHORIZE A CONTRACT WITH DISABLED AMERICAN VETERANS, CHAPTER 26 FOR TRANSPORTATION OF LOCAL VETERANS
- Sponsors:** Mayor's Office and Finance
- Attachments:** [DAV & COJ Contract](#)
- Legislative History**
- | | | |
|----------|---|------------------------|
| 12/13/11 | Finance & Administration
Council Committee | Recommended to Council |
|----------|---|------------------------|

RES-11:209 A RESOLUTION TO ACCEPT A MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES FOR NEA BAPTIST CLINIC/FLOYRED COMMONS OFF-SITE DETENTION, A COMMERCIAL SUBDIVISION

Sponsors: Engineering

Attachments: [Maintenance Agreement.pdf](#)

Legislative History

12/6/11 Public Works Council Recommended to Council
Committee

RES-11:210 A RESOLUTION TO ACCEPT A MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES FOR ST. BERNARDS HEALTH AND WELLNESS INSTITUTE OFF-SITE DETENTION, A COMMERCIAL DEVELOPMENT

Sponsors: Engineering

Attachments: [Maintenance Agreement.pdf](#)

Legislative History

12/6/11 Public Works Council Recommended to Council
Committee

RES-11:213 A RESOLUTION FOR THE CITY OF JONESBORO TO ENTER INTO A CONTRACT WITH NORTHEAST ARKANSAS INDUSTRIAL DEVELOPMENT COMMISSION FOR FUNDING OF ECONOMIC DEVELOPMENT SERVICES.

Sponsors: Finance

Attachments: [PBC NAIDC 2012](#)

Legislative History

12/13/11 Finance & Administration Recommended to Council
Council Committee

RES-11:220 A RESOLUTION OF THE CITY OF JONESBORO, ARKANSAS APPROVING A CONTRACT FOR PROFESSIONAL SERVICES BY BRACKETT, KRENNERICH & ASSOCIATES TO PERFORM A SPATIAL STUDY

Sponsors: Mayor's Office

Attachments: [Brackett-Krennerich](#)

Legislative History

12/13/11 Finance & Administration Recommended to Council
Council Committee

6. NEW BUSINESS

ORDINANCES ON FIRST READING

ORD-11:085 AN ORDINANCE TO AMEND SECTIONS, 117-2 AND 117-31 OF CHAPTER 117 OF THE JONESBORO CODE OF ORDINANCES OF THE CITY OF JONESBORO, ARKANSAS FOR THE PURPOSE OF ESTABLISHING A REASONABLE ACCOMMODATION POLICY AND PROVIDE CLARITY TO THE DEFINITION OF FAMILY, DECLARING AN EMERGENCY FOR THE PURPOSE OF EXPEDITING A PROCEDURE TO BRING THE CODE INTO COMPLIANCE WITH THE FAIR

HOUSING ACT (FHA)

Sponsors: Planning

Attachments: [StaffMemo Fair Housing Jonesboro](#)
[MAPC RecordOfProceedings](#)
[April52011_KingsRanchJudgement](#)
[FairHousingActPowerpointPresentation](#)
[JointStatement_HUD_DeptJustice](#)

EMERGENCY CLAUSE

Legislative History

12/6/11	Public Works Council Committee	Recommended to Council
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ORD-11:089 AN ORDINANCE FOR THE ADOPTION OF A BUDGET FOR THE CITY OF JONESBORO, ARKANSAS, FOR THE TWELVE (12) MONTHS BEGINNING JANUARY 1, 2012 AND ENDING DECEMBER 31, 2012, APPROPRIATING MONEY FOR EACH ITEM OF EXPENDITURE THEREIN PROVIDED FOR, ADOPTION OF THE EMERGENCY CLAUSE FOR THE EFFICIENT OPERATION OF CITY GOVERNMENT, AND FOR THE FINANCIAL CONTINUITY OF 2012, AND FOR OTHER PURPOSES.

Sponsors: Finance

EMERGENCY CLAUSE

Legislative History

12/13/11	Finance & Administration Council Committee	Recommended to Council
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ORD-11:090 AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AUTHORIZE PURCHASE OF TEN (10) NEW 2011 FORD CROWN VICTORIA POLICE CARS AND TO DECLARE AN EMERGENCY BECAUSE THE AVAILABILITY OF THE CARS IS EXTREMELY LIMITED SINCE THEY ARE NO LONGER PRODUCED

Sponsors: Finance

EMERGENCY CLAUSE

Legislative History

12/13/11	Finance & Administration Council Committee	Recommended to Council
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ORD-11:093 AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE OF THE CITY OF JONESBORO, ARKANSAS, PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM C-3 TO RS-4 FOR PROPERTY LOCATED AT 5213 EAST NETTLETON AS REQUESTED BY ARTHUR WALLACE

Attachments: [Plat](#)
[MAPC Report](#)

ORD-11:094 AN ORDINANCE TO VACATE AND ABANDON A 15' UTILITY EASEMENT AND DECLARING AN EMERGENCY FOR THE PURPOSE OF EXPEDITING CONSTRUCTION BY THE PROPERTY OWNER.

Attachments: [Plat](#)
[Utility Letters](#)
[Planning Letter](#)
[Petition](#)

EMERGENCY CLAUSE

7. UNFINISHED BUSINESS

ORDINANCES ON SECOND READING

ORD-11:086 AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-1 TO C-3 LUO FOR PROPERTY LOCATED AT 5600 EAST JOHNSON AS REQUESTED BY JIM AND JUDY FURR

Attachments: [Plat](#)
[MAPC Report](#)

EMERGENCY CLAUSE

Legislative History

12/6/11 City Council Held at one reading

ORD-11:087 AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE OF THE CITY OF JONESBORO, ARKANSAS, PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-3 TO C-3 LUO FOR PROPERTY LOCATED AT 2100 AND 2124 STADIUM BLVD AND 3010, 3012 AND 3014 SUN AVENUE AS REQUESTED BY LARRY BRIMHALL, BILLIE ALEXANDER, MT. ZION BAPTIST ASSOCIATION, MARY PAYTON AND KENNETH SMITH

Attachments: [Plat](#)
[MAPC Report](#)

Legislative History

12/6/11 City Council Held at one reading

ORD-11:091 AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-1 TO C-3 FOR PROPERTY LOCATED AT 1709 AIRPORT ROAD AS REQUESTED BY PHILLIPS INVESTMENTS

Attachments: [Plat](#)
[Layout](#)
[Concept Plan](#)
[MAPC Report](#)

Legislative History

12/6/11 City Council Held at one reading

8. MAYOR'S REPORTS

9. CITY COUNCIL REPORTS

10. PUBLIC COMMENTS

Public Comments are limited to 5 minutes per person for a total of 15 minutes.

11. ADJOURNMENT



City of Jonesboro

515 West Washington
Jonesboro, AR 72401

Legislation Details (With Text)

File #: COM-11:087 **Version:** 1 **Name:** Special presentation by Mayor Perrin
Type: Other Communications **Status:** To Be Introduced
File created: 12/6/2011 **In control:** City Council
On agenda: **Final action:**
Title: Special recognition presentation by the Mayor
Sponsors: Mayor's Office
Indexes: Mayor's Commendations
Code sections:
Attachments:

Date	Ver.	Action By	Action	Result
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Title
Special recognition presentation by the Mayor



City of Jonesboro

515 West Washington
Jonesboro, AR 72401

Legislation Details (With Text)

File #: COM-11:088 **Version:** 1 **Name:** City of Distinction presentation
Type: Other Communications **Status:** To Be Introduced
File created: 12/6/2011 **In control:** City Council
On agenda: **Final action:**
Title: City of Distinction presentation to Mayor Perrin from Paul Phillips of Crews & Associates
Sponsors: Mayor's Office
Indexes: Presentations
Code sections:
Attachments:

Date	Ver.	Action By	Action	Result
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Title
City of Distinction presentation to Mayor Perrin from Paul Phillips of Crews & Associates



City of Jonesboro

515 West Washington
Jonesboro, AR 72401

Legislation Details (With Text)

File #: MIN-11:105 **Version:** 1 **Name:**
Type: Minutes **Status:** To Be Introduced
File created: 12/15/2011 **In control:** City Council
On agenda: **Final action:**
Title: Minutes for the City Council meeting on December 6, 2011
Sponsors:
Indexes:
Code sections:
Attachments: [Minutes](#)

Date	Ver.	Action By	Action	Result
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title
Minutes for the City Council meeting on December 6, 2011



City of Jonesboro

900 West Monroe
Jonesboro, AR 72401

Meeting Minutes City Council

Tuesday, December 6, 2011

6:30 PM

Huntington Building

PUBLIC WORKS COMMITTEE MEETING AT 5:30 P.M.

1. CALL TO ORDER BY MAYOR PERRIN AT 6:30 P.M.

2. PLEDGE OF ALLEGIANCE AND INVOCATION

3. ROLL CALL BY CITY CLERK DONNA JACKSON

Councilman Dover left the meeting at 7:10 p.m. at the beginning of the City Council Reports.

Present 12 - Darrel Dover; Ann Williams; Charles Frierson; Chris Moore; John Street; Mitch Johnson; Tim McCall; Gene Vance; Chris Gibson; Rennell Woods; Mikel Fears and Charles Coleman

4. SPECIAL PRESENTATIONS

Fire Department awards

Mayor Perrin recognized recent award recipients in the Fire Department. Fireman Jason Olson was honored as 2011 Firefighter of the Year. Battalion Chief Jerry McCormick was chosen as 2011 Officer of the Year. Firefighter Brian Shannon was honored as 2011 Rookie of the Year.

COM-11:086

Presentation by Assistant Parks Director Wixson Huffstetler regarding Miracle League

Sponsors: Parks & Recreation

Mr. Huffstetler discussed the Miracle League. He noted this will benefit not only the City of Jonesboro, but the surrounding communities. The players are partnered with individuals to help the players get around the bases and move around the fields. He explained they have visited Springdale and Little Rock who both participate in the Miracle League. Playgrounds for mentally and physically disabled children are also constructed. He further discussed the playgrounds and fields. He added the funding will come from CDBG and grants, but will also come from private donations. After a short video, Mr. Huffstetler explained on the consent agenda there is a contract for the softball fields that includes a clause requiring the City to build a Miracle Field within the next 5 years in order to extend the contract another 50 years. For the City to be able to receive grant funding for the fields, the lease has to be at least 50 years for most of the grants. He asked the Council to pass the resolution in order to benefit the community.

Councilman Gibson questioned what the cost is associated with the construction. Mr.

Huffstetler explained they would like to build one, big field in order to play baseball, soccer and other sports on it in addition to having birthday parties. They estimate the cost to be between \$500,000 and \$750,000. He stated they want to be sure to build the playground big enough for kids to play on. Mayor Perrin added the field will be located next to Southside Ballpark, not far from DHS so they could also use it regularly. He explained engineers and other professionals have offered to donate some services towards the project. He also noted there have been several big entities who have expressed interest in naming rights for the field. He stressed the need for making the playground big enough in order for the kids to use. Mr. Huffstetler stated he would like to add on to the playground every year to make it bigger and better.

Read

5. CONSENT AGENDA

Approval of the Consent Agenda

A motion was made by Councilman Chris Moore, seconded by Councilman Chris Gibson, to Approve the Consent Agenda. A motion was made that these files be approved by consent voice vote

Aye: 12 - Darrel Dover; Ann Williams; Charles Frierson; Chris Moore; John Street; Mitch Johnson; Tim McCall; Gene Vance; Chris Gibson; Rennell Woods; Mikel Fears and Charles Coleman

MIN-11:100 Minutes for the City Council meeting on November 15, 2011

Attachments: [Minutes](#)

This item was PASSED on the consent agenda.

RES-11:195 A RESOLUTION AUTHORIZING A LEASE EXTENSION ON SOUTHSIDE SOFTBALL COMPLEX

Sponsors: Mayor's Office

Attachments: [Lease Extension](#)

This item was PASSED on the consent agenda.

Enactment No: R-EN-144-2011

RES-11:197 A RESOLUTION TO ENTER INTO CONTRACT WITH THE ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT FOR THE RECREATIONAL TRAIL GRANT

Sponsors: Grants

Attachments: [AHTD Agreement of Understanding](#)

This item was PASSED on the consent agenda.

Enactment No: R-EN-145-2011

RES-11:199 A RESOLUTION TO CONTRACT WITH UNILEVER FOR SPONSORSHIP OF SOCCER FIELDS AT JOE MACK CAMPBELL PARK

Sponsors: Parks & Recreation

Attachments: [Unilever](#)

This item was PASSED on the consent agenda.

Enactment No: R-EN-146-2011

RES-11:201 A RESOLUTION TO ACCEPT INSURANCE PROPOSALS FROM BLUE CROSS BLUE SHIELD AND DELTA DENTAL TO PROVIDE INSURANCE COVERAGE FOR CITY EMPLOYEES

Sponsors: Mayor's Office and Human Resources

Attachments: [Airport ABCBS contract](#)
[COJ ABCBS contract](#)
[COJ ABCBS Medipak supp RX](#)
[JURH ABCBS contract](#)
[Library ABCBS contract](#)

This item was PASSED on the consent agenda.

Enactment No: R-EN-147-2011

RES-11:205 A RESOLUTION TO ESTABLISH THE REQUIRED MINIMUM FINANCIAL RESERVES IN THE RESTRICTED FUNDS

Sponsors: Finance

This item was PASSED on the consent agenda.

Enactment No: R-EN-148-2011

6. NEW BUSINESS

ORDINANCES ON FIRST READING

ORD-11:086 AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-1 TO C-3 LUO FOR PROPERTY LOCATED AT 5600 EAST JOHNSON AS REQUESTED BY JIM AND JUDY FURR

Attachments: [Plat](#)
[MAPC Report](#)

Councilman Dover offered the ordinance for first reading by title only.

This ordinance was Held at one reading.

ORD-11:087 AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE OF THE CITY OF JONESBORO, ARKANSAS, PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-3 TO C-3 LUO FOR PROPERTY LOCATED AT 2100 AND 2124 STADIUM BLVD AND 3010, 3012 AND

3014 SUN AVENUE AS REQUESTED BY LARRY BRIMHALL, BILLIE ALEXANDER, MT. ZION BAPTIST ASSOCIATION, MARY PAYTON AND KENNETH SMITH

Attachments: [Plat](#)
 [MAPC Report](#)

Councilman Street offered the ordinance for first reading by title only.

Councilman Vance questioned how deep they will be going to the east on Stadium and if there will be barrier like Brazos. He stated he's not looking for an answer now, but he would like to know the other zonings in this particular area.

This ordinance was Held at one reading.

RESOLUTIONS TO BE INTRODUCED

RES-11:214 RESOLUTION TO SET A PUBLIC HEARING TO ABANDON A 15 FOOT UTILITY EASEMENT AT 2416 SEA ISLAND DRIVE AS REQUESTED BY MURRAY BENTON

Attachments: [Petition](#)
 [Plat](#)
 [Utility Letters](#)
 [Planning Letter](#)

A motion was made by Councilman John Street, seconded by Councilman Chris Moore, that this matter be Passed . The motion PASSED by a unanimous vote

Aye: 12 - Darrel Dover;Ann Williams;Charles Frierson;Chris Moore;John Street;Mitch Johnson;Tim McCall;Gene Vance;Chris Gibson;Rennell Woods;Mikel Fears and Charles Coleman

Enactment No: R-EN-149-2011

7. UNFINISHED BUSINESS

ORDINANCES ON SECOND READING

ORD-11:088 AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-1 TO C-3 LUO FOR PROPERTY LOCATED AT 1075/1709 AIRPORT ROAD AS REQUESTED BY PHILLIPS INVESTMENTS

Attachments: [Plat](#)
 [Concept Plan](#)
 [Layout](#)
 [MAPC Report](#)
 [Revised ordinance submitted 11/28/11](#)
 [Revised plat submitted 11/28/11](#)

Mayor Perrin noted there has been a change to the ordinance, so the new ordinance needs to be put on the agenda.

A motion was made by Councilman Chris Moore, seconded by Councilman

Chris Gibson, that this matter be Postponed Indefinitely . The motion PASSED by a unanimous vote

Aye: 12 - Darrel Dover;Ann Williams;Charles Frierson;Chris Moore;John Street;Mitch Johnson;Tim McCall;Gene Vance;Chris Gibson;Rennell Woods;Mikel Fears and Charles Coleman

ORD-11:091 AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-1 TO C-3 FOR PROPERTY LOCATED AT 1709 AIRPORT ROAD AS REQUESTED BY PHILLIPS INVESTMENTS

Attachments: [Plat](#)
[Layout](#)
[Concept Plan](#)
[MAPC Report](#)

Councilman Street motioned, seconded by Councilman Moore, to suspend the rules and add ORD-11:091 to the agenda. All voted aye.

Councilman Dover offered the ordinance for first reading by title only.

Mayor Perrin explained the original request was to have both tracts of land rezoned to C-3 LUO. But, the new request is for Tract 1 to be rezoned C-3 LUO and Tract 2 will stay R-1. Councilman Moore clarified Tract 2 is the one with the retention pond. Mayor Perrin stated that is correct. City Planner Otis Spriggs explained in the new ordinance the rezoning request is for C-3 for 1709 Airport and there will be no L.U.O.

A resident clarified the rezoning is for C-3 with no limited use overlay. Mayor Perrin agreed, stating the rezoning will be C-3 with the other tract of land staying R-1. The resident then questioned the need for the change. Mr. Spriggs stated the building will overlap the tract, so they wanted to rezone the property in order to make the proper changes on the zoning map. He noted there will be no buildings on the R-1 tract, so it will remain residential. He added the detention is allowed in R-1. The resident stated she thought the original property to which the rezoning is being attached to was rezoned C-3 LUO in order to restrict businesses on the property to things such as professional businesses. Mr. Spriggs stated the original property is C-3 and they verified that with the ordinance. He noted the rezoning was authorized with Ordinance 1031 in April, 2000. He added the adjoining Gillespie property is zoned C-3 LUO, which could be what property the resident is thinking of.

This ordinance was Held at one reading.

ORDINANCES ON THIRD READING

ORD-11:083 AN ORDINANCE REPEALING ORDINANCE 11:044 AND ADOPTING BY REFERENCE CHAPTER 66 SECTION 5 ENTITLED SPECIAL EVENT PERMIT, FOR THE REGULATION OF SPECIAL EVENTS AND STREET CLOSINGS IN THE CITY OF JONESBORO, ARKANSAS

Sponsors: Mayor's Office

Attachments: [Special Event Permit](#)
[ORD 11 044](#)
[Special Event Assembly Permit old version](#)

A motion was made by Councilman Darrel Dover, seconded by Councilman

Mitch Johnson, that this matter be Passed . The motion PASSED by a unanimous vote

Aye: 12 - Darrel Dover;Ann Williams;Charles Frierson;Chris Moore;John Street;Mitch Johnson;Tim McCall;Gene Vance;Chris Gibson;Rennell Woods;Mikel Fears and Charles Coleman

Enactment No: O-EN-070-2011

8. MAYOR'S REPORTS

Mayor Perrin reported on the following items:

They are surveying the Edwards property and will also get an appraisal in order to put it up for sale.

Improvements will be made to Highway 63 at Stadium, Highway 1 and Southwest Drive. Two of the contracts have been let. There will be an extended right-hand turn lane at Southwest Drive.

They have received permission from the Highway Department to extend Parker Road from Strawfloor to Washington Avenue. The estimated cost is \$1.1 million. They will be using federal funds to help pay for the project.

They met with ADEQ to discuss the landfill post-closure. They are concerned about gas mitigation. But, they have received a letter stating the City can take care of the gas mitigation itself without having to contract the services out. He would like to do the gas mitigation one more year.

They inspected the Wolverine building and there was evidence of trespassing. They have secured the building. If a condemnation is done on the building, the City will have to maintain it. Wolverine had indicated the City owned the building, but City Attorney Phillip Crego proved Wolverine owns it.

Winter Wonderland is open. They are averaging 140 children per night.

They found out today that the asbestos has been removed from the old Indian Mall. A 30-day contract has been signed for demolition. Within the next 35 days, the building will be coming down. The City will receive the brick. Councilman Moore suggested seeing if the County will help with hauling the brick since some of it will be used for ditch work.

He recommended everyone look at the public works facility on Lacy Drive. The low bid for the fencing was \$71,000 and it will be started as soon as possible.

He has been speaking with City Attorney Crego concerning property liens. He will be speaking at the next meeting concerning liens.

Current ordinances regarding towing need to be reviewed to reflect current economic standards. He will ask the Public Safety Committee to discuss the issue.

COM-11:089

Financial reports for November, 2011

Attachments: [2011 City Sales Tax Revenue - Cash Basis](#)
[2011 Combined Sales Tax Revenue - Cash Basis](#)
[2011 County Sales Tax Revenue - Cash Basis](#)
[2011 Franchise Fees Period Comparison](#)
[2011 Hotel tax \(cash \) Comparison Report](#)
[2011 Hotel tax \(cash \) Report](#)
[2011 Oct State Turnback Budget Comparison](#)
[2011Oct State Turnback Report](#)
[Deposit collateralization report](#)
[October Expenses](#)
[October Revenues](#)
[Publicsafetytax](#)
[Required Reserves 10-31-11](#)
[Statement of changes Fund Balance 10-31-11](#)

This item was Read.

9. CITY COUNCIL REPORTS

Councilman Street questioned when the light at Highway 49 and Kellers Chapel will be turned on. Mayor Perrin stated he has told Engineering to activate it as soon as possible.

Councilman Gibson stated Nominating & Rules will need to meet on December 20th before the next Council meeting to take care of current business and pass the committee membership to the other members for 2012.

Councilwoman Williams motioned, seconded by Councilman Moore, to suspend the rules and place RES-11:211 and RES-11:212 on the agenda. All voted aye.

RES-11:211 RESOLUTION TO AUTHORIZE A CONTRACT WITH 1ST SECURITY BANK, INTRUST, N.A. AND NESTEGG CONSULTING INC TO PROVIDE ADMINISTRATIVE SERVICES FOR THE CITY OF JONESBORO NON-UNIFORM EMPLOYEES 457 (b) PROGRAM

Sponsors: Finance

Attachments: [City of Jonesboro 457\(b\) Retirement Saving Plan](#)
[457 \(b\) Plan Administrative Services Agreement](#)

A motion was made by Councilwoman Ann Williams, seconded by Councilman Chris Gibson, that this matter be Passed . The motion PASSED by a unanimous vote

Aye: 11 - Ann Williams;Charles Frierson;Chris Moore;John Street;Mitch Johnson;Tim McCall;Gene Vance;Chris Gibson;Rennell Woods;Mikel Fears and Charles Coleman

Absent: 1 - Darrel Dover

Enactment No: R-EN-150-2011

RES-11:212 RESOLUTION TO AUTHORIZE A CONTRACT WITH 1st SECURITY BANK, INTRUST, N.A. AND NESTEGG CONSULTING INC. TO PROVIDE SERVICES FOR THE CITY OF JONESBORO NON UNIFORMED EMPLOYEES 401 (a)

DEFINED CONTRIBUTION PLAN AND 457 (b) RETIREMENT SAVINGS PLAN
AND TRUST

Sponsors: Finance

Attachments: [City of Jonesboro 401\(a\) Defined Contribution Plan](#)
[401\(a\) Plan Administrative Services Agreement](#)

A motion was made by Councilwoman Ann Williams, seconded by Councilman Chris Moore, that this matter be Passed . The motion PASSED by a unanimous vote

Aye: 11 - Ann Williams;Charles Frierson;Chris Moore;John Street;Mitch Johnson;Tim McCall;Gene Vance;Chris Gibson;Rennell Woods;Mikel Fears and Charles Coleman

Absent: 1 - Darrel Dover

Enactment No: R-EN-151-2011

Councilman Moore asked that a meeting be called to discuss the towing services as Mayor Perrin had previously discussed. He noted the towing service companies are used by the Police Department, so the ordinances need to be reviewed.

10. PUBLIC COMMENTS

Employee Representative Chairman Larry Jackson discussed the non-uniform pension plan contracts the Council just approved. He noted the difficult transition due to the employees contributing to the plan now. He added the system may have to be changed sometimes, but it's a good system.

Mr. Pat Austin read a statement from the Code of Ethics, stating official business transactions must be subject to public scrutiny. He noted he's asked questions during past meetings, but was given the answers by City Clerk Donna Jackson via an FOI request. He explained the citizens are paying for the new non-uniform pension plan. He questioned whether the City is borrowing money from a bank to pay bills, just months after receiving a public safety tax. Mayor Perrin answered the money is to be used for long-range capital improvement projects, such as the building of facilities, and will not be used to pay operating bills. He also noted the City has plenty of reserve fund money. Mr. Austin then questioned whether the City will pay interest on the bank loan. Mayor Perrin answered yes. Mr. Austin stated the officials gave themselves a raise, then borrowed money to pay bills. He added he's watching what is going on and he doesn't like what he sees.

Mr. Jackson noted the new non-uniform pension plan will be saving the City money. The plan will cost the City 5% or less, depending on how much the employee invests.

Ms. Brook Crane, from Sensational Kids Pediatric Therapy, spoke in favor of the Miracle Field program at Southside Ballpark. She stated they do a special needs kickball program, so she knows there is a need for the facility.

11. ADJOURNMENT

A motion was made by Councilman Chris Moore, seconded by Councilman John Street, that this meeting be Adjourned . The motion PASSED by a

unanimous vote

Aye: 11 - Ann Williams; Charles Frierson; Chris Moore; John Street; Mitch Johnson; Tim McCall; Gene Vance; Chris Gibson; Rennell Woods; Mikel Fears and Charles Coleman

Absent: 1 - Darrel Dover

_____ **Date:** _____
Harold Perrin, Mayor

Attest:

_____ **Date:** _____
Donna Jackson, City Clerk



Legislation Details (With Text)

File #: RES-11:202 **Version:** 1 **Name:** Contract and bid acceptance with Asphalt Producers for Viney Slough structures
Type: Resolution **Status:** Recommended to Council
File created: 11/9/2011 **In control:** Public Works Council Committee
On agenda: **Final action:**

Title: A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO ACCEPT THE LOW BID AND ENTER INTO A CONTRACT WITH ASPHALT PRODUCERS, LLC FOR THE VINEY SLOUGH TRIBUTARY STRUCTURES - JOB NO. 2011:41

Sponsors: Engineering

Indexes: Bid acceptance, Contract

Code sections:

Attachments: [Specifications.pdf](#)
[Bid Tab.pdf](#)

Date	Ver.	Action By	Action	Result
12/6/2011	1	Public Works Council Committee		

Title

A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO ACCEPT THE LOW BID AND ENTER INTO A CONTRACT WITH ASPHALT PRODUCERS, LLC FOR THE VINEY SLOUGH TRIBUTARY STRUCTURES - JOB NO. 2011:41

Body

WHEREAS, the City of Jonesboro has desires to accept the low bid and enter into a contract for the Viney Slough Tributary Structures - Job No. 2011:41;

WHEREAS, the low bidder and the firm selected for the Viney Slough Tributary Structures - Job No. 2011:41 is Asphalt Producers, LLC;

WHEREAS, Asphalt Producers, LLC has bid \$250,003.34 for the Viney Slough Tributary Structures - Job No. 2011:41;

WHEREAS, funding for the execution of the contract shall come from the Capital Improvements budget and compensation shall be paid in accordance with the contract documents.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

Section 1: That the City of Jonesboro shall accept the low bid and enter into a contract with Asphalt Producers, LLC in the amount of \$250,003.34 for the Viney Slough Tributary Structures - Job No. 2011:41.

Section 2: The funding for the execution of the contract shall come from the Capital Improvements budget and compensation shall be paid in accordance with the contract documents.

Section 3: The Mayor and the City Clerk are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate this agreement.



Specifications

For

Viney Slough Tributary

Structures

(Bid #2011:41)

Jonesboro, Arkansas

City of Jonesboro ■ Engineering Department

P.O. Box 1845 ■ 307 Vine Street ■ Jonesboro, AR 72403 ■ 870.932.2438

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I. ADVERTISEMENT FOR BIDS

Sealed bids for the Viney Slough Tributary Structures will be received at the Purchasing Department of the City of Jonesboro City Hall, 515 West Washington Ave., Jonesboro, Arkansas until 2:00 P.M. (Local Time) on November 2, 2011 and then publicly opened and read for furnishing all labor, material, and equipment, and performing all work required to construct the Viney Slough Tributary Structures. All Submissions shall be annotated on the outside of the envelope with the bid number 2011:41.

The project consists of the construction of 45 L.F. of triple 8' x 10' 45° skewed Box Culvert on Limestone Drive and the installation of 33 L.F. triple 8' x 10' Box Culvert on Richardson Road.

Proposals shall be accompanied by a cashier's or certified check upon a national or state bank in an amount not less than five percent (5%) of the total maximum bid price payable without recourse to the City of Jonesboro or a bid bond in the same amount from a reliable surety company, as a guarantee that the Bidder will enter into a contract and execute performance and payment bonds within ten (10) days after notice of award of Contract to him. The notice of award of Contract shall be given by the Owner within sixty (60) days following the opening of bids.

The successful Bidder must furnish a performance and payment bond upon the form provided in the amount of one hundred percent (100%) of the contract price from an approved surety company holding a permit from the State of Arkansas to act as surety, or other surety or sureties acceptable to the Owner.

The attention of bidders is called to the fact that Act 150 of 1965 (as amended), Arkansas Statutes, states that under certain conditions a Contractor must be licensed by the State Licensing Board for Contractors before he may undertake work in Arkansas. The Bidder shall comply with requirements of this Arkansas Law.

Plans, specifications, proposal forms and other contract documents may be examined at City of Jonesboro Engineering Department, 307 Vine Street, Jonesboro, Arkansas 72401 and may be secured at the cost of \$25.00 Dollars per set from the City of Jonesboro, 307 Vine Street, Jonesboro, Arkansas 72401. No refunds will be made. Any addendum to this bid will be posted no later than 5 days before bid opening by clicking on "Purchasing" at www.jonesboro.org.

Proposals will be considered on the basis of cost, the bidder's financial responsibility, his equipment, and his past performance in completing similar work. The City of Jonesboro reserves the right to reject any or all bids, to waive any informalities, and to accept the proposal deemed to be for their best interest.

The City of Jonesboro encourages participation of small, minority, and woman owned business enterprises in the procurement of goods, services, and construction, either as a general contractor or subcontractor. It is further requested that whenever possible, majority contractors who require sub-contractors seek qualified small, minority, and women owned businesses to partner with them.

II. INSTRUCTION TO BIDDERS

1. PREPARATION OF BID

Each bid must be submitted on the prescribed form (Proposal) and Unit Price Schedule. All blank spaces must be filled in legibly with ink or typed. All blank spaces for bid prices on the Unit Price Schedule must be filled in with figures; the extended total for each item shall be entered. If the unit price and the extended total of any item are not in agreement, the unit price shall govern and the extended total be corrected to conform thereto. Erasures or other corrections on the Proposal form or Unit Price Schedule shall be initialed by the signer of the bid. All bids must be signed in ink by an individual authorized to bind the Bidder. All bids must be regular in every respect and no interlineations, excisions or special conditions shall be made or included in the Proposal by the Bidder.

There must be a bid on all items which may appear on the Unit Price Schedule. No bid will be considered which covers only a part of the work. A conditional bid will not be considered.

The bid form and Unit Price Schedule shall not be detached, but shall be submitted in the original binding as furnished by the Engineer. Submission must be at the place, and at or prior to the time specified in the Advertisement for Bids.

Each bid must be submitted in a sealed envelope clearly marked on the outside that it contains a bid for the Viney Slough Tributary Structures, Bid Number 2011:41 and with the hour and date of bid opening shown thereon. The name, address, and Arkansas Contractor's License Number of the Bidder shall appear in the upper left hand corner of the envelope. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope properly addressed as noted in the NOTICE TO CONTRACTORS.

A bid which obviously is unbalanced may be rejected.

2. INTERPRETATIONS AND ADDENDA

No oral interpretation will be made to any Bidder as to the meaning of the Contract Documents or any part thereof. Every request for such an interpretation shall be made in writing to the City of Jonesboro Engineering Department. Any inquiry received up to five (5) days prior to the opening of bids will be given consideration. Every interpretation made to a Bidder will be in the form of an Addendum to the contract Documents. All such Addenda shall become part of the Contract and all Bidders shall be bound by such Addenda, whether or not received by the Bidders.

3. INSPECTION OF SITE

Each Bidder shall visit the site of the proposed work and fully acquaint himself with the existing conditions there relating to construction and labor, and shall fully inform himself as to the facilities involved, and the difficulties and restrictions attending the performance of the Contract. The Bidder shall thoroughly examine and familiarize himself with the Plans, Technical Specifications, and other Contract Documents. The Contractor by the execution of the Contract shall not be relieved of any

obligation under it due to his failure to receive or examine any form or legal instrument or to visit the site and acquaint himself with the conditions there existing. The Owner will be justified in rejecting any claim based on facts regarding which the contractor should have been on notice as a result thereof.

4. BID GUARANTY

The bids must be accompanied by a Bid Guaranty which shall not be less than five percent (5%) of the amount of the bid. At the option of the Bidder, the guaranty may be a certified check, or may be a bid bond (substantially in the form attached). No bid will be considered unless it is accompanied by the required guaranty. Certified check must be payable to the City of Jonesboro, Arkansas. Cash deposits will not be accepted. The Bid Guaranty shall insure the execution of the Contract and the furnishing of the surety bond or bonds by the successful Bidder, all as required by the Contract Documents.

Certified checks, or bid bonds, of unsuccessful Bidders, will be returned upon request as soon as feasible after the opening of the bids.

5. COLLUSION; SUBCONTRACTS

A Bidder submitting a Proposal to the Owner for the work contemplated by the Documents on which bidding is based shall not collude with any other person, firm, or corporation in regard to any bid submitted.

Before executing any subcontract, the successful Bidder shall submit the name of any proposed Subcontractor for prior approval of the Owner.

6. STATEMENT OF BIDDER'S QUALIFICATIONS

Each Bidder shall submit on the form furnished for that purpose (a copy of which is included in the Contract Documents), a statement of the Bidder's qualifications, his experience record in construction of work similar to that which here is involved, and his organization and equipment available for the work contemplated; and when specifically requested by the Owner, the Bidder shall provide a detailed financial statement. The Owner shall have the right to take such steps as it deems necessary to determine the ability of the Bidder to perform his obligations under the Contract, and the Bidder shall furnish the Owner all such information and data for this purpose as it may request. The right is reserved to reject any bid where an investigation of the available evidence or information does not satisfy the Owner that the Bidder is qualified to carry out properly the terms of the Contract.

7. BALANCED BIDS; VARIATIONS IN QUANTITIES

The lump sum price and unit price for each of the several items in the Proposal of each Bidder shall be balanced and shall include its pro rata share of overhead.

The Owner shall have the right to increase or decrease the extent of the work or to change the location, gradient, or the dimensions of any part of the work, provided that the length of the improvement is not increased or decreased in excess of 25% of the contract length, or that the

quantities of work to be done or the materials to be furnished are not increased or decreased in money value in excess of 25% of the total Contract. Such changes shall not be considered as a waiver of any conditions of the Contract nor invalidate any of the provisions thereof. The Contractor shall perform the work as increased or decreased within the qualifying limits named and no allowance will be made for anticipated profits on increases or decreases so incurred.

Increases or decreases in items of work, and the cost thereof, shall be done in accordance with the Section entitled, CHANGES IN THE WORK under GENERAL CONDITIONS.

8. TIME FOR RECEIVING BIDS

A bid received prior to the advertised time of opening will be kept securely, and will remain sealed until the time of opening. The officer whose duty it is to open them will decide when the specified time has arrived, and any bid received subsequent to that time will be returned unopened.

9. OPENING OF BIDS

At the time and place fixed for the opening of bids, the Owner first will cause the bid guarantees to be checked as stipulated above. The Owner then will cause the qualified bids to be opened and publicly read aloud, irrespective of any irregularities therein. Bidders and other persons properly interested may be present, in person or by representative.

10. WITHDRAWAL OF BIDS

Bids may be withdrawn on written request if the request is received prior to the time fixed for the opening of bids.

11. AWARD OF CONTRACT; REJECTION OF BIDS

The Contract will be awarded to the responsible Bidder submitting the lowest total bid complying with the conditions of the Notice to Contractors and other parts of these Contract Documents. The Bidder to whom the award is made will be notified at the earliest possible date. The Owner, however, reserves the right to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in its interests.

The Owner reserves the right to consider as unqualified to do the work any Bidder who does not habitually perform with his own forces the major portions of such work as is involved in construction of these improvements.

12. EXECUTION OF AGREEMENT; PERFORMANCE AND PAYMENT BOND

Subsequent to the award and within ten (10) days after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the Owner a Contract in the form included in the Contract Documents in such number of copies as the Owner may require.

Having satisfied all conditions of award as set forth elsewhere in these Documents, the successful Bidder shall, within the period specified above, furnish a surety bond in a penal sum not less than the amount of the Contract as awarded, as security for the faithful performance of the Contract, and for the payment of all persons, firms or corporations to whom the Contractor may become legally indebted for labor, materials, tools, equipment, or services of any nature, including utility and transportation services employed or used by him in performing the work. Such bond shall be as included in the Contract Documents and shall bear the same date as, or a date subsequent to, that of the Contract. The current power of attorney for the person who signs for any surety company shall be attached to such bond.

The failure of the successful Bidder to execute such Contract and to supply the required bond or bonds within ten (10) days after the prescribed forms are presented for signature, or within such extended period as the Owner may grant, based upon reasons determined insufficient by the Owner, shall constitute a default, and the Owner may either award the Contract to the next lowest responsible Bidder or readvertise for bids.

13. BONDS AND INSURANCE

Attention of Bidders is called to Act 82 of the 1935 Acts of the Arkansas General Assembly, which has certain requirements pertaining to performance bonds, labor bonds, employer's liability insurance, public liability insurance, workmen's collective insurance, and property damage insurance.

All companies furnishing bid bonds and performance bonds shall furnish evidence of being on the U.S. Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State of Arkansas.

14. LEGAL QUALIFICATIONS

All Bidders, in order to submit a bonafide Proposal, must comply with the terms of Act 150 of the 1965 Acts of the Arkansas General Assembly, as amended.

The successful Bidder, if a corporation created under the laws of a state other than the State of Arkansas, will be required to qualify, or to have qualified, with the Secretary of State of Arkansas to do business in the State of Arkansas.

15. MODIFICATION OF BID

No modification of any bid already submitted will be considered unless such modification is received prior to the time set for opening of bids.

III. PROPOSAL

Place Jonesboro, AR
Date 11/2/11

Proposal of Asphalt Producers, LLC

a corporation organized and existing under the laws of the State of Arkansas

or

Proposal of _____

a partnership consisting of _____

or

Proposal of _____

an individual doing business as _____

TO: City of Jonesboro

This bid results from your advertisement for bids for the Viney Slough Tributary Structures.

The undersigned Bidder, having visited the site of the work, having examined the Plans, Specifications, and other Contract Documents including all Addenda, and being familiar with all of the conditions relating to the construction of the proposed project, hereby agrees to comply with all other conditions or requirements set forth in the Plans, Specifications, and other Contract Documents, and further proposes to furnish all material, supplies, equipment, and appliances specified for incorporation into the project and to furnish all labor, tools, equipment, and incidentals to complete the work in accordance with the Plans, Specifications, and other Contract Documents at and for the lump sum and unit prices proposed in the attached Unit Price Schedule.

The undersigned Bidder agrees to begin work within ten (10) calendar days after the issuance by the Owner of a "Work Order" or "Notice to Proceed" and to complete the work within sixty (60) calendar days thereafter (except as modified in the GENERAL CONDITIONS of these Contract Documents). Should the work fail to be completed within the time herein stated, the Contractor shall pay to the Owner, as fixed and agreed liquidated damages, and not as a penalty, the sum, for each day of delay until the work is completed and accepted, as stipulated in the SPECIAL CONDITIONS of these Contract Documents. It is understood that additional time for the completion of the project is to be allowed only for delays as stipulated in the GENERAL CONDITIONS of these Contract Documents.

Bidder acknowledges receipt of the following addendum (addenda):

_____ Dated _____

_____ Dated _____

The undersigned Bidder agrees that this bid shall be good and shall not be withdrawn for a period of sixty (60) calendar days after the opening thereof. If written notice of the acceptance of this Proposal is mailed, telegraphed, or delivered to the undersigned within sixty (60) days after the opening thereof, or at any time thereafter before this Proposal is withdrawn, the undersigned agrees to execute and deliver a Contract in the prescribed form, and furnish the required Performance and Payment Bond, within ten (10) days after the Contract is presented to him for signature.

It is understood by the undersigned Bidder that the Owner reserves the right to reject any or all bids.

Accompanying this Proposal as bid security is ~~certified check~~ 5% of Total Bid bid bond (Strike One) in the amount of _____ Dollars (\$ 5% of total Bid), being not less than five percent (5%) of the total of the bid. If the undersigned Bidder is the successful Bidder, but fails or refuses to execute the contract and furnish the required bond within the prescribed ten (10) days of the notification of award, then this bid security is to become the property of the Owner as liquidated damages for the delay and additional expense to the Owner caused by such failure or refusal.



(Witness)

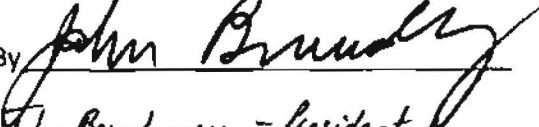
P.O. Box 1492

Jonesboro, AR 72403

(Address)

Asphalt Producers, LLC

(Name of Bidder)

By 

John Broadaway - President

(Print Name and Title)

P.O. Box 1492 - 1721 Dan Ave

Jonesboro, AR 72403

(Office Address of Bidder)

NOTES: Sign in ink. Do not detach.
Items must be bid upon as specified in the Unit Price Schedule.

IV. UNIT PRICE SCHEDULE

<u>Item No</u>	<u>Description</u>	<u>AHTD Ref</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Cost</u>
1	Stone Backfill	207	Ton	480	\$ <u>30.⁰⁰</u>	\$ <u>14,400.⁰⁰</u>
2	Mobilization	601	L.S.	1	\$ <u>11750.⁰⁰</u>	\$ <u>11,750.⁰⁰</u>
3	Unclassified Excavation for Structures - Roadway	801	C.Y.	95	\$ <u>25.⁰⁰</u>	\$ <u>2,375.⁰⁰</u>
4	Box Culvert & WW Class S Concrete	802	C.Y.	286	\$ <u>590.⁰⁰</u>	\$ <u>168,740.⁰⁰</u>
5	Box Culvert & WW Steel	804	Pound	40,802	\$ <u>1.¹⁷</u>	\$ <u>47,738.³⁴</u>
6	Connecting RCP Culverts into Wings	SP	L.S.	1	\$ <u>5000.⁰⁰</u>	\$ <u>5,000.⁰⁰</u>

TOTAL BASE BID \$ 250,003.³⁴

WRITTEN IN WORDS:

TWO HUNDRED FIFTY THOUSAND, THREE DOLLARS AND THIRTY FOUR CENTS.

V. BID BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT we the undersigned, Asphalt Producers, LLC, as PRINCIPAL, and

RLI Insurance Company, as SURETY, are held and firmly bound unto the

City of Jonesboro, hereinafter called the OWNER in the penal sum of Five Percent of Amount

of Bid * * *

(\$ 5% of Amount of Bid * * *), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these Presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS, the Principal has submitted the accompanying Proposal, dated November 2, 2011, for the Viney Slough Tributary Structures.

NOW, THEREFORE, if the Principal shall not withdraw said Proposal within sixty (60) days after the opening of same, and shall within ten (10) days after the prescribed forms are presented to him for signature, enter into a written Contract with the Owner in accordance with the Proposal as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument, under their several seals this 2nd day of November, 2011, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representatives, pursuant to authority of its governing body.



RLI Surety
 P.O. Box 3967 | Peoria, IL 61612-3967
 Phone: (800)643-2402 | Fax: (309)689-2036
 www.rlicorp.com

POWER OF ATTORNEY

RLI Insurance Company

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company**, a(n) Illinois corporation, does hereby make, constitute and appoint:

Benson A. Cashion, Matthew K. Cashion, Jr., Cynthia L. Trickey, William H. Griffin, Nick W. Peters, Pamela K. Hays, Judy Schoggen,
 jointly or severally

in the City of Little Rock, State of Arkansas its true and lawful Agent and Attorney in Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, the following described bond.

Any and all bonds, undertakings, and recognizances in an amount not to exceed Ten Million Dollars (\$10,000,000) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

The **RLI Insurance Company** further certifies that the following is a true and exact copy of the Resolution adopted by the Board of Directors of **RLI Insurance Company**, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** has caused these presents to be executed by its Vice President with its corporate seal affixed this 19th day of September, 2011.

State of Illinois }
 County of Peoria } SS



RLI Insurance Company

 Roy C. Die Vice President

On this 19th day of September, 2011, before me, a Notary Public, personally appeared Roy C. Die, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

CERTIFICATE
 I, the undersigned officer of **RLI Insurance Company**, a stock corporation of the State of Illinois, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** this 2nd day of November, 2011.

Jacqueline M. Bockler
 Jacqueline M. Bockler Notary Public

RLI Insurance Company

 Roy C. Die Vice President



Progressive Casualty Insurance Company (NAIC #24260)

BUSINESS ADDRESS: P.O. BOX 89490, CLEVELAND, OH 44101 - 6490.
PHONE: (440) 461-5000. UNDERWRITING LIMITATION b/:
\$133,346,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE,
DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN,
MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI,
SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN:
Ohio.

Protective Insurance Company (NAIC #12416)

BUSINESS ADDRESS: PO Box 7099, Indianapolis, IN 46207. PHONE:
(317) 636-9800 x-2632. UNDERWRITING LIMITATION b/:
\$24,905,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE,
DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS,
MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD,
TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Regent Insurance Company (NAIC #24449)

BUSINESS ADDRESS: One General Drive, Sun Prairie, WI 53596 -
0001. PHONE: (608) 837-4440. UNDERWRITING LIMITATION b/:
\$4,558,000. SURETY LICENSES c,f/: AL, AK, AZ, CA, CO, DE, DC, FL,
GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE,
NV, NH, NJ, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT,
VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Republic - Franklin Insurance Company (NAIC #12475)

BUSINESS ADDRESS: P. O. Box 530, Utica, NY 13503 - 0530. PHONE:
(315) 734-2000. UNDERWRITING LIMITATION b/: \$4,066,000. SURETY
LICENSES c,f/: CT, DE, DC, GA, IL, IN, KS, MD, MA, MI, NJ, NY, NC,
OH, PA, RI, TN, TX, VA, WI. INCORPORATED IN: Ohio.

RLI Indemnity Company (NAIC #28860)

BUSINESS ADDRESS: 9025 N. Lindbergh Drive, Peoria, IL 61615.
PHONE: (309) 692-1000. UNDERWRITING LIMITATION b/: \$4,070,000.
SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI,
ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV,
NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT,
VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

* **RLI Insurance Company (NAIC #13056)**

BUSINESS ADDRESS: 9025 N. Lindbergh Drive, Peoria, IL 61615.
PHONE: (309) 692-1000. UNDERWRITING LIMITATION b/:
\$69,168,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE,
DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS,
MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC,
SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

VI. STATEMENT OF BIDDER'S QUALIFICATIONS

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information he desires.

1. Name of Bidder.
Asphalt Producers, LLC.
2. Are you currently a licensed contractor by the State of Arkansas?
Yes
If so, what is your contractor's license number and expiration date?
No. 0195690412 Exp. date 4/30/12
3. Permanent main office address.
P.O. Box 1492 - 1721 Dan Ave., Jonesboro, AR 72403
4. When organized.
1-21-08
5. If a corporation, where incorporated.
Arkansas
6. How many years have been engaged in the contracting business under your present firm or trade name?
3 yrs.
7. Contracts on hand: (Schedule these, showing amount of each contract and the appropriate anticipated dates of completion). *See schedule attached*
8. General character of work performed by your company.
Road Const., Site work, Storm drainage system & structures, utilities, concrete, asphalt
9. Have you ever failed to complete any work awarded to you? *NO*
10. Have you ever defaulted on a Contract? *NO*
If so, where and why?
11. Have you ever been fined or had your license suspended by a Contractor's Licensing Board?
NO
If so, where and why?
12. List the more important projects recently completed by your company, stating the approximate cost for each, and the month and year completed. *See attached*
13. List your major equipment available for this Contract. *See schedule attached*
14. Experience in construction work similar in importance to this project.
See schedule attached
15. Background and experience of the principal members of your organization, including the officers.
See attached.

FOR: City of Jonesboro
Bid #2011:41
Viney Slough Tributary Structures
Statement of Bidder's Qualifications

Item No 7: Contracts on Hand

<u>Job Name</u>	<u>Contract Size</u>	<u>Est Date Completion</u>
Hwy 17-I-40 Brinkley	\$ 3,705,659	Aug-12
White River Str. & Apprs. Clarendon	\$ 1,022,136	Dec-12
ASU PH II	\$ 6,384,791	Jan-12
Wyndchase Subdivision	\$ 75,288	Dec-11
Harps Food	\$ 142,634	Dec-11

Item No 12: List of the more important projects recently completed

<u>Name</u>	<u>Contract Size</u>	<u>Date Completed</u>
Hwy. 49-East & Hwy. 158-South (Overlay)(S)	\$ 684,198	Oct-11
Hwy. 69/Hwy 122 Inter impvt 050207	\$ 421,031	Oct-11
Hwy. 183-West Ph 1 FA1814	\$ 584,161	Sep-11
Amagon-Poinsett Co. Line 050255	\$ 634,075	Aug-11
CR 48-CR 42 SA1655	\$ 230,576	Jul-11
ASU PH I	\$ 225,732	Dec-10
AHTD - Annual Maintenance	\$ 269,114	Dec-10
Harrisburg North Overlay	\$ 628,914	Oct-10
Hwy 384 & Hwy 18 Newport	\$ 370,436	Sep-10
Valley View Gibson	\$ 2,818,176	Oct-10
Newport School Parking Lot	\$ 268,203	Aug-10
Barton Lexa School	\$ 192,168	Sep-10
County Road Maintenance	\$ 188,175	Feb-10
City Streets Overlay	\$ 503,818	Sep-09
Hilton Garden Inn	\$ 156,105	Jun-09
Highland Center	\$ 118,577	Jun-10

Item No 13. List of construction equipment

Kamatsu Excavator
Cat Dozer
Mack Dump
American Crane

Item No 14. Experience in construction work similar in importance to this project.

Willow Creek	\$ 200,000	Apr-11
ASU PH I	\$ 225,732	Dec-10
Harrisburg North Overlay	\$ 828,914	Oct-10
Hwy 384 & Hwy 18 Newport	\$ 370,436	Sep-10
Valley View Gibson	\$ 2,818,176	Oct-10
Newport School Parking Lot	\$ 288,203	Aug-10
Barton Lexa School	\$ 192,188	Sep-10
City Streets Overlay	\$ 503,818	Sep-09
Hilton Garden Inn	\$ 156,105	Jun-09
Highland Center	\$ 118,577	Jun-10

Mike Cameron, PE
Vice-President, Registered Engineer

Education:

Jan 1970-Dec 1970:	University of Arkansas Fayetteville, Arkansas Degree: B.S. in Civil Engineering
Aug 1969-Dec 1969:	Arkansas State University Jonesboro, Arkansas Major: Civil Engineering
Aug 1967-Dec 1968:	University of Arkansas Fayetteville, Arkansas Major: Civil Engineering
Aug 1964-May 1967:	Arkansas State University Jonesboro, Arkansas Major: Civil Engineering
Aug 1961-May 1964:	Jonesboro High School Jonesboro, Arkansas

Registration:

Registered Engineer
Arkansas No. 3905

Continuing Education:

Numerous Seminars on Engineering and Management

Mike Cameron's background includes over thirty-five years experience in engineering, cad design/drafting, construction and business management. His background also includes extensive experience in all aspects of Cameron Construction Company, Inc. He is the business manager. He works in all areas of the construction ranging from project managing, site superintendent, project scheduling, to monitoring the job cost. He also shares responsibility in the estimating department. He has the responsibility of keeping qualified personnel in key positions. Over his thirty years as a registered engineer, he has designed and been in charge of numerous projects that include street and roadway design, storm drainage, bridge design, relocation of roadways, and traffic control studies. Mike also held the position of resident engineer with the Arkansas Highway & Transportation Department from 1972-1976 and the position of Director of Public Works/City Engineer for the City of Jonesboro from 1976-1984.

John Broadaway

Education:

Bachelor of Science in Agriculture, Arkansas State University,
Jonesboro, Arkansas (Aug 1980)
Westside High School, Jonesboro, Arkansas (May 1975)

Work Experience:

Plant Manager, Asphalt Producers, LLC, Jonesboro, Arkansas
(2008 to Present)

Vice-President of Operations, Cameron Construction Company,
Inc., Jonesboro, Arkansas (1985 to Present)

Street Superintendent, City of Jonesboro, Jonesboro, Arkansas
(1983 to 1985)

Superintendent of Parks and Recreation, City of Jonesboro,
Jonesboro, Arkansas (1981 to 1984)

Engineering Aide, City of Jonesboro, Jonesboro, Arkansas (1977
to 1980)

Related Experience:

Metropolitan Area Planning Commission

AHTD Advanced Planning Committee

Westside School Board

16. Credit available: \$ 500,000
17. Give Bank reference: Liberty Bank
18. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? yes
19. The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the Owner, in verification of the recitals comprising this statement of Bidder's Qualifications.

Dated at Jonesboro, Arkansas this 2nd
 day of November, 20 11.

Asphalt Producers, LLC
 (Name of Bidder)
 By [Signature]
John Broadaway
 Title President

STATE OF Arkansas)
) SS.
 COUNTY OF Lawrence)

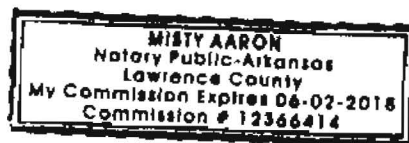
JOHN BROADAWAY being duly sworn deposes and says that
 he is PRESIDENT of ASPHALT PRODUCERS, LLC
 (Name of Organization)

and that the answers to the foregoing questions and all statements therein contained are true and correct.

SUBSCRIBED AND SWORN TO BEFORE ME this 2nd day of November, 2011.

[Signature]
 (Notary Public)

My Commission Expires:
6/2/2018



VII. CONTRACT

THIS AGREEMENT made this _____ day of _____, 20____, by and

between Asphalt Producers, LLC _____

(a Corporation organized and existing under the laws of the State of Arkansas _____)

Hereinafter called the "Contractor" and the City of Jonesboro, Arkansas, hereinafter called the "Owner".

WITNESSETH:

That the Contractor and the Owner for the consideration stated herein mutually agree as follows:

ARTICLE 1. Statement of Work. The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment, incidentals and services, including utility and transportation services and perform and complete all work required for the Viney Slough Tributary Structures, in strict accordance with the Contract Documents, including all Addenda thereto

_____ dated _____

_____ dated _____

_____ dated _____

as prepared by the Engineer.

ARTICLE 2. The Contract Price. The Owner will pay the Contractor, because of his performance of the Contract, for the total quantities of work performed at the lump sum and unit prices stipulated in the Proposal, subject to additions and deductions as provided in the Section entitled "CHANGES IN THE WORK" under the GENERAL CONDITIONS.

ARTICLE 3. Contract Time. The Contractor agrees to begin work within ten (10) calendar days after issuance by the Owner of a "Work Order" or "Notice to Proceed" and to complete the work within sixty (60) calendar days thereafter (except as modified in the GENERAL CONDITIONS of these Contract Documents). If the Contractor shall fail to complete the work within the time specified, he and his Surety shall be liable for payment to the Owner, as liquidated damages ascertained and agreed, and not in the nature of a penalty, the amount specified in the SPECIAL CONDITIONS of these Contract Documents for each day of delay. To the extent sufficient in amount, liquidated damages shall be deducted from the payments to be made under this Contract.

ARTICLE 4. Contract. The executed Contract Documents shall consist of the following:

- a. This Agreement (Contract)
- b. Addenda
- c. Advertisement for Bids
- d. Instructions to Bidders
- e. Proposal
- f. General Conditions
- g. Supplemental General Conditions
- h. Special Conditions
- i. Technical Specifications including Special Provisions
- j. Drawings (Plans)
- k. Performance-Payment Bond

This Contract, together with other Documents enumerated in this Article 4, which said other Documents are as fully a part of the Contract as if hereto attached or herein repeated, form the Contract between the parties hereto. In the event that any provisions in any component part of this Contract conflicts with any provision of any other component part, the conflict shall be resolved by the Engineer whose decision shall be final.

ARTICLE 5. Surety. The Surety on the Performance-Payment Bond shall be a surety company of financial resources satisfactory to the Owner, authorized to do business in the State of Arkansas, and shall comply with applicable Arkansas laws.

IN WITNESS WHEREOF, the parties hereto have caused this CONTRACT to be executed in four (4) counterparts, each of which shall be considered an original on the day and year first above written.

ATTEST:

(Contractor)

_____ By _____

_____ Title _____

(Street)

(City)

City of Jonesboro
(Owner)

_____ By _____

VIII. ARKANSAS PERFORMANCE-PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, _____

as Principal, hereinafter called Principal, and _____

of _____ State of _____,
as Surety, hereinafter called the Surety, are held and firmly bound unto the City of Jonesboro as Obligee, hereinafter called Owner, in the amount _____ Dollars (\$ _____) in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly, severally, and firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, The Principal entered into a Contract with the Owner by written Agreement dated the _____ day of _____, 20____, a copy of which is attached hereto and made a part hereof, hereinafter referred to as the Contract, for the Viney Slough Tributary Structures.

NOW THEREFORE, if the Principal shall well and truly perform and complete in good, sufficient, and workmanlike manner all of the work required by said Contract and within the time called for thereby to the satisfaction of the Owner, and shall pay all persons for labor, materials, equipment, and supplies furnished by said Principal in accordance with said Contract (failing which such persons shall have a direct right to action against the Principal and Surety under this obligation, but subject to the Owner's priority) and shall hold and save harmless the Owner from any and all claims, loss, and expense of every kind and nature arising because of or resulting from the Principal's operation under said Contract, except payments to the Principal rightly due the Principal for work under said Contract, then this obligation shall be null and void; otherwise to remain in full force and effect.

Any alterations which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Owner of an extension of time for the performance of the Contract, or any other forbearance on the part either of the Owner or Principal to the other shall not release in any way the Principal and Surety, or either of them, their heirs, personal representatives, successors, or assigns from their liability hereunder, notice to the Surety of any alteration, extension, or forbearance hereby being waived.

In no event shall the aggregate liability of the Surety exceed the sum set herein.

No suit, action, or proceeding shall be brought on this bond outside the State of Arkansas. No suit, action, or proceeding shall be brought on this bond, except by the Owner, after six (6) months

from the date on which final payment to the Contractor falls due. No suit, action, or proceeding shall be brought by the Owner after two (2) years from the date on which final payment to the Contractor falls due.

This bond is executed pursuant to the terms of Arkansas Code Ann. §§ 18-44-501 et. seq.

Executed on this _____ day of _____, 20____.

(Principal)

By _____

Title _____

SEAL

(Surety)

By _____
(Attorney-in-Fact)

NOTES:

1. This bond form is mandatory. No other forms will be acceptable.
2. The date of the Bond must not be prior to the date of the Contract.
3. Any surety executing this Bond must appear on the U.S. Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State of Arkansas.
4. Attach Power of Attorney.

IX. GENERAL CONDITIONS

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GC.1 DEFINITIONS

Wherever used in any of the Contract Documents, the following meanings shall be given to the terms herein defined:

(1) The term "Addendum" means any change, revision, or clarification of the Contract Documents which has been duly issued by the Local Public Agency, or the Engineer, to prospective Bidders prior to the time of receiving bids.

(2) The term "Award" means the acceptance by the owner of the successful bidder's proposal.

(3) The term "Bidder" means any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a proposal for the work contemplated.

(4) The term "Calendar Day" means every day shown on the calendar.

(5) The term "Change Order" means a written order to the contractor covering changes in the plans, specifications, or proposal quantities and establishing the basis of payment and contract time adjustment, if any, for the scope of work affected by the change. The work covered by the change order shall be within the scope of the contract.

(6) The term "Contract" means the Contract executed by the Local Public Agency and the Contractor of which these GENERAL CONDITIONS form a part.

(7) The term "Contract Documents" means and shall include the following: Executed Contract, Addenda (if any), Advertisement For Bids, Instructions to Bidders, Proposal, Performance-Payment Bond, General Conditions, Supplemental General Conditions, Special Conditions, Supplemental Special Conditions, Technical Specifications, and Drawings.

(8) The term "Contractor" means the person, firm, or corporation entering into the Contract with the Local Public Agency to construct and install the improvements embraced in this project.

(9) The term "Engineer" means the City of Jonesboro Engineering Department, serving the Local Public Agency with engineering services, its successor, or any other person or persons employed by said Local Public Agency to furnish engineering services in connection with the construction embraced in the Contract.

(10) The term "Local Government" means the City of Jonesboro, Arkansas, within which the Project is situated.

(11) The term "Local Public Agency" or "Owner" means the City of Jonesboro, which is authorized to undertake this Contract.

(12) The term "Plans" or "Drawings" means the official drawings or exact reproductions which show the location, character, and details of the work contemplated, and which are to be considered part of the contract, supplementary to the specifications.

(13) The term "Proposal" means the written offer of the Bidder (when submitted on the approved proposal form) to perform the contemplated work and furnish the necessary materials in accordance with the provisions of the Plans and Specifications.

(14) The term "Specifications" means a part of the contract containing the written directions and requirements for completing the contract work. Standards for specifying materials, or testing, which are cited in the specifications by reference shall have the same force and effect as if included in the contract physically.

(15) The term "Subcontractors" shall mean the individual, partnership or corporation entering into an agreement with the Contractor to perform any portion of the work covered by the Plans and Specifications.

(16) The term "Surety" shall mean any person, firm, or corporation that has executed, as Surety, the Contractor's Performance Bond securing the performance of the Contract.

(17) The term "Technical Specifications" means that part of the Contract documents which describes, outlines and stipulates the quality of the materials to be furnished; the quality of workmanship required; and the controlling requirements to be met in carrying out the construction work to be performed under this Contract. This also includes Special Provisions.

(18) The term "Work" shall mean the furnishing of all necessary labor, tools, equipment, appliances, supplies, and material other than materials furnished by the Owner as specified to complete the construction covered by the Plans and Specifications.

GC.2 SUPERINTENDENCE BY CONTRACTORS

Except where the Contractor is an individual and gives his personal superintendence to the work, the Contractor shall provide a competent superintendent, satisfactory to the Local Public Agency and the Engineer, on the work at all times during working hours with full authority to supervise and direct the work and who shall be the Contractor's agent responsible for the faithful discharge of the Contractor's obligations under the Contract.

The Owner shall have the authority to require the Contractor to remove from the work any incompetent or insubordinate superintendent.

GC.3 CONTRACTOR'S EMPLOYEES

The Contractor shall employ only competent skillful workers and shall at all times enforce strict discipline and good order among the employees.

The Contractor shall neither permit nor suffer the introduction or use of alcoholic beverages or controlled substances upon or about the work embraced in this Contract.

The Owner may require the Contractor to dismiss from the work such employee or employees as the Owner or the Engineer may deem incompetent, or careless, or insubordinate.

GC.4 SAFETY OF CONTRACTOR'S EMPLOYEES

The Contractor shall be responsible for the safety of his employees during the progress of the work as well as the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance or operation.

GC.5 SUBCONTRACTS

The Contractor is responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by the subcontractors and is aware that nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the Owner.

GC.6 OTHER CONTRACTS

The Local Public Agency may award, or may have awarded other Contracts for additional work, and the Contractor shall cooperate fully with such other Contractors, by scheduling his own work with that to be performed under other Contracts as may be directed by the Local Public Agency. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor as scheduled.

GC.7 CONTRACTOR'S INSURANCE

Before any work is commenced, the Contractor shall furnish an approved certificate of insurance addressed to the Owner, showing that he carries the following insurance which shall be maintained throughout the term of the Contract.

- (1) Workmen's Compensation - Statutory Limit
- (2) Employer's Liability for Hazardous Work - If Needed
- (3) Public Liability (Bodily Injury) - \$1,000,000/occurrence

and Property Damage

- \$2,000,000/aggregate

(4) Builder's Risk

- Insurable Portion

The Contractor shall carry or require that there be carried the insurance listed in (1) through (3) above for the protection of all his employees and those of his Subcontractors engaged in work under this Contract, and for the protection of the public.

If the work includes pipelines or other underground structures, the Property Damage Liability shall include explosion, collapse, and underground coverage.

The premiums for all insurance and the bond required herein shall be paid by the Contractor.

It shall be the obligation of the Contractor to complete and deliver to the Owner the structure required by these Contract Documents regardless of any loss, damage to, or destruction of the structure prior to delivery.

The City of Jonesboro shall be included on the policy as additional insured.

GC.8 OWNER'S AND ENGINEER'S PROTECTIVE LIABILITY INSURANCE

The Owner requires the Contractor to name the City of Jonesboro and the Engineer as an additional insured on their insurance policies referenced in GC.7.

GC.9 FITTING AND COORDINATION OF THE WORK

The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, Subcontractors, or material men engaged upon this Contract. He shall be prepared to guarantee to each of his Subcontractors the locations and measurements which they may require for the fitting of their work to all surrounding work.

GC.10 MUTUAL RESPONSIBILITY OF CONTRACTORS

If, through acts of neglect or through failure to comply with any applicable Government regulations by the Contractor, any other Contractor or any Subcontractor shall suffer loss or damage on the work, the Contractor shall settle with such other Contractor or Subcontractor by agreement or arbitration, if such other Contractor or Subcontractor will so settle. If such other Contractor or Subcontractor shall assert any claim against the Local Public Agency on account of any damage alleged to have been so sustained, the Local Public Agency will notify this Contractor, who shall defend at his own expense any suit based upon such claim, and, if any judgments or claims against the Local Public Agency shall be allowed, the Contractor shall pay or satisfy such judgments or claim and pay all costs and expenses in connection therewith.

GC.11 PAYMENT TO CONTRACTOR

The Engineer will prepare (with the required assistance from the Contractor) the application for partial payment. If the bid contains lump sum prices, the Contractor shall furnish to the Engineer, upon request, a detailed cost breakdown of the several items of work involved in the lump sum prices. The Engineer will use this cost breakdown to determine the amount due the Contractor as progress payment. A cut-off time shall be established near the last day of the month such as to allow sufficient time for the application to be prepared, approved by the Contractor, and submitted by the Engineer to the Owner by the first day of the successive month. The amount of the payment due to the Contractor shall be determined by the total value of work completed to date, deducting ten percent (10%) for retainage, adding the value of submitted paid invoices covering construction materials, properly stored on the site, and deducting the amount of all previous payments. After the project is fifty percent (50%) complete, no additional retainage beyond ten percent (10%) of the first fifty percent (50%) of the project cost will be withheld provided that the Contractor is making satisfactory progress and there is no specific cause for greater withholding until completion of the project at which time the retainage will be released with the final payment. The total value of work completed to date shall be based on the estimated quantities of work completed and on the unit and lump sum prices contained in the Proposal. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of paid invoices, covering construction materials for which material payments are made, shall be furnished to the Engineer before such material payments are made.

NOTE: It has been the policy of the Owner to make payments for properly stored materials/equipment based upon invoice price and allow the Contractor to submit paid invoices within 30 days (or the next partial payment period). If paid invoices are not provided within the time allowed, then the materials/equipment so paid for will be removed from the next partial payment.

Monthly or partial payments made by the Owner to the Contractor are monies advanced for the purpose of assisting the Contractor to expedite the work of construction. All material and complete work covered by such monthly or partial payments shall remain the property of the Contractor, and he shall be responsible for the care and protection of all materials and work upon which payments have been made. Such payments shall not constitute a waiver of the right of the Owner to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this Contract complete and satisfactory to the Owner in all details.

GC.11.1 Withholding Payments: The Local Public Agency may withhold from any payment otherwise due the Contractor so much as may be necessary to protect the Local Public Agency and if it so elects may also withhold any amounts due from the Contractor to any Subcontractors or material dealers, for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the Local Public Agency and will not require the Local Public Agency to determine or adjust any claims or disputes between the Contractor and his Subcontractors or material dealers, or to withhold any monies for their protection unless the Local Public Agency elects to do so. The failure or refusal of the Local Public Agency to withhold any monies from the Contractor

shall not impair the obligations of any Surety or Sureties under any bond or bonds furnished under this Contract. Such withholding may also occur as a result of the Contractor's failure or refusal to prosecute the work with such diligence as will insure its completion within the time specified in these Contract Documents, or as modified as provided in these Contract Documents, or if the Contractor fails to comply with any applicable regulations promulgated by the U.S. Government or any other Government agencies.

GC.11.2 Final Payment: After final inspection and acceptance by the Local Public Agency of all work under the Contract, the application for final payment shall be prepared which shall be based upon the carefully measured or computed quantity of each item of work at the applicable unit and lump sum prices stipulated in the Unit Price Schedule. The total number of the final payment due the Contractor under this Contract shall be the amount computed as described above less all previous payments. All prior payments shall be subject to correction in the final payment. Final payment to the Contractor shall be made subject to his furnishing the Local Public Agency with a release in satisfactory form of all claims against the Local Public Agency arising under and by virtue of his Contract, other than such claims, if any, as may be specifically excepted by the Contractor from the operation and the release as provided under the section entitled DISPUTES under GENERAL CONDITIONS.

The Local Public Agency, before paying the final estimate, may require the Contractor to furnish releases or receipts from all Subcontractors having performed any work and all persons having supplied materials, equipment (installed on the Project), and services to the Contractor, if the Local Public Agency deems the same necessary in order to protect its interest. The Local Public Agency, however, may, if it deems such action advisable, make payment in part or in full to the Contractor without requiring the furnishing of such releases or receipts and any payments so made shall not impair the obligations of any Surety or Sureties furnished under this Contract.

Withholding of any amount due the Local Public Agency under the section entitled LIQUIDATED DAMAGES FOR DELAY under SPECIAL CONDITIONS, shall be deducted from the payments due the Contractor.

All equipment warranties and general guarantee and maintenance bond provisions shall become effective for one year upon date of final acceptance of the completed, project by the Local Public Agency.

GC.11.3 Payments Subject to Submission of Certificates: Each payment to the Contractor by the Local Public Agency shall be made subject to submission by the Contractor of all written certifications required of him.

GC.12 USE OF COMPLETED PORTIONS

The Owner shall have the right to use any completed or partially completed portion of the work and such use shall not be considered as an acceptance of any work.

GC.13 CHANGES IN THE WORK

The Local Public Agency may make changes in the scope of the work required to be performed by the Contractor under the Contract or make additions thereto, or omit work therefrom without invalidating the Contract, and without relieving or releasing the Contractor from any of his obligations under the Contract or any guarantee given by him pursuant to the Contract provisions, and without affecting the validity of the Guaranty Bonds, and without relieving or releasing the Surety or Sureties of said bonds. All such work shall be executed under the terms of the original Contract unless it is expressly provided otherwise.

Except for the purpose of affording protection against any emergency endangering life or property, the Contractor shall make no change in the materials used or in the specified manner of constructing and/or installing the improvements, or supply additional labor, services or materials beyond that actually required for the execution of the Contract, unless in pursuance of a written order from the Local Public Agency authorizing the Contractor to proceed with the change. No claim for an adjustment of the Contract price will be valid unless so ordered.

After the work is complete, a final change order may be prepared to be accepted by the Owner and Contractor to adjust final payment as required to cover the actual units of work acceptably completed.

If the applicable unit prices are contained in the Proposal (established as a result of either a unit price or a Supplemental Schedule of Unit Prices) the Local Public Agency may order the Contractor to proceed with desired changes in the work, the value of such changes to be determined by the measured quantities involved and the applicable unit and lump sum prices specified in the Contract; provided that in case of a unit price Contract the net value of all changes does not increase or decrease the original total amount shown in the Agreement by more than twenty-five (25) percent in accordance with the section entitled BALANCED BID; VARIATION IN QUANTITIES under INSTRUCTIONS TO BIDDERS.

If applicable unit prices are not contained in the Unit Price Schedule as described above or if the total net change increases or decreases the total Contract price more than twenty-five (25) percent, the Local Public Agency shall, before ordering the Contractor to proceed with a desired change, request an itemized Proposal from him covering the work involved in the change after which the procedure shall be as follows:

- (1) If the Proposal is acceptable the Local Public Agency will prepare the Change Order in accordance therewith for acceptance by the Contractor and
- (2) If the Proposal is not acceptable and prompt agreement between the two (2) parties cannot be reached, the Local Public Agency may order the Contractor to proceed with the work on a Force Account basis, under which the net cost shall be the sum of the actual costs that follow:

- (A) Labor, including foremen;
- (B) Materials entering permanently into the work;
- (C) The ownership or rental cost of construction plant and equipment during the time of use on the extra work;
- (D) Power and consumable supplies for the operation of power equipment;
- (E) Insurance;
- (F) Social Security and old age and unemployment contributions.

To the net cost shall be added a fixed fee agreed upon, but not to exceed fifteen (15) percent of the net cost, to cover supervision, overhead, bond, and any other general expense, and profit.

Each Change Order shall include in its final form:

- (1) A detailed description of the change in the work.
- (2) The Contractor's Proposal (if any) or a conformed copy thereof.
- (3) A definite statement as to the resulting change in the Contract price and/or time.
- (4) The statement that all work involved in the change shall be performed in accordance with Contract requirements except as modified by the Change Order.

GC.14 CLAIMS FOR EXTRA COST

If the Contractor claims that any instructions by Drawings or otherwise involve extra cost or extension of time, he shall, within ten (10) days after the receipt of such instructions, and in any event before proceeding to execute the work, submit his protest thereto in writing to the Local Public Agency, stating clearly and in detail the basis of his objections. No such claim will be considered unless so made.

Claims for additional compensation for extra work, due to alleged errors in ground elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted or would result in handling more material, or performing more work, than would be reasonably estimated from the Drawings and maps issued.

Any discrepancies which may be discovered between actual conditions and those represented by the Drawings and maps shall at once be reported to the Local Public Agency, and work shall not proceed

except at the Contractor's risk, until written instructions have been received by him from the Local Public Agency.

If, on the basis of the available evidence, the Local Public Agency determines that an adjustment of the Contract Price and/or Time is justifiable, the procedure shall then be as provided in the Section entitled CHANGES IN THE WORK under GENERAL CONDITIONS.

GC.15 OWNER'S RIGHT TO TERMINATE CONTRACT

Termination for Cause

If the Contractor shall be adjudged as bankrupt or shall file a petition for an arrangement or reorganization under the Bankruptcy Act, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except under conditions where extension of time is approved, to supply adequate workmen, equipment and material, or disregard laws, ordinances, or the instructions of the Engineer, or otherwise be guilty of a violation of any provisions of the Contract; provided further that if the Contractor at any time fails to comply with any applicable Federal or State regulation which prevents either the Local Public Agency or the Contractor from fulfilling its obligations under these Contract Documents, then the Owner upon certification of the Engineer that sufficient cause exists to justify such action may, without prejudice to any other right or remedy, and after giving the Contractor ten (10) days' written notice, terminate the employment of the Contractor.

At the expiration of the said ten (10) days, the Owner may immediately serve notice upon the Surety to complete the work.

In the case the Surety fails to comply with the notice within thirty (30) days after service of such notice, the Owner may complete the work and charge the expense of the completion, including labor, materials, tools, implements, machinery, or apparatus, to said Contractor; and the expense so charged shall be deducted and paid by the Owner out of such monies as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of this Contract. And in case such expense is less than the sum which would have been payable under this Contract if the same had been completed by the Contractor, then said Contractor shall be entitled to receive the difference. And in case such expense is greater than the sum which would have been payable under this Contract if the same had been completed by said Contractor, then the Contractor and his Surety shall pay the amount of such excess to the Owner, on demand from said Owner or Engineer of the amount so due.

Termination for Convenience

The City of Jonesboro may, by written notice to the Contractor, terminate this contract without cause. The City must give notice of termination to the Contractor at least ten (10) days prior to the effective date of termination.

Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the

Contractor shall:

- (1) cease operations as directed by the Owner in the notice;
- (2) take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- (3) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Subcontracts and purchase orders and enter into no further Subcontracts and purchase orders.

In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and actual costs incurred directly as a result of such termination, and there will be no compensation for overhead and profit on work not executed.

GC.16 SUSPENSION OF WORK

Should contingencies arise to make such action necessary, the Owner shall have the right to suspend the whole or any part of the work for a period not to exceed sixty (60) days by giving the Contractor notice in writing three (3) days prior to the suspension.

The Contractor after written notice to resume work shall begin within ten (10) days from the date of such notice.

If the work or any part thereof shall be stopped by the Owner's notice and the Owner fails to notify the Contractor to resume work within sixty (60) days, the Contractor may abandon that portion of the work so suspended and the Contractor shall be paid for all work performed on the portion so suspended at unit prices quoted in the Unit Price Schedule for completed work involved, at agreed prices on any extra work involved, and at a fair and equitable price for partially completed work involved.

The Engineer may suspend work pending the settlement of any controversy. The Contractor shall not be entitled to any claim for loss or damage by reason of such delay, nor shall he be entitled to any extension of time; but an extension may be granted by the Owner at his discretion.

GC.17 DELAYS - EXTENSION OF TIME - LIQUIDATED DAMAGES

If the Contractor is delayed at any time in the progress of the work by any act or neglect of the Owner, the Owner's Engineer or employees, or by any separate contractor employed by the Owner, or by changes ordered in the work, or by strikes, lock-outs, fire, unusual delay in transportation, unavoidable casualty, or any other cause beyond the Contractor's control, then the time of completion shall be extended for such reasonable time as the Owner may decide; provided, however, said time of completion shall be extended upon the following conditions and no other.

- 1) Requests for extension of time shall be in writing. No extension of time shall be

granted automatically.

- 2) The Contractor claiming an extension of time because of any of the contingencies hereinabove mentioned, shall, within ten (10) days of the occurrence of the contingency which justifies the delay, notify the Owner in writing of his claim and the reasons therefore.
- 3) In event of a continuing cause of delay, only one claim is necessary.

GC.17.1 Excusable Delays: The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due:

- (1) To any acts of the Government, including controls or restrictions upon requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other national emergency;
- (2) To any acts of the Owner;
- (3) To causes not reasonable foreseeable by the parties of this Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in the performance of some other Contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions.
- (4) To any delay of any subcontractor occasioned by any of the causes specified in subparagraphs (1), (2), and (3) of this paragraph.

It is acknowledged between the parties to this Contract that the work to be performed by the Contractor will result in a benefit to the Owner and that a delay in completion of the work will be detrimental to the Owner. It is further acknowledged that, while work is in progress, the Owner shall incur an indeterminable amount of expense as a result of necessary supervision of the work and other overhead and administrative expenses.

It is, therefore, agreed that if there is a delay in the completion of the work beyond the period elsewhere herein specified which has not been authorized by the Owner as set forth above, then the Owner may deduct from the Contract price the amount stated in the Special Conditions, bound herewith, as liquidated damages.

GC.18 DISPUTES

All disputes arising under this Contract or its interpretation, whether involving law or fact or both, or extra work, and all claims for alleged breach of Contract shall within ten (10) days of commencement

of the dispute be presented by the Contractor to the Local Public Agency for decision. All papers pertaining to claims shall be filed in quadruplicate. Such notice need not detail the amount of the claim, but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope. In the meantime, the Contractor shall proceed with the work as directed. Any claim not presented within the time limit specified within this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) days of its commencement, the claim will be considered only for a period commencing ten (10) days prior to the receipt by the Local Public Agency of notice thereof.

The Contractor shall submit in detail his claim and his proof thereof. Each decision by the governing body of the Local Public Agency will be in writing and will be mailed to the Contractor by registered mail, with return of receipt requested.

If the Contractor does not agree with any decision of the Local Public Agency, he shall in no case allow the dispute to delay the work, but shall notify the Local Public Agency promptly that he is proceeding with the work under protest, and he may then except the matter in question from the final release.

GC.19 ASSIGNMENT OR NOVATION

The Contractor shall not assign or transfer, whether by an assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the local Public Agency; provided, however, that assignments to banks, trust companies, or other financial institutions may be made without the consent of the Local Public Agency. No assignment or novation of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment, supplied for the performance of the work under this Contract in favor of all persons, firms, or corporations rendering such labor or services or supplying such materials, tools, or equipment.

GC.20 TECHNICAL SPECIFICATIONS AND DRAWINGS

The Drawings and this Specification are to be considered cooperative. All work necessary for the completion of the facility shown on the Drawings, but not described in this Specification, or described in this Specification but not shown on the Drawings, OR REASONABLY IMPLIED BY EITHER OR BOTH, shall be executed in the best manner, the same as if fully shown and specified. When no figures or memoranda are given, the Drawings shall be accurately followed, according to their scale, but in all cases of discrepancy in figures or details, the decision of the Engineer shall be obtained before proceeding with the Work. If the Contractor adjusts any such discrepancy without first having obtained the approval of the Engineer, it shall be at his own risk, and he shall bear any extra expense resulting therefrom.

GC.21 SHOP DRAWINGS

Shop Drawings shall be required for all equipment, materials, and as required by the Engineer. All Shop Drawings, Machinery Details, Layout Drawings, etc., shall be submitted to the Engineer in four (4) copies for review (unless otherwise specified) sufficiently in advance of requirements to afford ample time for checking, including time for correcting, resubmitting, and rechecking if necessary. The Contractor may proceed, only at his own risk, with manufacture or installation of any equipment or work covered by said Shop Drawings, etc. until they are reviewed, and approved; and no claim, by the Contractor, for extension of the Contract time will be granted by reason of his failure in this respect.

Any Drawings submitted without the Contractor's stamp of approval will not be considered and will be returned to him for proper resubmission. If any Drawings show variations from the requirements of the Contract because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in his letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of Contract price and/or time; otherwise, the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract even though the Drawings have been reviewed.

The review of Shop Drawings by the Engineer shall be considered an accommodation to the Contractor to assist him in the execution of the Contract. The Engineer's review of such Drawings shall not relieve the Contractor of his responsibility to perform the work in strict accordance with the Plans and Specifications, and approved changes.

If the Shop Drawing is in accordance with the Contract or involves only a minor adjustment in the interest of the Local Public Agency not involving a change in Contract price or time, the Engineer shall so stamp the Drawing and shall contain in substance the following:

"Corrections or comments made on the shop drawings during this review do not relieve contractor from compliance with requirements of the drawings and specifications. This check is only for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The contractor is responsible for: confirming and correlating all quantities and dimensions; selecting fabrication processes and techniques of construction; coordinating his work with that of all other trades; and performing his work in a safe and satisfactory manner".

GC.22 REQUESTS FOR SUPPLEMENTARY INFORMATION

It shall be the responsibility of the Contractor to make timely requests of the Local Public Agency for any additional information not already in his possession which should be furnished by the Local Public Agency under the terms of this Contract, and which he will require in the planning and execution of the work. Such requests may be submitted from time to time as the need is approached, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing, and shall list the various items and the latest date by

which each will be required by the Contractor. The first list shall be submitted within two (2) weeks after the Contract award and shall be as complete as possible at that time. The Contractor shall, if requested, furnish promptly any assistance and information the Engineer may require in responding to these requests of the Contractor. The Contractor shall be fully responsible for any delay in his work or to others arising from his failure to comply fully with the provisions of this Section.

GC.23 REFERENCE TO MANUFACTURER OR TRADE NAME - "OR EQUAL CLAUSE"

If the Plans, Specifications, or Contract Documents, laws, ordinances or applicable rules and regulations permit the Contractor to furnish or use a substitute that is equal to any material or equipment specified, and if the Contractor wishes to furnish or use a proposed substitute, he shall make written application to the Engineer for approval of such a substitute certifying in writing that the proposed substitute will perform adequately the functions called for in the general design, be similar and of equal substance to that specified, and be suited to the same use and capable of performing the same functions as that specified; the use of such substitute will not require revisions of related work. No substitute shall be ordered or installed without the written approval of the Engineer who will be the judge of equality and may require the Contractor to furnish such other data regarding the proposed substitute as he considers pertinent. No substitute shall be ordered or installed without such performance guarantee and bonds as the Owner may require which shall be furnished at Contractor's expense.

Where such substitutions alter the design or space requirements indicated on the Contract Drawings, detailed drawings shall be prepared and submitted by the Contractor delineating any changes in, or additions to, the work shown on the Contract Drawings, and such drawings and changes or additions to the work shall be made by the Contractor at no additional expense to the City. In all cases, the burden of proof that the material or equipment offered for substitution is equal in construction, efficiency, and service to that named on the Contract Drawings and in these Contract Documents shall rest on the Contractor, and unless the proof is satisfactory to the Engineer, the substitution will not be approved.

GC.24 SAMPLES, CERTIFICATES, AND TESTS

The Contractor shall submit all material, product, or equipment samples, descriptions, certificates, affidavits, etc., as called for in the Contract Documents or required by the Engineer, promptly after award of the Contract and acceptance of the Contractor's bond. No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's own risk, until the required samples or certificates have been approved in writing by the Engineer. Any delay in the work caused by late or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the Contract time. Submit four (4) copies of data for Engineer's review.

Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying certificate or letter from the Contractor shall state that the sample complies with Contract requirements, shall give the

name and brand of the product, its place of origin, the name and address of the producer, and all specifications or other detailed information which will assist the Engineer in passing upon the acceptability of the sample promptly. It shall also include the statement that all materials or equipment furnished for use in the project will comply with the samples and/or certified statements.

Approval of any materials shall be general only and shall not constitute a waiver of the Local Public Agency's right to demand full compliance with Contract requirements. After actual deliveries, the Engineer will have such check tests made as he deems necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and articles have been given general approval. If materials, equipment or accessories which fail to meet check tests have been incorporated in the work, the Engineer will have the right to cause their removal and replacement by proper materials or to demand and secure such reparation by the Contractor as is equitable, at the Contractor's expense.

Except as otherwise specifically stated in the Contract, the costs of sampling and testing will be divided as follows:

- (1) The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the Engineer;
- (2) The Contractor shall assume all costs of re-testing materials which fail to meet Contract requirements;
- (3) The Contractor shall assume all costs of testing materials offered in substitution for those found deficient; and
- (4) The Local Public Agency will pay all other expenses.

GC.25 PERMITS AND CODES

The Contractor shall give all notices required by and comply with all applicable laws, ordinances, and codes of the Local Government. All construction work and/or utility installations shall comply with all applicable ordinances, and codes including all written waivers.

Should the Contractor fail to observe the foregoing provisions and proceed with the construction and/or install any utility at variance with any applicable ordinance or code, including any written waivers, the Contractor shall remove such work without cost to the Local Public Agency.

The Contractor shall at his own expense, secure and pay to the appropriate department of the Local Government the fees or charges for all permits for street pavements, sidewalks, sheds, removal of abandoned water taps, sealing of house connection drains, pavement cuts, building, electrical, plumbing, water, gas, and sewer permits required by the local regulatory body or any of its agencies.

The Contractor shall comply with applicable local laws and ordinances governing the disposal of surplus excavation, materials, debris, and rubbish on or off the site of the work, and commit no trespass on any public or private property in any operation due to or connected with the Improvements embraced in this Contract.

GC.26 CARE OF WORK

The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any injury, including death, to any person, and for any damage to property which may result from their failure, or from their improper construction, maintenance, or operation. He shall indemnify and save harmless the Local Public Agency and the Engineer and their employees and agents, against any judgement with costs, which may be obtained as a result of such injury or property damage, because of the alleged liability of the Local Public Agency or of the Engineer.

The Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance, whether or not the same has been covered in whole or in part by payments made by the Local Public Agency.

The Contractor shall provide sufficient competent watchmen, as required to protect the work both day and night, including Saturdays, Sundays, and holidays, from the time the work is commenced until final completion and acceptance.

In an emergency affecting the safety of life or property, including adjoining property, the Contractor, without special instructions or authorization from the Local Public Agency, is authorized to act at his discretion to prevent such threatened loss or injury, and he shall so act. He shall likewise act if instructed to do so by the Local Public Agency. Any compensation claimed by the Contractor on account of such emergency work will be determined by the Local Public Agency as provided in the Section entitled CHANGES IN THE WORK under GENERAL CONDITIONS.

The Contractor shall avoid damage, as a result of his operations, to existing sidewalks, streets, curbs, pavements, utilities (except those which are to be replaced or removed), adjoining property, etc., and he shall at his own expense completely repair any damage thereto caused by his operations, to the satisfaction of the Owner.

The Contractor shall shore up, brace, underpin, secure, and protect as may be necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the construction of the Improvements embraced in this Contract. The Contractor shall be responsible for the giving of any and all required notices to any adjoining or adjacent property owner or other party before the commencement of any work. The Contractor shall indemnify and save harmless the Local Public Agency, and the Engineer, from any damages on account of settlements or the loss of lateral support of adjoining property and from all loss or expense and all damages for which it may be

claimed that the Local Public Agency, or the Engineer, is liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

GC.27 QUALITY OF WORK AND PROPERTY

All property, materials, and equipment shall be new and free of defects upon completion of the Contractor's performance and, unless different standards are specified elsewhere in the Contract Documents, shall be of the best type and quality available for the purpose. All of the Contractor's work shall be performed with the highest degree of skill and completed free of defects and in accordance with the Contract Documents. Any work, property, materials, or equipment not in conformance with these standards shall be considered defective. If any work, property, materials or equipment is discovered to have been defective or not in conformance with the Contract Documents, whether said discovery is made before or after completion of performance, the Contractor, at his expense, after written notice from the Owner or Engineer, shall promptly replace or correct the deficiency and pay any engineering costs and consequential expense or damage incurred by the Owner in connection therewith. If the Contractor fails to promptly correct all deficiencies, the Owner shall have the option of remedying the defects at the Contractor's cost. If the Contractor is required to furnish shop drawings or designs, the above provisions shall apply to such drawings or designs.

Neither the Owner's payment, acceptance, inspection or use of the work, property, materials, or equipment, nor any other provision of the Contract Documents shall constitute acceptance of work, property, materials, or equipment which are defective or not in accordance with the Contract Documents. If the Contractor breaches any provision of the Contract Documents with respect to the quality of the work, property, materials, equipment or performance, whether initial or corrective, his liability to the Owner shall continue until the statute of limitations with respect to such breach of contract has expired following discovery of the defect. All parts of this section are cumulative to any other provisions of the Contract Documents and not in derogation thereof. If it is customary for a warranty to be issued for any of the property to be furnished hereunder, such warranty shall be furnished, but no limitations in any such warranty shall reduce the obligations imposed under the Contractor in the Contract Documents or by Arkansas Law; but if any greater obligations than imposed in this Contract are specified in any such warranty or by Arkansas Law, those greater obligations shall be deemed a part of this Contract and enforceable by the Owner.

GC.28 ACCIDENT PREVENTION

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, including applicable parts of the Arkansas Department of Labor Safety Code, shall be observed. The Contractor shall take or cause to be taken such safety and health measures, additional to those herein required, as he may deem necessary or desirable. Machinery, equipment, and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, Inc., to the

extent that such provisions are not in conflict with applicable local laws.

The Contractor shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor shall promptly furnish the Local Public Agency with reports concerning these matters.

The Contractor shall indemnify and save harmless the Local Public Agency, and the Engineer, from any claims for damages resulting from personal injury and/or death suffered or alleged to have been suffered by any person as a result of any work conducted under this Contract.

GC.29 SANITARY FACILITIES

The Contractor shall furnish, install, and maintain ample sanitary facilities for the workers. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required by the sanitary codes of the State and Local Government. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations.

GC.30 USE OF PREMISES

The Contractor shall confine his equipment, storage of materials, and construction operations to the Rights-of-Way to accommodate the permanent construction furnished by the Local Public Agency, or as may be directed otherwise by the Local Public Agency, and shall not unreasonably encumber the site of other public Rights-of-Way with his materials and construction equipment. In case such Rights-of-Way furnished by the Local Public Agency are not sufficient to accommodate the Contractor's operations, he shall arrange with the Local Government, or with the owner or owners of private property for additional area or areas, and without involving the Local Public Agency in any manner whatsoever.

The Contractor shall comply with all reasonable instructions of the Local Public Agency and the ordinances and codes of the Local Government (including but not limited to those) regarding signs, advertising, traffic, fires, explosives, danger signals, and barricades.

GC.31 REMOVAL OF DEBRIS, CLEANING, ETC.

The Contractor shall periodically or as directed during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the project site and public Rights-of-Way reasonably clear. Upon completion of the work, he shall remove all temporary construction facilities, debris, and unused materials provided for the work, thoroughly clean all drainage pipes, structures, ditches, and other features, and put the whole site of the work and public Rights-of-Way in a neat and "broom" clean condition. Trash burning on the site of the work will be subject to prior

approval of the Jonesboro Fire Department.

GC.32 RETURN OF OWNER'S MATERIALS, EQUIPMENT OR PROPERTY

Any materials, equipment or other property which belongs to the Owner, removed by the Contractor, shall be delivered to the Owner's designated warehouse unless its re-use is specified in the Plans and Specifications. If the Contractor fails to deliver the materials, equipment, or other property, the value, as determined by the Engineer, shall be deducted from amounts due the Contractor.

GC.33 OBSERVATION OF WORK

The Engineer, his authorized representative, and any Federal, State, County, or local authority representative having jurisdiction over any part of the work, or area through which the work is located, shall at all times have access to the work in progress.

The detailed manner and method of performing the work shall be under the direction and control of the Contractor, but all work performed shall at all times be subject to the observation of the Engineer or his authorized representative to ascertain its conformance with the Contract Documents. The Contractor shall furnish all reasonable aid and assistance required by the Engineer for the proper observation and examination of the work and all parts thereof.

The Engineer is not responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction, or safety precautions and programs incident thereto.

Observers may be appointed by the Engineer or Owner. Observers shall have no authority to permit any deviation from the Plans and Specifications except on written order from the Engineer and the Contractor will be liable for any deviation except on such written order. Observers shall have authority, subject to the final decision of the Engineer, to condemn and reject any defective work and to suspend the work when it is not being performed properly.

The observer shall in no case act as superintendent or foreman or perform other duties for the Contractor, nor interfere with the management of the work by the latter. Any advice which the observer may give the Contractor shall in no way be construed as binding to the Engineer in any way or releasing the Contractor from fulfilling all of the terms of the Contract.

Any defective work may be rejected by the Engineer at any time before final acceptance of the work, even though the same may have been previously overlooked and estimated for payment and payment therefore made by the Owner.

The Contractor shall notify the Engineer sufficiently in advance of backfilling or concealing any facilities to permit proper observation. If the facilities are concealed without approval or consent of the Engineer, the Contractor shall uncover for observation and recover such facilities all at his own expense, when so requested by the Engineer.

Should it be considered necessary or advisable by the Engineer at any time before final acceptance of the entire work to make an examination of work already completed, by uncovering the same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any important or essential respect, due to fault of the Contractor or his Subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement, plus fifteen (15) percent of such costs to cover superintendence, general expenses and profit, shall be allowed the Contractor and he shall, in addition, if completion of the work of the entire Contract has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

Observation of materials and appurtenances to be incorporated in the Improvements embraced in this Contract may be made at the place of production, manufacture or shipment, whenever the quantity justifies it, and such observation and acceptance, unless otherwise stated in the Technical Specifications, shall be final, except as regards (1) latent defects, (2) departures from specific requirements of the Contract, (3) damage or loss in transit, or (4) fraud or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the observation of materials as a whole or in part will be made at the project site.

All condemned or rejected work shall be promptly taken out and replaced by satisfactory work. Should the Contractor fail or refuse to comply with the instructions in this respect, the Owner may, upon certification by the Engineer, withhold payment, proceed to terminate the Contract, or perform work as provided herein.

GC.34 REVIEW BY LOCAL PUBLIC AGENCY OR OWNER

The Local Public Agency, its authorized representatives and agents, shall at all times during work hours have access to and be permitted to observe and review all work, materials, equipment, payrolls, and personnel records pertaining to this Contract, provided, however, that all instructions and approval with respect to the work will be given to the Contractor only by the Local Public Agency through its authorized representatives or agents. Representatives of Federal, State, and local government agencies also have the right of physical inspection of the work during work hours.

GC.35 PROHIBITED INTERESTS

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any executive, supervisory, or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part thereof.

GC.36 FINAL INSPECTION

When the Improvements embraced in this Contract are substantially completed, the Contractor shall notify the Local Public Agency in writing that the work will be ready for final inspection on a definite date which shall be stated in the notice. The notice will be given at least ten (10) days prior to the date stated for final inspection, and bear the signed concurrence of the representative of the Local Public Agency having charge of observation. If the Local Public Agency determines that the status of the Improvements is as represented, it will make the arrangements necessary to have final inspection commenced on the date stated in the notice, or as soon thereafter as practicable. The inspection party will also include the representatives of each Department of the Local Government and any other involved government agencies when such improvements are later to be accepted by the Local Government and/or other government agencies.

GC.37 PATENTS

The Contractor shall hold and save harmless the Local Public Agency, its officers, employees, and the Engineer, from liability of any nature or kind, including costs and expenses, for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the Local Public Agency, unless otherwise specifically stipulated in the Technical Specifications.

GC.38 WARRANTY OF TITLE

No material, supplies, or equipment for the work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed thereon by him to the Local Public Agency free from any claims, liens, or charges. Neither the Contractor nor any person, firm or corporation furnishing any material or labor for any work covered by this Contract, shall have any right to a lien upon any improvement or appurtenance thereon. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the Contractor in the hands of the Local Public Agency. The provisions of this paragraph shall be inserted in all subcontracts and material Contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal Contract is entered into for such materials.

GC.39 GENERAL GUARANTY

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the Improvements embraced in this Contract by the Local Public Agency or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the Contractor of liability in

respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom which shall appear within a period of twelve (12) months from the agreed upon day of final acceptance of the work. The Local Public Agency will give notice of defective materials and work with reasonable promptness.

X. SUPPLEMENTAL GENERAL CONDITIONS

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SGC.1 PROGRESS SCHEDULE

The Contractor shall submit a construction contract schedule of the bar graph (or other approved) type seven (7) calendar days prior to the preconstruction conference showing the following information as a minimum:

- (1) Actual date construction is scheduled to start if different from the date of notice to proceed.
- (2) Planned contract completion date.
- (3) Beginning and completion dates for each phase of work.
- (4) Respective dates for submission of shop drawings and the beginning of manufacture, the testing of, and the installation of materials, supplies, and equipment.
- (5) All construction milestone dates.
- (6) A separate graph showing work placement in dollars versus contract time. The schedule shall incorporate contract changes as they occur. The schedule shall be maintained in an up-to-date condition and shall be available for inspection at the construction site at all times.

The construction contract schedule shall be submitted in conjunction with and/or in addition to any other specification requirements concerning schedules.

SGC.2 DRAWINGS

One (1) set of Plans and Specifications shall be furnished to the Contractor, at no charge, for construction purposes. Additional copies may be obtained at cost of reproduction upon request.

The Contractor shall keep one (1) copy of all drawings and Contract Documents in good condition readily accessible at the site of the work available to the Engineer and his authorized representatives.

SGC.3 ADDITIONAL INSURANCE (i.e. Railroad Insurance)

Intentionally Left Blank

SGC.4 RECORD DRAWINGS

Before any work is started, the Contractor shall obtain at his own expense one set of Plans to be used for Record Drawings. The Engineer will supply the Plans at printing cost to the Contractor. Record Drawings will be kept on full-size plan sheets; no half-size sheets will be permitted. The Record Drawings shall be stored and maintained in good condition at all times by the Contractor and shall be made available to the Engineer at the work site immediately at the Engineer's request. All writing,

notes, comments, dimensions, etc. shall be legible. The Record Drawings shall be stored flat and shall not be rolled. The Record Drawings shall be submitted to the Engineer before the project can be accepted.

The Contractor shall accurately identify and document the locations of all underground and/or concealed work that he has performed and/or has been affected by his work. This shall include all equipment, conduits, pipe lines, valves, fittings and other appurtenances and underground structures that are part of the Contractor's work and their proximity to existing underground structures and utilities to the extent known. The Contractor will certify accuracy of the Record Drawings by endorsement.

The Contractor's work shall be documented on the Record Drawings in an on-going manner. Distances, offsets, depths, etc. shall be accurately measured from permanent fixed objects so that the Owner can expose any item of the work in the future with a minimum of effort. All such measurements shall be made before the items of work are covered or backfilled. The Contractor shall be required to expose and recover/backfill the work at his own expense if, in the Engineer's opinion, the measurements need to be verified.

SGC.5 TRENCH AND EXCAVATION SAFETY SYSTEM

This section covers trench and excavation safety system required for constructing improvements that necessitate open excavations on the project. All work under this item shall be in accordance with the current edition of the "Occupational Safety and Health Administration Standard for Excavation and Trenches Safety System, 29 CFR 1926, Subpart P.

The Contractor, prior to beginning any excavation, shall notify the State Department of Labor (Safety Division) that work is commencing on a project with excavations greater than five feet.

The Contractor shall notify all Utility Companies and Owners in accordance with OSHA Administration 29 CFR 1926.651(b) (2) for the purpose of locating utilities and underground installations.

Where the trench or excavation endangers the stability of a building, wall, street, highway, utilities, or other installation, the Contractor shall provide support systems such as shoring, bracing, or underpinning to ensure the stability of such structure or utility.

The Contractor may elect to remove and replace or relocate such structures or utilities with the written approval of the Owner of the structure or utility and the Project Owner.

The work required by this item will not be paid directly but will be included in the various items bid. If this item is required, the Contractor shall submit to the Engineer a breakdown of cost for work involved in the price bid for "Trench and Excavation Safety Systems" and shall, with each periodic payment request, submit a certification by the Contractor's "competent person" as defined in Subpart "P" 1926.650(b) that the Contractor has complied with the provisions of "Occupational Safety and Health Administration Standard for Excavation and Trenches Safety System", 29 CFR 1926 Subpart P for work for which payment is requested.

SGC.6 MINIMUM WAGES

The Contractor shall comply with the provisions of the Arkansas Prevailing Wage Law, Arkansas Code Annotated §§ 22-9-301 to 22-9-313 (1987) and the administrative regulations promulgated thereunder, as they apply under this Contract.

It shall be the responsibility of each Bidder to determine the consequences of the applicable provisions of the Arkansas Prevailing Wage Law, and include in his bid any costs made necessary because of them. No additional payment will be made, and no extension of Contract time will be allowed because of the provisions of the Law.

The Contractor shall comply with all applicable provisions of the Arkansas Prevailing Wage Law including the following:

- (1) Pay wage rates not less than the prevailing hourly wage for each craft or type of workman needed to execute the Contract, as determined by the Arkansas Department of Labor, such determination covering rates for regular hours, and rates for holidays and overtime work (Arkansas Code Ann. §§ 22-9-308(b)(2) and §§ 22-9-308(c)).
- (2) Post on the site of the work, in a conspicuous and accessible place, a copy of the prevailing wage rates as determined (Arkansas Code Ann. §§ 22-9-309(a)).
- (3) Keep an accurate record of workman employed by him, and by each subcontractor, if any, including the wage payments made. Such record, or records, shall be available for inspection by the Arkansas Department of Labor, and the Owner, during reasonable hours.
- (4) The Contractor's bond shall guarantee the payment of wages as herein specified.

Wage rates as established by the Arkansas Department of Labor are minimum for wage payments under this Contract.

There is no assurance on the part of the Owner that mechanics and laborers can be obtained for the rates herein bound. Each Bidder shall determine for himself the availability of laborers and mechanics, and the rates he must pay to obtain employees. Such rates of pay may be greater than, but cannot be less than, the wage rates bound herein.

MIKE BEEBE
GOVERNOR



STATE OF ARKANSAS
ARKANSAS DEPARTMENT OF LABOR
PREVAILING WAGE DIVISION

JAMES SALKELD
DIRECTOR

10421 WEST MARKHAM • LITTLE ROCK, AR 72205-2190
Phone: 501-682-4536 Fax: 501-682-4508 TRS: 800-285-1131

October 11, 2011

Brent Watkins
City of Jonesboro
P O Box 1845
Jonesboro, AR 72403

RE: Viney Slough Tributary Improvements
Jonesboro, Arkansas
Craighead County

Dear Mr. Watkins:

Please be advised that the Arkansas Prevailing Wage Law shall not be construed to apply to or affect highway, road, street, or bridge construction and maintenance or related work contracted for or performed by incorporated towns, cities, counties, or the Arkansas State Highway and Transportation Department. Ark. Code Ann. § 22-9-303 (b) (1987).

Since your request is for replacing two roadway cross-drain structures with reinforced concrete box culverts, the Prevailing Wage Law would exclude the above-referenced project from coverage and you are under no obligation to obtain a wage determination from this department.

Please note that you may access a copy of the Prevailing Wage Law and Regulations at <http://www.arkansas.gov/labor>.

If you have any questions, or if I can be of further assistance, please contact me at the above address or call (501) 682-4536.

Sincerely,

Lorna Kay Smith

Lorna Kay Smith
Prevailing Wage Division

XI. SPECIAL CONDITIONS

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SC.1 GENERAL

The provisions of this section of the Specifications shall govern in the event of any conflict between them and the "General Conditions".

SC.2 LOCATION OF PROJECT

The project is located along Viney Slough Tributary under Richardson Road and Limestone Drive. A map showing the general location is included in the plan sets.

SC.3 SCOPE OF WORK

The work to be performed under this Contract consists of furnishing all materials, labor, supervision, tools and equipment necessary to construct Viney Slough Tributary Structures.

SC.4 TIME ALLOTTED FOR COMPLETION

The time allotted for completion of the work shall be sixty (60) consecutive calendar days, which time shall begin with ten (10) days of the work order or notice to proceed. After award of the Contract is made and the Contract Documents are completed, the Engineer shall issue a Notice to Proceed, notifying the Contractor to proceed with the construction of the project, subject to the provisions of this paragraph. **Time allowed is a very important part of this contract and it is imperative that the road does not stay closed longer than absolutely necessary for the construction of this project.**

SC.5 FORMS, PLANS AND SPECIFICATIONS

Forms of Proposal, Contract and Bonds, and Plans and Specifications may be examined at the City of Jonesboro Engineering Department, 307 Vine Street, Jonesboro, Arkansas 72403, and obtained upon payment of \$25.00 each. No refunds will be made.

SC.6 LIQUIDATED DAMAGES FOR DELAY

The number of calendar days allowed for completion of the project is stipulated in the Proposal and in the Contract and shall be known as the Contract Time.

1. It is understood and agreed by and between the Owner and the Contractor that the time of completion herein set out is a reasonable time. The Contractor shall perform fully, entirely, and in an acceptable manner, the work contracted for within the contract time stated in the Contract. The contract time shall be counted from ten days after the effective date of the "Notice to Proceed"; and shall include all Sundays, holidays, and non-work days. All calendar days elapsing between the effective dates of any orders of the Engineer for suspension of the prosecution of the work, due to the fault of the Contractor, shall be counted as elapsed contract time, and shall not be considered for an extension of time.
2. Extensions of time for completion, under the condition of 2(a) next below, will be granted; extensions may be granted under other stated conditions:

- a. If the satisfactory execution and completion of the Contract shall require work or material in greater amounts or quantities than those set forth in the Contract, then the Contract time shall be increased in the same proportion as the additional work bears to the original work contracted for.
 - b. An average or usual number of inclement weather days, when work cannot proceed, is to be anticipated during the construction period and is not to be considered as warranting extension of time. If, however, it appears that the Contractor is delayed by conditions of weather, so unusual as not to be reasonably anticipated, extensions of time may be granted.
 - c. Should the work under the Contract be delayed by other causes which could not have been prevented or contemplated by the Contractor, and which are beyond the Contractor's power to prevent or remedy, an extension of time may be granted. Such causes of delay shall include but not necessarily be limited to the following:
 - (1) Acts of God, acts of the public enemy, acts of the Owner except as provided in these Specifications, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.
 - (2) Any delays of Subcontractors or suppliers occasioned by any of the causes specified above.
3. The Resident Project Representative or other authorized representative of the City shall keep a written record sufficient for determination as to the inclusion of that day in the computation of Contract time. This record shall be available for examination by the Contractor during normal hours of work as soon as feasible after the first of each construction month. In case of disagreement between the representative of the City and the Contractor, as to the classification of any day, the matter shall be referred to the City whose decision shall be final.
 4. The amount of all extensions of time for whatever reason granted shall be determined by the Owner. In general, only actual and not hypothetical days of delay will be considered. The Owner shall have authority to grant additional extensions of time as the Owner may deem justifiable.

The amount of Liquidated Damages to be assessed shall be in accordance with the schedule that follows:

<u>Amount of Contract</u>	<u>Liquidated Damages</u> <u>Per Day</u>
Less than \$25,000.00	\$100.00
Not less than \$ 25,000.00 but less than \$ 50,000.00	\$150.00
Not less than \$ 50,000.00 but less than \$ 100,000.00	\$200.00
Not less than \$100,000.00 but less than \$ 500,000.00	\$250.00
Not less than \$500,000.00 but less than \$1,000,000.00	\$350.00
Over \$1,000,000.00	\$500.00

1. Time is an essential element of the Contract and it is important that the work be pressed vigorously to completion. Loss will accrue to the public due to delayed completion of the facility; and the cost to the Owner of the administration of the Contract, including engineering, inspection and supervision, will be increased as the time occupied in the work is lengthened.
2. Should the Contractor fail to complete the work as set forth in the Specifications and within the time stipulated in the Contract, there shall be deducted the amount shown in the schedule above, for each day of delay, from any monies due or which may thereafter become due him, not as a penalty, but as ascertained and liquidated damages.
3. Should the amount otherwise due the Contractor be less than the amount of such ascertained and liquidated damages, the Contractor and his Surety shall be liable to the Owner for such deficiency.

If the Contractor finds it impossible for reasons beyond his control to complete the work within the Contract time as specified, or as extended in accordance with the provisions of this subsection, he may, at any time prior to the expiration of the Contract time as extended, make a written request to the Engineer for an extension of time setting forth the reasons which he believes will justify the granting of his request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Engineer finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, he may recommend to the Owner that the contract time be extended as conditions justify. If the Owner extends the contract, the extended time for completion shall then be in full force and effect, the same as though it were the original time for completion.

SC.7 KNOWLEDGE OF CONDITIONS

The Contractor states that he has examined all the available records and has made a field examination of the site and right-of-way and that he has informed himself about the character, quality, and quantity of surface and subsurface materials and other conditions to be encountered; the quantities in various sections of the work; the character of equipment and facilities needed for the prosecution of the work; the location and suitability of all construction materials; the local labor conditions; and all other matters in connection with the work and services to be performed under this contract.

SC.8 PERMITS AND RIGHTS-OF-WAY

The Owner will secure easements across public or private property permanently required for the pipelines at no cost to the Contractor.

The Contractor shall lease, buy, or otherwise make satisfactory provision, without obligating the Owner in any manner, for any land required outside the land provided by the Owner.

State Highway and Railroad Crossing Permits will be secured by the Owner. All other permits and licenses necessary for the prosecution of the work shall be secured and paid for by the Contractor.

SC.9 REFERENCE SPECIFICATIONS

Where reference is made in these Specifications to the Standard Specifications of the Arkansas State Highway and Transportation Department, such reference is made for expediency and standardization, and such specifications (latest edition thereof) referred to are hereby made a part of these Specifications.

More specifically, if any items or materials required for completion of the work required for this project are not specified in these Contract Documents, such items or materials and requirements for installation shall conform to the latest edition of the Arkansas State Highway and Transportation Department Standard Specifications for Highway Construction.

SC.10 PUBLIC UTILITIES AND OTHER PROPERTY TO BE CHANGED

In case it is necessary to change or move the property of any owner or of a public utility, such property shall not be moved or interfered with until ordered to do so by the Engineer. The right is reserved to the owner of public utilities to enter upon the limits of the project for the purpose of making such changes or repairs of their property that may be made necessary by performance of this Contract.

SC.11 USED MATERIALS

No material which has been used by the Contractor for any temporary purpose whatever is to be incorporated in the permanent structure without written consent of the Engineer.

SC.12 EXISTING STRUCTURES

The Plans show the locations of all known surface and subsurface structures. However, the Owner assumes no responsibility for failure to show any or all of these structures on the Plans, or to show them in their exact location. It is mutually agreed that such failure shall not be considered sufficient basis for claims for additional compensation for extra work or for increasing the pay quantities in any manner whatsoever, unless the obstruction encountered is such as to necessitate changes in the lines or grades, or requires the building of special work, provisions for which are not made in the Plans and Proposal, in which case the provisions in these Specifications for Extra Work shall apply.

The Contractor shall be responsible for protection of all existing structures, and any damage caused by his operations shall be repaired immediately without cost to the Owner. It shall be the responsibility of the prospective Contractor to examine the site completely before submitting his bid.

SC.13 USE OF EXPLOSIVES

Any use of explosives or blasting shall be as outlined in these Specifications.

SC.14 BARRICADES, LIGHTS, AND WATCHMEN

Where the work is performed on or adjacent to any street, alley, or public place, the Contractor shall, at his own expense, furnish and erect such barricades, fences, lights, and danger signals, shall provide such watchmen, and shall provide such other precautionary measures for the protection of persons or property and of the work as are necessary.

Barricades shall be painted in a color that will be visible at night. From sunset to sunrise the Contractor shall furnish and maintain at least one light at each barricade and a sufficient number of barricades shall be erected to keep vehicles from being driven on or into any work under construction. The Contractor shall furnish watchmen in sufficient numbers to protect the work.

The Contractor will be held responsible for all damage to the work due to failure to provide barricades, signs, lights, and watchmen to protect it. Whenever evidence is found of such damage, the Engineer may order the damaged portion immediately removed and replaced by the Contractor at his expense. The Contractor's responsibility for the maintenance of barricades, signs, and lights, and for providing watchmen, shall not cease until the project shall have been accepted by the Owner.

SC.15 FENCES AND DRAINAGE CHANNELS

Boundary fences or other improvements removed to permit the installation of the work shall be replaced in the same location and left in a condition as good or better than that in which they were found except as indicated on the Drawings.

Where surface drainage channels are disturbed or blocked during construction, they shall be restored to their original condition of grade and cross section after the work of construction is completed.

SC.16 WATER FOR CONSTRUCTION

Water used for the mixing of concrete, testing, or any other purpose incidental to this project, shall be furnished by the Contractor. The Contractor shall make the necessary arrangements for securing and transporting such water and shall take such water in a manner and at such times that will not produce a harmful drain or decrease of pressure in the Owners' water system. No separate payment will be made for water used but the cost thereof shall be included in the Unit Price Schedule.

SC.17 MATERIAL STORAGE

Materials delivered to the site of the work in advance of their use shall be stored so as to cause the least inconvenience and in a manner satisfactory to the Engineer.

SC.18 EXISTING UTILITIES AND SERVICE LINES

The Contractor shall be responsible for the protection of all existing utilities or improvements crossed by or adjacent to his construction operations. Where existing utilities or service lines are cut, broken, or damaged, the Contractor shall replace or repair immediately the utilities or service lines with the same type of original material and construction or better, at his own expense.

SC.19 TESTING, INSPECTION AND CONTROL

Testing and control of all materials used in the work shall be done by an approved commercial laboratory at the Contractor's expense.

SC.20 BOND

Coincident with the execution of the Contract, the Contractor shall furnish a good and sufficient surety bond, in the full amount of the Contract sum, guaranteeing the faithful performance of all covenants, stipulations, and agreements of the Contract, the payment of all bills and obligations arising from the execution of the Contract, (which bills or obligations might or will in any manner become a claim against the Owner), and guaranteeing the work included in this Contract against faulty materials and/or poor workmanship for one (1) year after the date of completion of Contract.

All provisions of the bond shall be complete and in full accordance with Statutory requirements. The bond shall be executed with the proper sureties through a company licensed and qualified to operate in the state and approved by the Owner. The issuing agent's power of attorney shall be attached to the bond and the bond shall be signed by an agent resident in the state and date of bond shall be the date of execution of the Contract. If at any time during the continuance of the Contract the surety on the Contractor's bond becomes irresponsible, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, the Contract may be suspended and all payments or money due the Contractor withheld.

SC.21 LIGHT AND POWER

The Contractor shall provide, at his own expense, temporary lighting and facilities required for the proper prosecution and inspection of the work. At the time the Owner obtains beneficial occupancy of any of the facilities placed in satisfactory service, charges for power and light for regular operation of those involved facilities will become the responsibility of the Owner.

SC.22 LINES AND GRADES

The Contractor will be furnished baselines and benchmarks to control the work. The Contractor shall be responsible for the additional instrument control necessary to layout and construct the improvements. The Contractor's instrument control of the work shall not be measured for separate payment.

As a minimum, the Contractor shall provide the following instrument control for the work:

- a. For the full length and width of all areas within the limits of paving, the finished grade of the concrete surface course shall be controlled by grade wires or forms set by the Contractor to control the final surface, in accordance with the plans.
- b. For the full length and width of all areas within the limits of paving, the initial courses of bituminous pavement will be controlled by uniform thickness. The course under the final surface course shall be controlled by grade wire, and the final surface course shall be controlled by uniform thickness. The bituminous pavement shall be constructed with a lay down machine with automatic controls and a forty (40) foot ski.
- c. For the full length and width of all areas within the limits of paving, the crushed aggregate base course and the sub base course will be controlled with intermediate and final surface stakes, "blue tops". Stakes shall be set as required or as directed by the Engineer to control the construction.
- d. The Contractor shall set intermediate line and grade stakes and final grade stakes, "blue tops," as required to control the construction of shoulders.

SC.23 LEGAL HOLIDAYS

January 1, Martin Luther King, Jr. Day, President's Day, Memorial Day, July 4, Labor Day, Veteran's Day, Thanksgiving, Day after Thanksgiving, December 24, and December 25 will be considered as being legal holidays; no other days will be so considered. Should any holiday fall on Sunday, the holiday shall be observed on the following Monday. No engineering observation will be furnished on legal holidays or Sundays, except in an emergency. The Contractor shall observe the legal holidays and Sundays, and no work shall be performed on these days except in an emergency. However, these days shall not be excluded from Contract time.

SC.24 SEQUENCE OF CONSTRUCTION

Sequence of all phases of work shall be such as to provide for the least possible inconvenience to the Owner. Scheduling of work which would interfere with normal traffic operation shall be coordinated with the Owner. Material and equipment received on the project prior to time of installation shall be stored at such locations designated by the Owner.

The Contractor shall furnish a proposed work schedule to the Engineer for review and approval as soon as possible after award of the Contract. This schedule shall show anticipated equipment delivery schedules and times of beginning and completing of the several work tasks.

SC.25 TEST BORINGS

The Contractor may rely upon the general accuracy of the test pit or soil boring data contained in reports or drawings, but such reports and drawings are not Contract Documents. The Contractor may not rely upon or make any claim against Owner, Engineer, or Engineer's Consultants with respect to (1) the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be

employed by the Contractor and safety precautions and programs incident thereto, (2) other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings, (3) any Contractor interpretation of or conclusion drawn from any data, interpretations, opinions, or information.

SC.26 TEMPORARY FIELD OFFICE

Not required for this project.

SC.27 RELEASE AND CONTRACTOR'S AFFIDAVIT

At the project's completion, the Contractor shall execute the attached Release and Lien Waiver to release all claims against the Owner arising under and by virtue of his Contract. The date of the Release shall be that agreed to for the final acceptance of the project with the Owner.

SC.28 MAINTENANCE BOND

The Contractor shall execute the attached Maintenance Bond guaranteeing the work included in the Contract against faulty materials and/or prior workmanship for one year after completion of the Contract. The date of the Maintenance Bond shall be that agreed to for the final acceptance of the project with the Owner. The Maintenance Bond shall be for 100% of the final contract amount.

At the end of the applicable maintenance period, the Owner and/or the Engineer, with the Contractor, shall make an inspection of the work. The Contractor immediately shall repair and correct any and all defects which have resulted from faulty workmanship, equipment, or materials, following which repair and correction the Local Public Agency will accept full maintenance of the work.

RELEASE

FROM: Contractor's Name _____

Address _____

TO: City of Jonesboro

DATE OF CONTRACT: _____

Upon receipt of the final payment and in consideration of that amount, the undersigned does hereby release the Owner and its agents from any and all claims arising under or by virtue of this Contract or modification thereof occurring from the undersigned's performance in connection with the construction of the

Viney Slough Tributary Structures

project.

Contractor's Signature

Title

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission Expires:

CONTRACTOR'S AFFIDAVIT

FROM: Contractor's Name _____

Address _____

TO: City of Jonesboro

DATE OF CONTRACT: _____

I hereby certify that all claims for material, labor, and supplies entered into contingent and incident to the construction or used in the course of the performance of the work on the construction of the

Viney Slough Tributary Structures

have been fully satisfied.

Contractor's Signature

Title

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission Expires:

The Surety Company consents to the release of the retained percentage on this project with the understanding that should any unforeseen contingencies arise having a right of action on the bond that the Surety Company will not waive liability through the consent to the release of the retained percentage.

Dated _____

Surety Company

By _____
Resident Agent, State of Arkansas

MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____,
as Principal, and _____,
as Surety, are held and firmly bound unto the City of Jonesboro, as Obligee, in the full and

just sum of _____
(\$ _____) DOLLARS, lawful money of the United States of America, to be paid to the said Obligee, its successors or assigns, for the payment of which, well and truly to be made, we and each of us, bind ourselves, our heirs, executors and assigns, themselves, and their successors and assigns, jointly and severally, firmly by these presents.

Dated this _____ day of _____, 20_____.

The conditions of this obligation are such, that whereas, said Principal, has by a certain contract with the City of Jonesboro dated the ____ day of _____, 20____, agreed to construct the Viney slough Tributary Structures and to maintain the said Improvement in good condition for a period of one (1) year from the date of acceptance of the improvements.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall indemnify and hold harmless the said Obligee from and against all loss, costs, damages, and expenses whatsoever which it may suffer or be compelled to pay by reason of failure of the said Principal to keep said work in repair for a one year period beginning _____ against any and all defects of faulty workmanship or inferior material, then this obligation shall be void; otherwise to remain in full force and effect.

It is further agreed that if the said Principal or Surety herein shall fail to maintain said improvements in good condition for the said period of 1 year, and at any time repairs shall be necessary, that the cost of making said repairs shall be determined by the Owner, or some person or persons designated by the Owner to ascertain the same, and if, upon thirty (30) days notice, the said amount ascertained shall not be paid by the Principal or Surety herein, or if the necessary repairs are not made, that said amount shall become due upon the expiration of thirty (30) days, and suit may be maintained to recover the amount so determined in any Court of competent jurisdiction; and that the amount so determined shall be conclusive upon the parties as to the amount due on this bond for the repair or repairs included therein; and that the cost of all repairs shall be so determined from time to time during the life of this bond, as the condition of the improvements may require.

Signed, sealed and delivered the day and year first above written.

Principal

ATTEST:

BY: _____

SEAL

Surety

ATTEST:

BY: _____

Attorney in Fact

XII. TECHNICAL SPECIFICATIONS

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TITLE

SP-1	Standard Specifications for Highway Construction Arkansas State and Highway Department, Edition of 2003
SP-2	Connecting RCP Culverts into Wings

SP-1 - SPECIFICATIONS, ARKANSAS STATE HIGHWAY COMMISSION

General

The standard specifications of the Arkansas State Highway and Transportation are bound in a book titled Standard Specifications for Highway Construction. These specifications are referred to herein as "Standard Specifications." The latest edition shall apply.

A copy of these "Standard Specifications" may be obtained from the Arkansas State Highway and Transportation Department, Little Rock, Arkansas, at their customary charge.

SP-2 - CONNECTING RCP CULVERTS INTO WINGS

1. **Description.** This item consists of connecting pipe culverts to the Richardson Road R. C. Box Culvert in accordance with this Special Provision, The Standard Specifications, and the details contained in the plans for this project. The existing 30” R.C. Pipe Culvert south of the Richardson Road Box shall be connected to the southeast wing wall. A double 30” R.C. Pipe Culvert shall be stubbed out of the northwest wing wall to accommodate a side drain to be installed by the City of Jonesboro.

2. **Materials.** The concrete pipe culvers shall be furnished by the City. All other materials, bracing, cribbing, backfill, that may be necessary to complete this item shall be the responsibility of the Contractor.

3. **Construction Requirements.** The pipe culverts shall be connected to the wing wall by inserting entirely through, and flush, with the wall. The final appearance shall be neat finished and uniform. All work involved with this item shall be performed in a manner consistent with industry standards and shall meet with the approval of the City Engineer.

4. **Method of Measurement.** Completed and accepted connections of the pipe culverts with the outlet end wing walls of the Richardson Road Box Culvert shall be measured by the unit.

5. **Basis of Payment.** Work completed and accepted and measured as provided above will be paid for at the contract unit price bid for the item Culvert Connection Through Wing Walls, which price shall be full compensation for furnishing all materials with the exception of the pipe culverts; for forms; for mixing, placing, and finishing concrete; for excavating and backfilling; cutting pipe to fit; and for all labor, equipment, tools, and incidentals necessary to complete the work.

Payment will be made under:

Pay Item	Unit
Connecting RCP Culverts into Wings	LUMP SUM



Legislation Details (With Text)

File #: RES-11:203 **Version:** 1 **Name:** Maintenance agreement for Jamestown Phase III
Type: Resolution **Status:** Recommended to Council
File created: 11/10/2011 **In control:** Public Works Council Committee
On agenda: **Final action:**
Title: A RESOLUTION TO ACCEPT A MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES FOR JAMESTOWN PHASE III, A RESIDENTIAL SUBDIVISION
Sponsors: Engineering
Indexes: Contract
Code sections:
Attachments: [Maintenance Agreement.pdf](#)

Date	Ver.	Action By	Action	Result
12/6/2011	1	Public Works Council Committee		

Title

A RESOLUTION TO ACCEPT A MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES FOR JAMESTOWN PHASE III, A RESIDENTIAL SUBDIVISION

Body

WHEREAS, the Section 112-157 of the Jonesboro Municipal Code requires that a Maintenance Agreement be executed between the Developer and the City prior to recording the final plat;

WHEREAS, Nix Development has submitted a Maintenance Agreement for Stormwater Management Facilities for Jamestown Phase III development;

WHEREAS, the City Engineer and City Attorney have reviewed the attached Maintenance Agreement and find it to be in compliance with the Stormwater Management Regulations.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

Section 1: That the City of Jonesboro accepts a Maintenance Agreement for Stormwater Management Facilities with Nix Development and authorizes the filing of a record plat for Jamestown Phase III development.

SECTION 2: The Mayor and the City Clerk are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate this agreement.

**MAINTENANCE AGREEMENT
FOR STORMWATER MANAGEMENT FACILITIES**

Property Identification

Project Name: Jamestown Phase III
Project Address: _____
Owner(s): Nix Development
Owner Address: 2532 Alexander Dr. Suite A
City: Jonesboro State: AR Zip Code: 72401

In accordance with Section 112-157 of the Jonesboro Municipal Code, this agreement is made and entered into this 7 day of November, 2011, by and between the City of Jonesboro, an Arkansas municipal corporation, hereinafter called the "City" and Nix Development, hereinafter called the "Developer".

WITNESSTH, that:

WHEREAS, The Developer is proceeding to build on and develop the property in accordance with the Stormwater Management Plan (the "Plan") approved by the City and the recorded plat (the "Plat") for Jamestown Phase III as recorded in the records of Craighead County, Arkansas.

WHEREAS, the City and the Developer, its successors and assigns, including any homeowner association, agree that the health, safety, and welfare of the residents of the City of Jonesboro, Arkansas require that on-site stormwater runoff management facilities be constructed and maintained on the property.

WHEREAS, the City requires that on-site stormwater runoff management facilities as shown on the plan be constructed and adequately maintained by the Developer, its successors and assigns, including any homeowner association.


WHEREAS, adequate maintenance is defined herein as the general upkeep of the facilities, specifically the mowing and trimming of grasses or other vegetative cover and the removal of litter and other minor debris that could impact the functionality of the facility or that would otherwise be considered unsightly or a nuisance.

WHEREAS, the City of Jonesboro shall be responsible, after construction and final acceptance of the development, for the operation and long-term maintenance of all drainage structures and improved watercourses which are part of the City of Jonesboro Stormwater Management System and which are not constructed and maintained by or under the jurisdiction of any State or Federal agency.

WHEREAS, Long-term maintenance is defined herein as the removal of sediment deposits, re-grading or shaping of embankments, drainage channels, and detention areas, and the repair or replacement of piping networks, and other underground drainage structures.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties agree as follows:

1. The on-site stormwater runoff management facilities shall be constructed by the Developer, its successors and assigns, in accordance with the plans and specifications identified in the Plan.
2. The Developer, its successors and assigns, including any homeowner association, shall adequately maintain the on-site stormwater runoff management facilities.
3. The Developer, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property to inspect and perform long-term maintenance of the on-site stormwater runoff management facilities whenever the City deems necessary.
4. In the event the Developer, its successors and assigns, fails to adequately maintain the stormwater runoff management facilities, the City may enter upon the Property upon thirty (30) days written notification or earlier, if deemed an emergency, and take whatever steps necessary to correct the deficiencies and charge the costs of such corrective action to the Developer, its successors and assigns. The Developer, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City including all labor, equipment, supplies, materials, and the like. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Developer outside of the easement for the on-site stormwater runoff management facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this agreement be construed to impose any such obligation on the City.
5. This agreement shall be recorded among the land records of Craighead County, Arkansas and shall constitute a covenant running with the land, and shall be binding on the Developer, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowner association.
6. This Agreement is binding upon and inures to the benefit of the City, and the Developer, the Developer's successors and assigns, any property owners' association or homeowners' association created which pertains to all or any part of the property and any individual lot owner who has purchased all or any part of the property referred to in this Agreement. The terms of this Agreement are enforceable on all of the above parties.
7. In the event any party to this Maintenance Agreement must employ a lawyer to enforce the terms and obligations set out in this Agreement and litigation ensue, the prevailing party, as determined under Arkansas Law, shall be entitled to recover not only court costs as defined under Arkansas Law but all costs of litigation, including a reasonable attorney's fee.
8. This Agreement is the complete agreement and understanding between the parties who have executed this Agreement. There are no other agreements, either oral or written. All prior or contemporaneous statements, representations, or guarantees are declared void. This Agreement may be amended only by a written document signed by all parties.

Owner/Agent:	<u>Jud Nik</u> Printed Name	 Signature	<u>11-7-11</u> Date
Owner/Agent:	_____ Printed Name	_____ Signature	_____ Date

STATE OF ARKANSAS
COUNTY OF CRAIGHEAD

On this day before me, the undersigned officer, personally appeared Jud Nix, to me well known to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he had executed the same for the purposes therein stated and set forth.

WITNESS my hand and seal this 8 day of Nov., 2011.

Whitni B. Metheny
Notary Public (Printed Name)

Whitni B. Metheny
Notary Public (Signature)



My Commission Expires: 07-20-21

Accepted by:

Mayor

Date

City Clerk

Date



Legislation Details (With Text)

File #:	RES-11:204	Version:	1	Name:	Maintenance agreement for Williams Replat of Lot 2 in Hurst Acres
Type:	Resolution	Status:		Status:	Recommended to Council
File created:	11/15/2011	In control:		In control:	Public Works Council Committee
On agenda:		Final action:			
Title:	A RESOLUTION TO ACCEPT A MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES WILLIAMS REPLAT OF LOT 2, HURST ACRES, A COMMERCIAL DEVELOPMENT				
Sponsors:	Engineering				
Indexes:	Contract				
Code sections:					
Attachments:	Maintenance Agreement.pdf				

Date	Ver.	Action By	Action	Result
12/6/2011	1	Public Works Council Committee		

Title

A RESOLUTION TO ACCEPT A MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES WILLIAMS REPLAT OF LOT 2, HURST ACRES, A COMMERCIAL DEVELOPMENT

Body

WHEREAS, the Section 112-157 of the Jonesboro Municipal Code requires that a Maintenance Agreement be executed between the Developer and the City prior to recording the final plat;

WHEREAS, Wes Williams has submitted a Maintenance Agreement for Stormwater Management Facilities for Williams Replat of Lot 2, Hurst Acres development;

WHEREAS, the City Engineer and City Attorney have reviewed the attached Maintenance Agreement and find it to be in compliance with the Stormwater Management Regulations.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

Section 1: That the City of Jonesboro accepts a Maintenance Agreement for Stormwater Management Facilities with Wes Williams and authorizes the filing of a record plat for Williams Replat of Lot 2, Hurst Acres development.

Section 2: The Mayor and the City Clerk are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate this agreement.

**MAINTENANCE AGREEMENT
FOR STORMWATER MANAGEMENT FACILITIES
PAGE 1 OF 3**

Property Identification

Project Name: Wes Williams – Hurst Lane
Project Address: 2219 Hurst Lane
Owner(s): Wes Williams
Owner Address: 3410 East Johnson Avenue – Suite “H”
City: Jonesboro State: AR Zip Code: 72401

In accordance with Section 112-157 of the Jonesboro Municipal Code, this agreement is made and entered into this ____ day of _____, 2011, by and between the City of Jonesboro, an Arkansas municipal corporation, hereinafter called the “City” and Mr. Wes Williams, hereinafter called the “Developer”.

WITNESSTH, that:

WHEREAS, The Developer is proceeding to build on and develop the property in accordance with the Stormwater Management Plan (the “Plan”) approved by the City and the recorded plat (the “Plat”) for the Williams Replat of Lot 2, Hurst Acres, as recorded in the records of Craighead County, Arkansas.

WHEREAS, the City and the Developer, its successors and assigns, including any homeowner association, agree that the health, safety, and welfare of the residents of the City of Jonesboro, Arkansas require that on-site stormwater runoff management facilities be constructed and maintained on the property.

WHEREAS, the City requires that on-site stormwater runoff management facilities as shown on the plan be constructed and adequately maintained by the Developer, its successors and assigns, including any homeowner association.

WHEREAS, adequate maintenance is defined herein as the general upkeep of the facilities, specifically the mowing and trimming of grasses or other vegetative cover and the removal of litter and other minor debris that could impact the functionality of the facility or that would otherwise be considered unsightly or a nuisance.

WHEREAS, the City of Jonesboro shall be responsible, after construction and final acceptance of the development, for the operation and long-term maintenance of all drainage structures and improved watercourses which are part of the City of Jonesboro Stormwater Management System and which are not constructed and maintained by or under the jurisdiction of any State or Federal agency.

WHEREAS, Long-term maintenance is defined herein as the removal of sediment deposits, re-grading or shaping of embankments, drainage channels, and detention areas, and the repair or replacement of piping networks, and other underground drainage structures.


NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties agree as follows:

1. The on-site stormwater runoff management facilities shall be constructed by the Developer, its successors and assigns, in accordance with the plans and specifications identified in the Plan.

**MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES
WES WILLIAMS - PAGE 2 OF 3**

2. The Developer, its successors and assigns, including any homeowner association, shall adequately maintain the on-site stormwater runoff management facilities.
3. The Developer, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property to inspect and perform long-term maintenance of the on-site stormwater runoff management facilities whenever the City deems necessary.
4. In the event the Developer, its successors and assigns, fails to adequately maintain the stormwater runoff management facilities, the City may enter upon the Property upon thirty (30) days written notification or earlier, if deemed an emergency, and take whatever steps necessary to correct the deficiencies and charge the costs of such corrective action to the Developer, its successors and assigns. The Developer, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City including all labor, equipment, supplies, materials, and the like. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Developer outside of the easement for the on-site stormwater runoff management facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this agreement be construed to impose any such obligation on the City.
5. This agreement shall be recorded among the land records of Craighead County, Arkansas and shall constitute a covenant running with the land, and shall be binding on the Developer, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowner association.
6. This Agreement is binding upon and inures to the benefit of the City, and the Developer, the Developer's successors and assigns, any property owners' association or homeowners' association created which pertains to all or any part of the property and any individual lot owner who has purchased all or any part of the property referred to in this Agreement. The terms of this Agreement are enforceable on all of the above parties.
7. In the event any party to this Maintenance Agreement must employ a lawyer to enforce the terms and obligations set out in this Agreement and litigation ensue, the prevailing party, as determined under Arkansas Law, shall be entitled to recover not only court costs as defined under Arkansas Law but all costs of litigation, including a reasonable attorney's fee.
8. This Agreement is the complete agreement and understanding between the parties who have executed this Agreement. There are no other agreements, either oral or written. All prior or contemporaneous statements, representations, or guarantees are declared void. This Agreement may be amended only by a written document signed by all parties.

Owner/Agent: Wes Williams
Printed Name


Signature

10/29/11
Date

**MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES
WES WILLIAMS - PAGE 3 OF 3**

STATE OF ARKANSAS
COUNTY OF CRAIGHEAD

On this day before me, the undersigned officer, personally appeared Wes Williams, to me well known to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he had executed the same for the purposes therein stated and set forth.

WITNESS my hand and seal this 27th day of October, 2011.

DONNA MARTIN
Notary Public (Printed Name)

Donna Martin
Notary Public (Signature)



My Commission Expires: 6/2/2015

Accepted by:

Mayor

Date

City Clerk

Date



Legislation Details (With Text)

File #:	RES-11:206	Version:	1	Name:	Contract with USGS for streamgages
Type:	Resolution	Status:		Status:	Recommended to Council
File created:	11/28/2011	In control:		In control:	Public Works Council Committee
On agenda:		Final action:		Final action:	
Title:	A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO CONTINUE A JOINT FUNDING AGREEMENT WITH THE U.S. GEOLOGICAL SURVEY, UNITED STATES DEPARTMENT OF THE INTERIOR FOR THE OPERATION AND MAINTENANCE OF TWO STREAMGAGES IN JONESBORO				
Sponsors:	Engineering				
Indexes:	Contract				
Code sections:					
Attachments:	2012 Agreement.pdf				

Date	Ver.	Action By	Action	Result
12/6/2011	1	Public Works Council Committee		

Title

A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO CONTINUE A JOINT FUNDING AGREEMENT WITH THE U.S. GEOLOGICAL SURVEY, UNITED STATES DEPARTMENT OF THE INTERIOR FOR THE OPERATION AND MAINTENANCE OF TWO STREAMGAGES IN JONESBORO

Body

WHEREAS, the City of Jonesboro has desires to continue a Joint Funding Agreement (attached) with the U.S. Geological Survey, United States Department of the Interior for the operation and maintenance of two streamgages in Jonesboro;

WHEREAS, the two streamgage monitoring locations in Jonesboro are located on Lost Creek and Whiteman Creek at Access Road;

WHEREAS, the funding for the annual operation and maintenance cost shall come from the Capital Improvements budget.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

Section 1: That the City of Jonesboro shall continue a Joint Funding Agreement with the U.S. Geological Survey, United States Department of the Interior for the operation and maintenance of two streamgages in Jonesboro

Section 2: The funding for operation and management cost shall come from the Capital Improvements budget.

Section 3: The Mayor and the City Clerk are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate this agreement.

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement

Page 1 of 2
Customer #: AR046
Agreement #: 12C4AR046AR0450
Project #:
TIN #: 71-6013749
Fixed Cost Agreement Yes No

FOR
Water Resources Investigations

THIS AGREEMENT is entered into as of the 22nd day of November, 2011, by the U.S. GEOLOGICAL SURVEY, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the CITY OF JONESBORO, party of the second part.

1. The parties hereto agree that subject to availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation operation and maintenance of the two streamgages, Whiteman's Creek at Industrial Drive and Lost Creek at Floyd Street in Jonesboro, herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50; and 43 USC 50b.
2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) includes In-Kind Services in the amount of \$.

(a) \$0 by the party of the first part during the period
January 1, 2012 to December 31, 2012

(b) \$27,000 by the party of the second part during the period
January 1, 2012 to December 31, 2012

(c) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.

(d) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.

3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.
4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.
5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.
6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.
7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

Form 9-1366
continued

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement

Customer #: AR046
Agreement #: 12C4AR046AR0450
Project #:
TIN #: 71-6013749

- 8. The maps, records, or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records, or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at costs, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records, or reports published by either party shall contain a statement of the cooperative relations between the parties.
- 9. USGS will issue billings utilizing Department of the Interior Bill for Collection (form DI-1040). Billing documents are to be rendered quarterly. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30 day period, or portion thereof, that the payment is delayed beyond the due date. (31 USC 3717; Comptroller General File B-212222, August 23, 1983).

U.S. Geological Survey
United States
Department of the Interior

CITY OF JONESBORO

USGS Point of Contact


Customer Point of Contact

Name: Jaysson E. Funkhouser, Acting Director
Address: USGS Arkansas Water Science Center
401 Hardin Road
Little Rock, AR 72211
Telephone: (501) 228-3663
Email: jefunkho@usgs.gov

Name: The Honorable Harold Perrin, Mayor
Address: City of Jonesboro
307 Vine Street
Jonesboro, AR 72403
Telephone: (870) 932-2438
Email:

Signatures

Signatures

By  Date 11/22/11
Name: Jaysson E. Funkhouser
Title: Acting Director, USGS Arkansas Water Science Center

By _____ Date _____
Name: The Honorable Harold Perrin
Title: Mayor, City of Jonesboro

By _____ Date _____
Name: _____
Title: _____

By _____ Date _____
Name: Donna Clark
Title: City Clerk

By _____ Date _____
Name: _____
Title: _____

By _____ Date _____
Name: _____
Title: _____



Legislation Details (With Text)

File #: RES-11:207 **Version:** 1 **Name:** Contract with DAV for veteran transportation
Type: Resolution **Status:** Recommended to Council
File created: 11/29/2011 **In control:** Finance & Administration Council Committee
On agenda: **Final action:**
Title: A RESOLUTION TO AUTHORIZE A CONTRACT WITH DISABLED AMERICAN VETERANS, CHAPTER 26 FOR TRANSPORTATION OF LOCAL VETERANS
Sponsors: Mayor's Office, Finance
Indexes: Contract
Code sections:
Attachments: [DAV & COJ Contract](#)

Date	Ver.	Action By	Action	Result
12/13/2011	1	Finance & Administration Council Committee		

Title

A RESOLUTION TO AUTHORIZE A CONTRACT WITH DISABLED AMERICAN VETERANS, CHAPTER 26 FOR TRANSPORTATION OF LOCAL VETERANS

Body

WHEREAS, Disabled American Veterans Chapter 26 sponsors two (2) vans to serve veterans in this area with transportation including transport to and from Veterans Administration hospitals in Little Rock, Arkansas and Memphis, Tennessee, and

WHEREAS, the City of Jonesboro desires to contract with Disabled American Veterans, Chapter 26 to assist in providing said transportation by providing five thousand (\$5,000.00) dollars.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

Section 1: The City of Jonesboro shall enter into a Contract with Disabled American Veterans Chapter 26 to provide transportation to and from Veterans Administration facilities for local veterans, for the sum of Five Thousand (\$5,000.00) dollars.

Section 2: That Mayor Harold Perrin and City Clerk Donna Jackson, are authorized to execute such document as are necessary to effectuate this agreement.

PUBLIC SERVICE CONTRACT BETWEEN THE CITY OF JONESBORO
AND DISABLED AMERICAN VETERANS, CHAPTER 26

This contract is entered into on this ___ day of _____, 2011 between the DISABLED AMERICAN VETERANS, CHAPTER 26, located at P. O. Box 195, Jonesboro, Arkansas and the City of Jonesboro, located at 515 W. Washington, Jonesboro, Arkansas.

Disabled American Veterans Chapter 26 currently sponsors two (2) vans in this area to provide transportation for veterans in this area to Veterans Administration locally, in Little Rock, Arkansas and Memphis, Tennessee.

The City of Jonesboro by way of this contract will provide Five Thousand (\$5,000.00) to assist with these efforts.

With these funds, the Disabled American Veterans, Chapter 26 will provide services to the veteran citizens of Jonesboro and Craighead County as normally associated with this type of transportation and use the funds towards obtaining additional grant funding.

This contract shall be effective _____, 2011 and remain in effect for a period of one (1) year and expiring _____, __,20___. This contract will be entered into annually at the beginning of each calendar year to satisfy the scope of the law.

CITY OFFICIAL:

DISABLED AMERICAN VETANS,CHAPTER 26

BY: _____

BY: _____

HAROLD PERRIN
MAYOR CITY OF JONESBORO

BILLY CRIBBS
COMMANDER, CHAPTER 26

ATTEST:

DONNA JACKSON,CITY CLERK



Legislation Details (With Text)

File #:	RES-11:209	Version:	1	Name:	Maintenance agreement with NEA Baptist Clinic for detention
Type:	Resolution	Status:			Recommended to Council
File created:	11/30/2011	In control:			Public Works Council Committee
On agenda:		Final action:			
Title:	A RESOLUTION TO ACCEPT A MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES FOR NEA BAPTIST CLINIC/FLOYRED COMMONS OFF-SITE DETENTION, A COMMERCIAL SUBDIVISION				
Sponsors:	Engineering				
Indexes:	Contract				
Code sections:					
Attachments:	Maintenance Agreement.pdf				

Date	Ver.	Action By	Action	Result
12/6/2011	1	Public Works Council Committee		

Title

A RESOLUTION TO ACCEPT A MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES FOR NEA BAPTIST CLINIC/FLOYRED COMMONS OFF-SITE DETENTION, A COMMERCIAL SUBDIVISION

Body

WHEREAS, the Section 112-157 of the Jonesboro Municipal Code requires that a Maintenance Agreement be executed between the Developer and the City prior to recording the final plat;

WHEREAS, Jonesboro Land Developers, LLC has submitted a Maintenance Agreement for Stormwater Management Facilities for NEA Baptist Clinic/FloyRed Commons Off-Site Detention;

WHEREAS, the City Engineer and City Attorney have reviewed the attached Maintenance Agreement and find it to be in compliance with the Stormwater Management Regulations.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

Section 1: That the City of Jonesboro accepts a Maintenance Agreement for Stormwater Management Facilities with Jonesboro Land Developers, LLC and authorizes the filing of a record plat for NEA Baptist Clinic/FloyRed Commons Off-Site Detention.

SECTION 2: The Mayor and the City Clerk are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate this agreement.

FP 11-03

RECEIVED
NOV 30 2011
[Signature]

**MAINTENANCE AGREEMENT
FOR STORMWATER MANAGEMENT FACILITIES**

Property Identification

Project Name: NEA Baptist Clinic/FloyRed Commons Off-Site Detention
Project Address: Whiteman Creek Commons
Owner(s): Jonesboro Land Developers, LLC
Owner Address: 1835 Grant Avenue
City: Jonesboro State: AR Zip Code:72401

In accordance with Section 112-157 of the Jonesboro Municipal Code, this agreement is made and entered into this 30 day of DECEMBER, 2011, by and between the City of Jonesboro, an Arkansas municipal corporation, hereinafter called the "City" and Jonesboro Land Developers, LLC, hereinafter called the "Developer".

WITNESSTH, that:

WHEREAS, The Developer is proceeding to build on and develop the property in accordance with the Stormwater Management Plan (the "Plan") approved by the City and the recorded plat (the "Plat") for Whiteman Creek Common as recorded in the records of Craighead County, Arkansas.

WHEREAS, the City and the Developer, its successors and assigns, including any homeowner association, agree that the health, safety, and welfare of the residents of the City of Jonesboro, Arkansas require that on-site stormwater runoff management facilities be constructed and maintained on the property.

WHEREAS, the City requires that on-site stormwater runoff management facilities as shown on the plan be constructed and adequately maintained by the Developer, its successors and assigns, including any homeowner association.

WHEREAS, adequate maintenance is defined herein as the general upkeep of the facilities, specifically the mowing and trimming of grasses or other vegetative cover and the removal of litter and other minor debris that could impact the functionality of the facility or that would otherwise be considered unsightly or a nuisance.

WHEREAS, the City of Jonesboro shall be responsible, after construction and final acceptance of the development, for the operation and long-term maintenance of all drainage structures and improved watercourses which are part of the City of Jonesboro Stormwater Management System and which are not constructed and maintained by or under the jurisdiction of any State or Federal agency.

WHEREAS, Long-term maintenance is defined herein as the removal of sediment deposits, re-grading or shaping of embankments, drainage channels, and detention areas, and the repair or replacement of piping networks, and other underground drainage structures.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties agree as follows:

1. The on-site stormwater runoff management facilities shall be constructed by the Developer, its successors and assigns, in accordance with the plans and specifications identified in the Plan.

2. The Developer, its successors and assigns, including any homeowner association, shall adequately maintain the on-site stormwater runoff management facilities.
3. The Developer, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property to inspect and perform long-term maintenance of the on-site stormwater runoff management facilities whenever the City deems necessary.
4. In the event the Developer, its successors and assigns, fails to adequately maintain the stormwater runoff management facilities, the City may enter upon the Property upon thirty (30) days written notification or earlier, if deemed an emergency, and take whatever steps necessary to correct the deficiencies and charge the costs of such corrective action to the Developer, its successors and assigns. The Developer, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City including all labor, equipment, supplies, materials, and the like. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Developer outside of the easement for the on-site stormwater runoff management facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this agreement be construed to impose any such obligation on the City.
5. This agreement shall be recorded among the land records of Craighead County, Arkansas and shall constitute a covenant running with the land, and shall be binding on the Developer, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowner association.
6. This Agreement is binding upon and inures to the benefit of the City, and the Developer, the Developer's successors and assigns, any property owners' association or homeowners' association created which pertains to all or any part of the property and any individual lot owner who has purchased all or any part of the property referred to in this Agreement. The terms of this Agreement are enforceable on all of the above parties.
7. In the event any party to this Maintenance Agreement must employ a lawyer to enforce the terms and obligations set out in this Agreement and litigation ensue, the prevailing party, as determined under Arkansas Law, shall be entitled to recover not only court costs as defined under Arkansas Law but all costs of litigation, including a reasonable attorney's fee.
8. This Agreement is the complete agreement and understanding between the parties who have executed this Agreement. There are no other agreements, either oral or written. All prior or contemporaneous statements, representations, or guarantees are declared void. This Agreement may be amended only by a written document signed by all parties.

Owner/Agent:	<u>Robert D. Taylor, MD</u> Printed Name	<u>Robert D. Taylor</u> Signature	<u>11-29-11</u> Date
Owner/Agent:	_____ Printed Name	_____ Signature	_____ Date

STATE OF ARKANSAS
COUNTY OF CRAIGHEAD

On this day before me, the undersigned officer, personally appeared Robert D. Taylor, to me well known to be the person whose name is subscribed to the foregoing Instrument, and acknowledged that he had executed the same for the purposes therein stated and set forth.

WITNESS my hand and seal this 29 day of November, 2011.

Andrea Panneck
Notary Public (Printed Name)



Andrea Panneck
Notary Public (Signature)

My Commission Expires: 7/20/2019

Accepted by:

Mayor

Date

City Clerk

Date



Legislation Details (With Text)

File #:	RES-11:210	Version:	1	Name:	Maintenance agreement with St. Bernard's Wellness for detention
Type:	Resolution	Status:		Status:	Recommended to Council
File created:	11/30/2011	In control:		In control:	Public Works Council Committee
On agenda:		Final action:			
Title:	A RESOLUTION TO ACCEPT A MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES FOR ST. BERNARDS HEALTH AND WELLNESS INSTITUTE OFF-SITE DETENTION, A COMMERCIAL DEVELOPMENT				
Sponsors:	Engineering				
Indexes:	Contract				
Code sections:					
Attachments:	Maintenance Agreement.pdf				

Date	Ver.	Action By	Action	Result
12/6/2011	1	Public Works Council Committee		

Title

A RESOLUTION TO ACCEPT A MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES FOR ST. BERNARDS HEALTH AND WELLNESS INSTITUTE OFF-SITE DETENTION, A COMMERCIAL DEVELOPMENT

Body

WHEREAS, the Section 112-157 of the Jonesboro Municipal Code requires that a Maintenance Agreement be executed between the Developer and the City prior to recording the final plat;

WHEREAS, St. Bernards Heathcare has submitted a Maintenance Agreement for Stormwater Management Facilities for St. Bernards Health and Wellness Institute Off-Site Detention;

WHEREAS, the City Engineer and City Attorney have reviewed the attached Maintenance Agreement and find it to be in compliance with the Stormwater Management Regulations.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

Section 1: That the City of Jonesboro accepts a Maintenance Agreement for Stormwater Management Facilities with St. Bernards Healthcare and authorizes the filing of a record plat for St. Bernards Health and Wellness Institute Off-Site Detention.

Section 2: The Mayor and the City Clerk are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate this agreement.

**MAINTENANCE AGREEMENT
FOR STORMWATER MANAGEMENT FACILITIES**



Property Identification

Project Name: St. Bernards Health and Wellness Institute Off-Site Detention
Project Address: Patrick Street/McDaniel Street
Owner(s): St. Bernards Healthcare
Owner Address: 225 East Jackson Avenue
City: Jonesboro State: AR Zip Code: 72401

In accordance with Section 112-157 of the Jonesboro Municipal Code, this agreement is made and entered into this 30 day of DECEMBER, 2011, by and between the City of Jonesboro, an Arkansas municipal corporation, hereinafter called the "City" and St. Bernards Healthcare, hereinafter called the "Developer".

WITNESSTH, that:

WHEREAS, The Developer is proceeding to build on and develop the property in accordance with the Stormwater Management Plan (the "Plan") approved by the City and the recorded plat (the "Plat") for St. Bernards Health and Wellness Institute Off-Site Detention as recorded in the records of Craighead County, Arkansas.

WHEREAS, the City and the Developer, its successors and assigns, including any homeowner association, agree that the health, safety, and welfare of the residents of the City of Jonesboro, Arkansas require that on-site stormwater runoff management facilities be constructed and maintained on the property.

WHEREAS, the City requires that on-site stormwater runoff management facilities as shown on the plan be constructed and adequately maintained by the Developer, its successors and assigns, including any homeowner association.

WHEREAS, adequate maintenance is defined herein as the general upkeep of the facilities, specifically the mowing and trimming of grasses or other vegetative cover and the removal of litter and other minor debris that could impact the functionality of the facility or that would otherwise be considered unsightly or a nuisance.

WHEREAS, the City of Jonesboro shall be responsible, after construction and final acceptance of the development, for the operation and long-term maintenance of all drainage structures and improved watercourses which are part of the City of Jonesboro Stormwater Management System and which are not constructed and maintained by or under the jurisdiction of any State or Federal agency.

WHEREAS, Long-term maintenance is defined herein as the removal of sediment deposits, re-grading or shaping of embankments, drainage channels, and detention areas, and the repair or replacement of piping networks, and other underground drainage structures.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties agree as follows:

1. The on-site stormwater runoff management facilities shall be constructed by the Developer, its successors and assigns, in accordance with the plans and specifications identified in the Plan.

2. The Developer, its successors and assigns, including any homeowner association, shall adequately maintain the on-site stormwater runoff management facilities.
3. The Developer, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property to inspect and perform long-term maintenance of the on-site stormwater runoff management facilities whenever the City deems necessary.
4. In the event the Developer, its successors and assigns, fails to adequately maintain the stormwater runoff management facilities, the City may enter upon the Property upon thirty (30) days written notification or earlier, if deemed an emergency, and take whatever steps necessary to correct the deficiencies and charge the costs of such corrective action to the Developer, its successors and assigns. The Developer, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City including all labor, equipment, supplies, materials, and the like. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Developer outside of the easement for the on-site stormwater runoff management facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this agreement be construed to impose any such obligation on the City.
5. This agreement shall be recorded among the land records of Craighead County, Arkansas and shall constitute a covenant running with the land, and shall be binding on the Developer, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowner association.
6. This Agreement is binding upon and inures to the benefit of the City, and the Developer, the Developer's successors and assigns, any property owners' association or homeowners' association created which pertains to all or any part of the property and any individual lot owner who has purchased all or any part of the property referred to in this Agreement. The terms of this Agreement are enforceable on all of the above parties.
7. In the event any party to this Maintenance Agreement must employ a lawyer to enforce the terms and obligations set out in this Agreement and litigation ensue, the prevailing party, as determined under Arkansas Law, shall be entitled to recover not only court costs as defined under Arkansas Law but all costs of litigation, including a reasonable attorney's fee.
8. This Agreement is the complete agreement and understanding between the parties who have executed this Agreement. There are no other agreements, either oral or written. All prior or contemporaneous statements, representations, or guarantees are declared void. This Agreement may be amended only by a written document signed by all parties.

Owner/Agent:	<u>CHRIS B BARBER</u> Printed Name	<u>Chris B Barber</u> Signature	<u>1/23/11</u> Date
Owner/Agent:	_____ Printed Name	_____ Signature	_____ Date

STATE OF ARKANSAS
COUNTY OF CRAIGHEAD

On this day before me, the undersigned officer, personally appeared Chris Barker, to me well known to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he had executed the same for the purposes therein stated and set forth.

WITNESS my hand and seal this 23 day of Nov., 2011.

Stephanie Brown
Notary Public (Printed Name)

Stephanie L Brown
Notary Public (Signature)

STEPHANIE L. BROWN
NOTARY PUBLIC STATE OF ARKANSAS
CRAIGHEAD COUNTY
MY COMMISSION EXPIRES:
July 21, 2019

My Commission Expires: July 21, 2019

Accepted by:

Mayor

Date

City Clerk

Date



Legislation Details (With Text)

File #:	RES-11:213	Version:	1	Name:	Contract with NEAIDC for funding
Type:	Resolution	Status:		Status:	Recommended to Council
File created:	12/1/2011	In control:		In control:	Finance & Administration Council Committee
On agenda:		Final action:		Final action:	
Title:	A RESOLUTION FOR THE CITY OF JONESBORO TO ENTER INTO A CONTRACT WITH NORTHEAST ARKANSAS INDUSTRIAL DEVELOPMENT COMMISSION FOR FUNDING OF ECONOMIC DEVELOPMENT SERVICES.				
Sponsors:	Finance				
Indexes:	Contract				
Code sections:					
Attachments:	PBC NAIDC 2012				

Date	Ver.	Action By	Action	Result
12/13/2011	1	Finance & Administration Council Committee		

Title

A RESOLUTION FOR THE CITY OF JONESBORO TO ENTER INTO A CONTRACT WITH NORTHEAST ARKANSAS INDUSTRIAL DEVELOPMENT COMMISSION FOR FUNDING OF ECONOMIC DEVELOPMENT SERVICES.

Body

WHEREAS, The City of Jonesboro has received a contract from Northeast Arkansas Industrial Development Commission; and

WHEREAS, This contract is for the purpose of providing economic development services to the City of Jonesboro; and

WHEREAS, It is in the best interest of the City of Jonesboro that the City Council authorize the Mayor and City Clerk to execute this contract.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

Section 1: This contract is for the purpose of obtaining economic development services from Northeast Arkansas Industrial Development Commission.

Section 2: That this contract is for the best interest of the residents of the City of Jonesboro.

Section 3: The Mayor and City Clerk are hereby authorized to execute said contract.

**Public Service Contract
between the
City of Jonesboro and
Northeast Arkansas Industrial Development Commission**

This contract is entered into on this ____ day of _____, 2012 between the Northeast Arkansas Economic Development Commission (NAIDC) and the City of Jonesboro, located at PO Box 1845, Jonesboro, Arkansas; the NAIDC at PO Box 789, Jonesboro, Arkansas.

The NAIDC is partially funded by the City of Jonesboro by Ordinance No. 3548, to fund economic development services.

Whereby, the appropriation of these funds to the NAIDC is a one time appropriation and is for a one-year contract and must be used to provide economic development services, such as but not limited to: professional economic development services, land, recruitment of industry and creating jobs and services relative to helping the citizens of Jonesboro as normally associated with this type of organization.

The amount of this contract will be \$377,250.00. This contract shall be effective from January 1, 2012 and remain in effect for a period of one (1) year and expiring December 31, 2012. This contract will be entered into annually at the beginning of each calendar year to satisfy the scope of the law.

City Official:

Northeast Arkansas Economic
Development Commission Official:

Harold Perrin, Mayor
City of Jonesboro



John Freeman, Chairman

ATTEST



Legislation Details (With Text)

File #:	RES-11:220	Version:	1	Name:	Contract with Brackett Krennerich for a spaital study
Type:	Resolution	Status:		Status:	Recommended to Council
File created:	12/6/2011	In control:		In control:	Finance & Administration Council Committee
On agenda:		Final action:		Final action:	
Title:	A RESOLUTION OF THE CITY OF JONESBORO, ARKANSAS APPROVING A CONTRACT FOR PROFESSIONAL SERVICES BY BRACKETT, KRENNERICH & ASSOCIATES TO PERFORM A SPATIAL STUDY				
Sponsors:	Mayor's Office				
Indexes:	Contract				
Code sections:					
Attachments:	Brackett-Krennerich				

Date	Ver.	Action By	Action	Result
12/13/2011	1	Finance & Administration Council Committee		

Title

A RESOLUTION OF THE CITY OF JONESBORO, ARKANSAS APPROVING A CONTRACT FOR PROFESSIONAL SERVICES BY BRACKETT, KRENNERICH & ASSOCIATES TO PERFORM A SPATIAL STUDY

Body

WHEREAS, The City of Jonesboro, Arkansas desires to have a spatial study performed to develop a plan for constructing a new administration building; and

WHEREAS, Brackett Krennerich & Associates have been selected to perform the study.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

Section 1: That the City of Jonesboro approves the contract for a spatial study for a new administration building with Brackett Krennerich & Associates.

Section 2: The Mayor, Harold Perrin and City Clerk, Donna Jackson, are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate this agreement.



AIA[®] Document B102[™] – 2007

Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

AGREEMENT made as of the Twenty-eighth day of November in the year Two Thousand Eleven
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Jonesboro
515 W. Washington Ave.
Jonesboro, Arkansas 72401

and the Architect:
(Name, legal status, address and other information)

Brackett Krennerich & Associates P.A.
100 E. Huntington Ave., Suite D
Jonesboro, AR 72401
Telephone Number: 870-932-0571
Fax Number: 870-932-0975

for the following Project:
(Name, location and detailed description)

Spatial Study
City of Jonesboro
Jonesboro, Arkansas

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

- 1 ARCHITECT'S RESPONSIBILITIES
- 2 OWNER'S RESPONSIBILITIES
- 3 COPYRIGHTS AND LICENSES
- 4 CLAIMS AND DISPUTES
- 5 TERMINATION OR SUSPENSION
- 6 COMPENSATION
- 7 MISCELLANEOUS PROVISIONS
- 8 SPECIAL TERMS AND CONDITIONS
- 9 SCOPE OF THE AGREEMENT

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall provide the following professional services:

Assist the city in evaluating the current and future spatial requirements for the City Hall Administrative, Public Works Offices, and Police/Courts.

The study will be performed through individual interviews with the department heads and key staff, and a review of the information on existing space provided in the spatial physical planning analysis that was prepared by ASAI Architecture for the city in 2006. Interview process will begin on or about December 1, 2011 with completions of interviews and research in approximately two weeks.

Brackett Krennerich will then analyze information gathered and make five and ten year projections of current and future space requirements. A preliminary report on recommendations will be prepared and ready for review around mid-January 2012 with each department head and key staff. Then a final report, ready to make recommendations to the City Council, will be delivered to the City Council or committee of city's choosing around mid-February 2012. (20 copies of each report will be provided)

§ 1.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 1.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 1.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 1.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

- .1 General Liability

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User Notes:

(827226744)

\$1,000,000.00

.2 Automobile Liability

\$1,000,000.00

.3 Workers' Compensation

Bodily Injury by Accident \$100,000.00 Each Accident

Bodily Injury by Disease \$500,000.00 Policy Limit

Bodily Injury by Disease \$100,000.00 Each Employee

.4 Professional Liability

\$1,000,000.00

ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 2.2 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 2.3 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 2.4 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 2.5 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 3.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially

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performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Sections 5.3 and 5.4, the license granted in this Section 3.3 shall terminate.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1.

§ 3.4 Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 4 CLAIMS AND DISPUTES

§ 4.1 GENERAL

§ 4.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 4.1.1.

§ 4.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction, if applicable. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 4.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 5.7.

§ 4.2 MEDIATION

§ 4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 4.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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§ 4.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 4.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 4.3 of this Agreement

Litigation in a court of competent jurisdiction

Other *(Specify)*

§ 4.3 ARBITRATION

§ 4.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 4.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 4.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 4.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 4.3.4 CONSOLIDATION OR JOINDER

§ 4.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 4.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 4.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 5.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 5.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 5.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 5.7.

§ 5.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 5.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 6.3.

ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect for services described in Section 1.1 as set forth below, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2.

(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)

| \$18,000.00

§ 6.2 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 6.2.1 Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;

| *(Paragraph deleted)*

- .5 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .6 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

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- .7 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .8 Other similar Project-related expenditures.

§ 6.2.2 For Reimbursable Expenses, the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus an administrative fee of One and one-quarter percent (1.25 %) of the expenses incurred.

§ 6.3 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 5.5, or the Architect terminates this Agreement under Section 5.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of the Project as follows:

§ 6.4 PAYMENTS TO THE ARCHITECT

§ 6.4.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 6.4.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Twenty-one (21) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

5.50 % per annum

§ 6.4.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 6.4.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 4.3.

§ 7.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 7.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 7.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 7.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 7.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

If Brackett – Krennerich is chosen to be the architect/design professional to provide services on the projects that result from the survey our architect engineer fee will be 7% of the cost of construction for the projects. Should the city select Brackett – Krennerich to provide architect engineering services for the projects we will credit back to the city \$8,000.00 in the Schematic Design Phase of our fee schedule.

ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 9.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B102–2007, Standard Form Agreement Between Owner and Architect

This Agreement entered into as of the day and year first written above.

OWNER

(Signature)

Harold Perrin, Mayor
City of Jonesboro

(Printed name and title)

ARCHITECT

(Signature)

George Krennerich III, President
Brackett Krennerich & Associates P.A.

(Printed name and title)



Legislation Details (With Text)

File #:	ORD-11:085	Version:	1	Name:	Amend Code of Ordinances regarding the Fair Housing Act
Type:	Ordinance	Status:		Status:	First Reading
File created:	11/9/2011	In control:		In control:	Public Works Council Committee
On agenda:		Final action:			
Title:	AN ORDINANCE TO AMEND SECTIONS, 117-2 AND 117-31 OF CHAPTER 117 OF THE JONESBORO CODE OF ORDINANCES OF THE CITY OF JONESBORO, ARKANSAS FOR THE PURPOSE OF ESTABLISHING A REASONABLE ACCOMMODATION POLICY AND PROVIDE CLARITY TO THE DEFINITION OF FAMILY, DECLARING AN EMERGENCY FOR THE PURPOSE OF EXPEDITING A PROCEDURE TO BRING THE CODE INTO COMPLIANCE WITH THE FAIR HOUSING ACT (FHA)				
Sponsors:	Planning				
Indexes:	Code of Ordinances amendment, Policy - creation/amendment				
Code sections:	Chapter 117 - Zoning				
Attachments:	StaffMemo Fair Housing Jonesboro MAPC RecordOfProceedings April52011_KingsRanchJudgement FairHousingActPowerpointPresentation JointStatement HUD DeptJustice				

Date	Ver.	Action By	Action	Result
12/6/2011	1	Public Works Council Committee		

Title

AN ORDINANCE TO AMEND SECTIONS, 117-2 AND 117-31 OF CHAPTER 117 OF THE JONESBORO CODE OF ORDINANCES OF THE CITY OF JONESBORO, ARKANSAS FOR THE PURPOSE OF ESTABLISHING A REASONABLE ACCOMMODATION POLICY AND PROVIDE CLARITY TO THE DEFINITION OF FAMILY, DECLARING AN EMERGENCY FOR THE PURPOSE OF EXPEDITING A PROCEDURE TO BRING THE CODE INTO COMPLIANCE WITH THE FAIR HOUSING ACT (FHA)

Body

WHEREAS, currently Chapter 117, Section 117-2 Definition of family does not comply with the Fair Housing Act (FHA) guidelines and rules and the City of Jonesboro does not have a current policy for Reasonable Accommodations.

WHEREAS, The Fair Housing Act (FHA) specifies that disabled individuals must be provided reasonable accommodations in rules, policies, practices, or services which such accommodation may be necessary to afford them the equal opportunity to use and enjoy a dwelling.

WHEREAS, The City of Jonesboro desires to encourage orderly development and provide clarity in the Code regarding definitions and policies that reduce any impediments to fair housing for the citizens of Jonesboro, Arkansas.

WHEREAS, this proposed text amendment was forwarded to the Director for the Arkansas Fair Housing Commission and received a positive review and support.

WHEREAS, The Metropolitan Area Planning Commission (MAPC) held a hearing on November 8, 2011 and voted unanimously to recommend approval to City Council.

BE IT ORDAINED by the City Council for the City of Jonesboro, Arkansas that:

SECTION ONE: That Chapter 117, Section 117-2 Definitions of terms and uses of the Jonesboro Code of Ordinances is hereby amended to include adding a new definitions for Familial Status, Person with a disability, Physical or Mental Impairment , and Reasonable Accommodation; and, revising the definition of Family and Dwelling to read as follows:

Family includes a single individual;

Familial Status means:

- (A) The status resulting from one (1) or more individuals who are under eighteen (18) years of age being domiciled with:
 - (i) The parent or another person having legal custody of the individual under the age of eighteen (18) years; or
 - (ii) The designee of the parent or other person having custody, with the written permission of the parent or other person; or
- (B) The status resulting from being in the process of securing legal custody of any individual who is under the age of eighteen (18) years; or
- (C) The status resulting from being pregnant;

Dwelling means any building, structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families and any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families; but not including motels, boardinghouses, tourist homes, convalescent homes, accessory storage buildings, travel trailers or recreational vehicles.

Person with a disability means any person who:

- a. has a physical or mental impairment that substantially limits one or more major life activities;
- b. has a record of having the impairment; or
- c. is regarded by others as having the impairment.
- d. The fact that a person is a registered sex offender does not make him or her a person with disabilities.

Physical or mental impairment includes, but is not limited to, orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

Reasonable accommodation means a modification or a waiver of zoning requirements, rules, policies, or practices if the modification or waiver is reasonable and necessary afford a person with disabilities an equal opportunity to use and enjoy a dwelling. "Necessary" means that without the accommodation, the person would not be able to live in the dwelling of his or her choice. "Reasonable" means that the accommodation will not create an undue financial or administrative burden for the City and will not fundamentally alter the zoning scheme of the City.

SECTION TWO: That Chapter 117, ARTICLE II. ADMINISTRATION AND ENFORCEMENT, DIVISION 1 GENERALLY, Section 117-31, Administrative Officer of the Jonesboro Code of Ordinances is hereby amended by adding a new policy and procedure for (7) Reasonable Accommodations, to read as follows:

(7.) Reasonable Accommodation Approval:

A. Purpose and Intent. The purpose of allowing Reasonable Accommodation(s) is to provide a process for individuals with disabilities to make requests for Reasonable Accommodation(s) for relief from the various land use, zoning, or rules, policies, practices, and/or procedures of the City. It is the policy of the City, pursuant to the Federal Fair Housing Act, to provide people with disabilities Reasonable Accommodation(s) in rules, policies, and procedures that may be necessary to ensure equal access to housing.

B. Requesting Reasonable Accommodation(s):

1. In order to make specific housing available to an individual with a disability, a disabled person, or representative may request Reasonable Accommodation(s) relating to the various land use, zoning, or rules, policies, practices, and/or procedures of the City.

2. If an individual needs assistance in making the request for Reasonable Accommodation(s) or appealing a determination regarding Reasonable Accommodation(s), the Planning Director will endeavor to provide the assistance necessary to ensure that the process is accessible to the applicant.

3. A request for Reasonable Accommodation(s) with regard to City regulations, rules, policies, practices, and/or procedures may be filed on an application form provided by the Planning Director at the time that the accommodation may be necessary to ensure equal access to housing.

C. Required Information. The applicant shall provide the following information when requesting Reasonable Accommodation(s). This information shall be made part of the public record for the project and subject to all applicable State and Federal laws for public access to records.

1. A completed City application indicating, among other things, the applicant's name, address, and telephone;
2. Address of the property for which the request is being made;
3. The current actual use of the property;
4. The Zoning Code provision, regulation, or policy from which Reasonable Accommodation(s) is being requested;
5. The basis for the claim that the person(s) for whom the Reasonable Accommodation(s) is/are sought is/are considered disabled under the Fair Housing Act and why the accommodation is reasonably necessary to make specific housing available to the person(s);
6. Such other relevant information as may be requested by the Planning Director as the Director reasonably concludes is necessary to determine whether the findings required by Section 117-31., 7.F. (Required Findings for Reasonable Accommodation(s)) can be made, so long as any request for information regarding the disability of the individuals benefited complies with fair housing law protections and the privacy rights of the individual(s) affected.

D. Approving Authority and Approval Process:

1. The Planning Director shall have the authority to consider and take action on requests for Reasonable Accommodation(s). When a request for Reasonable Accommodation(s) is filed with the Planning Department, it will be referred to the Planning Director for review and consideration as an administrative action unless determined otherwise by the Planning Director. A request for Reasonable

administrative action unless determined otherwise by the Planning Director. A request for Reasonable physical improvement that cannot be constructed to conform to the City's setbacks or design standards. Typical improvements considered to be "administrative" in nature would include ramps, walls, handrails, or other physical improvements necessary to accommodate a person's disability. The Planning Director shall issue a written determination of his or her action within 15 days of the date of receipt of a completed application and may:

- a. Grant or deny the accommodation request; or
- b. Grant the accommodation request subject to specified nondiscriminatory condition(s); or
- c. Forward the request to the Planning Commission for consideration as a Conditional Use Permit and subject to the findings stated in Section 117-31., 7.F. (Required Findings for Reasonable Accommodation(s)).

2. In the event the Planning Director determines that the request for Reasonable Accommodation(s) is non-administrative in nature, such request shall be forwarded to the Planning Commission in accordance with Section 117-197, Conditional use Permit) and shall be subject to the findings stated in Section 117-31., 7.F. (Required Findings for Reasonable Accommodation(s)).

3. All written determinations of actions of the Planning Director shall give notice of the right to appeal and the right to request Reasonable Accommodation(s) on the appeals process (e.g., requesting that City staff attempt to schedule an appeal hearing as soon as legally and practically possible), if necessary. The notice of action shall be sent to the applicant by mail.

4. If necessary to reach a determination or action on the request for Reasonable Accommodation(s), the Planning Director may request further information from the applicant specifying in detail what information is required. In the event a request for further information is made, the 15-day period to issue a written determination shall be stayed until the applicant fully and sufficiently responds to the request.

E. Considerations.

The City may consider, but is not limited to, the following factors in determining whether the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling:

1. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability;
2. Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation;
3. In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants;
4. In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.
5. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's Zoning

Code (Section 117);

6. Whether the requested accommodation would fundamentally alter the character of the neighborhood;
7. Whether the accommodation would result in a substantial increase in traffic or insufficient parking;
8. Whether granting the requested accommodation would substantially undermine any express purpose of either the City's Land Use or Comprehensive Plan or an applicable specific plan;
9. In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.

F. Required Findings for Reasonable Accommodation(s). In making a determination regarding the reasonableness of a requested Reasonable Accommodation(s), the Approving Authority shall make the following findings:

1. The housing which is the subject of the request for Reasonable Accommodation(s) will be used for an individual protected under the Fair Housing Act.
2. The request for Reasonable Accommodation(s) is necessary to make specific housing available to an individual protected under the Fair Housing Act.
3. The requested Reasonable Accommodation(s) does not impose an undue financial or administrative burden on the City and does not fundamentally alter City zoning, development standards, policies, or procedures.
4. The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning process, as "fundamental alteration" is defined in fair housing laws and interpretive case law.
5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

SECTION THREE: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION FOUR: It is further found that due to the immediate need to expedite the adoption of this ordinance and amendment to the Jonesboro Code of Ordinances, and need to bring City policy for Fair Housing into Compliance with the Fair Housing Act (FHA), an emergency is declared to exist and this ordinance being necessary for the preservation of the public peace, health and safety, shall take effect from and after its passage and approval.



Memo

To: City of Jonesboro, Public Works Council Committee, Metropolitan Area Planning Commission
From: Otis T. Spriggs, Planning Dept.
cc: Mayor Harold Perrin; Phillip Crego/Carol Duncan, City Attorney's Office; LM Duncan
Date: November 9, 2011
Re.: **Proposed Process for Reasonable Accommodation – Fair Housing Act Code Revisions**

Attached you will find proposed text amendments to the Jonesboro Code of Ordinance as presented to the Metropolitan Area Planning Commission on November 8, 2011, to establish a City policy for handling Zoning Cases/requests for reasonable accommodations for Fair Housing Act compliance in the future.

This language was produced as a result of the King's Ranch Law Suit/Judgment against the City decided April 25, 2011, as well as training provided by the Arkansas Fair Housing Commission Director on September 27, 2011.

We kindly request your review and approval at the earliest date possible to address this urgent issue.

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

Thank you.

Revise Section 117-2. Definitions of terms and uses.

Replace Existing Family Definition: ~~Family means one or more persons related by blood, marriage or adoption, or a group of not more than five unrelated persons living together and subsisting in common as a single, nonprofit housekeeping unit utilizing only one kitchen. A family may include domestic servants employed by said family.~~

(ADD: New Definition)

Family: includes a single individual;

Familial Status means:

(A) The status resulting from one (1) or more individuals who are under eighteen (18) years of age being domiciled with:

(i) The parent or another person having legal custody of the individual under the age of eighteen (18) years; or

(ii) The designee of the parent or other person having custody, with the written permission of the parent or other person; or

(B) The status resulting from being in the process of securing legal custody of any individual who is under the age of eighteen (18) years; or

(C) The status resulting from being pregnant;

Revise Existing Definition:

~~Dwelling means a building or portion thereof which is designed or used as living quarters for one or more families; but not including motels, boardinghouses, tourist homes, convalescent homes, travel trailers, mobile homes, or manufactured housing.~~

Add New Definition:

Dwelling means any building, structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families and any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families; but not including motels, boardinghouses, tourist homes, convalescent homes, accessory storage buildings, travel trailers or recreational vehicles.

Person with a disability means any person who:

a. has a physical or mental impairment that substantially limits one or more major life activities;

b. has a record of having the impairment; or

c. is regarded by others as having the impairment.

d. The fact that a person is a registered sex offender does not make him or her a person with disabilities.

Physical or mental impairment includes, but is not limited to, orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

Reasonable accommodation means a modification or a waiver of zoning requirements, rules, policies, or practices if the modification or waiver is reasonable and necessary afford a person with disabilities an equal opportunity to use and enjoy a dwelling. “Necessary” means that without the accommodation, the person would not be able to live in the dwelling of his or her choice. “Reasonable” means that the accommodation will not create an undue financial or administrative burden for the City and will not fundamentally alter the zoning scheme of the City.

**Revised: ARTICLE II. ADMINISTRATION AND ENFORCEMENT, DIVISION 1.
GENERALLY, Sec. 117-31. Administrative officer, by adding (7) Reasonable Accommodation:**

(7) Reasonable Accommodation Approval:

A. Purpose and Intent. The purpose of allowing Reasonable Accommodation(s) is to provide a process for individuals with disabilities to make requests for Reasonable Accommodation(s) for relief from the various land use, zoning, or rules, policies, practices, and/or procedures of the City. It is the policy of the City, pursuant to the Federal Fair Housing Act, to provide people with disabilities Reasonable Accommodation(s) in rules, policies, and procedures that may be necessary to ensure equal access to housing.

B. Requesting Reasonable Accommodation(s):

1. In order to make specific housing available to an individual with a disability, a disabled person, or representative may request Reasonable Accommodation(s) relating to the various land use, zoning, or rules, policies, practices, and/or procedures of the City.
2. If an individual needs assistance in making the request for Reasonable Accommodation(s) or appealing a determination regarding Reasonable Accommodation(s), the Planning Director will endeavor to provide the assistance necessary to ensure that the process is accessible to the applicant.
3. A request for Reasonable Accommodation(s) with regard to City regulations, rules, policies, practices, and/or procedures may be filed on an application form provided by the Planning Director at the time that the accommodation may be necessary to ensure equal access to housing.

C. Required Information. The applicant shall provide the following information when requesting Reasonable Accommodation(s). This information shall be made part of the public record for the project and subject to all applicable State and Federal laws for public access to records.

1. A completed City application indicating, among other things, the applicant’s name, address, and telephone;
2. Address of the property for which the request is being made;
3. The current actual use of the property;
4. The Zoning Code provision, regulation, or policy from which Reasonable Accommodation(s) is being requested;

5. The basis for the claim that the person(s) for whom the Reasonable Accommodation(s) is/are sought is/are considered disabled under the Fair Housing Act and why the accommodation is reasonably necessary to make specific housing available to the person(s);
6. Such other relevant information as may be requested by the Planning Director as the Director reasonably concludes is necessary to determine whether the findings required by Section 117-31., 7.F. (Required Findings for Reasonable Accommodation(s)) can be made, so long as any request for information regarding the disability of the individuals benefited complies with fair housing law protections and the privacy rights of the individual(s) affected.

D. Approving Authority and Approval Process.

1. The Planning Director shall have the authority to consider and take action on requests for Reasonable Accommodation(s). When a request for Reasonable Accommodation(s) is filed with the Planning Department, it will be referred to the Planning Director for review and consideration as an administrative action unless determined otherwise by the Planning Director. A request for Reasonable physical improvement that cannot be constructed to conform to the City's setbacks or design standards. Typical improvements considered to be "administrative" in nature would include ramps, walls, handrails, or other physical improvements necessary to accommodate a person's disability. The Planning Director shall issue a written determination of his or her action within 15 days of the date of receipt of a completed application and may:

- a. Grant or deny the accommodation request; or
- b. Grant the accommodation request subject to specified nondiscriminatory condition(s); or
- c. Forward the request to the Planning Commission for consideration as a Conditional Use Permit and subject to the findings stated in Section 117-31., 7.F. (Required Findings for Reasonable Accommodation(s)).

2. In the event the Planning Director determines that the request for Reasonable Accommodation(s) is non-administrative in nature, such request shall be forwarded to the Planning Commission in accordance with Section 117-197, Conditional use Permit) and shall be subject to the findings stated in Section 117-31., 7.F. (Required Findings for Reasonable Accommodation(s)).

3. All written determinations of actions of the Planning Director shall give notice of the right to appeal and the right to request Reasonable Accommodation(s) on the appeals process (e.g., requesting that City staff attempt to schedule an appeal hearing as soon as legally and practically possible), if necessary. The notice of action shall be sent to the applicant by mail.

4. If necessary to reach a determination or action on the request for Reasonable Accommodation(s), the Planning Director may request further information from the applicant specifying in detail what information is required. In the event a request for further information is made, the 15-day period to issue a written determination shall be stayed until the applicant fully and sufficiently responds to the request.

E. Considerations.

The City may consider, but is not limited to, the following factors in determining whether the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling:

1. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability;
2. Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation;

3. In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants;
4. In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.
5. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's Zoning Code (Section 117);
6. Whether the requested accommodation would fundamentally alter the character of the neighborhood;
7. Whether the accommodation would result in a substantial increase in traffic or insufficient parking;
8. Whether granting the requested accommodation would substantially undermine any express purpose of either the City's Land Use or Comprehensive Plan or an applicable specific plan;
9. In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.

F. Required Findings for Reasonable Accommodation(s). In making a determination regarding the reasonableness of a requested Reasonable Accommodation(s), the Approving Authority shall make the following findings:

1. The housing which is the subject of the request for Reasonable Accommodation(s) will be used for an individual protected under the Fair Housing Act.
2. The request for Reasonable Accommodation(s) is necessary to make specific housing available to an individual protected under the Fair Housing Act.
3. The requested Reasonable Accommodation(s) does not impose an undue financial or administrative burden on the City and does not fundamentally alter City zoning, development standards, policies, or procedures.
4. The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning process, as "fundamental alteration" is defined in fair housing laws and interpretive case law.
5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

Conclusion:

As a result of the King's Ranch Judgment the following types of state-licensed facilities must be permitted as of right in all districts in which single-family residences are permitted:

- i. a group home for the developmentally disabled with 8 or fewer residents;
- ii. a group home for persons with mental disorders that has 8 or fewer residents; and
- ii. a therapeutic group home for children with 8 or fewer residents.

Any request for reasonable accommodation deemed to be beyond administrative authority shall be processed as a conditional use once the Findings (Section F) are determined by the Planning Director reflecting such.

Record of Proceedings- MAPC Hearing Held November 8, 2011

RZ-11-26 Case RZ 11-26: Text Amendments: Reasonable Accommodation Policy

Staff: Mr. Spriggs explained the text amendment proposal and the reasons behind the draft. He discussed the Fair Housing Act training recently given to the Commission and Elected Officials. The presentation is placed on the agenda for those that did not attend.

Mr. Spriggs cited the King's Ranch Case which is also copied on the agenda attachment. We are obligated by the FHA to provide a process so that those individuals with disabilities and special needs can enjoy fair housing. This proposal is recommended to the Council Public Works Committee and Council.

We forwarded the proposal to the Arkansas Fair Housing Commission who provided the training. They have concurred that the proposal meets the standards.

Ms. Nix: Asked if Staff received approval from the Arkansas Fair Housing Commission? Mr. Spriggs noted that he received response today by email. Ms. Nix: Has the City Attorney reviewed and approved? Mr. Spriggs/Carol Duncan replied yes. Mr. noted that the changes will be drafted into an ordinance and reviewed by the Mayor and City Attorney prior to approval to be placed on the Council Agenda.

Mr. Scurlock asked what does this do to, or how does it change what we already have in place? Mr. Spriggs noted that our current definition of family is improper and does not comply with the FHA. It should have been modified perhaps 10 years ago. Our code does have restrictions that will protect us from group residential situations. Our code still addresses group living settings that are outside of the fair housing standards.

Mr. Scurlock: What are we not doing that we should be doing? Mr. Spriggs noted that the City did not provide the reasonable accommodation later requested by King's Ranch. The MAPC was provided a different set of parameters at first and acted on that merit. The reasonable accommodation request came later. The judge ordered that we provide that.

Mr. Tomlinson: Based on the number of people, this allows us some discretion on approvals. Mr. Spriggs noted that the language addresses situations where it exceeds the 8 or more individuals and where certain situations may be referred to the MAPC.

Mr. Scurlock: It seems to me that we are looking at this the wrong way. Mr. Scurlock compared the same parameters dealt with in apartments. He noted he has a problem when an agency that puts 8 kids in a neighborhood as opposed to individuals doing it; it is like running a business. I think this is going down a slippery slope.

Mr. Tomlinson: I do not think that we have a choice in what we are doing; within reason we will have to do it.

Mr. Kelton: The reasonable accommodation provision does not require us to take the rule book and throw it in the fire. But, we are to be accommodating to the extent that is reasonable. I think that we failed in that obligation previously. And it has been pointed out to us with substantial monetary penalties assessed against us. Arkansas has had a Fair Housing Act since 2003 that mirrors the Federal Fair Housing Act. The Arkansas Fair Housing Commission came into existence in 2003, primarily to aid, assist, to mitigate, and do what they can to avoid a lawsuit filed at the federal level. That is the first place that a complaint should be filed in Arkansas. The Fair Housing Director is Carol Johnson. When she looked at this King's Ranch thing, she agreed to come to Jonesboro and to do training: She did an outstanding job. She basically told us that you do not have to burn your rule book but be reasonable. There are seven (7) protected classes and the one here was the disability and handicap. We are to be reasonable and accommodating to their needs for fair housing. We have an obligation to obey Federal Law and Arkansas Law. Some of those penalties that were assessed to other Arkansas cities were very substantial. Again, I believe that it was an issue that no one understood. We all have had our eyes opened. I think it was Otis that asked Ms. Johnson a question about future requests or refusals; she said now that the Judge has asked you to comply, it would be even more difficult process for you to get out of your liabilities if you do not. I regard that as a firm statement that everyone has to obey Federal and State Law.

Mr. Spriggs noted the Commission also provides services to the City to avoid these problems. They are available for additional training and referred opinion requests.

Mr. Kelton: Cited an example of a lady that wanted to provide housing and exclude children recently. He noted that he spoke up that he found the language to be offensive. You can't sit back and let someone openly violate the law. As a licensed instructor teaching fair housing for 20 years he had to speak up. The average person does not understand this. Those workshops are very informative. In reference to the power-point that was shared- he recommend that everyone look at that and the case law.

Commission's Action:

Mr. Kelton made a motion to place Case: RZ-11-26- Text Amendments Establishing a Reasonable Accommodation Policy, on the floor for consideration and for recommendation to City Council for adoption, as so recommended by Staff in Compliance of the Fair Housing Act (FHA); motion seconded by Ms. Nix.

Roll Call Vote: Mr. Dover- Aye; Mr. White- Aye; Ms. Nix- Aye; Ms. Norris-Aye; Mr. Scurlock- Aye; Mr. Kelton- Aye. Mr. Tomlinson- Aye; Mr. Roberts- Chair. Motion passed with a 6-0 Vote in favor.



A

Analysis

As of: Sep 26, 2011

**KING'S RANCH OF JONESBORO, INC., PLAINTIFF v. CITY
OF JONESBORO, ARKANSAS, DEFENDANT**

No. 3:10CV00096 JLH

**UNITED STATES DISTRICT COURT FOR THE EASTERN DIS-
TRICT OF ARKANSAS, JONESBORO DIVISION**

2011 U.S. Dist. LEXIS 44487

April 25, 2011, Decided

April 25, 2011, Filed

PRIOR HISTORY: King's Ranch of Jonesboro, Inc. v. City of Jonesboro, 2011 Ark. 123, 2011 Ark. LEXIS 114 (Ark., 2011)

COUNSEL: [*1] For King's Ranch of Jonesboro Incorporated, Plaintiff: Abigail A. Southerland, Carly F. Gammill, Larry L. Crain, Wesley H. Southerland, American Center for Law and Justice - Brentwood, Brentwood, TN; James F. Gramling, Jr., Marshall & Owens, P.A., Jonesboro, AR.

For Jonesboro Arkansas, City of, Defendant: C. Burt Newell, LEAD ATTORNEY, C. Burt Newell, Attorney at Law, Hot Springs, AR; Ralph C. Ohm, Attorney at Law, Hot Springs, AR.

JUDGES: J. LEON HOLMES, UNITED STATES DISTRICT JUDGE.

OPINION BY: J. LEON HOLMES

OPINION

OPINION & ORDER

On April 26, 2010, King's Ranch of Jonesboro, Inc., an Arkansas nonprofit corporation, filed a complaint in this Court against the City of Jonesboro, Arkansas, for alleged violations of the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3604(f)(1)-(3) (2006). Specifically, the complaint alleges that the City of Jonesboro denied housing to handicapped children by refusing King's Ranch's request to waive the definition of "family" in its zoning resolution so that King's Ranch could house eight children and two house parents in a single family unit. The parties have filed cross-motions for summary judgment. For the following reasons, the plaintiff's motion for summary judgment is granted, and the [*2] defendant's motion for summary judgment is denied.

I. In February 2008, King's Ranch purchased 10.57 acres located at 2816 Day Drive, Jonesboro, Arkansas, to operate as a home for up to eight abused, neglected, and abandoned children as well as two full-time houseparents. The property is located in Jonesboro's R-1 residential zoning district and contains a 4,900 square foot brick home. Pursuant to the City of Jonesboro's zoning resolution, a group of more than five unrelated persons living together in a single family home must obtain a conditional use permit to reside in the city's R-1 district as a "group residential." The resolution defines "group residential" as "[t]he use of a site for occupancy by groups of more than five (5) persons, not defined as a family. Typical uses include fraternity or sorority houses, dormitories, residence halls, and boarding or lodging houses." (Pl.'s Mot. for S.J. Ex. 1 at 3.) In contrast, a "family" is defined as "[o]ne or more persons related by blood, marriage or adoption, or a group of not more than five (5) unrelated persons living together and subsisting in common as a single, non-profit housekeeping unit utilizing only one kitchen." (*Id.*)

In January [*3] 2008, King's Ranch submitted an application for a conditional use permit to operate as a group residential to house up to eight unrelated children between the ages of six and twelve. During the Metropolitan Area Planning Commission meetings in February and March 2008, the application was denied. King's Ranch appealed the decision to the Jonesboro City Council. At the

City Council meeting in which the issue was considered, residents of the neighborhood in which the proposed facility was located expressed concerns over the operation of a group home in their neighborhood. The City Council denied King's Ranch's appeal.

After its request for a conditional use permit was denied, King's Ranch filed suit in the Circuit Court of Craighead County, Arkansas, arguing that the City Council's denial of their conditional use permit was arbitrary and capricious. The circuit court found that there was a rational basis for the City Council to deny the conditional-use permit, and King's Ranch appealed its decision to the Arkansas Supreme Court. The supreme court determined that the circuit court had erred in applying the rational basis standard of review instead of *de novo* review, and it reversed and [*4] remanded to the circuit court, where the case is currently pending. *King's Ranch of Jonesboro, Inc., v. City of Jonesboro*, 2011 Ark. 123, 2011 WL 1177097 (2011).

In addition to the appeal, King's Ranch also sent a letter dated July 13, 2009, to the City of Jonesboro, making an official request for reasonable accommodation pursuant to the FHA. Specifically, King's Ranch requested that the City of Jonesboro waive its definition of "family" as it applied to King's Ranch's proposed use. On August 7, 2009, King's Ranch sent another letter to the City requesting reasonable accommodation. On January 19, 2010, the Jonesboro City Council acknowledged receipt of the August 7 let-

ter, and City Attorney Phillip Crego provided a report to the City Council in which he stated that, in his opinion, "the City code is reasonable and will allow King's Ranch to do what they want to do, but just not on the scale they are asking for." (Pl.'s Mot. for S.J. Ex. 4 at 4-5.) Based in part on his recommendation, the City Council voted to "stand on the current City code and allow federal court to rule on the issue." (*Id.*) King's Ranch alleges that its request is reasonable and necessary because the costs [*5] involved in maintaining a home and providing care to children make it economically unfeasible for it to operate as a children's home unless it can do so with eight children. The City of Jonesboro disagrees.

II. A court should enter summary judgment if the evidence, viewed in the light most favorable to the nonmoving party, demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); see also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986); *Cheshewalla v. Rand & Son Constr. Co.*, 415 F.3d 847, 850 (8th Cir. 2005). The party moving for summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986). If the moving party carries its burden, the nonmoving party must "come forward with 'specific

facts showing that there is a *genuine issue for trial*.'" *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1985) (quoting Fed. R. Civ. P. 56(e)) (emphasis in original). [*6] A genuine issue for trial exists only if there is sufficient evidence to allow a jury to return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 249, 106 S. Ct. at 2511. When a nonmoving party cannot make an adequate showing on a necessary element of the case on which that party bears the burden of proof, the moving party is entitled to judgment as a matter of law. *Celotex*, 477 U.S. at 322, 106 S. Ct. at 2552.

III. The FHA's reasonable accommodation provision prohibits "refusal[s] to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling[.]" 42 U.S.C. § 3604(f)(3)(B). As the Eleventh Circuit has explained,

"the duty to make a reasonable accommodation does not simply spring from the fact that the handicapped person wants such an accommodation made. Defendants must instead have been given an opportunity to make a final decision with respect to the Plaintiffs' request, which necessarily includes the ability to conduct a meaningful review of the

requested accommodation to determine if such an accommodation is required by law."

Schwarz v. City of Treasure Island, 544 F.3d 1201, 1219 (11th Cir. 2008) [*7] (quoting *Prindable v. Ass'n of Apartment Owners*, 304 F. Supp. 2d 1245, 1258 (D. Haw. 2003) (citations, quotation marks, alteration, and ellipsis omitted)). "[P]laintiffs themselves need not be handicapped and are permitted to argue on behalf of the proposed residents of their home that defendants discriminated against those residents on the basis of their handicap." *Cohen v. Township of Cheltenham, Penn.*, 174 F. Supp. 2d 307, 324 n.12 (E.D. Pa. 2001).

The City of Jonesboro acknowledges that it received two letters from King's Ranch requesting accommodation on behalf of handicapped children that King's Ranch alleged was reasonable and necessary. The City denies, however, that King's Ranch is entitled to protection under the FHA because King's Ranch is not an organization designed to serve handicapped children. The City of Jonesboro also argues that there is no evidence that any of the children who would live at the King's Ranch facility would be handicapped.

A threshold issue for finding liability under 42 U.S.C. § 3604(f)(3)(B) is whether the proposed residents of the group home would be "handicapped." Congress has defined "handicap" as "(1) a physical or mental impairment which substantially [*8] limits one

or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment." 42 U.S.C. § 3602(h). A "mental impairment" includes "[a]ny mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." 24 C.F.R. § 100.201(a)(1) (2010). "Major life activities" include, but are not limited to, "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 24 C.F.R. § 100.201(b).

King's Ranch offers affidavit testimony that many of the children currently enrolled in its program suffer from minor to moderate mental or behavioral disabilities, including Reactive Attachment Disorder, and that its staff is specifically trained to deal with and has a desire to serve children with these disabilities. King's Ranch also provides evidence of one specific child currently living at the residence who has been diagnosed with Reactive Attachment Disorder, Bipolar Disorder, and Attention Deficit Hyperactivity Disorder ("ADHD"). [*9] According to the affidavit of Dr. Terry Levy,

"King's Ranch currently provides a home to a 7 year old female at King's Ranch who is diagnosed with [Reactive Attachment Disorder], Bipolar Disorder and ADHD. She was removed from her biological mother at age one and placed in

foster care, moved to and from several foster homes, and finally adopted at 4 years old. For 3 years in the adoptive family she exhibited severe psychological and social difficulties, including acting-out in school, inability to make friends, and failing to attach to her parents. This child is illustrative of the type of youngster that will be residing in the King's Ranch children's home."

(Levy Aff. ¶ 18.) The affidavit also states that these disorders substantially limit the life activities of children at home, in school, and in other social settings. This undisputed evidence shows that King's Ranch will in fact house handicapped children and, thus, is entitled to protection under the FHA. See *Cohen*, 174 F. Supp. 2d at 325 ("[P]laintiffs in this case must establish that individual children who would reside in plaintiffs' proposed group home would suffer from an impairment that substantially limits one or more of such [*10] children's major life activities.") (finding that plaintiffs were not entitled to FHA protection because they failed to produce evidence that any of their potential residents would have a physical or mental impairment); *Keys Youth Servs., Inc. v. City of Olathe, Kan.*, 52 F. Supp. 2d 1284, 1299 and n.16 (D. Kan. 1999) (finding that, although the plaintiff's home is not for the handicapped, the plaintiff had provided evidence "that some potential residents meet the FHA definition of handicapped," and even though the plaintiff could not know who the

specific residents would be at the facility, "the Court [could] assume[] that at any given point, the residence would include both handicapped and non-handicapped youth and that the mix would vary over time"), *rev'd in part on other grounds*, 248 F.3d 1267 (10th Cir. 2001).

IV. The City of Jonesboro next contends that, even if King's Ranch is entitled to protection under the FHA, the request for accommodation is neither reasonable nor necessary. Under the FHA, disabled individuals must be provided reasonable "accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford [them] equal opportunity to [*11] use and enjoy a dwelling." *Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 748 (7th Cir. 2006) (citing 42 U.S.C. § 3604(f)(3)(B)).

"The basic elements of an FHA[] accommodation claim are well-settled. First, the requested accommodation must be reasonable, which, as we have stated, is a "highly fact-specific inquiry and requires balancing the needs of the parties. An accommodation is reasonable if it is both efficacious and proportional to the costs to implement it." *Oconomowoc Residential Programs [v. City of Milwaukee*, 300 F.3d 775, 784 (7th Cir. 2002)] (internal citations omitted). In the zoning context, a municipality may show that a modification to its policy is "unreasonable if it is so

at odds with the purpose behind the rule that it would be a fundamental and unreasonable change." *Id.* (internal quotation marks and citations omitted)."

Second, the requested accommodation must be "necessary," meaning that, without the accommodation, the plaintiff will be denied an equal opportunity to obtain the housing of her choice. *See id.* at 784; *see also Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1155 (9th Cir. 2003); *Smith & Lee Assocs., Inc. v. City of Taylor*, 102 F.3d 781, 795 (6th Cir. 1996). [*12] This has been described by courts essentially as a causation inquiry. *See, e.g., Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Twp. of Scotch Plains*, 284 F.3d 442, 460 (3d Cir. 2002) ("This requirement has attributes of a causation requirement. And if the proposed accommodation provides no direct amelioration of a disability's effect, it cannot be said to be necessary." (internal quotation marks and citations omitted)).

Id. at 749. In the Eighth Circuit, "the plaintiff has the burden to show that the requested accommodation is reasonable [and necessary] upon its face, *i.e.*, ordinarily or in the run of cases. Upon such a showing, the [defendant] is left to show special (typical case-specific) circumstances that demonstrate [unreasonableness or] undue hardship in the particular circumstances." *Developmental Servs. of Neb. v. City of Lincoln*, 504 F. Supp. 2d 714, 723 (D.

Neb. 2007) (quoting *Peebles v. Potter*, 354 F.3d 761, 768 (8th Cir. 2004)) (internal quotations omitted)). In other words, the plaintiff must show that the requested accommodation is necessary to afford equal opportunity to handicapped individuals and possible to implement. *Huberty v. Washington Cnty. Housing & Redevelopment Auth.*, 374 F. Supp. 2d 768, 773 (D. Minn. 2005).

The [*13] Vice President of the Board of Directors for King's Ranch says in an affidavit that the request to house eight children at a time is necessary because King's Ranch relies completely upon donations. Most donors or donor families who support our ministry sponsor an individual child living at King's Ranch. Thus, King's Ranch's financial support is based upon or directly tied to the number of children King's Ranch provides assistance to.

14. If King's Ranch is not permitted to use the property in the manner intended--to house eight children and two houseparents--King's Ranch will be unable to maintain the expenses related to operating the home.

(Cooper Aff. ¶¶ 13-14.); see *Developmental Servs. of Neb.*, 504 F. Supp. 2d at 724 (finding that plaintiff had met its burden of showing the accommodation to be reasonable and necessary based in part on evidence presented at trial that, if the accommodation is not granted, the plaintiff may be financially unable to continue providing services). The City of Jonesboro does not rebut this

evidence with any evidence of its own to suggest that King's Ranch feasibly could house fewer than eight children.

King's Ranch also alleges that its request is reasonable [*14] because it will impose no additional expense or undue burden on the City of Jonesboro, nor would it "fundamentally alter the single-family character of the neighborhood." (Pl.'s Mot. for S.J. Ex. 2.) Through affidavit testimony, King's Ranch contends that the addition of several children to the property would not impact parking, traffic, noise, utility uses, or any other concerns of zoning differently than an ordinary "family" of the same size. It points out that the City already allows conditional use permits for group residenceals, which typically include fraternities and sororities, dormitories, residence halls, and boarding or lodging houses--entities which would affect the character of the neighborhood in a much more significant manner than a ten-person children's home. In fact, the staff report proffered by Otis T. Spriggs, Planning Director for the City of Jonesboro, which was provided to the Metropolitan Area Planning Commission, states that "[s]taff does not feel that the ranch-like environment will be a detriment to the surrounding neighborhoods if the use is operated under an *around-the-clock* supervised program for the youth. . . . The . . . home to be used will remain residential [*15] in character and use, and a [sic] extreme demand for traffic has not been demonstrated by the applicant to cause negative impact beyond

that expected of a single family residence." (Def.'s Mot. for S.J. Ex. C at 9.)

King's Ranch has met its burden of proving the necessity and reasonableness of its request with unrebutted evidence, and the burden shifts to the City of Jonesboro to prove that the request is unreasonable. In order to "establish that the accommodation proffered by [the applicant] was not reasonable, [the municipality] [i]s required to prove that it could not have granted the variance without:" (1) "imposing undue financial and administrative burdens;" (2) "imposing an 'undue hardship' upon the Township;" or (3) "requiring a fundamental alteration in the nature of the [zoning] program." *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1104 (3d Cir. 1996) (internal citations and quotation marks omitted); see also *Developmental Servs. of Neb.*, 504 F. Supp. 2d at 724-25. This inquiry is "highly fact-specific, requiring a case-by-case determination." *Hovsons, Inc.*, 89 F.3d at 1104.

Although the City of Jonesboro argues that King's Ranch's waiver request is unreasonable, it offers [*16] no evidence that granting the request would impose an undue financial or administrative burden on the City of Jonesboro or result in any undue hardship. Nor does the City of Jonesboro offer evidence that the request would require a fundamental change in the nature of the zoning program. In fact, as King's Ranch points out, the zoning program is designed with requests like that of King's Ranch in mind; the

City of Jonesboro currently offers conditional use permits to groups like King's Ranch, which are comprised of more than five unrelated individuals, to live in residentially zoned areas. The City of Jonesboro presents absolutely no evidence to suggest that King's Ranch's waiver request is unreasonable. Nor does it seek to postpone the Court's ruling on the motion under Federal Rule of Civil Procedure 56(d). With trial just a few weeks away, the City has had ample time to discover and offer evidence to support its arguments, and it has not done so.

For the reasons stated above, the plaintiff's motion for summary judgment is GRANTED, and the defendant's motion for summary judgment is DENIED.

IT IS SO ORDERED this 25th day of April, 2011.

/s/ J. Leon Holmes

J. LEON HOLMES

UNITED STATES DISTRICT [*17] JUDGE

DECLARATORY JUDGMENT AND EQUITABLE DECREE

Pursuant to the Opinion and Order entered separately today, the Court finds the following:

1. The City of Jonesboro violated the Fair Housing Act when it refused to make reasonable accommodations in its zoning policies when such accommodations were necessary to afford the handicapped

individuals who will live at King's Ranch an equal opportunity to use and enjoy the home. See 42 U.S.C. § 3604(f)(3)(B).

2. Handicapped individuals who will live at King's Ranch are entitled to reasonable accommodation in the zoning policies in order to afford them an equal opportunity to use and enjoy the home.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the City of Jonesboro must provide reasonable accommodation to King's Ranch

1. by granting King's Ranch's request to waive the definition of "family" in Title 14 of the City of Jonesboro Zoning Resolution as it applies to King's Ranch; and


2. by authorizing King's Ranch to house up to eight unrelated children and two house parents in its home located at 2816 Day Drive, Jonesboro, Arkansas, in Jonesboro's R-1 residential zoning district.

IT IS SO ORDERED this 25th day of April, 2011.

/s/ J. Leon Holmes

J. LEON HOLMES [*18]


UNITED STATES DISTRICT JUDGE



**Group Homes, Land Use and
Reasonable Accommodations under
the Fair Housing Act**

Carol Johnson, Executive Director
Arkansas Fair Housing Commission

September 27, 2011
Jonesboro, Arkansas



**What is the
Arkansas
Fair Housing
Commission?**

**The Arkansas Fair Housing
Commission is a quasi-judicial,
regulatory, enforcement agency that
works in conjunction with the U.S.
Department of Housing and Urban
Development to enforce federal and
state fair housing laws in Arkansas.**

Mission of the
Arkansas Fair Housing
Commission...



Mission

...to receive, investigate, conciliate
and/or resolve complaints alleging
violations of the Arkansas Fair
Housing Act and the Federal Fair
Housing Act which prohibit
discrimination on the basis of...

Mission, Cont.

Race, Color, National Origin,
Religion, Sex, Disability and Familial
Status (including children under the
age of 18 living with parents of legal
custodians, pregnant women and
people securing custody of children
under the age of 18)....

Mission, Cont.

...to cooperate with and provide technical and other assistance to federal, state, local and other public or private entities that are formulating or operating programs to prevent or eliminate discriminatory housing practices; and to establish an education and outreach program to prevent discriminatory housing practices.

Jurisdiction

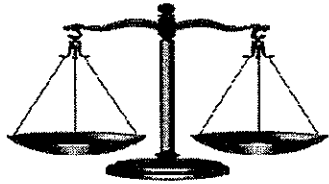
The Arkansas Fair Housing Commission investigates complaints of discriminatory housing practices throughout the state.

Federal versus State fair housing legislation

The Arkansas Fair Housing Act of 2001, as amended in 2003, Ark. Code Ann. §§ 16-123-301 et. seq.

is substantially equivalent to the Federal Fair Housing Act 42 USC §§ 3601 et. seq.

**WHAT CONSTITUTES A
FAIR HOUSING COMPLAINT ?**



Discriminatory housing practices can take many different forms, including allegations of fair housing violations based on:

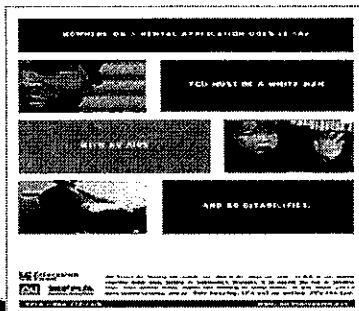
- Fair Lending
- Predatory Lending
- Redlining and Blockbusting.....

Reasonable Accommodations and Reasonable Modifications (for persons with mental and/or physical disabilities)

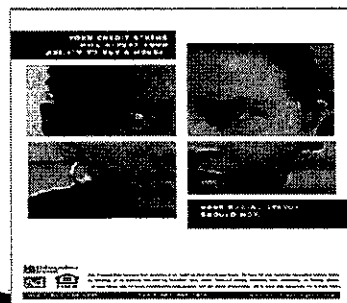
AND...

Retaliation against someone who is exercising a fair housing right.

Rental Application AD



Credit Application Ad



Forms of housing discrimination



- › Charging the person a higher security deposit and/or rent than other tenants that do not belong to that protected class
- › Segregating apartment complexes by putting all African Americans in one building, all Latinos in another building and all white tenants in a third
- › Instituting a policy that people with disabilities can only live on the first floor
- › Refusing to do repairs or provide services to tenants of a particular protected class while providing those services to other tenants

Forms of housing discrimination



- › Offering unequal terms in mortgage rates, services or home insurance based on the applicant's protected class
- › Neighborhood hate campaigns aimed at intimidating neighbors of color to leave the community
- › Potential neighbors intimidating real estate professionals who show homes to people of color

Discrimination techniques—
which may not be so obvious,
but *still* are acts of
discrimination....

Linguistic Profiling—hearing a
person's voice and discriminating
because you believe the person is
of a particular race, national
origin or sex.

Advertisements for leasing or selling of homes, which are designed for a particular "target" (market).

(e.g.) "No small children"
(New Orleans case)
"English speaking only please"
(Las Vegas case)

What are the "seven" protected classes?



Why do these "classes" exist?

Race, Color, National Origin, Religion,
Disability, Sex and Family Status

ooooo

Historically, disadvantaged people have been the victims of discriminatory housing practices. Laws were put into place to protect those housing rights. Potentially "everyone" is a member of a protected class.

What is Race Discrimination?

Race discrimination involves treating someone unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture or certain facial features).

What is Color Discrimination?

Color discrimination involves treating someone unfavorably because of skin color or complexion. (e.g.) African American w/light complexion vs. African American w/darker complexion.

What is National Origin Discrimination?

This involves treating someone unfairly because of his/her place of origin or ancestry, or because the person has the physical, cultural or linguistic characteristics of a specific or particular national origin group.

What is Religious Discrimination?

Discrimination based upon religion involves treating someone unfairly because of his/her religious observance, practices and beliefs.

What is Familial Status Discrimination?

Refusing to rent to families with children or imposing different terms and conditions on those tenants. It also applies to women who are pregnant or families who may be trying to adopt.

What is Sex Discrimination?

Treating a person unfavorably because of their gender (male or female).
(e.g.) refusing to lease or sell to a person of a particular sex; or to single women, (though one rents to single men); and

oo oo oo

Sexual Harassment

What is Disability Discrimination?

It is treating a person unfavorably because of his/her physical or mental disability.

Disability Discrimination, cont.

It also includes the failure to properly design and construct a dwelling in a manner consistent with ADA or Fair Housing Act Design Standards which would allow a person with a physical disability to enjoy the full use and benefit of a property.

Disability Discrimination, cont.

What is the definition of a disability under the Fair Housing Act?

Any impairment which substantially limits one or more major life activities.

Disability Discrimination, cont.

Who is considered disabled?

(1) individuals with a physical or mental impairment that substantially limits one or more major life activities;

(2) individuals who are regarded as having such an impairment; and

(3) individuals with a record of such an impairment.

HIV.

Disability Discrimination, cont.

What constitutes a "major life activity"?

Includes: caring for one's self, walking, seeing, hearing, speaking, breathing, working, performing manual tasks and learning, such disabilities as AIDS, blindness or visual impairment, cancer, deafness or hearing impairment, diabetes, heart disease and mental illness...

Disability Discrimination, cont.

What is a "major life activity"?

In short, a disability impairment is *anything* which substantially limits at least one major live activity. It *does not* need to rise to the same level of disability as a Social Security determination of disability.

Reasonable Accommodations



Reasonable Modifications

Guidance

❖ HUD/DOJ Joint Statement on Group Homes, Local Land Use and the Fair Housing Act

❖ HUD/DOJ Joint Statements on Reasonable Accommodations/ Modifications under the Fair Housing Act

Statutory law ----- Case Law

Reasonable Accommodation

A deviation from a rule, policy, practice or service when necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. A request for a reasonable accommodation may be made at any time during the tenancy and it is unlawful for a housing provider to refuse to grant a reasonable accommodation when necessary to afford persons with disabilities full enjoyment of the premises.

Reasonable Modification

A structural change made to existing premises, occupied or to be occupied, by a person with a disability, to afford such person full enjoyment of the premises. It can include structural changes to interiors and exteriors of dwellings and to common and public use areas. A request for a reasonable modification may be made at any time during the tenancy and it is unlawful for a housing provider or homeowners' association to refuse to allow a reasonable modification when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises.

HUD/DOJ Joint Statement on Group Homes,
Local Land Use and the Fair Housing Act

The FHAct applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities.

HUD/DOJ Joint Statement on Group Homes,
Local Land Use and the Fair Housing Act

The FHAct makes its illegal to..
Utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.

HUD/DOJ Joint Statement on Group Homes,
Local Land Use and the Fair Housing Act

The FHAct makes its illegal to..

Take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.

HUD/DOJ Joint Statement on Group Homes,
Local Land Use and the Fair Housing Act

The FHAct makes its illegal to..

Refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

HUD/DOJ Joint Statement on Group Homes,
Local Land Use and the Fair Housing Act

What constitutes a reasonable accommodation is a case-by-case determination.

Request may not be reasonable if it:

- ❖ Imposes an undue financial or administrative burden on a local government, or
- ❖ creates a fundamental alteration in a local government's land use and zoning scheme

**HUD/DOJ Joint Statement on Group Homes,
Local Land Use and the Fair Housing Act.**

The Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs or persons with or without disabilities who present a direct threat to the persons or property of others.

**HUD/DOJ Joint Statement on Reasonable
Accommodations under the Fair Housing Act**

The FHAct prohibits the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.

**HUD/DOJ Joint Statement on Reasonable
Accommodations under the Fair Housing Act**

The FHAct prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations.

HUD/DOJ Joint Statement on Reasonable Modifications under the Fair Housing Act

The FHAct also requires that housing providers allow residents to make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.

Under Section 504 of the Rehabilitation Act, housing providers must bear this expense.

HUD/DOJ Joint Statement on Reasonable Accommodations/Modification under the Fair Housing Act

The FHAct the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

HUD/DOJ Joint Statement on Reasonable Accommodations/Modification under the Fair Housing Act

Courts have applied the FHAct to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners, condominium associations, lenders, real estate agents and brokerage services.

AND... to state and local governments - most often in the context of exclusionary zoning or other land-use decisions.



Fair housing Case law



King's Ranch of Jonesboro, Inc. v. City of Jonesboro, 2011 U.S. Dist. Lexis 44487 (E.D. Ark. April 25, 2011)

On April 26, 2010, King's Ranch of Jonesboro, Inc., an Arkansas nonprofit corporation, sued the City of Jonesboro, Arkansas, for violations of the Fair Housing Act, 42 U.S.C. §§ 3604(f)(1)-(3) (2006) after the City of Jonesboro denied housing to handicapped children by refusing its request to waive the definition of "family" in its zoning resolution so that King's Ranch could house eight children and two house parents in a single family unit.

King's Ranch of Jonesboro, Inc. v. City of Jonesboro, 2011 U.S. Dist. Lexis 44487 (E.D. Ark. April 25, 2011)

In February 2008, King's Ranch purchased 10.57 acres located at 2816 Day Drive, Jonesboro, Arkansas, to operate as a group home and house for up to eight unrelated abused, neglected and abandoned children (aged between 6 and 12) and two full-time houseparents.

The property is located in Jonesboro's R-1 residential zoning district and contains a 4,900 square foot brick home.

King's Ranch of Jonesboro, Inc. v. City of Jonesboro , 2011 U.S. Dist. Lexis 44487 (E.D. Ark. April 25, 2011)

Pursuant to the city's zoning resolution, a group of more than five unrelated persons living together in a single family home must obtain a conditional use permit to reside in the city's R-1 district as a "group residential." The resolution defines "group residential" as "[t]he use of a site for occupancy by groups of more than five (5) persons, not defined as a family. Typical uses include fraternity or sorority houses, dormitories, residence halls and boarding or lodging houses."

King's Ranch of Jonesboro, Inc. v. City of Jonesboro , 2011 U.S. Dist. Lexis 44487 (E.D. Ark. April 25, 2011)

The Metropolitan Area Planning Commission denied King's Ranch a conditional use permit to operate as a group residential. King's Ranch appealed the decision to the Jonesboro City Council which also denied the appeal after residents expressed opposition to the group home in their neighborhood.

King's Ranch made two separate reasonable accommodation requests to the City asking it to waive its definition of "family" as it applied to King's Ranch's proposed use so that it could operate the group home.

King's Ranch of Jonesboro, Inc. v. City of Jonesboro , 2011 U.S. Dist. Lexis 44487 (E.D. Ark. April 25, 2011)

The City of Jonesboro defined "family" as "[o]ne or more persons related by blood, marriage or adoption, or a group of not more than five (5) unrelated persons living together and subsisting in common as a single, non-profit housekeeping unit utilizing only one kitchen."

The City denied King's Ranch's request for a reasonable accommodation under the Fair Housing Act.

King's Ranch of Jonesboro, Inc. v. City of Jonesboro, 2011 U.S. Dist. Lexis 44487 (E.D. Ark. April 25, 2011)

The Court made the following findings:

---The City of Jonesboro violated the FHAct when it refused to make reasonable accommodations in its zoning policies when such accommodations were necessary to afford the handicapped individuals who will live at King's Ranch an equal opportunity to use and enjoy the home. See 42 U.S.C. § 3604(f)(3)(B).

---Handicapped individuals who will live at King's Ranch are entitled to reasonable accommodation in the zoning policies in order to afford them an equal opportunity to use and enjoy the home.

United States v. Dalton Township (W.D. Mich. February 10, 2011)

The complainant, filed on July 28, 2010, alleged that that the Township violated the Fair Housing Act and Title II of the Americans with Disabilities Act by failing to grant a reasonable accommodation to a group home for nine males recovering from drug and alcohol addiction. Under the terms of the consent decree, the sober home is allowed to operate and provides for \$55,000 in damages to the owner of the property and a \$7,500 civil penalty to the United States.

United States v. Polk County (M.D. Fla. December 21, 2010)

A consent decree in the case involving disability discrimination against a group home which housing homeless men recovering from alcohol and drug addictions. The consent decree provides for \$280,000 to New Life Outreach Ministries, Inc., \$80,000 for aggrieved persons identified by the Department of Justice and a \$40,000 civil penalty. It also provides for comprehensive injunctive relief (operation of the group home) and training for Polk County's Board of Commissioners.

United States v. City of Satsuma
(S.D. Ala. September 16, 2010)

The DOJ brought suit against the city when it failed to grant a reasonable accommodation to allow a group home for three women with intellectual and developmental disabilities. The settlement requires the defendants to pay \$59,500 to aggrieved persons and a \$5,500 civil penalty. The city has also adopted a reasonable accommodation policy and other amendments to its zoning ordinance and business license law to prevent future discrimination.

United States Oxford House Inc. v. Town of Garner (E.D.N.C. January 11, 2011)

The complaint alleges that the town of Garner violated the Fair Housing Act by refusing to allow up to eight men recovering from drug and alcohol addictions to live together as a reasonable accommodation for their disabilities. The home is chartered by Oxford House Inc., a non-profit organization that assists in the development of self-governing houses in which persons in recovery support one another's determination to remain sober.

United States Oxford House Inc. v. Town of Garner (E.D.N.C. January 11, 2011)

Under the consent decree, the defendants will pay \$105,000 in monetary damages to Oxford House and a \$9,000 civil penalty. It also requires the town to grant the reasonable accommodation requested by Oxford House, submit periodic reports to the government and train town officials on the requirements of the Fair Housing Act. The town also amended its zoning code to establish a procedure for addressing future requests for reasonable accommodations.

**United States v. Adams
(W.D. Ark)**

United States v. Adams – on October 1, 2007, the U.S. Department of Justice (DOJ) settled a pattern and practice lawsuit filed against the owners and managers of Phoenix Village Apartments in Fort Smith, Arkansas, for familial status discrimination as a result of paired tests administered by the DOJ.

The DOJ alleged that between January and April of 2007, it performed fair housing tests in which paired individuals with similar characteristics (except for race, color and familial status) visited the Phoenix Village rental office in Fort Smith, AR, inquired about the availability of two-bedroom units and were denied housing based on their family status.

**United States v. Adams
(W.D. Ark) Damages**

The Federal District Court in the Western District of Arkansas ordered Phoenix Village Apartments to place \$165,000 in escrow to be held for potential housing discrimination, to pay \$20,000 in civil penalties and to adhere to posting and other fair housing record-keeping practices to include:

- ▶ A daily availability list of all units known to be available or expected to be available within thirty (30) days to include the monthly rent and security deposit for each unit to be shared with potential tenants;
- ▶ Guest cards of all potential tenants who visit the location;
- ▶ A waiting list of potential tenants who inquire by phone or in person; and
- ▶ A rental application log

**United States v. Big D. Enterprises, Inc
(W.D. Ark)**

A jury found that Big D. Enterprises, Inc., and its owner, Edwin Dooley, discriminated against prospective African American tenants at three Fort Smith, Arkansas, apartment complexes.

In this case, the respondents refused to rent to a white female because she had an African American biracial child.

The jury awarded a total of \$101,000 in compensatory and punitive damages.

That award was affirmed by the 8th Circuit Court of Appeals. See *U.S. v. Big D. Enterprises, Inc.*, 184 F3rd. 924 (8th Cir. 1999).

United States v. Deer Run Management co., Inc, et al
(W.D. Ark)

The DOJ entered into a Consent Decree with Deer Run Management Company in 2004 to satisfy its lack of accessible housing in compliance with the Arkansas Fair Housing Act and the American With Disabilities Act.

The Justice Department identified violations in the exterior sites, apartment units and the complex's amenities. The agreement will affect more than 4,000 ground floor apartment in 34 housing complexes in Arkansas, Texas, Oklahoma, Missouri, Tennessee and Kansas.

United States v. Deer Run Management co., Inc, et al
(W.D. Ark)

New and current tenants will be offered some "super accessible" features, such as roll-in showers for persons who use wheelchairs. The agreement establishes a \$1.2 million fund to compensate persons who were injured or inconvenienced by the inaccessible housing.

Additionally, company owners, including Fugitt & Associates Architects and Lindsey Construction Company, Inc. of Fayetteville, Arkansas, who designed developed and constructed the complexes, as well as the site engineers, Crafton, Tull & Associates and Bond Consulting Engineers, Inc., will pay a \$30,000 civil penalty or the violation.

United States v. Ibbotson (E.D. Ark)

The DOJ filed suit against the respondent-owner of a single-family trailer home in 2001 for making statements that indicated a preference, limitation or discrimination based on race or color.

The suit also alleged that the defendant threatened the complainants with eviction and intimidated them because they permitted an African American man to visit the defendant's rental property.

A Consent Decree was entered requiring the defendant to pay \$18,000 in compensatory damages to the complainants.

*United States v. Fred Thomas d/b/a Best western
Scenic Motor Inn (E.D. Ark)*

The U. S. Department of Justice filed suit alleging violations of public housing accommodations (Title II of the Civil Rights Act of 1964) where the defendants denied lodging to African Americans and other minority guests; provided inferior room accommodations to guests on the basis of race, color, or national origin; and attempted to ascertain the race, color, or national origin of potential guests over the telephone in order to tell minorities that there were no rooms available.

*United States v. Fred Thomas d/b/a Best western
Scenic Motor Inn (E.D. Ark)*

The settlement requires the defendants to pay for certain measures that will be undertaken by the new owner of the motel to prevent future discrimination and to remedy the effects of the defendant's past conduct. The measures include but are not limited to training the new owner's employees, voluntary testing, affirmative marketing, and permanently posting nondiscrimination signs.

United States v. Hurt (E.D. Ark)

On March 13, 2009, the U.S. Department of Justice filed suit against Bobby L. Hurt, the former property manager for numerous mobile homes in and around West Memphis, Arkansas, alleging a pattern or practice of sexual harassment.

United States v. Hurt (E.D. Ark)

The complaint alleges that Bobby Hurt, while providing property management services, entered the dwellings of female tenants without permission or notice, touched female tenants in an unwelcome sexual manner, made verbal sexual advances and threatened to and took steps to evict female tenants when they refused or objected to his sexual advances.

United States v. Rapp (E.D. Ark)

On April 6, 2006, the DOJ entered into a consent order where defendants were charged with refusing to rent a house to an Hispanic family on the basis of national origin.

The defendants will pay \$15,500 to the three complainants, including Raquel Rios, her adult son and her minor daughter. In addition, the defendants will attend fair housing training, post fair housing notices and submit to standard injunctive relief. The order also states that the United States may conduct fair housing testing at any dwelling in which any defendant, now or in the future, has a direct or indirect ownership, management or financial interest.

United States v. Boyers' Personal Care Homes, et al.
(W.D. PA)

The DOJ charged the Defendants with violating the Fair Housing Act by refusing to house an applicant with AIDS based on that disability. The Consent Order requires the defendants to pay \$7,000 to the estate of the applicant (now deceased) and to pay \$2,000 to an AIDS service organization that assisted him in his search for alternate housing. The Order also contains provisions that prohibit future discrimination and requires the defendants to adopt and notify others of its new nondiscrimination policy and requires reporting.

Robert G. Franke & Sara Franke Bowling v. Parkstone Living Center, Inc. d/b/a/ Fox Ridge (E.D. Ark)

2009 - Lambda Legal filed suit against Fox Ridge of North Little Rock, alleging that the assisted living facility violated Fair Housing laws by refusing housing to an HIV patient based on his disability.

The lawsuit was filed on behalf of 75-year-old Reverend Dr. Robert Franke, a retired university provost and minister, and his daughter, Sara Franke Bowling.

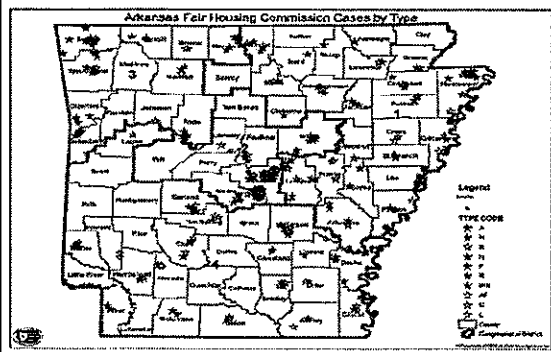
The case was settled for undisclosed monetary damages.

2011 marks the 10th anniversary of the Arkansas Fair Housing Act Ark. Code Ann. § 16-123-301 et. seq.

In 2010, the Commission:

- Fielded 379 inquiries into suspected fair housing/fair lending violations
- Processed 178 cases throughout the state

Congressional District Case Map



An African American was denied the opportunity to view a house for sale in Hot Springs, Arkansas....

Donald was in the market for a new home and solicited real estate agent, Judy Doe. Donald wanted to view a property listed for sale on Lake Hamilton. Judy Doe sent Donald a MLS listing of the property with a map of the area. On the map, Ms. Doe circled the address of the property and wrote, "Good People...Redneck Area". Ms. Doe advertised herself on her website as the "Redneck Realtor". The house was located in an all Caucasian area and Ms. Doe refused to show the property to Donald. The case settled for \$8,500.00.

A disabled person was denied a reasonable accommodation for his disability in Conway, Arkansas...

Joshua had been on the waiting list for ABC Housing Authority for six months. He was hospitalized due to his disability on the date he was scheduled to interview for housing at ABC Housing Authority. Joshua requested a reasonable accommodation from ABC Housing Authority in the form of allowing him to make up the interview instead of being put at the bottom of the list. ABC Housing Authority denied Joshua's request and placed him at the bottom of the waiting list.

A disabled person was denied a reasonable accommodation for his disability in Conway, Arkansas....

A subsequent conciliation agreement allowed Joshua to receive housing from ABC Housing Authority without the penalty of being placed at the bottom of the extensive waiting list.

An African American couple was denied a construction loan because of the racial make-up of the area in Little Rock, Arkansas...

Jeffery and Delisa applied for a home construction loan with ABC Federal Credit Union. Jeffery and Delisa wanted to build a home next to Jeffery's mother's home in a predominately African American neighborhood. ABC Federal Credit Union notified Jeffrey and Delisa that the land would not appraise for the amount needed to build a home - despite the fact that ABC Federal Credit Union never sent an appraiser to determine the property value

An African American couple was denied a construction loan because of the racial make-up of the area in Little Rock, Arkansas...(con't)

....nor did ABC Federal Credit Union send any other representative to visit the property location or to view the property. The neighborhood contained numerous newly constructed homes. The case subsequently settled for ABC Federal Credit Union:

- (1) Paying for an appraisal (which provided sufficient basis for the requested loan);
- (2) Approving the requested construction loan;
- (3) Paying damages in the amount of \$2,500.00; and
- (4) Attending fair lending training.



Best practices



BEST PRACTICES

Maintain Good Records

When a fair housing complaint is lodged and filed with HUD and with the AFHC, the investigation process begins.

The parties will have an opportunity to provide information that will affirm or refute the allegations in question.

Maintaining good records is key to ensuring that all necessary information is available and will provide protection when specific housing practices come into question.

BEST PRACTICES

Maintain the following documentation:

- ▶ Availability lists
- ▶ Guest cards
- ▶ Waiting lists
- ▶ Rental application logs
- ▶ All other information that will document your good management practices

Availability Lists

This should be consistently maintained, made available to potential tenants and include:

- ▶ The address and apartment number of each unit known to be available or is reasonably expected to be available for rental within a specific time frame (i.e., thirty (30) days);
- ▶ The monthly rent for each unit;
- ▶ The security deposit for each unit;
- ▶ The date management was first informed that it would be available for rent; and
- ▶ The date that unit will be available for rent to a new tenant.

Guest Cards

Maintain a record of all persons who inquire about rental units to include:

- › The date of the visit;
- › The visitor's name, address, daytime and evening telephone numbers;
- › And include whether that person was provided with an application, shown an apartment, etc.

Waiting Lists

Maintain a record of all persons who inquire about rental units and are informed that there are no current vacancies. This list should include:

- › The date of the visit or telephone call;
- › The visitor's or caller's name, address, daytime and evening telephone numbers;
- › The date the person wishes to move; and
- › Any other relevant information, such as a preference regarding the number of bedrooms.

This list should also note the date, time and employee who informed persons on the waiting list of vacancies and the manner and number in which each attempt was made.

Rental Application Logs

Maintain a daily record of:

- › Applicant's name;
- › Whether the application was approved or rejected;
- › The building and unit number occupied for each approved tenant; and
- › A detailed explanation for all rejected applicants.

**PENALTIES FOR ACTS OF
DISCRIMINATION:**

Ark. Code Ann. § 16-123-332

1st offense: up to \$11,000.00

2nd offense: up to \$27,500.00

3rd offense: up to \$55,000.00

Also, respondents can be required to complete up to 30 hours of fair housing education courses and/or up to 30 hours of community service.

FAIR HOUSING QUIZ

True or False

1. The purpose of the civil rights laws that affect the real estate industry is to make everyone equal.
2. Failing to comply with state and federal fair housing laws may subject a licensee to both fines and disciplinary action.
3. The Civil Rights Act of 1968 applies only to race.
4. Under HUD regulations, a "dwelling" is limited to single family houses, condominiums and cooperatives.

FAIR HOUSING QUIZ

5. The fair housing law under the "disabled persons" Classification protects persons with AIDS.
6. There are no exemptions under the state/federal Fair Housing Act.
7. The protections under the Equal Credit Opportunity Act (ECOA) are broader than those under the Fair Housing Act.
8. The ADA's specific requirements for making curb ramps, elevators and other spaces accessible for people with disabilities are contained in the "Accessibility Guidelines".

FAIR HOUSING QUIZ

- 9. Redlining is the act of encouraging people to sell or rent their homes on the basis that entry of members of a protected class into the neighborhood will reduce property values.
- 10. Channeling home seekers to a particular neighborhood based on non-economic factors is an illegal practice known as steering.
- 11. There are no exceptions to HUD's rules regarding statement of preference or limitations in advertising regarding race.

FAIR HOUSING QUIZ

- 12. While not valid consideration for the underlying real estate transaction, the following factors may be considered by an appraiser in evaluating a property: race, color, religion, national origin, sex, disability and familial status.
- 13. Any individual who believes he/she is the victim of illegal discrimination in a real estate transaction may file a complaint with HUD within three years of the alleged act.

FAIR HOUSING QUIZ

- 13. Failure to prominently display the Equal Housing Opportunity poster is presumed to be evidence of discriminatory practices.
- 14. April is National Fair Housing Month.

Answers

(1.) F; (2.) T; (3.) F; (4.) F;
(5.) T(6.) F; (7.) T; (8.) T;
(9.) F; (10.) T; (11.) T;
(12.) F; (13.) F; (14.) T; (15.) T

"Golden Rule" still applies today:

*"Treat everyone as you
want to be treated."*

Why?

Then *"everyone"* will be
treated fairly.

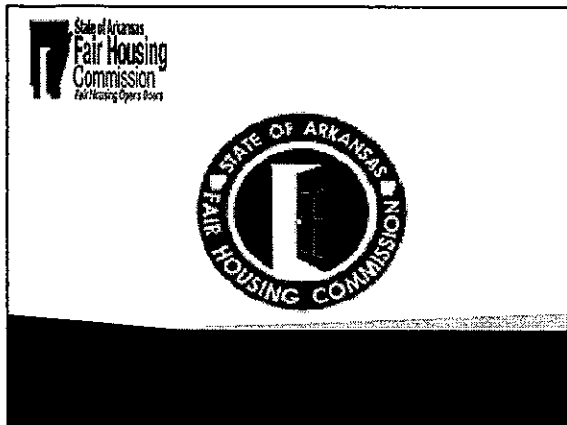
Resources

Arkansas Fair Housing Commission
Carol Johnson, Executive Director
101 E. Capitol Avenue, Suite 212
Little Rock, Arkansas 72201
1.501.682-3247 (FAIR)
www.fairhousing.arkansas.gov

▸ U.S. Dept. of Housing and Urban Development
www.hud.gov

▸ U.S. Department of Justice
www.doi.gov

▸ USDA Rural Development
www.usda.gov









U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE

*REASONABLE ACCOMMODATIONS UNDER THE
FAIR HOUSING ACT*

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act¹ (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

² The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.⁴

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them⁵ and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”⁶ The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

⁴ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (*e.g.*, providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and “Section 504: Frequently Asked Questions,” (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

⁵ The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

⁶ 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.⁷ With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), *aff'd* 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

⁷ This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.² Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

⁸ The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

⁹ *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its "no pets" policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a "fundamental alteration"?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words "reasonable accommodation" are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits¹⁰ or a credible statement by the individual). A doctor or other

¹⁰ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g., Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.



Legislation Details (With Text)

File #: ORD-11:089 **Version:** 1 **Name:** Adoption of 2012 budget
Type: Ordinance **Status:** First Reading
File created: 12/1/2011 **In control:** Finance & Administration Council Committee
On agenda: **Final action:**

Title: AN ORDINANCE FOR THE ADOPTION OF A BUDGET FOR THE CITY OF JONESBORO, ARKANSAS, FOR THE TWELVE (12) MONTHS BEGINNING JANUARY 1, 2012 AND ENDING DECEMBER 31, 2012, APPROPRIATING MONEY FOR EACH ITEM OF EXPENDITURE THEREIN PROVIDED FOR, ADOPTION OF THE EMERGENCY CLAUSE FOR THE EFFICIENT OPERATION OF CITY GOVERNMENT, AND FOR THE FINANCIAL CONTINUITY OF 2012, AND FOR OTHER PURPOSES.

Sponsors: Finance

Indexes: Budget adoption

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
12/13/2011	1	Finance & Administration Council Committee		

Title

AN ORDINANCE FOR THE ADOPTION OF A BUDGET FOR THE CITY OF JONESBORO, ARKANSAS, FOR THE TWELVE (12) MONTHS BEGINNING JANUARY 1, 2012 AND ENDING DECEMBER 31, 2012, APPROPRIATING MONEY FOR EACH ITEM OF EXPENDITURE THEREIN PROVIDED FOR, ADOPTION OF THE EMERGENCY CLAUSE FOR THE EFFICIENT OPERATION OF CITY GOVERNMENT, AND FOR THE FINANCIAL CONTINUITY OF 2012, AND FOR OTHER PURPOSES.

Body

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS THAT:

WHEREAS, the City Council has made a comprehensive study and review of the proposed budget submitted; and

WHEREAS, it is the opinion of the City Council that the schedules and exhibits of financial information prepared and reviewed revealing anticipated revenues and expenditures for the calendar year appear to be as accurate as possible for budgetary purposes.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF JONESBORO, ARKANSAS:

SECTION 1: This ordinance shall be known as the budget ordinance for the City of Jonesboro, Arkansas, for the twelve (12) month period beginning January 1, 2012 and ending December 31, 2012, reflecting estimated revenues and expenditures as hereinafter set forth on succeeding pages. All revenues herein are estimated and subject to change and all appropriations are calculated upon available revenues.

SECTION 2: The respective amounts of funds for each and every item of expenditure classification herein proposed in the budget for 2012 are hereby approved by the City of Jonesboro, Arkansas, and are hereby authorized and appropriated for the purposes herein set forth for the calendar year ending December 31, 2012.

SECTION 3: Expenditure of funds appropriated by this ordinance shall not be restricted to the line item expenditure but shall be restricted to office/departmental expenditures except for funds appropriated for personnel salaries and wages and related employee benefits. Personnel expenditures shall not exceed the dollar amounts, number of employees and salary or wage rates specified in the annual budget or an amendment thereto.

SECTION 4: WHEREAS, it is necessary for the efficient operation of city government, and for the financial continuity of 2012, that a budget be planned and adopted, now therefore an emergency is hereby declared to exist and this ordinance being necessary for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval.



Legislation Details (With Text)

File #:	ORD-11:090	Version:	1	Name:	Purchase of police vehicles
Type:	Ordinance	Status:		Status:	First Reading
File created:	12/1/2011	In control:		In control:	Finance & Administration Council Committee
On agenda:		Final action:		Final action:	
Title:	AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AUTHORIZE PURCHASE OF TEN (10) NEW 2011 FORD CROWN VICTORIA POLICE CARS AND TO DECLARE AN EMERGENCY BECAUSE THE AVAILABILITY OF THE CARS IS EXTREMELY LIMITED SINCE THEY ARE NO LONGER PRODUCED				
Sponsors:	Finance				
Indexes:	Property purchase - personal, Waive competitive bidding				
Code sections:					
Attachments:					

Date	Ver.	Action By	Action	Result
12/13/2011	1	Finance & Administration Council Committee		

Title

AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AUTHORIZE PURCHASE OF TEN (10) NEW 2011 FORD CROWN VICTORIA POLICE CARS AND TO DECLARE AN EMERGENCY BECAUSE THE AVAILABILITY OF THE CARS IS EXTREMELY LIMITED SINCE THEY ARE NO LONGER PRODUCED

Body

BE IT ORDAINED by the City Council of the City of Jonesboro, Arkansas that:

SECTION 1: That the Police Department of the City of Jonesboro needs to purchase the following:
Ten (10) new Ford Crown Victoria Police Cars

SECTION 2: That said cars may be purchased from Philpott Motors of Nederland, Texas for the sum of \$23,960 each for a total of \$239,600.

SECTION 3: That the City Council in accord with the terms of A.C.A. Section 14-58-302 hereby waives the requirement of competitive bidding and directs the Purchasing Officer to purchase the above described for the price set forth in Section 2 above.

SECTION 4: It is further found that there is an immediate need to acquire this equipment. The current fleet is made up primarily of these vehicles and communications systems and other equipment are easily moved from one vehicle to another. This particular type vehicle is no longer manufactured and availability is extremely limited, therefore an emergency is declared to exist and this Ordinance being necessary for the preservation of the public peace, health and safety shall take effect from and after its passage and approval.



Legislation Details (With Text)

File #: ORD-11:093 **Version:** 1 **Name:** Rezoning Arthur Wallace
Type: Ordinance **Status:** First Reading
File created: 12/15/2011 **In control:** City Council
On agenda: **Final action:**
Title: AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE OF THE CITY OF JONESBORO, ARKANSAS, PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM C-3 TO RS-4 FOR PROPERTY LOCATED AT 5213 EAST NETTLETON AS REQUESTED BY ARTHUR WALLACE
Sponsors:
Indexes: Rezoning
Code sections:
Attachments: [Plat](#)
[MAPC Report](#)

Date	Ver.	Action By	Action	Result
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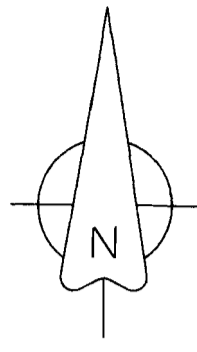
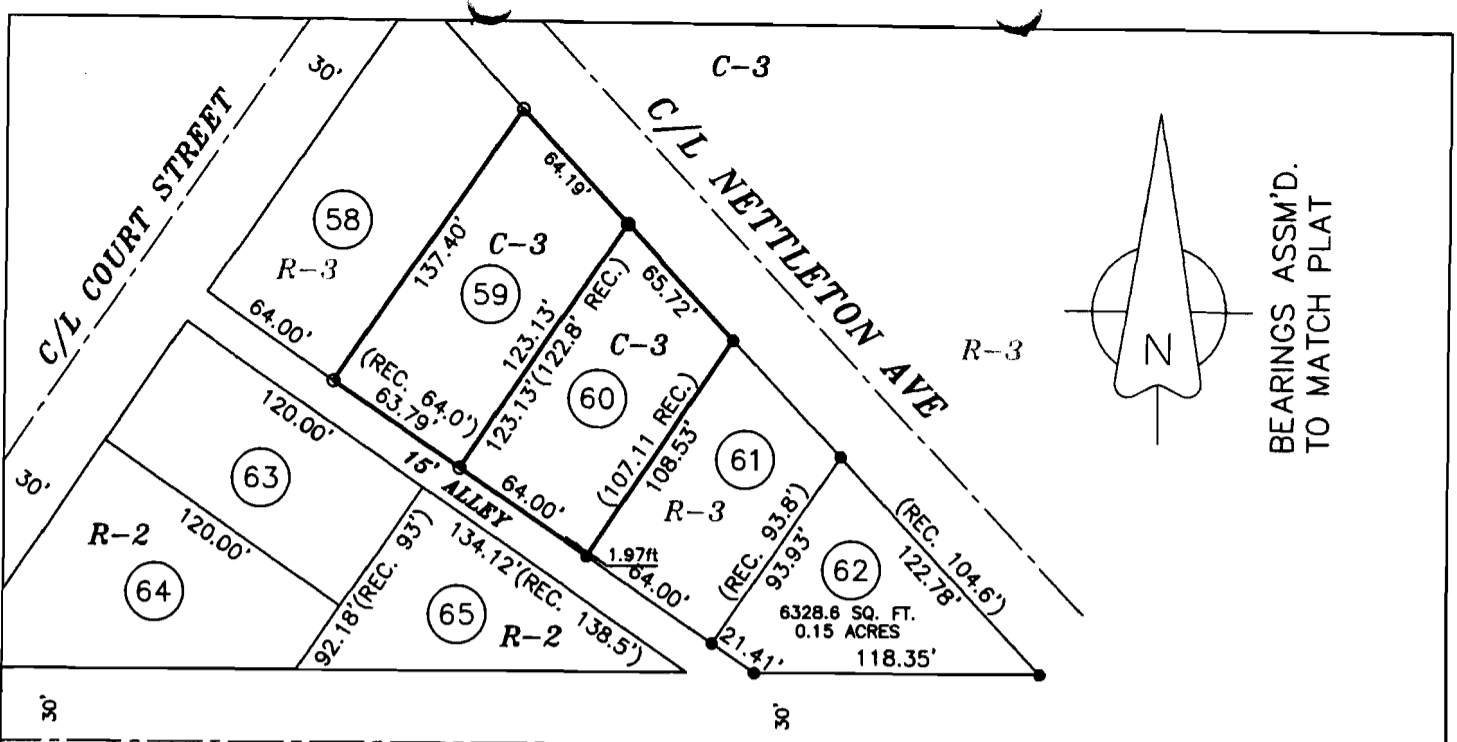
title
AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE OF THE CITY OF JONESBORO, ARKANSAS, PROVIDING FOR CHANGES IN ZONING BOUNDARIES
body
BE IT ORDAINED by the City Council of Jonesboro, Arkansas:

SECTION I: Chapter 117, Article III, known as the Zoning Ordinance of the City of Jonesboro, Arkansas, be amended as recommended by the Metropolitan Area Planning Commission by the changes in zoning classification as follows:

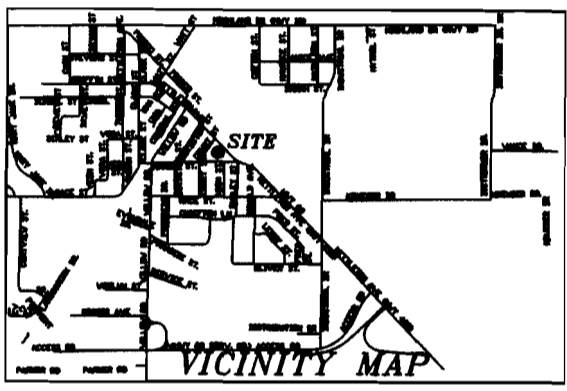
From C-3 General Commercial to RS-4 Single Family Residential District for the following described property:

Lots 59 & 60 of Keich’s 1st Addition to the City of Jonesboro, Arkansas, (formerly known as Nettleton) as shown by plat in Deed Record 13 at Page 520 in the Office of the Circuit Clerk and Ex-Officio Recorder, Craighead County, Jonesboro, Arkansas, containing 0.36 acres, more or less, subject to all rights-of-way and easements of record.

SECTION II: The City Clerk is hereby directed to amend the official Zoning District Boundary Map of the City of Jonesboro, Arkansas, insofar as it relates to the lands described hereinabove so that the zoning classification of said lands shall be in accordance with the provisions of this ordinance.



BEARINGS ASSM'D.
TO MATCH PLAT



DESCRIPTION:
A REPLAT OF LOTS 59 & 60 OF KEICH'S 1ST ADDITION TO THE CITY OF JONESBORO, ARKANSAS (FORMERLY NETTLETON) AS SHOWN BY PLAT IN DEED RECORD 13 AT PAGE 520 IN THE OFFICE OF CIRCUIT CLERK AND EX-OFFICIO RECORDER, CRAIGHEAD COUNTY, JONESBORO, ARKANSAS.

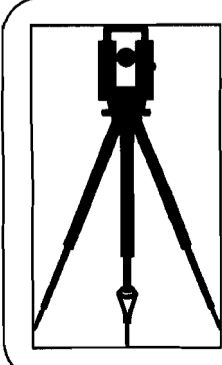
OWNER CERTIFICATION:
WE HEREBY CERTIFY THAT WE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT WE REQUEST THE ZONING CHANGES AS NOTED HEREON.

Arthur Wallace Jr



SURVEYOR'S CERTIFICATION:
THIS IS TO CERTIFY I HAVE ON THIS DATE SURVEYED THE ABOVE DESCRIBED PROPERTY IN ACCORDANCE WITH MONUMENTS FOUND AND THIS PLAT CONFORMS TO THAT SURVEYED.

H&S HIME PROFESSIONAL SURVEYING SERVICES
PMB #283, 2704 SO. CULBERHOUSE STE "L"
JONESBORO, ARKANSAS



H&S Hime Professional Surveying Services
POB 353
BROOKLAND, ARKANSAS 72417

PHONE: 870 972 1288
FAX: 870 972 1011
E-MAIL: hshime_butch@yahoo.com

REZONING PLAT

drawn by: HH	5213 E. NETTLETON AVE JONESBORO, ARKANSAS
date: 10-29-2011	C-3 EXISTING RS-4 REQUESTED
scale: 1"=60'	client: ARTHUR WALLACE JR



City of Jonesboro City Council
Staff Report – RZ 11-27: Arthur Wallace Jr. 5213 E. Nettleton Ave.
Huntington Building - 900 W. Monroe
For Consideration by the Council on December 20, 2011

REQUEST: To consider a rezoning of a parcel of land containing 0.36 acres more or less

PURPOSE: A request to consider a recommendation to Council for a rezoning from “C-3” General Commercial to “RS-4” Single-Family District.

APPLICANT: Arthur Wallace Jr. 5107 E. Nettleton Ave., Jonesboro AR 72401
OWNER: Same

LOCATION: 5213 E. Nettleton Ave.

SITE DESCRIPTION: Tract Size: Approx. +/- .36 Acres (15,644 s.f.)
Frontage: Approx. 129.9’ +/- along E. Nettleton Ave.
Topography: Flat
Existing Development: Vacant

SURROUNDING CONDITIONS:	<u>ZONE</u>	<u>LAND USE</u>
North:	C-3, R-3	Single-Family Homes, Commercial
South:	R-2	Single-Family Homes
East:	R-3	Single-Family Homes
West:	R-3	Single-Family Homes

HISTORY:

ZONING ANALYSIS: City Planning Staff has reviewed the proposed Zone Change and offers the following findings.

COMPREHENSIVE PLAN FUTURE LAND USE MAP

The Current/Future Land Use Map recommends this location as Retail General. The proposed rezoning although not retail in nature is consistent with the immediate planning area. A change in the land uses is justified, because the existing/vacant C-3 District could yield a very undesirable and incompatible end-use, next to existing residential uses.

Approval Criteria- Section 117-34- Amendments:

The criteria for approval of a rezoning are set out below. Not all of the criteria must be given equal consideration by the planning commission or city council in reaching a decision. The criteria to be considered shall include but not be limited to the following:

- (a) Consistency of the proposal with the Comprehensive Plan
- (b) Consistency of the proposal with the purpose of the zoning ordinance.
- (c) Compatibility of the proposal with the zoning, uses and character of the surrounding area;
- (d) Suitability of the subject property for the uses to which it has been restricted without the proposed zoning map amendment;
- (e) Extent to which approval of the proposed rezoning will detrimentally affect nearby property including, but not limited to, any impact on property value, traffic, drainage, visual, odor, noise,

light, vibration, hours of use/operation and any restriction to the normal and customary use of the affected property;

- (f) Length of time the subject property has remained vacant as zoned, as well as its zoning at the time of purchase by the applicant; and
- (g) Impact of the proposed development on community facilities and services, including those related to utilities, streets, drainage, parks, open space, fire, police, and emergency medical services.



Vicinity/Zoning Map

Findings:

Zoning compliance:

The applicant is requesting a change to a RS-4, which will allow one single family home for the two tracts combined. Setbacks and lot requirements are as follows for the RS-4 District.

Zoning Classification	BULK DIMENSIONAL REQUIREMENTS				
	Min. Lot Width	Minimum Lot Area	Front Setback	Rear Setback	Side Setback
AG	240'	5 ac.	30'	30'	10' ea.
RS-1	120'	43,560 SF	40'	30'	25.0' ea.
RS-2	100'	21,780 SF	35'	25'	15' ea.
RS-3	80'	14,520 SF	30'	25'	10.0' ea.
RS-4	80'	10,890 SF	25'	25'	7.5'ea.
RS-5	70'	8,712 SF	25'	20'	7.5' ea.
RS-6	65'	7,260 SF	20'	20'	15' Combined (Min. 10 on 1 side)
RS-7	50	6,222 SF	20'	20'	7.5' ea.
RS-8	50	5,445 SF	15'	15'	7.5' ea.

The general vicinity has a mixture of neighborhood commercial as well as older housing stock. This is the central Nettleton area. The proposal will be consistent with the area and should provide a nice infill application which will promote good land use planning. Compliance with the Zoning Code and all City Ordinance will be adhered to during the permit process.

RECORD OF PROCEEDINGS: MAPC Public Hearing held on December 13, 2011:

Applicant: Mr. Arthur Wallace Jr. - Appeared before the Commission, stating that he bought the lot and would like to build a home on it for his own use, to help keep the kids from running back and forth through the site.

Staff: Mr. Spriggs gave Staff comments and summarized the Staff report. The entire triangle surrounding the site is primarily a mixture of single family/multi-family uses that will most likely remain as such. The intensity will not cause any detriment to the area, by it being used only for one single family residence, which is a part of Old Nettleton. The request will be in good character with the neighborhood.

Mr. Tomlinson asked the applicant if he grew up and lives in the area. **Mr. Wallace:** Stated that he grew up in the area and he and his parents own property ranging from 5010 to 5112 E. Nettleton Ave. He lives at 5107 E. Nettleton Ave. He stated that he likes the neighborhood, and wants to improve the property.

Public Input: None present.

Ms. Nix made a motion to place Case: RZ-11-27 on the floor for consideration and for recommendation to City Council for a rezoning from C-3 General Commercial to RS-4 Single Family Residential. The MAPC finds that the use will be compatible and suitable with the zoning, uses and character of the surrounding area. Motion was seconded by **Mr. Joe Tomlinson**.

Roll Call Vote: Ms. Nix- Aye; Mr. Hoelscher- Aye; Ms. Norris- Aye; Mr. Scurlock- Aye; Mr. Kelton- Aye. Mr. Tomlinson- Aye; Motion passed with a 6-0 Vote in favor. Mr. Roberts- Chair; Mr. Dover- Absent; Mr. White- Absent.

Conclusion:

The MAPC and the Planning Department Staff find that the requested Zone Change submitted by Arthur Wallace Jr., should be evaluated based on the above observations and criteria, of Case RZ 11-27, a request to rezone property from "C-3" to "RS-4", and hereby is recommended as approved by the MAPC to the Jonesboro City Council.

Respectfully Submitted for Council Consideration,



Otis T. Spriggs, AICP
Planning & Zoning Director

Site Photographs



View looking Southwest towards subject site.



View looking Northwest adjacent from site.



View looking Southeast adjacent from the site.



View looking Southeast along E. Nettleton Ave.



View looking Northwest of along E. Nettleton Ave.



View looking Northwest of Single Family Homes and storage buildings.



View looking East from the rear yard.



Legislation Details (With Text)

File #:	ORD-11:094	Version:	1	Name:	Abandonment of a utility easement at 2416 Sea Island Drive as requested by Murray Benton
Type:	Ordinance	Status:		Status:	First Reading
File created:	12/15/2011	In control:		In control:	City Council
On agenda:		Final action:			
Title:	AN ORDINANCE TO VACATE AND ABANDON A 15' UTILITY EASEMENT AND DECLARING AN EMERGENCY FOR THE PURPOSE OF EXPEDITING CONSTRUCTION BY THE PROPERTY OWNER.				
Sponsors:					
Indexes:	Abandonment				
Code sections:					
Attachments:	Plat Utility Letters Planning Letter Petition				

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

title
AN ORDINANCE TO VACATE AND ABANDON A 15' UTILITY EASEMENT AND DECLARING AN EMERGENCY FOR THE PURPOSE OF EXPEDITING CONSTRUCTION BY THE PROPERTY OWNER.
body
CRAIGHEAD COUNTY, JONESBORO, ARKANSAS.

BE IT ORDAINED by the City Council of the City of Jonesboro, Arkansas, that:

SECTION ONE: The City of Jonesboro, Arkansas, hereby releases, vacates and abandons all of its rights, together with the rights of the public generally, in and to the 15' Utility Easement designated as follows:

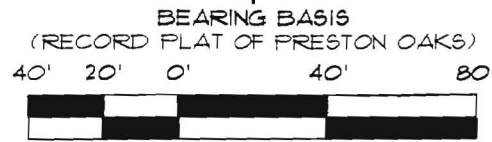
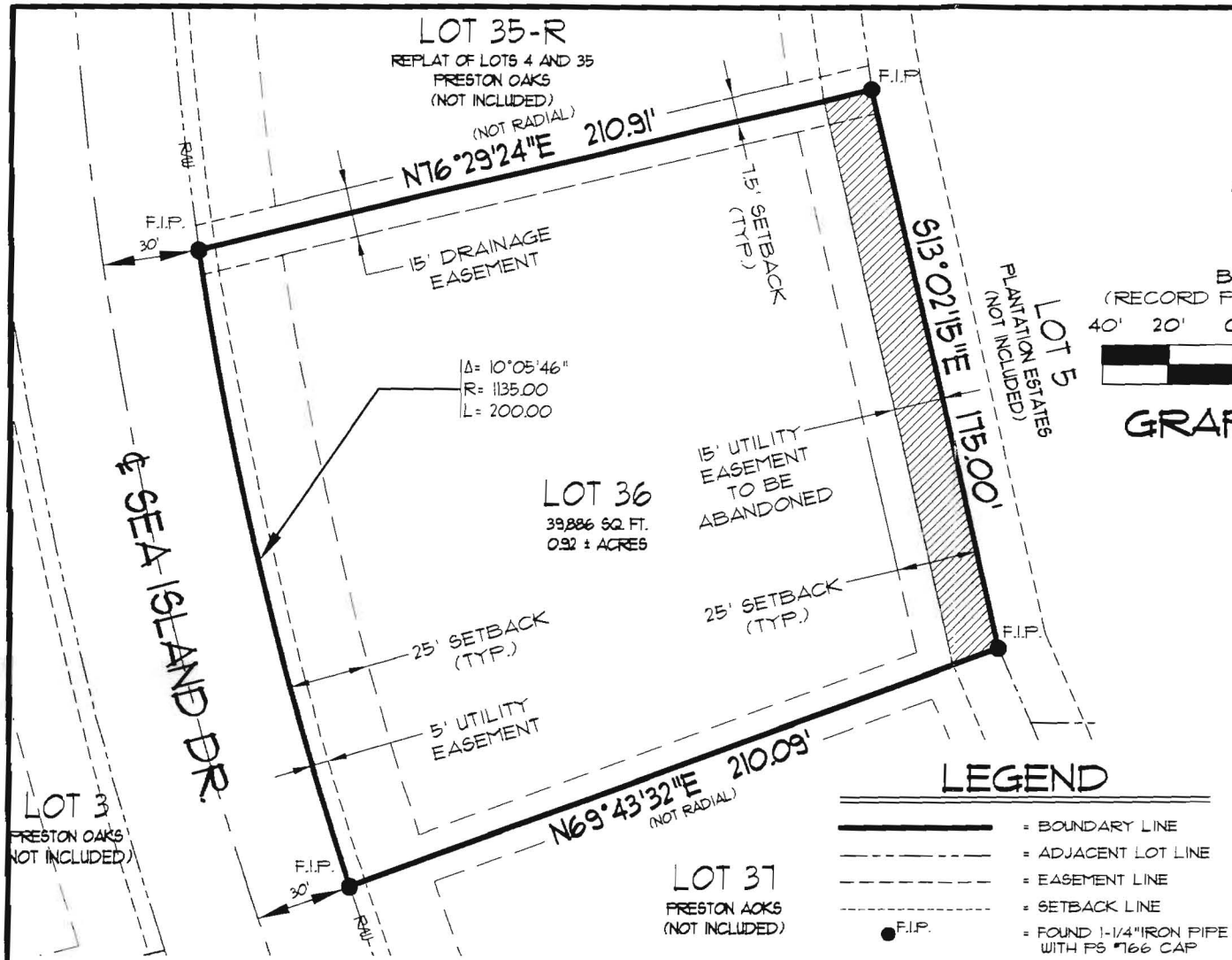
DESCRIPTION:
THE EAST 15 FEET OF LOT 36 OF THE PLAT OF PRESTON OAKS, JONESBORO, ARKANSAS, AS RECORDED IN BOOK "C", PAGE 165 IN THE PUBLIC RECORDS IN JONESBORO, CRAIGHEAD COUNTY, ARKANSAS.

CONTAINING IN ALL 2,638 SQ. FT. OR 0.06 ACRES, MORE OR LESS.

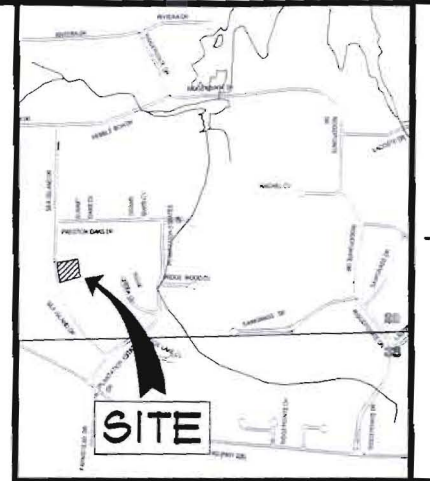
SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

SECTION TWO: It is further found that due to the immediate need of the property owner to complete construction during this work season and based on the fact that the abandonment was approved by all utility providers and no utilities were constructed in this easement and all utilities are accessed from the street side of this property, an emergency is declared to exist and this ordinance being necessary for the preservation of the public peace, health and safety, shall take effect from and after its passage and approval.

SECTION THREE: A copy of the ordinance duly certified by the City Clerk shall be filed in the office of the recorder of Craighead County, Arkansas and shall be filed in the Deed Records of such office.



GRAPHIC SCALE
IN FEET

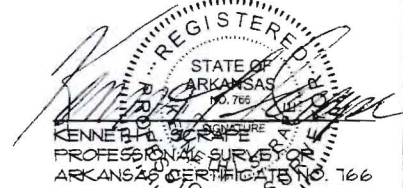


VICINITY SKETCH
NOT TO SCALE

SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY THAT ASSOCIATED ENGINEERING AND TESTING, LLC HAS THIS DATE MADE A BOUNDARY SURVEY OF THE ABOVE DESCRIBED PROPERTY AS SHOWN HEREON AND THAT SAID SURVEY IS ACCURATE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THERE ARE NO APPARENT ABOVE GROUND ENCROACHMENTS OTHER THAN AS SHOWN OR STATED HEREON AND THAT THIS SURVEY WAS MADE IN ACCORDANCE WITH THE "ARKANSAS MINIMUM STANDARDS FOR PROPERTY SURVEYS AND PLATS" IN EFFECT ON THIS DATE.

DATE OF BOUNDARY SURVEY: 08/24/2011



NOTE: TO BE VALID, COPIES MUST HAVE ORIGINAL SURVEYOR'S SIGNATURE AND SURVEYOR'S SEAL.

LOT 3
PRESTON OAKS
(NOT INCLUDED)

OWNER'S CERTIFICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF PROPERTY AS DESCRIBED HEREON, THAT WE ADOPT THE PLAN OF SUBDIVISION AND DEDICATE THE PERPETUAL USE OF ALL STREETS AND EASEMENTS AS

Murray R Benton
OWNER: MURRAY BENTON

LEGEND

- = BOUNDARY LINE
- = ADJACENT LOT LINE
- = EASEMENT LINE
- = SETBACK LINE
- = FOUND 1-1/4" IRON PIPE WITH PS #166 CAP

DESCRIPTION

LOT 36, ACCORDING TO THE RECORD PLAT OF PRESTON OAKS, JONESBORO, ARKANSAS, AS RECORDED IN BOOK C, AT PAGE 165, IN AND FOR THE PUBLIC RECORDS OF CRAIGHEAD COUNTY, AT JONESBORO, ARKANSAS.

CONTAINING 39,886 SQ. FT. OR 0.92 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

ASSOCIATED ENGINEERING AND TESTING, LLC
CIVIL ENGINEERING, LAND SURVEYING AND MATERIALS TESTING
103 SOUTH CHURCH STREET - P.O. BOX 1462 - JONESBORO, AR 72403
PH: 870-932-3594 FAX: 870-935-1263

EASEMENT ABANDONMENT PLAT
MURRAY BENTON
LOT 36, PRESTON OAKS
JONESBORO, ARKANSAS

REV	DATE	REVISIONS	DRAWN	CHK'D

DRAWN: KLS	CHECKED: KLS	DATE: 08/26/11	SHEET
SCALE: 1" = 40'	CADD FILE: 11163-001	DWG#: 0314283-0005	1 OF 1



Cindy Cole
Manager-Engineering Design

AT&T - Arkansas
723 S. Church, Rm. B27
Jonesboro, AR 72401
(870) 972.7600 Phone

August 16, 2011

RE: Easement Abandonment
2416 Sea Island Dr.
Lot 36, Preston Oaks Subdivision
14N-3, E-28
Plat Cabinet C, Page 165
City of Jonesboro
Craighead County

AT&T has no objection with the abandonment of the 15 foot rear utility easement located on Lot 36, Preston Oaks Subdivision, also known as 2416 Sea Island Drive, on the ease side of the property.

At the current time AT&T has no facilities in this easement.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Cindy Cole".

Cindy Cole
Manager Engineer Design



Owned by the Citizens of Jonesboro

August 9, 2011

City of Jonesboro
P.O. Box 1845
Jonesboro, AR 72403
Attn: Donna Jackson, City Clerk

Re: Easement Abandonment
2416 Sea Island Dr.
Lot 36, Preston Oaks Subdivision
Plat Cabinet C, Page 165
City of Jonesboro
Craighead County, Arkansas

Dear Donna:

City Water and Light has no objection with the abandonment of the 15 foot utility easement located on Lot 36, Preston Oaks Subdivision, also known as 2416 Sea Island Drive, on the east side of property as shown, hatched in red, on the attached plat. Please call if more information is needed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ronald L. Bowen', written over a white background.

Ronald L. Bowen
Manager, City Water & Light

Enclosure

Cc: Nancy Benton



To: Associated Engineering and Testing, LLC

From: Suddenlink Communications, Inc.

Date: November 10, 2011

Re: 2416 Sea Island Drive

Suddenlink Communications, Inc. has no objection to the abandonment of a 15' utility easement at the rear of the property located at 2416 Sea Island Drive, located in Jonesboro, Craighead County, Arkansas.

Respectfully,

Ed Martin

Construction Planner
Suddenlink Communications, Inc.



CenterPoint Energy
401 W. Capitol, Suite 600
Little Rock, AR 72201
CenterPointEnergy.com

UTILITY RELEASE FORM

General Utility Easement, Public Access Easement, Alley, Street, R.O.W.

Utility Company: CenterPoint Energy Date: 8/31/2011

Requested Vacation: Abandonment of 15' utility easement at rear of property.

Legal Description:

A FIFTEEN FOOT (15') WIDE EASEMENT BEGINNING AT THE NORTH PROPERTY LINE OF LOT 36 IN THE PRESTON OAKS SUBDIVISION AND RUNNING PARALLEL APPROXIMATELY ONE HUNDRED SEVENTY FIVE FEET (175') OF GRANTORS PROPERTY TO WIT: PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 14 NORTH, RANGE 5 EAST, CRAIGHEAD COUNTY, ARKANSAS, LYING NORTH OF HIGHWAY 226 AND EAST OF SEA ISLAND DR.2416 Sea Island Drive, Jonesboro, AR; Lot 36 according to the record plat of Preston Oaks, Jonesboro, Arkansas, as recorded in book C, at page 165, in and for the public records of Craighead County, at Jonesboro, Arkansas, containing 39,886 sq. feet or 0.92 acres, more or less.

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided the following easements are retained.
- Objects to the vacation(s) described above, reason described below.

Described reasons for objection or easements to be retained.


Signature of Utility Company Representative


Title



307 Vine Street
Jonesboro, AR 72401
(870) 932-0406 Voice
(870) 336-3036 Fax
www.jonesboro.org

December 1, 2011

Murray Benton
2416 Sea Island
Jonesboro, AR 72404

Re: Location: Lot 36, Preston Oaks

Dear Mr. Benton:

The purpose of this letter is to acknowledge your request for consideration of a utility easement abandonment at or adjacent to property you own above.

Our Planning and Engineering Staff have reviewed this matter in coordination with our subdivision plats and regulations.

The Planning and Engineering Staff have no objections to the utility easement requested on the subject lot. If you require any additional information, please advise me at your convenience.

Sincerely,

Otis T. Spriggs, AICP
Planning Director
City of Jonesboro

Michael Morris, P.E., CFM
Engineering Department

TO: Honorable Harold Perrin, Mayor, and members of the City Council of the City of Jonesboro, Arkansas.

PETITION TO ABANDON A 15' UTILITY EASEMENT

We the undersigned, being the owners of all property adjoining to the following described 15' Utility Easement located in the City of Jonesboro, Arkansas, described as follows:

DESCRIPTION:

THE EAST 15 FEET OF LOT 36 OF THE PLAT OF PRESTON OAKS, JONESBORO, ARKANSAS, AS RECORDED IN BOOK "C", PAGE 165 IN THE PUBLIC RECORDS IN JONESBORO, CRAIGHEAD COUNTY, ARKANSAS.

CONTAINING IN ALL 2,638 SQ. FT. OR 0.06 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

Herewith file and present this petition to the City council of the City of Jonesboro, Arkansas to have all of the utility easement described above legally closed.

DATED this 1st day of December, 2011.

PROPERTY OWNER:

Murray R Benton
MURRAY BENTON

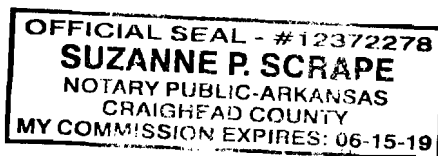
DATE: 12/1/11

Subscribed and sworn to before me this 1 day of Dec, 2011.

(seal)

Suzanne P. Scrape
NOTARY

Expiration date: 6-15-19.





Legislation Details (With Text)

File #:	ORD-11:086	Version:	1	Name:	Rezoning for Jim & Judy Furr
Type:	Ordinance	Status:		Status:	Second Reading
File created:	11/9/2011	In control:		In control:	City Council
On agenda:		Final action:			
Title:	AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-1 TO C-3 LUO FOR PROPERTY LOCATED AT 5600 EAST JOHNSON AS REQUESTED BY JIM AND JUDY FURR				
Sponsors:					
Indexes:	Rezoning				
Code sections:					
Attachments:	Plat MAPC Report				

Date	Ver.	Action By	Action	Result
12/6/2011	1	City Council		

title
AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES.

body
BE IT ORDAINED BY THE CITY COUNCIL OF CITY OF JONESBORO, ARKANSAS:

SECTION I: THAT CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE OF THE CITY OF JONESBORO, ARKANSAS BE AMENDED BY THE CHANGES IN ZONING CLASSIFICATION AS FOLLOWS:

FROM RESIDENTIAL (R-1) TO COMMERCIAL (C-3, LIMITED USE OVERLAY), THE FOLLOWING DESCRIBED PROPERTY:

A PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 14 NORTH, RANGE 4 EAST, JONESBORO, CRAIGHEAD COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 14 NORTH, RANGE 4 EAST, JONESBORO, CRAIGHEAD COUNTY, ARKANSAS; THENCE SOUTH 89°12'24" WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2, 430.10 FEET; THENCE NORTH 00°39'44" EAST, LEAVING SAID SOUTH LINE, 83.64 FEET TO THE NORTH RIGHT-OF-WAY LINE OF U.S. HIGHWAY NUMBER 49, THE POINT OF BEGINNING PROPER; THENCE SOUTH 89°06'29" WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 336.48 FEET; THENCE NORTH 06°10'19" EAST, LEAVING SAID RIGHT-OF-WAY LINE, 226.49 FEET; THENCE NORTH 89°27'47" EAST, 50.35 FEET; THENCE NORTH 00°39'44" EAST, 22.63 FEET; THENCE NORTH 89°12'24" EAST, 264.48 FEET; THENCE SOUTH 00°39'44" WEST, 249.36 FEET TO THE NORTH RIGHT-OF-WAY LINE OF U.S. HIGHWAY NUMBER 49, THE POINT OF BEGINNING PROPER, CONTAINING 1.83

ACRES, MORE OR LESS, SUBJECT TO ALL RIGHTS-OF-WAY AND EASEMENTS OF RECORD.

1. THE LIMITED USES IMPOSED ARE AS FOLLOWS: ADULT ENTERTAINMENT, BILLBOARDS, HIGH-VOLUME RETAIL USES SUCH AS CONVENIENCE STORE, CAR WASH, PAWN SHOP, VEHICLE REPAIR - LIMITED AND GENERAL, AGRICULTURE FARMERS MARKET, AND SERVICE STATION SHALL NOT BE PERMITTED.

2. THAT ALL FUTURE SITE PLANS SHALL BE APPROVED BY THE PLANNING COMMISSION WITH SAFE ACCESS EASEMENT MANAGEMENT INCLUDED ON INDIVIDUAL SITE PLANS. NO NEW WORK SHALL COMMENCE PRIOR TO FINAL SITE PLAN REVIEW AND APPROVAL BY THE MAPC.

3. A LIGHTING PLAN AND LANDSCAPING PLAN SHALL BE SUBMITTED TO THE MAPC, INCLUDING A 20 FT. LANDSCAPE BUFFER, INCLUDING PRIVACY FENCING WHERE THE SITE ABUTS EXISTING RESIDENTIAL USES.

4. THAT THE PROPOSED DEVELOPMENT SHALL SATISFY ALL REQUIREMENTS OF THE CITY ENGINEER, SATISFYING ALL REQUIREMENTS OF THE CURRENT STORMWATER DRAINAGE DESIGN MANUAL.

5. THAT PRIOR TO ANY ISSUANCE OF CERTIFICATE OF OCCUPANCY OF NEW USES, ALL REQUIREMENTS STIPULATED BY ALL CITY, STATE AND LOCAL AGENCIES SHALL BE SATISFIED.

6. THAT THE OWNER SHALL COORDINATE ALL EGRESS/INGRESS WITH THE STATE HIGHWAY DEPT, CITY ENGINEERING DEPT. AND THE PLANNING DEPT.

SECTION II: ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH ARE HEREBY REPEALED.

SECTION III: THE CITY CLERK IS HEREBY DIRECTED TO AMEND THE OFFICIAL ZONING DISTRICT BOUNDARY MAP OF THE CITY OF JONESBORO, ARKANSAS, INSOFAR AS IT RELATES TO THE LANDS DESCRIBED HEREINABOVE SO THAT THE ZONING CLASSIFICATION OF SAID LANDS SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF THIS ORDINANCE.

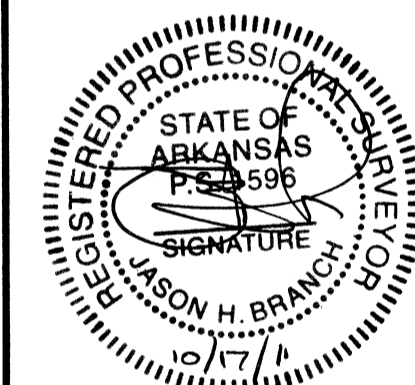
SECTION IV: IT IS FOUND AND DECLARED BY THE CITY COUNCIL THAT PROPER USE OF THE TRACT OF LAND DESCRIBED IN THIS ORDINANCE IS BEING DELAYED BECAUSE OF IMPROPER ZONING AND THAT, THEREFORE, AN EMERGENCY EXISTS AND THIS ORDINANCE BEING NECESSARY FOR THE PRESERVATION OF THE PUBLIC PEACE, HEALTH AND SAFETY, IT SHALL TAKE EFFECT FROM AND AFTER ITS PASSAGE AND APPROVAL.

REZONING PLAT

A PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 14 NORTH, RANGE 04 EAST, JONESBORO, CRAIGHEAD COUNTY, ARKANSAS

Haywood, Kenward, Bare AND ASSOCIATES, INC.
Civil Engineering, Surveying & Planning Services
1801 Latourette Drive, Jonesboro, AR, 72404

TEL 870-932-2019 FAX 870-932-1076



JASON H. BRANCH
AR-1596



Haywood, Kenward, Bare, and Associates, Inc
Arkansas - 234

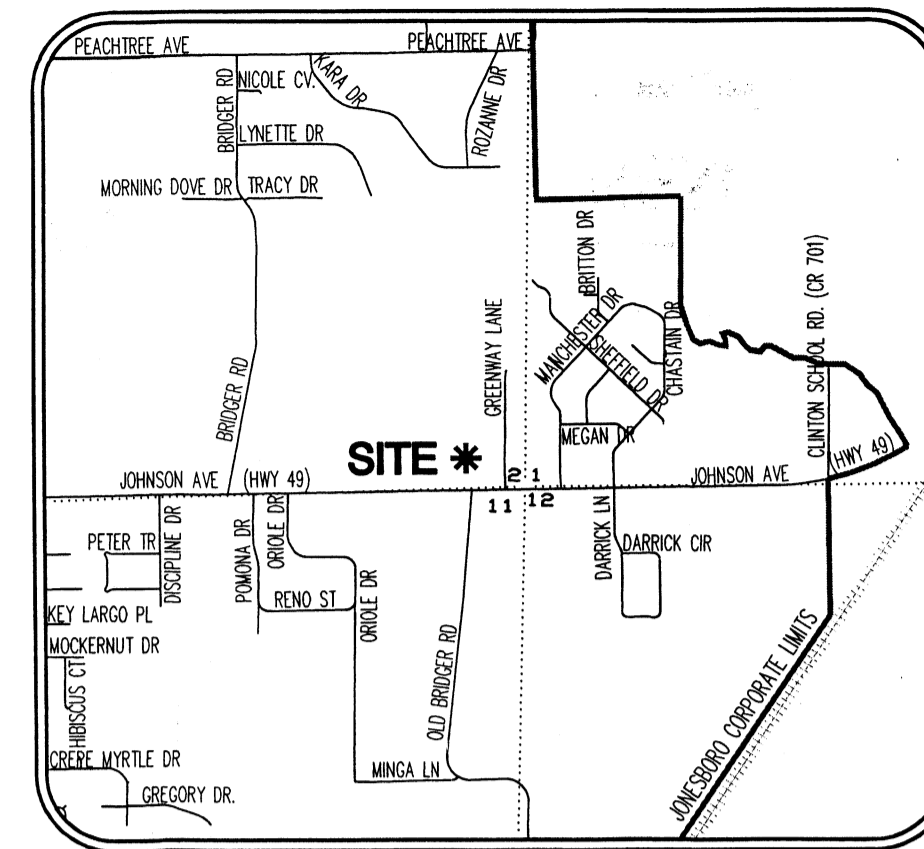
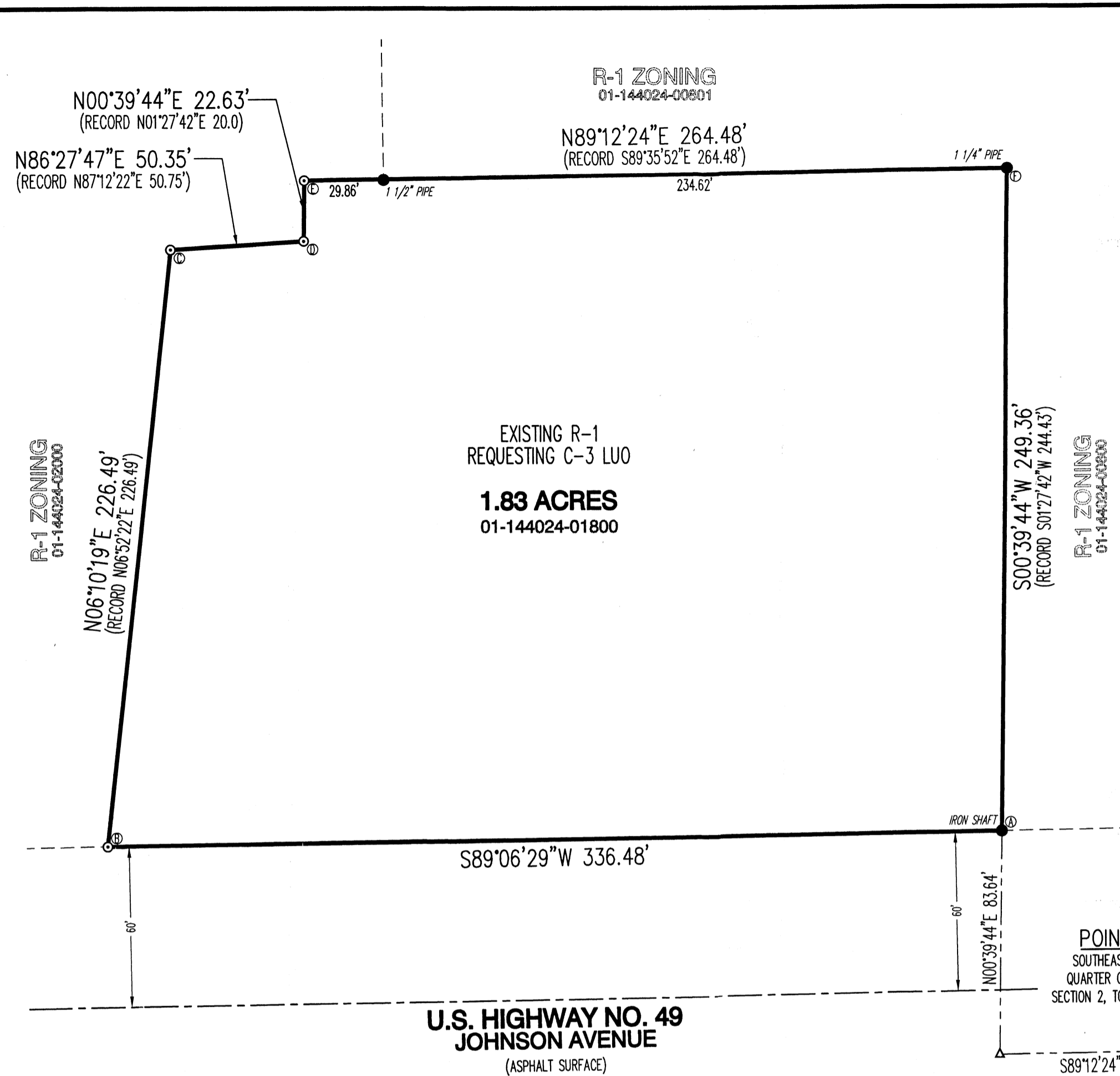
CLIENT:
JIM & JUDY FURR

COPYRIGHT 2011, ALL RIGHTS RESERVED

REVISIONS		
DATE	BY	DESCRIPTION

PROJECT NO.
F031-0001-12

DRAWN BY JJN	CHECKED BY JHB
SHEET 1 OF 1	SCALE 1"=40'
DATE 09/13/11	DRAWING NO. 57-358



VICINITY MAP
(NOT TO SCALE)

LEGEND:

- FOUND MONUMENT (AS NOTED)
- SET 5/8" REBAR W/ RED PLASTIC CAP STAMPED "BRANCH P.S. 1596"

SURVEYOR'S NOTES:

- SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD OR ANY OTHER FACTS WHICH AN ACCURATE TITLE SEARCH MAY DISCLOSE.
- BASIS OF BEARINGS: ARKANSAS STATE PLANE GRID NORTH ZONE (0301).
- THE FOLLOWING DOCUMENTS WERE USED IN THE CONSTRUCTION OF THIS SURVEY:
 - PLAT OF SURVEY, BY J.L. SCRAPE, P.S. 515, RECORDED IN BOOK B, PAGE 37, DATED SEPTEMBER 26, 1972.
 - PLAT OF SURVEY, BY TROY L. SHEETS, P.S. 596, RECORDED IN BOOK H, PAGE 56, DATED MAY 18, 1987.
 - PLAT OF SURVEY, BY TERRY G. BARE, P.S. 1048, RECORDED IN BOOK H, PAGE 71, DATED FEBRUARY 17, 1989.
 - REZONING PLAT, BY MICHAEL A. DANIELS, P.S. 1563, FILED IN HKB FILE 57-338, DATED DECEMBER 14, 2010.
 - WARRANTY DEED, RECORDED IN BOOK 229, PAGE 464.
 - WARRANTY DEED, RECORDED IN BOOK 154, PAGE 267.
 - WARRANTY DEED, RECORDED IN BOOK 601, PAGE 482.
 - WARRANTY DEED, RECORDED IN BOOK 108, PAGE 517.
 - WARRANTY DEED, RECORDED IN BOOK 370, PAGE 362.
- THE SUBJECT PROPERTY LIES OUTSIDE THE 100-YEAR SPECIAL FLOOD HAZARD ZONE, AS SHOWN ON FEMA FLOOD INSURANCE RATE MAP PANEL NO. 05031C0063C, EFFECTIVE DATE SEPTEMBER 27, 1991.
- FIELD NOTES ARE RECORDED IN HKB FIELD BOOK 1125, PAGES 15-16.
- FIELD WORK WAS COMPLETED ON FEBRUARY 9, 2011.

CERTIFICATE OF SURVEY:

THIS IS TO CERTIFY THAT HAYWOOD, KENWARD, BARE & ASSOCIATES INC., PROFESSIONAL LAND SURVEYORS HAVE SURVEYED THE FOLLOWING PARCEL OF LAND:

A PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 14 NORTH, RANGE 4 EAST, JONESBORO, CRAIGHEAD COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 14 NORTH, RANGE 4 EAST, JONESBORO, CRAIGHEAD COUNTY, ARKANSAS; THENCE SOUTH 89°12'24" WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2, 430.10 FEET; THENCE NORTH 00°39'44" EAST, LEAVING SAID SOUTH LINE, 83.64 FEET TO THE NORTH RIGHT-OF-WAY LINE OF U.S. HIGHWAY NUMBER 49, THE POINT OF BEGINNING PROPER; THENCE SOUTH 89°06'29" WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 336.48 FEET; THENCE NORTH 06°10'19" EAST, LEAVING SAID RIGHT-OF-WAY LINE, 226.49 FEET; THENCE NORTH 89°27'47" EAST, 50.35 FEET; THENCE NORTH 00°39'44" EAST, 22.63 FEET; THENCE NORTH 89°12'24" EAST, 264.48 FEET; THENCE SOUTH 00°39'44" WEST, 249.36 FEET TO THE NORTH RIGHT-OF-WAY LINE OF U.S. HIGHWAY NUMBER 49, THE POINT OF BEGINNING PROPER, CONTAINING 1.83 ACRES, MORE OR LESS, SUBJECT TO ALL RIGHTS-OF-WAY AND EASEMENTS OF RECORD.

OWNERS CERTIFICATION:

I HEREBY CERTIFY THAT I AM THE OWNER OF THE ABOVE DESCRIBED PROPERTY AND I HEREBY REQUEST A REZONING FROM: (R-3) MULTI-FAMILY HIGH DENSITY DISTRICT TO (C-3 LUO) GENERAL COMMERCIAL DISTRICT - LIMITED USE OVERLAY

SIGNED THIS 13TH DAY OF OCTOBER, 2011

Jim Furr *Judy Furr*
JIM FURR JUDY FURR

C-3 LUO:

LIMITED USE TO EXCLUDE:

- BILLBOARDS
- HIGH-VOLUME RETAIL USES SUCH AS CONVENIENCE STORE
- CAR WASH
- PAWN SHOP
- VEHICLE REPAIR - LIMITED
- VEHICLE REPAIR - GENERAL
- AGRICULTURE FARMERS' MARKET
- SERVICE STATION

- A. S58°47'E, 3.8' - 1 1/4" PIPE
- B. S56°45'E, 4.0' - 1 1/2" PIPE
- C. S53°36'E, 3.8' - 1 1/4" PIPE
- D. S54°31'E, 3.8' - 1 1/4" PIPE
- E. S35°02'E, 5.8' - 1 1/4" PIPE
- F. S27°11'E, 7.7' - 1 1/4" PIPE



REZONING PLAT



City of Jonesboro City Council
Staff Report – RZ 10-24: 5600 E. Johnson Jim & Judy Furr
 Huntington Building - 900 W. Monroe
For Consideration by the Council on December 6, 2011

REQUEST: To consider a rezoning of a parcel of property containing approximately 1.83 acres more or less from R-1 Single Family to C-3 L.U.O. and make recommendation to City Council.

PURPOSE: A request to consider approval the by the Metropolitan Area Planning Commission, as recommended to City Council for final action as C-3 L.U.O.

**APPLICANT/
OWNER:** Jim and Judy Furr, 1913 Santa Ines, Las Cruces, NM 88011

LOCATION: 5600 E. Johnson

SITE DESCRIPTION: Tract Size: Approx. 1.83 +/- acres, 79,714 Sq. ft. +/-
 Frontage: Approx. 336.48' ft. along Hwy. 49 N/Johnson
 Topography: Predominantly Flat
 Existing Dvlpmt: Vacant

SURROUNDING CONDITIONS:	<u>ZONE</u>	<u>LAND USE</u>
North:	R-1	Vacant
South:	R-1	Residential
East:	R-1	Vacant
West:	R-1	Residential

HISTORY: None.

ZONING ANALYSIS: City Planning Staff has reviewed the proposed Zone Change and offers the following findings.

Approval Criteria- Section 14.44.05, (5a-g) - Amendments:

The criteria for approval of a rezoning are set out below. Not all of the criteria must be given equal consideration by the planning commission or city council in reaching a decision. The criteria to be considered shall include but not be limited to the following:

- (a) Consistency of the proposal with the Comprehensive Plan
- (b) Consistency of the proposal with the purpose of the zoning ordinance.
- (c) Compatibility of the proposal with the zoning, uses and character of the surrounding area;
- (d) Suitability of the subject property for the uses to which it has been restricted without the proposed zoning map amendment;

- (e) Extent to which approval of the proposed rezoning will detrimentally affect nearby property including, but not limited to, any impact on property value, traffic, drainage, visual, odor, noise, light, vibration, hours of use/operation and any restriction to the normal and customary use of the affected property;
- (f) Length of time the subject property has remained vacant as zoned, as well as its zoning at the time of purchase by the applicant; and
- (g) Impact of the proposed development on community facilities and services, including those related to utilities, streets, drainage, parks, open space, fire, police, and emergency medical services.

COMPREHENSIVE PLAN FUTURE LAND USE MAP

The Future Land Use Map adopted on January 5, 2010 shows this area to be within the Northeast Sector and to be recommended as a Planned Mix Use Area. Consistency is achieved.

Typically PMUA is a campus-style planned development with multiple uses that are created in separate buildings or within single buildings, sharing a common image and circulation system. The Planned Mix Use Area is typically located on major arterial streets where infrastructure is pre-existing or is planned as part of a proposed development. Access management shall be a major priority; consolidated curb-cuts shall be promoted.

It is suggested that the PMUA comprise of a minimum of 10% of the total planning area to include commercial uses; maximum 25% multi-family. Green space and open space is encouraged where PMUA developments abut more restrictive districts, where buffers are necessary.



Vicinity Map/Zoning Map

Master Street Plan Review:

The proposed site is located along Hwy. 49N/Johnson Ave. which is a principal arterial on the most current Jonesboro Master Street Plan. The rezoning plat shows the compliance with the required right of ways along Highway 49N.

Findings:

With the new NEA Hospital, this area is a changing commercial corridor which includes other new retail development in the vicinity of the subject property. The request for rezoning allows for a more planned opportunity as opposed to the typical piece-meal developments brought before the commission and council in the past. With proper buffering a quality commercial development can be incorporated into this planning area.

This area will prove conducive for commercial uses along Highway 49 N. near the new hospital given the traffic volume. Traffic access management along this heavily travelled corridor should be limited as to the number and location of curb cuts along Johnson Ave. and should also be sensitive to the surrounding residential uses. A 20’ buffer should be provided and proper screening where residences abut. Landscaping and lighting plans would also be required at the final submittal.

The proposed rezoning will result in existing R-1 Single Family District requested to be zoned to C-3 L.U.O. Although the subject property abuts a single family residential, the 1.83 acre site will be required to provide a buffer and screening. The requested zoning to a limited use will provide for a listing of specifically prohibited uses as follows:

Prohibited Uses:

- Billboards
- High-Volume Retail Uses such as Convenience Store
- Carwash
- Pawn Shop
- Fast Food Restaurant
- General and Limited Vehicle Repair
- Agriculture Farmers Market
- Service Station

MAPC Record of Proceedings for Public Hearing Held on November 8, 2011:

Applicant: Applicant’s Agent: Jason Branch: HKB, Associates: We are asking for a rezoning from R-1 to C-3 LUO.

Staff: Mr. Spriggs gave the Staff Summary/comments. This area is in vicinity of the new hospital development and is changing tremendously. The land use plan does recommend Planned Mixed Use Area. Consistency is achieved with both the Land Use and the Master Street Plan. The applicant has listed a number of prohibited uses for the site. They were read into the record. Staff didn’t have a problem with some of those such as the farmer’s market. The 6 Staff recommended conditions were read.

Public Input: None.

Mr. Branch: The owners had requested that the fast-food be removed from the limited use list. Mr. Kelton asked if the sign was placed on the property. Mr. Roberts noted that he saw it.

Mr. Tomlinson asked if there is commercial zoning across Johnson. Mr. Spriggs noted the C-3 L.U.O. SE on the corner of Old Bridger.

Mr. Tomlinson asked if there is a condition regarding buffering. Mr. Spriggs noted that there is a 20 ft. buffering in the conditions.

Commission's Action:

Motion was made by Mr. Kelton to place Case: RZ-11-24 on the floor for consideration and for the recommendation to City Council for a rezoning from R-1 Single Family to C-3 L.U.O., subject to the following conditions:

1. The owner/applicant shall be restricted with the following use limitations:

Prohibited Uses:

Adult Entertainment

Off-Premise Advertisement

High-Volume Retail Uses such as Convenience Store

Carwash

Pawn Shop

General and Limited Vehicle Repair

Agriculture Farmers Market

Service Station

2. That all future site plans shall be approved by the Planning Commission with safe access easement management included on individual site plans. No new work shall commence prior to Final site Plan review and approval by the MAPC.

3. A lighting plan and landscaping plan shall be submitted to the MAPC, including a 20 ft. landscape buffer, including privacy fencing where the site abuts existing residential uses.

4. That the proposed development shall satisfy all requirements of the City Engineer, satisfying all requirements of the current Stormwater Drainage Design Manual.

5. That prior to any issuance of Certificate of Occupancy of new uses, all requirements stipulated by all City, State and Local agencies shall be satisfied.

6. That the owner shall coordinate all egress/ingress with the State Highway Dept, City Engineering Dept. and the Planning Dept.

Motion was seconded by Mr. Tomlinson.

Roll Call Vote: Mr. Dover- Aye; Mr. White- Aye; Ms. Nix- Aye; Ms. Norris- Aye; Mr. Scurlock- Aye; Mr. Kelton- Aye. Mr. Tomlinson- Aye; Mr. Roberts- Chair. Motion passed with a 6-0 Vote in favor.

Conclusion:

The MAPC and Planning Department Staff recommend the requested Zone Change as submitted by Jim & Judy Furr, Case RZ 11-24 should be approved by the City Council for rezoning from R-1 to C-3 Limited Use Overlay subject to the above conditions in the record of proceedings.

Respectfully Submitted for Council Consideration,

A handwritten signature in black ink, appearing to read "Otis T. Spriggs". The signature is fluid and cursive, with the first name being the most prominent.

Otis T. Spriggs, AICP
Planning & Zoning Director

SITE PHOTOGRAPHS



View looking Northwest along Johnson Ave.



View looking South of property frontage along Johnson Ave.



View looking North of subject property rear yard.



View looking East of subject property rear yard.



View from the site looking Northeast of abutting properties on Greenway Ln.



View Looking East of subject property frontage.



View Looking South of property adjacent from subject site.



Legislation Details (With Text)

File #: ORD-11:087 **Version:** 1 **Name:** Rezoning by Larry Brimhall, Billie Alexander, Mt. Zion Baptist Association, Mary Payton and Kenneth Smith

Type: Ordinance **Status:** Second Reading

File created: 11/10/2011 **In control:** City Council

On agenda: **Final action:**

Title: AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE OF THE CITY OF JONESBORO, ARKANSAS, PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-3 TO C-3 LUO FOR PROPERTY LOCATED AT 2100 AND 2124 STADIUM BLVD AND 3010, 3012 AND 3014 SUN AVENUE AS REQUESTED BY LARRY BRIMHALL, BILLIE ALEXANDER, MT. ZION BAPTIST ASSOCIATION, MARY PAYTON AND KENNETH SMITH

Sponsors:

Indexes: Rezoning

Code sections:

Attachments: [Plat](#)
[MAPC Report](#)

Date	Ver.	Action By	Action	Result
12/6/2011	1	City Council		

title
 AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE OF THE CITY OF JONESBORO, ARKANSAS, PROVIDING FOR CHANGES IN ZONING BOUNDARIES
 body
 BE IT ORDAINED BY THE CITY COUNCIL OF JONESBORO, ARKANSAS:

SECTION I: CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE OF THE CITY OF JONESBORO, ARKANSAS BE AMENDED AS RECOMMENDED BY THE METROPOLITAN AREA PLANNING COMMISSION BY THE CHANGES IN ZONING CLASSIFICATION AS FOLLOWS:

FROM R-3 MULTI FAMILY HIGH DENSITY DISTRICT TO (C-3 LU-O) GENERAL COMMERCIAL DISTRICT - LIMITED USE OVERLAY, THE FOLLOWING DESCRIBED PROPERTY:

LOTS 13, 14, 15, 34 AND 35 OF ALLEN SUBDIVISION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 14 NORTH, RANGE 4 EAST AND LOT 16 OF PAYTON SUBDIVISION OF LOTS 16, 17, 30, 31, 32, 33, 34 AND 35 OF ALLEN SUBDIVISION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 14 NORTH, RANGE 4 EAST, JONESBORO, CRAIGHEAD COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 34 OF ALLEN SUBDIVISION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 14 NORTH, RANGE 4 EAST, JONESBORO, CRAIGHEAD COUNTY, ARKANSAS; THENCE SOUTH 00°33'22" WEST, 150.31 FEET; THENCE NORTH 89°54'33" EAST, 300.00 FEET; THENCE SOUTH 00°21'02" WEST, 151.03 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SUN

AVENUE; THENCE SOUTH 89°54'33" WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 500.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NUMBER 49, STADIUM BOULEVARD; THENCE NORTH 00°27'11" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, 301.34 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF DAYTON AVENUE; THENCE NORTH 89°54'33" EAST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, 200.00 FEET TO THE POINT OF BEGINNING, CONTAIN 2.42 ACRES, MORE OR LESS, SUBJECT TO ALL RIGHTS-OF-WAY AND EASEMENTS OF RECORD.

SECTION II: Conditions:

1. THE REQUESTED ZONING TO A LIMITED USE INCLUDES SPECIFICALLY PROHIBITED AND CONDITIONAL USES AS FOLLOWS:

PROHIBITED:

ADULT ENTERTAINMENT
OFF-PREMISE ADVERTISEMENT
BILLBOARDS
COMMUNICATION TOWER
FUNERAL HOME
NURSING HOME
WAREHOUSE, RESIDENTIAL (MINI) STORAGE
DAYCARE, LIMITED (FAMILY HOME)
CEMETERY

THE FOLLOWING USES SHALL BE ALLOWED ONLY AS A CONDITIONAL USE APPLICATION APPROVAL BY

MAPC:

CARWASH
SERVICE STATION
FAST FOOD RESTAURANT
PAWN SHOP
GAS STATION
GENERAL DAYCARE
VEHICLE REPAIR-LIMITED
VEHICLE REPAIR-GENERAL

2. THAT ALL FUTURE SITE PLANS SHALL BE APPROVED BY THE PLANNING COMMISSION WITH SAFE ACCESS EASEMENT MANAGEMENT INCLUDED ON INDIVIDUAL SITE PLANS. NO NEW WORK SHALL COMMENCE PRIOR TO FINAL SITE PLAN REVIEW AND APPROVAL BY THE MAPC.

3. A LIGHTING PLAN AND LANDSCAPING PLAN SHALL BE SUBMITTED TO THE MAPC, INCLUDING A 20 FT. LANDSCAPE BUFFER, INCLUDING PRIVACY FENCING WHERE THE SITE ABUTS EXISTING RESIDENTIAL USES; TO BE EVALUATED BY THE MAPC DURING THE TIME REDEVELOPMENT OCCURS.

4. THAT THE PROPOSED DEVELOPMENT SHALL SATISFY ALL REQUIREMENTS OF THE CITY ENGINEER, SATISFYING ALL REQUIREMENTS OF THE CURRENT STORMWATER DRAINAGE DESIGN MANUAL.

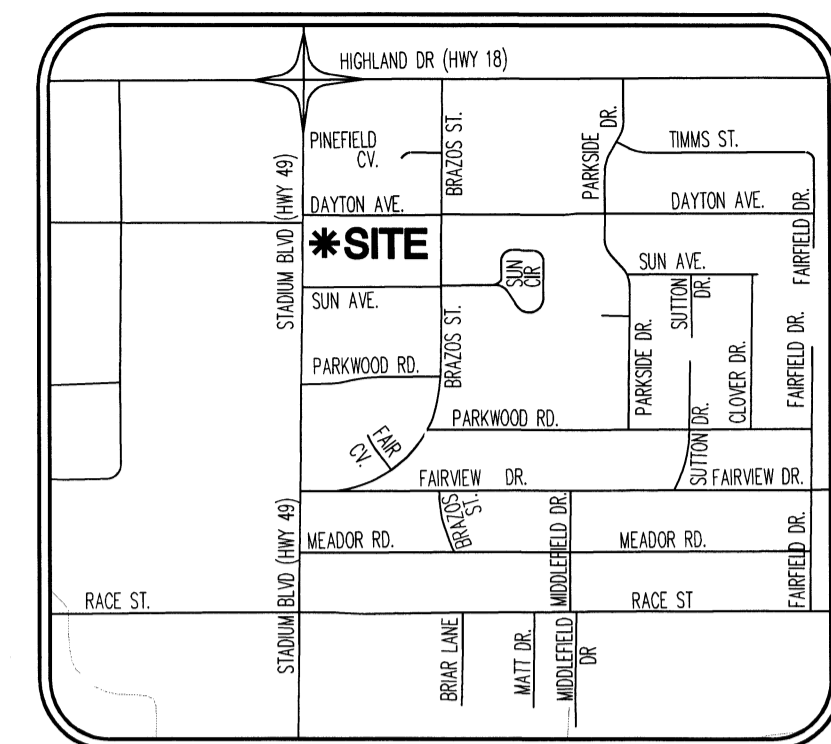
5. THAT PRIOR TO ANY ISSUANCE OF CERTIFICATE OF OCCUPANCY OF NEW USES, ALL REQUIREMENTS STIPULATED BY ALL CITY, STATE AND LOCAL AGENCIES SHALL BE SATISFIED.

6. THAT THE OWNER SHALL COORDINATE ALL EGRESS/INGRESS, AGREE TO THE STANDARDS WITH THE STATE HIGHWAY DEPT, CITY ENGINEERING DEPT. AND THE PLANNING DEPARTMENT.

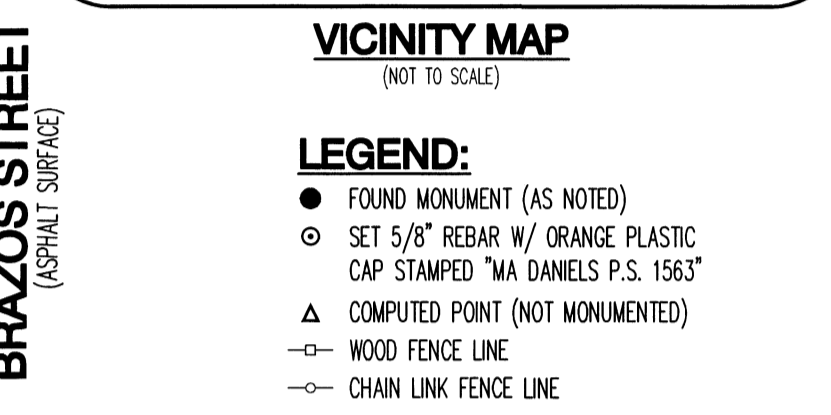
SECTION III: THE CITY CLERK IS HEREBY DIRECTED TO AMEND THE OFFICIAL ZONING DISTRICT BOUNDARY MAP OF THE CITY OF JONESBORO, ARKANSAS, INsofar AS IT RELATES TO THE LANDS DESCRIBED HEREINABOVE SO THAT THE ZONING CLASSIFICATION OF SAID LANDS SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF THIS ORDINANCE.

REZONING PLAT

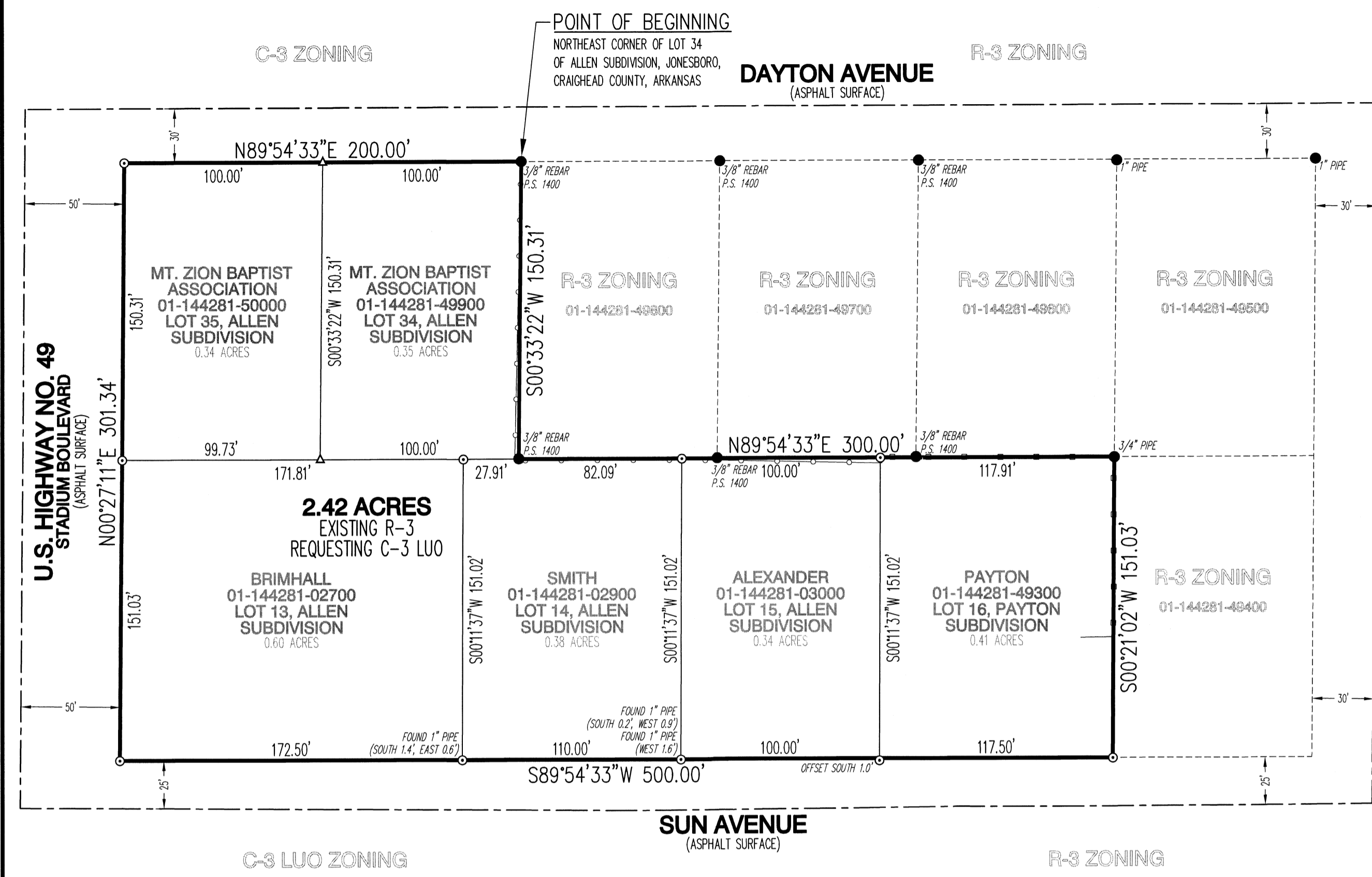
Haywood, Kenward, Bare AND ASSOCIATES, INC.
 Civil Engineering, Surveying & Planning Services
 1801 Latourette Drive, Jonesboro, AR, 72404
 TEL: 870-932-2019 FAX: 870-932-1076



BASIS OF BEARING: ARKANSAS STATE PLANE GRID NORTH ZONE (0301)
 LAT: 35°49'00.80016" N; LONG: 90°40'07.91459" W
 CON: 0.77458820; CAF: 0.99993597



- C-3 LUO:**
 LIMITED USE TO EXCLUDE:
- ADULT ENTERTAINMENT
 - OFF-PREMISES ADVERTISEMENT
 - COMMUNICATION TOWER
 - FUNERAL HOME
 - NURSING HOME
 - WAREHOUSE, RESIDENTIAL (MINI) STORAGE
 - DAYCARE, LIMITED (FAMILY HOME)
 - CEMETERY
- THE FOLLOWING LIMITED USES SHALL BE ALLOWED ONLY BY CONDITIONAL USE APPLICATION / APPROVAL BY THE MAPC:
- CARWASH
 - SERVICE STATION
 - RESTAURANT, FAST FOOD
 - PAWN SHOP
 - GAS STATION
 - DAYCARE, GENERAL
 - VEHICLE REPAIR - LIMITED
 - VEHICLE REPAIR - GENERAL



CERTIFICATE OF SURVEY:
 THIS IS TO CERTIFY THAT HAYWOOD, KENWARD, BARE AND ASSOCIATES INC., PROFESSIONAL LAND SURVEYORS, HAVE SURVEYED THE FOLLOWING PARCELS OF LAND:

LOTS 13, 14, 15, 34 AND 35 OF ALLEN SUBDIVISION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 14 NORTH, RANGE 4 EAST AND LOT 16 OF PAYTON SUBDIVISION OF LOTS 16, 17, 30, 31, 32, 33, 34 AND 35 OF ALLEN SUBDIVISION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 14 NORTH, RANGE 4 EAST, JONESBORO, CRAIGHEAD COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 34 OF ALLEN SUBDIVISION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 14 NORTH, RANGE 4 EAST, JONESBORO, CRAIGHEAD COUNTY, ARKANSAS; THENCE SOUTH 00°33'22" WEST, 150.31 FEET; THENCE NORTH 89°54'33" EAST, 300.00 FEET; THENCE SOUTH 00°21'02" WEST, 151.03 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SUN AVENUE; THENCE SOUTH 89°54'33" WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 500.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NUMBER 49, STADIUM BOULEVARD; THENCE NORTH 00°27'11" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, 301.34 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF DAYTON AVENUE; THENCE NORTH 89°54'33" EAST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, 200.00 FEET TO THE POINT OF BEGINNING, CONTAIN 2.42 ACRES, MORE OR LESS, SUBJECT TO ALL RIGHTS-OF-WAY AND EASEMENTS OF RECORD.

SURVEYOR'S NOTES:

1. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD OR ANY OTHER FACTS WHICH AN ACCURATE TITLE SEARCH MAY DISCLOSE.
2. BASIS OF BEARINGS: ARKANSAS STATE PLANE GRID NORTH ZONE (0301)
3. THE FOLLOWING DOCUMENTS WERE USED IN THE CONSTRUCTION OF THIS SURVEY:
 - RECORD PLAT, ALLEN SUBDIVISION, RECORDED IN BOOK 123, PAGE 74, DATED JUNE 5, 1959.
 - RECORD PLAT, PAYTON SUBDIVISION, RECORDED IN BOOK 123, PAGE 218, DATED AUGUST 14, 1964.
4. THE SUBJECT PROPERTY LIES OUTSIDE THE 100-YEAR SPECIAL FLOOD HAZARD, AS SHOWN ON FEMA FLOOD INSURANCE RATE MAP PANEL NO. 05031C0132C, EFFECTIVE DATE JUNE 25, 2007.
5. SUBJECT PROPERTY IS ZONED C-3 LUO, GENERAL COMMERCIAL DISTRICT LIMITED USE OVERLAY.
6. FIELD NOTES ARE RECORDED IN HKB FIELD BOOK 1133, PAGES 13-14.
7. FIELD WORK WAS COMPLETED ON SEPTEMBER 20, 2011.

OWNERS CERTIFICATION:
 I HEREBY CERTIFY THAT I AM THE OWNER OF THE ABOVE DESCRIBED PROPERTY AND I HEREBY REQUEST A REZONING FROM:
(R-3) MULTI-FAMILY HIGH DENSITY DISTRICT TO (C-3 LUO) GENERAL COMMERCIAL DISTRICT - LIMITED USE OVERLAY

SIGNED THIS 14th DAY OF OCTOBER, 2011

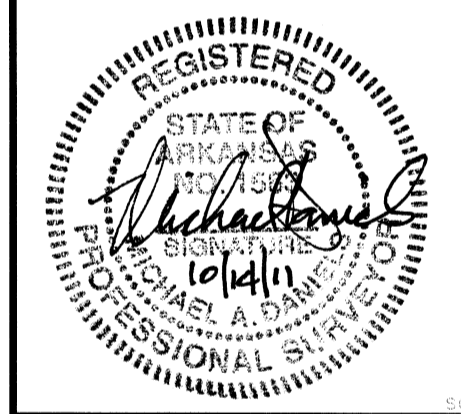
Larry Brimhall
 LARRY BRIMHALL

Kenneth & Janice L. Smith
 KENNETH & JANICE L. SMITH

Billie D. Alexander
 BILLIE D. ALEXANDER

Mary Payton
 MARY PAYTON

Ed Gilliam
 MT. ZION BAPTIST ASSOCIATION



MICHAEL A. DANIELS - SURVEYOR
 ARKANSAS - 1563



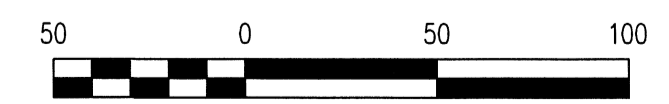
Haywood, Kenward, Bare, and Associates, Inc
 ARKANSAS - 234

CLIENT:
 LARRY BRIMHALL

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REVISIONS		
DATE	BY	DESCRIPTION

PROJECT NO. B053-0001-12	
DRAWN BY JJN	CHECKED BY MAD
SHEET 1 OF 1	SCALE 1"=50'
DATE 10/14/11	DRAWING NO. 57-358



REZONING PLAT



City of Jonesboro City Council
Staff Report – RZ 11-23: Brimhall/Payton/Smith/Mt. Zion Baptist Association
Rezoning- 2100, 2124 Stadium Blvd. /3010, 3012, 3014 Sun Ave.
Huntington Building - 900 W. Monroe
For Consideration by the Council on December 6, 2011

REQUEST: To consider a rezoning of a parcel of property containing approximately 2.42 acres more or less as from R-1 Single Family District to C-3 L.U.O. make recommendation to City Council.

PURPOSE: A request to consider the approval by the Metropolitan Area Planning Commission, as recommended to City Council for final action as C-3 L.U.O. Commercial district.

APPLICANT: Larry Brimhall, Billie D. Alexander, Mt. Zion Baptist Association, Mary Payton, and Kenneth M. Smith (See Application for more information).

OWNER: SAME AS ABOVE

LOCATION: 2100, 2124 Stadium Blvd. & 3010, 3012, 3014 Sun Ave.

SITE DESCRIPTION: Tract Size: Approx. 2.42 +/- acres,
 Frontage: Approx. 500' on Sun Ave., 301.34' on Stadium
 200' Dayton Ave.
 Topography: Predominantly Flat
 Existing Dvlpmt: Residential

SURROUNDING CONDITIONS:	<u>ZONE</u>	<u>LAND USE</u>
North:	C-3/R-3 Multi-Family	Commercial/Multi-fam. Res.
South:	C-3 L.U.O., R-3 Multi-Family	Commercial, Residential
East:	R-3 Multi-Family	Single Family Residential
West:	C-3	Old Fairgrounds/Redevelopment

HISTORY: None

ZONING ANALYSIS: City Planning Staff has reviewed the proposed Zone Change and offers the following findings.

Approval Criteria- Section 14.44.05, (5a-g)- Amendments:

The criteria for approval of a rezoning are set out below. Not all of the criteria must be given equal consideration by the planning commission or city council in reaching a decision. The criteria to be considered shall include but not be limited to the following:

- (a) Consistency of the proposal with the Comprehensive Plan
- (b) Consistency of the proposal with the purpose of the zoning ordinance.

- (c) Compatibility of the proposal with the zoning, uses and character of the surrounding area;
- (d) Suitability of the subject property for the uses to which it has been restricted without the proposed zoning map amendment;
- (e) Extent to which approval of the proposed rezoning will detrimentally affect nearby property including, but not limited to, any impact on property value, traffic, drainage, visual, odor, noise, light, vibration, hours of use/operation and any restriction to the normal and customary use of the affected property;
- (f) Length of time the subject property has remained vacant as zoned, as well as its zoning at the time of purchase by the applicant; and
- (g) Impact of the proposed development on community facilities and services, including those related to utilities, streets, drainage, parks, open space, fire, police, and emergency medical services.

COMPREHENSIVE PLAN FUTURE LAND USE MAP

The Future Land Use Map adopted on January 5, 2010 shows this area to be within the Northeast Sector and to be recommended as a Planned Mix Use Area. Consistency is achieved.

Typically PMUA is a campus-style planned development with multiple uses that are created in separate buildings or within single buildings, sharing a common image and circulation system. The Planned Mix Use Area is typically located on major arterial streets where infrastructure is pre-existing or is planned as part of a proposed development. Access management shall be a major priority; consolidated curb-cuts shall be promoted.

It is suggested that the PMUA compromise of a minimum of 10% of the total planning area to include commercial uses; maximum 25% multi-family. Green space and open space is encouraged where PMUA developments abut more restrictive districts, where buffers are necessary.



Vicinity Map- Zoning Map

Master Street Plan Review:

The proposed site is located along Stadium Blvd. /Hwy. 49 which is a principal arterial on the most current Jonesboro Master Street Plan. The rezoning plat depicts a 50' R.O.W. which lacks the requirement for a Principle Arterial (total 120'), the minimum is 60'. Sun Ave. is a local collector which requires 60' total, depicted as 25' and the requirement is 30'.

Findings:

With the new mall development, this area abuts a changing commercial corridor which includes other new retail development just north, west and south of the subject property. The request for rezoning allows for a more planned opportunity as opposed to the typical piece-meal developments brought before the commission and council in the past. With proper buffering a quality commercial development can be incorporated into this planning area.

This area will prove conducive for commercial uses along Stadium Drive north and south of the mall given the traffic volume. Traffic access management along this heavily travelled corridor should be limited on the number of curb cuts along Stadium Blvd. and should also be mindful of the surrounding subdivision. A 20' buffer should be provided and proper screening where residences abut. Landscaping and lighting plan would also be required at the final submittal.

The proposed rezoning will result in existing R-3 Single Family District requested to be zoned to C-3 L.U.O. Although the subject property abuts a single family residential subdivision, the 2.42-acre site will be required to provide a buffer and screening. The requested zoning to a limited use includes specifically prohibited and conditional uses as follows:

Prohibited:

- Adult Entertainment
- Off-Premise Advertisement
- Billboards
- Communication tower
- Funeral Home
- Nursing Home
- Warehouse, Residential (Mini) Storage
- Daycare, Limited (Family Home)
- Cemetery

The following uses shall be allowed only as a Conditional Use application approval by MAPC:

- Carwash
- Service Station
- Fast Food Restaurant
- Pawn Shop
- Gas Station
- General Daycare
- Vehicle Repair-Limited
- Vehicle Repair-General

MAPC Record of Proceedings for Public Hearing Held on November 8, 2011:

Applicant: Applicant's Agent: Michael Daniels, HKB Associates: Appeared before the commission and noted that he will answer any questions. He is requesting a change from existing R-3 to C-3 LUO.

Staff: Mr. Otis Spriggs presented the findings of the Staff Report noting consistency is achieved with the Master Land Use Plan which recommends that this land be used as Planned Mixed-Use types of developments in the future. This provides for a mixture of office, retail, and housing.

The Master Street Plan is complied with which recommends Stadium Dr. as a Principle Arterial, except for Sun Avenue which recommends a local street with a 60 ft. right of way. The plat does not show compliance (25 ft. ROW noted). Five (5) feet is needed.

The applicant has proposed a list of prohibited uses and conditional uses under the limited use overlay request. The list was referred to. Staff has no major problems with that list with the exception of the fast-food restaurant which caused a vast amount of confusion with the previous Panera Bread case. Staff recommends that the Commission move with caution with those restricted uses.

We feel confident that when the site plan is reviewed by the MAPC at a later time, the uses can be dealt with on an individual basis to weigh impact on abutting residential properties that remain. We notice that with the 20 ft. buffer recommended, it may need to be relaxed as requirement in unique situations where it may not be needed. The applicant will testify to that.

The uses listed can be modified, added to or deleted by the MAPC in your recommended motion to City Council. Mr. Spriggs read the 6 conditions by Staff.

Mr. Spriggs: Noted that the Planning and Engineering Departmental staff had concerns with the proliferation of driveways along Stadium Dr. and recommended that the MAPC considered restricting access driveways on/off the side streets (Sun Ave./Dayton Dr. only).

Mr. Daniels: This lot isn't going to be sold as whole. These are a group of property owners that went in together on the rezoning. I can't state in confidence they will be sold together. On the northern two lots- are you saying access off of Dayton Dr.; I need to consult with my client.

Mr. Spriggs suggested that we need to look at access management as a whole; the lots need to be coordinated as a larger scale development and not done piecemeal as it relates to Stadium Blvd.

Mr. Spriggs asked the Applicant to speak to the right of way request. Mr. Daniels noted that he is not willing to give extra right of way unless it is needed in the future. In the design phase we can plan for that accordingly.

Mr. Spriggs: Do you know that as required by the Master Street Plan, that through the subdivision platting process we recommend that the right of way requirements are adhered to? But, you are not willing to comply with the Master Street Plan?

Mr. Daniels: We are willing to, but we are not willing to give it away right now. It is an existing street we are not creating any additional burden with the rezoning. In the design phase we can plan for the additional right of way taking but the City can purchase the right of way.

Mr. Tomlinson: I am concerned about the right of way requirements of the Master Street Plan. We are dedicated to enforcing the Master Street Plan. I think that should be taken care of by the developer.

Mr. Daniels: At this time we are not platting or designing we are just asking for rezoning.

Mr. Tomlinson: That ends up as part of the rezoning process and the enforcement of the MSP as we deal with property.

Mr. Daniels: At this time we are not willing to give the right of way.

Mr. Tomlinson: Well I will not be ready to approve it.

Mr. Daniels: Is that a stipulation?

Mr. Spriggs: It is not a stipulation. We are not requiring it. We are asking for consideration of it.

Mr. Tomlinson: I believe this was done in the rezonings in the vicinity of this.

Mr. Spriggs: The developer agreed to take care of that.

Mr. Spriggs: We are not asking for donation of the R.O.W. at this time, however we are asking for some form of commitment. Then it would be handled during the platting process.

If this is information that you need to coordinate this with your client, then you may want to ask that it be tabled until you can verify that. I am just providing options.

Public Input: None.

Mr. Scurlock: Can we just make it subject to the condition that if the extra five (5) feet is appropriate.

Mr. Roberts: I think we can address it during the site plan approval. Mr. Spriggs noted that during the site plan approval the MAPC has the liberty to consider base upon individual requests per lots.

Commission's Action:

Mr. Scurlock made a motion to approve the rezoning subject to an MAPC site plan review being required and we will address the right of way easements at that time subject to the recommended staff conditions; Seconded by Mr. Kelton. Mr. Spriggs asked for clarifications on the conditions (prohibited list).

Mr. Daniels added that there was a concern on the fast-food restaurant condition. MAPC may remove that if you would like, because either way it will come back. We are ok with the way it is. Mr. Scurlock we may as well leave it the way it is. Mr. Daniels asked about the 20 ft. buffer which may cause a hardship on the smaller lots. Just as long as we can review them on an individual basis. Mr. White asked if the stipulations of Staff were included in the motion? Mr. Scurlock concurred.

Conditions:

1. The requested zoning to a limited use includes specifically prohibited and conditional uses as follows:

Prohibited:

Adult Entertainment
Off-Premise Advertisement
Billboards
Communication tower
Funeral Home
Nursing Home
Warehouse, Residential (Mini) Storage
Daycare, Limited (Family Home)
Cemetery

The following uses shall be allowed only as a Conditional Use application approval by

MAPC:

Carwash
Service Station
Fast Food Restaurant
Pawn Shop
Gas Station
General Daycare
Vehicle Repair-Limited
Vehicle Repair-General

2. That all future site plans shall be approved by the Planning Commission with safe access easement management included on individual site plans. No new work shall commence prior to Final site Plan review and approval by the MAPC.
3. A lighting plan and landscaping plan shall be submitted to the MAPC, including a 20 ft. landscape buffer, including privacy fencing where the site abuts existing residential uses; to be evaluated by the MAPC during the time redevelopment occurs.
4. That the proposed development shall satisfy all requirements of the City Engineer, satisfying all requirements of the current Stormwater Drainage Design Manual.
5. That prior to any issuance of Certificate of Occupancy of new uses, all requirements stipulated by all City, State and Local agencies shall be satisfied.
6. That the owner shall coordinate all egress/ingress, agree to the standards with the State Highway Dept, City Engineering Dept. and the Planning Dept.

Roll Call Vote: Mr. Dover- Aye; Mr. White- Aye; Ms. Nix- Aye; Ms. Norris- Aye; Mr. Scurlock- Aye; Mr. Kelton- Aye. Mr. Tomlinson- Aye; Mr. Roberts- Chair. Motion passed with a 6-0 Vote in favor.

Conclusion:

The MAPC and Planning Department Staff recommend the requested Zone Change to City Council submitted by Larry Brimhall and Others, RZ 11-23 should be approved from R-3 Multi-Family to C-3 Limited Use Overlay with the above stipulations included in the Record of Proceedings.

Respectfully Submitted for Council Consideration,

Otis T. Spriggs, AICP
Planning & Zoning Director

SITE PHOTOGRAPHS



View looking West along Sun Ave.



View looking North of one the sites along Sun Ave.



View looking North of one the sites along Sun Ave.



View looking East of the sites along Sun Ave.



View of the site looking to the west from Sun Ave./Stadium Blvd.



View of the site looking to the north from Sun Ave./Stadium Blvd.



View looking East of the sites along Stadium Blvd.



View looking South of the sites along Dayton Ave.



Legislation Details (With Text)

File #: ORD-11:091 **Version:** 1 **Name:** Rezoning by Phillips Investments
Type: Ordinance **Status:** Second Reading
File created: 12/7/2011 **In control:** City Council
On agenda: **Final action:**
Title: AN ORDINANCE TO AMEND CHAPTER 117, ARTICLE III, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-1 TO C-3 FOR PROPERTY LOCATED AT 1709 AIRPORT ROAD AS REQUESTED BY PHILLIPS INVESTMENTS
Sponsors:
Indexes: Rezoning
Code sections:
Attachments: [Plat](#)
[Layout](#)
[Concept Plan](#)
[MAPC Report](#)

Date	Ver.	Action By	Action	Result
12/6/2011	1	City Council		

title
AN ORDINANCE TO AMEND CHAPTER 117, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES.

body
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS:

SECTION 1: CHAPTER 117, KNOWN AS THE ZONING ORDINANCE OF THE CITY OF JONESBORO, ARKANSAS, BE AMENDED AS RECOMMENDED BY THE METROPOLITAN AREA PLANNING COMMISSION BY THE CHANGES IN ZONING CLASSIFICATIONS AS FOLLOWS:

From Residential, R-1, To C-3 GENERAL COMMERCIAL, THE FOLLOWING DESCRIBED PROPERTY:

LEGAL DESCRIPTION:

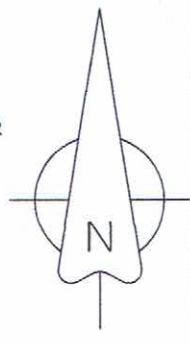
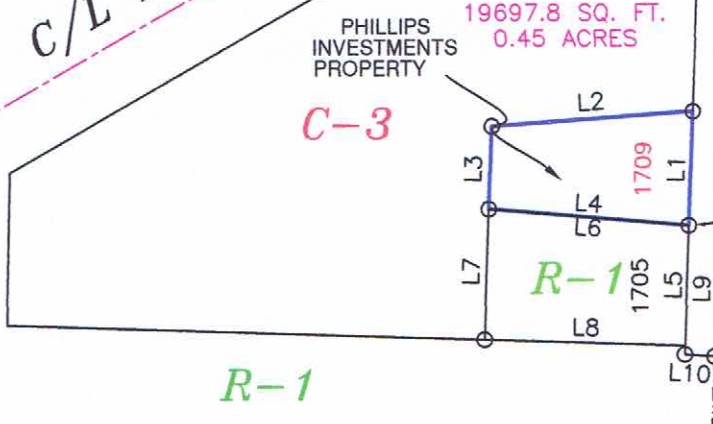
A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 14 NORTH, RANGE 4 EAST, CRAIGHEAD COUNTY, ARKANSAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT 1

Commencing at the center of said Section 10; thence North 2°00'00" East 637.00 feet; thence North 86°08'00" West 30.00 feet; thence North 2°00'00" East 128.5 feet; to the point of beginning proper; thence continue North 2°00'00" East 114.10 feet; thence South 85°53'00" West 201.11 feet; thence South 02°01'07" West 82.90 feet; thence South 85°12'10" East 200.23 feet; to the point of beginning proper, having an area of 19697.81 square feet, 0.45 acres more or less.

LINE	BEARING	DISTANCE
L1	N 02°00'00" E	114.10'
L2	S 85°53'00" W	201.11'
L3	S 02°01'07" W	82.90'
L4	S 85°12'10" E	200.23'
L5	N 02°00'00" E	119.57'
L6	N 85°12'10" W	200.23'
L7	S 01°49'25" W	129.96'
L8	S 88°10'35" E	199.59'
L9	N 02°00'00" E	128.50'
L10	N 86°08'00" W	30.00'

C-3
C/L HIGHWAY No. 49

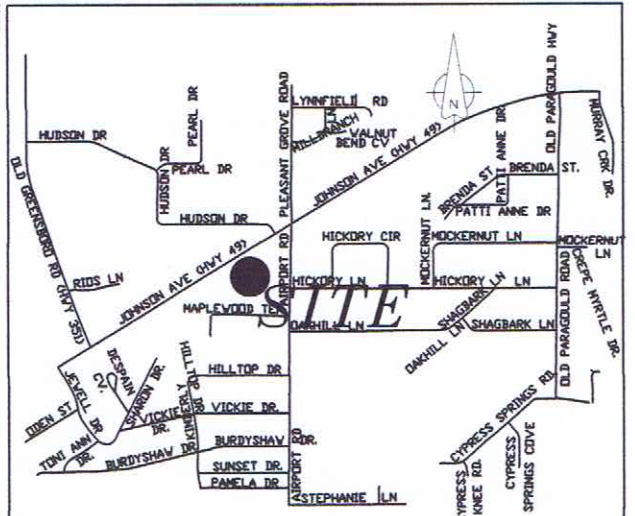


DESCRIPTION:
A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 14 NORTH, RANGE 4 EAST, CRAIGHEAD COUNTY, ARKANSAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing at the Center of said Section 10, thence North 2°00'00" East 637.00 feet; thence North 86°08'00" West 30.00 feet; thence North 2°00'00" East 128.5 feet; to the point of beginning proper; thence continue North 02°00'00" East 114.10 feet; thence South 85°53'00" West 201.11 feet; thence South 02°01'07" West 82.90 feet; thence South 85°12'10" East 200.23 feet; to the point of beginning proper, having an area of 19697.81 square feet, 0.45 acres more or less

OWNER CERTIFICATION:
WE HEREBY CERTIFY THAT WE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT WE REQUEST THE ZONING CHANGES AS NOTED HEREON.

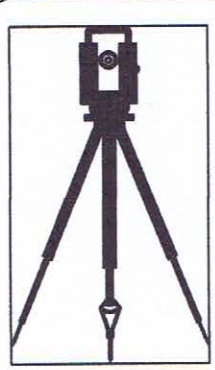
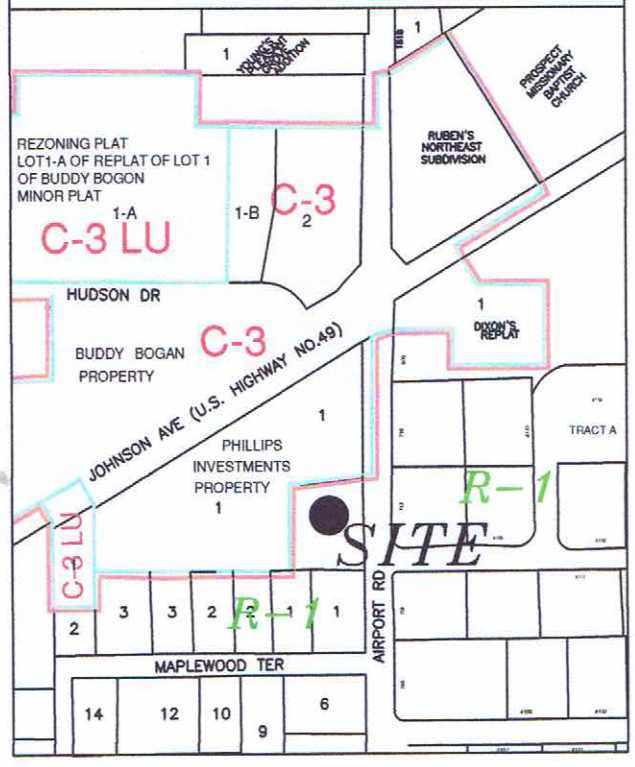
N 02°00'00" E 637.00'
CENTER OF SECTION T14N, R4E



VICINITY MAP

SURVEYOR'S CERTIFICATION:
THIS IS TO CERTIFY I HAVE ON THIS DATE SURVEYED THE ABOVE DESCRIBED PROPERTY IN ACCORDANCE WITH MONUMENTS FOUND AND THIS PLAT CONFORMS TO THAT SURVEYED.

H&S HIME PROFESSIONAL SURVEYING SERVICES
POB No. 353
BROOKLAND, ARKANSAS 72417

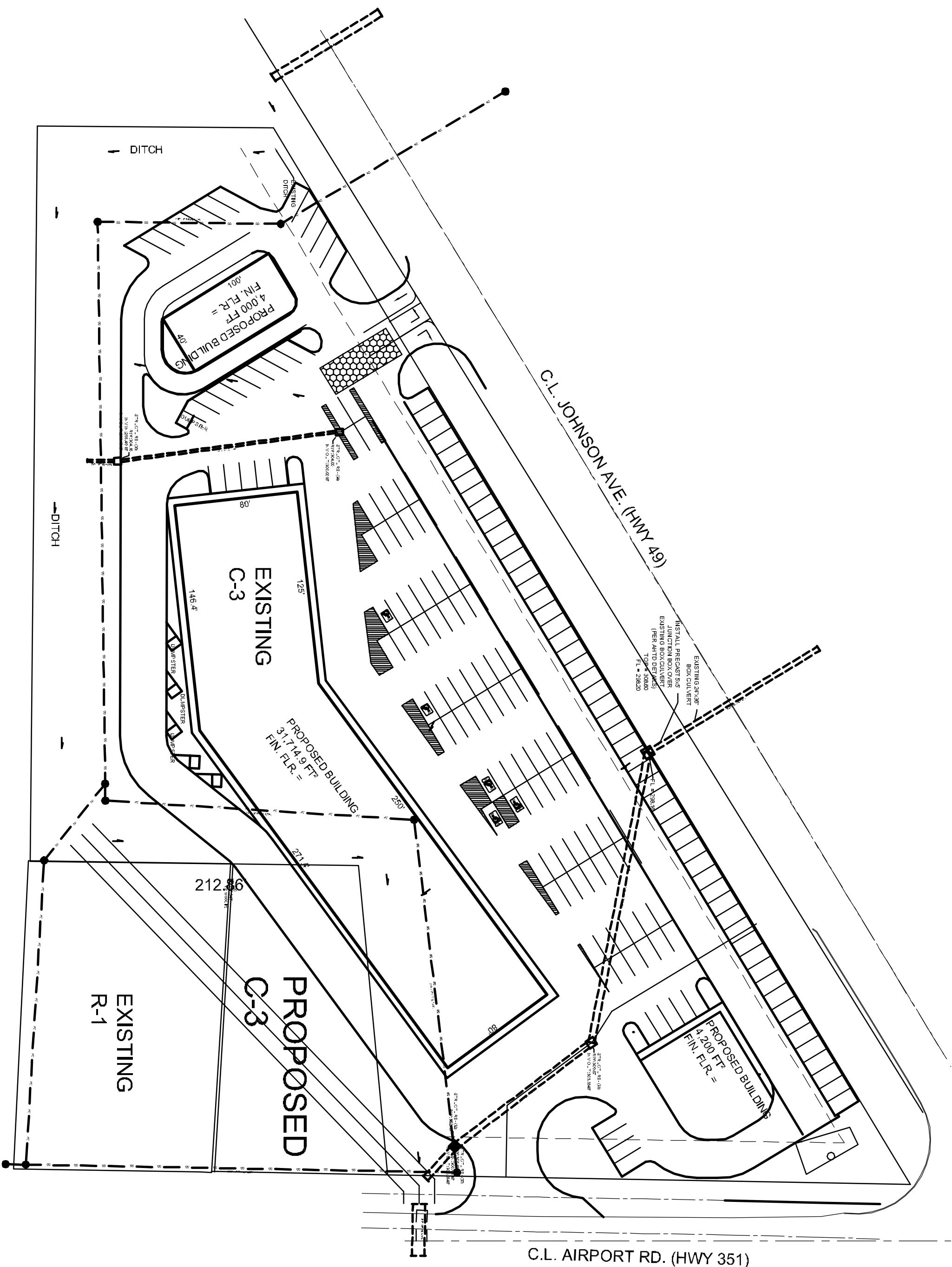


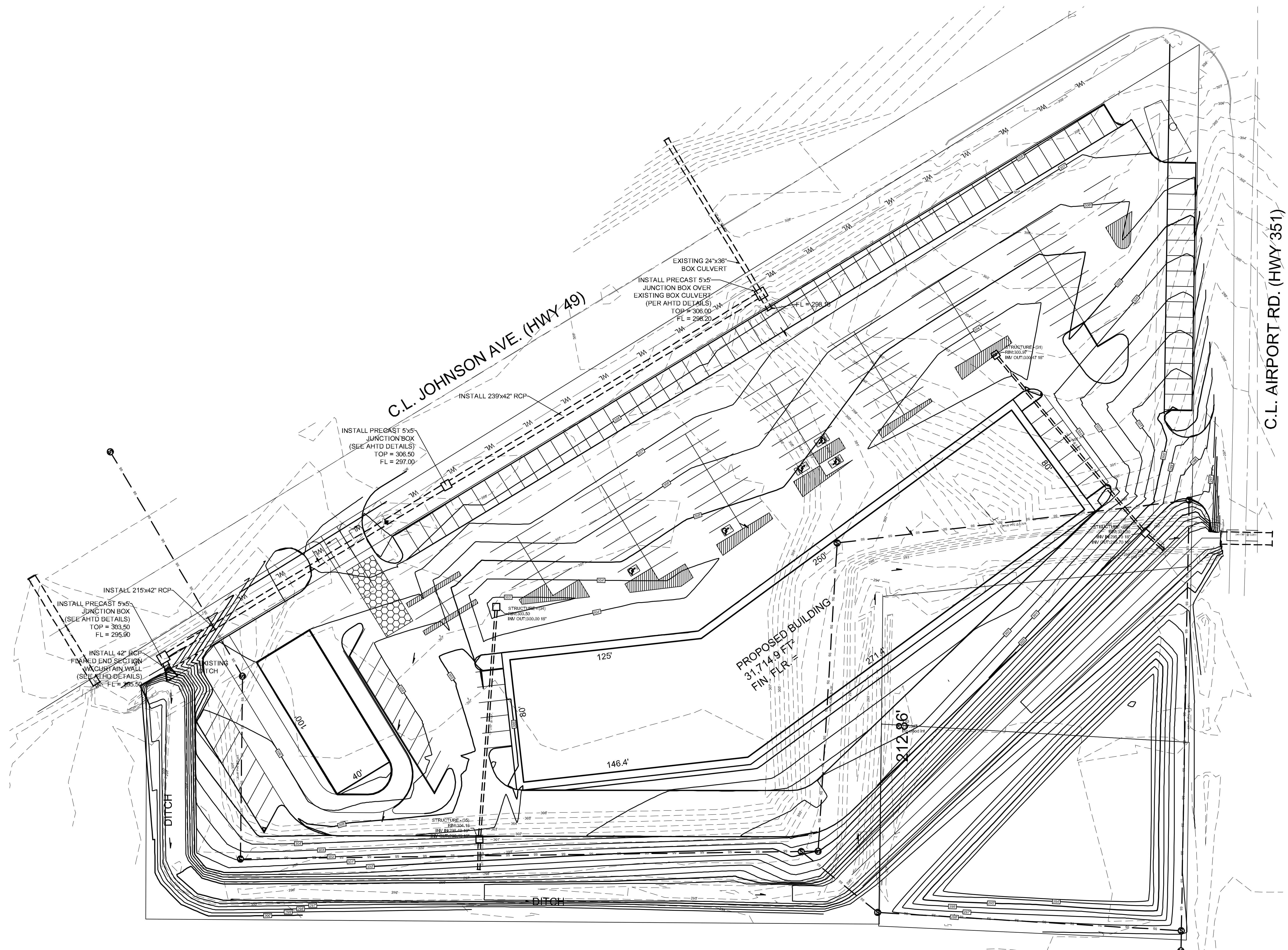
H&S Hime Professional Surveying Services
POB No. 353
BROOKLAND, ARKANSAS 72417

PHONE: 870 972 1288
FAX: 870 972 1011
E-MAIL: hshime_butch@yahoo.com

REZONING PLAT

drawn by: HH	R-1 EXISTING C-3 REQUESTED
date: 10-16-2011	
scale: 1"=200'	client: PHILLIPS INVESTMENTS





C.L. JOHNSON AVE. (HWY 49)

C.L. AIRPORT RD. (HWY 351)

PROPOSED BUILDING
31,714.9 FT²
FIN. FLR =

INSTALL 215"x42" RCP
INSTALL PRECAST 5x5 JUNCTION BOX (SEE AHTD DETAILS) TOP = 303.50 FL = 295.90
INSTALL 42" RCP FLARED END SECTION W/ CURTAIN WALL (SEE AHTD DETAILS) FL = 295.50

INSTALL PRECAST 5x5 JUNCTION BOX (SEE AHTD DETAILS) TOP = 306.50 FL = 297.00

EXISTING 24"x36" BOX CULVERT
INSTALL PRECAST 5x5 JUNCTION BOX OVER EXISTING BOX CULVERT (PER AHTD DETAILS) TOP = 306.00 FL = 296.20

INSTALL 239"x42" RCP

DITCH

DITCH

STRUCTURE = (034)
FIN. FLR = 294.16
INV. CUP = 292.40-292.40

STRUCTURE = (034)
FIN. FLR = 293.50
INV. CUP = 290.00-290.18

STRUCTURE = (031)
FIN. FLR = 292.37
INV. CUP = 287.47-287.48

EXISTING DITCH

125'

146.4'

212.86'

250'

271.4'

100'

40'

80'

5'

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City of Jonesboro City Council
Staff Report – RZ 11-25: Phillips Investments- Airport Rd.
Huntington Building - 900 W. Monroe
For Consideration by the Council on November 15, 2011

REQUEST: To consider a rezoning of a parcel of property containing approximately 1.02 acres more or less from R-1 Single Family Residential to C-3 General Commercial and make recommendation to City Council.

PURPOSE: A request to consider approval by the Metropolitan Area Planning Commission, as recommended to City Council for final action as C-3- General Commercial.

APPLICANT/ OWNER: Phillips Investments & Construction, Inc., P.O. Box 19298, Jonesboro AR

LOCATION: 1705/1709 Airport Rd., Jonesboro, AR (Corner of E. Johnson Ave. /Hwy. 49N)

SITE DESCRIPTION: Tract Size: Approx. 1.02 +/- acres, 44,624 Sq. ft. +/-
 Frontage: Approx. 234 ft. along Airport Rd.
 Topography: Predominantly Flat.
 Existing Development. 2 single family homes surrounded by vacant commercial.

SURROUNDING CONDITIONS:	<u>ZONE</u>	<u>LAND USE</u>
North:	C-3	Commercial
South:	R-1	Residential
East:	R-1	Residential
West:	C-3	Commercial

HISTORY: None.

ZONING ANALYSIS: City Planning Staff has reviewed the proposed Zone Change and offers the following findings.

Approval Criteria- Section 117-34- Amendments:

The criteria for approval of a rezoning are set out below. Not all of the criteria must be given equal consideration by the planning commission or city council in reaching a decision. The criteria to be considered shall include but not be limited to the following:

- (a) Consistency of the proposal with the Comprehensive Plan
- (b) Consistency of the proposal with the purpose of the zoning ordinance.
- (c) Compatibility of the proposal with the zoning, uses and character of the surrounding area;
- (d) Suitability of the subject property for the uses to which it has been restricted without the proposed zoning map amendment;

- (e) Extent to which approval of the proposed rezoning will detrimentally affect nearby property including, but not limited to, any impact on property value, traffic, drainage, visual, odor, noise, light, vibration, hours of use/operation and any restriction to the normal and customary use of the affected property;
- (f) Length of time the subject property has remained vacant as zoned, as well as its zoning at the time of purchase by the applicant; and
- (g) Impact of the proposed development on community facilities and services, including those related to utilities, streets, drainage, parks, open space, fire, police, and emergency medical services.

COMPREHENSIVE PLAN FUTURE LAND USE MAP

The Future Land Use Map adopted on January 5, 2010 shows this area to be within the Northwest Sector and to be recommended as a Single Family Residential. Currently the City is updating the Comprehensive Plan, which is predicted to be adopted by April 2012. Consistency is not achieved, however the change can be justified if constraints are placed on the subject tracts of land limiting the site area only to storm water detention or greenspace or openspace associated with the principal future uses on the adjacent C-3 tracts. This area is at a major Commercial node intersection and has been consistently redeveloped as commercial along Johnson Ave.



Zoning/Vicinity Map

Master Street Plan

The property is located along Airport Road which is recommended as a Minor Arterial street on the adopted Master Street Plan from its current status. While a 120 ft. - R.O.W. is recommended, a 30 ft.

right of way easement is denoted on the submitted rezoning plat. Engineering has reported that no future needs to expand the right of way width of Airport Rd. at this site are necessary.

Findings:

The proposal will result in the existing R-1 Single Family Residentially zoned property to be rezoned to C-3 General Commercial District. This site currently serves as an entry way into a single family neighborhood. The applicant has noted in the application that the land will be used solely to provide an storm water detention/impoundment area for the existing C-3 property currently owned by the same, and to provide for a buffer area for the residential area to the south of the property.

The applicant is proposing to consolidate the 2 lots within the larger tract for future development. Staff feels that the proposal can be achieved without causing any negative impact on the surrounding area. Controls can be placed on the petition that will require final site plan to be submitted to the Planning Commission to assure that the subject tracts are preserved for the use intended.

MAPC Record of Proceedings for Public Hearing Held on November 8, 2011:

Applicant: Applicant's Agent, Mr. Carlos Wood: Noted that the owner is here and we are asking for rezoning for 2 lots that were purchased, to an existing large C-3 tract.

Mr. Wood: We want to do the development as one lot. These 2 lots are residential homes on the southeast corner. The Planning Department is requiring all of the property to be in the same zoning classification. We proposed to create an area for detention for the entire site.

Staff: Mr. Spriggs gave the Staff Summary. Noting the vast amount of commercial along the principle arterial. It is not typical in land use planning to have major commercial at major intersections with no transitional area to separate it from a single family residential area. With that said, to utilize the tracts of property primarily for storm water drainage detention would add to justification for changing the land use. Consistency is not achieved however it is justified. The C-3 portion currently existing can be developed as such without this petition; however, the plan will address the drainage problems in the immediate site area.

Under the proposed layout, the access complies with good access management in terms of approximation from a signalized intersection. Mr. Spriggs noted the 20 ft. buffer is listed in the conditions in conjunction with required fencing.

In terms of the Master Street Plan, the property is located along Airport Road which is recommended as a Minor Arterial street on the adopted Master Street Plan from its current status. While a 120 ft. - R.O.W. is recommended, a 30 ft. right of way easement is denoted on the submitted rezoning plat. Engineering has reported that no future needs to expand the right of way width of Airport Rd. at this site are necessary, therefore the R.O.W. can be adjusted to 80 ft. to achieve any future widening of the intersection. The applicant noted a wish to donate an additional 10 ft. of R.O.W.

In terms of the C-3 General Commercial request the MAPC may include a stipulation that a site plan be submitted before you. Staff feels confident that we can assure the development will proceed as promised.

Mr. Wood asked if the developer could receive a grading plan approval under staff review; if issues then it could go before the MAPC.

Mr. Spriggs if recommended to City Council for approval and the process is completed, you can do that.

Public Input:

Mr. Jimmy Ashley, 1701 Airport Rd.: Stated that he is right next door to the lot on the south on Airport Rd. He abuts it right next door and is already having a drainage problem. Mr. Phillips developed Bills Fresh Market and didn't not do everything he was suppose to do. He was suppose to put up fencing and berms and none of that ever happened. Now he is saying he's going to do this and that. The City doesn't hold him to it. We are opposed to him rezoning it; if he puts the detention pond in where he has built it up so high, where is all the water and rain going. He can say that he will do that but the ditch is already eroding away. If he wants to do the one lot, that is fine. I am against the rezoning.

Stacey Schratz, 3104 Maplewood Terrace: She noted that she concurs with Mr. Ashley. We have a privacy fence along the existing ditch where his commercial is there; and it is eroding away and will go under our fence. We have lived there for 17 years. Why would you approve C-3 General when it is going more into our residential area. They will say why can't we get more C-3 General. It is just way too close. I've been before City Council before. There was a certificate of occupancy issued before things got done. It doesn't need to be general commercial.

Barry Phillips, Phillips Investments and Construction: As Mr. Ashley mentioned he said that the area floods. We will put the detention there and we are trying to help the property and not trying to cause it to be worse. She doesn't want commercial to go out there but she has a culvert running into the ditch which is 5 feet on to me. She wants to drain into the ditch. The property to the south of them is a lot higher and all of that water drains on to them, then to me. He mentioned that they are not taking into consideration the water coming off of Bills Fresh Market and draining it in this pond. Mr. Phillips noted that he has designed this detention larger than required for this site. One of the reason we are doing this is so that detention can be done, and to square the property up. We are willing to do the fence and do it on our property line. We will do some pine trees to keep the noise down that might go into the neighborhood. We have no tenants yet to lease with; we are talking to some people but no confirmations have been made. We are preparing the site for future development and are going to take care of the water problems. On the north side of Highway 49 there is redevelopment; so we will end up with more water for across the street.

Mr. White clarified that all we are considering tonight is the rezoning; we will address specific details under the site plan approval.

Mr. Ashley: If he didn't think he could get this done, why did he purchase the lots. Make him put it in black and white what he's going to do.

Ms. Phyllis Hankins, 3108 Maple wood: She lives in the house at the end of the streets next to the C-3 LUO. When Mr. Phillips was building Bill's Market, I had numerous occasions when I had problems from him. After they got through building the market; I visited Council and he promised faithfully a lot of things and he never did them. The buffer never occurred. She still has problems with drainage coming off of the Bill's Market.

Inaudible comments were made regarding the Bill's Market problems.

Mr. Spriggs asked the chair if we could restrict the comments to this case and not Bill's Market. The Bill's Market case was a separate issue. We had no Stormwater Regulations at that time; now we do. The MAPC can tie the site plan to the Limited Use Overlay. Any conditions of approval will be implemented, built and inspected per the site plan process. The site plan details will be adhered to and all of concerns raised will be addressed and coordinated.

Mr. Kelton asked questions concerning the soil and the detention. Mr. Carlos explained that the design will control the release of the water under Airport Rd. through a culvert and will drain to the east. It is relatively flat in that area. It rises towards Highway 49 and drains towards the east toward Airport Rd.

Mr. Kelton: Is there anyway drainage problems could occur?

Mr. Carlos Wood: not unless something blocked the culvert under the road.

Mr. Ashley: When we get a lot off of water off of Airport Road; if he puts in the detention it will have to be built up. Where will that water go? He has to build it up. The water runs off of Airport Rd. and Maple Wood Terrace. I've seen water in the yard next to mine.

Mr. Roberts: Reiterated the drainage in the past had no regulations. Mr. Wood we will enlarge the area so the elevation of the water spreads out and reach an elevation that will not exceed or overtop Airport Rd. The city will review and make sure we do it according to the standards.

Stacey Schratz: If you are going to rezoning it please make it where he has to develop these to lots in conjunction with the existing C-3 as a limited use overlay, that it not be general commercial.

Mr. Roberts: We need to discuss Mr. Wood's request regarding the grading permit though the City Staff.

Mr. Spriggs: Mr. Spriggs noted that the acreage if platted into one lot has to be on zoning classification. You would have the liberty to deny any site plan that does not comply with the intent here.

Mr. Tomlinson asked if the concept site plan reflect compliance with the Master Street Plan. Mr. Wood noted that the owner concurs that the additional 10 ft. will be added when it is replatted into one lot. Mr. Kelton asked if the City Engineer has been consulted concerning this? Yes. And his comments concerning the R.O.W. and access have been addressed; the storm water design will have to comply with the code.

Mr. Spriggs: Mr. Wood can you clarify whether you intend to submit the drainage plan at the same time of your request for a grading plan? Will the detention pond be designed at the same time? Mr. Carlos added that it is required that both be submitted at the same time.

Commission's Action:

Mr. White made a motion to place Case: RZ-11-25 on the floor consideration and for the recommendation to City Council for a rezoning from R-1 Single Family to C-3, subject to the following conditions noted by Staff:

1. That the proposed development shall satisfy all requirements of the City Engineer, satisfying all requirements of the current Stormwater Drainage Design Manual.
2. That the final replat be submitted before the issuance of a building permit.
3. That a final site plan shall be presented to the MAPC for final approval including details on lighting, landscaping, parking/loading, and signage, perimeter fencing/ to the South.

Motion was seconded by Mr. Scurlock.

Roll Call Vote: Mr. Dover- Aye; Mr. White- Aye; Ms. Nix- Aye; Ms. Norris- Aye; Mr. Scurlock- Aye; Mr. Kelton- Aye. Mr. Tomlinson- Aye; Mr. Roberts- Chair. Motion passed with a 6-0 Vote in favor.

Conclusion:

The MAPC and Planning Department Staff recommend the requested Zone Change as submitted by Phillips Investments Construction, Inc., Case RZ 11-25, C-3 should be approved by the City Council for rezoning with the stipulations above in the record of proceedings.

Respectfully Submitted for Council Consideration,



Otis T. Spriggs, AICP
Planning & Zoning Director

SITE PHOTOGRAPHS



View looking Northeast of abutting property frontage along Johnson Ave.



View looking North of adjacent property.



View looking South of subject prop



View looking South toward subject property (Johnson/Airport Rd intersection).



View looking North along Pleasant Grove Rd.



View looking West of subject property (1709 Airport Rd.)



View looking West of subject property (1705 Airport Rd.)



View looking West of subject property (drainage ditch abutting).