



FAYETTEVILLE CITY COUNCIL
AGENDA
FEBRUARY 13, 2012
7:00 P.M.
City Hall Council Chambers

1.0 CALL TO ORDER

2.0 INVOCATION

3.0 PLEDGE OF ALLEGIANCE

4.0 APPROVAL OF AGENDA

5.0 PUBLIC FORUM

5.1 Each speaker shall have up to 2 minutes to address Council on issues related to the City of Fayetteville. No time will be yielded to any speaker by another speaker. The Public Forum shall last no longer than 15 minutes. The Mayor shall have the discretion to extend the Public Forum up to 30 minutes.

6.0 CONSENT

6.1 Approve Meeting Minutes:

November 28, 2011 - Regular Meeting
December 7, 2011 - Special Agenda Briefing
December 12, 2011 - Discussion of Agenda Items
December 12, 2011 - Regular Meeting

6.2 Adoption of the Federal Legislative Agenda

6.3 Authorizing a Drainage Easement to NCDOT for the upcoming bridge replacement project along US 301 Business over Cross Creek

6.4 Amendment to the City's Fees and Charges Eliminating the Fee for More Than Six Bulky Item Collections at One Residence

6.5 Adopt Resolution to Declare City Foreclosed Property Surplus, Sale by Sealed Bid, and Award and Accept Highest Bid

6.6 Award Contract for the Purchase of Eight (8) Mini-Hybrid Thermal Management System Kits

6.7 Finance - Tax Refunds of Greater Than \$100.

6.8 Capital Project Ordinance Amendment 2012-19 and Capital Project Ordinance 2012-9 (Century Circle Park Facilities and Joint-Use Facilities at Cumberland County Schools)

6.9 Revisions to Policy 150.2 Relating To Annexation Requirements

7.0 PUBLIC HEARINGS

For certain issues, the Fayetteville City Council may sit as a quasi-judicial body that has powers resembling those of a court of law or judge. The Council will hold hearings, investigate facts, weigh evidence and draw conclusions which serve as a basis for its decisions. All persons wishing to appear before the Council should be prepared to give sworn testimony on relevant facts.

7.1 Case No. P12-05F. Rezoning from SF-15 Single Family District to OI Office and Institutional District, or a more restrictive district, on property located on the south side of Kinlaw Rd. Containing 9 acres more or less and being the property of The Methodist University Inc.
Presenter(s): Craig Harmon, AICP, CZO - Planner II

7.2 Public Hearing and Consideration of Adoption of Revisions to Chapter 23, Article III Stormwater Management Ordinance

Presenter(s): Greg Caison, Stormwater Manager

8.0 OTHER ITEMS OF BUSINESS

8.1 City of Fayetteville 2011 Annual Report to the Community

Presenter(s): Dale Iman, City Manager

9.0 ADJOURNMENT

CLOSING REMARKS

POLICY REGARDING NON-PUBLIC HEARING AGENDA ITEMS

Anyone desiring to address the Council on an item that is not a public hearing must present a written request to the City Manager by 10:00 a.m. on the Wednesday preceding the Monday meeting date.

POLICY REGARDING PUBLIC HEARING AGENDA ITEMS

Individuals wishing to speak at a public hearing must register in advance with the City Clerk. The Clerk's Office is located in the Executive Offices, Second Floor, City Hall, 433 Hay Street, and is open during normal business hours. Citizens may also register to speak immediately before the public hearing by signing in with the City Clerk in the Council Chamber between 6:30 p.m. and 7:00 p.m.

POLICY REGARDING CITY COUNCIL MEETING PROCEDURES SPEAKING ON A PUBLIC AND NON-PUBLIC HEARING ITEM

Individuals who have not made a written request to speak on a non-public hearing item may submit written materials to the City Council on the subject matter by providing twenty (20) copies of the written materials to the Office of the City Manager before 5:00 p.m. on the day of the Council meeting at which the item is scheduled to be discussed.

COUNCIL MEETING WILL BE AIRED

**February 13, 2012 - 7:00 PM
COMMUNITY CHANNEL 7**

COUNCIL MEETING WILL BE RE-AIRED

**February 15, 2012 - 10:00 PM
COMMUNITY CHANNEL 7**

***Notice Under the Americans with Disabilities Act (ADA):** The City of Fayetteville will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Any person who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in any City program, service, or activity, should contact the office of Ron McElrath, ADA Coordinator, at rmcelrath@ci.fay.nc.us, 910-433-1696, or the Office of the City Clerk at cityclerk@ci.fay.nc.us, 910-433-1989, as soon as possible but no later than 72 hours before the scheduled event.*

CITY COUNCIL ACTION MEMO

TO:

FROM:

DATE: February 13, 2012

RE: Each speaker shall have up to 2 minutes to address Council on issues related to the City of Fayetteville. No time will be yielded to any speaker by another speaker. The Public Forum shall last no longer than 15 minutes. The Mayor shall have the discretion to extend the Public Forum up to 30 minutes.

THE QUESTION:

RELATIONSHIP TO STRATEGIC PLAN:

BACKGROUND:

ISSUES:

BUDGET IMPACT:

OPTIONS:

RECOMMENDED ACTION:

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council
FROM: Pamela Megill, City Clerk
DATE: February 13, 2012
RE: **Approve Meeting Minutes:**
November 28, 2011 - Regular Meeting
December 7, 2011 - Special Agenda Briefing
December 12, 2011 - Discussion of Agenda Items
December 12, 2011 - Regular Meeting

THE QUESTION:

Should the City Council approve the draft minutes as the official record of the proceedings and actions of the associated meetings?

RELATIONSHIP TO STRATEGIC PLAN:

Greater Community Unity - Pride in Fayetteville; Objective 2: Goal 5: Better informed citizenry about the City and City government

BACKGROUND:

The Fayetteville City Council conducted meetings on the referenced dates during which they considered items of business as presented in the draft minutes.

ISSUES:

N/A

BUDGET IMPACT:

N/A

OPTIONS:

1. Approve the draft minutes as presented.
2. Revise the draft minutes and approve the draft minutes as revised.
3. Do not approve the draft minutes and provide direction to staff.

RECOMMENDED ACTION:

Approve the draft minute as presented.

ATTACHMENTS:

112811 Regular Minutes
120711 Agenda Briefing Minutes
121211 Executive Minutes
121211 Regular Minutes

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FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
CITY HALL COUNCIL CHAMBER
NOVEMBER 28, 2011
7:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); James W. Arp, Jr. (District 9)

Others Present: Dale E. Iman, City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Brian Meyer, Assistant City Attorney
Lisa Smith, Chief Financial Officer
Scott Shuford, Development Services Director
Michael Gibson, Parks and Recreation Director
Karen Hilton, Planning and Zoning Division Manager
Craig Harmon, Planner II
David Nash, Planner II
Bart Swanson, Housing and Code Enforcement Division
Manager
James Rose, PWC Chief Administrator
Pamela Megill, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order.

2.0 INVOCATION

The invocation was offered by Mayor Pro Tem Haire.

3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Mayor Pro Tem Haire.

On behalf of the City Council, City employees, and citizens of Fayetteville, Mayor Chavonne presented outgoing Council Member Ted Mohn with a plaque, a key to the City, and a City coin and thanked him for his commitment to the City of Fayetteville. Council Member Mohn thanked the Mayor, Council members, City staff, and the citizens for their support during the past four years of his service.

4.0 APPROVAL OF AGENDA

MOTION: Council Member Bates moved to approve the agenda.

SECOND: Council Member Arp

VOTE: UNANIMOUS (10-0)

5.0 CONSENT

MOTION: Council Member Arp moved to approve the consent agenda with the exception of Items 5.1, 5.5, and 5.11 for discussion.

SECOND: Council Member Mohn

VOTE: UNANIMOUS (10-0)

5.1 Pulled for discussion by Council Member Arp.

5.2 Case No. P11-55F. Rezone from SF-10 Single Family to NC Neighborhood Commercial, a more restrictive district than the requested LC Limited Commercial, for property at 2517 Legion

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Road, being 1.5 acres more or less. Owned by Rories Investments, LLC.

5.3 Special Revenue Fund Project Ordinance 2012-8 (FY 12 Juvenile Restitution Program).

The ordinance appropriated \$132,769.00 for the Juvenile Restitution Program for Fiscal Year 2012.

5.4 Special Revenue Fund Project Ordinance 2012-9 (2012 Sobriety Court).

The ordinance appropriated \$46,580.00 in federal court and local funds for the 2012 Sobriety Court Program.

5.5 Pulled for discussion by Council Member Arp.

5.6 PWC - Bid recommendation for replacement of 69kV transmission poles to C. W. Wright, Chester, VA, lowest responsive, responsible bidder in the amount of \$678,615.25 for Schedule No. 1 and \$434,444.00 for Schedule No. 2.

Bids were received as follows:

Schedule No. 1 - Year 1 - Fiscal Year 2012

C. W. Wright (Chester, VA) \$678,615.25
Lee Electrical Constructions, Inc. (Aberdeen, NC) . \$1,007,400.21

Schedule No. 2 - Morganton Road

C. W. Wright (Chester, VA) \$434,444.00
Lee Electrical Constructions, Inc. (Aberdeen, NC) ... \$493,600.05

5.7 PWC - Bid recommendation for water and wastewater chemical to Pencco, Inc., San Felipe, TX, low bidder in the amount of \$1,121,400.00.

Bids were received as follows:

Pencco, Inc. (San Felipe, TX) \$1,121,400.00
Kemira Water Solutions (Lawrence, KS) \$1,170,000.00

5.8 PWC - Ordinance revisions to Sewer Use Ordinance.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING ARTICLE II OF CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. ORDINANCE NO. S2011-015.

5.9 Approve meeting minutes:

- August 22, 2011 - Special Meeting Minutes
- September 6, 2011 - Work Session
- September 12, 2011 - Discussion of Agenda Items
- September 12, 2011 - Regular Meeting
- September 21, 2011 - Agenda Briefing
- September 26, 2011 - Discussion of Agenda Items
- September 26, 2011 - Regular Meeting
- September 29, 2011 - City/County Joint Meeting
- October 3, 2011 - Work Session
- October 6, 2011 - Discussion of Agenda Items
- October 10, 2011 - Regular Meeting
- October 18, 2011 - Legislative Update

5.10 Resolution to adopt the 2012 proposed City Council meeting dates calendar.

RESOLUTION OF THE CITY COUNCIL, CITY OF FAYETTEVILLE, NORTH CAROLINA, TO ADOPT THE 2012 CITY COUNCIL MEETING DATES CALENDAR

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TO CLARIFY THE TIME AND LOCATION OF THE CITY COUNCIL REGULAR MEETINGS. RESOLUTION NO. R2011-051.

5.11 Pulled for discussion by Council Member Arp.

5.1 Case No. P11-44F. Rezone from SF-6 and SF-10 Single Family to MR-5/C Mixed Residential Conditional Zoning for property east of Murchison Road at Country Club Road (PIN 0429-53-4492). Owned by March Riddle.

This item was pulled for discussion by Council Member Arp.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, 2010 Land Use Plan, and Murchison Road Study. He stated the request was not consistent with either the Land Use Plan or the Murchison Road Study and involved property identified by City Council for City-initiated rezoning consideration during the UDO remapping process. He stated the owner offered the conditions of (1) limiting the density to that of the former R-6 district and (2) retaining the existing CC zoning. He stated the Zoning Commission and staff recommended approval, with the conditions offered by the owner, based on (1) the principles of the UDO remapping project and (2) serving as a buffer between low-density residential and commercial/industrial uses/zoning.

MOTION: Mayor Pro Tem Haire moved to approve.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (10-0)

5.5 Parks and Recreation - Amendment to Ordinance Chapter 2 Administration, Chapter 8 Cemeteries, Chapter 18 Parks and Recreation, and Chapter 24 Streets and Sidewalks.

This item was pulled for discussion by Council Member Arp.

Ms. Karen McDonald, City Attorney, presented this item and stated effective December 1, 2011, Session Law 2011-268 (the "Act") would limit the authority of a local government to post a prohibition against carrying of a concealed handgun, by a permit holder, to local government buildings, their appurtenant premises and designated recreational facilities. She stated the Act further provided that recreational facilities would include only athletic fields, athletic facilities, playgrounds, and swimming pools specifically identified by the local government. She stated the Act provided that even where local governments have an ordinance to prohibit the carrying of concealed handguns in designated recreational facilities, the handgun could be kept in a trunk, glove box, or other enclosed compartment or area of a locked vehicle. She stated for the City's purposes, the passage of the Act meant that after December 1, 2011, the City could not prohibit the carrying of concealed firearms in parks in general. She stated the City could only do so with respect to the areas of parks consisting of City buildings, their facilities, and even then, the permit holder could secure the concealed weapon as provided by the statute. She stated Sections 2-12, 8-18, 18-7, 18-42, and 24-284 of the City Code would have to be amended to conform to the Act. She stated any postings in any City parks prohibiting the possession of a firearm in the entire park, instead of just the recreational facilities, buildings and their appurtenant premises, would have to be removed and altered to conform to the Act.

A brief discussion period ensued.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 2, ADMINISTRATION; CHAPTER 8, CEMETERIES; CHAPTER 18, PARKS AND RECREATION; AND CHAPTER 24, STREETS AND SIDEWALKS, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. ORDINANCE NO. S2011-016.

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MOTION: Council Member Massey moved to approve.
SECOND: Council Member Applewhite
VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Mohn)

5.11 Rental Action Management Program (RAMP).

This item was pulled for discussion by Council Member Arp.

Mayor Chavonne presented this item and stated the RAMP public hearing would be held on December 12, 2011, at 7:00 p.m. at City Hall. He explained that RAMP could impact multiple residents and property owners and there could be numerous RAMP stakeholders wishing to speak at the public hearing. As such, he stated the City Council should consider defining the guidelines for the public hearing so that all speakers can plan accordingly. He stated the recommendation was to allow each speaker to address the City Council for a maximum of 3 minutes, with up to 60 minutes allocated for the RAMP public hearing.

MOTION: Council Member Mohn moved to approve.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (10-0)

6.0 PUBLIC HEARINGS

6.1 An amendment, referred to as Set #2, to City Code Chapter 30 Unified Development Ordinance, to correct, clarify and adjust various sections of the UDO, including: child care centers, cell towers, posting requirements, pre-application conference requirements for major COA, appeal processes and schedules, separation between multi-story buildings, use changes in NC, temporary uses, hotel and motel parking standards, medical uses parking standards, cul-de-sacs and street stubs, performance guarantees, and definition and standards for nonconforming lots.

Ms. Karen Hilton, Planning and Zoning Division Manager, presented this item and provided background information on Amendment Set #1. She stated Amendment Set #2 was considered at a Planning Commission public hearing and one speaker was in favor of deferring action on the portions affecting setbacks to allow time for the UDO Advisory Committee to offer comments. She stated with deferral of the portions on setbacks, the Planning Commission recommended approval. She provided an overview of the changes highlighted in the ordinance. She stated the Planning Commission and staff recommended approval of the ordinance as recommended.

A brief discussion period ensued.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Ed Blanchard, 103 Roxie Avenue, Fayetteville, NC 28304, appeared in opposition and expressed concern regarding the section eight use changes for the NC (Neighborhood Commercial) District.

There being no one further to speak, the public hearing was closed.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE TO AMEND CHAPTER 30 UNIFIED DEVELOPMENT ORDINANCE TO ADDRESS ERRORS OR CLARIFICATIONS AFFECTING REFERENCES, CHILD CARE CENTERS AND CELL TOWERS, POSTING REQUIREMENTS, PRE-APPLICATION CONFERENCE REQUIREMENTS FOR MAJOR COA, APPEAL PROCESSES AND SCHEDULES, FRONT AND CORNER SIDE SETBACKS, REAR YARD REDUCTIONS, SEPARATION BETWEEN MULTI-STORY BUILDINGS, FRONT YARD SETBACK IN AR, ACCESSORY STRUCTURE SETBACKS, USE CHANGES IN NC, TEMPORARY USES, HOTEL AND MOTEL PARKING STANDARDS, MEDICAL USES PARKING STANDARDS, CUL-DE-SACS AND STREET STUBS, PERFORMANCE GUARANTEES,

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AND DEFINITION AND STANDARDS FOR NON-CONFORMING LOTS. ORDINANCE NO. S2011-013.

MOTION: Council Member Bates moved to approve.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (10-0)

6.2 An amendment, referred to as Set #3, to correct, clarify or adjust several parts of the City Code Chapter 30 - Unified Development Ordinance including: setbacks; perimeter requirements in the hospital area overlay; listing of middle schools and high schools in the OI district; separation requirements for tattoo parlors and auto repair; landscaping standards; standards for certain non-conformities.

Ms. Karen Hilton, Planning and Zoning Division Manager, presented this item provided background information on Amendment Set #1. She stated Amendment Set #3 was considered at a Planning Commission public hearing and one speaker was in favor of deleting the separation requirement for tattoo parlors and auto repair shops. She stated the Planning Commission recommended approval with modifications as noted in the ordinance. She stated during the hearing and discussion at the Planning Commission meeting, the issues that emerged and were resolved were primarily (1) a fuller understanding of where tattoo parlors and auto repair, not auto body repair, shops could locate and the impacts of the separation requirement, and (2) what was a reasonable total timeframe to allow for permitting and reconstruction of nonconforming multifamily developments experiencing major casualty damage. She stated the Planning Commission and staff recommended approval of the ordinance as recommended.

This is the advertised public hearing set for this date and time. There was no one present to speak and the public hearing was opened and closed.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE TO AMEND CHAPTER 30 UNIFIED DEVELOPMENT ORDINANCE TO ADDRESS ERRORS AND CLARIFICATIONS AND TO PROVIDE CHANGES TO STANDARDS AFFECTING SETBACKS; PERIMETER REQUIREMENTS IN THE HOSPITAL AREA OVERLAY; LISTING OF MIDDLE SCHOOLS AND HIGH SCHOOLS IN THE OI DISTRICT; SEPARATION REQUIREMENTS FOR TATTOO PARLORS AND AUTO REPAIR; PENALTIES FOR NON-COMPLIANT AUTO/JUNK SALVAGE YARDS; LANDSCAPING STANDARDS; STANDARDS FOR CERTAIN NON-CONFORMITIES. ORDINANCE NO. S2011-014.

MOTION: Council Member Hurst moved to approve.
SECOND: Council Member Bates
VOTE: UNANIMOUS (10-0)

6.3 Case No. P11-40F - Rezone from OI Office and Institutional to LC/C Limited Commercial Conditional District for property on Cliffdale Rd. (PIN 0417-26-2808), 10+ acres, owned by Joseph Riddle III. On appeal

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, 2010 Land Use Plan, and 2003 Glensford Road Area Study. He stated the request was not consistent with the Land Use Plan or the 2003 Glensford Road Area Study and involved property identified by City Council for City-initiated rezoning consideration during the UDO remapping process. He stated staff review of the request suggested that rezoning of the property to LC would be inconsistent with the surrounding development pattern. He stated after the request was advertised, the applicant requested a lesser zoning of NC Neighborhood Commercial with the following conditions: (1) no outdoor recreation, (2) no animal care, (3) no parks, (4) no government uses, (5) no group living, and (6) no multifamily. He stated the Zoning Commission and staff recommended denial of the rezoning to NC/C as requested by the applicant.

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A brief discussion period ensued.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Johnathan Charleston, 201 Hay Street, Fayetteville, NC 28301, representing the property owner, appeared in favor and stated the rezoning would be an appropriate use.

Mr. Neil Yarborough, 115 E. Russell Street, Fayetteville, NC 28301, representing the property owner, appeared in favor and requested the Council approve the rezoning.

There being no one further to speak, the public hearing was closed.

MOTION: Council Member Arp moved to approve.
SECOND: Council Member Hurst
VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Bates)

6.4 Case No. P11-41F. Rezone from LC Limited Commercial to CC/C Community Commercial Conditional District for 15+ acres at Sycamore Dairy Road (PIN 0418-53-3255). Owned by Joseph Riddle, III.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated the property was identified by City Council for City-initiated rezoning consideration during the UDO remapping process. He stated the Zoning Commission and staff recommended approval of the rezoning from LC to CC/C with all conditions provided by the applicant and City staff.

A brief discussion period ensued.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Johnathan Charleston, 201 Hay Street, Fayetteville, NC 28301, representing the property owner, appeared in favor and stated the item should have been placed on the consent agenda.

Mr. Neil Yarborough, 115 E. Russell Street, Fayetteville, NC 28301, representing the property owner, appeared in favor and requested approval of the rezoning.

Mr. Michael Royal, 2316 Larkhaven Court, Fayetteville, NC 28303, appeared in opposition and expressed concern for the neighbor's protection and the need for a buffer requirement.

There being no one further to speak, the public hearing was closed.

MOTION: Council Member Arp moved to approve.
SECOND: Council Member Massey
VOTE: UNANIMOUS (10-0)

6.5 Case No. P11-57F. Rezone from SF-10 Single Family to OI/C Office and Institutional Conditional District for property at 205 S. McPherson Church Road, being 1.16 acres more or less. Owned by Charles Stamitoles and Faye S. Stamitoles.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated the Zoning Commission and staff recommended

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approval of the rezoning with the conditions offered and accepted by the owner.

A brief discussion period ensued.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Neil Yarborough, 115 E. Russell Street, Fayetteville, NC 28301, representing the property owners, appeared in favor and requested the City Council approve the rezoning.

There being no one further to speak, the public hearing was closed.

MOTION: Council Member Arp moved to approve the rezoning as requested by the applicant.

SECOND: Council Member Bates

VOTE: UNANIMOUS (10-0)

6.6 Case No. P11-10F. Request for Special Use Permit for Independent Living Facility in the LC Limited Commercial District, located along Eastwood Avenue. Containing 7.31 acres more or less and being the property of Tri-Walker Investments, LLC.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated the City, through its Community Development Department, was a funding partner for the project. He stated the developer of the project, RHA, conducted a neighborhood meeting and approximately 20 people attended and only one was in opposition to the project. He stated there were no speakers in opposition to the proposal at the Zoning Commission meeting. He further stated approval of the facility would be based on the site plan. Finally, he stated the Zoning Commission and staff recommended approval of the Special Use Permit based upon the following findings of fact:

- (1) The special use complies with all applicable standards in Section 30-4.C, Use-Specific Standards.
- (2) The special use is compatible with the character of surrounding lands and the uses permitted in the zoning district(s) of surrounding lands.
- (3) The special use avoids significant adverse impact on surrounding lands regarding service delivery, parking, loading, odors, noise, glare, and vibration.
- (4) The special use is configured to minimize adverse effects, including visual impacts of the proposed use on adjacent lands.
- (5) The special use avoids significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.
- (6) The special use maintains safe ingress and egress onto the site and safe road conditions around the site.
- (7) The special use allows for the protection of property values and the ability of neighboring lands to develop the uses permitted in the zoning district.
- (8) The special use complies with all other relevant City, State, and Federal laws and regulations.

A brief discussion period ensued.

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This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Scott Redinger, 4553 Technology Drive, Wilmington, NC 28403, representing the developer, appeared in favor. He provided a brief power point and requested the Council approve the special use permit.

Mr. Joe Walker, 501 Walking Lane, Fayetteville, NC 28311, appeared in favor and stated no one had spoken in opposition at the Planning Commission meeting and requested the Council approve the request.

Ms. Lavern Oxendine, 325 Hay Street, Fayetteville, NC 28301, appeared in favor and expressed concern for homeless veterans and the need for the proposed facility and its programs.

Mr. Bob Measamer, 511 Thorncliff Drive, Fayetteville, NC 28303, appeared in favor and expressed his pride in supporting a transitional home for homeless veterans.

Ms. Tanya Hooks, 327 Eastwood Avenue, Fayetteville, NC 28301, appeared in opposition. She expressed support for the program but objected to the proposed location for the facility stating safety issues were a concern.

Ms. Georgina Muwakkil, 114 Eastwood Avenue, Fayetteville, NC 28301, appeared in opposition and expressed concern for this type of facility being located in her neighborhood. She stated she owned and operated a day care facility in the neighborhood and wanted the neighborhood to remain a safe place for children.

Ms. Sanya Eller, 275-2, Waterdown Drive, Fayetteville, NC 28314, appeared in opposition and expressed concern for safety in housing 24 homeless veterans in one facility with only one staff person in residence during the night hours.

Ms. Nettie Miller, 247 Eastwood Avenue, Fayetteville, NC 28301, appeared in opposition and expressed concern for the property values if the facility were located in her neighborhood.

Mr. Gregory Lane, 311 Eastwood Avenue, Fayetteville, NC 28301, appeared in opposition and expressed concern that the facility would be located too close to wooded areas, and wanted the neighborhood to remain a safe place to live.

There being no one further to speak, the public hearing was closed.

MOTION: Council Member Bates moved to approve.
SECOND: Council Member Applewhite
VOTE: FAILED by a vote of 3 in favor (Council Members Bates, Applewhite, and Hurst) to 7 in opposition (Council Members Davy, Massey, Haire, Crisp, Mohn, Arp, and Chavonne)

6.7 Case No. P11-13F. Request for rezoning from SF-10 Residential District to MR-5/C Residential District/Conditional Zoning district to develop 78 duplex apartments on property located North of Fisher Road. Containing 8.29 acres more or less and being the property of Willie J Sigler and wife, Gabriele.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated in August the case was tabled by the City Council in order for the developer to bring the plans up to UDO standards. He stated there were a large number of specimen trees located on the property. He stated while the developer had proposed submitting an alternative landscaping plan for the development, the plan had not been received. He stated staff was not opposed to multifamily

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development on the property, and rather than delaying the case to allow the submittal of a final site plan meeting the specific standards of the UDO, they recommended approval of the rezoning with the 78-unit density limitation proposed by the applicant. He stated a final site plan addressing all UDO requirements would be required of the applicant prior to site development. He stated the plan would also address the specimen tree mitigation requirements. He stated the Zoning Commission recommended approval with the following conditions:

- (1) Condition offered by the developer concerning a maximum density of 78 units.
- (2) Uses allowed prior to the UDO implementation.
- (3) That it meet the requirements of the UDO.

He stated staff also recommended the request be approved subject to the above conditions, with the understanding that the final site plan would be fully compliant with the UDO.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Scott Brown, 409 Chicago Drive, Fayetteville, NC 28306, representing the property owner, appeared in favor and stated he was the site designer and requested the Council approve the rezoning.

Ms. Mindy Love-Stanley, 2287 Lakewell Circle, Fayetteville, NC 28306, appeared in opposition and expressed concern for potential traffic congestion issues.

There being no one further to speak, the public hearing was closed.

MOTION: Council Member Crisp moved to approve.
SECOND: Council Member Bates
VOTE: PASSED by a vote of 7 in favor (Council Members Crisp, Bates, Applegate, Hurst, Arp, Haire, and Chavonne) to 3 in opposition (Council Members Davy, Massey, and Mohn)

6.8 Case No. P11-14F. Request for rezoning from SF6 Residential District to LC/C Limited Commercial Conditional District on property located at 521 Cedar Creek Road. Containing 1.5 acres more or less and being the property of Regina Mock.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated this could be considered spot zoning since it was not adjacent to any other commercial and no other commercial was on the same side of the street as the project. He stated the owner offered the following conditions:

- (1) Site plan and general layout.
- (2) That the property will be used for log cabin sales and residents.
- (3) Hours of operation limited to between 8 a.m. and 8 p.m.
- (4) Allowed uses in the SF-6 district.

He stated the Zoning Commission recommended approval based on (1) the Zoning Commission's view that this was the same as a subdivision with a model home for sale, but on a permanent basis; and (2) the Zoning Commission did not believe this was a case of illegal spot zoning, noting that it was mostly a residential use. He stated Staff recommended denial based on (1) the Land Use Plan calling for medium-density residential, (2) the property being surrounded by

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residential zoning and uses, (3) the property could meet the tests for illegal spot zoning, and (4) the rezoning would convey the appearance of an approved evolution to more commercial uses.

A brief discussion period ensued.

This is the advertised public hearing set for this date and time. There was no one present to speak and the public hearing was opened and closed.

MOTION: Council Member Davy moved to deny the rezoning.
SECOND: Council Member Crisp
VOTE: Unanimous (10-0)

6.9 Case No. P11-22F. Request for rezoning from SF-6 Single Family Residential to LC Limited Commercial on property located at 792 Bunce Road. Containing 0.28 acres more or less and being the property of Leamon and Dorise Bonds.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated the owner had indicated they wanted to expand their current beauty shop, which was next door and zoned OI, to include the property as well. He stated in 2002 the City rezoned the next door property from R10 to P4, the applicant had requested a C1A district. He stated the Zoning Commission recommended approval of a more restrictive district of OI based on (1) the adjoining property being zoned OI, (2) support from the neighborhood, and (3) the location being at an intersection. He stated staff recommended denial to the Zoning Commission based on (1) the Land Use Plans for the area calling for single-family residential, (2) the property bordering single-family zoning and uses on three sides, and (3) the uses in the LC and OI districts being too intense for a straight rezoning in a neighborhood setting. He stated the Zoning Commission recommended approval of the rezoning to Office and Institutional, a more restrictive zoning district than that applied for.

A brief discussion period ensued.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Leamon Bonds, 375 Kimberwicke Drive, Fayetteville, NC 28311, appeared in favor and stated he had collected 38 signatures from neighbors that were in favor of the rezoning.

Mrs. Dorise Bonds, applicant, 375 Kimberwicke Drive, Fayetteville, NC 28311, appeared in favor and requested the Council consider and approve the rezoning.

There being no one further to speak, the public hearing was closed.

MOTION: Council Member Applewhite moved to accept the Zoning Commission recommendation.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (10-0)

6.10 Case No. P11-47F. Request for rezoning from SF-10 Single Family Residential to LC Limited Commercial on property located at 1520 Hope Mills Road. Containing 1.59 acres more or less and being the property of Matilda Autry.

MOTION: Council Member Arp moved to table this item for the January 23, 2012, City Council regular meeting.
SECOND: Council Member Massey
VOTE: UNANIMOUS (10-0)

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6.11 Case No. P11-50F. Request for rezoning from AR Agricultural Residential to LC Limited Commercial on property located at the SW corner of Dundle and Stoney Point Roads. Containing 6.18 acres more or less and being the property of Dorothy Quick.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He briefly reviewed past zoning cases in the surrounding area. He stated the existing store had been there for approximately 30 years while zoned AR. He stated the rezoning would give the property an appropriate zoning district. He stated the Zoning Commission denied the case and it was now before Council on appeal based on (1) the Land Use Plan calling for residential, (2) six acres being a large amount of commercial property for a rural area, (3) the recent denial of a similar rezoning request across the intersection, and (4) the straight rezoning opening the property up to all allowed uses in the LC district. He stated the Zoning Commission and staff recommended denial of the rezoning to Limited Commercial.

A brief discussion period ensued.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Ms. Debbie Liebers, 3439 Dundle Road, Fayetteville, NC 28306, appeared in opposition and expressed concern for diminished property values if the rezoning request was approved.

Mr. Andrew Napoli, 7481 Glen Raven Road, Fayetteville, NC 28306, appeared in opposition and request the Council deny the rezoning.

Mrs. Maria Napoli, 7481, Glen Raven Road, Fayetteville, NC 28306, appeared in opposition and expressed her love of her home and surroundings and requested the Council not allow the rezoning.

There being no one further to speak, the public hearing was closed.

MOTION: Council Member Crisp moved to deny the zoning request.
SECOND: Council Member Bates
VOTE: UNANIMOUS (10-0)

6.12 Case No. P11-54F. Request for rezoning from NC Neighborhood Commercial to LC Limited Commercial on property located at 3530 Boone Trail. Containing 0.3 acres more or less and being the property of Sherril Watkins and Ed Blanchard.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated the property was recently remapped during the UDO process from C1 Commercial to NC Neighborhood Commercial. He stated the applicant was of the opinion that NC zoning was a down zoning and would cause undue hardship when trying to market the property. He stated during the UDO remapping process the property was mapped to NC to serve as an end point for commercial development on Boone Trail. He stated the uses allowed in NC fit more with the surrounding residential development. He stated the current use on the property would fit in the NC district and the nearest non-residential zoning to the property was also zoned NC. He stated the Zoning Commission denied the case and it was now before Council on appeal based on (1) the property being the last commercial property in the area of Boone Trail, (2) NC allowing the property to become a property buffer to the surrounding residential development, and (3) there being other NC on the opposite side of the street ending commercial development on that side. He further stated the Zoning Commission and staff recommended denial of the rezoning to Limited Commercial as presented by staff.

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A brief discussion period ensued.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Ed Blanchard, 103 Roxie Avenue, Fayetteville, NC 28304, appeared in favor and provided slides and a presentation to support his request to have his property rezoned, and stated this parcel of land should be a part of the UDO cleanup process.

There being no one further to speak, the public hearing was closed.

MOTION: Council Member Hurst moved to deny the zoning request.
SECOND: Council Member Applewhite
VOTE: FAILED by a vote of 5 in favor (Council Members Hurst, Davy, Arp, Massey, and Applewhite) to 5 in opposition (Council Members Mohn, Crisp, Bates, Haire, and Chavonne)

MOTION: Council Member Bates moved to rezone the property to LC.
SECOND: Council Member Hurst
VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Applewhite)

Mayor Chavonne announced that Item 6.15 would be the next item presented followed by Items 6.13 and 6.14 due to the amount of citizens that had been waiting to hear this item.

6.15 Public hearing to consider a petition requesting annexation submitted by the Household of Faith Church for property located at 468 N. Plymouth Street.

Mr. David Nash, Planner II, presented this item and stated the area had been reviewed by City operating departments and PWC. He stated the Fire Department would be able to serve the area from Station #1. He stated the Police Department would be able to serve the area. He stated Environmental Services would not serve the area because it was non-residential. He stated PWC water and sewer services were not currently provided to the area and the services would be provided by main extensions by the property owner. He stated PWC services the area with electrical services and street lights.

A brief discussion period ensued.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Robert D. Torry, 5245 Brownwood Court, Fayetteville, NC 28303, appeared in favor.

There being no one further to speak, the public hearing was closed.

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA [HOUSEHOLD OF FAITH CHURCH - 468 N. PLYMOUTH STREET (PINS 0447-74-9148 AND 0447-73-8837)]. ANNEXATION ORDINANCE NO. 2011-11-533.

MOTION: Council Member Davy moved to approve with an effective date of November 28, 2011.
SECOND: Mayor Pro Tem Haire
VOTE: UNANIMOUS (10-0)

6.13 Public hearing to consider a petition requesting annexation submitted by Freedom Christian Academy for property located at 3130 Gillespie Street.

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Mr. David Nash, Planner II, presented this item. He stated this was a satellite annexation and the area had been reviewed by City operating departments and PWC. He stated the area was 4.2 miles from the closest City fire station and therefore the Fire Department would need to contract with the Pearces Mill Volunteer Fire Department to provide primary coverage. He stated the Police Department would be able to serve the area. He stated since the area was nonresidential, the Environmental Services Department would not serve the area; instead, all waste would be hauled by a contract hauler at the school's expense. He stated sewer, water, fire hydrant, and electrical services were already provided to the area by PWC. He stated street light services were not currently provided to the area. He explained if the area were annexed, street light services would not be required. He stated staff was recommending an effective date of November 28, 2011.

A brief discussion period ensued.

This is the advertised public hearing set for this date and time. There was no one present to speak and the public hearing was opened and closed.

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA [FREEDOM CHRISTIAN ACADEMY - 3130 GILLESPIE STREET (PIN 0425-82-6757)]. ANNEXATION ORDINANCE NO. 2011-11-534.

MOTION: Council Member Bates moved to approve with an effective date of November 28, 2011.

SECOND: Council Member Hurst

VOTE: UNANIMOUS (10-0)

6.14 Public hearing to consider a petition requesting annexation submitted by Mr. and Mrs. Patel for property located at 2765 Gillespie Street.

Mr. David Nash, Planner II, presented this item. He stated this was a satellite annexation and the area had been reviewed by City operating departments and PWC. He stated the area was 3.4 miles from the closest City fire station and therefore the Fire Department would need to contract with the Pearces Mill Volunteer Fire Department to provide primary coverage. He stated the Police Department would be able to serve the area. He stated for the time that the two units were rentals, the Environmental Services Department would provide garbage pickup services and contract for recycling services. He stated if the property converted to commercial use, the Department would contract for garbage pickup services. He stated PWC water and fire hydrants were currently available to the property and sewer was adjacent and extensions would be needed per PWC policy. He stated electrical service was being provided by PWC to the area but street light services were not currently provided. He explained if the area were annexed, street light services would not be required.

A brief discussion period ensued.

This is the advertised public hearing set for this date and time. There was no one present to speak and the public hearing was opened and closed.

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA [PATEL PROPERTY - 2765 GILLESPIE STREET (PIN 0435-06-4623)]. ANNEXATION ORDINANCE NO. 2011-11-535.

MOTION: Council Member Mohn moved to approve with an effective date of November 28, 2011.

SECOND: Mayor Pro Tem Haire

VOTE: UNANIMOUS (10-0)

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6.16 Phase 5 Annexation Areas 12 and 13 public hearing.

Mr. James Rose, PWC Chief Administrator, presented this item and provided procedural background information. He stated after the public hearing, the next step in the process was to approve the resolution directing the project be undertaken.

A brief discussion period ensued.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Ms. Helen Miller, 1775 Arrow Ridge Way, Fayetteville, NC 28304, appeared in opposition and expressed concern regarding the fees and costs associated with annexation.

Mrs. Henrietta Pummill, 107 Cypress Circle, Hope Mills, NC 28348, appeared in opposition and expressed concern regarding the fees and costs associated with annexation.

There being no one further to speak, the public hearing was closed.

No action was taken on this item.

7.0 OTHER ITEMS OF BUSINESS

Mayor Chavonne announced that due to the late hour and length of the meeting, the following three items of business would be discussed at the next regular City Council meeting scheduled for December 12, 2011.

7.1 Presentation of the Audited FY 2010-2011 Comprehensive Annual Financial Report.

7.2 Construction Permit Fee Schedule amendments.

7.3 Uninhabitable structures demolition recommendations:

- 1103 Bunce Road
- 606 Mechanic Street
- 608 Mechanic Street
- 6526 Portsmouth Drive

8.0 ADMINISTRATIVE REPORTS

8.1 Monthly statement of taxes for October 2011.

2011 Taxes	\$1,693,020.48
2011 Vehicle	354,947.00
2011 Taxes Revit	3,085.90
2011 Vehicle Revit	270.57
2011 FVT	41,964.47
2011 Transit	41,964.50
2011 Storm Water	63,638.22
2011 Fay Storm Water	127,276.61
2011 Fay Recycle Fee	81,433.78
2011 Annex	0.00
2010 Taxes	37,551.34
2010 Vehicle	52,845.97
2010 Taxes Revit	130.55
2010 Vehicle Revit	10.06
2010 FVT	8,153.83
2010 Transit	8,153.82
2010 Storm Water	1,195.33
2010 Fay Storm Water	2,390.65
2010 Fay Recycle Fee	2,155.99
2010 Annex	0.00

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2009 Taxes	1,260.60
2009 Vehicle	2,093.08
2009 Taxes Revit	4.94
2009 Vehicle Revit	6.12
2009 FVT	565.87
2009 Transit	565.85
2009 Storm Water	63.86
2009 Fay Storm Water	127.71
2009 Fay Recycle Fee	126.21
2009 Annex	0.00
2008 Taxes	409.75
2008 Vehicle	1,382.45
2008 Taxes Revit	0.00
2008 Vehicle Revit	0.00
2008 FVT	256.64
2008 Transit	191.64
2008 Storm Water	62.19
2008 Fay Storm Water	76.37
2008 Fay Recycle	7.65
2008 Annex	0.00
2007 and Prior Taxes	553.51
2007 and Prior Vehicle	1,474.72
2007 and Prior Taxes Revit	0.00
2007 and Prior Vehicle Revit	0.00
2007 and Prior FVT	330.78
2007 and Prior Storm Water	266.19
2007 and Prior Fay Storm Water	168.00
2007 and Prior Annex	0.00
Interest	12,051.03
Revit Interest	23.03
Storm Water Interest	281.71
Fay Storm Water Interest	313.70
Annex Interest	9.56
Fay Recycle Interest	201.12
Fay Transit Interest	1,008.08
Total Tax and Interest	\$2,544,071.43

9.0 ADJOURNMENT

There being no further business, the meeting adjourned at 12:15 a.m. on Tuesday, November 29, 2011.

Respectfully submitted,

PAMELA J. MEGILL
City Clerk

ANTHONY G. CHAVONNE
Mayor

112811

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FAYETTEVILLE CITY COUNCIL
SPECIAL AGENDA BRIEFING MINUTES
LAFAYETTE ROOM
DECEMBER 7, 2011
4:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6) Valencia A. Applewhite (District 7); Wade Fowler (District 8); James W. Arp, Jr. (District 9)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Brian Meyer, Assistant City Attorney
Tom Bergamine, Chief of Police
Patricia Bradley, Police Attorney
Lisa Smith, Chief Financial Officer
Rusty Thompson, City Engineer
Scott Shuford, Development Services Director
Craig Harmon, Planner II
John Kuhls, Human Resource Development Director
Bart Swanson, Housing and Code Enforcement Division Manager
Frank Lewis, Sr., Code Enforcement Administrator
Doug Maples, Building Plan Review and Inspection Division Manager
Rebecca Rogers-Carter, Management Services Manager
Jennifer Lowe, Public Information Officer
Nathan Walls, Public Information Specialist
Members of the Press

Mayor Chavonne called the meeting to order at 4:00 p.m.

City staff presented the following items scheduled for the Fayetteville City Council's December 12, 2011, agenda:

CONSENT ITEMS:

Case No. P11-58F. Rezoning from LC Limited Commercial District to CC/C Community Commercial Conditional District, or a more restrictive district, on property located at Legend Avenue and Sycamore Dairy Road. Containing 3.1 acres more or less and being the property of Legend Hospitality One, LLC.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated the applicant's plans were to build a six-story hotel, but explained hotels allowed in the current LC district were restricted to four stories. He stated the CC district with conditions would allow the applicant to build a six-story hotel. He stated the owner offered the following conditions: (1) restrict to visitor accommodations as allowed in the CC district and (2) retain remaining rights allowed under the LC district. He stated the Zoning Commission and staff recommended approval of the rezoning to CC/C district based on the proposal matching the City's Land Use Plan; with the conditions offered by the owner, the zoning request would only extend allowances of visitor accommodations in the CC district and all other uses would remain as LC; and compatibility with surrounding uses.

Case No. P11-59F. Rezoning from SF-6 Single Family Residential District to NC Neighborhood Commercial District, or a more restrictive district, on property located at 4820 Rosehill Road. Containing 1 acre

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more or less and being the property of Westarea Volunteer Fire Department, Inc. (OI Office and Institutional recommended).

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated the applicant wished to rezone the property in order to sell it. He stated the Zoning Commission and staff recommended that the OI district would be a better fit since there was already OI zoning across from the property. He stated the property was currently nonconforming under the UDO and would remain so with a rezoning. He stated the Zoning Commission and staff recommended approval of a lesser OI district based on the previous use of the property, the existing building on the property, and the proximity to other OI districts. He stated the City would be required to provide an increase in public services that should be offset by the increase the development would bring to the City's tax base.

Case No. P11-60F. Rezoning from OI Office and Institutional District to LC/C Limited Commercial Conditional District, for a community gymnastics center, on property located at 417 Country Club Drive. Containing 2.4 acres more or less and being the property of New Century Bank.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated the applicant offered the following conditions: (1) LC uses would be restricted to only a gym; (2) retain all uses under the OI district; and (3) Type D, Opaque buffer where bordering residential districts, as listed in the UDO. He stated the Zoning Commission and staff recommended approval of the LC/C district based on the uses conditioned to only allow a gym under the LC zoning and all other uses and the proximity to other OI zoning.

Case No. P11-61F. Rezoning from CC Community Commercial District to MR-5 Mixed Residential District, or a more restrictive district, of a portion of property located at 4701 Raeford Road and Scotland Drive. Containing 10.51 acres more or less and being the property of Mitchell Properties of Florence, Inc.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed vicinity maps and gave overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He stated the Land Use Plan called for Heavy Commercial on the property, however, it was staff's opinion that Mixed Residential would also be appropriate since MR-5 was already on two sides of the property and should make a good redevelopment of a vacant property. He stated the Zoning Commission and staff recommended approval of the MR-5 district based on reuse of a previously developed site, the proximity to other MR-5 zoning, and the multiple access points since the proposal joins two different roads.

OTHER ITEMS OF BUSINESS:

Uninhabitable structures demolition recommendations:

Mr. Bart Swanson, Housing and Code Enforcement Division Manager, presented this item and stated staff was requesting demolition of four buildings determined to be dangerous or blight. He reviewed the following demolition recommendations:

1103 Bunce Road

Mr. Swanson stated the structure was a residential home that was inspected and condemned as a blighted/abandoned structure. He stated the owner had not appeared at the hearing and therefore an order to repair or demolish the structure within 60 days was issued. He stated to date there were no repairs to the structure and the utilities were

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disconnected on February 18, 2009. He stated within the past 24 months there had been three calls for 911 service and four code violations, one of which was abated by the City. He stated the low bid for demolition of the structure was \$3,000.00.

606 Mechanic Street

Mr. Swanson stated the structure was a residential home that was inspected and condemned as a blighted/abandoned structure. He stated the owners had not appeared at the hearing and therefore an order to repair or demolish the structure was issued. He stated to date there were no repairs made to the structure and the utilities were disconnected June 1, 2010. He stated within the past 24 months there were no calls for 911 service at the property and one code violation case. He stated the low bid for demolition of the structure was \$1,400.00.

608 Mechanic Street

Mr. Swanson stated the structure was a residential home that was vacant and the subject of a fire and condemned as a dangerous/abandoned structure. He stated the owners had not appeared at the hearing and therefore an order to repair or demolish the structure within 60 days was issued. He stated to date there were no repairs made to the structure and the utilities were disconnected October 15, 2010. He stated within the past 24 months there had been 18 calls for 911 service and 3 code violation cases, one of which was abated by the City. He stated the low bid for demolition of the structure was \$1,400.00.

6526 Portsmouth Drive

Mr. Swanson stated the structure was a residential home that was the subject of a fire. He stated the owner attended the hearing and an order to repair or demolish within 120 days was issued. He stated to date there were no repairs to the structure and the utilities were disconnected December 28, 2011. He stated within the past 24 months there had been 21 calls for 911 service and 2 code violations, both of which were abated by the owner. He stated the low bid for demolition of the structure was \$1,800.00.

There being no further business, the meeting adjourned.

Respectfully submitted,

KAREN M. MCDONALD
City Attorney

ANTHONY G. CHAVONNE
Mayor

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FAYETTEVILLE CITY COUNCIL
DISCUSSION OF AGENDA ITEMS MEETING MINUTES
EXECUTIVE CONFERENCE ROOM
DECEMBER 12, 2011
6:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); James W. Arp, Jr. (District 9)

Absent: Council Members Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3)

Others Present: Dale Iman, City Manager
Kristoff Bauer, Assistant City Manager
Doug Hewett, Assistant City Manager
Karen McDonald, City Attorney
Renner Eberlein, Assistant City Attorney
Brian Meyer, Assistant City Attorney
Members of the Press

Mayor Chavonne called the meeting to order at 6:00 p.m. He reviewed the agenda items and advised he would like to move the items under 9.0 to after the consent agenda and remove Item 7.6 due to applicant's request.

MOTION: Council Member Hurst moved to go into closed session for an attorney-client privileged matter and discussion of litigation in the matter of *Hillsboro Partners v. City of Fayetteville*.

SECOND: Council Member Arp

VOTE: UNANIMOUS (8-0)

The regular session recessed at 6:15 p.m. The regular session reconvened at 6:30 p.m.

MOTION: Council Member Arp moved to go into open session.

SECOND: Council Member Bates

VOTE: UNANIMOUS (8-0)

Mayor Chavonne reviewed the recognitions for tonight and identified which Council members would assist with the presentations.

There being no further business, the meeting adjourned at 6:50 p.m.

Respectfully submitted,

KAREN M. MCDONALD
City Attorney

ANTHONY G. CHAVONNE
Mayor

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FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
CITY HALL COUNCIL CHAMBER
DECEMBER 12, 2011
7:00 P.M.

Present: Mayor Anthony G. Chavonne

Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Wade R. Fowler (District 8); James W. Arp, Jr. (District 9)

Absent: Council Member Keith Bates, Sr. (District 1)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Brian Meyer, Assistant City Attorney
Tom Bergamine, Chief of Police
Patricia Bradley, Police Attorney
Lisa Smith, Chief Financial Officer
Rusty Thompson, City Engineer
Scott Shuford, Development Services Director
Craig Harmon, Planner II
John Kuhls, Human Resource Development Director
Bart Swanson, Housing and Code Enforcement Division Manager
Frank Lewis, Sr., Code Enforcement Administrator
Doug Maples, Building Plan Review and Inspection Division Manager
Rebecca Rogers-Carter, Management Services Manager
Jennifer Lowe, Public Information Officer
Nathan Walls, Public Information Specialist
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order.

2.0 INVOCATION

The invocation was offered by Reverend Jon-Su Hong, Senior Pastor, New Life Community Church.

3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by students from Northwood Temple AP Government class.

4.0 APPROVAL OF AGENDA

MOTION: Council Member Hurst moved to approve the agenda with the removal of Item 7.6 and moving Items 9.1, 9.2, and 9.3 before Item 8.0.

SECOND: Council Member Haire

VOTE: UNANIMOUS (9-0)

5.0 ANNOUNCEMENTS AND RECOGNITIONS

Mayor Chavonne thanked the students from Northwood Temple High School along with their teacher, Mr. Chris Lattimer.

Council Member Davy announced she had spent the day with Ms. Francesca Jasmine and provided insight into the day of a council member. Ms. Jasmine was presented with a certificate of appreciation,

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the "2011 Village Scholarship Award", and a medallion. Ms. Jasmine thanked her teachers, family members, and Council Member Davy.

5.1 National Association for Government Training and Development "2011 Program of the Year Award".

Mr. John Kuhls, Human Resource Development Director, announced the City's supervisory operational skills program was recently recognized as the 2011 Program of the Year by the National Association for Government Training and Development. He stated as a requirement to compete for the award, a 500-word statement was submitted by Ms. Ade Lewis, Assistant Director for Organization Development, describing the program and its benefits. He thanked the City Manager for his support, leadership, and participation in many human resource programs from employee appreciation to team building, while being a true advocate of employee development as the City Manager. He also thanked and recognized all the instructors who helped make the program a success.

Council Members Chavonne and Davy, on behalf of the City Council, presented a Proclamation to Ms. Sue Byrd, Fayetteville Area Operation Inasmuch, Inc., proclaiming May 17, 2011, Project Homeless Connect Day. Ms. Byrd extended an invitation to Council to attend the event.

Council Members Arp and Chavonne, on behalf of the City Council, presented a proclamation to Ms. Eva Hansen, President; Mr. Jeff Hylland, Board Chair; and Mr. John Freudenberg, Government and Military Affairs Liaison, congratulating the Partnership for Children of Cumberland County on being awarded the 2011 Nonprofit Sector Stewardship Award and recognizing the important role in ensuring that all children have the opportunity to succeed in school and be prepared to contribute to the City's social and economic future.

5.2 Resolution honoring former Mayor Charles Holt.

Mayor Chavonne read a resolution of respect honoring former Mayor Charles B.C. Holt who passed away December 4, 2011.

FORMER MAYOR CHARLES B.C. HOLT RESOLUTION OF RESPECT. RESOLUTION NO. R2011-052.

MOTION: Mayor Chavonne moved to adopt the resolution.
SECOND: Council Member Haire
VOTE: UNANIMOUS (9-0)

6.0 PUBLIC FORUM

Mr. Roosevelt Odom, Fayetteville, NC, through an interpreter, requested support from the elected officials for his endeavor to establish a disability regional center for the deaf and hard of hearing in the City of Fayetteville.

Ms. Chance, 1209 Elliotte Circle, Fayetteville, NC 28301, requested funding assistance for the purchase of computers and school supplies for Teresa C. Berrien Elementary School. She stated the students were economically disadvantaged and most of their interactions with technology took place in the school environment.

7.0 CONSENT

MOTION: Council Member Massey moved to approve the consent agenda with the exception of Item 7.4 for discussion.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (9-0)

7.1 Approve meeting minutes:

- November 7, 2011 - Work Session
- November 14, 2011 - Agenda Item Discussion

DRAFT

- November 18, 2011 - Special Meeting

- 7.2 Airport - Capital Project Ordinances No. 2012-6, stormwater drain; No. 2012-7, general aviation fence; and No. 2012-8, general aviation parking lot.

Ordinances No. 2012-6 appropriated \$115,000.00, No. 2012-7 appropriated \$175,000.00, and No. 2012-8 appropriated \$165,000.00.

- 7.3 Case No. P11-58F. Rezoning from LC Limited Commercial District to CC/C Community Commercial Conditional District, or a more restrictive district, on property located at Legend Avenue and Sycamore Dairy Road. Containing 3.1 acres more or less and being the property of Legend Hospitality One, LLC.
- 7.4 Pulled for discussion by Council Member Massey.
- 7.5 Case No. P11-60F. Rezoning from OI Office and Institutional District to LC/C Limited Commercial Conditional District, for a community gymnastics center, on property located at 417 Country Club Drive. Containing 2.4 acres more or less and being the property of New Century Bank.
- 7.6 Case No. P11-61F. Rezoning from CC Community Commercial District to MR-5 Mixed Residential District, or a more restrictive district, of a portion of property located at 4701 Raeford Road and Scotland Drive. Containing 10.51 acres more or less and being the property of Mitchell Properties of Florence, Inc.

This item was removed from the agenda.

- 7.7 Accept the Certification of Results from the Cumberland County Board of Elections for the November 8, 2011, Municipal Election.

The Municipal Election results for the Fayetteville City Council were as follows:

Fayetteville Mayor	Votes
Tony Chavonne	6,673
Nat Robertson	5,055
Write-In	58
Fayetteville City Council District 1	
Keith A. Bates	584
Robert L. Evans	244
Write-In	3
Fayetteville City Council District 2	
Kady-Ann Davy	1,506
Arthur Duke	358
Write-In	8
Fayetteville City Council District 3	
Robert A. Massey, Jr.	1,049
Al Woodall, II	414
Write-In	8
Fayetteville City Council District 4	
D. J. Haire	710
Chalmers L. McDougald	635
Write-In	3
Fayetteville City Council District 5	
Bobby Hurst	1,871
Tony D. McKinnon, Sr.	557
Write-In	6
Fayetteville City Council District 6	
Bill Crisp	734

DRAFT

Jeffrey Long	377
Write-In	3
Fayetteville City Council District 7	
Valencia Applewhite	594
Steve Borth	199
Write-In	10
Fayetteville City Council District 8	
Wade Fowler	462
Michael Pinkston	257
Write-In	6
Fayetteville City Council District 9	
Jim Arp	789
Write-In	54

7.8 Authorize the Mayor to execute a contract with Cherry, Bekaert and Holland to audit accounts for Fiscal Year 2011-2012.

7.9 Capital Project Ordinance Amendment 2012-18 (Municipal Transportation Agreements).

The amendment appropriated an additional \$69,529.00 for North Carolina Department of Transportation Municipal Agreements for the construction of sidewalks at Glensford Drive and Camden Road.

7.10 Special Revenue Fund Project Ordinance 2012-11 (Multi-Disciplinary Team Training).

The ordinance appropriated \$18,852.00 in federal and local funds for the Cumberland County Multi-Disciplinary Team Training Program.

7.11 Special Revenue Fund Project Ordinance 2012-10 (Project Safe Neighborhoods - Alcohol Tobacco Firearms Task Force).

The ordinance appropriated \$4,162.00 in federal funds from the Project Safe Neighborhoods Grant Program to fund the Police Department's Alcohol Tobacco Firearms Task Force.

7.12 Approval of a Municipal Agreement with NCDOT for sidewalk construction on Camden Road from King Charles Road to Owen Drive.

7.13 Approval of a Municipal Agreement with NCDOT for sidewalk construction on Glensford Drive from Raeford Road to Cliffdale Road.

7.14 Phase 5 Annexation Areas 12 and 13.

RESOLUTION DIRECTING CONSTRUCTION OF AREAS 12 AND 13 OF THE PHASE 5 ANNEXATION UTILITY IMPROVEMENT PROJECT BE UNDERTAKEN. RESOLUTION NO. R2011-053.

7.15 Renewal of a street sweeping agreement with NCDOT.

7.4 Case No. P11-59F. Rezoning from SF-6 Single Family Residential District to NC Neighborhood Commercial District, or a more restrictive district, on property located at 4820 Rosehill Road. Containing 1 acre more or less and being the property of Westarea Volunteer Fire Department, Inc. (OI Office and Institutional recommended).

This item was pulled for discussion by Council Member Massey.

Mr. Craig Harmon, Planner II presented this item. A brief discussion followed.

MOTION: Council Member Massey moved to approve the rezoning.
SECOND: Council Member Hurst

DRAFT

VOTE: UNANIMOUS (9-0)

9.0 OTHER ITEMS OF BUSINESS

9.1 Presentation of the Audited FY 2010-2011 Comprehensive Annual Financial Report.

Ms. Lisa Smith, Chief Financial Officer, presented this item and stated the City Council's audit firm, Cherry, Bekaert & Holland, completed the audit of the City's FY 2010-2011 financial statements. She stated a copy of the audited financial report was provided to City Council on November 28, 2011. She thanked the Finance Department staff for their role in completing a successful audit process in preparation of the Comprehensive Annual Financial Report. She respectfully requested the City Council accept the FY 2010-2011 Comprehensive Annual Financial Report.

MOTION: Council Member Hurst moved to accept the FY 2010-2011 Comprehensive Annual Financial Report.

SECOND: Council Member Haire

VOTE: UNANIMOUS (9-0)

9.2 Construction permit fee schedule amendments.

Mr. Doug Maples, Building Plan Review and Inspection Division Manager, presented this item and provided background information on the construction permit fee schedule. He stated the current fee schedule utilized a construction value-based fee methodology. He stated staff experience with the methodology and input from customers identified the need for adjustments to the calculation methodology to address equity and simplicity-of use issues. He stated the recommended changes would allow contractors and staff to more easily calculate fees and streamline the permit issuance process. He stated the recommended fee schedule also established a fee for violations of the City Code for junkyards and salvage yards which was inadvertently left out in the adoption of the fee schedule for this fiscal year. He stated the issues included the electrical trade permits for larger homes being significantly higher under the current fee schedule than prior ones; multiple fee payments for a single construction job being required, which was a continuation of prior practice; and use of standardized construction value tables for various classes of construction not always properly capturing the nature of the actual work being done and creating complications for identifying site upgrade requirements under the Unified Development Ordinance. He stated the proposed revisions would address all of the issues.

MOTION: Council Member Hurst moved to adopt the recommended adjustments to the fee schedule.

SECOND: Council Member Crisp

VOTE: UNANIMOUS (9-0)

9.3 Uninhabitable structures demolition recommendations:

Mr. Bart Swanson, Housing and Code Enforcement Division Manager, presented this item and stated staff was requesting demolition of four buildings determined to be dangerous or blight. He reviewed the following demolition recommendations:

1103 Bunce Road

Mr. Swanson stated the structure was a residential home that was inspected and condemned as a blighted/abandoned structure. He stated the owner had not appeared at the hearing and therefore an order to repair or demolish the structure within 60 days was issued. He stated to date there were no repairs to the structure and the utilities were disconnected on February 18, 2009. He stated within the past 24 months there had been three calls for 911 service and four code violations, one of which was abated by the City. He stated the low bid for demolition of the structure was \$3,000.00.

DRAFT

606 Mechanic Street

Mr. Swanson stated the structure was a residential home that was inspected and condemned as a blighted/abandoned structure. He stated the owners had not appeared at the hearing and therefore an order to repair or demolish the structure was issued. He stated to date there were no repairs made to the structure and the utilities were disconnected June 1, 2010. He stated within the past 24 months there were no calls for 911 service at the property and one code violation case. He stated the low bid for demolition of the structure was \$1,400.00.

608 Mechanic Street

Mr. Swanson stated the structure was a residential home that was vacant and the subject of a fire and condemned as a dangerous/abandoned structure. He stated the owners had not appeared at the hearing and therefore an order to repair or demolish the structure within 60 days was issued. He stated to date there were no repairs made to the structure and the utilities were disconnected October 15, 2010. He stated within the past 24 months there had been 18 calls for 911 service and 3 code violation cases, one of which was abated by the City. He stated the low bid for demolition of the structure was \$1,400.00.

6526 Portsmouth Drive

Mr. Swanson stated the structure was a residential home that was the subject of a fire. He stated the owner attended the hearing and an order to repair or demolish within 120 days was issued. He stated to date there were no repairs to the structure and the utilities were disconnected December 28, 2011. In stated within the past 24 months there had been 21 calls for 911 service and 2 code violations, both of which were abated by the owner. He stated the low bid for demolition of the structure was \$1,800.00.

A brief discussion period ensued.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY (1103 BUNCE ROAD). ORDINANCE NO. NS2011-015.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY (606 MECHANIC STREET). ORDINANCE NO. NS2011-016.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY (608 MECHANIC STREET). ORDINANCE NO. NS2011-017.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY (6526 PORTSMOUTH DRIVE). . ORDINANCE NO. NS2011-018.

MOTION: Council Member Applewhite moved to allow an additional 90 days for the properties located at 1103 Bunce Road and 6526 Portsmouth Drive

SECOND: Council Member Hurst

VOTE: UNANIMOUS (9-0)

DRAFT

MOTION: Council Member Davy moved to authorize the demolition for the properties located at 606 Mechanic Street and 608 Mechanic Street.
SECOND: Council Member Crisp
VOTE: UNANIMOUS (9-0)

8.0 PUBLIC HEARING

8.1 Public hearing on RAMP (Rental Action Management Program).

Mr. Doug Hewett, Assistant City Manager, presented this item and stated on April 26, 2011, the City Council adopted a Probationary Rental Occupancy Permit (PROP) program with an implementation date of July 1, 2011. He explained the program was designed to allow the City to more closely monitor and regulate rental properties that were the site of repeated or severe code violations or that were the site of certain criminal acts. He stated the program would require the rental property owners whose properties were the site of such violations or crimes to be placed into PROP and as a condition for renting the offending properties again, the owners would be required to obtain a permit from the City. He stated on June 18, 2011, Senate Bill 683 was ratified by the Legislature and the purpose of the Bill was to limit the level of local regulation of rental properties as well as limit the use of periodic inspections. He stated it would prohibit cities from enforcing an ordinance that would require permitting of rental properties unless the property was the site of more than three violations in a 12-month period or was identified as being in the top 10 percent of properties with crime or disorder problems as set forth in a local ordinance. He stated the language regarding the top 10 percent of properties with crime or disorder problems was based on a program currently utilized in Charlotte. He stated the bill would have a direct impact on the functionality and substance of the PROP program. He stated with adoption of the bill, the PROP ordinance would no longer be enforceable as drafted. He stated only one of the ten PROP eligible conditions could possibly be enforced as intended and would still have to be revised. He stated the ability of the City to charge a permit fee for PROP eligible properties under the PROP ordinance was doubtful. He stated given the substantial changes needed to make the City's PROP ordinance compliant with North Carolina law, staff recommended and City Council approve rescission/repeal of the PROP ordinance on August 8, 2011. He stated the City Council directed staff to revise the PROP program consistent with state law and bring back program alternatives. He Staff provided an update on October 3, 2011, with a draft ordinance for PROP II, now titled RAMP (Rental Action Management Program). He stated in developing the draft ordinance and program overview, staff met several times with counterparts in Charlotte regarding their program to determine how they may be able to replicate it in Fayetteville. He stated staff also conducted five stakeholder meetings to explain RAMP and solicit feedback. He stated staff provided another update to City Council on November 7, 2011, with a recommendation that a public hearing be held on Monday, December 12, 2011, to allow interested stakeholders an opportunity to address Council directly. He stated on November 28, 2011, the City Council approved the following guidelines for the public hearing: Allow each speaker to address the City Council for a maximum of 3 minutes, with up to 60 minutes allocated for the RAMP public hearing.

This is the advertised public hearing set for this date and time. The public hearing opened at 8:34 p.m.

Ms. Stella Mullen, President of and representing the Massey Hill Community Watch, 141 May Street, Fayetteville, NC 28306, appeared in favor.

Ms. Sandra Mitchell, representing the Murchison Citizens Action Group, appeared in favor.

DRAFT

Ms. Kym Shoultz, 1000A Elm Street, Fayetteville, NC 28303, representing the Cumberland County Apartment Association, appeared in opposition.

Mr. Jonathan Elliot, P.O. Box 4306, Fayetteville, NC 28309, appeared in opposition. He stated he was a stakeholder and had attended some of the prior RAMP meetings.

Mr. Royce Hawley, 5826 Samet Drive, High Point, NC 27265, representing Blue Ridge Property Management, appeared in opposition.

Mr. Jimmy Jones, 106 Bienville Drive, Fayetteville, NC 28311, appeared in opposition. He stated he owned a pest control business that services many of the apartment complexes in Fayetteville.

Mr. Robert C. Anderson, 511 Argyll Road, Fayetteville, NC 28303 appeared in opposition and expressed concerns regarding crime in Fayetteville.

Ms. Mary Jo Anderson, 511 Argyll Road, Fayetteville, NC 28303 appeared in opposition. She stated she was a stakeholder and had attended prior RAMP meetings.

Mr. Will Brownlee, 4020 West Chase Boulevard, Raleigh, NC 27607, an attorney representing several property owners, appeared in opposition.

Ms. Susan Passmore, 5826 Samet Drive, High Point, NC 27265, representing the North Carolina Apartment Association, appeared in opposition.

Ms. Angela Ruff, 1429 Bozerman Loop, Fayetteville, NC 28303, appeared in opposition and stated she had been working in property management for over ten years.

Mr. James Popp, 101 Goodyear Avenue, Fayetteville, NC 28303, representing the Cornborough neighborhood residents, appeared in favor.

Mr. Steven Street, 1406 Powell Street, NC 28306, appeared in favor and expressed concerns regarding crime in his neighborhood.

Mr. Anthony Castillo, 1804 Waterfall Way, Spring Lake, NC, appeared in favor and expressed concerns over the amount of crime committed in Fayetteville.

Ms. Karen Valenzuela, 3204A Turtle Point Drive, Fayetteville, NC 28304, appeared in opposition and expressed concerns over the blighted areas of the City.

Mr. Bill Nye, 639 Executive Place, Fayetteville, NC 28305, appeared in opposition and stated he did not believe the RAMP program was ready for a vote in January.

Mr. George Butterfly, 1623 Gillespie, Fayetteville, NC 28306, appeared in favor and expressed concerns regarding drug dealing and crime in his neighborhood.

Mr. Freddy McLean, Sr., 1023 Southern Avenue, Fayetteville, NC 28306, appeared in opposition. He stated he was a landlord and owned several rental properties and expressed concerns over the \$1,000.00 fine.

Ms. Kanice McLean, 1023 Southern Avenue, Fayetteville, NC 28306, appeared in opposition and expressed concerns over the fines and fees.

There being no one further to speak, the public hearing closed at 9:36 p.m.

DRAFT

9.4 Resolution in support of the development of transitional housing for homeless veterans.

Ms. Karen McDonald, City Attorney, presented this item and stated according to a 2009 Fayetteville Veterans Administration Medical Center survey, it was estimated that there were nearly 500 homeless veterans in the community. She stated there was a clear need for safe, secure, and affordable housing for the homeless veterans. She stated the transitional housing community for homeless veterans would help homeless veterans to receive much needed help from the Veterans Administration Medical Center to address their disabilities or illnesses. She stated the City Council recently considered a request for a special use permit at an Eastwood Avenue property for developing a transitional housing community facility for homeless veterans. She stated the special use permit was denied based on the compatibility of the facility with the surrounding neighborhood. She stated City staff was currently working with RHA Health Services, Inc., to identify property in the City of Fayetteville that would be conducive to the development of housing for the homeless veterans.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE IN SUPPORT OF THE DEVELOPMENT OF TRANSITIONAL HOUSING FOR HOMELESS VETERANS. RESOLUTION NO. R2011-054.

MOTION: Council Member Hurst moved approve the resolution.

SECOND: Council Member Haire

VOTE: UNANIMOUS (9-0)

10.0 ADJOURNMENT

There being no further business, the meeting adjourned at 9:45 p.m.

Respectfully submitted,

PAMELA J. MEGILL
City Clerk

ANTHONY G. CHAVONNE
Mayor

121211

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council
FROM: Rebecca Rogers-Carter, Management Services Manager
DATE: February 13, 2012
RE: **Adoption of the Federal Legislative Agenda**

THE QUESTION:

Does the attached Calendar 2012 Federal Legislative Agenda meet Council interest?

RELATIONSHIP TO STRATEGIC PLAN:

This item supports the goal of More Efficient City Government which seeks to efficiently invest in the City's future infrastructure, facilities and equipment.

BACKGROUND:

The City, Cumberland County and the Fayetteville-Cumberland County Chamber of Commerce have partnered with the Ferguson Group to develop a community-wide federal legislative agenda.

The partners met November 30 in a series of meetings with City and County department heads to discuss community federal advocacy needs with the Ferguson Group lobbyists Leslie Mazingo and Debra Bryant. During this meeting, time was allocated for elected official representatives from City Council and County Commissioners to meet with our lobbyists. The Ferguson Group then developed a Calendar 2012 Federal Legislative Agenda Preliminary Draft for your review and discussion.

This years' federal agenda represents a major change from years past. Instead of focusing on earmarks, it now focuses on federal grant opportunities.

On January 3, Ms. Mazingo presented the preliminary draft of the agenda to the Fayetteville City Council during its work session and to the Board of Commissioners at its regular meeting.

A final draft of the agenda is attached for your review and consideration. This agenda is based on projects and issues which the partners identified as community priorities and which the lobbyists think federal grants can be successfully secured. The initiatives are not listed in priority order.

ISSUES:

The attached Calendar 2012 Federal Legislative Agenda does not include state legislative issues that we share with our Congressional delegation.

BUDGET IMPACT:

OPTIONS:

RECOMMENDED ACTION:

Approve the attached Calendar 2012 Federal Legislative Agenda.

ATTACHMENTS:

Calendar 2012 Federal Legislative Agenda



**City of Fayetteville, Cumberland County and Fayetteville - Cumberland County Chamber
North Carolina
2012 FEDERAL AGENDA (Calendar)
FUNDING AND ADVOCACY OPPORTUNITIES**

STRATEGIC INITIATIVES	DESCRIPTION	ACTION PLAN
Murchison Road Corridor Development	Seek federal funding opportunities and leverage partnerships in an effort to promote economic development along the Murchison Road corridor.	Choice Neighborhoods
Public Safety	<ul style="list-style-type: none"> • Gang intervention and youth programs • Interoperability (Radios and technology) • Consolidation of E911 • Pandemic and bioterrorism planning • Joint Emergency Operations Center • Construction of approved police substations • Domestic violence programs in support of the Family Justice Center • Upgrades for fire facilities and equipment. 	<ul style="list-style-type: none"> • FEMA • Department of Justice • Partner with Communicare • Advocacy: Draft letter to delegation and agencies explaining why local officers need technology assistance • The Assistance to Firefighters program.
Transportation	<ul style="list-style-type: none"> • Seek federal funding to complete construction of the Multimodal Center facility. • Identify and support funding for rural public transportation • Seek federal funding to improve highway infrastructure • Seek added flexibility with FTA funding; more operational support for public transit systems. 	<ul style="list-style-type: none"> • US Department of Transportation • Surface Transportation Reauthorization.
Homelessness	The partnership supports legislation that increases federal resources to prevent and end homelessness. Seek federal funding opportunities and leverage partnerships (CCAP) for this and to fund permanent affordable housing.	<ul style="list-style-type: none"> • Homeless Vets Reintegration • Homeless Continuum of Care • CDBG
Partnership for Defense Innovation (PDI)	Wi-Fi Laboratory Testing and Assessment Center \$5 million funding to research and develop cellular capabilities on the battlefield.	<ul style="list-style-type: none"> • Defense Department, Defense-Wide, RDT&E, Special Operations Advanced Technology Development and/or TSWG • Explore SBIR/STTR for assistance to defense technology entrepreneurs.
Texfi Plant	Seek federal funding opportunities to mitigate and prevent spread of contaminants on site and to protect water supply.	<ul style="list-style-type: none"> • EPA Brownfield • EDA grant • CDBG funding/HUD 108 loan.



STRATEGIC INITIATIVES	DESCRIPTION	ACTION PLAN
Parks and Recreation	Identify ways to support efforts to increase funding for parks and recreation facilities and programs. Specifically, identify funding opportunities for construction of facilities listed in Parks and Recreation Master Plan.	<ul style="list-style-type: none"> • Urban Revitalization and Liveable Communities Act • Recreational Trails Program • Advocacy: Draft letter to delegation requesting assistance.
Sanitary Sewer System and Safe Water	Expand Water Resources Development Act (WRDA) authorization from \$6 million to \$20 million and modifications to language. Seek funding to provide safe drinking water to all county residents.	<ul style="list-style-type: none"> • Corps of Engineers Discretionary • WRDA Reauthorization • USDA

ADDITIONAL RESEARCH, MONITOR, REPORT

ISSUE	DESCRIPTION	ACTION PLAN
Unfunded Mandates	Oppose legislation that imposes unfunded mandates on local government.	Keep partnership aware of potential threat(s) by unfunded mandates.
Sustainability	Funding needed for energy efficiency retrofits on public buildings, and working with private companies to deploy solar energy on local government-owned land.	Research funding opportunities that the partnership would be eligible to apply.
Abandoned Home Removal	Keep partnership informed on funding available to assist in transforming vacant and blighted properties near Fort Bragg.	Assist County with application to EPA/HUD for Technical Assistance.
Stormwater	<ul style="list-style-type: none"> • Identify federal funding for unfunded county-wide soil testing and creation of an environmental master plan for areas east of the river. • Funding for city's stormwater infrastructure needs. 	Research funding opportunities that the partnership would be eligible to apply.
Workforce Development	Seek federal funding opportunities and leverage partnerships to meet workforce development challenges and evolve into a high-quality community workforce. Goals include an increase in training opportunities for residents to gain and enhance job skills in key community industries.	Research funding opportunities that the partnership would be eligible to apply.
Community Well-being	<ul style="list-style-type: none"> • County needs funding for public health electronic records management • Seek financial support for programs for children and youth in foster care system. • Seek funding for school capital projects. 	Research funding opportunities that the partnership would be eligible to apply.

FOR MORE INFORMATION CONTACT:

Debra Bryant
 (202) 331-8500
dbryant@tfgnet.com



Leslie Mozingo
 (336) 766-1801
lmozingo@tfgnet.com

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Rusty Thompson, Engineering and Infrastructure Director
DATE: February 13, 2012
RE: **Authorizing a Drainage Easement to NCDOT for the upcoming bridge replacement project along US 301 Business over Cross Creek**

THE QUESTION:

How to respond to a request from NCDOT to grant them a Drainage Easement of approximately 700 square feet for the upcoming bridge replacement project scheduled along US 301 Business over Cross Creek.

RELATIONSHIP TO STRATEGIC PLAN:

More Efficient City Government

BACKGROUND:

The City of Fayetteville owns approximately 58.38 acres located along Cross Creek off of Hwy. 301 Business. NCDOT is requesting that the City of Fayetteville give them approximately 700 square feet of said property so that they may utilize it for a permanent drainage easement which is needed so that NCDOT may complete the bridge replacement project along US 301 Business over Cross Creek.

ISSUES:

Conveyance of this property to NCDOT meets Council's interest in providing NCDOT necessary access to complete the bridge replacement project along US 301 Business over Cross Creek.

BUDGET IMPACT:

- No significant impact to budget.

OPTIONS:

- Authorize the City Manager to sign the attached Drainage Easement.
- Decline the request from NCDOT to grant the Easement.

RECOMMENDED ACTION:

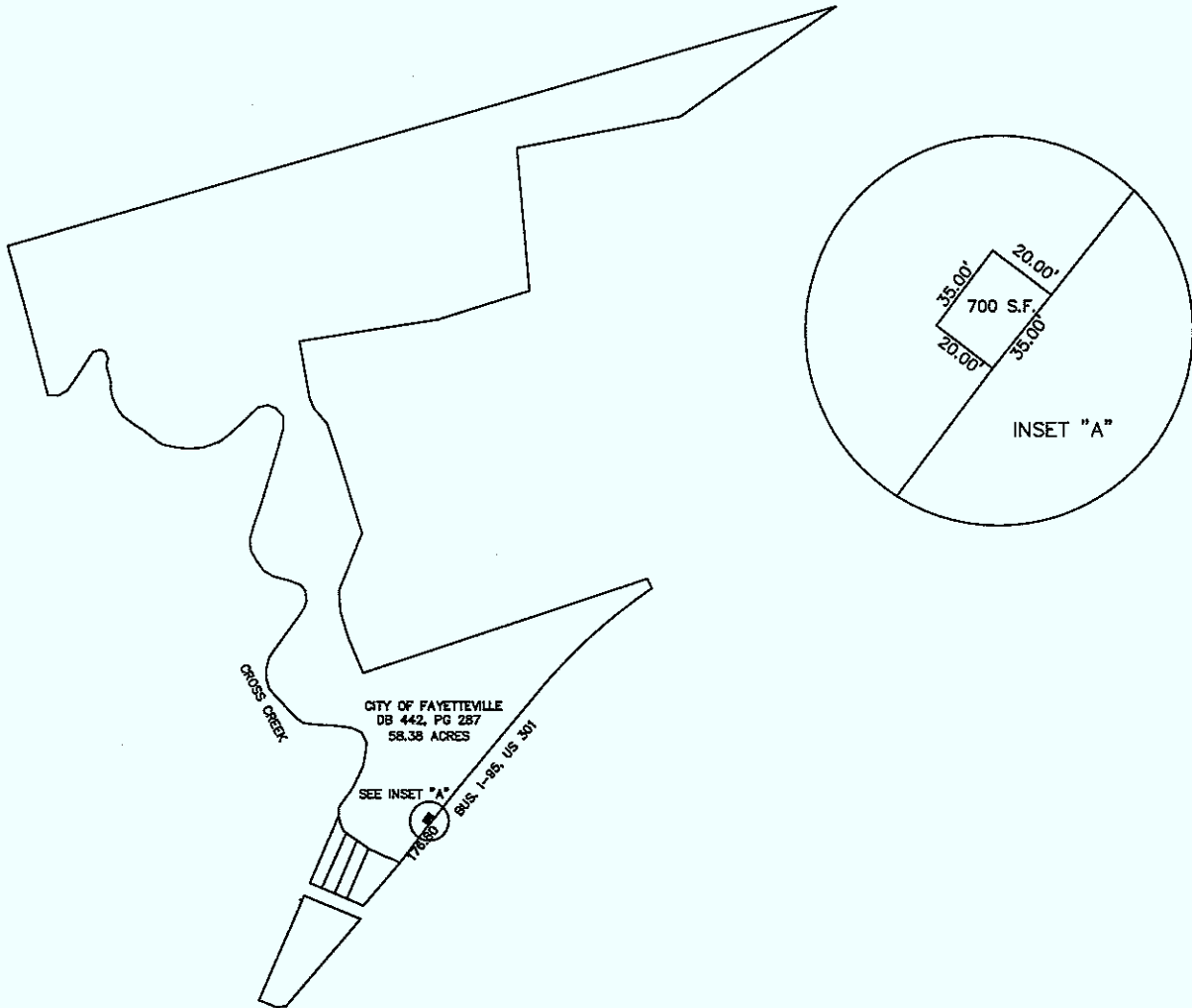
Authorize the City Manager to sign the attached Drainage Easement allowing for bridge replacement.

ATTACHMENTS:

Map
Deed of Easement

THIS MAP IS NOT A CERTIFIED SURVEY
AND HAS NOT BEEN REVIEWED BY A
LOCAL GOVERNMENT AGENCY FOR
COMPLIANCE WITH ANY APPLICABLE
LAND DEVELOPMENT REGULATIONS.

 DEDICATED AREA



Fayetteville ENGINEERING & INFRASTRUCTURE DEPT.
North Carolina CIVIL ENGINEERING DIVISION
433 HAY ST. 28301
(910) 433-1656

NCDOT PERM DRAINAGE
EASMENT, HWY 301
CITY OF FAYETTEVILLE PROPERTY
700 SQ FT

DATE 1/24/12 DRAWN BY TCF
SCALE NTS CK'D BY CSA

SHEET 1 OF 1

Revenue Stamps \$

DRAINAGE EASEMENT

THIS INSTRUMENT DRAWN BY S.A. [Signature] CHECKED BY [Signature]

Return to: Division Right of Way Agent - NCDOT
225 Green Street, Suite 503
Fayetteville, NC 28301

NORTH CAROLINA
COUNTY OF Cumberland

T.I.P. No.: B-4949

WBS ELEMENT: 40107.2.1

TIP/PARCEL NUMBER: B-4949 001

ROUTE: US 301 Bridge over Cross Creek

THIS EASEMENT, entered into this the _____ day of _____, 2011, by and between City of Fayetteville, a North Carolina Municipal Corporation
433 Hay Street
Fayetteville, NC 28302

hereinafter referred to as the GRANTORS, and the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, 1546 Mail Service Center, Raleigh, NC 27611, hereinafter referred to as the Department,

WITNESSETH

THAT WHEREAS, the DEPARTMENT desires to construct and maintain a drainage facility through and across the property of GRANTORS,

AND WHEREAS, GRANTORS, recognizing the benefits accruing to their said property through the construction and maintenance by the DEPARTMENT of roads and highways upon or in the vicinity of said property of GRANTORS,

NOW, THEREFORE, in consideration of said benefits, and further consideration of \$ 1.00 and other valuable considerations, GRANTORS hereby release the DEPARTMENT, its successors and assigns, from any and all claims for damages by reason of the construction and maintenance of said drainage facility across and through the lands of GRANTORS, and GRANTORS hereby give, grant, bargain, sell and convey unto the DEPARTMENT, its successors, and assigns, an easement for the construction and maintenance of a drainage across and through the property of GRANTORS located in Cross Creek Township, Cumberland County, and being more fully described in a deed recorded in Book 442, Page 287, Cumberland County Registry, said easement being described as follows:

Point of beginning being S 64°29'36.7" W, 313.249 feet from -L-Sta.30+00; thence to a point on a bearing of N 50°01'34.0" W, 20.000 feet; thence to a point on a bearing of S 39°58'26.0" W, 35.000 feet; thence to a point on a bearing of S 50°01'34.0" E, 20.000 feet; thence to a point on a bearing of N 39°58'26.0" E, 35.000 feet; returning to the point and place of beginning.

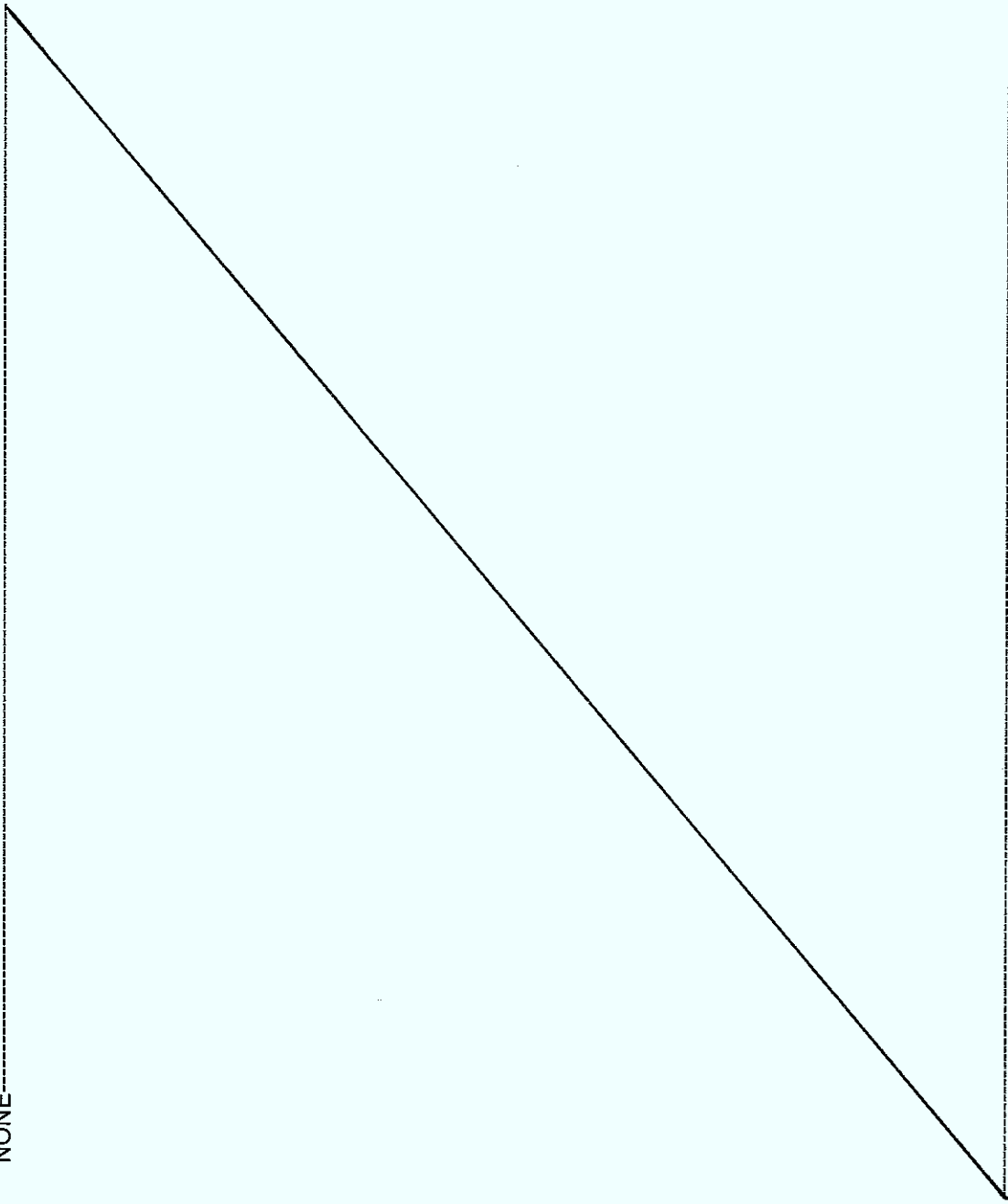
The final right of way plans showing the above described area are to be certified and recorded in the Office of the Register of Deeds for said county pursuant to N.C.G.S. 136-19.4, reference to which plans is hereby made for purposes of further description and for greater certainty.

Said Permanent Drainage easement in perpetuity is for the installation and maintenance of drainage facilities, and for all purposes for which the DEPARTMENT is authorized by law to subject same. The Department and its agents or assigns shall have the right to construct and maintain in a proper manner in, upon and through said premises a drainage facility with all necessary pipes, poles and appurtenances, together with the right at all times to enter said premises for the purpose of inspecting said drainage facility and making all necessary repairs and alterations thereon; together with the right to cut away and keep clear of said drainage facility all trees and other obstructions that may in any way endanger or interfere with the proper maintenance and operation of the same with the right at all times of ingress, egress and regress.

It is understood and agreed that the Department shall have the right to construct and maintain the cut and/or fill slopes in the above-described permanent drainage easement area(s). It is further understood and agreed that the Permanent Drainage Easement shall be used by the Department for additional working area during the above described project.

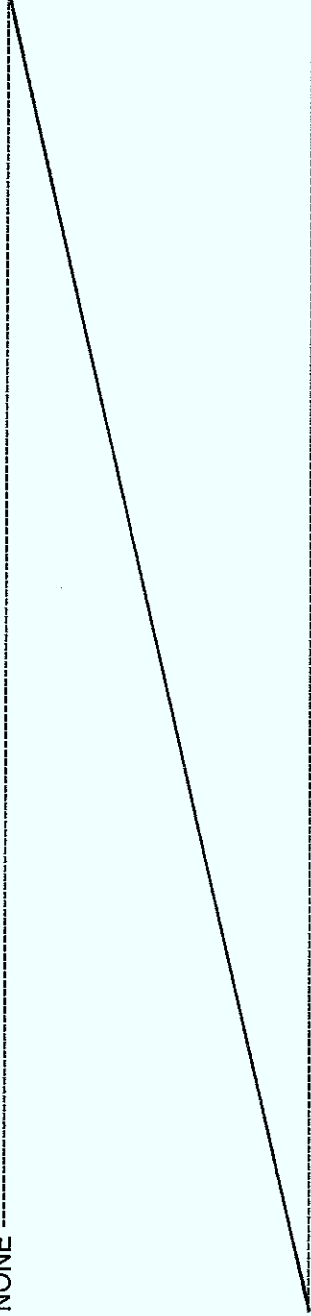
IN ADDITION, and for the aforesated consideration, the GRANTORS further hereby convey to the DEPARTMENT, its successors and assigns the following described areas and interests:

NONE



This EASEMENT is subject to the following provisions only:

NONE



There are no conditions to this EASEMENT not expressed herein.

To HAVE AND TO HOLD said perpetual easement for highway purposes unto the DEPARTMENT, its successors and assigns, and the GRANTORS, for themselves, their heirs, successors, executors and assigns, hereby warrant and covenant that they are the sole owners of the property; that they solely have the right to grant the easement; and that they will forever warrant and defend title to the same against the lawful claims of all persons whomsoever;

The Grantors acknowledge that the project plans for Project # 40107.2.1 have been made available to them. The Grantors further acknowledge that the consideration stated herein is full and just compensation pursuant to Article 9, Chapter 136 of the North Carolina General Statutes for the acquisition of the said interests and areas by the Department of Transportation and for any and all damages to the value of their remaining property; for any and all claims for interest and costs; for any and all damages caused by the acquisition for the construction of Department of Transportation Project # 40107.2.1

Cumberland County, and for the past and future use of said areas by the Department of Transportation, its successors and assigns for all purposes for which the said Department is authorized by law to subject the same.

IN WITNESS WHEREOF, the GRANTORS have hereunto set their hands and seals (or if corporate, has caused the instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors) the day and year first above written.

Corporate Seal

CITY OF FAYETTEVILLE, a North Carolina
Municipal Corporation
(Corporate Name)

BY: DALE IMAN, CITY MANAGER

ATTEST: JENNIFER PENFIELD,
DEPUTY CITY CLERK

ACCEPTED FOR THE DEPARTMENT OF TRANSPORTATION BY: _____

(Stamp/Seal)	STATE OF <u>North Carolina</u> COUNTY OF <u>Cumberland</u>
	I, _____ a Notary Public for said County and State, certify that <u>Jennifer Penfield</u> Deputy City Clerk of <u>City of Fayetteville, a North Carolina</u> a corporation and that by the authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its City Manager _____, sealed with its corporate seal, and attested by Jennifer Penfield _____ as its <u>Deputy City Clerk</u> . Witness my hand and official stamp or seal, this the _____ day of _____, 2011.
My commission expires _____ Notary Public	

The foregoing Certificate(s) of _____ This instrument and this certificate are duly registered on the _____ day of _____, 20____ in Book _____, Page _____ at _____ o'clock _____ M. REGISTER OF DEEDS FOR _____ COUNTY _____

BY: _____ Deputy/Assistant - Register of Deeds

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Jerry Dietzen
DATE: February 13, 2012
RE: **Amendment to the City's Fees and Charges Eliminating the Fee for More Than Six Bulky Item Collections at One Residence**

THE QUESTION:

Does the City Council wish to remove the fee for bulky item collections for more than six collections at one address in the fiscal year?

RELATIONSHIP TO STRATEGIC PLAN:

This item is consistent with Goal 4: More Attractive City - Clean and Beautiful
Objective 1: Clean and beautiful community with less trash and less visual blight

BACKGROUND:

As an element of several changes to the service provided by the Environmental Services Department, a fee of \$50 was approved by Council for residents who have more than six bulky item collections per year at one address. The intent was to reduce the number of persons taking advantage of this service for business or other reasons and other residents supplementing their use or abuse of the service.

Residents have voiced their concern over this restriction and say that it is causing illegal dumping and others won't call in a bulky item for fear they will be charged the fee.

Council Members requested that this fee be removed fears of being charged fees, to improve citizen involvement in calling in bulky items for collection and ultimately to improve the appearance of the City.

ISSUES:

There will still be abuse of the service from lawn maintenance contractors and others who may bring items into the City for free disposal.

The department will look for other methods of identifying over-users and reducing the effects of this on our resources.

BUDGET IMPACT:

The revenues that were projected as a result of this will be eliminated.

OPTIONS:

1. Continue the fee as is for more than six bulky item collections at one address in one fiscal year.
2. Eliminate the fee for more than six bulky item collections at one address in one fiscal year.

RECOMMENDED ACTION:

The City Council requested that the fee for more than six bulky item collections at one address in one fiscal year be eliminated, which will be effected by adjustment of the attached fee schedule.

ATTACHMENTS:

Bulky Item or Limb Debris pick up - Fees

Environmental Services

<i>Administrative Fee</i> (Abatement Actions)	\$100.00	2008	
<i>Backdoor Pickup Fee</i>			
Handicap Backdoor Pickup	Free	2002 or prior	
<i>Bulky Item or Limb Debris Pickup</i>			
Full truckload pickups (approx. 20 cubic yards)	\$357.00 per truckload	2007	
Less than full truck load pickups			
Six per fiscal year (July through June)	Free		
Each subsequent pickup per fiscal year	\$50.00	2012	Proposed fee elimination February 13, 2012
<i>Household Construction Debris Pickup</i>			
Generated by	Not offered		
Resulting from	\$50.00	2011	

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Gloria B. Wrench, Purchasing Manager
DATE: February 13, 2012
RE: **Adopt Resolution to Declare City Foreclosed Property Surplus, Sale by Sealed Bid, and Award and Accept Highest Bid**

THE QUESTION:

Staff requests Council adopt a Resolution to declare foreclosed property described as Lot 63, Section - 3, Rosewood Terrace, Pin No. 0520-20-90-5265 (4907 Rosehill Road), surplus to the City's needs; authorize the sale of such property by sealed bid, and award and accept the highest bid for the sale of the property.

RELATIONSHIP TO STRATEGIC PLAN:

BACKGROUND:

The Public Works Commission of the City of Fayetteville, through foreclosure of a utility assessment, has taken title deed in the name of the City of Fayetteville to certain property described as Lot 63, Section - 3, Rosewood Terrace, Pin No. 0520-20-90-5265 (4907 Rosehill Road). In an effort to recoup the Commission's financial interest, including sanitary sewer utility assessment, foreclosure fees, legal fees, taxes, and administrative costs, the Public Works Commission of the City of Fayetteville has declared the property surplus, properly advertised and subsequently received and opened sealed bids in accordance with N.C.G.S. 160A-268 and 143-129. The Public Works Commission of the City of Fayetteville requests that the City of Fayetteville join in the sale of the property by adopting the resolution declaring the property as surplus; authorizing its sale by sealed bid; and award and accept the highest bid in the amount of \$26,010.00.

ISSUES:

None

BUDGET IMPACT:

None

OPTIONS:

(1) Adopt resolution as requested. (2) Not adopt resolution.

RECOMMENDED ACTION:

Adopt Resolution to Declare City Foreclosed Property Surplus, Sale by Sealed Bid and Award and Accept Highest Bid

ATTACHMENTS:

Rosehill Road Resolution

**STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND
CITY OF FAYETTEVILLE**

Resolution R2012 _____

**RESOLUTION TO DECLARE CITY FORECLOSED PROPERTY SURPLUS, SALE BY
SEALED BID, AND TO AWARD AND ACCEPT HIGHEST BID**

WHEREAS, the Public Works Commission of the City of Fayetteville through foreclosure of a utility assessment, has taken title deed in the name of the City of Fayetteville to certain property(ies) herein described:

LOT 63, SECTION – 3, ROSEWOOD TERRACE PIN No. 0520-20-90-5265 (4907 Rosehill Road); and

WHEREAS, the Public Works Commission of the City of Fayetteville has a financial interest in the form of a sanitary sewer utility assessment, foreclosure fees, legal fees, taxes and administrative costs; and

WHEREAS, the property is surplus to the needs of the Public Works Commission and the City of Fayetteville; and

WHEREAS, North Carolina General Statute § 160A-268 permits the City to sell real property by advertisement and sealed bid; and

WHEREAS, in an effort to recoup said costs, said property has been declared surplus and advertised for public sale by sealed bid in accordance to N.C.G.S. 160A-268 and 143-129 and Public Works Commission of the City of Fayetteville requests that the City of Fayetteville join in the sale of the property by declaring the parcels surplus to the City's needs and to dispose of said property by sealed bid; and

WHEREAS, Public Works Commission has conducted a sale by sealed bid, has advertised and accepted responsible bids, and has unsealed and reviewed the responsible bids; and

WHEREAS, a high bid of \$26,010.00 from a bidder current on all property taxes owed to the County and the City has been received and approved by Public Works Commission of the City of Fayetteville as set forth PWC Resolution No. 2011.04; and

WHEREAS, the City Council of the City of Fayetteville finds such actions to be in the public interest.

NOW THEREFORE, the City Council of the City of Fayetteville hereby declares that the aforesaid real property is surplus to City's needs and authorizes its Manager to sign a deed conveying said property to the approved high bidder.

ADOPTED this _____ day of _____, 2012 by the City Council of the City of Fayetteville, North Carolina.

CITY OF FAYETTEVILLE, NORTH CAROLINA

(SEAL)

By: _____
Anthony G. Chavonne, Mayor

ATTEST:

Pamela Megill, City Clerk

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of Council
FROM: Gloria B. Wrench, Purchasing Manager
DATE: February 13, 2012
RE: **Award Contract for the Purchase of Eight (8) Mini-Hybrid Thermal Management System Kits**

THE QUESTION:

Staff requests approval to award a contract for the purchase of eight (8) mini-hybrid thermal management system kits.

RELATIONSHIP TO STRATEGIC PLAN:

More Efficient City Government - Cost-Effective Service Delivery

BACKGROUND:

The Transit Department has a need for eight (8) mini-hybrid thermal management system kits to be installed on eight (8) Gillig buses.

The mini-hybrid system is an enhancement to the standard engine cooling system. The mini-hybrid uses an array of electrically-powered fans that lessen the drain on engine horsepower, thereby reducing excessive engine heat. High engine heat results in higher maintenance costs and lower fuel economy. The City received an FT grant to retrofit eight buses. The system has been proven to increase fuel efficiency by approximately 10%, reduce costs and vehicle downtime related to hot engines and eliminates hydraulic fluid used with typical hydraulic fan.

Formal bids were received December 29, 2011 as follows:

Clarke Power Services, Greensboro, NC \$168,000.00
Engineered Machined Products, Escanaba, MI\$172,000.00

The low bid is recommended.

ISSUES:

None

BUDGET IMPACT:

This expenditure will be covered by federal and state grand funds (NC-90-X469). Federal grants will provide 80% and NCDOT will provide 10%.

OPTIONS:

(1) Award contract as recommended. (2) Not award contract.

RECOMMENDED ACTION:

Award contract to Clarke Power Services, Greensboro, NC, in the amount of \$168,000.00, for the purchase of eight (8) mini-hybrid thermal management system kits.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Lisa Smith, Chief Financial Officer
DATE: February 13, 2012
RE: **Finance - Tax Refunds of Greater Than \$100.**

THE QUESTION:

City Council approval is required to issue tax refund checks for \$100 or greater.

RELATIONSHIP TO STRATEGIC PLAN:

Not applicable.

BACKGROUND:

The attached refunds, totaling \$9,405.78, were approved by the Cumberland County Board of Equalization and Review on December 14, 2011.

ISSUES:

None.

BUDGET IMPACT:

See above.

OPTIONS:

Approve the refunds.

RECOMMENDED ACTION:

Approval.

ATTACHMENTS:

Tax Refunds of Greater Than \$100



February 13, 2012

MEMORANDUM

TO: Lisa Smith, Chief Financial Officer

LS
NP

FROM: Nancy Peters, Accounts Payable

RE: Tax Refunds of Greater Than \$100

The tax refunds listed below for greater than \$100 were approved by the Cumberland County Special Board of Equalization for the month of December 2011 and January 2012.

NAME	BILL NO.	YEAR	BASIS	CITY REFUND
Natural Pleasures, LLC	8226504	2009-2010	Corrected Assessment	333.47
Rouse, JB	8947764	2006-2010	Corrected Assessment	108.86
Systel Business Equipment	1272238	2008-2010	Corrected Assessment	7,863.76
Wingate , Addie	2486007	2010	Corrected Assessment	176.23
Burkhead-Devane Printing	1241936	2006	Corrected Assessment	923.46
TOTAL				\$9405.78

P.O. Drawer D
433 Hay Street
Fayetteville, NC 28302-1746
FAX (910) 433-1680

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Lisa Smith, Chief Financial Officer
DATE: February 13, 2012
RE: **Capital Project Ordinance Amendment 2012-19 and Capital Project Ordinance 2012-9 (Century Circle Park Facilities and Joint-Use Facilities at Cumberland County Schools)**

THE QUESTION:

Does the City wish to partner with Cumberland County Schools to make recreation improvements at various school sites at no additional cost to the City?

RELATIONSHIP TO STRATEGIC PLAN:

Principle I: Partnership of Citizens - Means City working with Cumberland County, Schools and other governments

BACKGROUND:

- In August 2007, City Council approved a project budget of \$800,000 for a park project at a school site in the western area of Fayetteville. This project was part of the service plan for the area that was annexed on September 30, 2005. The City's General Fund is the source of funds for the project.
- The City is currently in the process of constructing the improvements at the new Century Circle Middle School.
- Cumberland County Schools has requested to reimburse the City \$441,000 for the parks and recreation project at Century Circle Middle School since they have surplus funds that are restricted for improvements at the school site.
- In exchange, the school system has requested that the City agree to make certain improvements and reimburse the school system for improvements at various middle schools and high schools located in the City of Fayetteville in an amount not to exceed \$431,000. The improvements will be at Nick Jeralds, Westover, Max Abbott, and Douglas Byrd Middle Schools; and E.E. Smith, Westover, Terry Sanford, Reid Ross Classical, and Pine Forest High Schools. The improvements include baseball dugouts, gym bleachers, parking lot and track paving, scoreboards, tennis court and football field improvements, and air conditioning and irrigation systems improvements.
- The net impact to the City is a \$10,000 savings.
- The attached budget actions are necessary to approve the proposal outlined above.

ISSUES:

None.

BUDGET IMPACT:

The net impact of these actions will save the City's General Fund \$10,000.

OPTIONS:

1. Adopt the capital project ordinance and project amendment and move forward with the projects.
2. Do not adopt the capital project ordinance and project amendment and only move forward with the parks and recreation improvements at Century Circle Middle School.

RECOMMENDED ACTION:

Adopt Capital Project Ordinance Amendment 2012-19 and Capital Project Ordinance 2012-9.

ATTACHMENTS:

Capital Project Ordinance Amendment 2012-19

Capital Project Ordinance 2012-9

**CAPITAL PROJECT ORDINANCE AMENDMENT
CHANGE 2012-19 (CPO 2008-3)**

BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby amended:

Section 1. The project change authorized is to Capital Project Ordinance 2008-3, adopted August 13, 2007, for the funding of the Western Area Neighborhood Park.

Section 2. The project director is hereby directed to proceed with the project within the terms of the various agreements executed and within the funds appropriated herein.

Section 3. The following revenues are anticipated to be available to the City to complete the project:

	Listed As	Amendment	Revised
General Fund Transfer	\$ 800,000	\$ (441,000)	\$ 359,000
Cumberland County Schools Contribution	-	441,000	441,000
	\$ 800,000	\$ -	\$ 800,000

Section 4. The following amounts are appropriated for the project:

Project Expenditures	\$ 800,000	\$ -	\$ 800,000
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Section 5. Copies of this capital project ordinance amendment shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Adopted this 13th day of February, 2012.

**CAPITAL PROJECT ORDINANCE
ORD 2012-9**

BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1. The authorized project is for improvements at various facilities jointly-used by Cumberland County Schools and Fayetteville-Cumberland Parks and Recreation.

Section 2. The project director is hereby directed to proceed with the project within the terms of the various agreements executed and within the funds appropriated herein.

Section 3. The following revenues are anticipated to be available to the City to complete the project:

General Fund Transfer	<u>\$ 431,000</u>
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Section 4. The following amounts are appropriated for the project:

Project Expenditures	<u>\$ 431,000</u>
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Section 5. Copies of this capital project ordinance shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Adopted this 13th day of February, 2012.

CITY COUNCIL ACTION MEMO

TO: Mayor & City Council
FROM: Kristoff Bauer, Asst. City Manager
DATE: February 13, 2012
RE: **Revisions to Policy 150.2 Relating To Annexation Requirements**

THE QUESTION:

Do proposed revisions to the implementation process and supporting policies correct Council's concerns with the operation of the prior policy relating to the requirement for annexation in exchange for provision of PWC services?

RELATIONSHIP TO STRATEGIC PLAN:

Goal 3: Growing City, Livable neighborhoods – A Great Place To Live – Obj. 4: Manage the City's future growth and development with quality development and redevelopment reflecting plans, policies, and standards

BACKGROUND:

On December 14th of 2009, the Council adopted a revised PWC Policy 150.2 "Provision of Water and Sewer to Municipal Influence Area." This revised policy established the requirement that property owners within the City's growth area seeking PWC water or sewer service must file a petition for voluntary annexation before that service will be provided.

PWC policy at that time allowed developers to get water and sewer availability permits without petitioning for annexation as required by the policy. The policy was enforced at the time when water meters were requested. At that point, the development could be very close to completion.

In addition, case law established the standard that petitions for annexation, in order to be valid, must contain the signatures of all property owners at the time of Council consideration instead of the time of petition.

This combination of factors created two challenges to the successful implementation of Policy 150.2: 1) it allowed development to proceed to completion under County standards, and 2) it created the opportunity for the annexation petition to be invalidated through sale of lots, pre-sale of homes, or sale of completed homes during the period after the petition for annexation was filed.

Subsequent to that action there was an incident when a property owner filed a petition for annexation and then took actions that invalidated that petition before the City Council was able to act thereon.

ISSUES:

Staff has worked with PWC and representatives of the development community to develop an implementation strategy designed to address the issues above without negatively impacting the development process. Key elements of this strategy include:

- 1 - A clarified Policy 150.2 (Attached)
- 2 - Adding language to water and sewer availability permits as well as the PWC service agreement
- 3 - Expediting the annexation review process to allow it to run parallel with the initial zoning process, and
- 4 - Revision to Policy 165.1 - Initial Zoning After Annexation (Attached) - to address an order concern and give the Council additional flexibility in establishing the initial zoning.

Staff will review how these changes respond to concerns raised and how the new process will be implemented.

BUDGET IMPACT:

A successful implementation of Policy 150.2 should positively impact the City's financial position over time by allowing the City to grow with adjacent urban development.

OPTIONS:

- 1) Take no action: current policie would remain in effect.
- 2) Adopt revised policies 150.2 and 165.1

RECOMMENDED ACTION:

Staff recessful recommends that Council move to adopt revised policies 150.2 - PWC Provision of Water and Sewer to Municipal Influence Area and 165.1 - PWC Initial Zoning After Annexion.

ATTACHMENTS:

- Policy 150.2
- Policy 150.2 Changes
- Policy 165.1

SUBJECT – PUBLIC WORKS COMMISSION Provision of Water and Sewer to Municipal Influence Area	Number 150.2	Revised	Effective Date	Page 1 of 1
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Unless specifically exempted by action of the City Council, all property within the City of Fayetteville’s Municipal Influence Area¹ (“MIA”) that meet the statutory requirements for annexation must be annexed into the City of Fayetteville before water or sewer service will be provided or expanded. Further, all property to be served by PWC water and/or sewer service must be developed consistent with the City’s development regulations in place at the time service is requested.

The requirement for annexation does not apply to a single-family residential homeowner requesting service from an existing water and/or sanitary sewer main when their lot is not contiguous to a corporate boundary of the City of Fayetteville.

¹ The version of the MIA referenced in this policy is that established by interlocal agreement with Cumberland County June 9, 2008 as amended by the City’s Annexation Agreement with the Town of Hope Mills adopted August 23, 2010.

SUBJECT – PUBLIC WORKS COMMISSION Provision of Water and Sewer to Municipal Influence Area	Number 150.2	Revised	Effective Date	Page 1 of 1
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Unless specifically exempted by action of the City Council, all property within the City of Fayetteville’s Municipal Influence Area¹ (“MIA”) that meet the statutory requirements for annexation must be annexed into the City of Fayetteville before water or sewer service will be provided or expanded. Further, all property to be served by PWC water and/or sewer service must be developed consistent with the City’s development regulations in place at the time service is requested.

The requirement for annexation does not apply to a single-family residential homeowner requesting service from an existing water and/or sanitary sewer main when their lot is not contiguous to a corporate boundary of the City of Fayetteville.

¹ The version of the MIA referenced in this policy is that established by interlocal agreement with Cumberland County June 9, 2008 as amended by the City’s Annexation Agreement with the Town of Hope Mills adopted August 23,2010.

SUBJECT - ZONING Initial Zoning After Annexation	Number 165.1	Revised	Effective Date	Page 1 of 1
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The policy of the City Council on the initial zoning of property under consideration for annexation into the City is as follows:

1. The City Planning Department shall notify the property owners by letter that the initial municipal zoning proceedings are beginning. The letter shall state the existing County zoning of the property, if zoned, and the proposed municipal zoning. The initial zoning proposal and any requests for changes shall be heard by the City Zoning Commission prior to recommending the zoning map to the City Council.
2. For voluntary annexation requests, the City Clerk shall schedule the initial zoning public hearing before the City Council immediately prior to the public hearing on the annexation petition. Council's action on that zoning will be preliminary as the property in question has not yet been annexed and, therefore, is not within the City's authority to zone.
3. The annexation petitioner may request to withdraw their petition to annex after the preliminary initial zoning action and prior to action on that petition. If such a request is timely made by all petitioners, the Council will table action on the annexation petition indefinitely.
4. The final initial zoning action will be included in the motion to approve the petition for annexation.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Craig Harmon, AICP, CZO - Planner II
DATE: February 13, 2012
RE: **Case No. P12-05F. Rezoning from SF-15 Single Family District to OI Office and Institutional District, or a more restrictive district, on property located on the south side of Kinlaw Rd. Containing 9 acres more or less and being the property of The Methodist University Inc.**

THE QUESTION:

Does the proposed zoning to Office and Institutional fit with the character of the neighborhood and the long range plans of the City of Fayetteville?

RELATIONSHIP TO STRATEGIC PLAN:

Livable Neighborhoods
Growth and development.

BACKGROUND:

Owner: The Methodist University Inc.
Applicant: The Methodist University Inc.
Requested Action: SF-15 to OI
Property Address: Kinlaw Rd
Council District: 1 (Bates)
Status of Property: Developed
Size: 9 acres +/-
Existing Land Use: Dorm Rooms
Adjoining Land Use & Zoning:
North - SF-15 Residential
South - OI University
East - OI University
West - LC Commercial
Letters Mailed: 347
Land Use Plan: Office and Institutional
Small Area Studies: Ramsey Street Corridor Plan

ISSUES:

This is a City initiated rezoning. During the UDO remapping process two properties owned by Methodist University had a straight translation given to them (R15 to SF-15). The new district does not allow universities as a use. Methodist is looking to build dorms on these properties. With this rezoning all on the University's property will be zoned for OI. The Zoning Commission encouraged the University to meet with the neighbors to discuss their future building plans.

Zoning Commission and Staff recommend approval of the OI district based on:

1. Land Use Plan calls for Office and Institutional.
2. Dorm rooms already exist on one of these two properties.
3. Universities are not allowed in the SF-15 district.

BUDGET IMPACT:

The City would be required to provide an increase in public services that should be offset by the increase this development would bring to the City's tax base.

OPTIONS:

- 1) Approval of rezoning as presented by staff (recommended);
- 2) Approval of rezoning to a more restrictive zoning district;
- 3) Denial of the rezoning request.

RECOMMENDED ACTION:

Zoning Commission and Staff Recommend: That the City Council move to APPROVE the rezoning of this property to Office and Institutional as presented by staff.

ATTACHMENTS:

Zoning Map

Current Landuse

Land Use Plan



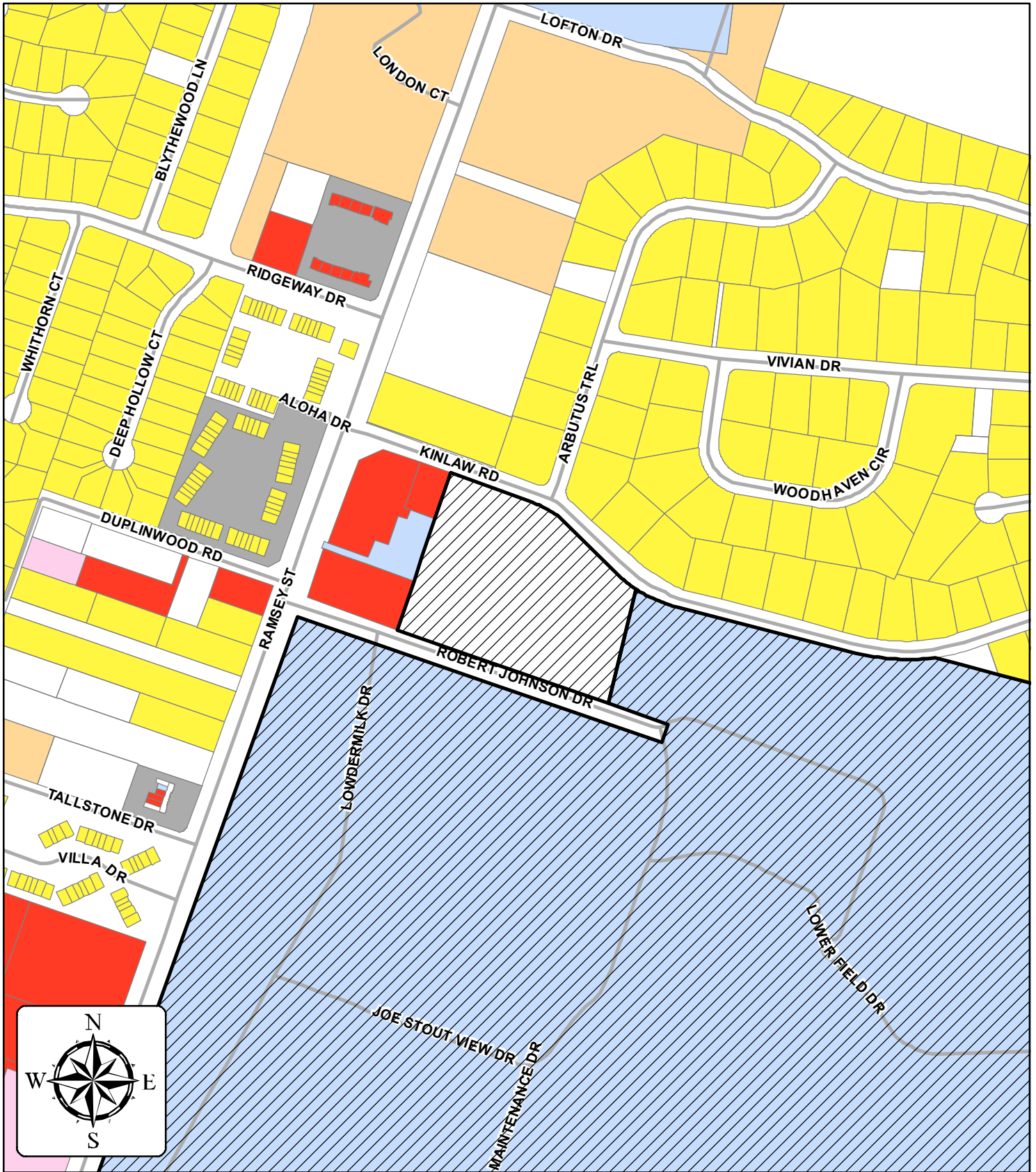
Request: City Rezoning SF-15 to OI
Location: Kinlaw Rd
Acreage: +/- 9 acres

Zoning Commission: 1/110/2012 Recommendation: _____
City Council: _____ Final Action: _____
Pin: 0530-84-0907 and a portion of 0530-91-3792 currently zoned SF-15

Letters are being sent to all property owners within the circle, the subject property is shown in the hatched pattern.

Current Land Use

P12-05F

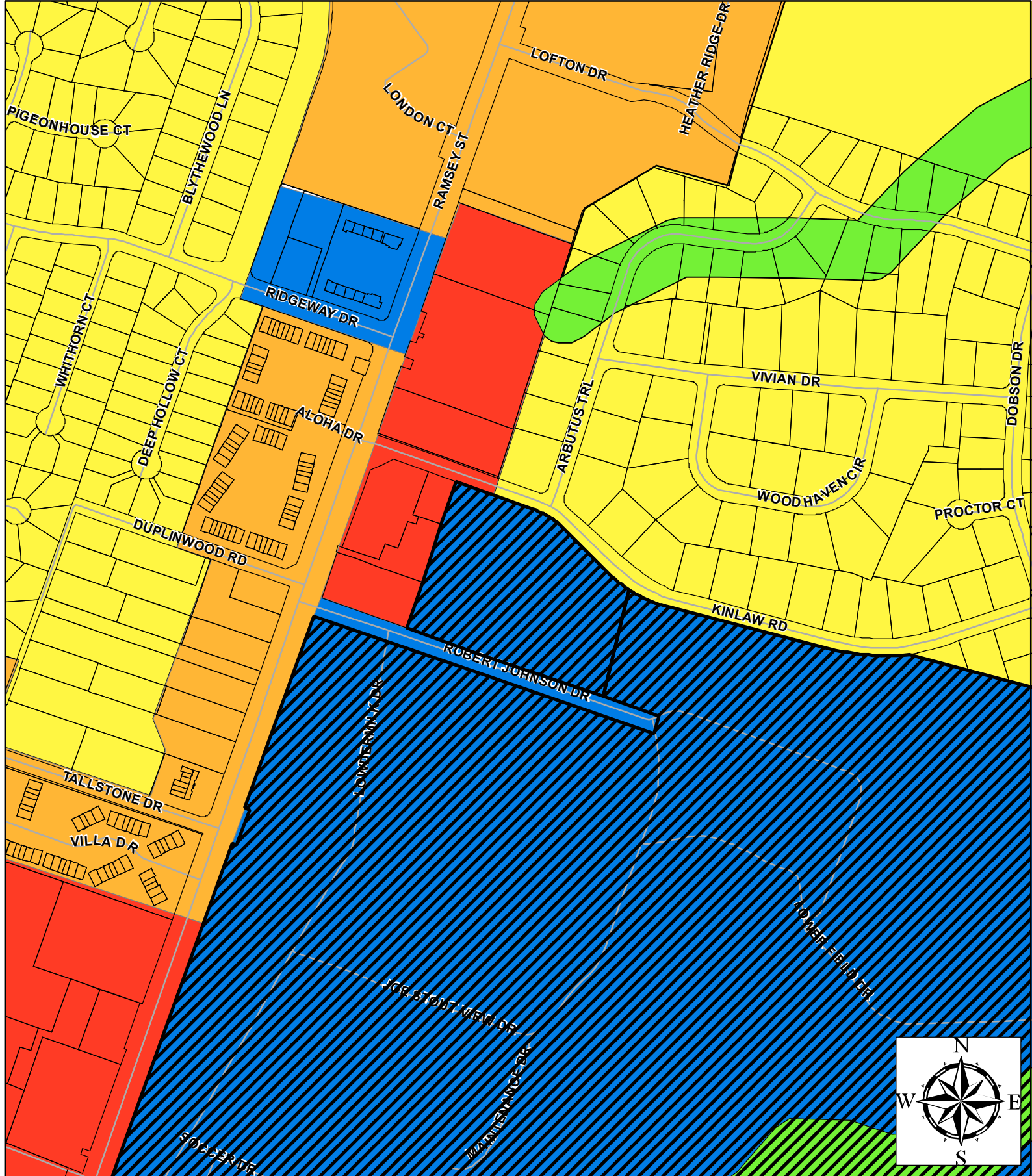


Legend

Existing Landuse	Common Area	Group Quarters	Industrial	Multi-Family	Open Space	Communications-Utilities	Vacant Commercial
Single Family Detached	Commercial	Golf Course	Institutional	Mobile Home	Parking	Under Construction	Not Verified
Single Family Attached	Cemetery	Government Office	Lake	Mobile Home Park	Predominantly Vacant	Vacant Land	Null PIN

2010 Land Use Plan

Case No. P12-05F



CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Dale Iman, City Manager
DATE: February 13, 2012
RE: **Public Hearing and Consideration of Adoption of Revisions to Chapter 23, Article III Stormwater Management Ordinance**

THE QUESTION:

Council is asked to adopt proposed revisions in the Stormwater Management Ordinance, Article III of Chapter 23 of the City Code of Ordinances.

RELATIONSHIP TO STRATEGIC PLAN:

Growing City, Livable Neighborhoods; More Efficient Government

BACKGROUND:

The Stormwater Management Ordinance, also referred to as Chapter 23, Article III, Stormwater Control, initially became effective January 1, 2009, and at Council's urging, established minimum requirements and procedures for new development to control the adverse effects of increased stormwater quantity and runoff quality.

The ordinance also included State-mandated Phase II stormwater requirements developed directly from language as contained in the State's Stormwater Phase II Model Ordinance.

A local Stakeholders Group, the Stormwater Advisory Board, and City staff originally developed the Stormwater Control Ordinance in 2008, and that same group has recently been working for several months to craft and review these proposed ordinance changes. As part of that effort, a new Stormwater Administrative Manual, an internal, user-friendly working document that will help all users apply the ordinance to their specific needs has also been developed.

ISSUES:

Since the original Article III first became effective in early 2009, City Staff and those affected by the resulting requirements have wrestled with several technical matters particularly those regarding stormwater Best Management Practices (BMP's). Proposed ordinance revisions to address those areas of concern and provide for clarification and/or other resolution have now been fully reviewed by the Stakeholder's Group, the Stormwater Advisory Board, and City Staff. All parties have now expressed agreement with both the proposed Ordinance changes and the new Administrative Manual.

The NC Division of Water Quality recently reviewed the City's Ordinance and has proposed the majority of the requested revisions. To continue to maintain our municipal NPDES stormwater permit compliance, and as part of the NC Division of Water Quality's (DWQ) recent review, the City is required to add specific new language as contained in the State's Model Ordinance to meet Phase II requirements. When adopted, the City's ordinance will better align with the State's Stormwater Phase II Model Ordinance, and the State has agreed to immediately delegate authority to the City to administer post-construction requirements. Doing so will provide for internal and external efficiencies eliminating a duplication of services between the City and local NC DENR office thereby allowing developers to need only a single (stormwater) permit rather than two.

A performance guarantee is required by the Ordinance to effectively ensure that stormwater BMP's are built/installed like the engineering design specified. The original ordinance performance

guarantee is 150% of the estimated BMP construction cost and is established to guard against the “unknown” as the City prepared to move into the BMP business. Now that City Staff has gained some experience and a comfort level over time, a change has been proposed to reduce the performance guarantee to 75% of estimated construction which would reduce financial burden and also be more consistent with similar UDO requirements.

The Stormwater Advisory Board has unanimously requested that these changes be adopted. The City has also received a letter from the Home Builders Association of Fayetteville in support of these changes.

BUDGET IMPACT:

N/A

OPTIONS:

1. Adopt the proposed revisions to the Stormwater Control Ordinance, Article III of Chapter 23 of the City Code of Ordinances.
2. Do not adopt proposed revisions.

RECOMMENDED ACTION:

Option 1 -- Adopt the proposed revisions to the Stormwater Control Ordinance, Article III of Chapter 23 of the City Code of Ordinances.

ATTACHMENTS:

Resolution with Ordinance showing Proposed Changes

Stormwater Advisory Board 12-6-11 Minutes with Approved Motion for Ordinance Changes

Letter of Support from the Home Builders Association of Fayetteville

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 23, ARTICLE III, STORMWATER CONTROL, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA TO COMPLY WITH STATE PHASE II STORMWATER REQUIREMENTS, TO ADJUST BMP PERFORMANCE GUARANTEE, AND TO PROVIDE FOR TECHNICAL CLARIFICATION.

WHEREAS, the City of Fayetteville has adopted a Stormwater Management Ordinance, Chapter 23, containing Article III, Stormwater Control; and

WHEREAS, the Stormwater Management Ordinance was created to address the Federal Water Quality Act NPDES program as well as those elements of stormwater quantity to effectively address local flooding and stormwater problems including capital improvement projects; and

WHEREAS, specific changes have been requested by the NC Division of Water Quality to comply with the State's Phase II Stormwater regulations; and

WHEREAS, a need exists to adjust performance guarantees of Best Management Practices (BMP) to be more consistent with requirements of the Unified Development Ordinance (UDO); and

WHEREAS, the need exists for minor clarifications and changes to several technical aspects of the ordinance have been identified;

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. Chapter 23, Article III is amended by deleting the portions struck through and inserting the underlined portions as follows:

ARTICLE III. - STORMWATER CONTROL

[Sec. 23-20. - Title, purpose, application.](#)

[Sec. 23-21. - Definitions.](#)

[Sec. 23-22. - Scope of article.](#)

[Sec. 23-23. - Powers of the department.](#)

[Sec. 23-24. - Exemptions from requirements.](#)

[Sec. 23-25. - Scope of stormwater design plans.](#)

[Sec. 23-26. - Stormwater design plans and approval process.](#)

[Sec. 23-27. - Plan requirements.](#)

[Sec. 23-28. - Plan hydrologic criteria.](#)

[Sec. 23-29. - Plan land use conditions criteria.](#)

[Sec. 23-30. - Plan wetlands criteria.](#)

[Sec. 23-31. - Minimum stormwater quantity control requirements.](#)

[Sec. 23-32. - Minimum stormwater quality control requirements.](#)

[Sec. 23-33. - Approval and permit requirements.](#)

[Sec. 23-34. - Building permit or street plan approval suspension and revocation.](#)

[Sec. 23-35. - Professional registration requirements.](#)

[Sec. 23-36. - Fees.](#)
[Sec. 23-37. - Construction and inspection.](#)
[Sec. 23-38. - Ownership and maintenance of stormwater management facilities.](#)
[Sec. 23-39. - Operation and maintenance agreement.](#)
[Sec. 23-40. - Inspection program.](#)
[Sec. 23-41. - Performance ~~guarantees~~ security for installation.](#)
[Sec. 23-42. - Notice to owners; deed recordation and indications on plat.](#)
[Sec. 23-43. - Records of installation and maintenance activities.](#)
[Sec. 23-44. - Variances from requirements.](#)
[Sec. 23-45. - Appeals.](#)
[Sec. 23-46. - Enforcement.](#)
[Sec. 23-47. - Relationship to other laws, regulations, and private agreements.](#)
[Sec. 23-48. - Severability.](#)
[Sec. 23-49. - Effective date.](#)

Sec. 23-20. - Title, purpose, application.

(a) The provisions of this article shall constitute and be known as the "Stormwater Control Ordinance of Fayetteville, North Carolina".

(b) The purpose of this article is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse effects of the increase in stormwater quantity and the stormwater runoff quality associated with both future land development and consideration of existing developed land within the City of Fayetteville. Proper management of the quantity and quality of stormwater runoff will minimize damage to public and private property, prevent personal damage and bodily harm, ensure a functional drainage system, reduce the effects of development on land and stream channel erosion, promote the attainment and maintenance of water quality standards, enhance the local environment associated with the drainage system, reduce local flooding, and maintain as nearly as possible the predeveloped runoff characteristics of the area, and facilitate economic development while mitigating associated flooding and drainage impacts. Additionally, the purpose of this article is to comply with the post construction stormwater requirements as per the city's NPDES stormwater discharge permit.

(c) Further, the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this article.

~~(e)~~(d) The application of this article and the provisions expressed herein, shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other powers granted by state statute. In addition, if site characteristics indicate that complying with these minimum requirements will not provide adequate designs or protection for local property or residents, it is the designer's responsibility to exceed the minimum requirements as necessary. The city engineer or designee shall be responsible for the coordination and enforcement of the provisions of this article.

~~(d)~~(e) Compliance with all applicable local, state, and federal regulations and permits shall be the responsibility of the applicant. Other stormwater regulations to consider when complying with this article include, but are not limited to, the following:

- (1) Water supply watershed regulations, chapter 29 of this Code of Ordinances;

- (2) Federal wetland permits;
- (3) Water quality certifications; and
- (4) Sediment and erosion control requirements.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-21. - Definitions.

For the purpose of this article, the following terms, phrases, and words, and their derivatives, shall have the meaning given herein:

Adequate channel shall mean a natural or manmade channel or pipe which is capable of conveying the runoff from the design storm events without flooding existing structures or causing property damage.

Best management practice (BMP) shall mean a wide range of management procedures, schedules of activities, prohibitions on practices, and other management practices which have been demonstrated to effectively control the quality and/or quantity of stormwater runoff and which are compatible with the planned land use.

Built-upon area shall mean that portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. Built-upon area does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

City shall mean the City of Fayetteville, North Carolina.

City clerk shall mean the City Clerk of the City of Fayetteville, North Carolina, or his/her designee.

City council shall mean the duly elected Governing Body of the City of Fayetteville, North Carolina.

City engineer shall mean the City Engineer of the City of Fayetteville, North Carolina, or his/her designee.

City engineering and infrastructure department shall mean the Engineering and Infrastructure Department of the City of Fayetteville, North Carolina.

City manager shall mean the City Manager of the City of Fayetteville, North Carolina, or his/her designee.

Cross-drain culvert shall mean a structure designed to convey a watercourse under a roadway, railway, pedestrian walk, or through an embankment.

Design report shall mean the report that accompanies the stormwater design plan and includes data used for engineering analysis, results of all analysis, design and analysis calculations (including results obtained from computer programs), and other engineering data that would assist the city engineer in evaluating proposed stormwater management facilities.

Design storm events shall mean the frequency storm used for the design of stormwater management facilities.

Designer shall mean a registered professional who is permitted to prepare plans and studies required by this article.

Detention structure shall mean a permanent stormwater management structure whose primary purpose is to temporarily store stormwater runoff and release the stored runoff at controlled rates.

Developed land use conditions shall mean the land use conditions according to the current city land use map or proposed site plan. Also, the conditions which exist following the completion of the land disturbing activity in terms of topography, vegetation, land use and rate, quality, volume or direction of stormwater runoff.

Development shall (to the extent permitted by law) mean any of the following actions undertaken by a public or private individual or entity:

- (1) All land altering activities associated with the division of a lot, tract, or parcel of land into two or more lots plots, sites, tracts, parcels or other divisions by plan or deed;
- (2) The construction, installation, or alteration of a structure, impervious surface, or drainage facility;
- (3) Any land change including, without limitation to, clearing, tree removal, grubbing, stripping, dredging, grading, excavating, transporting and filling of land; or
- (4) Adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging, or otherwise disturbing the soil, vegetation, and mud, sand or rock of a site.

Easement shall mean a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

Erosion shall mean the process by which ground surface is worn away by the action of wind and/or water.

Exemption shall mean those development activities that are not subject to the stormwater requirements contained in this article.

Existing land use condition shall mean the land use conditions existing at the time the design plans are submitted for approval.

FEMA-designated floodplain shall mean the 100-year floodplain shown on the most current FEMA flood insurance rate map or flood boundary and floodway map. This shall include both the detailed 100-year floodplain which shows a 100-year flood elevation and the approximate 100-year floodplain.

Functional maintenance shall mean any action necessary to preserve stormwater management facilities in proper working condition, in order to serve the intended purposes set forth in this article, and to prevent structural failure of such facilities. Functional maintenance shall not include actions taken solely for the purpose of enhancing the aesthetics aspects associated with stormwater management facilities.

Grading shall mean excavating, filling (including hydraulic fill), or stockpiling of earth material, or any combination thereof, including the land in its excavated or filled condition.

Impervious shall mean the condition of being impenetrable by water.

Imperviousness shall mean the degree to which a site is impervious.

Infiltration shall mean the passage or movement of water into the soil subsurface.

Interior culvert shall mean a culvert that is not located under a roadway, railway, or pedestrian walk.

Maintenance (as relates to BMPs or other stormwater management facilities). See "functional maintenance" or "routine maintenance".

100-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in one 100 years. It also may be expressed as an exceedance probability with a one percent chance of being equaled or exceeded in any given year.

On-site stormwater management shall mean the design and construction of a facility necessary to control stormwater runoff within and for a single development.

One-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in one year. It also may be expressed as an exceedance probability with a 100 percent chance of being equaled or exceeded in any given year.

Predevelopment conditions shall mean those which existed on the site at the time this article became effective.

Preliminary plat shall mean the preliminary plat of a subdivision submitted pursuant to the subdivision regulations of the city.

Pervious pavement shall mean concrete and asphalt paving materials that allow for infiltration of stormwater into a storage area with void spaces that provide temporary storage.

Record drawings shall mean a set of engineering or site drawings that delineate the specific permitted stormwater management facility(ies) as actually constructed.

Redevelopment shall mean any development on previously developed land, other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

Regional stormwater management shall mean the design and construction of a facility necessary to control stormwater runoff for more than one development.

Regulated floodplain shall mean the floodplain area designated by FEMA regulations or designated by the city.

Retention structures shall mean a permanent structure whose primary purpose is to permanently store a given volume of stormwater runoff. Release of the given volume is by infiltration and/or evaporation.

Routine maintenance shall mean any action to enhance the aesthetics aspects associated with stormwater management facilities. Routine maintenance shall include actions such as grass cutting, trash removal, and landscaping.

Site shall mean any lot, plot, parcel or tract of land.

Stormwater design plan shall mean the set of drawings and other documents that comprise all of the information and specifications for the drainage systems, structures, concepts and techniques that will be used to control stormwater as required by this article. Also included are the supporting engineering calculations and results of any computer analysis.

Stormwater management shall mean the collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to minimize accelerated channel erosion, increased flood damage, and/or degradation of water quality and in a manner to enhance and ensure the public health, safety, and general welfare which shall include a system of vegetative or structural measures, or both, that control the increased volume and rate of stormwater runoff caused by manmade changes to the land.

Stormwater management facilities shall mean those structures and facilities that are designed for the collection, conveyance, storage, treatment and disposal of stormwater runoff into and through the drainage system. This includes all stormwater quantity and quality facilities.

Stormwater runoff shall mean the direct response of a watershed to precipitation and includes the surface and subsurface runoff that enters a ditch, stream, storm drain, or other concentrated flow during and following precipitation.

Subdivision shall mean that which is defined in chapter 25, Subdivisions, of this Code of Ordinances; and G.S. 160A-~~376~~175(d).

Ten-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in ten years. It may also be expressed as an exceedance probability with a ten percent chance of being equaled or exceeded in any given year.

Thoroughfare shall mean all numbered routes and all roads with four or more travel lanes.

25-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 25 years. It may also be expressed as an exceedance probability with a four percent chance of being equaled or exceeded in any given year.

Variance shall mean the modification of the minimum stormwater management requirements for specific circumstances where strict adherence of the requirements would result in practical difficulties or undue hardship and not fulfill the intent of this article.

Water quality shall mean those characteristics of stormwater runoff that relate to the physical, chemical, biological, or radiological integrity of water.

Water quantity shall mean those characteristics of stormwater runoff that relate to the rate and volume of the stormwater runoff to downstream areas resulting from land disturbing activities.

Watershed shall mean the drainage area contributing stormwater runoff to a single point.

Wetland shall mean those areas that are inundated or saturated by surface or groundwater at a

frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, and similar areas as determined by the U.S. Army Corps of Engineers.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-22. - Scope of article.

(a) No person shall develop any land without having provided for appropriate stormwater management measures that control or manage stormwater runoff, in compliance with this article, unless exempted in section 23-24 below.

(b) The provisions of this article shall apply throughout the incorporated areas in the City of Fayetteville, North Carolina.

(c) The city engineering and infrastructure department shall be responsible for the coordination and enforcement of the provisions of this article, and shall have the authority to enforce this article in accordance with the enforcement provisions.

(d) The application of this article and the provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other local requirements authorized by state statute. Where other requirements are more stringent those shall apply. This article does not eliminate the necessity for obtaining other permits as may be required by other governmental entities.

(e) This article shall apply to both public and privately owned or maintained drainage systems, and stormwater management facilities.

(f) *Map.* The provisions of this article shall apply within the areas designated on the map titled "Stormwater Map of Fayetteville, North Carolina", which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this article.

The Stormwater Map shall be kept on file by the city engineer and shall be updated to take into account changes in the land area covered by this article and the geographic location of all stormwater management facilities permitted under this article. In the event of a dispute, the applicability of this article to a particular area of land shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-23. - Powers of the department.

(a) The city engineering and infrastructure department shall have the power to administer and enforce all regulations and procedures adopted to implement this article, including the right to maintain an action or procedure in any court of competent jurisdiction to compel compliance with or restrain any violation of this article, and to enforce the provisions of this article in accordance with its enforcement provisions.

(b) The city engineering and infrastructure department can:

(1) Administer, coordinate, and oversee design, construction, and operation and maintenance of city stormwater facilities and conveyances;

- (2) Implement or oversee implementation of development standards and guidelines;
- (3) Determine the manner in which stormwater facilities should be operated;
- (4) Inspect private systems which discharge to a public drainage system;
- (5) Require compliance with maintenance requirements;
- (6) Advise the other city departments on issues related to stormwater;
- (7) Protect facilities and properties controlled by the city and prescribe how they are used by others; and
- (8) Require proposed developments, not exempt from this article, to comply with the terms of this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-24. - Exemptions from requirements.

The following development activities are exempt from the provisions of this article and the requirements of providing stormwater management measures. Even if exempt from this article, the following as well as all development activity is not allowed to divert water to adjacent property to cause a nuisance and/or property damage and should comply with the intent of this article.

- (1) Construction or improvement of a single-family residence (single-family residence - separately built) or their accessory buildings that is separately built and not part of multiple construction or a subdivision development approved under this article and that cumulatively disturbs less than one acre. If included in a subdivision plan, all development activities must follow the stormwater management plan that has been approved for the subdivision.
- (2) New developments that do not include more than 20,000 square feet of impervious area in total and that cumulatively disturb less than one acre.
- (3) New construction to existing development that does not include more than 2,000 square feet of new impervious area and that cumulatively disturbs less than one acre. If the new construction to existing development exceeds 2,000 square feet of new impervious area but the total impervious area for the property does not exceed 5,000 square feet of impervious area and that cumulatively disturbs less than one acre, the development shall also be exempt.
- (4) Land disturbing activities for agricultural uses.
- (5) Land disturbing activities undertaken on forest land for the production and harvesting of timber and timber products where all of the following occur:
 - a. The growing of trees;
 - b. The harvesting of timber, leaves, or seeds;
 - c. The regeneration of either timely replanting of trees or natural generation;

d. The application of applicable "best management practices", including the N.C. Department of Environment, ~~Health~~ and Natural Resources "Forest Practice Guidelines Related to Water Quality"—Title 15A North Carolina Administrative Code subchapter 11, sections 1.010—.0209 and all successor documents; and

e. A forest management plan is prepared or approved either by a professional forester registered in the State of North Carolina or by the Division of North Carolina Forest Resources. Copies of the forest management plan shall be provided to the city upon request.

(6) Land disturbing activities for which a permit is required under the Mining Act of 1972; G.S. Ch. 74, Article 7.

(7) Projects which commenced prior to the application of this article, such as:

a. Approved subdivisions and site plans. However, if the approved subdivision or site plan is modified or changed after the effective date of this article, the proposed development would have to comply with all requirements of this article in its entirety.

b. Projects which have an outstanding unexpired valid building permit in compliance with either G.S. 160A-422 or G.S. 153A-357 or have an outstanding unexpired valid soil erosion permit in compliance with G.S. 160A-458; provided that, upon application of any impervious surfaces, the exemption based on a valid soil erosion permit shall not apply.

c. Projects which have obtained a state permit, such as landfills and land application of residuals.

d. Projects which have continuing vested rights in compliance with G.S. 160A-385.1 or G.S. 153A-344.1.

Phased developments do not constitute separate developments and the total area of all phases will be used to determine exemption requirements.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-25. - Scope of stormwater design plans.

(a) The following items relate to the general scope of plans required by this article:

(1) In developing plans for subdivisions, individual lots in a residential development shall not be considered to be separate development activities and shall not require individual permits. Instead the subdivision development, as a whole, shall be considered to be a single development activity. Hydrologic parameters that reflect the ultimate subdivision development shall be used in all engineering calculations.

(2) For developments that have different planned phases of development, if all phases are covered by the approved stormwater design plan, one permit will be given for the entire development so that new permits will not be needed for each phase of development.

(b) In subdivisions, lots should generally be graded in such a manner that surface runoff does not cross more than two lots before it is collected in a system of open channels, closed conduits, or a combination of both.

(c) For all development activities, concentrated stormwater runoff leaving a development site must be discharged directly into a well-defined, natural or manmade off-site receiving channel or pipe. If the receiving channel or pipe is found to be inadequate, the developer must incorporate measures to either improve the receiving channel or pipe to an adequate condition, or detain/retain runoff on the site to a level that can be accommodated by the receiving channel or pipe. Newly constructed channels or pipes shall be designed as adequate channels or pipes.

The development site should be designed to maximize the amount of rainfall that infiltrates into the soils and minimize the amount of direct flow into public drainage facilities, adjoining streets, waterbodies, watercourses, and wetlands, to the extent feasible.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-26. - Stormwater design plans and approval process.

(a) Unless granted an exemption from this article, a stormwater design plan (as part of the construction plans) for each development activity shall be submitted for review by the city engineer for the entire development activity, or any portion thereof. If granted an exemption from this article, those development activities are still required to submit a stormwater design plan for review by the city engineer to ensure that all other city minimum requirements have been satisfied.

(b) Permit required. A stormwater permit is required for all development and redevelopment unless exempt pursuant to this article. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to the administrative manual.

(c) Consultation meeting. A land owner or developer may request a consultation meeting with the city engineer to review and discuss the stormwater management system to be utilized in a proposed development project. The purpose of the meeting(s) is to discuss any questions for stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering commences.

~~(b)~~(d) All stormwater design plans as required by this article shall be submitted to the city engineering and infrastructure department for review and approval. The applicant shall submit three copies of the final plans. Within 30 calendar days from and after receipt of the plans, the city engineer shall issue a decision approving, rejecting, or conditionally approving the plans with modifications. The review and approval time frames for all subsequent submittals on the same plans, if required, shall be 15 calendar days.

~~(e)~~(e) All preliminary plats of the development shall be consistent with the stormwater design plan required in subsection (a) of this section.

~~(d)~~(f) Should any stormwater design plan involve any stormwater management facilities or land to be dedicated to public use, the same information shall also be submitted for review and approval to the department having jurisdiction over the land or other appropriate departments or agencies identified by the city engineer for review and approval. This stormwater design plan shall serve as the basis for all subsequent construction.

~~(e)~~(g) A stormwater design plan shall not be considered approved without the inclusion of an approval stamp with a signature and date on the plans. The stamp of approval on the plans is solely an acknowledgement of satisfactory compliance with the requirements of these regulations. The approval stamp does not constitute a representation or warranty to the

applicant or any other person concerning the safety, appropriateness, or effectiveness of any provision, or omission from the stormwater design plan.

~~(f)~~(h) Following approval of stormwater design plans, an owner shall have a vested right to develop the property in accordance with the conditions of approval for two years. Extensions or renewals of the plan approvals may be granted by the city engineer upon written request by the person responsible for the development activity.

~~(g)~~(i) All requirements for sites located in water supply watersheds as set forth in the Code of Ordinances must be met. In addition, all state and/or federal requirements such as U.S. Army Corps of Engineers wetland permits must be met, if required.

~~(h)~~(j) Administrative manual. For applications required under this article, the city engineering and infrastructure department shall compile the application requirements, submission schedule, fee schedule, a copy of this article, and information on how and where to obtain the latest version of the "Stormwater Best Management Practices Manual" as provided by the North Carolina Division of Water Quality in an Administrative Manual, which shall be made available to the public.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-27. - Plan requirements.

Stormwater design plans shall include as a minimum the following:

- (1) A vicinity map indicating a north arrow, scale, boundary lines of the site, and other information necessary to locate the development site.
- (2) The maximum scale shall be one inch equals 100 feet.
- (3) The existing and proposed topography of the development site except for individual lot grading plans in single-family subdivisions. Profiles of proposed streets in single-family subdivisions shall be provided showing existing and proposed grades.
- (4) Physical improvements on the site, including present development and proposed development.
- (5) Location, dimensions, elevations, and characteristics of all existing and proposed stormwater management facilities.
- (6) Stormwater design plans shall include designation of all easements needed for inspection and emergency maintenance of the stormwater management facilities along with those easements needed for the maintenance of the drainage system conveying public water. As a minimum, easements shall have the following characteristics:
 - a. Provide adequate access to all stormwater management facilities for inspection and emergency maintenance. Provide a minimum 20-foot permanent maintenance access easement from a public or private right-of-way to all stormwater management facilities. Provide a minimum 10-foot permanent drainage easement around the perimeter of all stormwater management facilities. The perimeter shall be the edge of facilities such as sand filters or bioretention areas. For wet and dry extended detention basins and similar facilities, the perimeter shall be the top of bank where the stormwater is stored. Any fences constructed around such facilities shall be outside of

the 10-foot permanent drainage easement.

b. Provide adequate access to all parts of the public drainage system and structures.

c. Provide a minimum 20-foot easement for closed pipe systems. The required easement width shall be computed as follows:

$$\text{Width} = 10 \text{ feet} + (\text{the diameter or total outside width for multiple pipes}) + (2 \text{ times the invert depth}).$$

The easement width should be rounded to the nearest five-foot increment.

Drainage easements associated with culverts should be centered over the culvert but may be offset as long as a minimum of ten feet is provided on both sides.

d. Provide easements centered on watercourses with the minimum widths based on the following:

Easement Widths for Open Channels

<u>Drainage Area, acres</u>	<u>Easement Width, feet</u>
< 10 acres	10 feet on each side
10 to < 25 acres	20 feet on each side
25 to < 50 acres	30 feet on each side
50 to < 100 acres	40 feet on each side
> 100 acres	Greater of the floodway width or 50 feet

e. Restriction on easements shall include prohibiting all fences without gates and structures which would interfere with access to the easement areas and/or the maintenance function of the drainage system. If an obstruction (fence, wall, landscaping, etc.) is located in a drainage easement and inhibits access to the drainage system, the city shall remove the obstruction as necessary but will not be obligated to replace it.

(7) In subdivisions where a stormwater management facility serves more than one lot, the facility shall be located on a separate lot that is owned by the homeowner association. This lot shall have a minimum frontage of 20 feet.

(87) The stormwater design plan shall include all engineering calculations needed to design the system and associated structures including existing and developed velocities, peak rates of discharge, and hydrographs of stormwater runoff at all existing and proposed points of discharge from the site.

(98) Description of site conditions around points of all surface water discharge including vegetation and method of flow conveyance from the development activity.

(109) Construction and design details for structural controls.

(1140) If there are FEMA-designated floodplains, they must be shown. All construction

in the FEMA-designated floodplain must conform to chapter 12, Flood Damage Prevention, of this Code of Ordinances. A separate floodplain submittal may be required.

(1211) A plan for maintenance of privately owned stormwater management facilities shall be included as part of the stormwater design plan which as a minimum shall specify the following:

- a. Types of maintenance activities which should be anticipated so that the proposed drainage system and stormwater management facilities will operate as designed.
- b. The frequency and amount of maintenance that should be anticipated.
- c. The equipment that will be required to perform the needed maintenance.
- d. Name, address, and telephone number of the party responsible for maintenance.

Section 23-39 outlines the requirements for the operation and maintenance agreement which must be executed on all privately owned stormwater management facilities. The city shall provide a standard agreement for this purpose.

(1342) Any existing wetlands on the property shall be delineated on both the stormwater design plan as well as the final plat.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-28. - Plan hydrologic criteria.

(a) The hydrologic criteria to be used for the stormwater design plans shall be as follows:

<u>Description</u>	<u>Design Storm</u>
Permanent Storage Facilities	1 and 10
Roadway Inlets	5-year
Swales	10-year
Storm Drainage Systems	10-year
Open Channels	25-year
Culverts (Subdivision streets)	25-year
Culverts (Thoroughfare roads)	50-year
Emergency Spillways	100-year
Energy Dissipaters	Same as Outlet System

(b) All hydrologic analysis will be based on land use conditions as specified in section 23-29, below.

(c) For the design of storage facilities, a secondary outlet device or emergency spillway shall be provided to discharge the excess runoff in such a way that no danger of loss of life or facility failure is created.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-29. - Plan land use conditions criteria.

For all stormwater management facilities, a hydrologic-hydraulic study shall be done showing how the drainage system will function with the proposed facilities. For such studies the following land use conditions shall be used.

- (1) For the design of the facility outlet structure, use developed land use conditions for the area within the proposed development and existing land use conditions for upstream areas draining to the facility.
- (2) For any analysis of flood flows downstream from the proposed facility, use existing land use conditions for all downstream areas.
- (3) All stormwater management facilities, emergency spillways shall be checked using the 100-year storm and routing flows through the facility and emergency spillways. For this analysis, developed land use conditions representing ultimate build-out conditions shall be used for all areas draining to the facility.
- (4) The effects of existing upstream detention facilities can be considered in the hydrologic-hydraulic study only if such facilities have been constructed and maintained, as detention facilities, as required by this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-30. - Plan wetlands criteria.

Wetland areas shall not be disturbed until documentation is provided to the city engineer to show that the applicant has received approval from the U.S. Army Corps of Engineers regarding appropriate permits and approval of development activities. Stormwater design plans shall not be approved until this documentation has been provided to the city engineer. The city does have the option of providing conditional approval of the stormwater design plans that stipulate the documentation shall be provided prior to any disturbance of wetland areas.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-31. - Minimum stormwater quantity control requirements.

- (a) Install stormwater management facilities to limit the one-year and ten-year developed peak discharge rates to predeveloped peak discharge rates or to the amount that can be accommodated by the receiving downstream drainage system, whichever is more restrictive.
- (b) Watersheds that have well documented water quantity problems may have more stringent, or modified, design criteria [such as controlling the 25-year developed peak discharge rate to the predeveloped peak discharge rate] determined by the city engineer that is responsive to the specific needs of that watershed.
- (c) Stormwater management facilities may include both structural and nonstructural elements. Natural swales and other natural runoff conduits shall be retained where practicable.
- (d) Stormwater design plans can be rejected by the city engineer if they incorporate structures and facilities that are not easily maintained.
- (e) The drainage system and all stormwater management structures within the city (including both public and private portions) will be designed to the same engineering and technical criteria

and standards. The design and construction must be sealed by a registered professional (as outlined in section 23-35) as meeting or exceeding public drainage system standards. The city engineering and infrastructure department's review will be the same whether the portion of the drainage system will be under public or private control or ownership.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-32. - Minimum stormwater quality control requirements.

(a) *General standards.* All development and redevelopment to which this article applies shall comply with the standards of this section.

(b) *Development standards for low-density projects.* Low-density projects shall comply with each of the following standards:

(1) No more than two dwelling units per acre or 24 percent built-upon area.

(2) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

(3) Built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters draining less than or equal to 640 acres. Built-upon area shall be at a minimum of 75 feet landward of all perennial and intermittent surface waters draining greater than 640 acres. This distance shall be measured from the top of bank on both sides of the perennial and intermittent surface waters. For all perennial and intermittent surface waters, constructed BMPs shall be located at a minimum of 30 feet landward. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using division of water quality approved methodology.

(4) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(5) A project with an overall density at or below the low-density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

(c) *Development standards for high-density projects.* A project not consistent with the requirements for a low-density project may be permitted as a high-density project and shall implement stormwater control measures that comply with each of the following standards:

(1) The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.

(2) High-density projects must discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one year, 24-hour storm.

(3) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85 percent average annual removal for Total Suspended Solids (TSS).

(4) For BMPs that require a separation from the seasonal high water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high water table.

(5) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c).

(6) Built-upon area shall be at a minimum of 50 feet landward of all perennial and intermittent surface waters draining less than or equal to 640 acres. Built-upon area shall be at a minimum of 75 feet landward of all perennial and intermittent surface waters draining greater than 640 acres. This distance shall be measured from the top of bank on both sides of the perennial and intermittent surface waters. For all perennial and intermittent surface waters, constructed BMPs shall be located at a minimum of 30 feet landward. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using division of water quality approved methodology.

(7) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(d) *Standards for stormwater control measures.*

(1) *Evaluation according to contents of Stormwater Best Management Practices Manual.* All stormwater control measures and stormwater treatment practices required under this article shall be evaluated by the city engineer according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the latest version of the "Stormwater Best Management Practices Manual" as provided by the North Carolina Division of Water Quality. The city engineer shall determine whether proposed BMPs will be adequate to meet the requirements of this article.

(2) *Determination of adequacy; presumptions and alternatives.* Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the latest version of the "Stormwater Best Management Practices Manual" as provided by the North Carolina Division of Water Quality will be presumed to meet the minimum water quality and quantity performance standards of this article. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the latest version of the

"Stormwater Best Management Practices Manual" as provided by the North Carolina Division of Water Quality, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this article. The city engineer may require the applicant to provide the documentation, calculations, and examples necessary for the city engineer to determine whether such an affirmative showing is made.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-33. - Approval and permit requirements.

(a) No final site ~~development~~ plan or subdivision ~~plan~~ approval shall be issued or modified without the following items:

(1) An approved stormwater design plan;

~~(2) An executed operation and maintenance agreement, if required, in accordance with section 23-39;~~

~~(3) The posting of an installation performance guarantee;~~

~~(42) An approved erosion control plan, if applicable;~~

~~(53) Right of entry given to the city for city personnel to enter property for emergency maintenance if necessary; and~~

~~(64) Any off-site easements needed.~~

(b) No final certificate of occupancy permit shall be issued pursuant to chapter 7 of this Code of Ordinances or final plat approved without the following:

(1) All final inspection requirements as per section 23-37 are met;

(2) Receipt of record drawings as outlined in section 23-37; and

~~(3) A ~~recorded~~ executed operation and maintenance agreement, if required, in accordance with section 23-39~~

(c) All land clearing, construction, development and drainage shall be done in accordance with the approved stormwater design plan or previously approved revisions.

(d) Submittal and/or approval of stormwater design plans does not preclude the applicant from obtaining all other necessary permits and compliance with appropriate regulations including, but not limited to, the following:

(1) Water supply watershed regulations, chapter 29 of this Code of Ordinances;

(2) Federal wetland permits;

(3) Water quality certifications; and

(4) Sediment and erosion control requirements.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-34. - Building permit or street plan approval suspension and revocation.

(a) The following conditions shall represent grounds for suspension and/or revocation for building permit(s) and/or street plan approval(s):

- (1) Any violation(s) of the conditions of the stormwater design plan approval;
- (2) Construction not in accordance with the approved plans;
- (3) Approval of a stormwater design plan has not been obtained;
- (4) Noncompliance with correction notice(s); or
- (5) The existence of an immediate danger in a downstream area.

(b) If one or more of these conditions are found, a written notice of violation shall be served upon the owner or authorized representative and the time in which to correct the deficiencies shall be specified. The notice shall set forth the measures necessary to achieve compliance with the plan. Correction of these violations must be started immediately or the owner shall be deemed in violation of this article.

(c) If appropriate remedial actions as outlined in the written notice are not completed within the specified time period, a building permit or street plan approval will be suspended or revoked within seven days. The suspension or revocation will then be in force until the development is in compliance with this article.

(d) If a violation of this article is occurring that will cause significant damage to downstream property or structures, the city engineer can issue an immediate suspension or revocation.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-35. - Professional registration requirements.

(a) Stormwater design plans and design reports that are incidental to the overall or ongoing site design shall be prepared, and stamped/sealed by a qualified registered professional engineer, land surveyor or landscape architect, using acceptable engineering standards and practices. All other stormwater design plans and design reports shall be prepared, and stamped/sealed by a qualified registered professional engineer, using acceptable engineering standards and practices.

(b) The engineer, surveyor, or landscape architect shall perform services only in areas of his/her competence, and shall undertake to perform engineering or land surveying assignments only when qualified by education and/or experience in the specific technical field. In addition, the engineer, surveyor, or landscape architect must verify that the plans have been designed in accordance with this article and the standards and criteria stated or referred to in this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-36. - Fees.

The initial fees associated with the operation of this article shall be set annually by city council as part of the annual budget ordinance, or by an amendment thereto. If no amendment to the prior year's fees is proposed or adopted by city council as part of the budget ordinance, then the prior year's fees shall continue in full force and effect. A list of the fees proposed at the

enactment of this article for plan review and other fees associated with this article may be obtained from the city engineering and infrastructure department.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-37. - Construction and inspection.

(a) The owner or his representative shall notify the city engineer before commencing any work to implement the stormwater design plan, at key milestones noted during plan approval, and upon completion of the work.

(b) Any portion of the construction which does not comply with the stormwater design plan shall be promptly corrected by the permittee.

(c) The city engineer will notify the person responsible for the development activity in writing when violations are observed describing the following:

- (1) Nature of the violation;
- (2) Required corrective actions; and
- (3) The time period for violation correction.

(d) A final inspection shall be conducted by the city engineer upon completion of the work included in the approved stormwater design plan to determine if the completed work is constructed in accordance with the plan.

(e) The permittee shall provide record drawings signed and sealed by a registered professional (as outlined in section 23-35) to be submitted upon completion of the stormwater management facilities included in the stormwater design plan. The record drawings shall be referenced to North Carolina State Plane Coordinates and shall be provided in hard copy form as well as a digital file which is compatible with the city's software. The registered professional shall state on the record drawings that:

- (1) The facilities have been constructed as shown on the record drawings; and
- (2) The facilities meet the approved stormwater design plan and specifications.

(f) As a minimum, the record drawings shall contain the following:

- (1) Mark through and redraw drainage structures when the as-built location deviates more than ten feet horizontally from the location indicated on the plans.
- (2) Show all drainage structures, pipe inverts, and rim elevations.
- (3) Show distances between drainage structures on the plan view as well as the profile.
- (4) Show the final design specifications for all stormwater management facilities and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-38. - Ownership and maintenance of stormwater management facilities.

(a) All stormwater management facilities shall be privately owned and maintained unless the city accepts the facility for city ownership and maintenance. The owner thereof shall grant to the city a right of entry which allows for inspection and emergency repair, in accordance with the terms of the operation and maintenance agreement set forth in section 23-39, hereof.

(b) Single-family residential stormwater management facilities accepted for maintenance. The city shall accept functional maintenance responsibility of structural stormwater management facilities that are installed pursuant to this article following a warranty period of one year from the date of record-drawing certification described in section 23-37, or from the date the facility ceases to function as an erosion control measure and starts to function as a stormwater management facility, whichever is later, provided the stormwater management facility:

- (1) Only serves a single-family detached residential development or townhomes all of which have public street frontage;
- (2) Is satisfactorily maintained during the one-year warranty period by the owner or designee;
- (3) Meets all the requirements of this article;
- (4) Includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection, maintenance, repair, or reconstruction; and
- (5) Prior to the release of the installation performance guaranteesecurity as outlined in section 23-41, the developer shall pay into a maintenance fund used to maintain such facilities in the future an amount equal to 20 percent of the initial construction cost of the stormwater management facilities related to detention ponds or other BMPs constructed to meet the requirements of this article.

The city engineer must receive an application for transfer of maintenance responsibilities for the structural stormwater management facility along with the stormwater design plan submittal.

(c) The person responsible for maintenance of any stormwater management facility installed pursuant to this article and not covered under subsection (b) above, shall submit to the city engineer an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

- (1) The name and address of the landowner;
- (2) The recorded book and page number of the lot of each stormwater management facility;
- (3) A statement that an inspection was made of all stormwater management facilities;
- (4) The date the inspection was made; and
- (5) A statement that all inspected stormwater management facilities are performing properly and are in compliance with the terms and conditions of the approved maintenance

agreement required by this article ~~;~~ and

~~(6) — The original signature and seal of the engineer, surveyor, or landscape architect.~~

All inspection reports shall be on forms supplied by the city engineer. An original inspection report shall be provided to the city engineer beginning one year from the date of record-drawing certification and each year thereafter on or before the date of the record-drawing certification.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-39. - Operation and maintenance agreement.

(a) *In general.* At the time record drawings are provided to the city engineer as described in section 23-37 and prior to final approval of a project for compliance with this article, but in all cases prior to placing the stormwater management facilities into service, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all current and subsequent owners of the site, portions of the site, and lots or parcels served by the stormwater management facility. Failure to execute an operation and maintenance agreement within the timeframe specified by the city engineer may result in assessment of penalties as specified in section 23-46. For single-family residential subdivisions, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement for a period of one year from the date of record-drawing certification described in section 23-37, or for a period of one year from the date the facility ceases to function as an erosion control measure and starts to function as a stormwater management facility, whichever is later. At the end of the one-year timeframe, the stormwater management facility shall be inspected as outlined in section 23-41 in order to release the performance ~~guarantee~~ security. Once the stormwater management facility has passed inspection, primary responsibility for carrying out the provisions of the maintenance agreement shall be transferred to a homeowners' association, property owners' association, or similar entity. In cases where the city is accepting functional maintenance responsibility, such responsibility shall be transferred to the city once the stormwater management facility has passed inspection. A homeowners' association, property owners' association, or similar entity shall still be responsible for routine maintenance such as mowing the grass and picking up litter.

(1) The operation and maintenance agreement shall require the owner or owners to maintain, repair, and, if necessary, reconstruct the stormwater management facility, and shall state the terms, conditions, and schedule of maintenance for the stormwater management facility. In addition, it shall grant to the city a right of entry in the event that the city engineer has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the stormwater management facility; however, in no case shall the right of entry, of itself, confer an obligation on the city to assume responsibility for the stormwater management facility.

(2) The operation and maintenance agreement must be approved by the city engineer prior to final approval, and it shall be referenced on the final plat and shall be recorded with the Cumberland County Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the city engineer within 14 days following its recordation.

(b) *Special requirement for homeowners' and other associations.* For all stormwater management facilities required pursuant to this article and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity in a

| single-family residential subdivision, the required operation and maintenance agreement shall include all of the following provisions:

(1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.

(2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the stormwater management facilities. If stormwater management facilities are not performing adequately or as intended or are not properly maintained, the city, in its sole discretion, may remedy the situation, and in such instances the city shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the stormwater management facilities, ~~provided that the city shall first consent to the expenditure.~~

(3) Both developer and homeowners' association contributions shall fund the escrow account. Prior to the release of the installation performance ~~guarantee~~ security as outlined in Section 23-41, the developer shall pay into the escrow account an amount equal to 15 percent of the initial construction cost of the stormwater management facilities. Two-thirds (2/3) of the total initial construction cost shall be deposited into the escrow account within the first five years and the full amount shall be deposited within ten years following initial construction of the stormwater management facilities. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the escrow account budget.

(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the city depending on the design and materials of the stormwater control and management facility.

(5) Granting to the city a right of entry to inspect, monitor, maintain, repair, and reconstruct stormwater management facilities.

(6) Allowing the city to recover from the association and its members any and all costs the city expends to maintain or repair the stormwater management facilities or to correct any operational deficiencies. Failure to pay the city all of its expended costs, after 45 days' written notice, shall constitute a breach of the agreement. In case of a deficiency, the city shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

(7) A statement that this agreement shall not obligate the city to maintain or repair any stormwater management facilities, and the city shall not be liable to any person for the condition or operation of stormwater management facilities.

(8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the city to enforce any of its ordinances as authorized by law.

(9) A provision indemnifying and holding harmless the city for any costs and injuries arising from or related to the stormwater management facility, unless the city has agreed in

writing to assume the maintenance responsibility for the stormwater management facility and has accepted dedication of any and all rights necessary to carry out that maintenance.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-40. - Inspection program.

(a) Inspections and inspection programs by the city may be conducted or established on any reasonable basis, including, but not limited to, routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, and material or water in stormwater management facilities; and evaluating the condition of stormwater management facilities.

(b) If the owner or occupant of any property refuses to permit such inspection, the city engineer shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2, or its successor. No person shall obstruct, hamper or interfere with the city engineer while carrying out his or her official duties.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-41. - Performance guaranteesecurity for installation.

(a) *Shall be required.* The city shall require the submittal of a performance guaranteesecurity or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the stormwater management facilities are installed by the permit holder as required by the approved stormwater design plan.

(b) *Amount.* The amount of an installation performance guaranteesecurity shall be equal to at least 75 percent of the total estimated construction cost of the stormwater management facilities approved under the permit, ~~plus 50 percent~~. The installation performance guaranteesecurity shall remain in place until at least one year after final approval. In cases where the facility initially functions as an erosion control measure, the installation performance guaranteesecurity shall remain in place until at least one year after the facility starts to function as a stormwater management facility.

(c) *Use of performance guaranteesecurity.*

(1) *Forfeiture provisions.* The performance guaranteesecurity shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this article, approvals issued pursuant to this article, or an operation and maintenance agreement established pursuant to this article.

(2) *Default.* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any stormwater management facility in accordance with the applicable permit or operation and maintenance agreement, the city engineer shall obtain and use all or any portion of the guaranteesecurity to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement.

(3) *Costs in excess of performance guaranteesecurity.* If the city takes action upon such

6.5 Adopt Resolution to Declare City Foreclosed Property Surplus, Sale by Sealed Bid, and Award and Accept Highest Bid

6.6 Award Contract for the Purchase of Eight (8) Mini-Hybrid Thermal Management System Kits

6.7 Finance - Tax Refunds of Greater Than \$100.

6.8 Capital Project Ordinance Amendment 2012-19 and Capital Project Ordinance 2012-9 (Century Circle Park Facilities and Joint-Use Facilities at Cumberland County Schools)

6.9 Revisions to Policy 150.2 Relating To Annexation Requirements

7.0 PUBLIC HEARINGS

For certain issues, the Fayetteville City Council may sit as a quasi-judicial body that has powers resembling those of a court of law or judge. The Council will hold hearings, investigate facts, weigh evidence and draw conclusions which serve as a basis for its decisions. All persons wishing to appear before the Council should be prepared to give sworn testimony on relevant facts.

7.1 Case No. P12-05F. Rezoning from SF-15 Single Family District to OI Office and Institutional District, or a more restrictive district, on property located on the south side of Kinlaw Rd. Containing 9 acres more or less and being the property of The Methodist University Inc.
Presenter(s): Craig Harmon, AICP, CZO - Planner II

7.2 Public Hearing and Consideration of Adoption of Revisions to Chapter 23, Article III Stormwater Management Ordinance

Presenter(s): Greg Caison, Stormwater Manager

8.0 OTHER ITEMS OF BUSINESS

8.1 City of Fayetteville 2011 Annual Report to the Community

Presenter(s): Dale Iman, City Manager

9.0 ADJOURNMENT

CLOSING REMARKS

POLICY REGARDING NON-PUBLIC HEARING AGENDA ITEMS

Anyone desiring to address the Council on an item that is not a public hearing must present a written request to the City Manager by 10:00 a.m. on the Wednesday preceding the Monday meeting date.

(3) In granting this variance, water quality has been protected, public safety and welfare has been assured, and substantial justice has been done.

(b) A written request for a variance shall be submitted to the city clerk and shall state the specific variance sought and the reasons, with supporting data, for their granting. The request shall include descriptions, drawings, calculations and any other information that is necessary to evaluate the proposed variance.

(c) The city engineer will conduct a review of the request for a variance and submit a report to the city council.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-45. - Appeals.

The disapproval or required modification of any proposed stormwater design plan, or the determination by the city of noncompliance, or failure to maintain shall entitle the aggrieved person to appeal this decision or lack of action to the city council. Such appeal must be made in writing to the city clerk and the city manager within 15 days of written notice of disapproval or modification of a stormwater design plan, or determination of either noncompliance or failure to maintain or within 30 days of the receipt of a notice of assessment of a civil penalty, made or rendered by the city engineer in the enforcement of this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-46. - Enforcement.

(a) *General.*

(1) *Authority to enforce.* The provisions of this article shall be enforced by the city engineer, his or her designee, or any authorized agent of the city. Whenever this section refers to the city engineer, it includes his or her designee as well as any authorized agent of the city.

(2) *Violation unlawful.* Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this article, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this article, is unlawful and shall constitute a violation of this article.

(3) *Each day a separate offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.

(4) *Responsible persons/entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, practice, or condition in violation of this article shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein, may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs. For the purposes of this section, responsible person(s) shall include, but

not be limited to:

- a. *Person maintaining condition resulting in or constituting violation.* An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists.
- b. *Responsibility for land or use of land.* The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

(b) *Remedies and penalties.* The remedies and penalties provided for violations of this article, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(1) *Remedies.*

- a. *Withholding of certificate of occupancy.* The city engineer or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein. This remedy shall not apply to buildings in a single-family residential subdivision ~~or residential condominium project.~~

- b. *Disapproval of subsequent permits and development approvals.* As long as a violation of this article continues and remains uncorrected, the city engineer or other authorized agent may withhold, and the city council may disapprove, any request for permit or development approval or authorization provided for by this article or the zoning, subdivision, and/or building regulations, as appropriate, for the land on which the violation occurs.

- c. *Injunction, abatements, etc.* The city engineer, with the written authorization of the city manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this article. Any person violating this article shall be subject to the full range of equitable remedies provided in the general statutes or at common law.

- d. *Correction as public health nuisance, costs as lien, etc.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. 160A-193, the city engineer, with the written authorization of the city manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(2) *Civil penalties.*

- a. *Violations of article.* A violation of any of the provisions of this article or rules or other orders adopted or issued pursuant to this article may subject the violator to a civil penalty. A civil penalty may be assessed from the date the violation occurs. No penalty shall be assessed until the person alleged to be in violation has been notified

of the violation. Refusal to accept the notice or failure to notify the city engineer of a change of address shall not relieve the violator's obligation to comply with this article or to pay such a penalty.

b. *Amount of penalty.* The ~~maximum~~ civil penalty for each violation of this article is ~~\$5,000.00~~ may be up to the maximum allowed by law. Each day of continuing violation shall constitute a separate violation. In determining the amount of the civil penalty, the city engineer shall consider any relevant mitigating and aggravating factors including, but not limited to, the effect, if any, of the violation; the degree and extent of harm caused by the violation; the cost of rectifying the damage; whether the violator saved money through noncompliance; whether the violator took reasonable measures to comply with this article; whether the violation was committed willfully; whether the violator reported the violation to the city engineer; and the prior record of the violator in complying or failing to comply with this article or any other post construction article or law. The city engineer is authorized to vary the amount of the per diem penalty based on criteria specified in the administrative manual and based on relevant mitigating factors. Civil penalties collected pursuant to this article shall be credited to the city's general fund as nontax revenue.

c. *Notice of assessment of civil penalty.* The city engineer shall determine the amount of the civil penalty and shall notify the violator of the amount of the penalty and the reason for assessing the penalty. This notice of assessment of civil penalty shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or file an appeal within 30 days of receipt of the notice as specified in subsection (2)e., below.

d. *Failure to pay civil penalty assessment.* If a violator does not pay a civil penalty assessed by the city engineer within 30 days after it is due, or does not request a hearing as provided in subsection (2)e., below, the city engineer shall request the initiation of a civil action to recover the amount of the assessment. The civil action shall be brought in Cumberland County Superior Court or in any other court of competent jurisdiction. A civil action must be filed within three years of the date the assessment was due. An assessment that is appealed is due at the conclusion of the administrative and judicial review of the assessment.

e. *Appeal of remedy or penalty.* The issuance of a notice of assessment of a civil penalty by the city engineer shall entitle the responsible party or entity to an appeal before the city council if such person submits written demand for an appeal hearing to the city clerk within 30 days of the receipt of a notice of assessment of a civil penalty. The demand for an appeal shall be accompanied by a filing fee as established by city council. The appeal of a notice of assessment of a civil penalty shall be conducted as described in section 23-45 of this article.

(3) *Criminal penalties.* A violation of this article may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

(c) *Procedures.*

(1) *Authority to inspect.* The city engineer shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this article, or rules or orders adopted or issued pursuant to this article, and to determine whether the activity is being conducted in accordance with this article and

the approved stormwater design plan, and whether the measures required in the plan are effective. No person shall willfully resist, delay, or obstruct the city engineer while the city engineer is inspecting or attempting to inspect an activity under this article.

(2) *Notice of violation and order to correct.* When the city engineer finds that any building, structure, or land is in violation of this article, the city engineer shall notify in writing the responsible person/entity. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation occurred or is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. The notice shall, if required, specify a date by which the responsible person/entity must comply with this article, and advise that the responsible person/entity is subject to remedies and/or penalties or that failure to correct the violation within the time specified will subject the responsible person/entity to remedies and/or penalties as described in this section of this article. In determining the measures required and the time for achieving compliance, the city engineer shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits. The city engineer may deliver the notice of violation and correction order personally, by the Fayetteville Police, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the city engineer may take appropriate action under this article to correct and abate the violation and to ensure compliance with this article.

(3) *Extension of time.* A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the city engineer a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the city engineer may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The city engineer may grant 30-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this article. The city engineer may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(4) *Enforcement after time to correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the city engineer, the city engineer shall determine if the violation is corrected. If the violation is not corrected, the city engineer may act to impose one or more of the remedies and penalties authorized by this article.

(5) *Emergency enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this article or pose an immediate danger to the public health, safety, or welfare, then the city engineer may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The city engineer may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-47. - Relationship to other laws, regulations, and private agreements.

(a) *Conflict of laws.* This article is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this article are in addition to the requirements of any other article, rule, regulation or other provision of law. Where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

(b) *Private agreements.* This article is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this article are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this article shall govern. Nothing in this article shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this article. In no case shall the city be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-48. - Severability.

If any term, requirement, or provision of this article or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this article or the application of such terms, requirements and provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, requirement or provision of this article shall be valid and be enforced to the fullest extent permitted by law.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-49. - Effective date.

This article shall become effective on January 1, 2009.

(Ord. No. S2008-020, § 1, 10-27-2008)

Section 2. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered and formatted to accomplish such intention.

ADOPTED this _____ day of _____, 2012.

CITY OF FAYETTEVILLE

ANTHONY G. CHAVONNE, Mayor

ATTEST:

PAMELA MEGILL, City Clerk

STORMWATER ADVISORY BOARD MEETING MINUTES

2011 – MEETING MINUTES OF STORMWATER ADVISORY BOARD
REGULAR MEETING DECEMBER 06, 2011

STORMWATER ADVISORY BOARD
REGULAR MEETING
CITY HALL, LAFAYETTE ROOM
DECEMBER 06, 2011
5:30 P.M.

Present: Chair Carlon Mercer;
Board Members Charles Donnell, Rod Hohing, and Vice Chair, Lynn Vaughan
Absent: Board Member Kevin Briscoe
Others Present: Greg Caison, Engineering & Infrastructure
Michelle J. Foye, Stormwater Paralegal
Shauna Haslem, Stormwater Educator
Al Hardee, Senior Stormwater Inspector
John Fersner, US Infrastructure

1. CALL TO ORDER

Chair Mercer called the meeting to order at 5:30 p.m. in the Lafayette Room at City Hall. The record is to reflect there was a member absent, Mr. Kevin Briscoe and a newly appointed member Rod Hohing is present.

2. APPROVAL OF AGENDA

MOTION: Board Member Donnell moved to approve the agenda.
SECOND: Vice Chair Vaughan
VOTE: Unanimous (4-0) Favor

3. APPROVAL OF MINUTES

MOTION: Board Member, Donnell
SECOND: Board Member Vaughan
VOTE: Unanimous (4-0) Favor

The following item was approved:

Regular Stormwater Advisory Board Meeting held on November 1, 2011

INTRODUCTION OF NEW MEMBER: ROD HOHING

Mr. Hohing introduced himself and stated that he has lived in Fayetteville for 39 years and raised his three children here. For the last 15 years of his manufacturing career he worked out of town and commuted between Fayetteville and Smithfield and Garner. Mr. Hohing formerly worked with Mr. Caison many years ago. He likes to fish, walk and quail hunt. The Board then briefly introduced themselves to Mr. Hohing.

4. NPDES PERMIT RENEWAL STATUS

Mr. Caison discussed that he was recently contacted by the State to address the renewal cycle of the permit. Currently Fayetteville is still in the original Phase I Permit. Other Phase I cities are to renew their permits in 2012. We are currently 6 to 8 months out of cycle on that status based on anticipated renewal. Mr. Caison is trying to guard our City against having to comply with requirements that other cities will not have. City staff will respond to the Division of Water Quality's comments next week. The Board will be addressed soon after the first of the year and as required.

STORMWATER ADVISORY BOARD MEETING MINUTES

5. REVIEW OF PROPOSED ORDINANCE CHANGES & ADMIN MANUAL

Mr. Caison introduced John Fersner, who gave a presentation of the background and history Stormwater Control Ordinance & NPDES Permit Fee. Development standards (drafted October 2007) added a new City-wide Fee that is mainly geared to address quantity and flooding. There are changes that City Staff and the Stormwater Stakeholders have compiled for the Ordinance. (Please See attached PowerPoint Presentation copy of proposed Administrative Manual, Stormwater Control Ordinance Chapter 23. All proposed changes are highlighted.). The new manual does not have to be approved by council; however, the Stormwater Control Ordinance has to be approved by the State, and then approved by Council. Council will be approached thru a work session on February 6, 2012 in which a similar presentation will be presented.

MOTION TO APPROVE STORMWATER CONTROL ORDINANCE CHANGES

Mr. Donnell moved that the Stormwater Advisory Board approve the requested changes to the Stormwater Management Ordinance, Chapter 23, City of Fayetteville Code of Ordinances, and that the proposed ordinance with revisions be forwarded to City Council for adoption.

MOTION: Board Member Donnell moved to approve.
SECOND: Chairman Mercer
VOTE: Unanimous (4-0) Favor

6. OTHER:

Next Meeting will be January 3rd.

7. ADJOURNMENT

The meeting adjourned at 6:31 p.m.

Carlton Mercer, Chair
Lynn Vaughan, Vice-Chair

/MJF

Handouts: Copy of Proposed Administrative Manual & Stormwater Control Ordinance



January 24, 2012

Mr. Greg Caison
Stormwater Manager
City of Fayetteville
433 Hay Street
Fayetteville, NC 28301

The Home Builders Association
of Fayetteville, Inc.
2935 Breezewood Avenue,
Suite 100

Phone: 910-826-0648

Fax: 910-826-0649

Email: admin@fayhba.org

www.fayhba.org

Re: Amendments to the City of Fayetteville Stormwater Control Ordinance

Dear Mr. Caison:

2012 Officers

President

Hector Ray

Vice President

Wells Alderman

Secretary

Lynne Greene

Treasurer

Jason Poole

Past President

Larry Strother

We are writing to you on behalf of the Home Builders Association of Fayetteville to express our support for the recent revisions to the Stormwater Control Ordinance.

During the review of the ordinance conducted by city staff, members of the HBAF were invited to participate in a stakeholders discussion, along with local engineers and Stormwater Advisory Board members. The city's consultant, Mr. John Ferstner of U.S. Infrastructure, provided expert advice and guidance during the process.

The review was conducted with a spirit of cooperation between staff, consultant and stakeholders. We believe that the revised ordinance will better serve the needs of the city and its citizens.

We appreciate the opportunity to be involved in the ordinance revision and wish to thank city staff for the professional manner in which these review sessions were conducted.

Sincerely,

Hector Ray

Dohn Broadwell, Jr.

Jimmy Kizer

John Gillis

2012 Directors

George Armstrong

Dohn Broadwell Jr.

Wade Duggins

Wesley Faulk

Scott Hartmann

Rick Meade

Jim Pittman

Grant Singleton

Steve Smith

Cam Stout

Greg West

Neil Yarborough

HBAF Staff

Executive Officer

Natalie Fryer

Communications Manager

Pamela Grierson

Governmental Affairs Consultant

Angie Hedgepeth

MISSION STATEMENT:

The Home Builders Association of Fayetteville's Mission is to serve, advocate, and promote the local building and development industries while fostering unity between members, government, and the community.

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council Members
FROM: Dale Iman, City Manager
DATE: February 13, 2012
RE: **City of Fayetteville 2011 Annual Report to the Community**

THE QUESTION:

Does the City of Fayetteville 2011 Annual Report to the Community meet the needs of the Council toward telling the City's story and sharing this year's accomplishments in an appealing, readable, informative, print format worthy of distribution?

RELATIONSHIP TO STRATEGIC PLAN:

The report highlights both visually and through narrative significant contributions to the realization of the City's strategic plan during the 2011 calendar year; it reinforces and clarifies Council's vision for our community, which is the foundation of the City's strategic plan.

BACKGROUND:

The goal of this report is to share with the community at large a sense of who the City of Fayetteville is and what successes it has seen in the past year. This publication will be widely distributed via post and hand delivery and it is hoped will be management's and council's go-to leave-behind publication.

ISSUES:

Do the work efforts of the report reflect the overall direction articulated by the City Council in the FY 2011 strategic plan? Does the progress highlighted in the report move the community closer to the desired fifteen-year vision?

BUDGET IMPACT:

None.

OPTIONS:

- 1.) Accept the report as provided with guidance to the City Manager on areas of interest.
- 2.) Request additional information on items presented in this report.
- 3.) Modify or clarify interests in report and strategic plan.

RECOMMENDED ACTION:

Receive and file this report.

