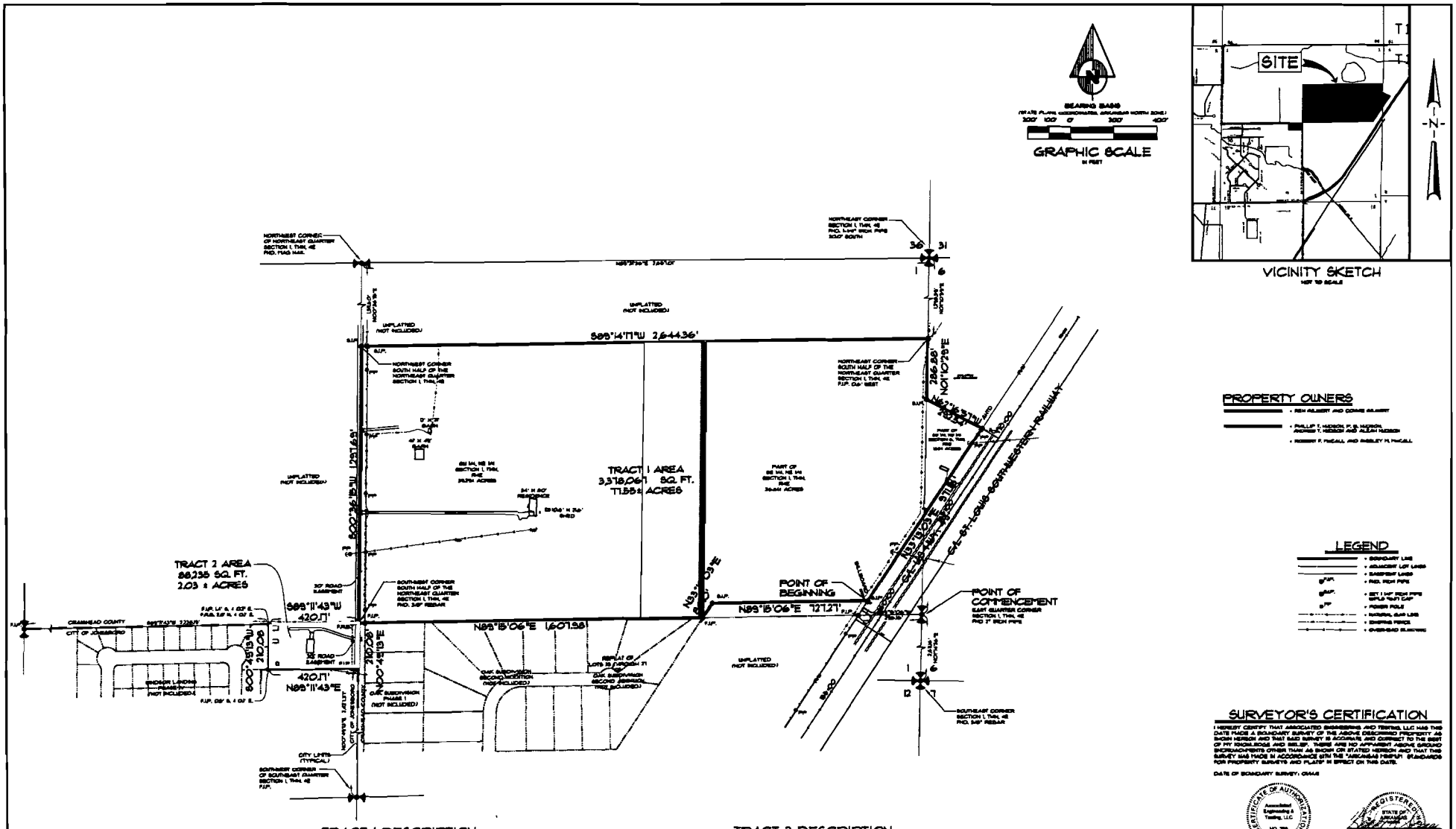
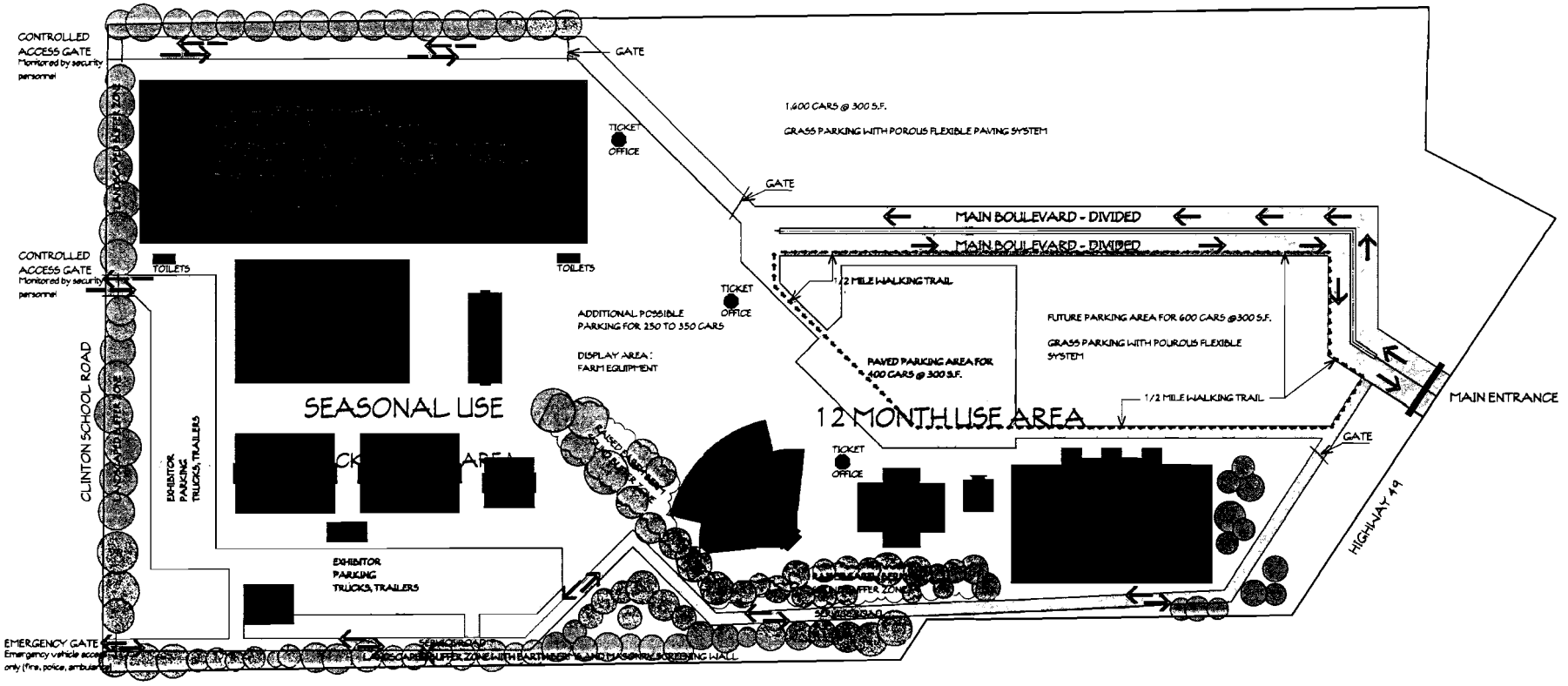

GRAPHIC SCALE
SITE
VICINITY SKETCH
PROPERTY OWNERS
LEGEND
TRACT 1 AREA
3,378,061 SQ. FT.
77.55± ACRES
TRACT 2 AREA
88,235 SQ. FT.
2.03 ± ACRES
POINT OF BEGINNING
POINT OF COMMENCEMENT
S89°14'17"W 2644.36'
N89°15'06"E 1607.38'
N89°15'06"E 121.21'
S89°11'43"W 420.11'
N89°11'43"E 420.11'
S00°48'17"W 210.00'
N00°48'17"E 210.00'
S00°36'18"W 1257.65'
N00°36'29"E 1286.58'
TRACT 1 DESCRIPTION
TRACT 2 DESCRIPTION
SURVEYOR'S CERTIFICATION
ASSOCIATED ENGINEERING AND TESTING, LLC
CIVIL ENGINEERING, LAND SURVEYING AND MATERIALS TESTING
109 SOUTH CHURCH STREET - P.O. BOX 963 - JONESBORO, AR 72403
Ph: 870-932-3884 Fax: 870-934-3863
BOUNDARY SURVEY
FOR ANNEXATION
IN SECTIONS 1, T14N, R4E & 6, T14N, R5E
JONESBORO, ARKANSAS
DRAWN: KLS | DESIGNED: KLS | DATE: 04/4/13 | SHEET
SCALE: 1" = 300' | CAD FILE: 09-1-003 | DWG: 04408-0001 | 1 OF 1
REVISIONS | REV | DATE | DRAWN | CHK'D
© Copyright 2011 AEWLLC



RESPONSE SITE PLAN

0' 50' 100' 250' 500'

GRAPHIC SCALE

NORTHEAST ARKANSAS EXPOSITION AND CONFERENCE CENTER
JONESBORO, ARKANSAS

Fair site alone if Oak subdivision is not annexed		Fair site and Oak subdivision		Additional for homes	
North along CR701	1542	North along CR701	1542	North along CR701	1542
East inside fair site	2200	East along south 705	747	East along south 705	747
		Northeast along east edge of subdivision	1892	Northeast along east edge of subdivision	1892
				Running north along 705	608
					641
				Running west along 705	451
					345
Footage estimate	3742		4181		6226
Cost per foot estimate	$50.00		$50.00		$50.00
Sub-Total	**$ 183,250.00**		**$209,050.00**		**$311,300.00**
				Plus:	
				Long (across a road into the yard) standard CWL charge ($3,000.00 x 3 = $9,000.00)	$ 9,000.00
				Short (into the yard) standard CWL charge (35 homes @ $1,500.00 per home = $52,500.00)	$ 52,500.00
				Plumber per estimate	$ 70,000.00
				Sub-Total	**$442,800.00**
				Less Cost paid by Fair Board for their cost	($183,250.00)
				Less Cost paid by Fair Board for Oak Subd.	($75,000.00)
				Amount to be paid by Oak Subdivision	**$184,550.00**
				Divided by number of homes	35

Westlaw.

A.C.A. § 20-7-109

C
West's Arkansas Code Annotated Currentness
Title 20. Public Health and Welfare
Subtitle 2. Health and Safety (Chapters 6 to 44)
Chapter 7. State Board of Health--Department of Health (Refs & Annos)
Subchapter 1. General Provisions

→§ 20-7-109. Powers--Rules and regulations--Restrictions

(a)(1) Power is conferred on the State Board of Health to make all necessary and reasonable rules and regulations of a general nature for:

(A) The protection of the public health and safety;

(B) The general amelioration of the sanitary and hygienic conditions within the state;

(C) The suppression and prevention of infectious, contagious, and communicable diseases;

(D) The proper enforcement of quarantine, isolation, and control of such diseases; and

(E) The proper control of chemical exposures that may result in adverse health effects to the public.

(2) All rules and regulations promulgated pursuant to this subsection shall be reviewed by the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

(b) However, if a patient can be treated with reasonable safety to the public health, he or she shall not be removed from his or her home without his or her consent, or the consent of the parents or guardian in the case of a minor, and the rules and regulations, when made, shall be printed in pamphlet form, with such numbers of copies as may be necessary for the distribution of the information to health bodies, health and sanitary officers, and the public generally.

(c) The board shall not regulate the practice of medicine or healing nor interfere with the right of any citizen to employ the practitioner of his or her choice.

CREDIT(S)

Acts of 1913, Act 96, § 6; Acts of 1991, Act 990, §§ 3, 5; Acts of 1997, Act 179, § 20, eff. Feb. 17, 1997.

Formerly C. & M. Dig., § 5130; Pope's Dig., § 6401; A.S.A. 1947, § 82-110.

HISTORICAL AND STATUTORY NOTES

Arkansas Code Revision Commission

Technical changes were made in 2006 to conform with the official Arkansas Code of 1987 as approved by the Arkansas Code Revision Commission.

Westlaw.

A.C.A. § 17-38-201

C
West's Arkansas Code Annotated Currentness
Title 17. Professions, Occupations, and Businesses
Subtitle 2. Nonmedical Professions (Chapters 10 to 79)
Chapter 38. Plumbers (Refs & Annos)
Subchapter 2. Regulation by State Board of Health (Refs & Annos)

→§ 17-38-201. Powers and duties

(a) The State Board of Health shall have the following powers:

(1) To ensure that the construction, installation, and maintenance of plumbing in connection with all buildings in this state, including buildings owned by the state or any political subdivision thereof, shall be safe and sanitary in order to safeguard the public health;

(2)(A) To have general supervision of all plumbing and, according to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall prescribe and publish and enforce minimum reasonable standards that shall be uniform as far as practicable.

(B) The Director of the Department of Health or any employee of the Department of Health designated by the board may act for the State Board of Health except in adoption of rules and regulations;

(3) To prescribe rules and regulations as to the qualifications, examination, and licensing of master plumbers and journeyman plumbers and for the registration of apprentice plumbers;

(4) To assign the duties of the Committee of Plumbing Examiners;

(5)(A) To prescribe rules and regulations as to the use of corrugated stainless steel piping.

(B) Such rules and regulations shall be no more stringent than the American National Standards for Interior Fuel Gas Piping Systems; and

(6)(A) To require that a survey and inspection for leaks, proper venting, and general condition of the natural gas piping system and gas utilization equipment connected thereto, including appliances, serving any school accredited by the State Board of Education shall be performed as frequently as necessary, but at intervals not exceeding one (1) year. School officials shall be responsible to ensure that these surveys and inspections are performed by a qualified agency and that proof of the survey results are provided to the Division of Protective Health Codes of the Department of Health by September 1 each year.

(B) As used in subdivision (a)(6)(A) of this section, "qualified agency" means any individual, firm, corporation, or company which either in person or through a representative is engaged in and is responsible for the installation, replacement, or repair of consumer gas piping, or the connection, installation, repair, or servicing of gas utilization equipment, and is experienced in such work and familiar with all precautions required and has complied with all requirements of the State Board of Health and Department of Health and the codes and regulations.

RULES AND REGULATIONS

PERTAINING TO

ONSITE WASTEWATER SYSTEMS

ACT 402 OF 1977

A.C.A. 14-236-101 et seq.

Revised:

July 4, 2010

Table of Contents

Section 1. Authority and Purpose

1.1. The following RULES AND REGULATIONS PERTAINING TO ONSITE WASTEWATER SYSTEMS are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by the laws of the State Arkansas including, without limitation, Act 96 of 1913 (A.C.A. 20-7-109), and Act 402 of 1977 (A.C.A. 14-236-101, et seq.).

1.2. Purpose: To establish minimum standards for the design and construction of onsite wastewater systems in suitable soils for the renovation of wastewater and the return of the renovated wastewater into the hydrologic cycle.

Section 2. Definitions

2.1. **Alternate Onsite Wastewater System.** A non-standard individual wastewater treatment or collection system approved by the Department in instances where a standard system is not suitable.

2.2. **Approved System.** An onsite wastewater system constructed and installed in accordance with the standards and requirements of this Regulation and for which a Permit for Operation has been issued. "Approved system" does not imply that the system will perform satisfactorily for a specific period of time, only that the system has met the minimum requirements of this Regulation.

2.3. **Authorized Agent.** The Environmental Health Specialist assigned to the County, or Business Unit by the Department.

2.4. **Bedrock.** Consolidated rocks such as sandstones, siltstones, and shale, which essentially retain their depositional or tectonic orientation. Fine earth materials shall constitute less than 10% of the materials and no other conditions exist that would provide adequate wastewater renovation. Where bedrock and soil horizons are interlayered, the depth to bedrock shall be the cumulative thickness of the soil layers greater than or equal to four inches in thickness within 72 inches of the soil surface.

2.5. **Bedroom.** Any room inside a residence intended for the purposes of sleeping quarters.

2.6. **Benchmark.** A mark made on a stationary object of a determined position and elevation and used as a reference point.

2.7. **Community Wastewater System.** Any system, whether public or privately owned, serving 2 or more individual lots, for the collection, treatment and disposal of wastewater or industrial wastes of a liquid nature, including various devices for the treatment of such wastewater or industrial wastes.

2.8. **Department.** The Arkansas Department of Health.

2.20. **High-use Area.** Any site accessible to the public for the purposes of entertainment, recreation, or gathering.

2.21. **High Water Mark.** The established maximum flood elevation of lakes with constructed dams, or when not available, the line which the water impresses on the soil by covering it for sufficient periods of time to deprive it of non-aquatic vegetation.

2.22. **Homeowner.** A person who owns and occupies a building as his home.

2.23. **Hydraulic Conductivity.** The rate of water movement under unit gradient in a specific soil horizon.

2.24. **Onsite Wastewater System.** A single system of treatment tanks and/or renovation facilities used for the treatment of domestic wastewater, exclusive of industrial wastes, serving only a single building, commercial facility such as an office building, or industrial plant or institution.

2.25. **Industrial Wastes.** Liquid wastes resulting from the processes employed in industrial and commercial establishments.

2.26. **Installer.** Any person, firm, corporation, association, municipality, or governmental agency licensed by the department, which constructs, installs, alters or repairs onsite wastewater systems for others.

2.27. **Interceptor Drain.** A subsurface drainline, usually constructed upgrade from the absorption area to divert seasonal groundwater.

2.28. **Lake.** A considerable body of inland water or an expanded portion of a river generally of appreciable size and too deep to permit vegetation, excluding subaqueous vegetation, to take root completely across the expanse of water.

2.29. **Maintenance Personnel.** An individual certified by the Department to conduct assessments under the Onsite Maintenance and Monitoring Program.

2.30. **Municipality.** A city, town, county, district, or other public body created by or pursuant to State law, or any combination thereof, acting cooperatively or jointly.

2.31. **Pedon.** The smallest classifiable soil units. Pedons are intended to be of a size suitable for field examination, description, and sampling.

2.32. **Person.** Any institution, public or private corporation, individual, partnership, or other entity.

2.33. **Piezometer.** A pipe placed in the soil which gives the water pressure at depth. The reading is used to estimate the elevation of a water table.

2.34. **Pond.** A body of water smaller than a lake, often artificially formed.

platting of record of such subdivisions. No onsite wastewater system to be installed on a residential lot for which the Department or its authorized agent has issued a construction permit on or before the effective date of these Rules and Regulations shall be required to conform to the design, construction and installation provisions of these Rules and Regulations. In a subdivision for which a master plan has been approved by the Department prior to the effective date of these Rules and Regulations or for which the Department has otherwise previously issued its written approval for the installation of onsite wastewater systems and where individual lots have been developed or sold in reliance upon such prior written approval, onsite wastewater systems shall not be required to conform to more stringent specifications as to design, construction and installation than those standards in effect at the time of, or referred to, in such prior written approval. However, it is provided, that any onsite wastewater system which is determined by the Department to be a health hazard or which constitutes a nuisance due to odor or unsightly appearance must conform to the provisions of these Rules and Regulations within 30 working days after notification that such determination has been made.

Section 4. Sewer Connection

4.1. All premises shall be connected to a sanitary sewer when within 300 feet and available to said premises when connection can be made without crossing another person's property. No privies, onsite wastewater systems or other receptacles for human excreta shall be constructed, maintained, or used on the premises. Plumbing fixtures shall be installed and maintained in accordance with the ARKANSAS STATE PLUMBING CODE. (see Ark. Code Ann.§§ 17-38-101-311)

4.2. When connection to an existing sanitary sewer system is not feasible and a large number of residences are to be built in an area, consideration should be given to the construction of a community sewer system and treatment plant. However, since an improperly operated or inadequately staffed community wastewater treatment plant cannot effectively treat wastewater, consideration should be given to the size of the proposed system to ensure that economically feasible sewer rates are sufficient to ensure proper treatment plant operation. As an aid to developers and engineers, the following information is offered to determine the feasibility of a public sewer system or onsite wastewater system.

Population Density	Equivalent Lot Size	Service Economic Justification
Over 5,000 persons per sq. mi.	Less than 1/2 acre	Public sewerage is justified
2,500-5,000 persons per sq. mi.	1/2 to 1 acre	Public sewerage normally is justified
1,000-2,500 persons per sq. mi.	1 to 2 acres	Public sewerage normally is not justified
less than 1,000 persons per sq. mi.	Over 2 acres	Public sewerage rarely is justified

Westlaw.

AR ST § 14-235-302
A.C.A. § **14-235-302**

C
West's Arkansas Code Annotated Currentness
Title 14. Local Government
Subtitle 14. Solid Waste Disposal, Waterworks, and Sewers Generally (Chapters 229 to 247)
Chapter 235. Municipal Sewage Systems
Subchapter 3. Sewer Connections by Property Owners

→§ 14-235-302. Ordering property owners to connect

(a) After the completion of any sewer or branch sewer authorized to be built under the provisions of this act, it shall be lawful for any municipality to which this act is applicable, whenever in its opinion the public health will be promoted by it, to order any one (1) or more property owners near or adjacent to any sewer to construct upon their property sewers leading from some point or place on their premises to the sewer of the municipality for the purpose of:

(1) Draining off surface or other water; and

(2) Conducting any excrement that may be at or about the premises and filth of every nature, character, and description into the sewers belonging to the municipality.

(b) In the order issued to construct the sewers for the purpose presented, the time within which they are to be completed, the nature and character of the material to be used in the construction of them, and the place of tapping the sewers of the municipality shall be designated, as well as the manner of doing it.

CREDIT(S)

Acts of 1881, Act 84, § 18, p. 161; Acts of 2005, Act 279, § 2, eff. Aug. 12, 2005.

Formerly C. & M. Dig., § 7537; Pope's Dig., § 9612; A.S.A. 1947, § 19-4125.

HISTORICAL AND STATUTORY NOTES

Arkansas Code Revision Commission

Technical changes were made in 2005 to conform with the official Arkansas Code of 1987 as approved by the Arkansas Code Revision Commission.

A.C.A. § **14-235-302**, AR ST § **14-235-302**

Current through end of 2010 Fiscal Sess., including changes made by Ark.
Code Rev. Comm. received through 12/31/10, and emerg. eff. acts
from 2011 Reg.Sess.: 1, 5, 11, 17, 20, 38, 39 to 41, 45, 66, 70, 72, 91,
115, 116, 131, and 137, 163, 172, 174, 204, 207, and 209.

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

to any other cause of action for personal injury or property damage available under state law, and shall be in addition to civil penalties which may be assessed under this section.

(d) *Remedies nonexclusive.* The provisions of this section are not exclusive remedies. The city water and light plant reserves the right to take any, all, or any combination of these actions against a noncompliance user. Enforcement of pretreatment violations will generally be in accordance with city water and light plant's enforcement response plan. However, city water and light plant shall have the right to take other action against any user when the circumstances warrant. Further, the city water and light plant is empowered to take more than one enforcement action against any noncompliance user. These actions may be taken concurrently.

(Ord. No. 3126, § 1(10.04.15), 5-3-1999)

Sec. 70-86. - Supplemental enforcement action.

(a) *Performance bonds.* The manager of city water and light plant may decline to reissue a wastewater discharge permit to any user which has failed to comply with the provisions of this division, any orders, or a previous wastewater discharge permit issued hereunder, unless such user first files a satisfactory bond, payable to the city water and light plant, in a sum not to exceed a value determined by the manager of city water and light plant to be necessary to achieve consistent compliance.

(b) *Liability assurance.* The manager of city water and light plant may decline to reissue a wastewater discharge permit to any user which has failed to comply with the provisions of this division, any order, or a previous wastewater discharge permit issued hereunder, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

(c) *Water supply severance.* Whenever a user has violated or continues to violate the provisions of this division, orders, or wastewater discharge permits issued hereunder, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

(d) *Public nuisances.* Any violation of this division, wastewater discharge permits, or orders issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the manager of the city water and light plant or his designee. Any person creating a public nuisance shall be required to reimburse the city water and light plant or the city for any costs incurred in removing, abating or remedying said nuisance.

(Ord. No. 3126, § 1(10.04.16), 5-3-1999)

Sec. 70-87. - General sewer use requirements.

(a) *Use of public sewers.*

(1) It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner upon public or private property within the city or in any area under the jurisdiction of said city, any human or animal excrement, garbage, or other objectionable wastes.

(2) It shall be unlawful to discharge to any natural outlet within the city, or in any area served by the city water and light plant, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with provisions of division. The issuance of a valid National Pollutant Discharge Elimination System permit authorizing such discharges into a natural outlet shall be considered as meeting all the requirements of this section.

(3) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended to be used for the disposal of sewage.

(4) The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the city and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located an accessible public sanitary sewer of the city water and light plant is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper accessible public sewer in accordance with the provisions of the this Code, within 60 days after date of official notice to do so, provided that said accessible public sewer is within 300 feet of the property line. The requirements of this section shall not apply to owners discharging such sewage under the provisions of a valid National Pollutant Discharge Elimination System permit.

(5) Other than building sewers and collector building sewers, all sewers constructed by owners to connect the building drains of structures to an existing public sewer shall be located within public easements or rights-of-way and shall be constructed by such owner to the standards required by the city water and light plant for public sewers. No sewer shall be constructed within any public easement or right-of-way or connected to an existing public sewer without approval by the manager of city water and light plant.

(6) No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff or subsurface drainage to the POTW.

(7) Stormwater and all other surface runoff shall be discharged to such sewers specifically

Jonesboro, Arkansas, Code of Ordinances >> PART I - GENERAL ORDINANCES >> Chapter 70 - UTILITIES >> ARTICLE III. - SEWAGE AND SEWAGE DISPOSAL >> DIVISION 1. - GENERALLY >>

DIVISION 1. - GENERALLY

Sec. 70-60. - Payment required prior to connection.

It shall be unlawful for any person to tap or connect with the sewer system of the city water and light without having paid the charges hereinafter set forth.

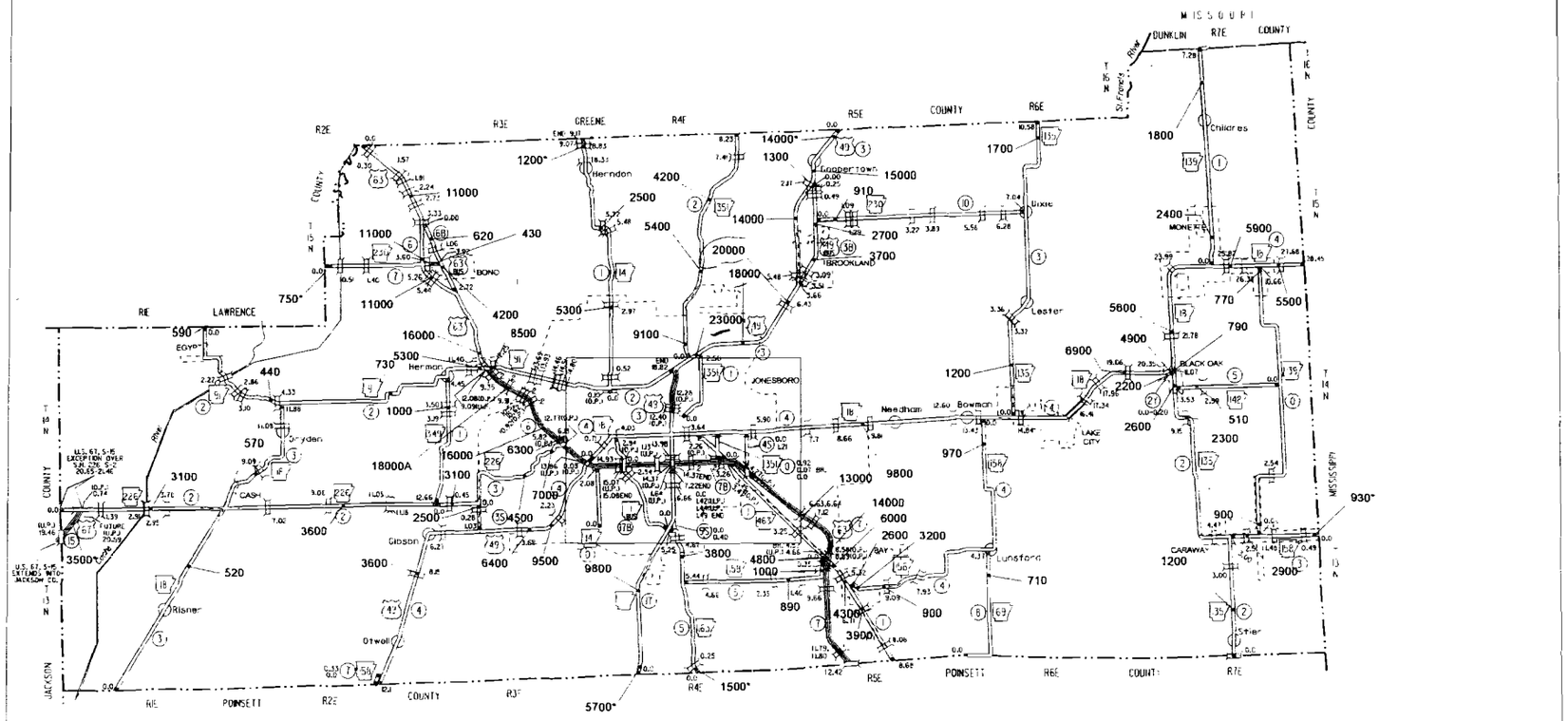
(Code 1962, § 19-2; Code 2006, § 10.16.01)

Sec. 70-61. - Amount of tap fee.

Any person connecting or attempting to connect with the sewer system of the city water and light shall pay to the city water and light as a connection or tap fee and charge such a sum as will equal the proportionate value of the property connected or to be connected and benefited as compared with the value of the property taxed in the original improvement district and the actual cost of said sewers or such lesser sum as the board of directors of the plant shall fix.

(Code 2006, § 10.16.02; Ord. No. 798, § 2, 10-5-1949)

Secs. 70-62—70-80. - Reserved.



PREPARED BY AHTD/P&R/TS 4-1-2010

ARTICLE VIII. - OTHER STANDARDS AND REQUIREMENTS

Sec. 117-324. - Off-street parking and loading.

(a) *Applicability.* Off-street parking and loading shall be provided in accordance with the regulations of this section for all new development, and for any existing development that is altered in a way that enlarges or increases capacity by adding or creating dwelling units, guest rooms, floor area or seats.

(b) *Parking and loading schedules.*

(1) *Off-street parking schedule A.* Off-street parking spaces shall be provided in accordance with the following off-street parking schedule (schedule A), provided that there shall be no minimum off-street parking requirement for uses located in the C-1 district. In some cases, the applicable off-street parking space requirement in schedule A refers to schedule B.

(2) *Number of spaces required.* The number of parking spaces required for a use not listed herein shall be the same as for a similar use which is listed. Where the required number of spaces cannot be ascertained by this method, or the applicant and the city staff cannot agree, the matter shall be submitted to the planning commission for determination.

(3) *Approval.* Such determination shall be subject to appeal to the city council.

.....

Schedule A

Uses	Number of Spaces Required
Residential	
Single-family detached	2 per dwelling unit
Single-family attached	2 per dwelling unit
Duplex	2 per dwelling unit
Multifamily	1.25 per efficiency unit
	1.75 per one-bedroom unit
	2.25 per two-bedroom unit
	3.00 per three-bedroom and larger units
Manufactured housing (all)	2 per dwelling unit
Manufactured housing park	2 per unit, plus 1 for each 10 units
Zero lot line single-family	2 per dwelling unit
Civic and commercial	
Animal care, general	1 per 400 square feet
Animal care, limited	1 per 300 square feet
Auditorium, arena, theater	1 for each 4 seats, based on maximum capacity
Bank or financial institution	1 per 300 square feet
Bed and breakfast	2 per building, plus 1 per guest room

	possible)
College or university	1 per 300 square feet, or 1 for each 2 students, whichever is greater
Communication tower	1 space (plus office space, if on site)
Construction sales and service	Spaces to be provided pursuant to schedule B
Convenience store	1 per 200 square feet
Day care, limited or general	1 per employee and/or attendant, plus 2 spaces
Funeral home	1 for each 4 chapel seats, plus 1 per employee
Government service	1 per 300 square feet
Hospital	1 for each 3 beds, plus 1 for each 3 employees
Hotel or motel	1 per guest room, plus 1 per 10 guest rooms
Day care, limited or general	1 per employee and/or attendant, plus 2 spaces
Library	1 per 500 square feet
Medical service	6 per doctor or dentist
Museum	1 per 500 square feet
Office, general	1 per 300 square feet
Recreation/entertainment, indoor	1 per 400 square feet
Recreational vehicle park	1 per camping space
Restaurant, fast-food	1 per 75 square feet of customer service/dining area
Restaurant, general	1 per 150 square feet for first 2,500 square feet, plus 1 per 100 square feet over 2,500 square feet
Retail/service, general	1 per 250 square feet
Retail/service, furniture and bulky items	Spaces to be provided pursuant to schedule B
School, nursery, elementary and middle	1 per staff and employee, plus 1 space per classroom
School, high	1 for each 3 students, plus 1.5 per classroom
Service station	2 per service bay, plus 1 per pump
Vehicle and equipment sales	Spaces to be provided pursuant to schedule B
Vehicle repair, general or limited	5 per service bay
Vocational school	1 per 3 students, plus 1 per faculty member
Warehouse, residential (mini) storage	1 for each 5 storage bays, or 1 per 1,000 square feet, whichever is greater
Industrial and manufacturing	
Asphalt or concrete plant	Spaces to be provided pursuant to schedule B
Auto wrecking or salvage yard	Spaces to be provided pursuant to schedule B

Manufacturing, general	Spaces to be provided pursuant to schedule B
Manufacturing, limited	Spaces to be provided pursuant to schedule B
Research service	1 per 300 square feet
Warehousing	Spaces to be provided pursuant to schedule B
Welding or machine shop	1 per 1,000 square feet or 1 per employee, whichever is greater

(4) *Off-street parking schedule B.* Off-street parking for schedule B uses shall be provided in accordance with the following table:

Schedule B

Activity	Number of Spaces Required
Office or administrative area	1 per 300 square feet
Indoor sales, service or display area	1 per 500 square feet
Outdoor sales, service or display area	1 per 750 square feet
Manufacturing area	1 per 1,000 square feet
Indoor storage, warehousing, or equipment servicing	1 per 5,000 square feet unless number of employees and visitors requires greater

(5) *Off-street loading schedule.* Off-street loading spaces shall be provided in accordance with the following minimum standards:

Off-Street Loading Schedule

Floor Area (in square feet)		Minimum Requirements
Retail and service, warehouse, wholesale, and manufacturing uses		
	3,000 to 25,000	1
	25,001 to 85,000	2
	85,001 to 155,000	3
	155,001 to 235,000	4
	235,001 to 325,000	5
	325,001 to 425,000	6
	425,001 to 535,000	7
	535,001 to 655,000	8
	655,001 to 775,000	9
	775,001 to 925,000	10
	925,001 or more	10, plus 1 per 200,000 square feet above 925,001
Offices, nursing homes, hospitals, hotels and institutions		
	3,000 to 100,000	1
	100,001 to 335,000	2
	335,001 to 625,000	3

	625,001 to 945,000	4
	945,001 or more	5, plus 1 per 500,000 square feet above 945,001

(c) *Computing off-street parking and loading requirements.*

(1) *Multiple uses.* Lots containing more than one use shall provide parking and loading in an amount equal to the total of the requirements for all uses.

(2) *Fractions.* When measurements of the number of required spaces result in fractions, any fraction of one-half or less shall be disregarded and any fraction of more than one-half shall be rounded upward to the next highest whole number.

(3) *Area.* Unless otherwise noted in the provisions, all square footage-based parking and loading standards shall be computed on the basis of gross floor area.

(4) *Employees, students and occupant-based standards.* For the purpose of computing parking requirements based on the number of employees, students, residents or occupants, calculations shall be based on the largest number of persons working on any single shift, the maximum enrollment or the maximum fire-rated capacity, whichever is applicable and whichever results in the greater number of spaces.

(5) *American's With Disability Act Requirements (ADA).* Pursuant to Federal ADA standards, a portion of the total number of required off-street parking spaces in each off-street parking area shall be specifically designated, located and reserved for use by person with physical disabilities. Responsibility for compliance, in all respects, shall rest with the applicant.

(d) *Location and design of off-street parking and loading spaces.*

(1) *On-site.* Except as otherwise specifically provided, required off-street parking and loading spaces shall be located on the same lot as the principal use.

(2) *Right-of-way.* Off-street parking spaces shall be prohibited within the public right-of-way; and no portion of the abutting street right-of-way shall, except for the driveway, shall be paved or used in any manner except as green area.

(3) *Setbacks.*

a. In single districts, required off-street parking shall not be located within a street setback. Parking in excess of the required number of spaces is allowed in the street setback, but not off the driveway, and not in a manner which obstructs sidewalks or visibility.

b. Where parking is to be provided in the street setback of a multifamily dwelling, there shall be established a setback line of ten feet. The area between the setback line and the front lot line shall be prepared and planted with grass, shrubs, trees, or ground cover not inconsistent with other landscaping provisions contained herein, and protected by interior curbing.

c. In all commercial and industrial districts, required parking is allowed within the street setback.

(4) *Ingress and egress.* Off-street parking and loading spaces shall be designed to permit exiting vehicles to enter the public right-of-way in a forward motion. No off-street parking or loading space shall be allowed that requires vehicles to back onto a public right-of-way, except single-family and duplex residential development on local and collector streets.

(5) *Surfacing.* All required off-street parking and loading spaces, and the driveways serving off-street parking and loading spaces, shall be paved with asphalt, concrete or brick; provided driveways serving single-family dwellings shall only be required to pave the first 100 feet, as measured from the street. The area of the driveway from the edge of the street to the property line shall be paved.

(6) *Drainage.* All off-street parking and loading areas shall be designed with drainage facilities adequate to dispose of all stormwater, and to not increase the stormwater runoff onto the surface of adjoining properties or streets.

(7) *Curbing.* The perimeter of all off-street parking and loading areas and their access drives shall be curbed, with the exception of single-family, duplex, triplex and fourplex residences. Landscape islands and other interior features within parking lots shall also be protected by curbs. The area between the curb and the property line, except for the driveway, shall be maintained as green space.

(8) *Striping.* Off-street parking areas containing five or more spaces shall be delineated by pavement striping.

(9) *Parking space dimensions.* Off-street parking spaces shall contain a minimum area of at least 180 square feet, with a minimum width of nine feet and a minimum length of 18 feet.

(10) *Loading space dimensions.* Off-street loading spaces shall be at least 14 feet by 45 feet in size, with a minimum 18-foot height clearance.

(11) *Aisle dimensions.* Drive aisles within off-street parking lots shall comply with the following minimum width requirements:

collector streets shall be constructed so that the point of tangency of the curb return radius closest to a nonsignalized street or driveway intersection is at least 80 feet from the perpendicular curb face of the intersecting street or driveway. In the event that this standard cannot be met because of an unusually narrow or shallow lot size, the city engineer may approve a reduction in spacing as long as the reduction does not result in an unsafe traffic condition.

c. *Driveways per parcel.*
   1. At least one driveway shall be permitted for any lot. Shared driveways shall be recommended for lots that have less than 150 feet of frontage.
   2. Driveways shall be located a minimum of 20 feet from the side property lines. A separation of 40 feet is required between the driveways on one lot and the driveways on the adjacent lots. Driveways on the same lot shall be no closer than 50 feet to each other.
   3. Driveways on corner lots shall be located as far away from the intersection as possible. In no case shall a driveway be installed closer than five feet to the beginning of the curb radius.

d. *Ingress/egress driveway width.* The width of the driveway throat shall not exceed 40 feet in width. Driveway lanes shall be a minimum of 13 feet in width and shall not have more than three lanes in one entrance/exit.

(Zoning Ord., § 14.36.02)

Sec. 117-326. - Landscaping and screening.

This section sets out the minimum landscaping and screening requirements for new development in the city as follows:

(1) *Applicability exemptions.* The following shall be exempt from the standards of this section:
   a. *Residential.* The AG, RR, R-O, RS-1—RS-8, R-1, R-1A, and R-2 districts shall be exempt from all standards of this section.
   b. *Existing development; changes in use.* Improvements or repairs to existing development that do not result in an increase in floor area, and changes in use that do not result in an increase in intensity, shall also be exempt from all the standards of this section.

(2) *General landscaping requirements.* In the absence of a landscape plan, the following general landscaping requirements shall apply to all development:
   a. *Landscaping required.* All multifamily development of five units or more, and all commercial development shall be required to provide at least one tree and three five-gallon shrubs per unit within the development.
   b. *Location.* Landscaping required pursuant to this section shall be installed between the property line and the required street setback areas.

(3) *Parking lot.* Landscaping. In the absence of a landscaping plan, the parking lot landscaping standards of this section shall apply to the interior of all off-street parking areas containing more than ten off-street parking spaces. They shall not apply to vehicle and equipment sales lots or storage areas, multi-level parking structures, or areas devoted to drive-through lanes.
   a. *Relationship to other landscaping standards.* Trees provided to meet the general landscaping requirements of subsection (2) of this section may be used to meet a development's parking lot landscaping requirements.
   b. *Required landscaping.* In the absence of a landscape plan, at least one tree and three five-gallon shrubs shall be provided for each ten parking spaces and fraction thereof within an off-street parking area.
   c. *Location.* Required landscaping shall be reasonably dispersed throughout off-street parking areas.
   d. *Planting areas.* Planting areas that contain trees shall be at least seven feet wide and protected by raised curbs to prevent damage by vehicle.

(4) *Dumpster screening.* Dumpsters located in any district shall be completely screened from view on all sides visible to the public by a fence or wall with a minimum height of six feet, or one foot taller than the dumpster, whichever is greater. The fence or wall shall provide complete visual screening of the dumpster, and be compatible in material and color with the principal structure on the lot.

(5) *Landscape material standards.* The following standards shall be considered the minimum required planting standards for all trees and landscape material:
   a. *Plant quality.* Plants installed to satisfy the requirement of this section shall conform to or exceed the plant quality standards of the most recent edition of American Standard for Nursery Stock, published by the American Association of Nurserymen. Plants shall be nursery grown and adapted to the local area.

b. *Artificial plants.* No artificial plants or vegetation shall be used to meet any standards of this section, unless expressly approved by the planning commission.

c. *Trees.*

1. *Types.*

(i) *Required.* Where required or permitted, trees shall be of ornamental, evergreen, or of the large deciduous types.

(ii) *Prohibited.* The following trees shall be prohibited and shall not be used to satisfy the landscaping or buffering standards of this section unless approved by the planning commission:

A. Box elder;

B. Soft maple;

C. Hackberry; or

D. American elm.

(iii) *Species mix.* When more than ten trees are required to be planted to meet the standards of this section, a mix of species shall be provided. For each ten, or fractions thereof, another differing species shall be used.

2. *Size.*

(i) *Medium and large deciduous trees.* Medium and large deciduous trees planted to satisfy the standards of this section shall have a minimum height of eight feet, and a minimum diameter of three inch, measured at a point that is at least four and one-half feet above existing grade level.

(ii) *Small deciduous or ornamental trees.* Small deciduous and ornamental trees planted to satisfy the standards of this section shall have a minimum height of four feet.

(iii) *Conifers or evergreens.* Conifers or upright evergreen trees planted to satisfy the standards of this section shall have a minimum height, after planting, of six feet.

(iv) *Use of existing plant material.* Trees that exist on site, prior to its development, may be used to satisfy the landscaping standards of this section provided they meet the size, variety, and location requirements of this section.

(6) *Installation, maintenance and replacement.*

a. *Installation.* All landscaping shall be installed according to sound nursery practices in a manner designed to encourage vigorous growth. All landscape material, both living and nonliving, shall be in place prior to issuance of a final certificate of occupancy. A temporary certificate of occupancy may be issued prior to installation of required landscaping if binding, written assurances are submitted, ensuring that planting will take place when planting season arrives.

b. *Maintenance and replacement.* Trees, shrubs, fences, walls and other landscape features, which includes screening depicted on plans approved by the city shall be considered as elements of the project in the same manner as parking, building materials, and other details are elements of the plan. The landowner, or successors in interest, or agent, if any, shall be jointly and severally responsible for the following:

1. Regular maintenance of all landscaping in good condition and in a way that presents a healthy, neat, and orderly appearance. All landscaping shall be maintained free from disease, pests, weeds and litter. This maintenance shall include weeding, watering, fertilizing, pruning, mowing, edging, mulching or other maintenance, as needed and in accordance with acceptable horticultural practices;

2. The repair or replacement of required landscape structures, e.g., fences and walls, to a structurally sound condition;

3. The regular maintenance, repair, or replacement, where necessary, of any landscaping required by this section; and

4. Continuous maintenance of the site.

(7) *Alternative compliance.* Applicants shall be entitled to demonstrate that the intent of this section can be more effectively met, in whole or in part, through alternative means. If approved, an alternative compliance landscape plan may be substituted, in whole or in part, for landscaping that meets the expressed terms of this section.

a. *Procedure.* Alternative compliance landscape plans shall be considered through the site plan review process.

b. *Review criteria.* In reviewing proposed alternative compliance landscape plans, favorable consideration shall be given to exceptional landscape designs that attempt to preserve and incorporate existing vegetation in excess of minimum standards, and plans that demonstrate innovative design and use of plant materials. Alternative compliance landscape plans may be approved upon a finding that any of the following circumstances

exist on the proposed building site or surrounding properties:

1. Natural land characteristics or existing vegetation on the proposed development site would achieve the intent of this section;
2. Innovative landscaping or architectural design is employed on the proposed development site to achieve a buffering effect that is equivalent to the buffering or screening standards of this section;
3. The required landscaping or buffering would be ineffective at maturity due to topography, or the location of improvements on the site; or
4. The proposed alternative represents a plan that is as good or better than a plan prepared in strict compliance with the other standards of this section.

(Zoning Ord., § 14.36.03)

Sec. 117-327. - Corner visibility.

On corner lots at intersecting two-way streets, nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of two feet and eight feet above curb grade within the triangular area formed by an imaginary line that follows street side property lines, and a line connecting them, 25 feet from their point of intersection. This sight triangle standard may be increased by the city in those instances deemed necessary for promoting traffic safety, and may be lessened at intersections involving one-way streets.

(Zoning Ord., § 14.36.04)

Sec. 117-328. - Residential compatibility standards.

The compatibility standards of this section are intended to protect low density residential uses and neighborhoods from the adverse impacts sometimes associated with high density residential uses and nonresidential development. The standards are intended to mitigate the effects of uses with operating and structural characteristics that are vastly different than those associated with single-family and duplex uses.

(1) *Applicability, triggering property.* Compatibility standards shall apply to all development in the C-1, C-2, C-3, C-4, CR-1, I-1 and I-2 zoning districts when such development is adjacent to triggering property, which shall include all property:

a. Occupied by a single-family or duplex dwelling unit that is a use permitted by-right in the zoning district in which it is located; or

b. Zoned in an RS or RM zoning district.

(2) *Exemptions.*

a. Notwithstanding the applicability provisions of subsection (1) of this section, compatibility standards shall not be triggered by property that is public right-of-way, railroad track, roadway or utility easement.

b. The following uses and activities shall specifically be exempt from compliance with compatibility standards:

1. Construction of a use permitted by right in a RS or RM district; provided that multifamily development shall be screened when abutting a single-family use or zone;
2. Structural alteration of an existing building when such alteration does not increase the building's square footage or height; and
3. A change in use that does not increase the minimum number of off-street parking spaces required.

(3) *Setback standards.* The following setback standards shall apply to all development that is subject to compatibility standards:

a. *Small sites.* On sites with 20,000 square feet of area or less that also have less than 100 feet of street frontage, structures shall be set back from the lot line of triggering property in accordance with the following requirements:

Street Frontage (in feet)	Minimum Setback (in feet)
0 to 52.50	10.0
52.51 to 54.99	10.5

55.00 to 57.50	11.0
57.51 to 59.99	11.5
60.00 to 62.50	12.0
62.51 to 64.99	12.5
65.00 to 67.50	13.0
67.51 to 69.99	13.5
70.00 to 72.50	14.0
72.51 to 74.99	14.5
75.00 to 77.50	15.0
77.51 to 79.99	15.5
80.00 to 82.50	16.0
82.51 to 84.99	16.5
85.00 to 87.50	17.0
87.51 to 89.99	17.5
90.00 to 92.50	18.0
92.51 to 94.99	18.5
95.00 to 97.50	19.0
97.51 to 99.99	19.5

b. *Large sites.* On sites with more than 20,000 square feet of area or 100 feet of street frontage or more, no structure shall be erected within 20 feet of the lot line of triggering property.

c. *Surface-level parking and driveways.* Surface-level off-street parking areas and driveways shall not be subject to the above setback standards, however such standards shall apply to parking structures. Surface-level parking areas shall be setback a minimum of ten feet from the lot line of triggering property.

(4) *Building height.* No structure shall exceed 35 feet in height within 50 feet of the lot line of triggering property. Structures located over 50 feet from the lot line of triggering property may increase height, if permitted by base district zoning regulations, at a ratio of one foot in height for each five feet of setback. For example, a building limited to a maximum of 35 feet in height at 50 feet from triggering property may be increased to a maximum height of 45 feet at a point that is 100 feet from the lot line of triggering property.

(5) *Screening standards.* Decorative walls, vegetative screening, fencing or earthen berms shall be provided to completely screen off-street parking areas, mechanical equipment, storage areas, and refuse collection areas from view of triggering property.

(6) *Site design standards.* The following additional site design standards shall apply to development

that is subject to the compatibility standards of this section:

a. No swimming pool, tennis court, ball field, or playground area, except those that are accessory to a single-family dwelling unit, shall be permitted within 50 feet of the lot line of triggering property.

b. Dumpsters and refuse receptacles shall be located a minimum of 25 feet from the lot line of triggering property.

c. Exterior lighting shall be designed to minimize light spilling onto surrounding property.

(Zoning Ord., § 14.36.05)

Sec. 117-329. - Fences (permit required).

Except as otherwise specifically provided in other codes and regulations, the following regulations shall apply to the construction of all fences:

(1) *Maximum height.* Fences shall not exceed six feet in height, unless approved by the planning commission.

a. Front yards. Fences that are 50 percent open may be erected to a maximum height of four feet in the front yard.

b. Fencing in the I-1 and I-2 districts, areas abutting interstate highways, around tennis courts and other recreational amenities, and on lots or tracts containing five acres or more shall be exempt from the height limitation.

(2) *Corner visibility.* Fences shall comply with the corner visibility standards of section 117-327.

(3) *Construction materials.* Fences in all residential zoning districts shall be constructed so that the horizontal and vertical support posts are inside the fence area or hidden from view of those outside the fenced area. This requirement shall not apply to fences that abut nonresidential zoning districts, lots abutting interstate highways, or in situations where the owner of the lot adjacent to the fence gives written permission of a plan for placing support posts on the outside of the fence. All exposed steel, except galvanized metal, shall have a color finish coat applied to them and be preserved against rust and corrosion.

(4) *Design and maintenance.* All fences shall be maintained in their original upright condition. Fences designed to be painted or have other surface finishes shall be maintained in their original condition as designed. Missing boards, pickets, or posts shall be replaced in a timely manner with material of the same type and quality.

(5) *Prohibited.*

a. Barbed wire and electrified fences shall be prohibited on all lots of less than two acres in area.

b. Fencing shall be prohibited within any street right-of-way. Exact location of fencing shall be the sole responsibility of the property owner.

c. Fencing shall not obstruct the passage or storage of floodwater, surface runoff, or stormwater along lot lines as regulated in section 112-129 of chapter 112, Stormwater Management, of this Code.

(Zoning Ord., § 14.36.06; Ord. No. 09:086, 11-17-2009)

Sec. 117-330. - Sidewalks.

(a) *Multifamily and commercial development.* Sidewalks shall be required for all multifamily developments that contain five units or more. Sidewalks may be required through the site plan approval process for commercial developments.

(b) *Construction standards.* Sidewalks shall be constructed in accordance with all applicable city standards and specifications, and with all applicable ADA, Americans with Disabilities Act, requirements. If detached and set back at least five feet from the back of the curb, such sidewalks shall have a minimum width of four feet. If attached to the curb or located closer than five feet to the curb, such sidewalks shall have a minimum width of five feet.

(c) *Timing of installation.* Required sidewalks shall be installed prior to occupancy of any structure.

(Zoning Ord., § 14.36.07)

887 S.W.2d 296
318 Ark. 679, 887 S.W.2d 296
(Cite as: 318 Ark. 679, 887 S.W.2d 296)

C

Supreme Court of Arkansas.

CITY OF LITTLE ROCK, ARKANSAS, and its Board of Directors, Jim Dailey, Dr. Hamp Roy, Jesse Mason, Jr., Jeff Sharp, Joan Adcock, John Lewellen and Sharon Priest, Appellants/ Cross-Appellees,

v.

Eugene M. PFEIFER, III; Steven H. Scott; Carol Diane Brown; James Moore Brown, Jr.; Robert Johnston; FCC Tract A Partnership; FCC Tract D Partnership; Heights Neighborhood Association; Mark Dane Hartness; James R. Lynch; Weaver Leon Majors, III; Stewart B. McGehee; Evelyn Thomas; Bart Tomerlin; and Leisure Arts, Appellees/Cross-Appellants.

No. 93-786.
Nov. 14, 1994.

Property owner challenged municipal ordinance rezoning property as planned commercial district and declaring that proposed building supply center development was proper subject for district. The Chancery Court, Pulaski County, Van Smith, Chancellor, voided ordinance and enjoined city from issuing building permit. City appealed. The Supreme Court, Boyett, Special J., held that building supply center development was not proper subject for planned commercial district.

Affirmed.

West Headnotes

[1] Zoning and Planning 414 ⚿1140

414 Zoning and Planning
414III Modification or Amendment; Rezoning
414III(A) In General
414k1140 k. Power to modify or amend in general. Most Cited Cases
(Formerly 414k151)
City has right to change uses and amend its land use plan.

[2] Zoning and Planning 414 ⚿1043

414 Zoning and Planning
414II Validity of Zoning Regulations
414II(A) In General
414k1043 k. Comprehensive or general plan, validity. Most Cited Cases
(Formerly 414k30)

Zoning and Planning 414 ⚿1044

414 Zoning and Planning
414II Validity of Zoning Regulations
414II(A) In General
414k1044 k. Conformity of regulations to comprehensive or general plan. Most Cited Cases
(Formerly 414k30)

Zoning and Planning 414 ⚿1045

414 Zoning and Planning
414II Validity of Zoning Regulations
414II(A) In General
414k1045 k. Zoning by districts. Most Cited Cases
(Formerly 414k31)
City does not have to create zoning ordinance or land use plan, or adopt planned use districts or planned commercial districts, but once it has done so it must follow ordinance until it is repealed or altered.

[3] Appeal and Error 30 ⚿863

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k862 Extent of Review Dependent on Nature of Decision Appealed from
30k863 k. In general. Most Cited Cases

Appeal and Error 30 ⚿934(1)

30 Appeal and Error
30XVI Review
30XVI(G) Presumptions
30k934 Judgment
30k934(1) k. In general. Most Cited Cases

On summary judgment appeal evidence is normally viewed most favorably for party resisting motion and any doubts and inferences are resolved against moving party, but in case where there is agreement by parties that there is no genuine issue of any material fact, that rule is inapplicable and reviewing court simply determines whether appellees were entitled to judgment as matter of law.

[4] Zoning and Planning 414 ⚿1631

414 Zoning and Planning
414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)1 In General
414k1627 Arbitrary, Capricious, or Unreasonable Action
414k1631 k. Decisions of boards or officers in general. Most Cited Cases
(Formerly 414k610)

Zoning and Planning 414 ⚿1680

414 Zoning and Planning
414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)3 Presumptions and Burdens
414k1680 k. Decisions of boards or officers in general. Most Cited Cases
(Formerly 414k676)

Chancellor's decision that city acted arbitrarily, capriciously, and unreasonably in zoning case had to be examined by reviewing court for error, taking into consideration that there was presumption that city's board of directors acted in reasonable manner whether they zoned or refused to zone property.

[5] Zoning and Planning 414 ⚿1241

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(C) Uses and Use Districts
414V(C)1 In General
414k1241 k. Commercial districts and uses in general. Most Cited Cases
(Formerly 414k276)

Building material supply center, used for both wholesale and retail operations, was not permitted use in, and did not satisfy definition or requirement for, planned commercial district, under city's land use plan and zoning ordinances; such district was intended to accommodate shopping centers and commercial/office park development and other mixed use developments combining residential, commercial, and office uses in carefully planned configuration in such manner as to protect and enhance viability of each independent use. Little Rock, Arkansas, Municipal Code, § 36-452(3).

***680** ****297** Thomas M. Carpenter, Susan M. Oswalt, Cynthia Dawson, Stephen R. Giles, Little Rock, for appellants.

Christopher O. Parker, Little Rock, for appellees.

BOYETT, Special Justice.

This appeal challenges the Chancellor's finding that the Board of Directors of Little Rock, Arkansas was arbitrary, capricious and unreasonable in passing Municipal Ordinance No. 16337. This ordinance basically rezoned 17.7 acres of land on Highway 10 in Little Rock from R-2 to a Planned Commercial District and legislated that the National Home Center Project was a proper subject for a Planned Commercial Development.

***681** All parties agreed there were no genuine issues of material facts and the case was submitted to the Chancellor on summary judgment motions which included pleadings, testimony by affidavit, deposition and other discovery methods and exhibits. The Chancellor voided the ordinance and permanently enjoined the City from issuing a building permit and the City has appealed.

The General Assembly provided cities with the power to adopt plans for property usage within its boundaries as set out in Ark.Code Ann. §§ 14-56-401 to -425 (1987 & Supp.1993) which include the adoption and filing of a land use plan and zoning ordinances consisting of a map and text for the entire city which will carry out or protect the various elements of the plan.

Pursuant to the legislative authority granted it, the City of Little Rock did adopt a land use plan and zoning ordinances for the City including the Highway 10 area west of I-40 which includes the subject property. Included in the adoption of the zoning code of ordinances was a designation of Planned Unit Development, Municipal Code Section 36-451 *et seq.* Professor Robert Wright, author of *Zoning Law in Arkansas: A Comparative Analysis,* opined that:

> [t]he Planned Unit Development, or PUD, is authorized by ordinance in Little Rock.... As mentioned, the potential scope of a PUD is greater than that of a cluster development. Clustering still takes place in the sense that the population density within the area is intended to remain about the same as if setback and similar requirements were met. On the other hand, there is a greater mix of uses. The idea is that these varying uses will be blended so as to create an aesthetically pleasing, interrelating unit which is advantageous in terms of property values.

A Planned Commercial District or PCD is one of four kinds of Planned Unit Developments or PUDs.

In Municipal Code Section 36-452(3), the City stated the purpose and intent of the PCD planned commercial/mixed use district as follows:

> a. *Purpose and intent.* The PCD district is intended to accommodate shopping centers and commercial/office park developments, and mixed use developments combining***682** residential, commercial and office uses in a carefully planned configuration in such a manner as to protect and enhance the viability of each independent use. The legislative purpose, intent and application of commercial planned development are as follows:
>
> 1. To encourage the clustering of commercial and office activities within areas specifically designed to accommodate the uses and to discourage the proliferation of commercial uses along major thoroughfares and noncommercial areas.
>
> 2. To provide for the orderly development of commercial and office activities in order to minimize adverse impact on surrounding areas and on the general flow of traffic.
>
> 3. To encourage orderly and systematic commercial/office and mixed use development design providing for the rational placement of activities, vehicular and pedestrian circulation, access and egress, loading, landscaping and buffer strips.
>
> ****298** 4. To encourage commercial development which is consistent with the long-range comprehensive plan for the city.
>
> 5. To facilitate residential development in a multi-use configuration incorporating commercial and office uses.
>
> 6. To accommodate large-scale suburban developments combining commercial office and residential uses in a harmonious relationship.

Municipal Code Section 36-452(3)(b) lists as permitted uses in the PCD:

> 1. Retail commercial uses.
>
> 2. Public and institutional uses.
>
> 3. Office uses.
>
> 4. Light industrial uses, provided that gross area per use generally does not exceed five thousand (5,000) square ***683** feet and that at least fifty

(50) percent of the floor area is used for retail sales.

5. Substantial residential uses appropriate to the scope and character of the development.

[1][2] Of course the City has the right to change usages and amend the plan. As an example, Municipal Ordinance No. 15765 passed October 17, 1989, introduced a design overlay district for the Highway 10 land use plan, i.e. this was supplemental to the land use plan and basically dealt with the concept of "protection of the scenic quality of the Highway", "substantial building setbacks", "extensive landscaping and uniform tree plantings", and other esoteric values; nor does a city have to create a zoning ordinance or a land use plan or adopt planned use districts or planned commercial districts, but once it has done so it must follow the ordinance until it is repealed or altered. *City of Fordyce v. Vaughn,* 300 Ark. 554, 560, 781 S.W.2d 6, 9-10 (1989); *Potocki v. City of Fort Smith,* 279 Ark. 19, 22, 648 S.W.2d 462, 464 (1983).

What the questionable ordinance does is rezone the tract in question from R-2 to a PCD and declare that the National Home Center constitutes a project within the concepts of a PCD. The City did not repeal or amend the concept of a PCD as set out in its ordinance, i.e. the definitional requirements of a PCD are left in place. The project must comply with the uses, intent and purposes of the ordinance which defines PCD.

The undisputed facts are that the 17.7 acre tract was zoned R-2. The project to be built on the tract is a large National Home Center which provides materials and supplies for construction. The store would be 1,100 feet long and would be used partially for wholesale operations to contractors and the remainder would be for retail operations. The main building would comprise 100,200 square feet of customer showroom, the contractor sales showroom would be 10,000 square feet, the warehouse would be 50,000 square feet; there would be 30,000 square feet of lawn and garden facilities and it would have vehicle maintenance facilities with a fuel station. The exterior of the building along Highway 10 frontage would be a concrete wall and the other three walls would be a textured steel. The height of all the buildings is 24 ***684** feet with a metal roof of 12 and 2 pitch. No existing landscaping or terrain could be used on the site. The 17.7 acre tract amounts to 270,000 square feet of land. The main building would be on a 10 foot fill and the finished floor elevation of the retail sales area facing Highway 10 would be some 15 feet above the curb line on Highway 10 making the building facade about 40 feet in height above that point. The project would not be screened by any proposed landscaping for 15-20 years. There would be only one ownership of the facility.

[3] This case is unique in a couple of senses. First of all, the parties have agreed that there was no genuine issue as to any material fact. Normally on a summary judgment appeal the evidence is viewed most favorably for the party resisting the motion and any doubts and inferences resolved against the moving party. In a case where there is agreement by the parties that there is no genuine issue of any material fact that rule is inapplicable and we simply determine whether the appellees were entitled to judgment as a matter of law. *See Daniels v. Riley's Health & Fitness Centers,* 310 Ark. 756, 840 S.W.2d 177 (1992).

****299** While Chancery cases are reviewed *de novo* on appeal, *Garot v. Hopkins & Coates,* 266 Ark. 243, 583 S.W.2d 54 (1979), the Chancellor in a zoning case is limited solely to whether or not the city acted arbitrarily, capriciously or unreasonably. The reason is that such zoning decisions of the city are legislative in nature and the courts have long ruled that judicial intrusion upon this legislative prerogative violates the constitutional requirement of separation of powers. *City of Little Rock v. Breeding,* 273 Ark. 437, 619 S.W.2d 664 (1981); *Wenderoth v. City of Fort Smith,* 251 Ark. 342, 472 S.W.2d 74 (1971).

[4][5] So the Chancellor's decision that the City

acted arbitrarily, capriciously and unreasonably must be examined by this court for error, taking into consideration there is a presumption that the Board of Directors acted in a reasonable manner whether they either zoned or refused to zone property. *Breeding, supra.* Arbitrary has been defined as "decisive but unreasoned action," and capricious has been defined as "not guided by steady judgment or purpose." *W.C. McMinn Co., Inc. v. City of Little Rock,* 257 Ark. 442, 448, 516 S.W.2d 584, 587 (1974) (citing *City of North Little Rock v. Habrle,* 239 Ark. 1007, 395 S.W.2d 751 (1965)).

***685** There was opinion evidence given as to whether or not under the facts this project was proper for a PCD. Various witnesses testified and perhaps the most impressive witness was Jim Lawson, an employee of the City in the Planning Commission office. Mr. Lawson who is very knowledgeable in the field of zoning and the effect of zoning ordinances testified by deposition that the National Home Center Project would not encourage the clustering of commercial and office activities within the area rezoned and that it would encourage a proliferation of strip commercial along Highway 10. In fact Mr. Lawson testified that he was concerned that if the National Home Center went in the area it would encourage a commercial development that was inconsistent with the Highway 10 land use plan, that it would discourage residential areas from being developed along Highway 10, and that it would lead toward a total strip commercial area and in fact cause a collapse of the entire Highway 10 plan intent. Several land owners in the immediate vicinity testified that they had no objections to the project being constructed and hoped their land would be rezoned also and other land owners in the vicinity gave evidence that they objected to the proposed project as being out of sync with the intent of the zoning and land use plan of the City.

There were four *uses* for a PCD three of which obviously are inapplicable to this case, i.e. (1) public institutional uses (2) office uses (3) industrial uses (gross area exceeds 5,000 square feet). This leaves only the retail commercial use. There was strong evidence that a portion of the project of the National Home Center's business would be wholesale rather than retail use.

Plaintiffs' evidence also addressed itself to whether the project was in keeping with the *purpose* and *intent* of a PCD. The PCD district is definitionally intended to accommodate shopping centers and commercial/office park development and other mixed use developments combining residential, commercial and office uses in a carefully planned configuration in such a manner as to protect and enhance the viability of each independent use. This is not a commercial/office park development; there are no mixed developments combining residential and commercial office uses and this is not a shopping center. At page 2292 of the Little Rock Code, a shopping center was defined as a group of unified commercial establishments built on a site which is planned, developed, ***686** owned and managed as an operating unit related in its location, size and types of shops to the trade area that the unit serves. It is obvious that the Chancellor felt that this required multiple businesses and multiple ownerships in order to be a shopping center. The finding of the Chancellor under the agreed upon facts that the project did not meet the definitional requirement of a PCD is not clearly erroneous. Consequently, we cannot say the Chancellor erred in determining the appellees were entitled to judgment as a matter of law.

Appellees have cross-appealed claiming the right to an attorney fee under the 1993 Civil Rights Act passed by the General Assembly. We find no ruling by the lower court on this ****300** issue. In any event, the municipal ordinance was passed in January 1993 and the Civil Rights Act did not go into effect until August of 1993.

Affirmed on direct appeal; affirmed on cross-appeal.

Special Chief Justice EUGENE T. KELLEY and Special Justice DON A. SMITH concur.

HOLT, C.J., and NEWBERN and GLAZE, JJ., not participating.

Ark.,1994.
City of Little Rock, Ark. v. Pfeifer
318 Ark. 679, 887 S.W.2d 296

END OF DOCUMENT

Prudential
1st Realty

Greg Baugh
Prudential 1st Realty
2917 King Street
Jonesboro, AR 72401
(870) 336-7653

To whom it may concern,

The purpose of this letter is to give you my opinion as a real estate broker regarding the impact the relocation of the Craighead County Fairgrounds will have on the future sales prices and marketing of property in the area.

First, let me say that I am not a real estate appraiser. However, I have been involved in several hundred real estate transactions and have been an active real estate broker and owner in the Jonesboro and surrounding area real estate market for over ten years.

As Brookland School District continues to make improvements, the desirability of property in their district has increased dramatically in the past three years. Windsor Landing, Oak Subdivision (CR 705) and Eastridge Subdivision (CR 745, CR 7450, CR 7452) have experienced increases in sales prices over the past several years due to their location.

However, since the fairgrounds announcement was made several weeks ago, this area has already experienced a negative impact. On more than five occasions in the past three weeks, clients have absolutely refused to look at property in the area due to the possibility of the fairgrounds relocating. On every occasion, I showed them where the proposed location was. On every occasion, we continued our property search elsewhere. I believe this is just the tip of the iceberg. While it is impossible to predict the actual impact on property values, it is possible to predict a trend in a property's desirability based upon environmental factors.

It is my opinion that the future residential property values in this area will be negatively impacted by the location of the fairgrounds. I can't think of any reason how it could ever improve any residential property value by locating this type of facility this close to a residential neighborhood.

Sincerely,

Greg Baugh, Principal Broker and Owner
Prudential 1st Realty

CRYE-LEIKE,
REALTORS®

2907 S. Caraway Road • Jonesboro, AR 72401

March 14, 2011

Mr. Jim Lyons, Attorney
407 South Main Street
Jonesboro, Arkansas 72401

RE: Fairgrounds Relocation

Dear Mr. Lyons:

I want to take this opportunity to give you my opinion of what the relocation of the fairgrounds will do to the property values of the surrounding neighborhoods. I have been listing and selling real estate in Jonesboro since 1989 and am the Principal Broker and Manager of Crye-Leike, Realtors.

These neighborhoods are residential and just outside the city limits. I have sold homes in these neighborhoods in the past. Families who have bought there had a desire to be in a quiet country atmosphere with conveniences the City of Jonesboro has to offer not being very far from their homes. The relocation of the fairgrounds to this area will not help the value of these homes appreciate. It is my opinion it will do the exact opposite, they will decrease in value because of the obvious reason, the "quiet country atmosphere" will no longer be there. The fairgrounds being located there will effect the safety of children, traffic count, noise level, the list goes on and on.

Annexing these properties into the city limits to allow them city sewer is not going to make up for the depreciation of what the fairgrounds will do to the value of these properties.

Sincerely,

Cathi Nisenbaum

For all your Real Estate needs.

Cathi Nisenbaum
Broker/Manager, CRS, GRI

Office: (870) 933-5699 • Home: (870) 932-5905 • Mobile: (870) 930-5673

REZONING INFORMATION:

The applicant is responsible for explaining and justifying the proposed rezoning. *Please prepare an attachment to this application answering each of the following questions in detail:*

(1). How was the property zoned when the current owner purchased it? N/A

(2). What is the purpose of the proposed rezoning? Why is the rezoning necessary? TO DEVELOP A COMPETE COMMUNITY ACTIVITY CENTER TO INCLUDE THE NORTHEAST DISTRICT FAIR (ONE WEEK IN SEPTEMBER).

(3). If rezoned, how would the property be developed and used? TO DEVELOP A COMPETE COMMUNITY ACTIVITY CENTER TO INCLUDE THE NORTHEAST DISTRICT FAIR (ONE WEEK IN SEPTEMBER).

(4). What would be the density or intensity of development (e.g. number of residential units; square footage of commercial, institutional, or industrial buildings)? PRELIMINARY DESIGN CALLS FOR APPROXIMATELY 200,000 SQUARE FEET OF DEVELOPMENT FOR THE 10 YEAR PLAN.

(5). Is the proposed rezoning consistent with the *Jonesboro Comprehensive Plan* and the *Future Land Use Plan?*
NO, IS NOT CONSISTENT WITH THE CURRENT LAND USE PLAN.

(6). How would the proposed rezoning be the public interest and benefit the community?
IT WOULD ALLOW DEVELOPMENT OF COMPLETE COMMUNITY ACTIVITY CENTER.

(7). How would the proposed rezoning be compatible with the zoning, uses, and character of the surrounding area?
ZONING WOULD BE CONSISTENT WITH THE CONTINUING DEVELOPMENT ALONG HIGHWAY 49 NORTH WITH THE PROPERTY CURRENTLY NOT IN THE CITY.

(8). Are there substantial reasons why the property cannot be used in accordance with existing zoning?
DEVELOPMENT COULD BE COMPLETED WITHOUT ANNEXING THE PROPERTY. HOWEVER, THE DESIRE OF THE DEVELOPER IS TO BE WITHIN THE CITY LIMITS IN ORDER TO DEVELOP ACCORDING TO CITY CODES AND ORDINANCES.

(9). How would the proposed rezoning affect nearby property including impact on property value, traffic, drainage, visual appearance, odor, noise, light, vibration, hours of use or operation and any restriction to the normal and customary use of the affected property. THIS REZONING SHOULD NOT ADVERSLY AFFECT ANY OF THE ABOVE.

(10). How long has the property remained vacant? THE PROPERTY HAS REMAINED VACANT FOR SEVERAL YEARS EXECPT FOR THE ONE OCCUPIED FARM HOME ON THIS PROPERTY.

(11). What impact would the proposed rezoning and resulting development have on utilities, streets, drainage, parks, open space, fire, police, and emergency medical services? IT SHOULD HAVE MINIMAL IMPACT ON THESE SERVICES WITH THE DEVELOPER EXTENDING CWL UTILITIES TO THIS PROPERTY IT SHOULD HAVE A POSITIVE IMPACT ON THE AREA. ALSO THE ULTIMATE UTILIZATION OF THIS PROPERTY IS CONSISTENT WITH THE NEED FOR ADDITIONAL NEIGHBORHOOD PARKS AND OPEN AREAS.

(12). If the rezoning is approved, when would development or redevelopment begin? WOULD LIKE TO PERMIT CONSTRUCTION IN EARLY SUMMER.

(13). How do neighbors feel about the proposed rezoning? Please attach minutes of the neighborhood meeting held to discuss the proposed rezoning or notes from individual discussions. *If the proposal has not been discussed with neighbors, please attach a statement explaining the reason. Failure to consult with neighbors may result in delay in hearing the application.*
MEETINGS WERE HELD TO DISCUSS THE PROPOSED DEVELOPMENT.

(14). If this application is for a Limited Use Overlay (LUO), the applicant must specify all uses desired to be permitted.

Applications will not be considered complete until all items have been supplied. Incomplete applications will not be placed on the Metropolitan Area Planning Commission agenda and will be returned to the applicant. The deadline for submittal of an application is the 17th of each month. The Planning staff must determine that the application is complete and adequate before it will be placed on the MAPC agenda.