



FAYETTEVILLE CITY COUNCIL  
AGENDA  
NOVEMBER 28, 2011  
7:00 P.M.  
CITY HALL COUNCIL CHAMBER

**1.0 CALL TO ORDER**

**2.0 INVOCATION**

**3.0 PLEDGE OF ALLEGIANCE**

**4.0 APPROVAL OF AGENDA**

**5.0 CONSENT**

5.1 P11-44F Rezone from SF-6 and SF-10 Single Family to MR-5/C Mixed Residential Conditional Zoning for property east of Murchison Rd. at Country Club Rd. (PIN 0429-53-4492) owned by March Riddle.

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

5.3 Special Revenue Fund Project Ordinance 2012-8 (FY12 Juvenile Restitution Program)

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

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

5.6 PWC - Bid Recommendation - Replacement of 69kV Transmission Poles

5.7 PWC - Bid Recommendation - Water and Wastewater Chemical

5.8 PWC - Ordinance Revisions to Sewer Use Ordinance

## 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

## 5.11 Rental Action Management Program (RAMP)

## 6.0 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.*

- 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 non-conforming lots.

Presenter(s): Karen S. Hilton, AICP, Manager Planning and Zoning Division, Development Services

- 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.

Presenter(s): Karen S. Hilton, AICP, Manager Planning and Zoning Division, Development Services

- 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

Presenter(s): Craig Harmon, AICP, CZO Planner II

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

Presenter(s): Craig Harmon, Planner II

- 6.5 P11-57F Rezone from SF-10 Single Family to OI/C Office and Institutional Conditional District for property at 205 S. McPherson Church Rd, being 1.16 acres more or less owned by Charles Stamitoles and Faye S. Stamitoles.

Presenter(s): Craig Harmon, Planner II

- 6.6 Case No. P11-10F. Request for Special Use Permit (SUP) 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.

Presenter(s): Craig Harmon, Planner II

- 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.

Presenter(s): Craig Harmon, Planner II

- 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.

Presenter(s): Craig Harmon, Planner II

- 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 & Dorise Bonds.

Presenter(s): Craig Harmon, Planner II

- 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.

Presenter(s): Craig Harmon, Planner II

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.  
Presenter(s): Craig Harmon, Planner II

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.

Presenter(s): Craig Harmon, Planner II

6.13 Public Hearing to Consider a Petition Requesting Annexation-Submitted by Freedom Christian Academy-Property Located at 3130 Gillespie Street

Presenter(s): David Nash, Planner II

6.14 Public Hearing to Consider a Petition Requesting Annexation-Submitted by Mr. and Mrs. Patel-Property Located at 2765 Gillespie Street  
Presenter(s): David Nash, Planner II

6.15 Public Hearing to Consider a Petition Requesting Annexation -Submitted by the Household of Faith Church-Property Located at 468 N. Plymouth Street

Presenter(s): David Nash, Planner II

6.16 Phase 5 Annexation Areas 12 and 13 Public Hearing

Presenter(s): James Rose, PWC Chief Administrative Officer

## **7.0 OTHER ITEMS OF BUSINESS**

7.1 Presentation of the Audited FY2010-2011 Comprehensive Annual Financial Report

Presenter(s): Michelle Thompson, Cherry, Bekaert & Holland

7.2 Construction Permit Fee Schedule Amendments

Presenter(s): Doug Maples, Building Plan Review & Inspection Division Manager  
Scott Shuford, Development Services Director

7.3 Uninhabitable Structures Demolition Recommendations:

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

Presenter(s): Bart Swanson, Housing and Code Enforcement Division Manager

## **8.0 ADMINISTRATIVE REPORTS**

8.1 Monthly Statement of Taxes for October 2011

## **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  
November 28, 2011 - 7:00 PM  
COMMUNITY CHANNEL 7**

**COUNCIL MEETING WILL BE RE-AIRED  
November 30, 2011 - 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](mailto:rmcelrath@ci.fay.nc.us), 910-433-1696, or the Office of the City Clerk at [cityclerk@ci.fay.nc.us](mailto: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:** Mayor and Members of City Council  
**FROM:** Craig Harmon, Planner II  
**DATE:** November 28, 2011  
**RE:** **P11-44F Rezone from SF-6 and SF-10 Single Family to MR-5/C Mixed Residential Conditional Zoning for property east of Murchison Rd. at Country Club Rd. (PIN 0429-53-4492) owned by March Riddle.**

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### **THE QUESTION:**

Should the subject property be rezoned as requested by the owner?

### **RELATIONSHIP TO STRATEGIC PLAN:**

Strong Local Economy  
Liveable Neighborhoods

### **BACKGROUND:**

Owner: March Riddle  
Applicant: City of Fayetteville  
Requested Action: Rezone the subject property from SF-6, SF-10 to MR-5/C  
Property Address: PIN 0429-53-4492

Land Use Plan Recommendation: The Land Use Plan recommends this property to be developed as Medium Density Residential, Open Space and a small area of Heavy Commercial. The Murchison Road Corridor Study calls for this property to become Office/Industrial. This request is not consistent with either the Land Use Plan or the Murchison Road Study.

### **Purpose:**

This case involves property identified by City Council for City-initiated rezoning consideration during the UDO remapping process. This process allows consideration of the requested rezoning in a standard fashion, with specific notice to adjoining property owners and an opportunity for full analysis by staff.

### **ISSUES:**

This large parcel (123 acres) is located east of Murchison Road. Most of it is zoned SF-6, although significant acreage is also zoned SF-10. The frontage along Country Club Road is zoned CC (the owner would like to retain this commercial zoning). The property appears to adjoin wetlands to the east, Country Club Road to the south, and a combination of zoning (HI, LI, CC, and SF-6) and commercial, industrial and manufactured housing development to the west.

The MR-5 district without a conditional zoning would permit 18-20 dwelling units per acres, a much denser density than the current zoning would allow. MR-5 also would allow a full range of building types...single family and multifamily. The current SF-6 district allows between 9.6 and 10.9 units per acre and is limited to single family or 2-4 family units with appearance of single family units.

Owner has offered the following conditions:

1. Limit density to that of the former R-6 district.
2. Retain the existing CC zoning.

Zoning Commission and Staff recommend approval with the conditions offered by the owner, based on:

1. Principles of the UDO remapping project.
2. Serves as a buffer between low density residential and commercial/industrial uses/zoning

**BUDGET IMPACT:**

None noted.

**OPTIONS:**

- 1) Recommend approval of rezoning as requested by the owner. (recommended).
- 2) Recommend approval of rezoning with changes offered by the owner.
- 3) Recommend denial of the rezoning.

**RECOMMENDED ACTION:**

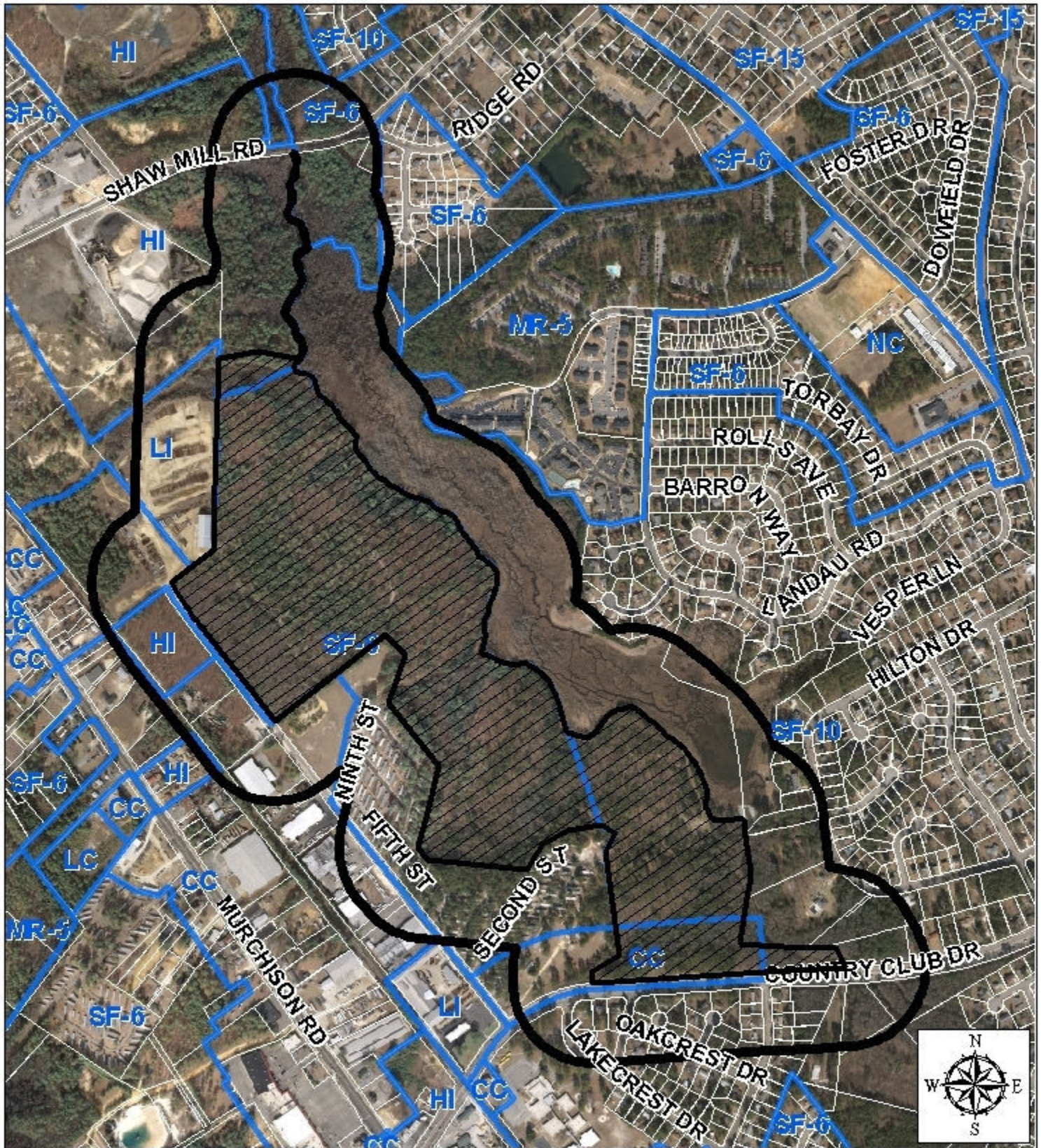
Zoning Commission and Staff recommend: that the City Council move to APPROVE the rezoning of PIN 0429-53-4492 from SF-6 and SF-10 to MR-5/C with conditions as requested by the owner.

**ATTACHMENTS:**

Zoning Map

Land Use

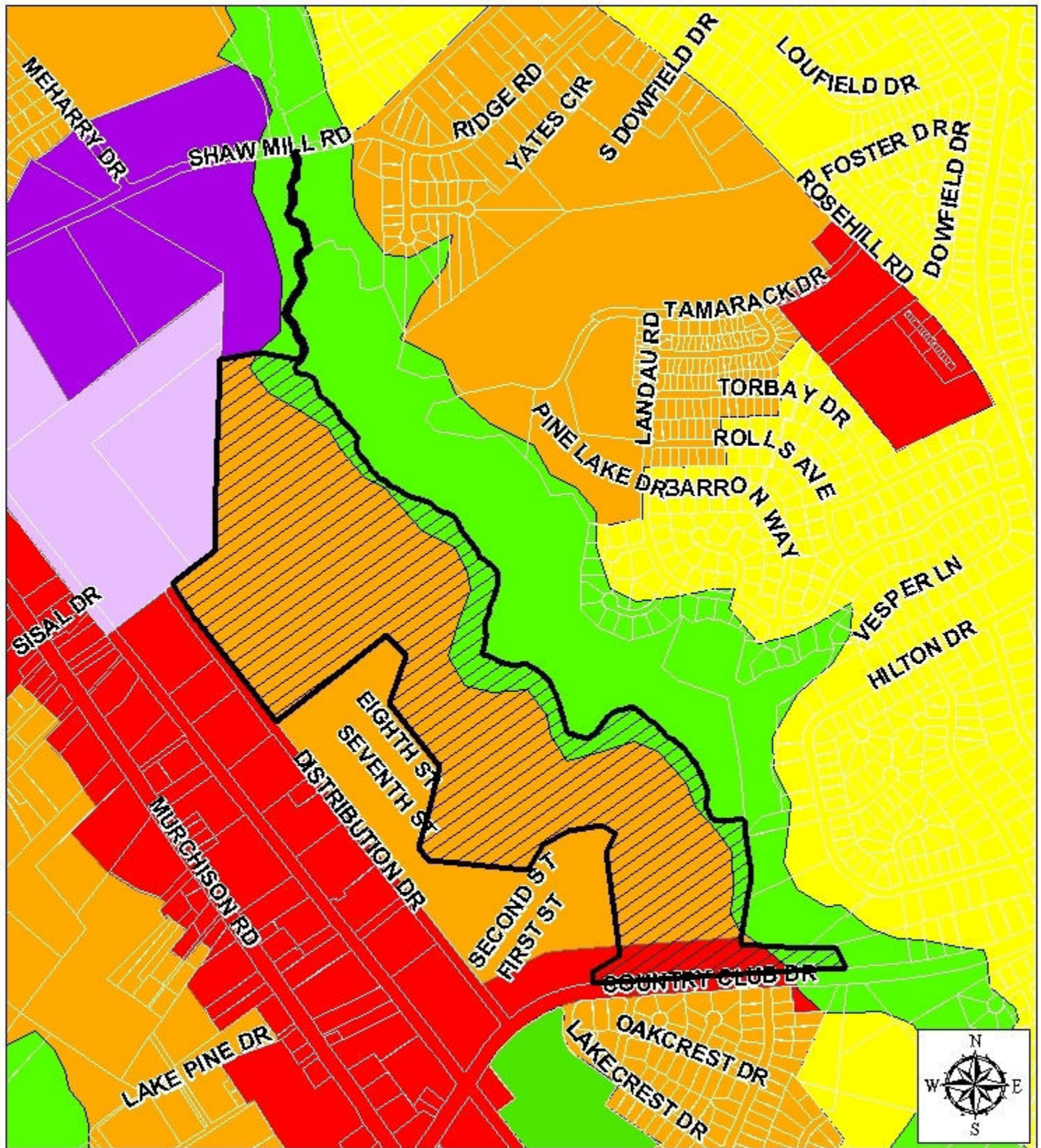




Request: Rezoning  
Location: North side of Country Club Drive  
Acreage: +/- 124.0 acres

Zoning Commission: 08/018/2011 Recommendation: \_\_\_\_\_  
City Council: \_\_\_\_\_ Final Action: \_\_\_\_\_  
Pin: 0429-53-4492





Legend

updated 2010 plan (dnash)

Academic Training-Fort Bragg	Armed Operations-Fort Bragg	Heavy Commercial	Light Industrial	One Acre Residential Lots	Range & Training-Fort Bragg
Activity Node	Community Activity Node	Heavy Industrial	Low Density Residential	Open Space	Redevelop/Holding-Fort Bragg
CLASS DN	Downtown	High Density Residential	Medium Density Residential	Policy Directed Heavy Commercial	Suburban Density Residential
Farmland	Governmental	Historical District-Fort Bragg	Neighborhood Activity Node	Policy Directed Light Commercial	
		Light Commercial	Office & Institutional	Policy Directed Office & Institutional	

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Craig Harmon, Planner II  
**DATE:** November 28, 2011  
**RE:** **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 Road, being 1.5 acres more or less owned by Rories Investments LLC.**

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**THE QUESTION:**

Should the subject property be rezoned as requested by the owner?

**RELATIONSHIP TO STRATEGIC PLAN:**

Strong Local Economy  
Livable Neighborhoods

**BACKGROUND:**

Owner: Rories Investments LLC

Applicant: Tray Rorie

Requested Action: SF-10 to LC

Property Address: 2715 Legion Rd (2 properties)

Size: 1.5 acres +/- total

Land Use Plan Recommendation: The Land Use Plan recommends this property to be developed as Medium Density Residential. This request is not consistent with the Land Use Plan.

**Current Zoning:**

**SF-10** The Single-Family Residential 10 (SF-10) District is established to accommodate principally single-family detached residential development at low densities, and to accommodate flexibly-designed residential development that provides variable housing types and arrangements that respond to environmental and site conditions. Uses within the district are subject to the design standards in Article 30-5: Development Standards. The district accommodates two- to four-family dwellings designed to appear as single-family detached homes and zero lot line development subject to the requirements of this Ordinance. District regulations discourage any use that substantially interferes with the development of single-family dwellings and that is detrimental to the quiet residential nature of the district. Also allowed are complementary uses usually found in residential zoning districts, such as parks, open space, minor utilities, accessory dwellings of up to 800 square feet in size, schools, and places of worship.

**Proposed Zoning:**

**LC** The Limited Commercial (LC) District is established and intended to accommodate a wider range of moderate-intensity general retail, business, and service uses that serve groups of neighborhoods instead of just an individual neighborhood—e.g., grocery stores, drugstores, large restaurants, gas stations, and higher order retail uses like specialty stores. The district is not intended to accommodate intensive commercial or other business uses. Residential uses are encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is compatible with surrounding residential neighborhoods.

**ISSUES:**

This rezoning request is for two properties. These properties came into the city with commercial uses already on them. One has been a beauty shop for the past 20 years and the second is power easement between the beauty shop property and JP Riddle Stadium. Across Legion Road from these properties is industrial and commercial zoning with mini-storage warehousing. While this

property backs up to single family residential and the land use plan calls for the property to be used as medium density residential, it is staff's opinion that commercial development is more appropriate. Limited Commercial however seems to be too intense for this location. Staff recommended NC - Neighborhood Commercial for the reasons listed below.

Zoning Commission and Staff recommend NC based on:

1. Three sides of these properties are currently used commercially.
2. Of these two properties, one is a power easement and the other has been used commercially for 20 years.
3. There is no connection from these properties to the adjoining residential development.
4. The property beside of Riddle Stadium has limited development potential because of the utility easement across it.

Applicant has not appealed the recommendation of the more restrictive district.

**BUDGET IMPACT:**

Little to no budget impact since this property is already in the city and already has a commercial use on it.

**OPTIONS:**

1. Recommend denial of rezoning as presented;
2. Recommend approval of rezoning to a more restrictive district (NC recommended);
3. Recommend approval of the rezoning.

**RECOMMENDED ACTION:**

Zoning Commission and Staff recommend: that the City Council move to APPROVE the rezoning from SF-10 to NC, a more restrictive district than that applied for, as presented by staff.

**ATTACHMENTS:**

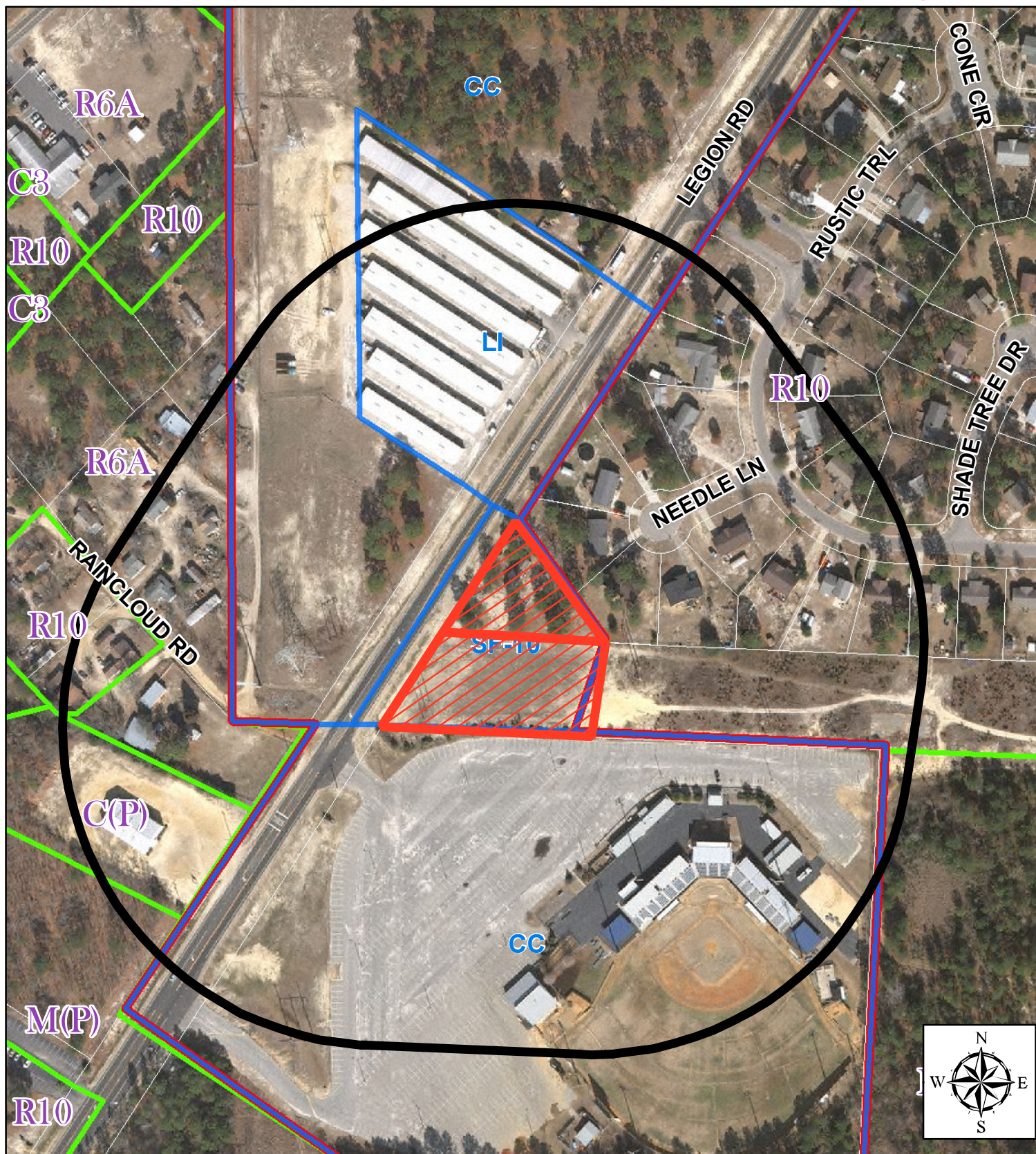
Zoning Map

Current Landuse

Land Use Plan



**ZONING COMMISSION  
CASE NO. P11-55F**



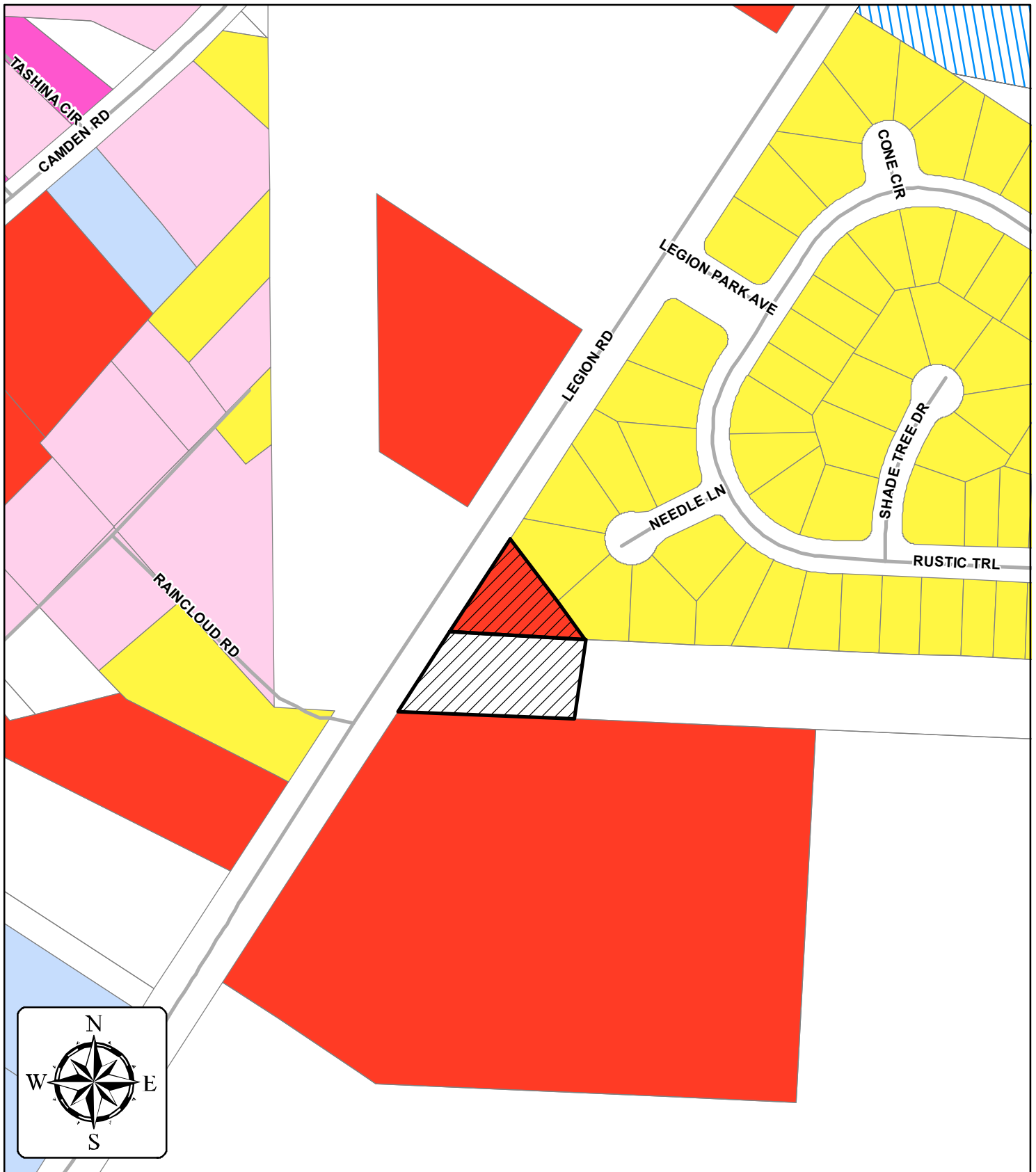
**Request: Rezoning**  
**Location: 2715 Legion Road**  
**Acreage: +/- 1.5 acres**

**Zoning Commission: 10/11/2011**   **Recommendation: \_\_\_\_\_**  
**City Council: \_\_\_\_\_**   **Final Action: \_\_\_\_\_**  
**Pin: 0425-68-7443; 0425-68-7320**



# Current Land Use

## P11-55F

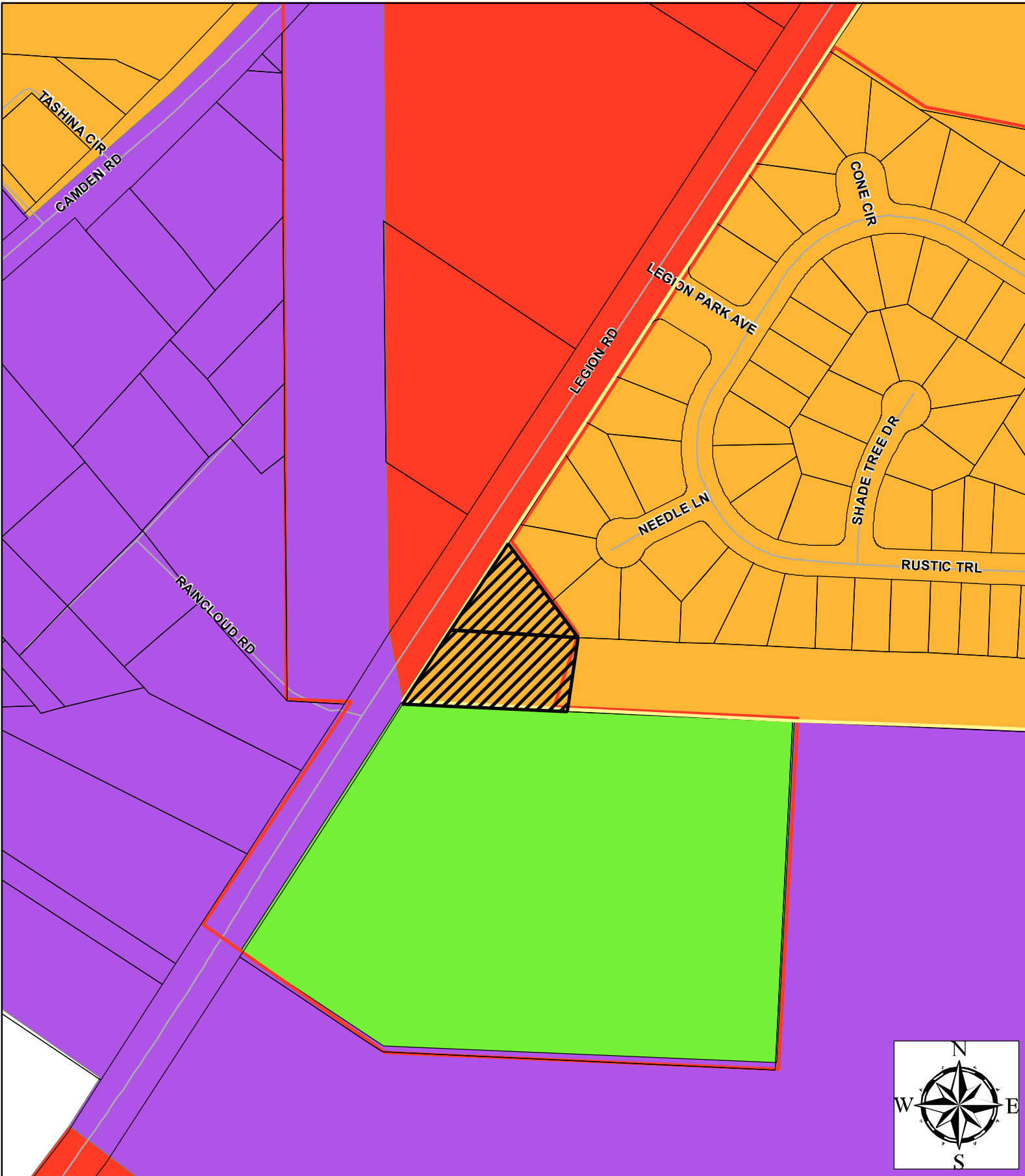


Legend

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. P11-55F



### Legend

Heavy Commercial  Heavy Industrial  5-2-3 Medium Density Residential  Open Space

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Lisa Smith, Chief Financial Officer  
**DATE:** November 28, 2011  
**RE:** **Special Revenue Fund Project Ordinance 2012-8 (FY12 Juvenile Restitution Program)**

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**THE QUESTION:**

This ordinance appropriates \$132,769 for the Juvenile Restitution Program for fiscal year 2012.

**RELATIONSHIP TO STRATEGIC PLAN:**

Goal 3: GROWING CITY, LIVABLE NEIGHBORHOODS - A GREAT PLACE TO LIVE

Objective 1: Consistent improvement in reducing crime rates

**BACKGROUND:**

- The funding sources for this program are an \$83,536 grant awarded by the NC Department of Juvenile Justice and Delinquency Prevention, \$12,152 from Cumberland County, \$12,151 from the City of Fayetteville and a \$24,930 in-kind match for office space, supplies, utilities and insurance.
- The Fayetteville/Cumberland County Juvenile Restitution Program is a sentencing alternative for Fayetteville and Cumberland County youth. The goal of the program is to teach the youth who are served by the program accountability and responsibility for their actions. The City of Fayetteville has participated in the Juvenile Restitution program since 1991.
- This ordinance will appropriate the funds needed for personnel and operating costs for fiscal year 2012.

**ISSUES:**

None.

**BUDGET IMPACT:**

The City's \$12,151 cash match is included in the General Fund budget. The in-kind match is also included in the General Fund budget as necessary.

**OPTIONS:**

- 1) Adopt Special Revenue Fund Project Ordinance 2012-8.
- 2) Do not adopt Special Revenue Fund Project Ordinance 2012-8.

**RECOMMENDED ACTION:**

Adopt Special Revenue Fund Project Ordinance 2012-8.

**ATTACHMENTS:**

SRO 2012-8 (FY12 Juvenile Restitution)

SPECIAL REVENUE FUND PROJECT ORDINANCE  
ORD 2012-8

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 special revenue project ordinance is hereby adopted:

Section 1. The authorized project is for the funding for the Fayetteville-Cumberland Juvenile Restitution Program awarded by the N.C. Department of Juvenile Justice and Delinquency Prevention for FY 2012.

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:

N.C. Department of Juvenile Justice and Delinquency prevention	\$ 83,536
Local Match - Cumberland County	12,152
Local Match - City of Fayetteville	12,151
Local In-Kind Match - City of Fayetteville	24,930
	<u>\$ 132,769</u>

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

Project Expenditures	<u>\$ 132,769</u>
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Section 5. Copies of this special revenue project ordinance shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Adopted this 28th day of November, 2011.

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Lisa Smith, Chief Financial Officer  
**DATE:** November 28, 2011  
**RE:** **Special Revenue Fund Project Ordinance 2012-9 (2012 Sobriety Court)**

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**THE QUESTION:**

This ordinance appropriates \$46,580 in federal and local funds for the 2012 Sobriety Court Program.

**RELATIONSHIP TO STRATEGIC PLAN:**

Goal 3: GROWING CITY, LIVABLE NEIGHBORHOODS - A GREAT PLACE TO LIVE

Objective 1: Consistent improvement in reducing crime rates

**BACKGROUND:**

- The funding sources for this program are a \$39,593 federal grant award passed through the NC Governor's Highway Safety Program and a \$6,987 local match from the City of Fayetteville.
- The Sobriety Court is a problem solving court that uses a supervised treatment system to treat high risk DWI offenders who demonstrate destructive behaviors coupled with alcohol abuse.
- This ordinance will appropriate the funds needed to provide approximately 30 monitoring units to pre-trial, high risk offenders and training for Police Officers who are involved with the program.

**ISSUES:**

None

**BUDGET IMPACT:**

The City's \$ 6,987 match is included in the General Fund budget.

**OPTIONS:**

- 1) Adopt Special Revenue Fund Project Ordinance 2012-9.
- 2) Do not adopt Special Revenue Fund Project Ordinance 2012-9.

**RECOMMENDED ACTION:**

Adopt Special Revenue Fund Project Ordinance 2012-9.

**ATTACHMENTS:**

SRO 2012-9 2012 Sobriety Court

SPECIAL REVENUE FUND 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 special revenue project ordinance is hereby adopted:

- Section 1. The authorized project is for the funding for the 2012 Sobriety Court Program awarded by the National Highway Traffic Safety Administration through the Governor's Highway Safety Program
- 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:

Governor's Highway Safety Program	\$ 39,593
City of Fayetteville	<u>6,987</u>
	<u><u>\$ 46,580</u></u>

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

Project Expenditures	<u><u>\$ 46,580</u></u>
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- Section 5. Copies of this special revenue project ordinance shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Adopted this 28th day of November, 2011.

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Michael Gibson, Parks, Recreation and Maintenance Director  
**DATE:** November 28, 2011  
**RE:** **Parks and Recreation - Amendment to Ordinance Chapter 2 Administration, Chapter 8 Cemeteries, Chapter 18 Parks and Recreation, and Chapter 24 Streets and Sidewalks**

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### **THE QUESTION:**

Should Council adopt Amendment to Ordinance Chapter 2 Administration, Chapter 8 Cemeteries, Chapter 18 Parks and Recreation, and Chapter 24 Streets and Sidewalks

### **RELATIONSHIP TO STRATEGIC PLAN:**

NA

### **BACKGROUND:**

Effective December 1, 2011, Session Law 2011-268 (the "Act"), will 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.

The Act further provides that recreational facilities include only athletic fields, athletic facilities, playgrounds and swimming pools, specifically identified by the local government.

The Act provides that even where local governments have an ordinance to prohibit, by posting the carrying of concealed handguns in designated recreational facilities, the handgun may be kept in a trunk, glove box or other enclosed compartment or area of a locked vehicle.

For the City's purposes, the passage of the Act means that after December 1, 2011, the City may not prohibit the carrying of concealed firearms in parks in general.

The City can only do so with respect to the areas of parks consisting of City buildings, their facilities and even then, the permit holder may secure the concealed weapon as provided by the statute above.

Sections 2-12, 8-18, 18-7, 18-42 and 24-284 of the City Code will have to be amended to conform to the Act.

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 will have to be removed and altered to conform to the Act.

### **ISSUES:**

Sections 2-12, 8-18, 18-7, 18-42 and 24-284 of the City Code will have to be amended to conform to the Act.

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 will have to be removed

and altered to conform to the Act.

**BUDGET IMPACT:**

NA

**OPTIONS:**

1. Adopt the proposed ordinance amendment to prohibit concealed weapons in those areas that state law allows. (Recommended)
2. Take no action - the City's existing regulations will become unenforceable and concealed weapons will be allowed in City parks.

**RECOMMENDED ACTION:**

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

**ATTACHMENTS:**

Ordinance Amendment of Concealed Firearms in Parks and Facilities



**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 2 ADMINISTRATION, CHAPTER 8, CEMETARIES, CHAPTER 18, PARKS AND RECREATION, AND CHAPTER 24, STREETS AND SIDEWALKS, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA**

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

**Section 1: Section 2-122 is amended by deleting the portions struck through, and by inserting the underlined portion:**

(a) Except as set forth in subsection (b) of this section, the city manager, or his designee is hereby authorized and instructed to post conspicuous signage at appropriate locations on or within each ~~park~~ recreational facility specifically designated by the city manager or his designee, a list of which shall be maintained by the city clerk, and each building or portion of a building owned, leased as lessee, operated, occupied, managed or controlled by the city, as well as the appurtenant premises to such buildings, indicating that carrying a concealed handgun is prohibited in such buildings and appurtenant premises, and designated recreational facilities, to the extent allowed by state law.

(b) The general manager of the public works commission shall have the authority set forth in subsection (a) of this section for the buildings, appurtenant premises, or other properties under the operational control of the city public works commission pursuant to chapter VI of the Charter of the city.

(c) Signs on buildings shall be visibly posted on the exterior of each entrance by which the general public can access the building. The city manager or his designee, or general manager of the public works commission shall exercise discretion in determining the number and appropriate location of signs to be placed on or within appurtenant premises and ~~parks~~ designated recreational facilities as authorized in this section, to the extent allowed by state law.

**Section 2: Section 8-18 is amended by inserting the underlined portion:**

- (a) No trinkets, toys, shells, glass vases, fruit jars, pickle jars, tin cans, or anything which, in the opinion of the city, is unsightly will be allowed on any lot or single grave.
- (b) Children under 12 years of age must be attended by an adult person responsible for their conduct.
- (c) Delivery trucks, wagons and vehicles, or any conveyance generally used for hauling goods or chattels, except city vehicles delivering to the cemetery, flower trucks bringing flowers for an interment or to be placed on a grave, and trucks of a memorialist or vault company installing monument or vault, are not permitted in cemeteries without permission.
- (d) Persons passing through the cemetery, except for the bona fide purpose of visiting a grave or lot or to attend to cemetery business matters with an authorized representative of the city, are not permitted.
- (e) Persons carrying firearms, except officers of the law or members of a military detail in attendance upon an interment, are not allowed, except as otherwise provided by state law.
- (f) Bicycles and motorcycles are not allowed without permission.
- (g) No intoxicating substances are permitted.
- (h) Dogs must be on leash.

**Section 3. Section 18-7 is amended by deleting the portions struck through and by inserting the underlined portion:**

In addition to the other conditions contained in section 17-4, it shall be unlawful to bring, or cause to be brought, into any city building, the appurtenant premises thereto, or designated recreational facilities as provided in Section 2-122 of this Code, a concealed handgun in accordance with N.C.G.S. 14-415.11(c), -or to bring, or cause to be brought into any park at any time or under any circumstances a sling shot, or other similar toy or weapon, other than a concealed handgun, as referenced above,- which entails the use of or forcibly hurls a projectile or missile, except as otherwise provided by state law.

**Section 4. Section 18-42 is amended by inserting the underlined portion:**

(a) Duly appointed city park rangers shall be the official custodians of the lakes owned by the city and surrounding premises.

(b) It shall be the duty of the park rangers to enforce all rules and regulations prescribed in this article, and to insure that no indiscreet acts of any character are committed by any person upon the premises which would tend to result in the pollution or tend to affect the quality of the water supply.

(c) All duly appointed enforcement personnel, state or local, including park rangers and state wildlife protectors shall have the power and authority to summarily deny admission to the lakes to any person known to have violated the rules and regulations or ordinances governing fishing, boating, or other uses of lake premises. In addition, all enforcement personnel shall have the authority and power to require any such person or persons to leave the premises if discovered thereon. This authority to refuse admission or to reject persons shall also apply to any person or persons having intoxicating liquors, including wines or malt beverages, or drugs in their possession or who show evidence of being under the influence of alcohol or drugs.

(d) It shall be unlawful for any person to consume any intoxicating beverage including wine or malt beverage on or about city-owned lakes.

(e) It shall be unlawful for any person to spit in the lakes, swim, to put his feet in the water or to commit on the lakes or within 200 feet thereof any nuisance or act which would tend to affect the quality of water in the lakes.

(f) It shall be unlawful for any person, except duly authorized enforcement personnel, to possess a firearm, except as otherwise provided by state law, or fireworks upon the premises or to discharge any firearm or fireworks from any boat on the lakes or on the shores of the lakes. Further, it shall be unlawful to hunt with dog, gun, or bow and arrow or other weapons on any lands owned or controlled by the city abutting the lakes.

(g) No picnics shall be allowed upon the grounds, structures or water of the lakes except where areas for this activity are specifically designated. All persons using these areas shall be responsible for disposing of any trash or litter.

(h) It shall be unlawful for any person or persons to enter upon the lakes or upon the property of the city abutting the lakes except during the times and upon the areas permitted under this chapter or by other regulation.

**Section 5. Section 24-284 is amended by inserting the underlined portion:**

(a) It shall be unlawful for any person to possess on or about his person or vehicle any firearm or dangerous weapon of any kind, as defined in subsection (c) of this section, whether exposed or concealed, while participating in any parade, motorcade, special event, or any picketing.

(b) It shall be unlawful for any person present at any parade, motorcade, special event, or picketing, or any person upon any street, sidewalk, alley or other public property within 500 feet of any parade, motorcade, special event, or picketing, to possess on or about his person or vehicle any firearm or dangerous weapon of any kind, as defined below, whether exposed or concealed, except as otherwise provided by state law.

(c) For purposes of this article, the term "dangerous weapon" shall be defined as any device or substance designed or capable of being used to inflict serious injury to any person or property; including, but not limited to: firearms, airguns, BB guns, pellet guns, knives or razors with a blade more than three inches in length, metallic knuckles, clubs, blackjacks, nightsticks, dynamite cartridges, bombs, grenades, knives, explosives, Molotov cocktails, and sword canes.

(d) This section shall not apply to the following persons while acting lawfully and within the scope of their duties and authority:

- (1) Law enforcement officers; and
- (2) Officers and soldiers of the armed forces, militia and national guard; and
- (3) Reserve Officer Training Corp (ROTC) units or drill teams.

**Section 6.** 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 to accomplish such intention.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

CITY OF FAYETTEVILLE

ATTEST:

\_\_\_\_\_  
ANTHONY G. CHAVONNE, Mayor

\_\_\_\_\_  
PAMELA MEGILL, City Clerk

(b) The holder of a permit shall apply to renew the permit within the 90-day period prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, ~~a notarized~~ an affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(c) Upon receipt of the completed renewal application, ~~including the permittee's fingerprints, application~~ and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, including with another inquiry of the National Instant Criminal Background Check System (NICS), and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within the 90-day period prior to its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(d) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation.

(e) If the permittee does not apply to renew the permit prior to its expiration date, but does apply to renew the permit within 60 days after the permit expires, the sheriff may waive the requirement of taking another firearms safety and training course. This subsection does not extend the expiration date of the permit."

**SECTION 19.** G.S. 14-415.17 reads as rewritten:

**"§ 14-415.17. Permit; sheriff to retain and make available to law enforcement agencies a list of permittees.**

The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and ~~social security number of the permittee, and the drivers license identification number used in applying for the permit.~~ The sheriff shall maintain a listing listing, including the identifying information, of those persons who are issued a ~~permit and any pertinent information regarding the issued permit, permit.~~ The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system."

**SECTION 20.** G.S. 14-415.18(a) reads as rewritten:

"(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

- (1) Fraud or intentional ~~or~~ and material misrepresentation in the obtaining of a permit.
- (2) Misuse of a permit, including lending or giving a permit or a duplicate permit to another person, duplicating, materially altering a permit, or using a permit with the intent to unlawfully cause harm to a person or property. It shall not be considered misuse of a permit to provide a duplicate of the permit to a vender for record-keeping purposes.
- (3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.
- (4) The violation of any of the terms of this Article.
- (5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal."

**SECTION 21.(a)** G.S. 14-415.21 reads as rewritten:

**"§ 14-415.21. Violations of this Article punishable as an ~~infraction and a Class 2 misdemeanor~~ infraction.**



(a) A person who has been issued a valid permit who is found to be carrying a concealed handgun without the permit in the person's possession or who fails to disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun, as required by G.S. 14-415.11, shall be guilty of an infraction ~~for the first offense~~ and shall be punished in accordance with G.S. 14-3.1. In lieu of paying a fine ~~for the first offense~~, the person may surrender the permit. ~~Subsequent offenses for failing to carry a valid permit or for failing to make the necessary disclosures to a law enforcement officer as required by G.S. 14-415.11 shall be punished in accordance with subsection (b) of this section.~~

(b) A person who violates the provisions of this Article other than as set forth in subsection (a) of this section is guilty of a Class 2 misdemeanor."

**SECTION 21.(b)** G.S. 14-415.23 reads as rewritten:

**"§ 14-415.23. Statewide uniformity.**

It is the intent of the General Assembly to prescribe a uniform system for the regulation of legally carrying a concealed handgun. To insure uniformity, no political subdivisions, boards, or agencies of the State nor any county, city, municipality, municipal corporation, town, township, village, nor any department or agency thereof, may enact ordinances, rules, or regulations concerning legally carrying a concealed handgun. A unit of local government may adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun, in accordance with G.S. 14-415.11(c), on local government buildings, their appurtenant premises, and parks, buildings and their appurtenant premises. A unit of local government may adopt an ordinance to prohibit, by posting, the carrying of a concealed handgun on municipal and county recreational facilities that are specifically identified by the unit of local government. If a unit of local government adopts such an ordinance with regard to recreational facilities, then the concealed handgun permittee may, nevertheless, secure the handgun in a locked vehicle within the trunk, glove box, or other enclosed compartment or area within or on the motor vehicle. For purposes of this section, the term "recreational facilities" includes only the following: a playground, an athletic field, a swimming pool, and an athletic facility.

**SECTION 22.(a)** G.S. 14-415.24 reads as rewritten:

**"§ 14-415.24. Reciprocity; out-of-state handgun permits.**

(a) A valid concealed handgun permit or license issued by another state is valid in North Carolina if that state grants the same right to residents of North Carolina who have valid concealed handgun permits issued pursuant to this Article in their possession while carrying concealed weapons in that state. North Carolina.

(b) ~~The Attorney General shall maintain a registry of states that meet the requirements of this section on the North Carolina Criminal Information Network and make the registry available to law enforcement officers for investigative purposes.~~

(c) Every 12 months after the effective date of this subsection, the Department of Justice shall make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) whether a North Carolina resident may carry a concealed handgun in their state based upon having a valid North Carolina concealed handgun permit and (ii) whether a North Carolina resident may apply for a concealed handgun permit in that state based upon having a valid North Carolina concealed handgun permit. The Department of Justice shall attempt to secure from each state permission for North Carolina residents who hold a valid North Carolina concealed handgun permit to carry a concealed handgun in that state, either on the basis of the North Carolina permit or on the basis that the North Carolina permit is sufficient to permit the issuance of a similar license or permit by the other state."

**SECTION 22.(b)** Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

**"§ 14-415.27. Expanded permit scope for district attorneys, assistant district attorneys, and investigators employed by office of the district attorney.**

Notwithstanding G.S. 14-415.11(c), any person who is a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and who has a concealed handgun permit issued pursuant to this Article or that is considered valid under G.S. 14-415.24 is not subject to the restrictions and prohibitions set out in G.S. 14-415.11(c) and may carry a concealed handgun in the areas listed in G.S. 14-415.11(c) unless otherwise prohibited by federal law."

**SECTION 23.** G.S. 50B-3.1(d) reads as rewritten:

"(d) Surrender. – Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms,

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of Council  
**FROM:** Steven K. Blanchard, PWC CEO/General Manager  
**DATE:** November 28, 2011  
**RE:** **PWC - Bid Recommendation - Replacement of 69kV Transmission Poles**

---

**THE QUESTION:**

The Public Works Commission of the City of Fayetteville requests Council approve bid recommendation for replacement of 69kV transmission poles for the following projects: **Schedule No. 1 (Year 1 – Fiscal Year 2012) and Schedule No. 2 (Morganton Road),**

**RELATIONSHIP TO STRATEGIC PLAN:**

Quality Utility Services

**BACKGROUND:**

The Public Works Commission, during their meeting of November 9, 2011, approved bid recommendation for replacement of 69kV transmission poles for the following projects: Schedule No. 1 (Year 1 – Fiscal Year 2012) and Schedule No. 2 (Morganton Road), with the option to extend contract for similar work to be completed in subsequent fiscal years, for a period of up to three (3) additional years, upon the agreement of both parties to C.W. Wright, Chester, VA, lowest responsive, responsible bidder in the total contract amount of \$1,113,059.25 for Schedules No. 1 (\$678,615.25) and No. 2 (\$434,444.00) and forward to City Council for approval. Projects are budgeted in the PWC CIP Budget as follows: Schedule No. 1 (Year 1 – Fiscal Year 2012) – CIP EL22 - \$850,000; Schedule No. 2 (Morganton Road) – funds in the amount of \$434,444.00 to be transferred from CIP EL38 – Lafayette Village Substation Rebuild Project). Bids were received October 20, 2011 as follows:

**Schedule No. 1 – Replacement of 69kv Transmission Poles (Year 1 – Fiscal Year 2012)**

<u>Bidders</u>	<u>Total Cost</u>
C.W. Wright, Chester, VA	\$ 678,615.25
Lee Electrical Construction, Inc., Aberdeen, NC	\$1,007,400.21

**Schedule No. 2 – Replacement of 69kv Transmission Poles for Morganton Road**

<u>Bidders</u>	<u>Total Cost</u>
C.W. Wright Construction, Chester, VA	\$434,444.00
Lee Electrical Construction, Inc., Aberdeen, NC	\$493,600.05

**ISSUES:**

C.W. Wright will not be using SDBE/MWBE subcontractors for work on these projects. C.W. Wright was required to submit their good faith efforts to solicit SDBE/MWBE participation on this project and, upon review; staff has verified that C. W. Wright did make a good faith effort in accordance with NCGS 143-128.2.

Bids were solicited from eight (8) contractors with two (2) contractors responding. The bid was advertised twice due to the fact that a sufficient number of bids were not received on the first advertisement.

**BUDGET IMPACT:**



PWC Budgeted Item

**OPTIONS:**

N/A

**RECOMMENDED ACTION:**

Approve bid award for replacement of 69kV Transmission Poles to C.W. Wright, Chester, VA, lowest responsive, responsible bidder in the total contract amount of \$1,113,059.25 for Schedules No. 1 (\$678,615.25) and No. 2 (\$434,444.00).

**ATTACHMENTS:**

Bid Recommendation

Bid History

**TO:** Steve Blanchard, CEO/General Manager **DATE:** November 3, 2011

**ACTION REQUESTED:** Award contract for Replacement of 69kV Transmission Poles – Schedule No. 1 (Year 1 – Fiscal Year 2012) and Schedule No. 2 (Morganton Road), with the option to extend contract for similar work to be completed in subsequent fiscal years, for a period of up to three (3) additional years, upon the agreement of both parties.

**BID DATE:** October 20, 2011 **DEPARTMENT:** Electric Engineering

**BUDGET INFORMATION:** Schedule No. 1 – Replacement of 69kV Transmission Poles (Year 1 – Fiscal Year 2012) – CIP EL22 - \$850,000; Schedule No. 2 – Replacement of 69kV Transmission Poles for Morganton Road - funds in the amount of \$434,444.00 to be transferred from CIP EL38 – Lafayette Village Substation Rebuild Project

**TOTAL COST**

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

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

**AWARD RECOMMENDED TO:** C.W. Wright Construction, Chester, VA

**BASIS OF AWARD:** Lowest responsive, responsible bidder

**AWARD RECOMMENDED BY:** Rick Anderson, Marc Tunstall and Gloria Wrench

**COMMENTS:** Bids were solicited from eight (8) contractors with two (2) contractors responding. The bid was advertised twice due to the fact that a sufficient number of bids were not received on the first advertisement. Award is recommended to the lowest responsive, responsible, bidder.

APPROVED \_\_\_\_\_ REJECTED \_\_\_\_\_  
DATE \_\_\_\_\_

APPROVED \_\_\_\_\_ REJECTED \_\_\_\_\_  
DATE \_\_\_\_\_

**BID HISTORY**  
**REPLACEMENT OF 69kV TRANSMISSION POLES (YEAR 1 - FISCAL YEAR 2012)**  
**AND REPLACEMENT OF 69kV TRANSMISSION POLES ON MORGANTON ROAD**  
**BID DATE: OCTOBER 20, 2011**

**Consulting Engineer**

Booth & Associates

**Advertisement**

- |    |                        |  |
|----|------------------------|--|
| 1. | PWC Website            | 1 <sup>st</sup> advertisement 09/14/11 through 10/03/11<br>2 <sup>nd</sup> advertisement 10/13/11 through 10/20/11 |
| 2. | Greater Diversity News | 09/15/11   |

**List of Organizations Notified of Bid**

1. NAACP Fayetteville Branch, Fayetteville, NC
2. NAWIC, Fayetteville, NC
3. N.C. Institute of Minority Economic Development, Durham, NC
4. CRIC, Fayetteville, NC
5. Fayetteville Business & Professional League, Fayetteville, NC
6. SBTDC, Fayetteville, NC
7. FTCC Small Business Center, Fayetteville, NC
8. Fayetteville Area Chamber of Commerce, Fayetteville, NC
9. Carolinas AGC, Fayetteville and Raleigh, NC
10. McGraw Hill/Dodge Reports, Raleigh, NC
11. Hispanic Contractors Association, Raleigh, NC
12. The Raleigh Black Chamber of Commerce, Raleigh, NC

**List of Contractors Requesting Plans and Specifications**

1. Sumter Utilities, Inc., Sumter, SC
2. Lee Electrical Construction, Aberdeen, NC
3. Pike Electric, LLC, Mount Airy, NC
4. Tew Electrical, Fayetteville, NC
5. Mastec, Inc., Coral Gables, FL
6. Utilities Plus, Inc., Linden, NC
7. Line Construction, Inc., Sanford, NC
8. C.W. Wright Construction, Chester, VA

**SDBE/MWBE Participation**

C.W. Wright will not be using SDBE/MWBE subcontractors for work on these projects. C.W. Wright was required to submit their good faith efforts to solicit SDBE/MWBE participation on this project and, upon review; staff has verified that C. W. Wright did make a good faith effort in accordance with NCGS 143-128.2.

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of Council  
**FROM:** Steven K. Blanchard, PWC CEO/General Manager  
**DATE:** November 28, 2011  
**RE:** **PWC - Bid Recommendation - Water and Wastewater Chemical**

---

**THE QUESTION:**

The Public Works Commission of the City of Fayetteville requests Council approve bid award for one-year contract, with option to extend contract for additional one-year period(s) upon agreement of both parties for the purchase of Liquid Ferric Sulfate.

**RELATIONSHIP TO STRATEGIC PLAN:**

Quality Utility Services

**BACKGROUND:**

The Public Works Commission, during their meeting of November 9, 2011 approved to award bid for purchase of approximately 6000 tons of Liquid Ferric Sulfate over a one year period (with the option to extend contract for additional one-year periods upon the agreement of both parties) to Pencco, Inc., San Felipe, Texas, low bidder in the total amount of \$1,121,400.00 and forward to City Council for approval. Bids were received September 29, 2011 as follows:

<u>Bidders</u>	<u>Total Cost</u>
Pencco, Inc., San Felipe, TX	\$1,121,400.00
Kemira Water Solutions, Lawrence, KS	\$1,170,000.00

**ISSUES:**

The recommended bidder, Pencco, Inc., is not classified as SDBE, minority or woman-owned business.

**BUDGET IMPACT:**

PWC Budgeted Item

**OPTIONS:**

**RECOMMENDED ACTION:**

Award bid to Pencco, Inc., San Felipe, TX, low bidder in the amount of \$1,121,400.00.

**ATTACHMENTS:**

Bid Recommendation  
Bid History

**PUBLIC WORKS COMMISSION  
ACTION REQUEST FORM**

**TO:** Steve Blanchard, CEO/General Manager      **DATE:** November 2, 2011

**FROM:** Gloria Wrench, Purchasing Manager

.....  
**ACTION REQUESTED:** Award contract for the purchase of approximately 6000 tons of Liquid Ferric Sulfate over a one-year period (with the option to extend contract for additional one-year periods upon the agreement of both parties).  
.....

**BID/PROJECT NAME:** Water and Wastewater Chemicals

**BID DATE:** September 29, 2011      **DEPARTMENT:** Water/Wastewater Treatment

.....  

BIDDERS	TOTAL COST
<u>Pencco, Inc., San Felipe, TX</u>	<u>\$1,121,400.00</u>
<u>Kemira Water Solutions, Lawrence, KS</u>	<u>\$1,170,000.00</u>

  
.....

**AWARD RECOMMENDED TO:** Pencco, Inc., San Felipe, TX

**BASIS OF AWARD:** Low bidder

.....  
**COMMENTS:** Bids were solicited from twenty-four (24) bidders with two (2) bidders responding. PWC is currently paying \$216.43 per ton; this year's bid price is \$186.90 per ton, which represents a decrease of \$177,180.00 over the term of the contract. The low bid is recommended.  
.....

**ACTION BY COMMISSION**

**APPROVED** \_\_\_\_\_ **REJECTED** \_\_\_\_\_  
**DATE** \_\_\_\_\_

**ACTION BY COUNCIL**

**APPROVED** \_\_\_\_\_ **REJECTED** \_\_\_\_\_  
**DATE** \_\_\_\_\_

## **BID HISTORY**

### **WATER AND WASTEWATER CHEMICALS**

**BID DATE: SEPTEMBER 29, 2011**

#### **Advertisement**

Public Works Commission Website

09/19/21 through 09/29/11

#### **List of Organizations Notified of Bid**

1. NAACP Fayetteville Branch, Fayetteville, NC
2. NAWIC, Fayetteville, NC
3. N.C. Institute of Minority Economic Development, Durham, NC
4. CRIC, Fayetteville, NC
5. Fayetteville Business & Professional League, Fayetteville, NC
6. SBTDC, Fayetteville, NC
7. FTCC Small Business Center, Fayetteville, NC
8. Fayetteville Area Chamber of Commerce, Fayetteville, NC

#### **List of Prospective Bidders**

1. Mosaic Crop Nutrition, LLC, Lithia, FL
2. General Chemical Performance Products, Parsippany, NJ
3. Kemira Water Solutions, Lawrence, KS
4. C&S Chemicals, Marietta, GA
5. PVS Chemical Solutions, Detroit, MI
6. Southern Ionics, West Point, MS
7. Sterling Water Technologies, Columbia, TN
8. Colonial Chemical Solutions, Savannah, GA
9. JCI Jones Chemical, Charlotte, NC
10. LCI, Ltd, Jacksonville Beach, FL
11. Univar USA, Morrisville, PA
12. GEO Specialty Chemicals, Little Rock, AR
13. KC Industries, Mulberry, FL
14. Gulbrandsen Technologies, Inc., Clinton, NJ
15. Greer Lime Company, Morgantown, WV
16. Solvay Fluorides LLC, Houston, TX
17. Brenntag Southeast, Durham, NC
18. Tanner Industries, Inc., Southampton, PA
19. Carmeuse Lime & Stone, Inc., Pittsburg, PA
20. Pencco, San Felipe, TX
21. Key Chemical, Inc., Waxhaw, NC
22. Chemrite, Buford, GA
23. Bleach Tech, Cleveland, OH
24. Oltrin Solutions, Hamlet, NC

#### **SDBE/MWBE Participation**

Pencco, Inc. is not classified as a SDBE, minority or women owned businesses.

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of Council  
**FROM:** Steven K. Blanchard, PWC CEO/General Manager  
**DATE:** November 28, 2011  
**RE:** **PWC - Ordinance Revisions to Sewer Use Ordinance**

---

**THE QUESTION:**

The Public Works Commission of the City of Fayetteville requests Council adopt required modifications to the Sewer Use Ordinance.

**RELATIONSHIP TO STRATEGIC PLAN:**

Quality Utility Services

**BACKGROUND:**

The Public Works Commission, during their meeting of November 9, 2011, approved changes to the Sewer Use Ordinance and to forward to City Council for adoption.

In the spring of 2011, the North Carolina Division of Water Quality adopted revised rules for implementation of pretreatment programs in North Carolina. As a result, modifications to the City of Fayetteville Sewer Use Ordinance were required to reflect the new State rules and requirements.

PWC's Attorney, Richard Lewis and City Attorney, Karen McDonald reviewed and approved the proposed changes to this Ordinance.

**ISSUES:**

N/A

**BUDGET IMPACT:**

N/A

**OPTIONS:**

N/A

**RECOMMENDED ACTION:**

Adopt Revised City of Fayetteville Sewer Use Ordinance

**ATTACHMENTS:**

Transmittal Memo  
Attorney Letter  
Description of Ordinance Change  
Revised Ordinance  
Red lined copy of Sewer Use Ordinance



WILSON A. LACY, COMMISSIONER  
TERRI UNION, COMMISSIONER  
LUIS J. OLIVERA, COMMISSIONER  
MICHAEL G. LALLIER, COMMISSIONER  
STEVEN K. BLANCHARD, CEO/GENERAL MANAGER


**PUBLIC WORKS COMMISSION**  
OF THE CITY OF FAYETTEVILLE  
*ELECTRIC & WATER UTILITIES*

955 OLD WILMINGTON RD  
P.O. BOX 1089  
FAYETTEVILLE, NORTH CAROLINA 28302-1089  
TELEPHONE (AREA CODE 910) 483-1401  
FAX (AREA CODE 910) 829-0207

Environmental Department  
October 26, 2011

MEMO TO: Steve Blanchard

Through: Mick Noland

FROM: Chad Ham C. Ham

SUBJECT: Revision of Sewer Use Ordinance

In the spring of 2011, the North Carolina Division of Water Quality adopted revised rules for implementation of pretreatment programs in North Carolina. As a result of these rule changes, the City of Fayetteville Sewer Use Ordinance must be updated to reflect the new State rules/requirements.

Attached you will find a strike through version of the revised ordinance, a clean version of the revised ordinance, a check list showing what changes were made to the ordinance, and an attorney's statement from Karen McDonald, City Attorney, stating that she has reviewed the changes. In addition, Richard Lewis has reviewed and approved the proposed changes.

I am requesting the revised ordinance be place on the next Commission agenda for adoption and then be forwarded to City Council for adoption.

Thank you for your consideration in this matter.





October 7, 2011

Ms. Julia Storm  
Pretreatment Unit Supervisor  
North Carolina Division of Environmental Management  
P.O. Box 29535  
Raleigh, NC 27626-04535

**Re: Sewer Use Ordinance and Sewer Use Checklist, Fayetteville, North Carolina**

Dear Ms. Storm,

I certify that I am the duly appointed and acting City Attorney for the City of Fayetteville, North Carolina; that I have reviewed the proposed sewer use ordinance for the City of Fayetteville, North Carolina, and also its sewer use ordinance checklist as required by 15A NCAC 2H .0907(b)(1) and 40 CFR 403.9(b)(1); and they meet with my approval.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karen M. McDonald".

Karen M. McDonald  
City Attorney

KMM/jkp

P.O. BOX 1513  
FAYETTEVILLE, NC 28302-1513  
PH: (910) 433-1985 FAX: (910) 433-1980

[www.cityoffayetteville.org](http://www.cityoffayetteville.org)  
[www.facebook.com/cityoffayetteville](http://www.facebook.com/cityoffayetteville) [www.twitter.com/CityOfFayNC](http://www.twitter.com/CityOfFayNC)

## **Checklist for SUO updated August 2011**

### **DISCUSSION**

The Pretreatment, Emergency Response, and Collection Systems (PERCS) Unit published our 2011 NC DWQ Model SUO on our web-site on August 12, 2011. This Model SUO includes many revisions to address the revisions to NCAC 15A 02H .0900 – Local Pretreatment Programs.

Additional comments were received and revisions were made to 1.2 (a) (34) (D) & (E) to clarify that it is the POTW's NPDES permit, not the SIU's. If you downloaded the Model prior to August 17, please make sure that you review these two sections and make the correction if you feel it is necessary to provide clarification. The version posted August 17 includes the informational boxes for both the required and optional 2006 streamlining changes. The August 26, 2011 revision has removed the informational boxes regarding the 2006 required streamlining changes, making it somewhat easier to read. There are 4 – 2006 Optional Changes in the model, you may make the same choice as before or make a different choice at this time.

If you use a different numbering system than the Model note the Section number in your SUO in the appropriate column.

Many of these sections contain optional changes that are designed to strengthen or clarify. Please indicate your choice by checking Yes [you did make the change] or No [you did not make the change].

Several changes are aimed at establishing legal authority for satellite POTW situations. If your POTW is part of such an arrangement you may wish to consult with your partners to ensure the respective SUOs are compatible with each other and with any other agreements or established procedures.

After all choices have been made and informational boxes removed check the page numbering in the Table of Contents.

### **WHAT TO SUBMIT TO PERCS FOR SEWER USE ORDINANCE (SUO) REVISIONS**

- The revised Sewer Use Ordinance
- The completed 2011 SUO checklist.
  - Include discussion about any significant changes that deviate from the Division's 2011 NC Model SUO on the PERCS Web-site.
- Documentation of Council adoption, including signatures and effective date of changes.
  - POTWs may submit their SUO as a draft (before adoption) if you wish. This is especially recommended/requested for significant changes, especially where they deviate from the Division's Model.
- Attorney's Statement.
  - Particular attention should be given to sections regarding multiple POTW organizations and to Section 10 – Hearings. Several suggestions are presented in Section 10, however it is up to each POTW to determine what language is compatible with their local hearing procedures.
  - See Appendix 2-E of the *Comprehensive Guidance for NC Pretreatment Programs*.

SUO Section DWQ Web- site SUO page #	Type of Change	Comments	POTW SUO Section # if different from DWQ Model	Indicate choices below
All Sections	Required	<p>1) The Model SUO contains <b>BRACKETS</b> [ ] around references to other sections. The references inside the brackets will need to be <b>CHANGED</b> if your SUO <b>IS NOT</b> numbered the same as the Model SUO.</p> <p>2) Throughout the SUO, [Town] indicates a place for the name of the organization to be entered. See first paragraph of 1.1: “for the [Town of ____] hereafter referred to as the [Town]”</p> <p>3) If the administrator of the program is not referred to as the POTW Director replace [POTW Director] with the correct reference.</p> <p>4) In any case, the brackets themselves must be <b>DELETED</b>.</p> <p>5) The Model SUO also contains several <b>NOTES</b> to alert the POTW to various instructions and discussions about how to adapt the Model SUO to meet your local needs. <b>REMOVE THESE NOTES</b> from you SUO before finalizing your SUO.</p>		<p>1) References Changed (if needed): Yes <u>  X  </u> N/A <u>      </u></p> <p>2) [Town] replaced <u>  “PWC”  </u></p> <p>3) [POTW Director] changed (if needed) Yes <u>  X  </u> <u>  “General Manager”  </u> N/A <u>      </u></p> <p>4) Brackets Deleted <u>  X  </u></p> <p>5) Notes Deleted <u>  X  </u></p>
1.1 (a) & (b)	Optional		Section 28-61 (a) & (b)	<p>1.1 (a) Yes <u>      </u> No <u>  X  </u></p> <p>1.1 (b) Yes <u>      </u> No <u>  X  </u></p>
1.1 last two paragraphs	Optional	There are 3 choices. Indicate which one is used. Also indicate if the minor wording changes Publicly Owned Treatment Works or [Town] were made.	Section 28-61 (Paragraphs 2 & 3)	<p>1. <u>  X  </u> Yes <u>      </u> No <u>      </u></p> <p>2. <u>      </u> Yes <u>  X  </u> No <u>      </u></p> <p>3. <u>      </u> Yes <u>  X  </u> No <u>      </u></p>

1.2 (a)(3)(B)	2006 Optional	Indicate which paragraph B was used. If streamlining option was used which phrase was used.	Section 28-62 (1) (b)	___ Original <u><input checked="" type="checkbox"/></u> Streamlining <u><input checked="" type="checkbox"/></u> investment recommendations ___ investment decisions
1.2(a) (8)	Optional	Add definition	Section 28-62 “Control Authority”	Yes <u><input checked="" type="checkbox"/></u> No ___
1.2 (a) <del>(8)</del>	Typographical change	Indicate if this definition was deleted. If “no”, renumber subsequent definitions.	Deleted	Yes <u><input checked="" type="checkbox"/></u> No ___
1.2 (a) (12)	Optional	PWC kept original wording	Section 28-62 “Indirect discharge or discharge”	Yes ___ No <u><input checked="" type="checkbox"/></u>
1.2 (a) (14)	Required for CAs with multiple POTW organizations	Indicate if the change was made or if it is not applicable to your program.  Others – indicate if optional change made	Section 28-62 “Interference”	Yes <u><input checked="" type="checkbox"/></u> No ___ N/A ___  Optional: <u><input checked="" type="checkbox"/></u> Yes ___ No ___
1.2 (a) (18)	Optional	Indicate the chosen option.	Section 28-62 “New Source”	___ Remove definition and renumber <u><input checked="" type="checkbox"/></u> Reference 40 CFR ___ Retain original definition
1.2 (a) (21)	Optional		Section 28-62 “Non-Discharge Permit”	Yes <u><input checked="" type="checkbox"/></u> No ___
1.2 (a) (22)	Required & Optional	Indicate which of the changes were made or if not applicable to your program	Section 28-62 “Pass through”	Req’d for multiple organizations Yes <u><input checked="" type="checkbox"/></u> No ___ N/A ___ Req’d change Yes ___ No <u><input checked="" type="checkbox"/></u> Opt. change Yes ___ No <u><input checked="" type="checkbox"/></u>
1.2 (a) ( 25)	Optional		Section 28-62 “Pollutant”	Yes <u><input checked="" type="checkbox"/></u> No ___
1.2 (a) (26)	Optional		Section 28-62 “General Manager”	Yes <u><input checked="" type="checkbox"/></u> No ___
1.2 (a) (28)	Optional		Section 28-62	Yes ___ No <u><input checked="" type="checkbox"/></u>

1.2 (a) (31)	Optional		Section 28-62	Yes <u>X</u> No ____
1.2 (a) (34)	Optional	PWC used old language	Section 28-62	Yes ____ No <u>X</u>
1.2 (a) (34) (A)	Optional	PWC used old language	Section 28-62 SIU (1)	Yes ____ No <u>X</u>
1.2 (a) (34) (B)	Optional	Indicate which paragraph (B) was chosen PWC used optional language	Section 28-62 SIU (2)	____ 1 ____ 2 ____ 3 <u>X</u> 4
1.2 (a) (34) (C)	Optional		Section 28-62 SIU (3)	Yes <u>X</u> No ____
1.2 (a) (34) (D)	Optional	Indicate which paragraph (D) was chosen PWC used old SUO language	Section 28-62 SIU (4)	____ 1 <u>X</u> 2 ____ 3
1.2 (a) (34) (E)	Optional	Included definition Included stream standard criteria	Section 28-62 SIU (5)	Yes <u>X</u> No ____ Yes ____ No <u>X</u>
1.2 (a) (34) (F)	Optional		Section 28-62 SIU (6)	Yes <u>X</u> No ____
1.2 (a) (34) (G)	Optional		Section 28-62 SIU (7)	Yes <u>X</u> No ____
1.2 (a) (35)	Optional	PWC used optional change	Section 28-62 SNC	Retained Original: Yes <u>X</u> No ____ Deleted “reportable non-compliance” Yes <u>X</u> No ____ N/A ____
1.2(a) (35) (A-D)	Required	To be consistent with 40 CFR 403 & NCAC .0900	Section 28-62 SNC (1-8)	Yes <u>X</u> No ____
1.2 (a) (35) (F)	Optional		Section 28-62 SNC (6)	Yes <u>X</u> No ____
1.2 (a) (35) (H)	Required for CAs with multiple POTW organizations	Indicate if change made or if not applicable to your program  If not a required change, indicate if optional change made	Section 28-62 SNC (8)	Yes <u>X</u> No ____ N/A ____ Yes <u>X</u> No ____ N/A ____
1.2 (a) (43)	Optional	PWC used new wording	Section 28-62 Waters of the State	Yes <u>X</u> No ____
2.1 (b) (4)		Choose an upper pH limit or delete [or more	Section 28-73	Upper limit chosen:



		than ____] 12.5 upper limit chosen	(b) (4)	Yes <u>X</u> No ____
2.1 (b) (9 – 23)		It is suggested that these optional prohibitions be included Suggestion accepted	Section 28-73 (b) (4) – (23)	Suggestion considered <u>X</u>
2.1 (b) (14)	Optional	PWC used optional language	Section 28-73 (b) (14)	Yes <u>X</u> No ____
2.2 (e)	Optional	PWC used optional language	Section 28-74 (e)	Yes <u>X</u> No ____
2.3	Optional	Any changes made to local limits? We did not change our local limits from what they were before but the BOD, TSS NH3, and O&G are different from the model	Section 28-75	Yes ____ No <u>X</u>
2.8 (a)	2006 Optional	PWC chose optional language (A) (2)	Section 28-80	Yes <u>X</u> No ____
4.2 (b)	Required	Indicate which paragraph (b) was chosen and if additional requirements were included if the 2 <sup>nd</sup> paragraph (b) was chosen	Section 28-113 (b)	____ 1 <u>X</u> 2 Additional req's: Yes <u>X</u> No ____
4.2 (d) (2)	Optional	Indicate number of days chosen	Section 28-113 (d) (2)	# of days <u>60</u>
4.2 (f)	Required	Use this wording to be consistent with .0916	Section 28-113 (f)	Yes <u>X</u> No ____
4.2 (i) (1) (H)	Optional		Section 28-113 (i) (1) (h)	Yes <u>X</u> No ____
4.2 (i) (2) (B)	Optional		Section 28-113 (i) (2) (b)	Yes <u>X</u> No ____
4.2 (l)	Optional	Indicate number of days chosen	Section 28-113 (i) (2) (l)	# of days <u>180</u>
5.5	Required		Section 28-128	Yes <u>X</u> No ____
5.5 (c)	Required & Optional	Clarification of changed conditions requirements	Section 28-128 (3)	Req: Yes <u>X</u> No ____ Percent (%) entered <u>20</u> Opt: Yes ____ No <u>X</u>

5.7	Optional	Required if 1.2 (a)(34)(F) Non-Significant Categorical has been included in SUO	Section 28-130	Yes <u>  X  </u> No <u>      </u>
5.8 (b)	Optional		Section 28-131 (b)	Yes <u>  X  </u> No <u>      </u>
5.9 (a)	Optional		Section 28-132 (1)	Yes <u>      </u> No <u>  X  </u>
5.10	Optional	Choose no change to wording, or change to allow possible alternative procedures, or change to require all analysis be done by certified lab.	Section 28-133	<u>      </u> No change <u>  X  </u> Alt. procedures <u>      </u> Certified lab
5.14	2006 Optional	CROMERR change	Section 28-137	Yes <u>  X  </u> No <u>      </u>
5.15	Optional for CAs with multiple POTW organizations	Indicate if the change was made or if it is not applicable to your program.	Section 28-146 (This was “reserved” for future use)	Yes <u>      </u> No <u>      </u> N/A <u>  X  </u>
6.2 & 6.3	Required	Same change to both sections	Section 28-148 & 149	Yes <u>  X  </u> No <u>      </u>
7	Optional		Section 28-159	Yes <u>      </u> No <u>  X  </u>
8.2	Optional		Section 28-161	Yes <u>  X  </u> No <u>      </u>
9	2006 Optional		Section 28-173	Yes <u>  X  </u> No <u>      </u>
10	Required		Section 28-174	Yes <u>  X  </u> No <u>      </u>
11.2		Indicate if this section is included in the SUO. If yes, indicate if affirmative defense offered for additional specific prohibitions (9 – 23).	Section 28-176	Included? Yes <u>  X  </u> No <u>      </u> (9 – 23)? Yes <u>  X  </u> No <u>      </u>
14		Indicate option chosen	Division 14	<u>  X  </u> Option A <u>      </u> Option B

**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**

**BE IT ORDAINED** by the City Council of the City of Fayetteville that:

Section 1. Article II, Chapter 28, of the Code of Ordinances, entitled “Sewer Use Ordinance” is deleted in its entirety and the following is substituted in lieu thereof:

**SUO**  
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## **DIVISION 1. GENERAL PROVISIONS**

### **Section 28-61. - Purpose and policy**

This Article sets forth uniform requirements for direct and indirect contributors into the municipal wastewater system for the Public Works Commission of the City of Fayetteville, hereafter referred to as the PWC, and enables the PWC to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code §1251 *et seq.*) and the General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this Article are:

- (a) To prevent the introduction of pollutants into the municipal wastewater system, which will interfere with the operation of the system or contaminate the resulting sludge;
- (b) To prevent the introduction of pollutants into the municipal wastewater system, which will pass through the system, inadequately treated, into any waters of the State or otherwise be incompatible with the system;
- (c) To promote reuse and recycling of industrial wastewater and sludge from the municipal system;
- (d) To protect both municipal personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;
- (e) To provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal wastewater system; and
- (f) To ensure that the municipality complies with its NPDES or Non-discharge Permit conditions, sludge use and disposal requirements and any other Federal or State laws to which the municipal wastewater system is subject.

This Article provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This Article shall apply to all users of the municipal wastewater system, as authorized by N.C.G.S. 160A-312 and/or 153A-275. The PWC shall designate an administrator of the municipal wastewater system and pretreatment program hereafter referred to as the General Manager. Except as otherwise provided herein, the General Manager shall administer, implement, and enforce the provisions of this Article. Any powers granted to or imposed upon the General Manager may be delegated by the General Manager to other PWC personnel. By discharging wastewater into the municipal wastewater system, users located outside the corporate limits of the City of Fayetteville agree to comply with the terms and conditions established in this Article, as well as any permits, enforcement actions, or orders issued hereunder.

### **Section 28-62. - Definitions and abbreviations**

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this Article, shall have the meanings hereinafter designated:

*Act or "the Act".* The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §1251, *et seq.*

*Approval Authority.* The Director of the Division Of Water Quality of the North Carolina Department of Environment and Natural Resources or his designee.

*Authorized Representative of the Industrial User.*

- (1) If the industrial user is a corporation, authorized representative shall mean:



- a. The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
  - b. The manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (2) If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.
  - (3) If the industrial user is a Federal, State or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
  - (4) The individuals described in paragraphs (1) – (3) above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the PWC.
  - (5) If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to the General Manager prior to or together with any reports to be signed by an authorized representative.

*Biochemical Oxygen Demand (BOD).* The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g. mg/l).

*Building Sewer.* A sewer conveying wastewater from the premises of a user to the municipal wastewater system.

*Bypass.* The intentional diversion of waste streams from any portion of a user's treatment facility.

*Carbonaceous Biochemical Oxygen Demand (CBOD).* The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, minus the nitrogenous oxygen demand fraction, usually expressed as a concentration (e.g. mg/l).

*Categorical Standards.* National Categorical Pretreatment Standards or Pretreatment Standard.

*Environmental Protection Agency, or EPA.* The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.

*General Manager.* The PWC administrator designated with the responsibility for the pretreatment program and enforcement of this Article. The General Manager is also the person designated by the PWC to supervise the operation of the municipal wastewater system and who is charged with certain duties and responsibilities by this Article, or his duly authorized representative.

*Control Authority:* Refers to the POTW organization if the POTW organization's Pretreatment Program approval has not been withdrawn.

*Grab Sample.* A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.

*Holding Tank Waste.* Any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

*Indirect Discharge or Discharge.* The discharge or the introduction from any nondomestic source regulated under section 307(b), (c), or (d) of the Act, (33 U.S.C. 1317), into the municipal wastewater system (including holding tank waste discharged into the system).

*Industrial User or User.* Any person that is a source of indirect discharge.

*Interference.* The inhibition, or disruption of the municipal wastewater system, POTW collection system, treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the Control Authority's (and /or POTW's, if different from the Control Authority) NPDES, collection system, or Non-discharge Permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the municipal wastewater system in accordance with section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA)(42 U.S.C. §6901, *et seq.*), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any State sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

*Medical Waste.* Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

*National Categorical Pretreatment Standard or Categorical Standard.* Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. §1317) which applies to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405-471.

*National Prohibitive Discharge Standard or Prohibitive Discharge Standard.* Absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 28-73 of this Article and are developed under the authority of 307(b) of the Act and 40 CFR, section 403.5.

*New Source.* As defined in 40 CFR 403.3(m), including any subsequent amendments and additions

*Non-contact Cooling Water.* Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

*National Pollution Discharge Elimination System, or NPDES, Permit.* A permit issued pursuant to section 402 of the Act (33 U.S.C. §1342), or pursuant to N.C.G.S. 143-215.1 by the State under delegation from EPA.

*Non-discharge Permit.* A permit issued by the State pursuant to N.C.G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the State or for a wastewater treatment works which does not discharge directly to surface waters of the State.

*Pass Through.* A discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the Control Authority's (and/or POTW's if different from the Control Authority) NPDES, collection system, or Non-discharge Permit.

*Person.* Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State, and local government entities.

*pH.* A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

*Pollutant.* Any "waste" as defined in N.C.G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor).

*POTW Treatment Plant.* That portion of the municipal wastewater system designed to provide treatment to wastewater.

*Pretreatment or Treatment.* The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a municipal wastewater system. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

*Pretreatment Coordinator.* The person responsible for the daily activities of the pretreatment program to include inspections, sampling, report generation, compliance judgment, permit application review and permit development, issuance of NOV's, or any other duties delegated by the General Manager.

*Pretreatment Program.* The program for the control of pollutants introduced into the municipal wastewater system from non-domestic sources which was developed by the PWC in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by N.C.G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.

*Pretreatment Requirements.* Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

*Pretreatment Standards.* Any prohibited discharge standard, categorical standard, or local limit which applies to an industrial user.

*Publicly Owned Treatment Works (POTW) or Municipal Wastewater System.* A treatment works as defined by section 212 of the Act, (33 U.S.C. §1292) which is owned in this instance by the City of Fayetteville, acting through its PWC. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this Article, "POTW" or "municipal wastewater system" shall also include any sewers that convey wastewaters to the municipal wastewater system from persons outside the corporate limits of the City of Fayetteville who are, by contract or agreement with the PWC, or in any other way, users of the municipal wastewater system of the PWC.

*PWC.* Means the Public Works Commission of the City of Fayetteville acting through its manager, deputy, agent or representative.

*Severe Property Damage.* Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

*Significant Industrial User or SIU.* Any industrial user of the wastewater disposal system who:

- (1) has an average daily process wastewater flow of 25,000 gallons or more, or
- (2) contributes process wastewater which makes up five percent or more of the NPDES or Non-discharge permitted flow limit or organic capacity of the POTW treatment plan. In this context, organic capacity refers to BOD, TSS, and Ammonia; or
- (3) is subject to Categorical Pretreatment Standards under 40 CFR Part 403.6 and 40 CFR chapter I, Subchapter N, Parts 405-471; or
- (4) is found by the PWC, the Division Of Water Quality or the U.S. Environmental Protection Agency (EPA) to have the potential for impact, either singly or in combination with other contributing

industrial users, on the wastewater treatment system, the quality of sludge, the system's effluent quality, or compliance with any pretreatment standards or requirements.

- (5) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraphs (1) and (2) above has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement, the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options, and thus is not a Significant Industrial User
- (6) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraph (3) above meets the requirements of 40 CFR Part 403.3(v)(2) and thus is a Non-Significant Categorical Industrial User.
- (7) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraph (3) above meets the requirements of 40 CFR Part 403.12(e)(3) and thus is a Middle Tier Significant Industrial User. Sampling and inspection requirements may be cut in half as per 40 CFR Parts 403.8(f)(2)(v)(C) and 403.12(e)(3).

*Significant Noncompliance or SNC.* The status of noncompliance of a Significant Industrial User when one or more of the following criteria are met. Additionally, any Industrial User which meets the criteria in (3), (4), or (8) below shall also be in SNC

- (1) Chronic Violations of discharge limits, defined here as those in which sixty-six (66) percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(1);
- (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(1) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH));
- (3) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR Part 403.3(1) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Control Authority and/or POTW determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public);
- (4) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either the Control Authority and/or POTW's, if different from the Control Authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and Section 28-160(5) of this Article to halt or prevent such a discharge;
- (5) Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by 90 days or more after the schedule date.
- (6) Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and periodic compliance reports within 45 days from the due date.
- (7) Failure to accurately report noncompliance.

- (8) Any other violation or group of violations that the Control Authority and/or POTW determines will adversely affect the operation or implementation of the local pretreatment program.

*Slug Load or Discharge.* Any discharge at a flow rate or concentration which has a reasonable potential to cause Interference or Pass-Through, or in any other way violates the municipal wastewater system's regulations, local limits, or Industrial User Permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in section 28-73 of this Article.

*Standard Industrial Classification (SIC).* A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, latest edition, as amended.

*Storm Water.* Any flow occurring during or following any form of natural precipitation and resulting there from.

*Suspended Solids.* The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

*Upset.* An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities lack of preventive maintenance, or careless or improper operation.

*Wastewater.* The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the municipal wastewater system.

*Wastewater Permit.* As set forth in section 28-113 of this Article.

*Waters of the State.* All streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.

This Article is gender neutral and the masculine gender shall include the feminine and vice-versa.

Shall is mandatory; may is permissive or discretionary.

The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.

The following abbreviations when used in this Article, shall have the designated meanings:

(1)	BOD	Biochemical Oxygen Demand
(2)	CBOD	Carbonaceous Biochemical Oxygen Demand (CBOD)
(3)	CFR	Code of Federal Regulations
(4)	COD	Chemical Oxygen Demand
(5)	EPA	Environmental Protection Agency
(6)	gpd	Gallons per day
(7)	l	Liter
(8)	mg	Milligrams
(9)	mg/l	Milligrams per liter
(10)	N.C.G.S.	North Carolina General Statutes
(11)	NPDES	National Pollution Discharge Elimination System
(12)	O & M	Operation and Maintenance
(13)	POTW	Publicly Owned Treatment Works
(14)	RCRA	Resource Conservation and Recovery Act
(15)	SIC	Standard Industrial Classification
(16)	SWDA	Solid Waste Disposal Act

(17)	TSS	Total Suspended Solids
(18)	TKN	Total Kjeldahl Nitrogen
(19)	U.S.C	United States Code.

**Sections 28-63 through 28-72. - Reserved**



## **DIVISION 2. GENERAL SEWER USE REQUIREMENTS**

### **Section 28-73. - Prohibited Discharge Standards**

- (a) *General Prohibitions.* No user shall contribute or cause to be contributed into the municipal wastewater system, directly or indirectly, any pollutant or wastewater which causes interference or pass through. These general prohibitions apply to all users of the municipal wastewater system whether or not the user is a significant industrial user or subject to any National, State, or local pretreatment standards or requirements.
- (b) *Specific Prohibitions.* No user shall contribute or cause to be contributed into the municipal wastewater system the following pollutants, substances, or wastewater:
  - (1) Pollutants which create a fire or explosive hazard in the municipal wastewater system, including, but not limited to, waste streams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21.
  - (2) Solid or viscous substances in amounts which will cause obstruction of the flow in the municipal wastewater system resulting in interference but in no case solids greater than one half inch (1/2") in any dimension.
  - (3) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
  - (4) Any wastewater having a pH less than 5.0 or more than 12.5 or wastewater having any other corrosive property capable of causing damage to the municipals wastewater system or equipment.
  - (5) Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc) in sufficient quantity, (flow or concentration) either singly or by interaction with other pollutants, to cause interference with the municipal wastewater system.
  - (6) Any wastewater having a temperature greater than 150° F (66° C), or which will inhibit biological activity in the POTW treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).
  - (7) Any pollutants which result in the presence of toxic gases, vapors or fumes within the municipal wastewater system in a quantity that may cause acute worker health and safety problems.
  - (8) Any trucked or hauled pollutants, except at discharge points designated by the General Manager in accordance with section 28-81 of this Article.
  - (9) Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
  - (10) Any substance which may cause the municipal wastewater system's effluent or any other product of the municipal wastewater system such as residues, sludge, or scum, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the municipal wastewater system cause the municipal wastewater system to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.
  - (11) Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
  - (12) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the General Manager in compliance with applicable State or Federal regulations.

- (13) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water and unpolluted industrial wastewater, unless specifically authorized by the General Manager.
  - (14) Fats, oils, or greases of animal or vegetable origin in concentrations greater than two hundred fifty (250) mg/l, unless authorized by the General Manager.
  - (15) Any sludges, screenings or other residues from the pretreatment of industrial wastes.
  - (16) Any medical wastes, except as specifically authorized by the General Manager in a wastewater discharge permit.
  - (17) Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.
  - (18) Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer except as may be specifically authorized by the General Manager.
  - (19) Any wastewater causing the municipal wastewater system's treatment plant effluent to violate State Water Quality Standards for toxic substances as described in 15A NCAC 2B .0200.
  - (20) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
  - (21) Recognizable portions of the human or animal anatomy.
  - (22) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.
  - (23) At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent (5%) nor any single reading over ten percent (10%) of the lower explosive limit (LEL) of the meter.
- (c) Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the municipal wastewater system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.
  - (d) When the General Manager determines that a user(s) is contributing to the municipal wastewater system, any of the above enumerated substances in such amounts which may cause or contribute to interference of municipal wastewater system operation or pass through, the General Manager shall:
    - (1) Advise the user(s) of the potential impact of the contribution on the municipal wastewater system in accordance with section 28-160; and
    - (2) Take appropriate actions in accordance with Division 4 of this Article for such user to protect the municipal wastewater system from interference or pass through.

#### **Section 28-74. - National Categorical Pretreatment Standards**

Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein.

- (a) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the General Manager may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).

- (b) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the General Manager shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
- (c) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
- (d) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.
- (e) **A user may request a removal credit adjustment to a categorical standard in accordance with 40 CFR 403.7.**

#### **Section 28-75. - Local Limits**

An industrial waste survey is required prior to a User discharging wastewater containing in excess of the following average discharge limits.

BOD	300	mg/l	
CBOD	300	mg/l	
TSS	300	mg/l	
NH <sub>3</sub>	25	mg/l	
Arsenic	0.003	mg/l	
Cadmium	0.003	mg/l	
Chromium	0.05	mg/l	(total chromium)
Copper	0.061	mg/l	
Cyanide	0.015	mg/l	
Lead	0.049	mg/l	
Mercury	0.0003	mg/l	
Nickel	0.021	mg/l	
Silver	0.005	mg/l	
Zinc	0.175	mg/l	
Oil & Grease	250	mg/l	

Industrial Waste Survey information will be used to develop user-specific local limits when necessary to ensure that the municipal wastewater system's maximum allowable headworks loading are not exceeded for particular pollutants of concern. User-specific local limits for appropriate pollutants of concern shall be included in wastewater permits. The General Manager may impose mass based limits in addition to, or in place of concentration based limits.

#### **Section 28-76. - State Requirements**

State requirements and limitations on discharges shall apply in any case where they are more stringent than Federal requirements and limitations or those in this Article.

#### **Section 28-77. - Right of Revision**

The PWC reserves the right to establish limitations and requirements which are more stringent than those required by either State or Federal regulation if deemed necessary to comply with the objectives presented in section 28-61 of this Article or the general and specific prohibitions in section 28-73 of this Article, as is allowed by 40 CFR 403.4.

#### **Section 28-78. - Dilution**

No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the National categorical pretreatment standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant-specific limitation developed by the PWC or State.

## **Section 28-79. - Pretreatment of Wastewater**

- (a) *Pretreatment Facilities.* Users shall provide wastewater treatment as necessary to comply with this Article and wastewater permits issued under Section 28-113 of this Article and shall achieve compliance with all National categorical pretreatment standards, local limits, and the prohibitions set out in Section 28-74 of this Article within the time limitations as specified by EPA, the State, or the General Manager, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the PWC for review, and shall be approved by the General Manager before construction of the facility. Approval will be evidenced by issuance of an written authorization to construct by the PWC. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the PWC under the provisions of this Article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the General Manager prior to the user's initiation of the changes. Any proposed modifications to existing pretreatment facilities shall require issuance of a new written authorization to construct.
- (b) *Additional Pretreatment Measures.*
  - (1) Whenever deemed necessary, the General Manager may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the municipal wastewater system and determine the user's compliance with the requirements of this Article.
  - (2) The General Manager may require any person discharging into the municipal wastewater system to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.
  - (3) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

## **Section 28-80. - Accidental Discharge/Slug Control Plans**

- (a) The General Manager shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in Section 28-62 of this Article. All SIUs must be evaluated within one year of being designated an SIU. The General Manager may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the General Manager may develop such a plan for any user.
- (b) All SIUs are required to notify PWC immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see Sections 28-128 and 28-129 of this article.
- (c) An accidental discharge/slug control plan shall address, at a minimum, the following:
  - (1) Description of discharge practices, including non-routine batch discharges;
  - (2) Description of stored chemicals;
  - (3) Procedures for immediately notifying PWC of any accidental or slug discharge, as required by Section 28-129 of this Article; and
  - (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

#### **Section 28-81. - Hauled Wastewater**

- (a) Septic tank waste disposal shall be permitted and regulated through the PWC Septage Disposal Policy. Septage may be introduced into the municipal wastewater system only at locations designated by the General Manager, and at such times as are established by the General Manager. Such waste shall not violate Division 2 of this Article or any other requirements established by the PWC. The General Manager may require septic tank waste haulers to obtain wastewater discharge permits.
- (b) The General Manager may require haulers of industrial waste to obtain wastewater discharge permits. The General Manager may require generators of hauled industrial waste to obtain wastewater discharge permits. The General Manager also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this Article.
- (c) Industrial waste haulers may discharge loads only at locations designated by the General Manager. No load may be discharged without prior consent of the General Manager. The General Manager may collect samples of each hauled load to ensure compliance with applicable standards. The General Manager may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- (d) Industrial waste haulers may be required to provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

#### **Section 28-82. - Use of Public Sewers Required**

- (a) It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the city or in any area under the jurisdiction of the city any human or animal excrement, garbage, or objectionable waste.
- (b) It shall be unlawful to discharge to any natural outlet within the city or in any area under the jurisdiction of the city any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Article and in accordance with regulations of the NC Division of Water Quality, Department of Environment and Natural Resources. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater within the city.
- (c) The owners of all houses, buildings or properties used for human occupancy, employment, recreation, or other purposes situated within the city and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary sewer of the city, are hereby required at the owners' expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper sewer in accordance with the provisions of this article, within 30 days after the date of official notice to do so, provided that the public sewer is within 300 feet of the property line.

#### **Section 28-83. - Private wastewater disposal.**

- (a) Where the residence or building is more than 300 feet from any public sewer line, or connection to the sewer line is impossible, the owner of the premises shall be required to install a sanitary septic sewage disposal system according to the specifications of the Cumberland County Board of Health and construction of the system shall be allowed only upon receipt of a permit from the Cumberland County Health Department.
- (b) The owners shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times and at no expense to the PWC and/or City of Fayetteville.
- (c) At such time as a public sewer becomes available to a property served by a private wastewater disposal system, a direct connection shall be made to the public sewer within 60 days. Under unusual and/or special circumstances, the PWC may waive this provision.

#### **Section 28-84. - Building sewers and connections.**

- (a) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining written approval from the PWC. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owners. The owners shall indemnify the local government from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer; provided, however, that such indemnification shall not extend to loss or damage due solely to willful misconduct or negligence on the part of the local government.
- (b) Excluding industrial plant sites or other sites that have written approval from the PWC for single discharge points, a separate and independent building sewer shall be provided for every building; except, where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, or driveway, the front building sewer line may be extended to the rear building and the whole considered as one building sewer. But the local government does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.
- (c) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the PWC, to meet all requirements of this Article. Existing building sewers may be kept in service if, in the opinion of the PWC, they are in acceptable structural condition and operate satisfactorily. All new building sewers including any necessary replacement of existing building sewers must comply with the state building code, volume II, plumbing. The connection of the building sewer into the public sanitary sewer shall be made at the street or easement right-of-way. No person shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of infiltration/inflow to a building sewer or building drain which in turn is connected directly or indirectly to the municipal wastewater system. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard.
- (d) It shall be the responsibility of the property owner to keep and maintain the building sewer connected to the public sewer in good repair. The owner shall be responsible for making necessary repairs, at his own expense, to the building sewer when notified in writing by the local government that repairs are necessary.
- (e) Failure of the owner to repair the building sewer within 60 days after receiving written notification shall be deemed a violation of this article, enforceable pursuant to Chapter 14, article III, of this Code. Except upon specific permission granted by the PWC, no substance, either solid or liquid, shall be discharged into the municipal sanitary sewer system at manholes, or in any way other than through an authorized connection.
- (f) Sand/grit interceptors shall be provided when in the opinion of the PWC and/or local plumbing inspectors they are necessary for the proper handling of liquid wastes containing sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity accessible for cleaning and inspection. Where installed, interceptors shall be maintained by the owner at his expense in continuously efficient operation at all times. In the maintaining of these interceptors, the owner shall be responsible for the removal and disposal by appropriate means of the captured material in accordance with local regulations.
- (g) Non-PWC owned sewer systems or sewer connections that discharge into the municipal sewer system shall be maintained in a manner that prevents the introduction of excessive inflow and/or infiltration. When PWC finds a private sewer system or sewer connection exhibits excessive inflow and/or infiltration the General Manager may direct the owner of said system or connection, at the owners expense, to provide corrective measures within a time frame acceptable to PWC. If the owner fails to implement corrective measures within the specified time frame PWC may initiate corrective measures and charge the owner for these expenses, install flow monitoring equipment and bill owner for additional flow, or take other enforcement action as outlined in Division 8 of this Article.

#### **Section 28-85. - Grease and oil removal.**

- (a) Grease traps shall be provided at the user's expense, when such user operates an establishment preparing, processing or serving food and/or food products; except that such interceptors shall not be required for



private living quarters or dwelling units. At a minimum, all food preparatory sinks, dishwashers, etc., shall be connected to the trap or interceptor. Any sink equipped with a waste grinder or any plumbing fixture not associated with food preparation should not be connected to the trap or interceptor.

- (b) All interceptors shall be of a type and capacity accessible for cleaning and inspection and shall meet the minimum design criterion in the PWC design specification manual. All such traps or interceptors shall be serviced and emptied of the waste content as required in order to maintain their minimum design capability to intercept oils and greases from the wastewater discharged to the public sewer, or to achieve compliance with the oil and grease limit of 250 mg/l as regulated in section 28-75. For grease traps, the service shall be completed and documented at an interval not to exceed 60 days unless approval is obtained in writing from PWC. PWC may require more frequent cleaning as deemed necessary. For under-the-sink interceptors, the service shall be completed and documented daily or at a frequency recommended by the manufacturer. If an under-the-sink interceptor is not serviced daily, it shall be the responsibility of the user to demonstrate compliance with the oil and grease limit.
- (c) Users who are required to pass water through a grease trap or similar interceptor will provide for a minimum hydraulic retention time of 24 minutes at actual peak flow between the influent and effluent baffles with 25 percent of the total volume of the grease trap or interceptor being allowed for any food-derived solids to settle or accumulate and floatable grease-derived materials to rise and accumulate..
- (d) Where installed, all traps or interceptors shall be maintained by the user at his expense in continuously efficient operation at all times. Users shall maintain a written record of grease trap or interceptor maintenance for three years. All such records shall be available for inspection by the PWC at all times. These records shall include:
  - (1) Food Service Establishment name and physical location
  - (2) Date and time of grease trap or interceptor maintenance
  - (3) Name of third party service provider
  - (4) Name and signature of third party service provider company agent performing service
  - (5) Number and size of each grease trap or interceptor serviced at site
  - (6) Approximate volume of waste removed from each grease trap or interceptor
  - (7) Destination of removed wastes
  - (8) Such other information as required by the PWC General Manager
- (e) During trap maintenance, all inorganic and organic solids shall be removed from the sludge pocket. In addition, all floating material shall be skimmed from the trap or basin tank to avoid accumulation of scum covering the surface of the liquid. There shall be no reintroduction of the water removed from the trap either to the trap itself or to the municipal wastewater system without prior written approval from the PWC. The user shall be responsible for the removal and disposal by appropriate means of the captured material in accordance with local regulations.
- (f) The PWC General Manager may, at his discretion, require permitting of third party service providers, i.e., any third party not in the employment of a food service establishment who perform trap maintenance to include removal of grease and/or solids on a grease trap or interceptor connected to the PWC sewer collection system, to obtain a Grease Trap Pumping Permit from the PWC. This permit will include requirements for providing such services to establishments discharging into PWC's sewer collection system. The permit may include but not be limited to submission of a permit application with documentation of a legal disposal option for any waste removed from grease traps and the number and size of any trucks used to remove grease from grease traps on PWC's sewer collection system. The permit may include but not be limited to requirements for submittal of documentation of any traps that are maintained on the PWC sewer collection system as well as the date, time, approximate amount (per best professional judgement of third party service provider) of waste removed , and destination of removed wastes.

**Section 28-86. - Technical Advice.**

- (a) The PWC may consult with and furnish such technical assistance and advice as may be available to industrial users of the municipal wastewater system in order to assist them in devision procedures and constructing equipment to reduce or eliminate from industrial wastewater objectionable characteristics or properties that may not otherwise be discharged into the wastewater disposal system under this article.
- (b) Any technical assistance rendered by the PWC to industrial users will in no way releive the user from the responsibility of modifying its procedures or equipment as necessary to produce an effluent acceptable to PWC under the provisions of this article.

**Sections 28-87 through 28-97. - Reserved**

## **DIVISION 3 - FEES**

### **Section 28-98. – Purpose.**

It is the purpose of this chapter to provide for the recovery of costs from users of the municipal wastewater system of the PWC for the implementation of the program established herein. The applicable charges or fees shall be set forth in a schedule of sewer use charges and fees by the General Manager and approved by the PWC Board of Commissioners. A copy of these charges and fees will be made available from the General Manager. Such fees may include, but are not limited to items listed in Section 28-99 of this Article.

### **Section 28-99. - User Charges**

A user charge shall be levied on all users including, but not limited to, persons, firms, corporations or governmental entities that discharge, cause or permit the discharge of sewage into the municipal wastewater system.

- (1) The user charge shall reflect, at least, the cost of debt service, operation and maintenance (including replacement) of the municipal wastewater system.
- (2) Each user shall pay its proportionate cost based on volume of flow.
- (3) The General Manager of the PWC shall review annually the sewage contributions of users, the total costs of debt service, operation and maintenance of the municipal wastewater system and will make recommendations to the PWC Board of Commissioners for adjustments in the schedule of charges and fees as necessary.
- (4) Charges for flow to the municipal wastewater system not directly attributable to the users shall be distributed among all users of the municipal wastewater system based upon the volume of flow of the users.

### **Section 28-100. - Surcharges**

All industrial and commercial users of the municipal wastewater system are subject to high-strength waste surcharges on discharges that exceed pollutant levels as set forth in the PWC water and sanitary sewer rate schedule. The amount of the surcharges will be based upon the volume of flow and the character and concentration of the constituents of the wastewater:

- (1) The volume of flow used in determining the total discharge of wastewater for payment of user charges and surcharges shall be based on the following:
  - a. Metered water consumption as shown in the records of meter readings maintained by the PWC; or
  - b. If required by the PWC or at the individual dischargers option, other flow monitoring devices that measure the actual volume of wastewater discharged to the sewer. Such devices shall be accessible and safely located, and the measuring system shall be installed in accordance with plans approved by the PWC. The metering system shall be installed and maintained at the users expense according to arrangements that may be made with the PWC.
  - c. Where any user procures all or part of his water supply from sources other than the PWC, the user shall install and maintain at his own expense a flow measuring device of a type approved by the PWC.
- (2) The character and concentration of the constituents of the wastewater used in determining surcharges shall be determined by samples collected and analyzed by the user and the PWC. Samples shall be collected in such a manner as to be representative of the actual discharge and shall be analyzed using procedures set forth in 40 CFR Part 136.

- (3) The determination of the character and concentration of the constituents of the wastewater discharge by the General Manager or his duly appointed representatives shall be binding as a basis for charges.

**Section 28-101. - Pretreatment Program Administration Charges**

The schedule of charges and fees adopted by the PWC may include charges and fees for:

- (1) Reimbursement of costs of setting up and operating the Pretreatment Program;
- (2) Monitoring, inspections and surveillance procedures;
- (3) Reviewing slug control plans, including accidental and/or slug load discharge procedures and construction plans and specifications;
- (4) Permitting;
- (5) Recovery of capital related expenditures;
- (6) Other charges, including user charges based on billable flow and excessive pollutant discharges to the municipal wastewater system, necessary to recover the operation and maintenance costs of the municipal wastewater system.
- (7) Other fees as the PWC may deem necessary to carry out the requirements of the Pretreatment Program.

**Sections 28-102 through 28-111. - Reserved**

## **DIVISION 4 - WASTEWATER DISCHARGE PERMIT APPLICATION AND ISSUANCE**

### **Section 28-112. - Wastewater Dischargers**

It shall be unlawful for any person to connect or discharge to the municipal wastewater system without first obtaining the permission of the PWC. When requested by the General Manager, a user must submit information on the nature and characteristics of its wastewater within thirty (30) days of the request. The General Manager is authorized to prepare a form for this purpose and may periodically require users to update this information.

### **Section 28-113. - Wastewater Permits**

All significant industrial users shall obtain a significant industrial user permit prior to the commencement of discharge to the municipal wastewater system. Existing industrial users who are determined by the General Manager to be significant industrial users shall obtain a significant industrial user permit within 180 days of receiving notification of the General Manager's determination. Industrial users who do not fit the significant industrial user criteria may at the discretion of the General Manager be required to obtain a wastewater discharge permit for non-significant industrial users.

(a) *Significant Industrial User Determination:*

All persons proposing to discharge non-domestic wastewater, or proposing to change the volume or characteristics of an existing discharge of non-domestic wastewater shall request from the General Manager a significant industrial user determination. If the General Manager determines or suspects that the proposed discharge fits the significant industrial user criteria he will require that a significant industrial user permit application be filed.

(b) *Significant Industrial User Permit Application:*

Users required to obtain a significant industrial user permit shall complete and file with the General Manager, an application in the form prescribed by the General Manager, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a significant industrial user permit within 90 days after notification of the General Manager's determination in Section 28-113(a) above. The application shall include at a minimum the information required by 15A NCAC 02H 0.0916(c)(1)(A-M). In support of the application, the user shall submit any other information deemed necessary by the General Manager to evaluate the permit application. This may include reporting requirements under 40 CFR 403.12(b) and Section 28-124 of this Article.

(c) *Application Signatories and Certification:*

All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the Control Authority and/or Municipality as defined in Division 1, Section 28-62 and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(d) *Application Review and Evaluation:*

The General Manager will evaluate the data furnished by the user and may require additional information.

- (1) The General Manager is authorized to accept, review, and evaluate applications for the PWC.

- (2) Within 60 days of receipt the General Manager shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.
- (e) *Tentative Determination and Draft Permit:*
- (1) The General Manager shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit.
  - (2) If the staff's tentative determination in Paragraph (1) above is to issue the permit, the following additional determinations shall be made in writing:
    - a. Proposed discharge limitations for those pollutants proposed to be limited;
    - b. A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
    - c. A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
  - (3) The General Manager shall organize the determinations made pursuant to Paragraphs (1) and (2) above and the general permit conditions of the PWC into a significant industrial user permit.
- (f) *Permit Supporting Documentation:*  
The Control Authority shall prepare the following documents for all Significant Industrial User permits.
- (1) An allocation table (AT) listing permit information for all Significant Industrial Users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with Division approved maximum allowable loadings of the POTW, including flow, on forms or in a format approved by the Division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised.
  - (2) The basis, or rationale, for the pretreatment limitations, including the following:
    - a. Documentation of categorical determination, including documentation of any calculations used in applying categorical pretreatment standards; and
    - b. Documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).
- (g) *Final Action On Significant Industrial User Permit Applications:*
- (1) The General Manager shall take final action on all applications not later than 90 days following receipt of a complete application.
  - (2) The General Manager is authorized to:
    - a. Issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this Article and N.C.G.S. 143-215.1;
    - b. Issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;
    - c. Modify any permit upon not less than 60 days notice and pursuant to Section 28-113(i) of this Article;
    - d. Revoke any permit pursuant to Section 28-160 of this Article;

- e. Suspend a permit pursuant to Section 28-160 of this Article;
- f. Deny a permit application when in the opinion of the General Manager such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of G.S. 143-215.1.

(h) *Permit Modification:*

- (1) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as listed below. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance
  - a. Changes in the ownership of the discharge when no other change in the permit is indicated,
  - b. A single modification of any compliance schedule not in excess of four months,
  - c. Modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.
- (2) Within 9 months of the promulgation of a National categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a National categorical pretreatment standard, has not previously submitted an application for a wastewater discharge permit as required by Section 28-113(b), the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable National categorical pretreatment standard.
- (3) A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. 143-215.1(b) for modifications.

(i) *Permit Conditions:*

- (1) The General Manager shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this Article and N.C.G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:
  - a. A statement of duration (in no case more than five years);
  - b. A statement of non-transferability;
  - c. Applicable effluent limits based on categorical standards or local limits or both;
  - d. Applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State and local law;
  - e. Requirements for notifying the PWC in the event of an accidental discharge or slug load as defined in Section 28-62;
  - f. Requirements to implement a plan or other controls for prevention of accidental discharges and/or slug loads as defined in Section 28-62, if determined by the General Manager to be necessary for the User and,
  - g. Requirements for immediately notifying the PWC of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load as defined in Section 28-62. Also see Sections 28-128 and 28-129;



- h. A statement of applicable civil and/or criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.

(2) In addition, permits may contain, but are not limited to, the following:

- a. Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
- b. Limits on the instantaneous, daily and/or monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
- c. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
- d. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
- e. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
- f. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
- g. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
- h. Requirements for immediate reporting of any instance of noncompliance and for automatic re-sampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).
- i. Compliance schedules for meeting pretreatment standards and requirements.
- j. Requirements for submission of periodic self-monitoring or special notification reports.
- k. Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in Section 28-136 and affording the General Manager, or his representatives, access thereto.
- l. Requirements for prior notification and approval by the General Manager of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system.
- m. Requirements for the prior notification and approval by the General Manager of any change in the manufacturing and/or pretreatment process used by the permittee.
- n. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the terms of the permit.
- o. Other conditions as deemed appropriate by the General Manager to ensure compliance with this Article, and State and Federal laws, rules, and regulations.

(j) *Permit Duration:*

Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.

(k) *Permit Transfer:*

Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.

(l) *Permit Re-issuance:*

A significant industrial user shall apply for permit re-issuance by submitting a complete permit application in accordance with Section 28-113 a minimum of 180 days prior to the expiration of the existing permit.

**Sections 28-114 through 28-123 – Reserved**

## **DIVISION 5 - REPORTING REQUIREMENTS**

### **Section 28-124. - Baseline Monitoring Reports**

- (a) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the municipal wastewater system shall submit to the General Manager a report which contains the information listed in paragraph (b), below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the General Manager a report which contains the information listed in paragraph (b), below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- (b) Users described above shall submit the information set forth below.
  - (1) Identifying Information. The name and address of the facility, including the name of the operator and owner.
  - (2) Environmental Permits. A list of any environmental control permits held by or for the facility.
  - (3) Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the municipal wastewater system from the regulated processes.
  - (4) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the municipal wastewater system from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).
  - (5) Measurement of Pollutants.
    - 1. The categorical pretreatment standards applicable to each regulated process.
    - 2. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the General Manager of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 28-124 of this Article.
    - 3. Sampling must be performed in accordance with procedures set out in Section 28-134 of this Article and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).
  - (6) Certification. A statement, reviewed by the user's current authorized representative as defined in Section 28-62 of this article and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
  - (7) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in section 28-125 of this Article.
  - (8) Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with Section 28-113(c) of this Article.

### **Section 28-125. - Compliance Schedule Progress Reports**

The following conditions shall apply to the compliance schedule required by Section 28-124(b)(7) of this Article:

- (1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- (2) No increment referred to above shall exceed nine (9) months;
- (3) The user shall submit a progress report to the General Manager no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
- (4) In no event shall more than nine (9) months elapse between such progress reports to the General Manager.

### **Section 28-126. - Reports on Compliance with Categorical Pretreatment Standard, Deadline**

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the municipal wastewater system, any user subject to such pretreatment standards and requirements shall submit to the General Manager a report containing the information described in Section 28-124(b)(4-6) of this Article. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 28-113(c) of this Article.

### **Section 28-127. - Periodic Compliance Reports**

Municipalities may sample and analyze user discharges in lieu of requiring the users to conduct sampling and analysis.

- (1) All significant industrial users shall, at a frequency determined by the General Manager but in no case less than once every six months, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in Section 28-133 and 28-134 of this Article. All periodic compliance reports must be signed and certified in accordance with Section 28-113(c) of this Article.
- (2) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the General Manager, using the procedures prescribed in Sections 28-133 and 28-134 of this Article, the results of this monitoring shall be included in the report.

### **Section 28-128. - Reports of Changed Conditions**

Each user must notify the General Manager of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 30 days before the change. The permittee shall not begin the changes until receiving written approval from the Control Authority and/or Municipality. See Section 28-129 for other reporting requirements.

- (1) The General Manager may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 28-113 of this Article.
- (2) The General Manager may issue a wastewater discharge permit under Section 28-113 of this Article or modify an existing wastewater discharge permit under Section 28-113 of this Article in response to changed conditions or anticipated changed conditions.
- (3) For purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of 20 percent or greater, and the discharge of any previously unreported pollutants.

#### **Section 28-129. - Reports of Potential Problems**

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Section 28-62 of this Article, that may cause potential problems for the municipal wastewater system, the user shall immediately telephone and notify PWC of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- (b) Within five (5) days following such discharge, the user shall, unless waived by the General Manager, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the municipal wastewater system, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this Article.
- (c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph (a), above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
- (d) All SIUs are required to notify the General Manager immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Section 28-62.

#### **Section 28-130. - Reports from Unpermitted Users**

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the General Manager as the PWC General Manager may require. All users classified as Non-Significant Categorical Industrial Users under Section 28-62 shall provide appropriate reports to the General Manager as the General Manager may require. At a minimum, this shall include the Annual Certification of continuing to meet the Non-Significant Categorical User criteria as required under 40 CFR 403.12(q)

#### **Section 28-131. - Notice of Violation/Repeat Sampling and Reporting**

- (a) If sampling performed by a user indicates a violation, the user must notify the General Manager within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the General Manager within thirty (30) days after becoming aware of the violation. If allowed by the General Manager, the user is not required to resample:
  - (1) If the General Manager monitors at the user's facility at least once a month; or
  - (2) If the General Manager samples between the user's initial sampling and when the user receives the results of this sampling.
- (b) If the General Manager has performed the sampling and analysis in lieu of the industrial user and the PWC sampling of the user indicates a violation, the General Manager shall repeat the sampling and obtain the results of the repeat analysis within thirty (30) days after becoming aware of the violations, unless one of the following occurs:

- (1) The General Manager monitors at the user's facility at least once a month; or
- (2) The General Manager samples the user between their initial sampling and when the PWC receives the results of this initial sampling; or
- (3) The General Manager requires the user to perform sampling and submit the results to the General Manager within the 30 day deadline of the PWC becoming aware of the violation.

#### **Section 28-132. - Notification of the Discharge of Hazardous Waste**

The PWC prohibits the discharge of any hazardous wastes without notification and approval of the General Manager.

- (1) Any user who commences the discharge of hazardous waste shall notify the PWC, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the municipal wastewater system of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the municipal wastewater system, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharge during the calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under Section 28-128 of this Article. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of Sections 28-124, 28-126, 28-127 of this Article.
- (2) Dischargers are exempt from the requirements of paragraph (a), above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specific in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.
- (3) In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the General Manager, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- (4) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (5) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Article, a permit issued there under, or any applicable Federal or State law.

#### **Section 28-133. - Analytical Requirements**

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed by a laboratory certified by the state to perform the wastewater analysis in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard or unless otherwise performed in accordance with procedures approved

by EPA or PWC. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA

#### **Section 28-134. - Grab and Composite Sample Collection**

- (a) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.
- (b) Grab Samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The General Manager shall determine the number of grabs necessary to be representative of the User's discharge. See 40 CFR 403.12(g)(5) for additional grab sample number requirements for BMR and 90 Day Compliance Reports. Additionally, the General Manager may allow collection of multiple grabs during a 24 hour period which are composited prior to analysis as allowed under 40 CFR 136.
- (c) Composite Samples: All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the General Manager. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

#### **Section 28-135. - Timing**

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

#### **Section 28-136. - Record Keeping**

Users subject to the reporting requirements of this Article shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Article and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the PWC, or where the user has been specifically notified of a longer retention period by the General Manager.

#### **Section 28-137. - Electronic Reporting**

The General Manager may develop procedures for receipt of electronic reports for any reporting requirements of this Article. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under Division 8 of this Article.

#### **Sections 28-138 through 28-146 - Reserved**

## **DIVISION 6 - COMPLIANCE MONITORING**

### **Section 28-147. - Monitoring Facilities**

The PWC requires the user to provide and operate at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the PWC may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the requirements of the PWC and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the PWC.

### **Section 28-148. - Inspection and Sampling**

The PWC will inspect the facilities of any user to ascertain whether the purpose of this Article is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the PWC, approval authority and EPA or their representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties. The PWC, approval authority and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the PWC, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the PWC's, the approval authority's, or EPA's access to the user's premises shall be a violation of this Article. Unreasonable delays may constitute denial of access.

### **Section 28-149. - Search Warrants**

If the PWC, approval authority, or EPA has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the PWC designed to verify compliance with this Article or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the PWC, approval authority, or EPA may seek issuance of a search warrant from the court having jurisdiction within the PWC service area.

### **Sections 28-150 through 28-158 - Reserved**



## **DIVISION 7 - CONFIDENTIAL INFORMATION**

### **Section 28-159. – User Information Obtained From Reports, etc.**

Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the General Manager that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted at the time of submission of the information or data.

When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this Article, the National Pollutant Discharge Elimination System (NPDES) Permit, Non-discharge permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the State or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

All records relating to compliance with Pretreatment Standards shall be made available to officials of the approval authority and EPA upon request.

## **DIVISION 8 - ENFORCEMENT**

### **Section 28-160. - Administrative Remedies**

The PWC may utilize all of the enforcement tools available through the PWC Enforcement Response Plan to address escalating enforcement actions dependent on the nature of the violation and to cooperativeness, or recalcitrance, of the violator. Enforcement actions may include, but are not limited to the following:

(1) *Notification Of Violation:*

Whenever the General Manager finds that any industrial user has violated or is violating this Article, wastewater permit, or any prohibition, limitation or requirements contained therein or any other pretreatment requirement the General Manager may serve upon such a person a written notice stating the nature of the violation. Within the time frame stated in the notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the PWC by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.

(2) *Consent Orders:*

The General Manager is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to Section 28-160(4), below.

(3) *Show Cause Hearing:*

The General Manager may order any industrial user who causes or is responsible for an unauthorized discharge, has violated this Article or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. In the event the General Manager determines that a show cause order should be issued, a notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.

The General Manager shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under Section 28-161 of this Article nor is any action or inaction taken by the General Manager under this section subject to an administrative appeal under Section 28-174.

(4) *Administrative Orders:*

When the General Manager finds that an industrial user has violated or continues to violate this Article, permits or orders issued hereunder, or any other pretreatment requirement the General Manager may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:

- a. Immediately comply with all requirements;
- b. Comply in accordance with a compliance time schedule set forth in the order;
- c. Take appropriate remedial or preventive action in the event of a continuing or threatened violation;

- d. Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.

(5) *Emergency Suspensions:*

The General Manager may immediately suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the municipal wastewater system or causes the PWC to violate any condition of its NPDES or Non-discharge permit.

Any user notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the General Manager shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the municipal wastewater system or endangerment to any individuals. The General Manager shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The industrial user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the General Manager prior to the date of the above-described hearing.

(6) *Termination of Permit or Permission to Discharge:*

The General Manager may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:

- a. Failure to accurately report the wastewater constituents and characteristics of his discharge;
- b. Failure to report significant changes in operations, or wastewater constituents and characteristics;
- c. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or,
- d. Violation of conditions of the permit or permission to discharge, conditions of this Article, or any applicable State and Federal regulations.

Noncompliant Industrial Users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under Section 28-160 of this Article as to why the proposed action should not be taken.

**Section 28-161. - Civil Penalties**

- (a) Any user who is found to have failed to comply with any provision of this Article, or the orders, rules, regulations and permits issued hereunder, may be assessed a civil penalty of up to twenty-five thousand dollars (\$25,000) per day per violation.
- (b) Penalties between \$10,000 and \$25,000 per day per violation may be assessed against a violator only if:
  - (1) For any class of violation, only if a civil penalty has been imposed against the violator within the five years preceding the violation, or
  - (2) In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this Article, or the orders, rules, regulations and permits issued hereunder, only if the General Manager determines that the violation was intentional and a civil penalty has been imposed against the violator within the five years preceding the violation.

- (c) In determining the amount of the civil penalty, the General Manager shall consider the following:
- (1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
  - (2) The duration and gravity of the violation;
  - (3) The effect on ground or surface water quantity or quality or on air quality;
  - (4) The cost of rectifying the damage;
  - (5) The amount of money saved by noncompliance;
  - (6) Whether the violation was committed willfully or intentionally;
  - (7) The prior record of the violator in complying or failing to comply with the pretreatment program;
  - (8) The costs of enforcement to the PWC.
- (d) Appeals of civil penalties assessed in accordance with this section shall be as provided in Section 28-174.

#### **Section 28-162. - Other Available Remedies**

Remedies, in addition to those previously mentioned in this Article, are available to the General Manager who may use any single one or combination against a noncompliant user. Additional available remedies include, but are not limited to:

(1) *Criminal Violations:*

Prosecution of noncompliant users who violate the provisions of N.C.G.S. 143-215.6B. [Note: Under North Carolina law, it is a crime to negligently violate any term, condition, or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(f)), to knowingly and willfully violate any term, condition, or requirement of a pretreatment permit, or knowingly and willfully fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(g)), to knowingly violate any term, condition, or requirement of a pretreatment permit issued by local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time that a person is placed in imminent danger of death or serious bodily injury, (G.S. 143-215.6B(h)), and to falsify information required under Article 21 of Chapter 143 of the General Statutes (G.S. 143-215.6B(i)).]

(2) *Injunctive Relief:*

Whenever a user is in violation of the provisions of this Article or an order or permit issued hereunder, the General Manager, through the City Attorney, may petition the Superior Court of Justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.

(3) *Water Supply Severance:*

Whenever an Industrial User is in violation of the provisions of this Article or an order or permit issued hereunder, water service to the industrial user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply.

(4) *Public Nuisances:*

Any violation of the prohibitions or effluent limitations of this Article or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the General Manager. Any person(s) creating a public nuisance shall be subject to the provisions of the appropriate Articles of the City of Fayetteville governing such nuisances,

including reimbursing the PWC for any costs incurred in removing, abating or remedying said nuisance.

**Section 28-163. - Remedies Nonexclusive**

The remedies provided for in this Article are not exclusive. The General Manager may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the PWC's enforcement response plan. However, the General Manager may take other action against any user when the circumstances warrant. Further, the General Manager is empowered to take more than one enforcement action against any noncompliant user.

**Sections 28-163 through 28-172. – Reserved**

## **DIVISION 9 - ANNUAL PUBLICATION OF SIGNIFICANT NONCOMPLIANCE**

### **Section 28-173. – Publication Of Noncompliance**

At least annually, the General Manager shall publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the municipal wastewater system, a list of those industrial users which were found to be in significant noncompliance, also referred to as reportable noncompliance, in 15A NCAC 2H .0903(b)(10), with applicable pretreatment standards and requirements, during the previous 12 months.

## Division 10 – Adjudicatory Hearings

### Section 28-174. - Hearings

*Hearings:* The local government may conduct hearings in accordance with its regular hearing procedure.

- (1) *Initial Adjudicatory Hearing.* An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable, a permittee/user assessed a civil penalty under Section 28-161, or one issued an administrative order under Section 28-160(4) shall have the right to an adjudicatory hearing before the General Manager or other hearing officer appointed by the General Manager upon making written demand, identifying the specific issues to be contested, to the General Manager within 30 days following receipt of the significant industrial user permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding and further appeal is barred. For modified permits, only those parts of the permit being modified may be adjudicated. The hearing officer shall make a final decision on the contested permit, penalty, or order within ninety (90) days of the receipt of the written demand for a hearing. The General Manager shall transmit a copy of the hearing officer's decision by registered or certified mail as described in paragraph (3) below. The terms and conditions of a permit under appeal shall be as follows:
  - a. *New Permits.* Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
  - b. *Renewed Permits.* Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
  - c. *Terminated Permits.* Upon appeal, including judicial review in the General Courts of Justice, of a terminated permit, no permit is in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
- (2) *Final Appeal Hearing.* Any decision of a hearing officer made as a result of an adjudicatory hearing held under paragraph (1) above may be appealed, to the PWC Board of Commissioners upon filing a written demand within ten (10) days of receipt of notice of the decision. . Failure to make written demand within the time specified herein shall bar further appeal. The PWC Board of Commissioners shall make a final decision on the appeal within ninety (90) days from receipt of the demand filed under paragraph (1) above and shall transmit a written copy of its decision by registered or certified mail as described in paragraph (3) below.
- (3) *Official record.* When a final decision is issued under paragraph (2) above, the PWC Board of Commissioners shall prepare an official record of the case that includes:
  - a. All notices, motions, and other like pleadings;
  - b. A copy of all documentary evidence introduced;
  - c. A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken.
  - d. A copy of the final decision of the PWC Board of Commissioners.
- (4) *Judicial Review.* Any person against whom a final order or decision of the PWC Board of Commissioners is entered, pursuant to the hearing conducted under paragraph (2) above, may seek judicial review of the order or decision by filing a written request for review by the Superior Court of Cumberland County within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter along with a copy to the PWC. Within 30 days after receipt of

the copy of the written request for review by the Court, the PWC Board of Commissioners shall transmit to the reviewing court the original or a certified copy of the official record.



## **DIVISION 11 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS**

### **Section 28-175. - Upset**

- (a) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (b), below, are met.
- (b) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (1) An upset occurred and the user can identify the cause(s) of the upset;
  - (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - (3) The user has submitted the following information to the General Manager within twenty-four (24) hours of becoming aware of the upset. If this information is provided orally, a written submission must be provided within five (5) days:
    - a. A description of the indirect discharge and cause of noncompliance;
    - b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
    - c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (c) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- (d) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- (e) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

### **Section 28-176. - Prohibited Discharge Standards Defense**

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 28-73(a) of this Article or the specific prohibitions in Sections 28-73(b)(2), (3), and (5-7) of this Article if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- (1) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- (2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when PWC was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

### **Section 28-177. - Bypass**

- (a) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (b) and (c) of this section.
- (b) (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the General Manager, at least ten (10) days before the date of the bypass, if possible.

- (2) A user shall submit oral notice to the General Manager of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of this time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The General Manager may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- (c) (1) Bypass is prohibited, and the General Manager may take an enforcement action against a user for a bypass, unless
  - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - c. The user submitted notices as required under paragraph (b) of this section.
- (2) The General Manager may approve an anticipated bypass, after considering its adverse effects, if the General Manager determines that it will meet the three conditions listed in paragraph (c)(1) of this section.

**Sections 28-178 through 28-210 - Reserved**

## **DIVISION 12 - SEVERABILITY**

If any provision, paragraph, word, section or article of this Article is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

### **DIVISION 13 - CONFLICT**

All other Articles and parts of other Articles inconsistent or conflicting with any part of this Article are hereby repealed to the extent of such inconsistency or conflict.

**DIVISION 14 - EFFECTIVE DATE**

This Article shall be in full force and effect from and after its passage, approval and publication, as provided by law.

**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**

**BE IT ORDAINED** by the City Council of the City of Fayetteville that:

Section 1. Article II, Chapter 28, of the Code of Ordinances, entitled “Sewer Use Ordinance” is deleted in its entirety and the following is substituted in lieu thereof:

**SUO**  
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## **DIVISION 1. GENERAL PROVISIONS**

### **Section 28-61. - Purpose and policy**

This Article sets forth uniform requirements for direct and indirect contributors into the municipal wastewater system for the Public Works Commission of the City of Fayetteville, hereafter referred to as the PWC, and enables the PWC to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code §1251 *et seq.*) and the General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this Article are:

- (a) To prevent the introduction of pollutants into the municipal wastewater system, which will interfere with the operation of the system or contaminate the resulting sludge;
- (b) To prevent the introduction of pollutants into the municipal wastewater system, which will pass through the system, inadequately treated, into any waters of the State or otherwise be incompatible with the system;
- (c) To promote reuse and recycling of industrial wastewater and sludge from the municipal system;
- (d) To protect both municipal personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;
- (e) To provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal wastewater system; and
- (f) To ensure that the municipality complies with its NPDES or Non-discharge Permit conditions, sludge use and disposal requirements and any other Federal or State laws to which the municipal wastewater system is subject.

This Article provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This Article shall apply to all users of the municipal wastewater system, as authorized by N.C.G.S. 160A-312 and/or 153A-275. The PWC shall designate an administrator of the municipal wastewater system and pretreatment program hereafter referred to as the General Manager. Except as otherwise provided herein, the General Manager shall administer, implement, and enforce the provisions of this Article. Any powers granted to or imposed upon the General Manager may be delegated by the General Manager to other PWC personnel. By discharging wastewater into the municipal wastewater system, users located outside the corporate limits of the City of Fayetteville agree to comply with the terms and conditions established in this Article, as well as any permits, enforcement actions, or orders issued hereunder.

### **Section 28-62. - Definitions and abbreviations**

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this Article, shall have the meanings hereinafter designated:

*Act or "the Act".* The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §1251, *et seq.*

*Approval Authority.* The Director of the Division Of Water Quality of the North Carolina Department of Environment and Natural Resources or his designee.

*Authorized Representative of the Industrial User.*

- (1) If the industrial user is a corporation, authorized representative shall mean:

- a. The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
  - b. The manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (2) If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.
  - (3) If the industrial user is a Federal, State or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
  - (4) The individuals described in paragraphs (1) – (3) above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the PWC.
  - (5) If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to the General Manager prior to or together with any reports to be signed by an authorized representative.

*Biochemical Oxygen Demand (BOD).* The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g. mg/l).

*Building Sewer.* A sewer conveying wastewater from the premises of a user to the municipal wastewater system.

*Bypass.* The intentional diversion of waste streams from any portion of a user's treatment facility.

*Carbonaceous Biochemical Oxygen Demand (CBOD).* The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, minus the nitrogenous oxygen demand fraction, usually expressed as a concentration (e.g. mg/l).

*Categorical Standards.* National Categorical Pretreatment Standards or Pretreatment Standard.

*Environmental Protection Agency, or EPA.* The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.

*General Manager.* The PWC administrator designated with the responsibility for the pretreatment program and enforcement of this Article. The General Manager is also the person designated by the PWC to supervise the operation of the municipal wastewater system and who is charged with certain duties and responsibilities by this Article, or his duly authorized representative.

*Control Authority:* Refers to the POTW organization if the POTW organization's Pretreatment Program approval has not been withdrawn.

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*Grab Sample.* A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.

*Holding Tank Waste.* Any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

*Indirect Discharge or Discharge.* The discharge or the introduction from any nondomestic source regulated under section 307(b), (c), or (d) of the Act, (33 U.S.C. 1317), into the municipal wastewater system (including holding tank waste discharged into the system).

*Industrial User or User.* Any person that is a source of indirect discharge.

*Interference.* The inhibition, or disruption of the municipal wastewater system, POTW collection system, treatment ~~plant~~ processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the ~~municipal wastewater system's~~ Control Authority's (and /or POTW's, if different from the Control Authority) NPDES, collection system, or Non-discharge Permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the municipal wastewater system in accordance with section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA)(42 U.S.C. §6901, *et seq.*), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any State sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW/municipal wastewater system.

*Medical Waste.* Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

*National Categorical Pretreatment Standard or Categorical Standard.* Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. §1317) which applies to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405-471.

*National Prohibitive Discharge Standard or Prohibitive Discharge Standard.* Absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 28-73 of this Article and are developed under the authority of 307(b) of the Act and 40 CFR, section 403.5.

*New Source.* As defined in 40 CFR 403.3(m), including any subsequent amendments and additions

~~(1) — Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under section 307(e) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with section 307(e), provided that:~~

~~a. — The building, structure, facility, or installation is constructed at a site at which no other source is located; or~~

~~b. — The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or~~

~~c. — The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.~~

~~(2) — Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation~~

- meeting the criteria of section 28-62 above but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) ~~For purposes of this definition, construction of a new source has commenced if the owner or operator has:~~
- (a) ~~Begun, or caused to begin, as part of a continuous on-site construction program:~~
    - 1. ~~Any placement, assembly, or installation of facilities or equipment; or~~
    - 2. ~~Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or~~
  - (B) ~~Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.~~

*Non-contact Cooling Water.* Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

*National Pollution Discharge Elimination System, or NPDES, Permit.* A permit issued pursuant to section 402 of the Act (33 U.S.C. §1342), or pursuant to N.C.G.S. 143-215.1 by the State under delegation from EPA.

*Non-discharge Permit.* A ~~disposal system~~ permit issued by the State pursuant to N.C.G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the State or for a wastewater treatment works which does not discharge directly to surface waters of the State.

*Pass Through.* A discharge which exits the ~~municipal wastewater system~~ POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the ~~municipal wastewater system's~~ Control Authority's (and/or POTW's if different from the Control Authority) NPDES, collection system, or Non-discharge Permit, or a downstream water quality standard.

*Person.* Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State, and local government entities.

*pH.* A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

*Pollutant.* Any "waste" as defined in N.C.G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, ~~or~~ and odor).

*POTW Treatment Plant.* That portion of the municipal wastewater system designed to provide treatment to wastewater.

*Pretreatment or Treatment.* The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a municipal wastewater system. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

*Pretreatment Coordinator.* The person responsible for the daily activities of the pretreatment program to include inspections, sampling, report generation, compliance judgment, permit application review and permit development, issuance of NOV's, or any other duties delegated by the General Manager.

*Pretreatment Program.* The program for the control of pollutants introduced into the municipal wastewater system from non-domestic sources which was developed by the PWC in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by N.C.G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.

*Pretreatment Requirements.* Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

*Pretreatment Standards.* ~~Any P~~prohibited discharge standards, categorical standards, ~~and/or~~ local limits ~~which applies to an industrial user.~~

*Publicly Owned Treatment Works (POTW) or Municipal Wastewater System.* A treatment works as defined by section 212 of the Act, (33 U.S.C. §1292) which is owned in this instance by the City of Fayetteville, acting through its PWC. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this Article, "POTW" or "municipal wastewater system" shall also include any sewers that convey wastewaters to the municipal wastewater system from persons outside the corporate limits of the City of Fayetteville who are, by contract or agreement with the PWC, or in any other way, users of the municipal wastewater system of the PWC.

*PWC.* Means the Public Works Commission of the City of Fayetteville acting through its manager, deputy, agent or representative.

*Severe Property Damage.* Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

*Significant Industrial User or SIU.* Any industrial user of the wastewater disposal system who:

- (1) has an average daily process wastewater flow of 25,000 gallons or more, or
- (2) contributes ~~process wastewater which makes up five percent or more than 5% of the NPDES or Non-discharge permitted flow limit or organic capacity of the POTW treatment plan. In this context, organic capacity refers to BOD, TSS, and Ammonia; any design or treatment capacity (i.e., allowable pollutant load) of the wastewater treatment plant receiving the indirect discharge;~~ or
- (3) is ~~required~~subject to Categorical Pretreatment Standards under 40 CFR Part 403.6 and 40 CFR chapter I, Subchapter N, Parts 405-471~~meet a National categorical pretreatment standard;~~ or
- (4) is found by the PWC, the Division Of Water Quality or the U.S. Environmental Protection Agency (EPA) to have the potential for impact, either singly or in combination with other contributing industrial users, on the wastewater treatment system, the quality of sludge, the system's effluent quality, or compliance with any pretreatment standards or requirements.
- (5) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraphs (1) and (2) above has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement, the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options, and thus is not a Significant Industrial User
- (6) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraph (3) above meets the requirements of 40 CFR Part 403.3(v)(2) and thus is a Non-Significant Categorical Industrial User.
- (7) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraph (3) above meets the

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requirements of 40 CFR Part 403.12(e)(3) and thus is a Middle Tier Significant Industrial User. Sampling and inspection requirements may be cut in half as per 40 CFR Parts 403.8(f)(2)(v)(C) and 403.12(e)(3).

~~Significant Noncompliance or Reportable Noncompliance~~SNC. The status of noncompliance of a Significant Industrial User when one or more of the following criteria are met. Additionally, any Industrial User which meets the criteria in (3), (4), or (8) below shall also be in SNC~~A status of noncompliance defined as follows:~~

~~(1)~~ Violations of wastewater discharge limits.

~~a-(1)~~ Chronic Violations of discharge limits, defined here as those in which sixty-six (66) percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(1); ~~Sixty-six percent or more of the measurements exceed (by any magnitude) the same daily maximum limit or the same average limit in a six-month period.~~

~~b-(2)~~ Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(1) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH)). Thirty-three percent or more of the measurements equal or exceed the TRC times the limit (maximum or average) in a six-month period. There are two groups of TRC: For the conventional pollutants: BOD, TSS, fats, oil and grease TRC = 1.4, for all other pollutants TRC = 1.2

~~e-(3)~~ Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR Part 403.3(1) (daily maximum, long-term average, instantaneous limit, or narrative standard) ~~(s) of an effluent limit (average or daily maximum) that the eControl aAuthority and/or POTW determines~~believes has caused, alone or in combination with other discharges, interference or pass-through; ~~or (including endangering the health of POTW the sewage treatment plant personnel or the general public);~~

~~d-(4)~~ Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, ~~welfare~~ or to the environment or has resulted in either the PWC's Control Authority and/or POTW's, if different from the Control Authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and Section 28-160(5) of this Article to halt or prevent such a discharge;

~~(25)~~ Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by 90 days or more after the schedule date.

~~(36)~~ Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and periodic compliance reports within ~~3045~~ days from the due date.

~~(47)~~ Failure to accurately report noncompliance.

~~(58)~~ Any other violation or group of violations that the eControl aAuthority and/or POTW determines will adversely affect the operation or implementation of the local pretreatment program~~considers to be significant.~~

*Slug Load or Discharge.* Any discharge at a flow rate or concentration which has a reasonable potential to cause Interference or Pass-Through, or in any other way violates the municipal wastewater system's regulations, local limits, or Industrial User Permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in section 28-73 of this Article.

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*Standard Industrial Classification (SIC).* A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, latest edition, as amended.

*Storm Water.* Any flow occurring during or following any form of natural precipitation and resulting there from.

*Suspended Solids.* The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

*Upset.* An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities lack of preventive maintenance, or careless or improper operation.

*Wastewater.* The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the municipal wastewater system.

*Wastewater Permit.* As set forth in section 28-113 of this Article.

*Waters of the State.* All streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs, lakes, ponds, marshes, watercourse, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.

This Article is gender neutral and the masculine gender shall include the feminine and vice-versa.

Shall is mandatory; may is permissive or discretionary.

The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.

The following abbreviations when used in this Article, shall have the designated meanings:

(1)	BOD	Biochemical Oxygen Demand
(2)	CBOD	Carbonaceous Biochemical Oxygen Demand (CBOD)
(3)	CFR	Code of Federal Regulations
(4)	COD	Chemical Oxygen Demand
(5)	EPA	Environmental Protection Agency
(6)	gpd	Gallons per day
(7)	l	Liter
(8)	mg	Milligrams
(9)	mg/l	Milligrams per liter
(10)	N.C.G.S.	North Carolina General Statutes
(11)	NPDES	National Pollution Discharge Elimination System
(12)	O & M	Operation and Maintenance
(13)	POTW	Publicly Owned Treatment Works
(14)	RCRA	Resource Conservation and Recovery Act
(15)	SIC	Standard Industrial Classification
(16)	SWDA	Solid Waste Disposal Act
(17)	TSS	Total Suspended Solids
(18)	TKN	Total Kjeldahl Nitrogen
(19)	U.S.C	United States Code.

**Sections 28-63 through 28-72. - Reserved**

## **DIVISION 2. GENERAL SEWER USE REQUIREMENTS**

### **Section 28-73. - Prohibited Discharge Standards**

- (a) *General Prohibitions.* No user shall contribute or cause to be contributed into the municipal wastewater system, directly or indirectly, any pollutant or wastewater which causes interference or pass through. These general prohibitions apply to all users of the municipal wastewater system whether or not the user is a significant industrial user or subject to any National, State, or local pretreatment standards or requirements.
- (b) *Specific Prohibitions.* No user shall contribute or cause to be contributed into the municipal wastewater system the following pollutants, substances, or wastewater:
  - (1) Pollutants which create a fire or explosive hazard in the municipal wastewater system, including, but not limited to, waste streams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21.
  - (2) Solid or viscous substances in amounts which will cause obstruction of the flow in the municipal wastewater system resulting in interference but in no case solids greater than one half inch (1/2") in any dimension.
  - (3) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
  - (4) Any wastewater having a pH less than 5.0 or more than 12.5 or wastewater having any other corrosive property capable of causing damage to the municipals wastewater system or equipment.
  - (5) Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc) in sufficient quantity, (flow or concentration) either singly or by interaction with other pollutants, to cause interference with the municipal wastewater system.
  - (6) Any wastewater having a temperature greater than 150° F (66° C), or which will inhibit biological activity in the POTW treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).
  - (7) Any pollutants which result in the presence of toxic gases, vapors or fumes within the municipal wastewater system in a quantity that may cause acute worker health and safety problems.
  - (8) Any trucked or hauled pollutants, except at discharge points designated by the General Manager in accordance with section 28-81 of this Article.
  - (9) Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
  - (10) Any substance which may cause the municipal wastewater system's effluent or any other product of the municipal wastewater system such as residues, sludge, or scum, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the municipal wastewater system cause the municipal wastewater system to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.
  - (11) Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
  - (12) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the General Manager in compliance with applicable State or Federal regulations.



- (13) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water and unpolluted industrial wastewater, unless specifically authorized by the General Manager.
  - (14) Fats, oils, or greases of animal or vegetable origin in concentrations greater than two hundred fifty (250) mg/l, unless authorized by the General Manager.
  - (15) Any sludges, screenings or other residues from the pretreatment of industrial wastes.
  - (16) Any medical wastes, except as specifically authorized by the General Manager in a wastewater discharge permit.
  - (17) Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.
  - (18) Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer except as may be specifically authorized by the General Manager.
  - (19) Any wastewater causing the municipal wastewater system's treatment plant effluent to violate State Water Quality Standards for toxic substances as described in 15A NCAC 2B .0200.
  - (20) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
  - (21) Recognizable portions of the human or animal anatomy.
  - (22) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.
  - (23) At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent (5%) nor any single reading over ten percent (10%) of the lower explosive limit (LEL) of the meter.
- (c) Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the municipal wastewater system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.
  - (d) When the General Manager determines that a user(s) is contributing to the municipal wastewater system, any of the above enumerated substances in such amounts which may cause or contribute to interference of municipal wastewater system operation or pass through, the General Manager shall:
    - (1) Advise the user(s) of the potential impact of the contribution on the municipal wastewater system in accordance with section 28-160; and
    - (2) Take appropriate actions in accordance with Division 4 of this Article for such user to protect the municipal wastewater system from interference or pass through.

#### **Section 28-74. - National Categorical Pretreatment Standards**

Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR Chapter I, Subchapter N, Parts 405-471 and incorporated herein.

- (a) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the General Manager may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).

- (b) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the General Manager shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
- (c) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
- (d) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

(e) ~~A user may request a removal credit adjustment to a categorical standard in accordance with 40 CFR 403.7.~~

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#### Section 28-75. - Local Limits

An industrial waste survey is required prior to a User discharging wastewater containing in excess of the following average discharge limits.

BOD	300	mg/l	
CBOD	300	mg/l	
TSS	300	mg/l	
NH <sub>3</sub>	25	mg/l	
Arsenic	0.003	mg/l	
Cadmium	0.003	mg/l	
Chromium	0.05	mg/l	(total chromium)
Copper	0.061	mg/l	
Cyanide	0.015	mg/l	
Lead	0.049	mg/l	
Mercury	0.0003	mg/l	
Nickel	0.021	mg/l	
Silver	0.005	mg/l	
Zinc	0.175	mg/l	
Oil & Grease	250	mg/l	

Industrial Waste Survey information will be used to develop user-specific local limits when necessary to ensure that the municipal wastewater system's maximum allowable headworks loading are not exceeded for particular pollutants of concern. User-specific local limits for appropriate pollutants of concern shall be included in wastewater permits. The General Manager may impose mass based limits in addition to, or in place of concentration based limits.

#### Section 28-76. - State Requirements

State requirements and limitations on discharges shall apply in any case where they are more stringent than Federal requirements and limitations or those in this Article.

#### Section 28-77. - Right of Revision

The PWC reserves the right to establish limitations and requirements which are more stringent than those required by either State or Federal regulation if deemed necessary to comply with the objectives presented in section 28-61 of this Article or the general and specific prohibitions in section 28-73 of this Article, as is allowed by 40 CFR 403.4.

#### Section 28-78. - Dilution

No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the National categorical pretreatment standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant-specific limitation developed by the PWC or State.

#### **Section 28-79. - Pretreatment of Wastewater**

- (a) *Pretreatment Facilities.* Users shall provide wastewater treatment as necessary to comply with this Article and wastewater permits issued under ~~S~~ection 28-113 of this Article and shall achieve compliance with all National categorical pretreatment standards, local limits, and the prohibitions set out in ~~s~~Section 28-74 of this Article within the time limitations as specified by EPA, the State, or the General Manager, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the PWC for review, and shall be approved by the General Manager before construction of the facility. Approval will be evidenced by issuance of a written authorization to construct by the PWC. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the PWC under the provisions of this Article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the General Manager prior to the user's initiation of the changes. Any proposed modifications to existing pretreatment facilities shall require issuance of a new written authorization to construct.
- (b) *Additional Pretreatment Measures.*
  - (1) Whenever deemed necessary, the General Manager may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the municipal wastewater system and determine the user's compliance with the requirements of this Article.
  - (2) The General Manager may require any person discharging into the municipal wastewater system to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.
  - (3) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

#### **Section 28-80. - Accidental Discharge/Slug Control Plans**

- (a) The General Manager shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in Section 28-62 of this Article. All SIUs must be evaluated within one year of being designated an SIU. The General Manager may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the General Manager may develop such a plan for any user.
- (b) All SIUs are required to notify PWC immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see Sections 28-128 and 28-129 of this article.
- (c) An accidental discharge/slug control plan shall address, at a minimum, the following:
  - (1) Description of discharge practices, including non-routine batch discharges;
  - (2) Description of stored chemicals;
  - (3) Procedures for immediately notifying PWC of any accidental or slug discharge, as required by Section 28-129 of this Article; and
  - (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

#### **Section 28-81. - Hauled Wastewater**

- (a) Septic tank waste disposal shall be permitted and regulated through the PWC Septage Disposal Policy. Septage may be introduced into the municipal wastewater system only at locations designated by the General Manager, and at such times as are established by the General Manager. Such waste shall not violate Division 2 of this Article or any other requirements established by the PWC. The General Manager may require septic tank waste haulers to obtain wastewater discharge permits.
- (b) The General Manager may require haulers of industrial waste to obtain wastewater discharge permits. The General Manager may require generators of hauled industrial waste to obtain wastewater discharge permits. The General Manager also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this Article.
- (c) Industrial waste haulers may discharge loads only at locations designated by the General Manager. No load may be discharged without prior consent of the General Manager. The General Manager may collect samples of each hauled load to ensure compliance with applicable standards. The General Manager may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- (d) Industrial waste haulers may be required to provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

#### **Section 28-82. - Use of Public Sewers Required**

- (a) It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the city or in any area under the jurisdiction of the city any human or animal excrement, garbage, or objectionable waste.
- (b) It shall be unlawful to discharge to any natural outlet within the city or in any area under the jurisdiction of the city any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Article and in accordance with regulations of the NC Division of Water Quality, Department of Environment and Natural Resources. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater within the city.
- (c) The owners of all houses, buildings or properties used for human occupancy, employment, recreation, or other purposes situated within the city and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary sewer of the city, are hereby required at the owners' expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper sewer in accordance with the provisions of this article, within 30 days after the date of official notice to do so, provided that the public sewer is within 300 feet of the property line.

#### **Section 28-83. - Private wastewater disposal.**

- (a) Where the residence or building is more than 300 feet from any public sewer line, or connection to the sewer line is impossible, the owner of the premises shall be required to install a sanitary septic sewage disposal system according to the specifications of the Cumberland County Board of Health and construction of the system shall be allowed only upon receipt of a permit from the Cumberland County Health Department.
- (b) The owners shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times and at no expense to the PWC and/or City of Fayetteville.
- (c) At such time as a public sewer becomes available to a property served by a private wastewater disposal system, a direct connection shall be made to the public sewer within 60 days. Under unusual and/or special circumstances, the PWC may waive this provision.

**Section 28-84. - Building sewers and connections.**

- (a) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining written approval from the PWC. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owners. The owners shall indemnify the local government from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer; provided, however, that such indemnification shall not extend to loss or damage due solely to willful misconduct or negligence on the part of the local government.
- (b) Excluding industrial plant sites or other sites that have written approval from the PWC for single discharge points, a separate and independent building sewer shall be provided for every building; except, where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, or driveway, the front building sewer line may be extended to the rear building and the whole considered as one building sewer. But the local government does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.
- (c) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the PWC, to meet all requirements of this Article. Existing building sewers may be kept in service if, in the opinion of the PWC, they are in acceptable structural condition and operate satisfactorily. All new building sewers including any necessary replacement of existing building sewers must comply with the state building code, volume II, plumbing. The connection of the building sewer into the public sanitary sewer shall be made at the street or easement right-of-way. No person shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of infiltration/inflow to a building sewer or building drain which in turn is connected directly or indirectly to the municipal wastewater system. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard.
- (d) It shall be the responsibility of the property owner to keep and maintain the building sewer connected to the public sewer in good repair. The owner shall be responsible for making necessary repairs, at his own expense, to the building sewer when notified in writing by the local government that repairs are necessary.
- (e) Failure of the owner to repair the building sewer within 60 days after receiving written notification shall be deemed a violation of this article, enforceable pursuant to Chapter 14, article III, of this Code. Except upon specific permission granted by the PWC, no substance, either solid or liquid, shall be discharged into the municipal sanitary sewer system at manholes, or in any way other than through an authorized connection.
- (f) Sand/grit interceptors shall be provided when in the opinion of the PWC and/or local plumbing inspectors they are necessary for the proper handling of liquid wastes containing sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity accessible for cleaning and inspection. Where installed, interceptors shall be maintained by the owner at his expense in continuously efficient operation at all times. In the maintaining of these interceptors, the owner shall be responsible for the removal and disposal by appropriate means of the captured material in accordance with local regulations.
- (g) Non-PWC owned sewer systems or sewer connections that discharge into the municipal sewer system shall be maintained in a manner that prevents the introduction of excessive inflow and/or infiltration. When PWC finds a private sewer system or sewer connection exhibits excessive inflow and/or infiltration the General Manager may direct the owner of said system or connection, at the owners expense, to provide corrective measures within a time frame acceptable to PWC. If the owner fails to implement corrective measures within the specified time frame PWC may initiate corrective measures and charge the owner for these expenses, install flow monitoring equipment and bill owner for additional flow, or take other enforcement action as outlined in Division 8 of this Article.

**Section 28-85. - Grease and oil removal.**

- (a) Grease traps shall be provided at the user's expense, when such user operates an establishment preparing, processing or serving food and/or food products; except that such interceptors shall not be required for

private living quarters or dwelling units. At a minimum, all food preparatory sinks, dishwashers, etc., shall be connected to the trap or interceptor. Any sink equipped with a waste grinder or any plumbing fixture not associated with food preparation should not be connected to the trap or interceptor.

- (b) All interceptors shall be of a type and capacity accessible for cleaning and inspection and shall meet the minimum design criterion in the PWC design specification manual. All such traps or interceptors shall be serviced and emptied of the waste content as required in order to maintain their minimum design capability to intercept oils and greases from the wastewater discharged to the public sewer, or to achieve compliance with the oil and grease limit of 250 mg/l as regulated in section 28-75. For grease traps, the service shall be completed and documented at an interval not to exceed 60 days unless approval is obtained in writing from PWC. PWC may require more frequent cleaning as deemed necessary. For under-the-sink interceptors, the service shall be completed and documented daily or at a frequency recommended by the manufacturer. If an under-the-sink interceptor is not serviced daily, it shall be the responsibility of the user to demonstrate compliance with the oil and grease limit.
- (c) Users who are required to pass water through a grease trap or similar interceptor will provide for a minimum hydraulic retention time of 24 minutes at actual peak flow between the influent and effluent baffles with 25 percent of the total volume of the grease trap or interceptor being allowed for any food-derived solids to settle or accumulate and floatable grease-derived materials to rise and accumulate..
- (d) Where installed, all traps or interceptors shall be maintained by the user at his expense in continuously efficient operation at all times. Users shall maintain a written record of grease trap or interceptor maintenance for three years. All such records shall be available for inspection by the PWC at all times. These records shall include:
  - (1) Food Service Establishment name and physical location
  - (2) Date and time of grease trap or interceptor maintenance
  - (3) Name of third party service provider
  - (4) Name and signature of third party service provider company agent performing service
  - (5) Number and size of each grease trap or interceptor serviced at site
  - (6) Approximate volume of waste removed from each grease trap or interceptor
  - (7) Destination of removed wastes
  - (8) Such other information as required by the PWC General Manager
- (e) During trap maintenance, all inorganic and organic solids shall be removed from the sludge pocket. In addition, all floating material shall be skimmed from the trap or basin tank to avoid accumulation of scum covering the surface of the liquid. There shall be no reintroduction of the water removed from the trap either to the trap itself or to the municipal wastewater system without prior written approval from the PWC. The user shall be responsible for the removal and disposal by appropriate means of the captured material in accordance with local regulations.
- ~~(f) The user shall maintain a written record on the site, of trap or interceptor maintenance, for three years.~~
- (gf) The PWC General Manager may, at his discretion, require permitting of third party service providers, i.e., any third party not in the employment of a food service establishment who perform trap maintenance to include removal of grease and/or solids on a grease trap or interceptor connected to the PWC sewer collection system, to obtain a Grease Trap Pumping Permit from the PWC. This permit will include requirements for providing such services to establishments discharging into PWC's sewer collection system. The permit may include but not be limited to submission of a permit application with documentation of a legal disposal option for any waste removed from grease traps and the number and size of any trucks used to remove grease from grease traps on PWC's sewer collection system. The permit may include but not be limited to requirements for submittal of documentation of any traps that are maintained

on the PWC sewer collection system as well as the date, time, approximate amount (per best professional judgement of third party service provider) of waste removed , and destination of removed wastes.

**Section 28-86. - Technical Advice.**

- (a) The PWC may consult with and furnish such technical assistance and advice as may be available to industrial users of the municipal wastewater system in order to assist them in devision procedures and constructing equipment to reduce or eliminate from industrial wastewater objectionable characteristics or properties that may not otherwise be discharged into the wastewater disposal system under this article.
- (b) Any technical assistance rendered by the PWC to industrial users will in no way releive the user from the responsibility of modifying its procedures or equipment as necessary to produce an effluent acceptable to PWC under the provisions of this article.

**Sections 28-87 through 28-97. - Reserved**

## **DIVISION 3 - FEES**

### **Section 28-98. – Purpose.**

It is the purpose of this chapter to provide for the recovery of costs from users of the municipal wastewater system of the PWC for the implementation of the program established herein. The applicable charges or fees shall be set forth in a schedule of sewer use charges and fees by the General Manager and approved by the PWC Board of Commissioners. A copy of these charges and fees will be made available from the General Manager. Such fees may include, but are not limited to items listed in Section 28-99 of this Article.

### **Section 28-99. - User Charges**

A user charge shall be levied on all users including, but not limited to, persons, firms, corporations or governmental entities that discharge, cause or permit the discharge of sewage into the municipal wastewater system.

- (1) The user charge shall reflect, at least, the cost of debt service, operation and maintenance (including replacement) of the municipal wastewater system.
- (2) Each user shall pay its proportionate cost based on volume of flow.
- (3) The General Manager of the PWC shall review annually the sewage contributions of users, the total costs of debt service, operation and maintenance of the municipal wastewater system and will make recommendations to the PWC Board of Commissioners for adjustments in the schedule of charges and fees as necessary.
- (4) Charges for flow to the municipal wastewater system not directly attributable to the users shall be distributed among all users of the municipal wastewater system based upon the volume of flow of the users.

### **Section 28-100. - Surcharges**

All industrial and commercial users of the municipal wastewater system are subject to high-strength waste surcharges on discharges that exceed pollutant levels as set forth in the PWC water and sanitary sewer rate schedule. The amount of the surcharges will be based upon the volume of flow and the character and concentration of the constituents of the wastewater:

- (1) The volume of flow used in determining the total discharge of wastewater for payment of user charges and surcharges shall be based on the following:
  - a. Metered water consumption as shown in the records of meter readings maintained by the PWC; or
  - b. If required by the PWC or at the individual dischargers option, other flow monitoring devices that measure the actual volume of wastewater discharged to the sewer. Such devices shall be accessible and safely located, and the measuring system shall be installed in accordance with plans approved by the PWC. The metering system shall be installed and maintained at the users expense according to arrangements that may be made with the PWC.
  - c. Where any user procures all or part of his water supply from sources other than the PWC, the user shall install and maintain at his own expense a flow measuring device of a type approved by the PWC.
- (2) The character and concentration of the constituents of the wastewater used in determining surcharges shall be determined by samples collected and analyzed by the user and the PWC. Samples shall be collected in such a manner as to be representative of the actual discharge and shall be analyzed using procedures set forth in 40 CFR Part 136.



- (3) The determination of the character and concentration of the constituents of the wastewater discharge by the General Manager or his duly appointed representatives shall be binding as a basis for charges.

**Section 28-101. - Pretreatment Program Administration Charges**

The schedule of charges and fees adopted by the PWC may include charges and fees for:

- (1) Reimbursement of costs of setting up and operating the Pretreatment Program;
- (2) Monitoring, inspections and surveillance procedures;
- (3) Reviewing slug control plans, including accidental and/or slug load discharge procedures and construction plans and specifications;
- (4) Permitting;
- (5) Recovery of capital related expenditures;
- (6) Other charges, including user charges based on billable flow and excessive pollutant discharges to the municipal wastewater system, necessary to recover the operation and maintenance costs of the municipal wastewater system.
- (7) Other fees as the PWC may deem necessary to carry out the requirements of the Pretreatment Program.

**Sections 28-102 through 28-111. - Reserved**

## DIVISION 4 - WASTEWATER DISCHARGE PERMIT APPLICATION AND ISSUANCE

### Section 28-112. - Wastewater Dischargers

It shall be unlawful for any person to connect or discharge to the municipal wastewater system without first obtaining the permission of the PWC. When requested by the General Manager, a user must submit information on the nature and characteristics of its wastewater within thirty (30) days of the request. The General Manager is authorized to prepare a form for this purpose and may periodically require users to update this information.

### Section 28-113. - Wastewater Permits

All significant industrial users shall obtain a significant industrial user permit prior to the commencement of discharge to the municipal wastewater system. Existing industrial users who are determined by the General Manager to be significant industrial users shall obtain a significant industrial user permit within 180 days of receiving notification of the General Manager's determination. Industrial users who do not fit the significant industrial user criteria may at the discretion of the General Manager be required to obtain a wastewater discharge permit for non-significant industrial users.

(a) *Significant Industrial User Determination:*

All persons proposing to discharge non-domestic wastewater, or proposing to change the volume or characteristics of an existing discharge of non-domestic wastewater shall request from the General Manager a significant industrial user determination. If the General Manager determines or suspects that the proposed discharge fits the significant industrial user criteria he will require that a significant industrial user permit application be filed.

(b) *Significant Industrial User Permit Application:*

Users required to obtain a significant industrial user permit shall complete and file with the General Manager, an application in the form prescribed by the General Manager, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a significant industrial user permit within 90 days after notification of the General Manager's determination in Section 28-113(a) above. ~~The application shall include at a minimum the information required by 15A NCAC 02H 0.0916(c)(1)(A-M). In support of the application, the user shall submit any other information deemed necessary by the General Manager to evaluate the permit application. This may include reporting requirements under 40 CFR 403.12(b) and Section 28-124 of this Article, in units and terms appropriate for evaluation, the following information:~~

- ~~(1) Name, address, and location, (if different from the address);~~
- ~~(2) Standard Industrial Classification (SIC) codes for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated;~~
- ~~(3) Analytical data on wastewater constituents and characteristics including but not limited to those mentioned in Division 2 of this Article, any of the priority pollutants (section 307(a) of the Act) which the applicant knows or suspects are present in the discharge as determined by a reliable analytical laboratory, and any other pollutant of concern to the municipal wastewater system; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the Act and contained in 40 CFR, Part 136, as amended and as required in Division 5, Sections 28-124 and 28-125;~~
- ~~(4) Time and duration of the indirect discharge;~~
- ~~(5) Average daily and 30 minute peak wastewater flow rates, including daily, monthly and seasonal variations if any;~~
- ~~(6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow and appurtenances by the size, location and elevation;~~

- ~~(7) Description of activities, facilities and plant processes on the premises including all materials which are or could be accidentally or intentionally discharged;~~
- ~~(8) Where known, the nature and concentration of any pollutants in the discharge that are limited by any PWC, State, or Federal Pretreatment Standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards;~~
- ~~(9) If additional pretreatment and/or O&M will be required to meet the pretreatment standards; the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
  - ~~a. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. No increment in the schedule shall exceed nine (9) months.~~
  - ~~b. No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the General Manager including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the General Manager.~~~~
- ~~(10) Each product produced by type, amount, process or processes and rate of production;~~
- ~~(11) Type and amount of raw materials processed (average and maximum per day);~~
- ~~(12) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;~~
- ~~(13) If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15A NCAC 2H.0908(a), as outlined in Division 5, Section 28-124 of this Article.~~
- ~~(14) Any other information as may be deemed by the General Manager to be necessary to evaluate the permit application.~~

(c) *Application Signatories and Certification:*

All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the Control Authority and/or Municipality as defined in Division 1, Section 28-62 and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(d) *Application Review and Evaluation:*

The General Manager will evaluate the data furnished by the user and may require additional information.

- (1) The General Manager is authorized to accept, review, and evaluate applications for the PWC.

- (2) Within ~~360~~ days of receipt the General Manager shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.

(c) *Tentative Determination and Draft Permit:*

- (1) The General Manager shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit.
- (2) If the staff's tentative determination in Paragraph (1) above is to issue the permit, the following additional determinations shall be made in writing:
- Proposed discharge limitations for those pollutants proposed to be limited;
  - A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
  - A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
- (3) The General Manager shall organize the determinations made pursuant to Paragraphs (1) and (2) above and the general permit conditions of the PWC into a significant industrial user permit.

(f) *Permit ~~Supporting Documentation~~Synopsis:*

The Control Authority shall prepare the following documents for all Significant Industrial User permits.

- (1) An allocation table (AT) listing permit information for all Significant Industrial Users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with Division approved maximum allowable loadings of the POTW, including flow, on forms or in a format approved by the Division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised.

- (2) The basis, or rationale, for the pretreatment limitations, including the following:

- Documentation of categorical determination, including documentation of any calculations used in applying categorical pretreatment standards; and
- Documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).

A fact sheet providing a brief synopsis of the application shall be prepared by the General Manager for submission to the applicant and the approval authority and shall be made available to the public upon request. The contents of such fact sheets shall include at least the following information:

- A sketch and detailed description of the industrial facilities and pretreatment facilities including the location of all points of discharge to the municipal wastewater system and all established compliance monitoring points.
- A quantitative description of the discharge described in the application which includes at least the following:
  - The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;
  - The actual average daily discharge in pounds per day of any limited pollutant and any pollutant identified in the application as known or suspected present; and,

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~~e. The basis for the pretreatment limitations including the documentation of any calculations in applying categorical pretreatment standards.~~

(g) *Final Action On Significant Industrial User Permit Applications:*

- (1) The General Manager shall take final action on all applications not later than 90 days following receipt of a complete application.
- (2) The General Manager is authorized to:
  - a. Issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this Article and N.C.G.S. 143-215.1;
  - b. Issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;
  - c. Modify any permit upon not less than 60 days notice and pursuant to Section 28-113(i) of this Article;
  - d. Revoke any permit pursuant to Section 28-160 of this Article;
  - e. Suspend a permit pursuant to Section 28-160 of this Article;
  - f. Deny a permit application when in the opinion of the General Manager such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of G.S. 143-215.1.

~~(h) Hearings: The local government may conduct hearings in accordance with its regular hearing procedure.~~

- ~~(1) Initial Adjudicatory Hearing. An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable, a permittee/user assessed a civil penalty under Section 28-161, or one issued an administrative order under Section 28-161 shall have the right to an adjudicatory hearing before a hearing officer designated by the General Manager upon making written demand, identifying the specific issues to be contested, to the General Manager within 30 days following receipt of the significant industrial user permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding. The hearing officer shall make a final decision on the contested permit, penalty, or order within Ninety (90) days of the receipt of the written demand for a hearing. The General Manager shall transmit a copy of the hearing officer's decision by registered or certified mail.~~
  - ~~a. New Permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.~~
  - ~~b. Renewed Permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.~~
- ~~(2) Final Appeal Hearing. Any decision of a hearing officer made as a result of an adjudicatory hearing held under section 28-113(h)(1) above may be appealed, to the PWC Board of Commissioners upon filing a written demand within ten (10) days of receipt of notice of the decision. Hearings held under this Subdivision shall be conducted in accordance with local hearing procedures. Failure to make written demand within the time specified herein shall bar further appeal. The PWC Board of Commissioners shall make a final decision on the appeal within ninety (90) days of the date the appeal was filed and shall transmit a written copy of its decision by registered or certified mail.~~

~~(3) Official record. When a final decision is issued under Section 28-113(h)(2) above, the PWC Board of Commissioners shall prepare an official record of the case that includes:~~

~~a. All notices, motions, and other like pleadings;~~

~~b. A copy of all documentary evidence introduced;~~

~~c. A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken.~~

~~d. A copy of the final decision of the PWC Board of Commissioners.~~

~~(4) Judicial Review. Any person against whom a final order or decision of the PWC Board of Commissioners is entered, pursuant to the hearing conducted under Section 28-113(h)(2) above, may seek judicial review of the order or decision by filing a written petition within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, with the Superior Court of Cumberland County along with a copy to the PWC. Within 30 days after receipt of the copy of the petition of judicial review, the PWC Board of Commissioners shall transmit to the reviewing court the original or a certified copy of the official record.~~

**(h) Permit Modification:**

- (1) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as listed below. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance
  - a. Changes in the ownership of the discharge when no other change in the permit is indicated,
  - b. A single modification of any compliance schedule not in excess of four months,
  - c. Modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.
- (2) Within 9 months of the promulgation of a National categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a National categorical pretreatment standard, has not previously submitted an application for a wastewater discharge permit as required by Section 28-113(b), the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable National categorical pretreatment standard.
- (3) A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. 143-215.1(b) for modifications.

**(i) Permit Conditions:**

- (1) The General Manager shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this Article and N.C.G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:
  - a. A statement of duration (in no case more than five years);
  - b. A statement of non-transferability;
  - c. Applicable effluent limits based on categorical standards or local limits or both;
  - d. Applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be

monitored, sampling location, sampling frequency, and sample type based on Federal, State and local law;

- e. Requirements for notifying the PWC in the event of an accidental discharge or slug load as defined in Section 28-62;
- f. Requirements to implement a plan or other controls for prevention of accidental discharges and/or slug loads as defined in Section 28-62, if determined by the General Manager to be necessary for the User and,
- g. Requirements for immediately notifying the PWC of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load as defined in Section 28-62. Also see Sections 28-128 and 28-129;
- h. A statement of applicable civil and/or criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.

(2) In addition, permits may contain, but are not limited to, the following:

- a. Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
- b. Limits on the instantaneous, daily and/or monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
- c. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
- d. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
- e. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
- f. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
- g. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
- h. Requirements for immediate reporting of any instance of noncompliance and for automatic re-sampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).
- i. Compliance schedules for meeting pretreatment standards and requirements.
- j. Requirements for submission of periodic self-monitoring or special notification reports.
- k. Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in Section 28-136 and affording the General Manager, or his representatives, access thereto.
- l. Requirements for prior notification and approval by the General Manager of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system.
- m. Requirements for the prior notification and approval by the General Manager of any change in the manufacturing and/or pretreatment process used by the permittee.

- n. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the terms of the permit.
- o. Other conditions as deemed appropriate by the General Manager to ensure compliance with this Article, and State and Federal laws, rules, and regulations.

| ~~(k)~~ *Permit Duration:*

Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.

| ~~(k)~~ *Permit Transfer:*

Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.

| ~~(m)~~ *Permit Re-issuance:*

A significant industrial user shall apply for permit re-issuance by submitting a complete permit application in accordance with Section 28-113 a minimum of 180 days prior to the expiration of the existing permit.

**Sections 28-114 through 28-123 – Reserved**



## **DIVISION 5 - REPORTING REQUIREMENTS**

### **Section 28-124. - Baseline Monitoring Reports**

- (a) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the municipal wastewater system shall submit to the General Manager a report which contains the information listed in paragraph (b), below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the General Manager a report which contains the information listed in paragraph (b), below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- (b) Users described above shall submit the information set forth below.
  - (1) Identifying Information. The name and address of the facility, including the name of the operator and owner.
  - (2) Environmental Permits. A list of any environmental control permits held by or for the facility.
  - (3) Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the municipal wastewater system from the regulated processes.
  - (4) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the municipal wastewater system from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).
  - (5) Measurement of Pollutants.
    - 1. The categorical pretreatment standards applicable to each regulated process.
    - 2. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the General Manager of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 28-124 of this Article.
    - 3. Sampling must be performed in accordance with procedures set out in Section 28-134 of this Article and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).
  - (6) Certification. A statement, reviewed by the user's current authorized representative as defined in Section 28-62 of this article and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
  - (7) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in section 28-125 of this Article.
  - (8) Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with Section 28-113(c) of this Article.

#### **Section 28-125. - Compliance Schedule Progress Reports**

The following conditions shall apply to the compliance schedule required by Section 28-124(b)(7) of this Article:

- (1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- (2) No increment referred to above shall exceed nine (9) months;
- (3) The user shall submit a progress report to the General Manager no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
- (4) In no event shall more than nine (9) months elapse between such progress reports to the General Manager.

#### **Section 28-126. - Reports on Compliance with Categorical Pretreatment Standard, Deadline**

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the municipal wastewater system, any user subject to such pretreatment standards and requirements shall submit to the General Manager a report containing the information described in Section 28-124(b)(4-6) of this Article. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 28-113(c) of this Article.

#### **Section 28-127. - Periodic Compliance Reports**

Municipalities may sample and analyze user discharges in lieu of requiring the users to conduct sampling and analysis.

- (1) All significant industrial users shall, at a frequency determined by the General Manager but in no case less than once every six months, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in Section 28-133 and 28-134 of this Article. All periodic compliance reports must be signed and certified in accordance with Section 28-113(c) of this Article.
- (2) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the General Manager, using the procedures prescribed in Sections 28-133 and 28-134 of this Article, the results of this monitoring shall be included in the report.

#### **Section 28-128. - Reports of Changed Conditions**

Each user must notify the General Manager of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 30 days before the change. The permittee shall not begin the changes until receiving written approval from the Control Authority and/or Municipality. Notice by the user shall be given to PWC in advance or at the earliest possible time when normal operations of the industry will be interrupted for 24 hours or longer, when wastewater will not be available for discharge or prior to implementation of a process change that will alter demands on the municipal wastewater system. Each user must notify the General Manager of any planned significant changes to the user's operations or

~~system which might alter the nature, quality, or volume of its wastewater at least ninety (90) days before the change.~~  
See Section 28-129 for other reporting requirements.

- (1) The General Manager may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 28-113 of this Article.
- (2) The General Manager may issue a wastewater discharge permit under Section 28-113 of this Article or modify an existing wastewater discharge permit under Section 28-113 of this Article in response to changed conditions or anticipated changed conditions.
- (3) For purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of 20 percent or greater, and the discharge of any previously unreported pollutants.

#### **Section 28-129. - Reports of Potential Problems**

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Section 28-62 of this Article, that may cause potential problems for the municipal wastewater system, the user shall immediately telephone and notify PWC of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- (b) Within five (5) days following such discharge, the user shall, unless waived by the General Manager, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the municipal wastewater system, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this Article.
- (c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph (a), above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
- (d) All SIUs are required to notify the General Manager immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Section 28-62.

#### **Section 28-130. - Reports from Unpermitted Users**

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the General Manager as the PWC General Manager may require. All users classified as Non-Significant Categorical Industrial Users under Section 28-62 shall provide appropriate reports to the General Manager as the General Manager may require. At a minimum, this shall include the Annual Certification of continuing to meet the Non-Significant Categorical User criteria as required under 40 CFR 403.12(q)

#### **Section 28-131. - Notice of Violation/Repeat Sampling and Reporting**

- (a) If sampling performed by a user indicates a violation, the user must notify the General Manager within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the General Manager within thirty (30) days after becoming aware of the violation. If allowed by the General Manager, the user is not required to resample:
  - (1) If the General Manager monitors at the user's facility at least once a month; or
  - (2) If the General Manager samples between the user's initial sampling and when the user receives the results of this sampling.

- (b) If the General Manager ~~has performed the sampling and analysis in lieu of the industrial user~~~~does not require the user to perform any self-monitoring~~ and the PWC sampling of the user indicates a violation, the General Manager shall repeat the sampling and obtain the results of the repeat analysis within thirty (30) days after becoming aware of the violations, unless one of the following occurs:

- (1) The General Manager monitors at the user's facility at least once a month; or
- (2) The General Manager samples the user between their initial sampling and when the PWC receives the results of this initial sampling; or
- (3) The General Manager requires the user to perform sampling and submit the results to the General Manager within the 30 day deadline of the PWC becoming aware of the violation.

#### **Section 28-132. - Notification of the Discharge of Hazardous Waste**

The PWC prohibits the discharge of any hazardous wastes without notification and approval of the General Manager.

- (1) Any user who commences the discharge of hazardous waste shall notify the PWC, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the municipal wastewater system of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the municipal wastewater system, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharge during the calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under Section 28-128 of this Article. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of Sections 28-124, 28-126, 28-127 of this Article.
- (2) Dischargers are exempt from the requirements of paragraph (a), above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specific in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.
- (3) In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the General Manager, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- (4) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (5) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Article, a permit issued there under, or any applicable Federal or State law.

#### **Section 28-133. - Analytical Requirements**

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed by a laboratory certified by the state to perform the wastewater analysis in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard or unless otherwise performed in accordance with procedures approved by EPA or PWC. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA.

#### **Section 28-134. - Grab and Composite Sample Collection**

- (a) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.
- (b) Grab Samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The General Manager shall determine the number of grabs necessary to be representative of the User's discharge. See 40 CFR 403.12(g)(5) for additional grab sample number requirements for BMR and 90 Day Compliance Reports. Additionally, the General Manager may allow collection of multiple grabs during a 24 hour period which are composited prior to analysis as allowed under 40 CFR 136.
- (c) Composite Samples: All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the General Manager. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

#### **Section 28-135. - Timing**

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

#### **Section 28-136. - Record Keeping**

Users subject to the reporting requirements of this Article shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Article and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the PWC, or where the user has been specifically notified of a longer retention period by the General Manager.

#### **Section 28-137. - Electronic Reporting**

The General Manager may develop procedures for receipt of electronic reports for any reporting requirements of this Article. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under Division 8 of this Article.

#### **Sections 28-138 through 28-146 - Reserved**

## **DIVISION 6 - COMPLIANCE MONITORING**

### **Section 28-147. - Monitoring Facilities**

The PWC requires the user to provide and operate at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the PWC may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the requirements of the PWC and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the PWC.

### **Section 28-148. - Inspection and Sampling**

The PWC will inspect the facilities of any user to ascertain whether the purpose of this Article is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the PWC, approval authority and EPA or their representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties. The PWC, approval authority and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the PWC, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the ~~PWC's General Manager or his designee~~, the approval authority's, or EPA's access to the user's premises shall be a violation of this Article. Unreasonable delays may constitute denial of access.

### **Section 28-149. - Search Warrants**

If the ~~PWC General Manager or his designee~~, approval authority, or EPA has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the PWC designed to verify compliance with this Article or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the ~~PWC General manager~~, approval authority, or EPA may seek issuance of a search warrant from the court having jurisdiction within the PWC service area.

### **Sections 28-150 through 28-158 - Reserved**

## **DIVISION 7 - CONFIDENTIAL INFORMATION**

### **Section 28-159. – User Information Obtained From Reports, etc.**

Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the General Manager that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted at the time of submission of the information or data.

When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this Article, the National Pollutant Discharge Elimination System (NPDES) Permit, Non-discharge permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the State or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

All records relating to compliance with Pretreatment Standards shall be made available to officials of the approval authority and EPA upon request.

## **DIVISION 8 - ENFORCEMENT**

### **Section 28-160. - Administrative Remedies**

The PWC may utilize all of the enforcement tools available through the PWC Enforcement Response Plan to address escalating enforcement actions dependent on the nature of the violation and to cooperativeness, or recalcitrance, of the violator. Enforcement actions may include, but are not limited to the following:

(1) *Notification Of Violation:*

Whenever the General Manager finds that any industrial user has violated or is violating this Article, wastewater permit, or any prohibition, limitation or requirements contained therein or any other pretreatment requirement the General Manager may serve upon such a person a written notice stating the nature of the violation. Within the time frame stated in the notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the PWC by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.

(2) *Consent Orders:*

The General Manager is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to Section 28-160(4), below.

(3) *Show Cause Hearing:*

The General Manager may order any industrial user who causes or is responsible for an unauthorized discharge, has violated this Article or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. In the event the General Manager determines that a show cause order should be issued, a notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.

The General Manager shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under Section 28-161 of this Article nor is any action or inaction taken by the General Manager under this section subject to an administrative appeal under Section 28-1374(h).

(4) *Administrative Orders:*

When the General Manager finds that an industrial user has violated or continues to violate this Article, permits or orders issued hereunder, or any other pretreatment requirement the General Manager may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:

- a. Immediately comply with all requirements;
- b. Comply in accordance with a compliance time schedule set forth in the order;
- c. Take appropriate remedial or preventive action in the event of a continuing or threatened violation;



- d. Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.

(5) *Emergency Suspensions:*

The General Manager may immediately suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the municipal wastewater system or causes the PWC to violate any condition of its NPDES or Non-discharge permit.

Any user notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the General Manager shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the municipal wastewater system or endangerment to any individuals. The General Manager shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The industrial user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the General Manager prior to the date of the above-described hearing.

(6) *Termination of Permit or Permission to Discharge:*

The General Manager may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:

- a. Failure to accurately report the wastewater constituents and characteristics of his discharge;
- b. Failure to report significant changes in operations, or wastewater constituents and characteristics;
- c. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or,
- d. Violation of conditions of the permit or permission to discharge, conditions of this Article, or any applicable State and Federal regulations.

Noncompliant ~~Industrial~~ ~~u~~Users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under Section 28-160 of this Article as to why the proposed action should not be taken.

**Section 28-161. - Civil Penalties**

- (a) Any user who is found to have failed to comply with any provision of this Article, or the orders, rules, regulations and permits issued hereunder, may be assessed a civil penalty of~~ined~~ up to twenty-five thousand dollars (\$25,000) per day per violation.
- (b) Penalties between \$10,000 and \$25,000 per day per violation may be assessed against a violator only if:
  - (1) For any class of violation, only if a civil penalty has been imposed against the violator with-in the five years preceding the violation, or
  - (2) In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this Article, or the orders, rules, regulations and permits issued hereunder, only if the General Manager determines that the violation was intentional and a civil penalty has been imposed against the violator within the five years preceding the violation.

- (c) In determining the amount of the civil penalty, the General Manager shall consider the following:
- (1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
  - (2) The duration and gravity of the violation;
  - (3) The effect on ground or surface water quantity or quality or on air quality;
  - (4) The cost of rectifying the damage;
  - (5) The amount of money saved by noncompliance;
  - (6) Whether the violation was committed willfully or intentionally;
  - (7) The prior record of the violator in complying or failing to comply with the pretreatment program;
  - (8) The costs of enforcement to the PWC.
- (d) Appeals of civil penalties assessed in accordance with this section shall be as provided in Section 28-174.13(h).

#### Section 28-162. - Other Available Remedies

Remedies, in addition to those previously mentioned in this Article, are available to the General Manager who may use any single one or combination against a noncompliant user. Additional available remedies include, but are not limited to:

(1) *Criminal Violations:*

Prosecution of noncompliant users who violate the provisions of N.C.G.S. 143-215.6B. [Note: Under North Carolina law, it is a crime to negligently violate any term, condition, or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(f)), to knowingly and willfully violate any term, condition, or requirement of a pretreatment permit, or knowingly and willfully fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(g)), to knowingly violate any term, condition, or requirement of a pretreatment permit issued by local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time that a person is placed in imminent danger of death or serious bodily injury, (G.S. 143-215.6B(h)), and to falsify information required under Article 21 of Chapter 143 of the General Statutes (G.S. 143-215.6B(i)).]

(2) *Injunctive Relief:*

Whenever a user is in violation of the provisions of this Article or an order or permit issued hereunder, the General Manager, through the City Attorney, may petition the Superior Court of Justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.

(3) *Water Supply Severance:*

Whenever an Industrial User is in violation of the provisions of this Article or an order or permit issued hereunder, water service to the industrial user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply.

(4) *Public Nuisances:*

Any violation of the prohibitions or effluent limitations of this Article or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the General Manager. Any person(s) creating a public nuisance shall be subject to the provisions of the appropriate Articles of the City of Fayetteville governing such nuisances,

including reimbursing the PWC for any costs incurred in removing, abating or remedying said nuisance.

**Section 28-163. - Remedies Nonexclusive**

The remedies provided for in this Article are not exclusive. The General Manager may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the PWC's enforcement response plan. However, the General Manager may take other action against any user when the circumstances warrant. Further, the General Manager is empowered to take more than one enforcement action against any noncompliant user.

**Sections 28-163 through 28-172. – Reserved**

## **DIVISION 9 - ANNUAL PUBLICATION OF SIGNIFICANT NONCOMPLIANCE**

### **Section 28-173. – Publication Of Noncompliance**

At least annually, the General Manager shall publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the municipal wastewater system, a list of those industrial users which were found to be in significant noncompliance, also referred to as reportable noncompliance, in 15A NCAC 2H .0903(b)(10), with applicable pretreatment standards and requirements, during the previous 12 months.

## Division 10 – Adjudicatory Hearings

### Section 28-174. - Hearings

(h) Hearings: The local government may conduct hearings in accordance with its regular hearing procedure.

- (1) Initial Adjudicatory Hearing. An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable, a permittee/user assessed a civil penalty under Section 28-161, or one issued an administrative order under Section 28-160 (4) shall have the right to an adjudicatory hearing before a hearing officer designated by the General Manager or other hearing officer appointed by the General Manager upon making written demand, identifying the specific issues to be contested, to the General Manager within 30 days following receipt of the significant industrial user permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding and further appeal is barred. For modified permits, only those parts of the permit being modified may be adjudicated. The hearing officer shall make a final decision on the contested permit, penalty, or order within Ninety (90) days of the receipt of the written demand for a hearing. The General Manager shall transmit a copy of the hearing officer's decision by registered or certified mail as described in paragraph (3) below. The terms and conditions of a permit under appeal shall be as follows:
  - a. New Permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
  - b. Renewed Permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
  - c. Terminated Permits. Upon appeal, including judicial review in the General Courts of Justice, of a terminated permit, no permit is in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
- (2) Final Appeal Hearing. Any decision of a hearing officer made as a result of an adjudicatory hearing held under section 28-113(h)(1) paragraph (1) above may be appealed, to the PWC Board of Commissioners upon filing a written demand within ten (10) days of receipt of notice of the decision. Hearings held under this Subdivision shall be conducted in accordance with local hearing procedures. Failure to make written demand within the time specified herein shall bar further appeal. The PWC Board of Commissioners shall make a final decision on the appeal within ninety (90) days from receipt of the demand filed under paragraph (1) above of the date the appeal was filed and shall transmit a written copy of its decision by registered or certified mail as described in paragraph (3) below.
- (3) Official record. When a final decision is issued under Section 28-113(h)(2) paragraph (2) above, the PWC Board of Commissioners shall prepare an official record of the case that includes:
  - a. All notices, motions, and other like pleadings;
  - b. A copy of all documentary evidence introduced;
  - c. A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken.
  - d. A copy of the final decision of the PWC Board of Commissioners.
- (4) Judicial Review. Any person against whom a final order or decision of the PWC Board of Commissioners is entered, pursuant to the hearing conducted under Section 28-113(h)(2) paragraph (2) above, may seek judicial review of the order or decision by filing a written request for review

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~~by the Superior Court of Cumberland County~~petition within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, ~~with the Superior Court of Cumberland County~~ along with a copy to the PWC. Within 30 days after receipt of the copy of ~~the written request for review by the Court~~petition of judicial review, the PWC Board of Commissioners shall transmit to the reviewing court the original or a certified copy of the official record.

**DIVISION 110 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS**

**Section 28-1745. - Upset**

- (a) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (b), below, are met.
- (b) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (1) An upset occurred and the user can identify the cause(s) of the upset;
  - (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - (3) The user has submitted the following information to the General Manager within twenty-four (24) hours of becoming aware of the upset. If this information is provided orally, a written submission must be provided within five (5) days:
    - a. A description of the indirect discharge and cause of noncompliance;
    - b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
    - c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (c) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- (d) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- (e) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

**Section 28-1756. - Prohibited Discharge Standards Defense**

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 28-73(a) of this Article or the specific prohibitions in Sections 28-73(b)(2), (3), and (5-7) of this Article if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- (1) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- (2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when PWC was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

**Section 28-1776. - Bypass**

- (a) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (b) and (c) of this section.
- (b) (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the General Manager, at least ten (10) days before the date of the bypass, if possible.

- (2) A user shall submit oral notice to the General Manager of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of this time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The General Manager may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- (c) (1) Bypass is prohibited, and the General Manager may take an enforcement action against a user for a bypass, unless
  - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - c. The user submitted notices as required under paragraph (b) of this section.
- (2) The General Manager may approve an anticipated bypass, after considering its adverse effects, if the General Manager determines that it will meet the three conditions listed in paragraph (c)(1) of this section.

| Sections 28-17~~8~~7 through 28-210 - Reserved



**| DIVISION ~~12~~4 - SEVERABILITY**

If any provision, paragraph, word, section or article of this Article is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

| **DIVISION ~~13~~2 - CONFLICT**

All other Articles and parts of other Articles inconsistent or conflicting with any part of this Article are hereby repealed to the extent of such inconsistency or conflict.

**DIVISION 1~~4~~3 - EFFECTIVE DATE**

This Article shall be in full force and effect from and after its passage, approval and publication, as provided by law.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF FAYETTEVILLE

\_\_\_\_\_  
ANTHONY G. CHAVONNE, Mayor

ATTEST:

\_\_\_\_\_  
CANDICE H. WHITE, City Clerk

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and City Council  
**FROM:** Pamela Megill, City Clerk  
**DATE:** November 28, 2011  
**RE:** **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**

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**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:**

September 6, 2011 Meeting Minutes  
Septembr 12, 2011 6 pm Meeting Minutes  
September 12, 2011 Regular Meeting Minutes  
Sept 21, 2011 Agenda Briefing Minutes

Sept 26, 2011 Discussion of Agenda Items  
Sept 26, 2011 Regular Meeting Minutes  
Sept 29, 2011 City-County Meeting  
Oct 3, 2011 WKS  
Oct 10, 2011 Discussion of Agenda Items  
Oct 10, 2011 Regular Meeting Minutes  
Oct 18, 2011 Legislative Update  
Aug 22, 2011 Special Meeting

# DRAFT

FAYETTEVILLE CITY COUNCIL  
WORK SESSION MINUTES  
LAFAYETTE ROOM  
SEPTEMBER 6, 2011  
5:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2) (arrived at 5:27 p.m.); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8) (departed at 8:30 p.m.); James W. Arp, Jr. (District 9)

Absent: Council Member William J. L. Crisp (District 6)

Others Present: Dale E. Iman, City Manager  
Doug Hewett, Assistant City Manager  
Kristoff Bauer, Assistant City Manager  
Karen M. McDonald, City Attorney  
Brian Leonard, Assistant City Attorney  
Brian Meyer, Assistant City Attorney  
Renner Eberlein, Assistant City Attorney  
Lisa Smith, Chief Financial Officer  
Tom Bergamine, Chief of Police  
Phil Cannady, Assistant Police Chief  
Lars Paul, Police Captain  
Benjamin Major, Fire Chief  
Victor Sharpe, Community Development Director  
Rusty Thompson, Interim Engineering and Infrastructure Director  
Kecia Parker, Real Estate Manager  
Michael Gibson, Parks, Recreation and Maintenance Director  
Scot Shuford, Development Services Director  
Bart Swanson, Housing and Code Enforcement Division Manager  
Randy Hume, Transit Director  
Jeff Thompson, Fayetteville Advisory Committee on Transit  
Jennifer Lowe, Communications Officer  
Nathan Walls, Public Information Specialist  
Lee Jernigan, NCDOT Division Traffic Engineer  
Mike Griffin, NCDOT  
Douglas Peters, President/CEO, Fayetteville-Cumberland County Chamber of Commerce  
Bo Gregory, Director of Economic Development, Fayetteville-Cumberland County Chamber of Commerce  
Members of the Press

## 1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order.

## 2.0 INVOCATION

The invocation was offered by Council Member Massey.

## 3.0 APPROVAL OF AGENDA

MOTION: Council Member Arp moved to approve the agenda.  
SECOND: Council Member Massey  
VOTE: UNANIMOUS (9-0)

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### 4.0 OTHER ITEMS OF BUSINESS

#### 4.1 Update on the Ramsey Street construction and the Ramsey Street Corridor Plan.

Mr. Rusty Thompson, Interim Engineering and Infrastructure Director, presented this item and provided background information. He introduced Mr. Lee Jernigan, NCDOT Division Traffic Engineer, and Mr. Mike Griffin, NCDOT.

Mr. Lee Jernigan, NCDOT Division Traffic Engineer, provided a brief history of the project and stated it originated from a request by the City. He stated concerns were raised with the left turns and accidents which were addressed by installing medians funded through the NCDOT High Hazard Elimination Program.

Mr. Mike Griffin, NCDOT, provided an update on the construction and stated the work began in January 2011. He stated the curbs and gutters were complete except for two which they were currently working on. He stated weather permitting the project would be completed in mid-December.

A question and answer period ensued regarding signalization improvements, the projects selected for the High Hazard Elimination Program based on funds being available, the Grove Street pedestrian plan, and the funding budgeted by the City and NCDOT.

Mr. Scott Shuford, Development Services Director, provided a history of the zoning and land use components of the corridor plan. He stated funding in the amount of \$100,000.00 was allocated for contractor assistance to support the Ramsey Street Corridor Plan implementation and the development of a new Bragg Boulevard Corridor Plan. He stated the funds were not sufficient to support both the implementation of the Ramsey Street Corridor Plan and the development of a plan for Bragg Boulevard in the current fiscal year. He stated additional funds would be needed or prioritization provided by City Council as to which project to pursue this year.

Council Member Bates inquired why it was anticipated it would cost so much to implement the plan. Mr. Shuford responded they would have to begin the outreach to the businesses and residents in the area and spend time developing standards. He stated they had completed the zoning changes the plan called for and were currently developing the standards.

Mayor Chavonne inquired if they had money in the budget for Bragg Boulevard. Mr. Iman responded funding was included in the budget for two plans at \$50,000.00 each, but staff was saying that \$50,000.00 per study was not enough at this time to implement the plans.

Mayor Chavonne recommended bringing back budget needs for the Ramsey Street Corridor Plan. Mr. Iman explained the needs for the plan were different than Murchison Road or Bragg Boulevard in that the results of the study involved doing overlays and zoning work. He stated right now the staff was consumed with the UDO and would not have the ability to work on the other items.

Council expressed desire for the completion of the Ramsey Street Corridor Plan. Mr. Shuford stated he would return with more concrete information no later than the October work session.

#### 4.2 Fayetteville-Cumberland County Chamber of Commerce (FCCCC) Contract Annual Project Update - Performance Metrics.

Mr. Douglas Peters, President/CEO, FCCCC, presented this item and briefly reviewed the performance metrics provided under the contract. He stated this year they had surpassed what the metrics were and at the same time there had been discussions of raising the bar and figuring out a way to come up with the right numbers as they realized

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that for the last two years they had reported results that were higher than the standard. He explained they were reporting on what the clients were telling them the value was, what the construction permit number value was, or when the project was completed what the appraised value was.

Mr. Bo Gregory, Director of Economic Development, FCCCC, stated the City negotiated a new contract with the Chamber which identified the following specific projects to be the focus of their efforts:

- Hope VI Business Park
- Murchison Road Corridor Redevelopment Plan
- Economic Development Metrics
- All America City Marketing
- PWC Sustainability Campus

Mr. Gregory stated the objectives of the economic development metrics were to engage economic development partners, including the City, in the exploration of performance metrics for future reporting purposes. He stated the major objective was to achieve concurrence from the City Council on a consistent and supportive set of metrics to be tracked over a significant period of years into the future.

Mayor Chavonne expressed concern that there was a disconnect between what the City was tracking and what the Chamber was saying, which was resulting in a credibility issue. He stated they needed to reconcile what was being reported from the Chamber. Mr. Peters explained they were reporting what the businesses were telling them the value of the project was. Mr. Dale Iman, City Manager, further explained the number the City was tied to was the actual assessed value.

A discussion period ensued regarding benchmarks, measurements for success, the Chamber continuing to report on what they were doing, and Council adding to the metrics.

Mr. Peters suggested they bring back to Council a strategic plan showing what was in the contract and adding to that.

At this time Mr. Iman introduced Mr. Dwayne Campbell, the newly hired Chief Information Officer.

#### 4.3 2011 Update on Community Wellness Plan.

Mr. Tom Bergamine, Chief of Police, presented this item and provided an overview of the following guiding principles of the Community Wellness Plan:

- Veterans Court
- Radio Show
- Business Watch Group
- Risk Based Analysis/Predictive Analysis
- Juvenile Repeat Offenders

Council Member Applewhite requested more information be provided as to what progress was being made with the juveniles. Chief Bergamine stated they would be providing monthly updates to the City Manager which would be forwarded to City Council.

A discussion period ensued regarding preventive programs that had been implemented to keep the children doing healthy things instead of getting into bad environments.

Chief Bergamine continued with an overview of the following guiding principles:

- Risked Based Assessment - Burglary Task Force
- Homelessness



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Mayor Pro Tem Haire inquired what was being done to involve the churches, businesses, and community to alleviate the problem of homelessness. Chief Bergamine responded there were groups working within the community but everyone was not working together. He stated meetings regarding the homeless were occurring once a month at various locations. He stated the efforts being made by the community should be more organized and moving forward as one.

A question and answer period ensued regarding what was being done for the homeless and the increase of calls caused by the homeless.

Chief Bergamine stated success would emerge only when they had developed a strong partnership with the community, nonprofits, other government entities, and the business community. He continued with an overview of the following guiding principle:

- Partnership Initiatives - Smart Start Partnership

A discussion period ensued regarding the homeless issue as to lack of shelters and houses.

Mr. Phil Cannady, Assistant Police Chief, spoke regarding the different community watches as to whether they were functioning or not. He stated they look at the level of fear of crime within a community, the type of activities going on within a community, and things of that nature. He stated when they go into a community they try to create an environment where people do not feel so much fear. He stated as far as numbers, every community was different.

A discussion period ensued regarding the Council being informed on how the process works with police devotion to different neighborhoods.

Mayor Chavonne inquired about the Police substation efforts. Mr. Lars Paul, Police Captain, responded the Council would receive a briefing from the architect in January.

Mr. Dale Iman, City Manager, stated they would have information available on the October work session agenda.

#### 4.4 Privilege License Update (Requested by Council Member Hurst).

Mr. Brian Leonard, Assistant City Attorney, presented this item and explained under state law there were businesses that were either exempt from the City's privilege license or for which state law limited the amount that the City could levy in a privilege license tax. He stated in the absence of a specific exemption or limitation, the City was free to levy a privilege license tax on any person engaging in any business, trade, or profession, or the doing of any act for which a privilege license would be required. He stated the privilege license ordinance applied to rental management companies as well as those engaged in day-to-day rental management activities and had exemptions for active duty military service members as well as organizations engaged in charitable, nonprofit, religious, or educational activities. He stated the City had contracted with MuniServices to assist in locating tax revenue. He explained the standard rate for businesses with less than \$500,000.00 in gross receipts was \$50.00 and subject to a late penalty of 5 percent per month on the amount owed up to a maximum of 25 percent, which was \$12.50. He stated the City's practice, although not required by law, was to collect for the current year as well as the three prior years of privilege license taxes for a total of four years. He stated the City identified 137 businesses engaged in rental management activity and 30 had gross receipts in excess of \$500,000.00 leaving the remaining 107 with gross receipts under \$500,000.00 which meant they would be subject to the flat fee. He stated through August 19, 2011, the City had collected approximately \$34,000.00 in privilege license tax revenue for rental management activities. He stated of that

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number, \$14,382.09 represented privilege license taxes and penalties collected for the discovery tax year which was the year in which MuniServices discovered the businesses. He stated the remaining \$20,087.34 represented prior year taxes and penalties for rental management activities. He stated if Council wanted to release the prior year taxes and all penalties for that particular activity, the potential budget impact would be between \$20,000.00 and \$34,000.00. He stated at the August work session it was inquired whether the City could release taxes and penalties for prior year privilege license taxes and penalties for the rental management activities and whether the City could create classifications for the rental management activities. He stated the City was free to either adopt state law provisions for release and refund of the tax obligations or to develop its own policies, procedures, and standards for refund and release of privilege license taxes. He stated the only provision in the ordinance for release and refund was the miscalculation in a tax or an error in interpretation of a privilege license ordinance. He stated the City had the following options on the release and refund:

- (1) To amend the ordinance to provide for refund and release for rental management activities;
- (2) To continue to require payment of the privilege license tax including the prior year's taxes and penalties; or
- (3) To not require a privilege license for rental management activities.

Mr. Leonard stated classifications and distinctions were allowed as long as there was a rational basis and the classification or distinction was related to such basis. He stated none of the cities contacted by staff had adopted a classification for their rental management activities through their privilege license ordinance. He stated the City had the following options on the classifications of rental properties:

- (1) To amend the privilege license ordinance to create a classification;
- (2) To provide a minimum threshold or number for any classification that the Council desired that would be subject to the privilege license tax or the rental management activities;
- (3) To continue to apply the privilege license to all rental management activities, regardless of a number or classification; or
- (4) To exempt residential rental property management activities from the privilege license.

Council Member Massey inquired if home-based businesses were subject to the privilege license. Mr. Leonard responded in the affirmative and explained there were no exemptions for home-based businesses in the ordinance.

Council Member Bates inquired if the contract would be affected if the fees were not charged. Ms. Lisa Smith, Chief Financial Officer, responded under the contract they would receive 40 percent of what was collected as a result of the discovery work. She stated if the ordinance was amended after the discovery and collection efforts were completed, they would be responsible for paying the 40 percent from what was collected.

A discussion period ensued regarding releasing the property owners from prior year tax obligations and all penalties and which classifications that would entail. Mr. Leonard stated it was staff's recommendation to have a uniform objective refund and release procedure that would be allowed for any category.

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Council Member Hurst suggested the release be for the rental property owners of one rental, and then charge the privilege license fee for all other rental property managements.

A discussion period ensued regarding those who were not aware of the taxes and whether to collect prior year privilege license fees, penalties, and interests with Council expressing an interest in not going back.

Ms. Smith stated the current practice was to go back three prior years, but with very limited staff to accomplish the task, they had to engage MuniServices for assistance. She stated Mr. Leonard's numbers were mainly focused on the rental businesses.

Mr. Leonard stated it was his understanding that the interest of Council was for staff to bring back a draft ordinance amendment that would provide for release and refund of prior year taxes and all penalties for businesses prior to the year in which they were discovered.

Mayor Chavonne requested a show of hands of those in agreement. Council Members Chavonne, Arp, Hurst, and Davy raised their hands in agreement.

A discussion period ensued regarding communicating and educating the public regarding the issue and moving forward.

Mayor Chavonne stated staff would be coming back with additional information.

Council Member Hurst stated in the classification of rental properties he would support amending the ordinance to include a minimum number of units that would be subject to the privilege license tax for real estate rental subject to two or more.

Discussion ensued regarding rental properties being rented by active duty military property owners.

Mayor Chavonne stated the privilege license for people who were renting their homes would be from two or more to require a privilege license.

Consensus of Council was to move forward with a proposed ordinance amendment.

#### 4.5 Options for ensuring no connectivity from the new development to the existing Cottonade neighborhood and Shawcroft Drive.

Mr. Rusty Thompson, Interim Engineering and Infrastructure Director, presented this item and provided background information. He stated staff was reviewing whether the last portion of Southwick Drive could be closed. He stated there was community concern in Cottonade regarding development of the properties at the location of the street closing. He stated moving forward with the closing would landlock the current landowner. He stated with closing the street there was also the potential that the future owner could buy the connection back and the City would have less control over it. He explained the process under the UDO on how a new street would connect to an existing street.

A question and answer period ensued regarding the process under the UDO. Mr. Thompson explained the connection would have to come before Council for approval. He stated staff's recommendation was to retain ownership of the property thereby keeping the control with the City and address any connection through the UDO in the future. He stated if the City denied access to the King's Grant development, there would be a landlock issue. He stated the only access available to the development was through City-maintained streets in the King's

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Grant Subdivision, which was bordered by the Fayetteville Outer Loop limiting any other access points.

A question and answer period ensued regarding the process through the Technical Review Committee.

#### 4.6 Amendments to Fayetteville Code of Ordinances relating to code enforcement.

Mr. Bart Swanson, Housing and Code Enforcement Division Manager, presented this item and provided background information. He stated staff was requesting text amendments of Section 1-9 pertaining to appeals of civil penalties and Section 22-31 pertaining to solid waste penalties for violations. He stated both sections contained language that the appeal of a citation payment would require action within ten days of receipt of the citation. He stated over the years the code requirement for service of citations and notices changed from certified mail to first-class mail and the language requiring appeal for payment within ten days of receipt of a citation was not changed. He stated by the use of first-class mail as a means of serving a civil penalty citation, there was no way to determine when a recipient actually received the citation as required by the code. He stated this was causing problems when recipients filed appeals or paid the citation penalties several months after the issuance date of a citation, claiming that they had just received the citation within the last ten days. He stated the proposed code amendments would require that appeals of citations and payments of citation penalties under Chapter 22 be made within ten working days of the issuance of the citation rather than upon receipt of the citation. He stated this would establish a definitive time period for appeal or payment of the citation. He stated the amendments would also add Chapters 7, 14, 30 to the appeal process for civil penalties under Section 1-9 of the City Code.

A question and answer period ensued regarding the appeal process.

A discussion period ensued regarding making the amendment to change the notice period from ten days of receipt to ten working days from issuance consistent throughout the City Code.

Consensus of Council was to bring the amendments back to Council for consideration.

#### 4.7 Council concurrence for FAST to develop and issue a Request for Proposals for interested vendors to sell, install, and maintain transit vehicle advertising services for purposes of generating additional revenue.

Mr. Randy Hume, Transit Director, presented this item. He provided background information on the Transit Development Plan, Fayetteville Advisory Committee on Transit (FACT), revenue opportunities to help support improvements and reduce demand on the General Fund, and the industry moving back to Transit advertising with buses being the primary item and possibly looking into the future regarding benches and shelters. He stated advertising through Transit had largely discontinued in 2008 due to the arrival of new buses and the focus being on a positive image. He stated advertising had been sold and managed by Transit staff and the annual revenues in FY 2006 had been \$42,980.00 and in FY 2008 had been \$20,328.00. He provided the following information on the industry, peer systems, and issues:

##### Industry

- Revenue

- o Average Small Operators - \$1,472.00 per bus totaling \$20,600.00 for all buses

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- o Averages All Operators
  - 4.4% of Fare Revenues (\$34,500.00)
  - 3.5¢ per Passenger (\$49,000.00)
- o Minimum Guarantees
- Issues
  - o Bus Aesthetics
  - o Advertising Content

### Peer Systems

- Durham - Phasing Out with New Buses  
FY 2009 - \$98,000.00/37 buses - \$2,649.00/bus
- Raleigh - Phasing Out with New Buses  
FY 2009 - \$40,000.00/16 buses - \$2,500.00/bus  
Limit to 25% of Fleet (62 buses)
- Greensboro - No Longer Soliciting Ads  
FY 2009 - \$11,000.00
- Columbus, GA - Guaranteed \$1,200.00/bus or 15% of Sales  
FY 2009 - \$19,200.00/16 buses - \$1,200/bus
- Clarksville, TN  
FY 2009 - \$15,000.00/15 buses - \$1,000.00/bus
- Augusta, GA  
FY 2009 - \$9,000.00/13 buses - \$692.00/bus

### Issues

- Aesthetics
  - o Contractor responsible for any damage to paint
  - o Timely replacement of ads
- Content - Will need to establish policy
  - o Typical
    - Right to refuse (offensive)
    - Prohibit alcohol, tobacco, political campaigns
    - Prohibit ads promoting violence or illegal activity
  - o Other Limitations
    - Ads advocating an issue
    - Critical of others
    - Religious content

Mr. Hume stated the recommendation was to issue a request for proposals for contractors to sell, place, and maintain on-board advertising. He stated they would look for commissions based on gross sales, a minimum guarantee per each type of vehicle, contractor responsibility, and general guidelines for advertising content. He stated staff would develop a policy.

Mayor Pro Tem Haire inquired if they had researched the use of digital signs. Mr. Hume responded they had not researched that and stated most of the signs had a limited capacity.

A discussion period ensued regarding not placing advertisements on the new buses, placing advertisements inside of buses, and the City having the final say as to the advertising placed on the buses.

Mayor Chavonne inquired if a third party had the responsibility, could they put up more stringent safeguards on the content. Ms. Karen



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McDonald, City Attorney, responded they would be identifying parameters or types of ads and looking at what the ad would look like and could make suggestions. She stated the City's issue would be the types and then the ad company would be working with the City within those parameters.

Mr. Hume stated they would provide the guidelines and if a company had something they thought might be controversial, they would come to the City and ask the City upfront before they spend the time putting something on the bus.

Ms. McDonald stated those were all issues that the staff could spend time working out if Council desired.

Mr. Doug Hewett, Assistant City Manager, suggested they develop an advertising policy.

The majority of Council requested moving forward with the request for proposals and taking the next step.

#### 4.8 Response to request to donate City lots on Mann Street.

Ms. Kecia Parker, Real Estate Manager, presented this item and provided background information. She stated the City received a request from St. Paul Full Gospel Baptist Church that the City donate three parcels of land for a Community Life Center on Mann Street. She briefly reviewed the map and supporting documentation. She stated Parcels 1 and 3 were undeveloped and currently not needed by the City, Parcel 2 was needed which was part of the current Community Garden project. She stated Parcel 1 was valued at \$15,750.00, Parcel 2 at \$1,400.00, and Parcel 3 at \$6,000.00. She stated the compensation for the parcels would be the value of the public services offered and would be addressed as restrictions in the deed that would mandate the property be used for a public purpose and revert back to the City in the event it ceased to be used as such.

A question and answer period ensued regarding the tax exempt status of the church and the cost of publication that would be incurred by the City.

A question and answer period ensued regarding the plans for the property. Ms. Parker explained if the City donated the property, the City could stipulate in the deed the property was for that purpose and if not used for that purpose, it would revert back to the City within a timeframe.

Council Member Davy requested there be a consistent message in what they do. Ms. McDonald responded staff shared that concern as well but explained the request had been pending since December and given the time that had already elapsed, they did not want to continue to hold it while they continued to work on a policy.

A discussion period ensued regarding tabling the matter.

Mayor Chavonne inquired when the policy would be ready. Ms. Parker responded she did not have a definitive answer.

Consensus of Council was to deny the request and direct staff to work on the policy as quickly as possible and evaluate whether they would want to give property for community uses.

#### 4.9 2011 All-America City Marketing Plan

Ms. Jennifer Lowe, Communications Officer, presented this item and provided background information on the All-America City Award. She briefly reviewed the purpose of the award and the importance of targeting internal and external audiences. She stated the foundation of the marketing message should be a strong economy, improved image, and community engagement and the campaign should embrace the citizens.

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She stated the goals were to increase citizen engagement, align perception of City with reality, and take control of telling the City's story. She briefly reviewed the advertising opportunities through print and outdoor advertising such as digital. She stated promotional items were selected for their relevancy to designated target markets, capacity for visibility at events and beyond, and financial prudence. She stated the radio could be used to thank the citizens. She stated many items on the plan were ongoing and the document would function as a work plan for corporate communications, would be a living document with changes and alterations necessary, and would require flexibility.

Mayor Chavonne inquired of Ms. Lowe if she could assist the Chamber of Commerce regarding businesses using the All-America City logo. Ms. Lowe responded in the affirmative.

Discussion ensued regarding placing an ad on Channel 11 during the Extreme Makeover Program in September, submitting a copy of the plan to the NCLM, and placing the ACC logo on the back of the City coin.

#### 4.10 Amendment to Ordinance Chapter 5, Alcoholic Beverages, and Chapter 18, Parks and Recreation.

Mr. Michael Gibson, Parks, Recreation and Maintenance Director, presented this item. He stated the amendment would grant the City Manager the authority to authorize the use of alcohol in City parks and facilities in the downtown core area through the standard event permit process.

Ms. Karen McDonald, City Manager, explained they were making the ordinance consistent and referring to only the parks and facilities in the downtown area and just for special events.

Council Member Applewhite inquired about the parks not in the downtown area. Ms. McDonald explained the parks and facilities in the core downtown area were set up to handle these types of events. She stated that was an option and it could be brought back at some point.

Consensus of Council was to move this amendment forward to the September 12, 2011, City Council meeting.

#### 4.11 Code enforcement and assistance program for tornado-damaged properties.

Mr. Scott Shuford, Scot Shuford, Development Services Director, presented this item and reviewed photos showing examples of housing, solid waste, and vegetative debris remaining in the area. He briefly reviewed the status of the courtesy enforcement through letters, the violation types, the information provided by property owners regarding status of cleanup, and the priority order of enforcement. He stated opportunities for assistance were available through Community Development Demolition Grants, U.S. Military (for military owners only), and Cumberland Disaster Recovery Coalition (CDRC). He stated the recommended approach was to facilitate information-sharing about opportunities for assistance; assist CDRC with tipping fee waivers from the County; and pursue enforcement in recommended order of priority, and taking individual circumstances into account (e.g., slow insurance settlements).

Discussion ensued regarding the cleanup of the properties.

Consensus of Council was to approve the recommendation presented.

## DRAFT

4.12 Council Member Request(s): (In order of receipt date)

(a) Mayor Chavonne - Community Cleanup & Plan to Go Forward

Mayor Chavonne presented this item and stated he would like to take aggressive steps to clean up the excessive cases of yard debris and trash piles on the streets of Fayetteville and review the factors that were contributing to the increased level of the visual blight issue and prepare recommendations for Council to consider to address the issue.

Consensus of Council was to clean up.

### 5.0 ADJOURNMENT

There being no further business, the meeting adjourned.

Respectfully submitted,

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JENNIFER K. PENFIELD  
Deputy City Clerk

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ANTHONY G. CHAVONNE  
Mayor

090611



# DRAFT

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

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2) (arrived at 6:10 p.m.); 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 Iman, City Manager  
Kristoff Bauer, Assistant City Manager  
Doug Hewett, Assistant City Manager  
Karen McDonald, City Attorney  
Renner Eberlein, Assistant City Attorney  
Members of the Press

Mayor Chavonne called the meeting to order at 6:05 p.m. and reviewed the agenda. He announced Bishop Larry Wright, President of the Fayetteville/Cumberland County Ministerial Council, would do the invocation.

Mayor Pro Tem Haire announced SFC Clayborn Lowe, 583rd Forward Support Company, 18th Fire Brigade, 82nd Airborne Division, would be making a presentation.

Mayor Chavonne explained additional language was added to the introduction of the public forum.

Council Member Bates advised he would be pulling Item 7.4 for discussion.

Mayor Chavonne advised the following items were the only two under the regular items agenda: (1) revision to ordinance regarding alcohol and (2) Chief of Police's wellness report.

Closed session for consultation with the attorney regarding attorney-client privileged matters.

MOTION: Council Member Mohn moved to go into closed session for consultation with the attorney regarding attorney-client privileged matters.  
SECOND: Council Member Massey  
VOTE: UNANIMOUS (10-0)

The regular session recessed at 6:12 p.m. The regular session reconvened at 6:50 p.m.

MOTION: Council Member Bates moved to go into open session.  
SECOND: Council Member Mohn  
VOTE: UNANIMOUS (10-0)

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

Respectfully submitted,

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KAREN M. MCDONALD  
City Attorney

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ANTHONY G. CHAVONNE  
Mayor

091211

# DRAFT

FAYETTEVILLE CITY COUNCIL  
REGULAR MEETING MINUTES  
CITY HALL COUNCIL CHAMBER  
SEPTEMBER 12, 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  
Kristof Bauer, Assistant City Manager  
Doug Hewett, Assistant City Manager  
Karen M. McDonald, City Attorney  
Tom Bergamine, Chief of Police  
Phil Cannady, Assistant Police Chief  
Charles Kimble, Assistant Police Chief  
Brad Chandler, Assistant Police Chief  
Charles Hunter, Police Captain  
Patricia Bradley, Police Attorney  
Lisa Smith, Chief Financial Officer  
John Kuhls, Human Resources Development Director  
Wayne Moser, Parks Division Manager  
Rusty Thompson, Interim Engineering and Infrastructure Director  
Ron McElrath, Human Relations Director  
Brad Whited, Airport Director  
Dwight Miller, PWC Chief Finance Officer  
Rebecca Rogers-Carter, Management Services Manager  
Jennifer Lowe, Communications Officer  
Nathan Walls, Public Information Specialist  
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 Bishop Larry Wright, President of the Fayetteville/Cumberland County Ministerial Council.

## 3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was recited by those in attendance.

## 4.0 APPROVAL OF AGENDA

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

## 5.0 ANNOUNCEMENTS AND RECOGNITIONS

Mr. Dale Iman, City Manager, introduced the newly hired City Clerk, Pamela Megill, and stated she was a certified Municipal Clerk. Mayor Chavonne thanked Mr. Iman for the introduction and welcomed Ms. Megill to the team.

Mayor Chavonne presented a proclamation to Mr. Ron McElrath, Human Relations Director, proclaiming a "Diversity Day in September 2011". Mr. McElrath thanked the Mayor and Council members, and stated

## DRAFT

that the City of Fayetteville was one of the most diverse cities in America and stated the Fayetteville-Cumberland Human Relations Commission was honored to receive the proclamation. Also in attendance were additional members from the Commission: Mr. Clayborn Lowe, Monica Haynes, Sandra Mitchell, Annie Pope, Robert McRae, and Bishop Larry Wright, President of the Ministerial Council.

Mayor Chavonne introduced SFC Clayborn Lowe, 583rd Forward Support Company, 18th Fire Brigade, 82nd Airborne Division. SFC Lowe, on behalf of the 583rd, thanked the City Council for their support during the deployment of 2009-2010. He presented a United States flag to Mrs. Joanne Chavonne for the care packages that were sent from "Fayetteville Cares". He presented a plaque to Mayor Pro Tem Haire and the representatives of the Kingdom Global Impact Ministries and thanked them for the Bibles and spiritual inspiration. He also presented a United States flag to Mayor Chavonne and the City Council.

### 6.0 PUBLIC FORUM

Ms. Charlotte Robinson, 814 Hope Mills Road, Fayetteville, NC 28304, stated she was the proud Team Mom of the "Fayetteville Stars" basketball team who were the National Champions from 2008 to 2011. She stated that all of the team players were exemplary honor students.

Mr. Andrew Early, no address was provided, stated he had provided an information packet that highlighted the T.J. Robinson Life Center. He stated the Fayetteville Stars were a part of the project. He announced a groundbreaking ceremony was scheduled for Thursday, September 15, 2011, at 12:00 noon in the Hope Mills area. He stated the focus of the program was to ensure that today's youth were allowed to develop into prominent and promising young men and women.

Ms. Joyce Malone, 516 Spaulding Street, Fayetteville, NC 28301, Director of the "His and Her's" performing arts theater, thanked everyone for supporting the arts. She stated the production, "Cindy in the Hood" that was recently held at Fayetteville State University was a complete success. She stated the theater had received a grant from the Arts Council in the amount of \$975.00 to pay for the rental space. Ms. Malone concluded by asking if there would be a police substation for the Broadell area.

Mr. Charlton Johnson, 334 Point Place, Apt. J, Fayetteville, NC 28301, expressed concern regarding the amount of trash that trucks were dropping onto the roads, and inquired if the Citizens on Patrol program could be a part of the solution to the problem.

Ms. Dana Murray, 2013 Forest Hills Drive, Fayetteville, NC 28303, expressed concern regarding speeding on her street. She stated there were children living on Forest Hills Drive that ride bicycles and skateboards. She stated the posted speed limit was 25 mph and a traffic study had shown there was a speeding problem. Ms. Murray requested the problem be resolved by installing speed bumps and stop signs.

### 7.0 CONSENT

**MOTION:** Council Member Bates moved to approve the consent agenda with the correction to Item 7.6, adopting the amended resolution referring to the proposed closing of Farmview Drive, and with the exception of Item 7.4.

**SECOND:** Council Member Crisp

**VOTE:** UNANIMOUS (10-0)

7.1 Federal Aviation Administration (FAA) Grant Amendment and Capital Project Ordinance Amendment #2012-13 for Airport Improvement Project (AIP) #37, Rehabilitation of Taxiway A Pavement and Lighting.

## DRAFT

- 7.2 2011 Airport Improvement Grant #38 and Capital Project Ordinance #2012-2 for the Design of Runway 4 area and Taxiway A, and Phase I reconstruction of airline terminal concrete apron.
- 7.3 Surplus 1989 Airport Rescue Fire Fighting (ARFF) truck to sell.
- 7.4 Pulled for discussion by Council Member Bates.
- 7.5 PWC - Phase V Annexation, Area 6 - Proposed assessment revision.
- 7.6 Adopt a resolution to set public hearing to consider closing a portion of Farmview Drive.

RESOLUTION CALLING A PUBLIC HEARING REGARDING THE PROPOSED CLOSING OF A PORTION OF FARMVIEW DRIVE AS A CITY STREET. RESOLUTION NO. R2011-042.

- 7.7 Approval of amendment to Memorandum of Understanding with Fayetteville State University for the demolition of the Washington Drive School.
- 7.4 Transfer of City-owned property located on Fisher Street adjacent Walker-Spivey School to Cumberland County School Board.

This item was pulled for discussion by Council Member Bates.

Mr. Dale Iman, City Manager, stated this was a request by City staff to transfer two surplus City-owned parcels to the Cumberland County Board of Education and provided background information. He stated it was adjacent to the child development center that was being developed through a \$5 million grant. He stated the funds would be transferred to the Board of Education and used as part of the child development center. He stated it was a cleanup of a remnant property that was in the area and would complement the Hope VI project but not be a commitment of the project.

Council Member Bates expressed concern that the City was donating land to the school system when the County was demanding a cash payment for an easement for the Cape Fear River Trail. Mr. Iman explained the City was negotiating to obtain an easement, not ownership, to construct a part of the River Trail Phase II near the County landfill. He stated in the past the County had granted property to the project for rights-of-way and easements, but this time the County was demanding a cash payment of \$38,000.00. He stated it was the County's opinion they could use the land where the easement was for the dirt on the property as daily cover for the landfill, and therefore valued it at approximately \$6.00 per cubic yard. Mr. Iman stated the issue would be on the September 20, 2011, County Commissioners meeting agenda, and inquired if the Council wanted to have the item pulled from that agenda and placed on the joint agenda.

Consensus of Council was to pull the item from the September 20, 2011, County meeting agenda and place on the joint meeting agenda.

RESOLUTION TO CONVEY REAL PROPERTY TO THE CUMBERLAND COUNTY BOARD OF EDUCATION. RESOLUTION NO. R2011-041.

- MOTION: Council Member Bates moved to approve the land transfer located on Fisher Street adjacent to Walker-Spivey School to Cumberland County School Board.
- SECOND: Council Member Davy
- VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Crisp)

## DRAFT

### 8.0 OTHER ITEMS OF BUSINESS

#### 8.1 Amendment to Ordinance - Chapter 5, Alcoholic Beverages, and Chapter 18, Parks and Recreation.

Mr. Wayne Moser, Parks Division Manager, presented this item. Mr. Moser stated it was the Parks and Recreation's recommendation that Council amend Chapter 5, alcoholic beverages, and Chapter 18, parks and recreation, pertaining to the consumption, serving, and selling of alcoholic beverages on City facilities. He explained there were five locations in the current ordinance that were allowed to obtain permits to hold events that were recommended through the Special Events Committee to the City Manager for approval and not required to come before Council. He stated other locations not in the ordinance would have to go through a time-consuming process of going to the Council for approval, then from the Special Events Committee to the City Manager for approval. He stated staff was recommending the terminology be changed in the ordinance to change the locations and facilities.

Ms. Karen McDonald, City Attorney, clarified that when the events would come before Council, all they were doing was granting permission for them to serve alcohol. She stated the request would then go to the Special Events Committee for review as to security and street blocking. She stated the Special Events Committee was dealing with the logistical issues related to the event. She stated the intent of the proposal was to speed up the process by allowing the City Manager to make the decision that according to the ordinance was currently made by Council.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 5, ALCOHOLIC BEVERAGES, AND CHAPTER 18, PARKS AND RECREATION, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. ORDINANCE NO. S2011-009.

MOTION: Council Member Mohn moved to approve the amendment to ordinance Chapter 5, alcohol and beverages, and Chapter 18, parks in recreation.  
SECOND: Council Member Massey  
VOTE: PASSED by a vote of 8 in favor to 2 in opposition (Council Members Haire and Bates)

#### 8.2 2011 Update on Community Wellness Plan

Mr. Tom Bergamine, Chief of Police, provided a power point presentation on the Community Wellness Plan. Mr. Bergamine stated there were several new initiatives for the plan wherein they would report to Mr. Iman and forward a report to the Mayor and City Council on a monthly basis. He provided an overview of the following:

- Veterans Court - Habilitate Justice Involved Veterans (JIV) by diverting them from traditional criminal justice and providing them with treatment and counseling needed to reintegrate them to the community. The program goals were to identify JIVs, assess their needs, manage their care, provide resolution of criminal cases, and reintegrate them into the community.
- Radio Show - Utilize for outreach to the members of the community who were not traditionally served by television or internet. A partnership with Klaus & Company show on 91.9 FM at the Fayetteville State University would choose topics which reflected current trends in crime and events in regards to what was going on in Fayetteville.
- Business Watch Groups - Successfully prevent and reduce crime and the perception of crime through a community-based problem-solving approach. A few years ago there were 64 community watch groups and there were currently over 160 sustainable

## DRAFT

community watch groups. A business watch group was being modeled after what was done with the community watch groups in the neighborhoods.

- Predictive Analysis or Risk-Based Analysis - A strategic placement of personnel, crime prevention, and special operations. Looking at past crime trends to include weather, time of the year, events that occurred in the City, anything that could contribute to crimes. Taking an overall look at crime in various areas of Fayetteville, not just one particular area, but the entire City. Looking at the risk, who was at risk, and how to prevent those risks from occurring.
- Juvenile Repeat Offenders - Identify serious or habitual juvenile offenders in Fayetteville through coordinated case management, improved public safety by holding these juveniles accountable, increasing supervision, and helping them become successful.
- Risk-Based Assessment, Burglary Task Force - A burglary task force was tried at various times throughout the Police Department throughout the years. Looking to reduce crime within specific target areas. This was a multifaceted approach to all crimes to develop criminal conspiracy cases for not only state prosecution but also federal.
- Homelessness - Accelerate the ten-year plan and reduce homelessness in Fayetteville. Homelessness in Fayetteville consisted of not having affordable housing.
- Partnerships Initiative - Currently lining up for Adopt a Cops with the elementary schools throughout Fayetteville. Last year there were 46 officers volunteering in 39 schools and were in the process of lining up the officers for that initiative again.

A question and answer period ensued regarding the presentation.

### 9.0 ADJOURNMENT

There being no further business, the meeting adjourned at 8:30 p.m.

Respectfully submitted,

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PAMELA J. MEGILL  
City Clerk

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ANTHONY G. CHAVONNE  
Mayor

091211



# DRAFT

FAYETTEVILLE CITY COUNCIL  
AGENDA BRIEFING MINUTES  
LAFAYETTE ROOM  
SEPTEMBER 21, 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); Bobby Hurst (District 5); William J. L. Crisp (District 6) Valencia A. Applewhite (District 7); James W. Arp, Jr. (District 9)

Absent: Council Members Darrell J. Haire (District 4); Theodore W. Mohn (District 8)

Others Present: Kristoff Bauer, Assistant City Manager  
Karen M. McDonald, City Attorney  
Scott Shuford, Development Services Director  
Craig Harmon, Planner II  
David Nash, Planner II  
Bart Swanson, Housing and Code Enforcement Division Manager  
Frank Lewis, Senior Code Enforcement Administrator  
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 September 26, 2011, agenda:

Uninhabitable Structures Demolition Recommendations: 806 Eugene Street, 516 Link Street, and 1639 Rudolph Street

Mr. Bart Swanson, Housing and Code Enforcement Division Manager, presented this item and briefly reviewed the history and condition of each structure. He stated the recommendation was adoption of the ordinances authorizing demolition of the structures.

Consideration of a Planned Neighborhood District (PND) detailed development plan application for property located on the southeast side of Bingham Drive across from Lakeridge Drive. Containing 56.22 acres more or less and being the property of Edgar L. Maness and wife and Robert C. Draughon and wife.

Mr. Craig Harmon, Planner II, presented this item and stated the City received a detailed development plan for a Planned Neighborhood District called Reserve at Bingham. He showed vicinity maps and provided overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He explained the PND development application process and stated after approval of the site plan by Council, the developer would have two years to submit a detailed site plan. He stated the developer had already submitted a site plan that had gone before the Planning Commission. He stated the Planning Commission and staff recommended approval of the detailed site plan.

Public hearing to consider a petition requesting annexation - submitted by Methodist University (Meadowcroft Drive - Riverdell Drive Property).

Mr. David Nash, Planner II, presented this item and provided background information. He stated the existing land use in the area was mostly vacant, but there were two lakes and several storage buildings. He stated there were no housing units or population and the property was exempt from taxes. He stated staff recommended adoption with an effective date of September 26, 2011.

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Public hearing to consider a petition requesting annexation - submitted by Methodist University (Longview Drive Extension Property).

Mr. David Nash, Planner II, presented this item and stated the second property for Methodist University was referred to the Longview Drive extension property. He stated the only thing that passed through the area that was anything close to being developed was the Longview Drive extension running through it, and it was just a trail at that point leading to one house. He stated there were no homes or population in the area and the petition was sufficient. He stated staff recommended adoption of the ordinance with an effective date of September 26, 2011.

Public hearing to consider a petition requesting annexation - submitted by various owners of property in the Baywood Point Subdivision.

Mr. David Nash, Planner II, presented this item and stated this was a satellite request grant for annexation. He stated the item was on the July 25, 2011, agenda but was pulled because it was determined at that time the petition was not sufficient. He stated the new petition was received September 12, 2011. He stated it was located in an area referred to as Vander which was unincorporated. He stated it was required by City policy for properties within the City of Fayetteville's Municipal Influence Area (MIA) area, and if PWC water and sewer were requested, the owner must submit an annexation petition. He stated staff recommendation was that the effective date be December 31, 2011, because there were some people living in the area and there was an election coming up. He explained the people would not be precleared to vote in the City elections in time for the primary and general election in November.

Public hearing to consider the City of Fayetteville Hazard Mitigation Plan (a part of the Cumberland County Multi-Jurisdictional Hazard Mitigation Plan Update).

Mr. David Nash, Planner II, presented this item and provided background information. He stated it was a five-year document and which needed to be updated. He stated the City had worked with all the other jurisdictions in the County on the original plan and had elected to work with all the other units of local government in updating it. He stated the work on the update began in May of 2010 and most of the research and work of the City's efforts were completed in September 2010. He stated it was then submitted to FEMA and the State and approved by the State on April 4, 2011. He stated the focus was keeping the natural hazards from becoming disasters. He stated hazard mitigation meant reducing some of the adverse consequences of the hazards. He stated the benefits of having an approved Hazard Mitigation Plan was making the area eligible for hazard funds should an event happen in the area. He stated the staff and Planning Commission recommended adoption of the City of Fayetteville Hazard Mitigation Plan as part of the overall Cumberland County plan.

A request that a sidewalk not be required to be constructed with the City's Municipal Influence Area (MIA) (southern side of Eastern Boulevard.

Mr. Craig Harmon, Planner II, presented this item and reviewed the process. He explained the request came up when the project was going through the subdivision process in the County within the MIA area. He showed vicinity maps and gave overviews of the current land uses, current zonings and surrounding land uses and zonings. He stated staff recommended that the City recommend to the County Commissioners denial of the sidewalk waiver but require only a 10-foot sidewalk easement, based on the fact that NCDOT indicated that a sidewalk would not be allowed within the right-of-way along the roadway under the current conditions but anticipated that future development along the service road would warrant retrofit to provide a sidewalk or multipurpose path.



## DRAFT

There being no further business, the meeting adjourned at  
4:55 p.m.

Respectfully submitted,

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KAREN M. MCDONALD  
City Attorney

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ANTHONY G. CHAVONNE  
Mayor

092111

# DRAFT

FAYETTEVILLE CITY COUNCIL  
DISCUSSION OF AGENDA ITEMS MEETING MINUTES  
EXECUTIVE CONFERENCE ROOM  
SEPTEMBER 26, 2011  
6:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2) (arrived at 6:15 p.m.); 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 Iman, City Manager  
Kristoff Bauer, Assistant City Manager  
Doug Hewett, Assistant City Manager  
Karen McDonald, City Attorney  
Members of the Press

Mayor Chavonne called the meeting to order at 6:05 p.m. and reviewed the agenda items.

Council Member Crisp advised he planned to pull Item 6.6 and shared his questions. Mr. Dale Iman, City Manager, and Mr. Doug Hewett, Assistant City Manager, shared background information on Solid Waste Requests for Proposal and the need for trucks. Council Member Applewhite inquired on the cost savings.

Mayor Chavonne advised the City Manager had information on the consent searches. Mr. Iman advised there were several concerns regarding the issue.

Council Members Mohn and Crisp advised to allow Chief and Manager to make a presentation at the work session.

Council Member Arp advised they needed to figure out the objective--what to do, what they hoped to achieve, and how do they measure it.

Council Member Massey stated there was a perception that stops were racially motivated. He stated forms would certainly be an effort to address the issue.

Council Member Davy inquired as to why the form was discontinued.

Mayor Chavonne inquired whether there was concern regarding doing a briefing at a work session. Consensus was to do it at a work session.

Council Member Arp advised with addition of cameras, it may not be an issue as it would be recorded.

Consensus was to add this to the work session for October to be held in the Council Chambers.

Mayor Chavonne reminded Council of the City/County Breakfast on Thursday, September 29, 2011.

## DRAFT

There being no further business, the meeting adjourned at 6:35 p.m.

Respectfully submitted,

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KAREN M. MCDONALD  
City Attorney

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ANTHONY G. CHAVONNE  
Mayor

091211

# DRAFT

FAYETTEVILLE CITY COUNCIL  
REGULAR MEETING MINUTES  
CITY HALL COUNCIL CHAMBER  
SEPTEMBER 26, 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  
Kristof Bauer, Assistant City Manager  
Doug Hewett, Assistant City Manager  
Karen M. McDonald, City Attorney  
Lisa Smith, Chief Financial Officer  
Rusty Thompson, Interim Engineering and Infrastructure Director  
Mark Bridgeman, Police Captain  
David Nash, Planner II  
Craig Harmon, Planner II  
Bart Swanson, Housing and Code Enforcement Manager  
Frank Lewis, Sr., Code Enforcement Administrator  
Jerry Dietzen, Environmental Services Director  
Dwight Miller, PWC Chief Finance Officer  
Jennifer Lowe, Communications Officer  
Rebecca Rogers-Carter, Management Services Manager  
Nathan Walls, Public Information Specialist  
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 Reverend Dr. James W. Randall, Jr., MacPherson Presbyterian Church.

## 3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was recited by those in attendance.

## 4.0 APPROVAL OF AGENDA

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

## 5.0 ANNOUNCEMENTS AND RECOGNITIONS

Council Member Arp introduced volunteers from the "Toys for Tots" program operated by the United States Marine Corp. Reserve. He stated the program would donate toys to children whose parents could not afford to buy them. He announced a fundraising event for the program would be held on October 8, 2011, beginning at 1:00 p.m. at the Methodist University Monarch Stadium.

## 6.0 CONSENT

MOTION: Council Member Crisp moved to approve the consent agenda with the exception of Item 6.6.  
SECOND: Council Member Bates

## DRAFT

VOTE: UNANIMOUS (10-0)

6.1 Approve Minutes:

- June 22, 2011 - Agenda Briefing
- June 27, 2011 - Regular Meeting
- July 20, 2011 - Agenda Briefing
- July 25, 2011 - Discussion of Agenda Items Meeting

6.2 Local Government Resolution (Governor's Highway Safety Program).

NORTH CAROLINA GOVERNOR'S HIGHWAY SAFETY PROGRAM LOCAL  
GOVERNMENTAL RESOLUTION. RESOLUTION NO. R2011-043.

6.3 Award contract for the purchase of 19 Dodge Charger police cars to Ilderton Dodge Chrysler Jeep, High Point, NC, in the amount of \$558,315.00.

Formal bids were received August 30, 2011, as follows:

16 Marked Dodge Charger Police Cars

Ilderton Dodge Chrysler Jeep (High Point, NC) ..... \$467,280.00  
US 1 Chrysler Dodge Jeep (Sanford, NC) ..... \$576,000.00

3 Marked Dodge Charger Police Cars with Kennels

Ilderton Dodge Chrysler Jeep (High Point, NC) ..... \$91,035.00

6.4 Award contract for the purchase of one 56,000 GVWR dump truck with sand spreader and plow to Rush International Truck Center, Charlotte, NC, the lowest responsible bidder, in the amount of \$118,484.27.

Formal bids were received August 31, 2011, as follows:

Rush International Truck Center (Charlotte, NC) ..... \$118,484.27  
Piedmont Truck Center (Greensboro, NC) ..... \$129,675.00  
Peterbilt Truck Center of Dunn (Dunn, NC) ..... \$133,336.00  
\*Tri-Point Truck Center (Raleigh, NC) ..... \$117,924.00

\*The bid received from Tri-Point Truck Center had not included the on-board scale system for the air ride suspension as required by the City's specifications.

6.5 Award contract for the purchase of one 70,000 GVWR dump truck with sand spreader and plow to Tri-Point Truck Center, Raleigh, NC, in the amount of \$146,140.00 pursuant to the additional buy clause allowed in the original bid.

On November 22, 2010, Council approved award of contract to Tri-Point Truck Center for the purchase of one 70,000 GVWR dump truck with sand spreader and plow and the bid documents allowed for the purchase of additional units for a period of up to three years from the original bid award and allowed for an adjustment in the price.

6.6 Pulled for discussion by Council Member Crisp.

6.7 Award contract for the purchase of two 39,000 GVWR dump trucks with plows to Tri-Point Truck Center, Raleigh, NC, low bidder, in the amount of \$196,074.00.

Formal bids were received August 31, 2011, as follows:

Tri-Point Truck Center (Raleigh, NC) ..... \$196,074.00  
Rush International Truck Center (Charlotte, NC) ..... \$199,036.18  
Peterbilt Truck Center of Dunn (Dunn, NC) ..... \$224,534.00  
Piedmont Truck Center (Greensboro, NC) ..... \$232,164.00

## DRAFT

### 6.8. PWC - Financial Matters: Capital Project Fund Budget Amendments

The Public Works Commission requested adoption of (1) Amendment #1, Annexation Phase V, Areas 6 and 7, Capital Project Fund for Fiscal Years 2010-2012, and (2) Amendment #1, Series 2009 Revenue Bond Capital Project Fund for Fiscal Years 2010-2012.

### 6.9 Adopt a resolution declaring jointly-owned real property surplus and authorizing a quitclaim of the City's interest in order to expedite Cumberland County's sale of properties on Howell Street.

RESOLUTION DECLARING PROPERTY EXCESS TO CITY'S NEEDS AND QUITCLAIMING CITY TITLE IN THE PROPERTY TO CUMBERLAND COUNTY (PINS 0438-33-5672, 0438-34-6463, 0438-34-6469, 0438-34-6574, 0438-34-6599, 0438-34-7634). RESOLUTION NO. R2011-044.

### 6.10 Budget Ordinance Amendment 2012-2 (General Fund).

The amendment appropriated \$200,000.00 of expected reimbursements from the Federal and State governments to provide funding for remaining expenditures for the restoration of the debris collection site used after the April 16, 2011, tornadoes.

### 6.11 Special Revenue Fund Project Ordinance 2012-5 (Gangs Across the Carolinas Training Conference 2011).

The ordinance appropriated \$62,069.00 for the 2011 Gangs Across the Carolinas Training Conference. The funding for the program was a \$46,552.00 grant and a \$15,157.00 local match.

### 6.12 Ordinance amending Chapter 1, General Provisions, and Chapter 22, Solid Waste, related to notice and appeal of code violations.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING ORDINANCE AMENDING CHAPTER 1, GENERAL PROVISIONS, AND CHAPTER 22, SOLID WASTE, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE. ORDINANCE NO. S2011-010.

### 6.13 Tax refunds greater than \$100.00.

<u>Name</u>	<u>Year</u>	<u>Basis</u>	<u>City Refund</u>
Ramsey North Medical Clinic PA	2009	Adjusted Value	\$447.64
Total			\$447.64

### 6.6 Award contract for the purchase of six automated side loading refuse trucks to Carolina Environmental Systems, Inc., Kernersville, NC, in the amount of \$1,402,626.00.

This item was pulled for discussion by Council Member Crisp.

Mr. Dale Iman, City Manager, stated this was a contract award for the purchase of six automated side loading refuse trucks for use in the Environmental Services Department. He stated the item was budgeted during the year and was a cost-efficiency item as well as a long-term savings for the City.

Council Member Crisp inquired if they were being premature in ordering the trucks and spending in excess of \$1 million prior to the recommendations of the study on privatization. Mr. Iman responded that the City was not undergoing a study for privatization, but had a request for proposals; soliciting contractors to submit proposals. He stated the proposal would include the collection of one quarter of the residential properties in the City or 15,000 properties. He stated there would be 45,000 properties remaining to collect solid waste, and the trucks were needed.

MOTION: Council Member Bates moved to approve.

SECOND: Council Member Crisp

## DRAFT

VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Arp)

### 7.0 PUBLIC HEARINGS

#### 7.1 Public hearing to consider the City of Fayetteville Hazard Mitigation Plan (a part of the Cumberland County Multi-Jurisdictional Hazard Mitigation Plan Update).

Mr. David Nash, Planner II, presented this item and provided background information. He stated it was a five-year document which needed to be updated. He stated the City had worked with all other jurisdictions in the County on the original plan and elected to work with them again in updating the plan. He stated the work on the update began in May 2010 and most of the research and work on the City's efforts were completed in September 2010. He stated it was then submitted to FEMA and the State and approved by the State on April 4, 2011. He stated the occurrences or events were part of the natural world that they could not control and the focus of the plan was to keep the natural hazards from becoming disasters. He stated hazard mitigation meant reducing some of the adverse consequences of the hazards. He stated an example of that was restricting new development in vulnerable sections of the community and making existing development in hazard prone areas safer. He stated the benefits of having an approved Hazard Mitigation Plan was making the area eligible for hazard funds should an event happen in the area. He stated it also would make the staff and the elected officials identify actions that might help keep future hazards from becoming disasters. He stated the staff and Planning Commission recommended adoption of the City of Fayetteville Hazard Mitigation Plan as part of the overall Cumberland County plan.

Council Member Mohn inquired if the reference to the base flood elevation and the new standards being two feet above were off the new FEMA maps. Mr. Nash responded the base flood elevation data was embedded in the maps which were in the GIS.

Discussion ensued regarding the hiring of a grants administrator.

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 Bates moved to approve the City of Fayetteville Hazard Mitigation Plan (a part of the Cumberland County Multi-Jurisdictional Hazard Mitigation Plan Update).

SECOND: Council Member Crisp

VOTE: UNANIMOUS (10-0)

#### 7.2 Public hearing to consider a petition requesting annexation submitted by Methodist University (Meadowcroft Drive-Riverdell Drive Property).

Mr. David Nash, Planner II, presented this item and provided background information. He stated the existing land use in the area was mostly vacant, but there were two lakes and several storage buildings. He stated there were no housing units or population and the property was exempt from taxes. He stated staff recommended adoption with an effective date of September 26, 2011.

Mr. Dale Iman, City Manager, stated the two properties for Methodist College were both donut holes in the City. He stated he had a discussion with President Hancock and Mr. Hancock took the item to his board. He stated they asked for the annexation basically because they wanted to see the map filled in.

## DRAFT

Council Member Crisp inquired if the action would restrict the citizens from crossing the property using the river trail. Mr. Nash responded in the negative.

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 Bates moved to approve with an effective date of September 26, 2011.  
SECOND: Council Member Hurst  
VOTE: UNANIMOUS (10-0)

7.3 Public hearing to consider a petition requesting annexation submitted by Methodist University (Longview Drive Extension Property).

Mr. David Nash, Planner II, presented this item and stated the property was referred to as the Longview Drive extension property. He stated the only thing that passed through the area that was anything close to being developed was the Longview Drive extension and explained it was a trail at that point leading to one house. He stated there were no homes or population in the area and the petition was sufficient. He stated staff recommended adoption of the ordinance with an effective date of September 26, 2011.

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 Bates moved to approve with an effective date of September 26, 2011.  
SECOND: Mayor Pro Tem Haire  
VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Massey)

7.4 Public hearing to consider a petition requesting annexation submitted by various owners of properties in the Baywood Point Subdivision.

Mr. David Nash, Planner II, presented this item and stated this was a satellite request for annexation. He stated the item was on the July 25, 2011, agenda but was pulled because it was determined at the time the petition was not sufficient. He stated the new petition was received September 12, 2011, and utilities were now on hold pending the outcome. He stated it was located in an area referred to as Vander which was unincorporated. He stated it was required by City policy for properties within the City of Fayetteville's Municipal Influence Area (MIA) area, and if PWC water and sewer were requested, the owner must submit an annexation petition. He stated staff recommendation was that the effective date be December 31, 2011, because there were some people living in the area and there was an election coming up. He explained there was not time for the area to be precleared to vote in the City elections in time for the primary and general election in November.

A brief discussion period ensued regarding the ISO ratings.

Council Member Arp inquired if the property owners that were listed were in favor of the annexation. Mr. Nash responded all property owners had signed the petition.

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 Arp moved to approve with an effective date of December 31, 2011.  
SECOND: Council Member Massey



## DRAFT

VOTE: PASSED by a vote of 8 in favor to 2 in opposition (Council Members Mohn and Crisp)

### 8.0 OTHER ITEMS OF BUSINESS

#### 8.1 Uninhabitable Structures Demolition Recommendations

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

##### 516 Link Street

Mr. Swanson stated the property was located between Grove and Person Streets. He stated the property was not historical. He stated this was a vacant house in a residential zone. He stated the utilities were disconnected as of September 2009. He stated in the last two years there were 166 calls for 911 service and 18 code violations. He stated the low bid for demolition was \$1,300.00.

##### 806 Eugene Street

Mr. Swanson stated the property was located in Borden Heights off of Cumberland Road. He stated the building had no fiscal value and the utilities were disconnected as of February 2009. He stated in the last two years there were three calls for 911 service and three code violations. He stated there was \$494.00 in a lot cleaning, no outstanding taxes, and the low bid for demolition was \$4,300.00.

##### 1639 Rudolph Street

Mr. Swanson stated the structure suffered fire damage on April 22, 2011. He stated it was not an historical property. He stated it was a vacant house when it received the fire damage. He stated it was residentially zoned. He stated the utilities were disconnected in September of 2009. He stated in the last two years there were 11 calls for 911 services and 4 code violations. He stated there was \$1,050.00 in lot cleanings, \$1,528.50 in outstanding taxes, and the low bid for demolition was \$4,900.00.

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 (516 LINK STREET). ORDINANCE NO. NS2011-010.

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 (806 EUGENE STREET). ORDINANCE NO. NS2011-011.

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 (1639 RUDOLPH STREET). ORDINANCE NO. NS2011-012.

MOTION: Council Member Davy moved to adopt the demolition ordinances.

SECOND: Council Member Bates

VOTE: UNANIMOUS (10-0)

8.2 Consideration of a Planned Neighborhood District (PND) detailed development plan application for property located on the southeast side of Bingham Drive across from Lakeridge Drive. Containing 56.22 acres more or less and being the property of Edgar L. Maness and wife and Robert C. Draughon and wife.

## DRAFT

Mr. Craig Harmon, Planner II, presented this item and stated the City received a detailed development plan for a Planned Neighborhood District called Reserve at Bingham. He showed vicinity maps and provided overviews of the current land uses, current zonings, surrounding land uses and zonings, and 2010 Land Use Plan. He explained the PND development application process and stated after approval of the site plan by Council, the developer would have two years to submit a detailed site plan. He stated the developer had already submitted a site plan that had gone before the Planning Commission. He stated the Planning Commission and staff recommended approval of the detailed site plan.

Council Member Crisp inquired if there would be a light at the entrance way. Mr. Harmon responded they would have to put a light at that intersection.

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

8.3 A request that a sidewalk not be required to be constructed with the City's MIA (southern side of Eastern Boulevard).

Mr. Karen Hilton, Planner II, presented this item and reviewed the process. She explained the request came up when the project was going through the subdivision process in the County within the MIA area. She showed vicinity maps and gave overviews of the current land uses, current zonings and surrounding land uses and zonings. She stated staff recommended that the City recommend to the County Commissioners denial of the sidewalk waiver but require only a 10-foot sidewalk easement, based on the fact that NCDOT indicated that a sidewalk would not be allowed within the right-of-way along the roadway under the current conditions but anticipated that future development along the service road would warrant retrofit to provide a sidewalk or multipurpose path.

MOTION: Council Member Mohn moved to follow staff's recommendation, that they deny the request with the condition that they provide a 10-foot sidewalk easement for potential future development.  
SECOND: Council Member Crisp  
VOTE: UNANIMOUS (10-0)

8.4 NC League of Municipalities annual league business meeting voting delegates.

Mr. Dale Iman, City Manager, stated the North Carolina League of Municipalities annual meeting would be held October 24-26, 2011. He requested Council designate one voting delegate and one alternate voting delegate to represent the City of Fayetteville at the NC League of Municipalities annual business meeting.

MOTION: Mayor Pro Tem Haire moved to appoint Council Member Bates as the voting delegate and Council Member Applewhite as the alternate voting delegate.  
SECOND: Council Member Massey  
VOTE: UNANIMOUS (10-0)

### 9.0 ADMINISTRATIVE REPORTS

9.1 Monthly statement of taxes for August 2011.

2011 Taxes .....	\$2,639,236.68
2011 Vehicle .....	309,639.62
2011 Taxes Revit .....	4,082.53
2011 Vehicle Revit .....	203.42
2011 FVT .....	36,972.23
2011 Transit .....	36,972.24

## DRAFT

2011 Storm Water .....	104,297.65
2011 Fay Storm Water.....	208,595.18
2011 Fay Recycle Fee .....	118,000.84
2011 Annex.....	0.00
2010 Taxes .....	50,556.46
2010 Vehicle .....	96,893.51
2010 Taxes Revit .....	79.19
2010 Vehicle Revit .....	9.07
2010 FVT .....	14,321.15
2010 Transit .....	14,321.21
2010 Storm Water .....	1,215.88
2010 Fay Storm Water.....	2,431.86
2010 Fay Recycle Fee .....	2,866.94
2010 Annex.....	0.00
2009 Taxes .....	3,114.92
2009 Vehicle .....	3,935.78
2009 Taxes Revit .....	0.00
2009 Vehicle Revit .....	0.00
2009 FVT .....	823.53
2009 Transit .....	823.55
2009 Storm Water .....	28.14
2009 Fay Storm Water.....	56.27
2009 Fay Recycle Fee .....	89.09
2009 Annex.....	0.00
2008 Taxes .....	897.74
2008 Vehicle .....	598.52
2008 Taxes Revit .....	0.00
2008 Vehicle Revit .....	0.00
2008 FVT .....	200.21
2008 Transit .....	142.40
2008 Storm Water .....	82.89
2008 Fay Storm Water .....	48.61
2008 Fay Recycle .....	85.07
2008 Annex.....	0.00
2007 and Prior Taxes .....	1,305.51
2007 and Prior Vehicle .....	1,951.94
2007 and Prior Taxes Revit .....	0.00
2007 and Prior Vehicle Revit .....	0.00
2007 and Prior FVT .....	474.16
2007 and Prior Storm Water .....	150.77
2007 and Prior Fay Storm Water .....	48.00
2007 and Prior Annex.....	8.47
Interest .....	13,383.11
Revit Interest .....	5.42
Storm Water Interest .....	177.84
Fay Storm Water Interest .....	210.92
Annex Interest .....	1.09
Fay Recycle Interest .....	238.85
Fay Transit Interest .....	1,003.78
Total Tax and Interest .....	\$3,670,582.24

## DRAFT

### 10.0 ADJOURNMENT

There being no further business, the meeting adjourned at 8:15 p.m.

Respectfully submitted,

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PAMELA J. MEGILL  
City Clerk

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ANTHONY G. CHAVONNE  
Mayor

092611

## DRAFT

FAYETTEVILLE CITY COUNCIL\CUMBERLAND COUNTY BOARD OF COMMISSIONERS  
SPECIAL JOINT MEETING  
CAPE FEAR BOTANICAL GARDENS, GRAND HALL  
536 N. EASTERN BOULEVARD, FAYETTEVILLE, NC  
SEPTEMBER 29, 2011  
8:00 A.M.

Present: Mayor Anthony G. Chavonne (departed at 9:40 a.m.)

Council Members Keith Bates, Sr. (District 1) (departed at 9:30 a.m.); Kady-Ann Davy (District 2); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); James W. Arp (District 9)

Commissioners Kenneth S. Edge, Chairman; Jeanette Council; Billy King (departed at 9:30 a.m.); Charles Edge; and Ed Melvin

Absent: Council Members Robert A. Massey Jr. (District 3); Theodore W. Mohn (District 8)

Commissioner Marshall Faircloth, Vice Chairman

Others Present: Dale E. Iman, City Manager  
Doug Hewett, Assistant City Manager  
Kristoff Bauer, Assistant City Manager  
Karen M. McDonald, City Attorney  
Michael Gibson, Parks and Recreation Director  
Randy Hume, Transit Director  
Victor Sharpe, Community Development Director  
Tom Bergamine, Chief of Police  
Bradley Chandler, Assistant Police Chief  
Rebecca Rogers-Carter, Management Services Manager  
Jennifer Lowe, Public Information Officer  
Pamela Megill, City Clerk  
James Martin, County Manager  
Juanita Pilgrim, Deputy County Manager  
Amy H. Cannon, Assistant County Manager  
Rick Moorefield, County Attorney  
Phyllis Jones, Assistant County Attorney  
Sally Shutt, County Communications and Strategic Initiative Manager  
Dr. John Lauby, County Animal Services Director  
Kenny Currie, County Emergency Services Director  
Bob Stanger, County Engineer  
Thomas Lloyd, County Planning and Inspections Director  
Kristine Wagner, County Transportation Community Planner  
Torn Cooney, County Public Utilities Director  
Marie Colgan, County Clerk  
Candice H. White, Deputy County Clerk  
Members of the Press

Ms. Jennifer Sullivan, Cape Fear Botanical Gardens Executive Director, provided opening remarks and welcomed those in attendance.

### CALL TO ORDER

The meeting was called to order by Mayor Anthony Chavonne, Fayetteville City Council, and Chairman Kenneth Edge, Board of County Commissioners.

The invocation was offered by Mayor Pro Tem Haire followed by the unanimous approval of the agenda by both bodies.

## **DRAFT**

Mayor Chavonne advised that the Fayetteville City Council and Board of County Commissioners were gathered to discuss issues affecting the greater community.

### **1. DETENTION CENTER UPDATE**

Mr. James Martin, County Manager, presented this item and recognized Mr. Bob Stanger, County Engineer.

Mr. Bob Stanger, County Engineer, stated the expansion would include 322 beds consisting of four 64-bed dormitory style housing units and one 66 single-cell maximum security unit. He reported the County had recently selected a Construction Manager at Risk who would be responsible for constructing the facility, and the County was in the process of negotiating the terms of the agreement. He stated the County had also completed the development phase of the design and the County anticipated the construction plans and specifications would be completed by the end of the year and the next phase would be to subdivide the work into bid packages, prequalify the subcontractors, and develop a guaranteed maximum price. He stated the construction period would begin as early as February 2012 and the County anticipated the facility would be operational by April 2014.

Council Member Bates inquired if the contract specified the use of minority-owned and local businesses as subcontractors. Mr. Stanger responded when the Board approved the \$15 million budget for the project, they also approved a minority participation goal of 40 percent.

Council Member Crisp inquired if there was a provision in the contract should the contractor run over the construction timeline. Mr. Stanger responded a liquidation of damages clause was included in County contracts.

### **2. ANIMAL CONTROL ORDINANCE**

Mr. Rick Moorefield, County Attorney, presented this item and stated revisions to the Animal Control Ordinance were complete and awaiting review by the Policy Committee and the full Board. He advised the County had streamlined the document to eliminate duplicate provisions, shifted away from the existing privilege license tax concept, and moved to a pet tax proposal like the one which New Hanover County has had success. He stated the proposed pet tax would likely generate revenue for the Animal Control Department. He also stated the revised ordinance had a more streamlined enforcement mechanism that was written in such a way that the City of Fayetteville, or any other municipalities who decided to apply it directly to their jurisdictions, would not need to make any further revisions. He stated he had kept the City Attorney's office, other municipalities, Ms. Shelby Townsend, and FAPS apprised throughout the process, and he anticipated the Board of Commissioners would adopt the revised ordinance in October.

Mayor Pro Tem Haire inquired about tethering and barking dogs. Mr. Moorefield responded the City's noise ordinance was very specific about barking dogs and the County would not have the authority to enforce the City's ordinance, which created a lot of confusion for both City and County residents. He further stated in regard to nuisance animals that the County had made it clear that the sole method of enforcement would be the complainant obtaining a criminal summons and explained why civil penalties had not worked in these instances. He explained if a dog remained tethered for 14 days following a notice of violation, it would be seized by Animal Control and the owner would then be given 72 hours in which to become compliant. He stated should the owner remain noncompliant, the animal would become the property of Animal Control and would be disposed of in accordance with Animal Control policies.



## DRAFT

Mayor Pro Tem Haire inquired about assistance for pet owners who could not afford a shelter for their animals. Mr. Moorefield responded this was not addressed under the ordinance but his understanding was that Ms. Shelby Townsend had a program that may be able to provide assistance and had been in place for more than a year.

Mayor Chavonne requested clarification regarding the number of pets within the City and County. Mr. Moorefield clarified the zoning ordinance for the County provided stringent limitations; however, his understanding was that the City's zoning regulations were a little different and residents could have more animals. He stated the proposed method of addressing it under the new ordinance was to maintain the zoning enforcement within the County and to reference whatever was in place under the jurisdiction of the individual municipalities.

Mayor Chavonne inquired if Animal Control would receive the increased revenues generated by the proposed pet tax. Mr. Moorefield confirmed any revenue generated would go to the Animal Control program.

Ms. Karen McDonald, City Attorney, stated once the County adopted its ordinance, the City would proceed to adopt the County's ordinance in its entirety. She further stated this would eliminate past difficulties with enforcement.

Council Member Crisp inquired if there were plans to increase the number of Animal Control officers. Mr. Moorefield explained four positions were added in the current budget cycle; however, Animal Control was one of the Departments in which it was difficult to retain employees.

Council Member Applewhite inquired about provisions for aggressive dogs. Mr. Moorefield responded the ordinance had always contained aggressive or dangerous dog provisions and once an animal was deemed by the Animal Control Director to be dangerous, the owner would be noticed and a hearing held before the bad-dog appeal board. He also stated the bad-dog appeal board had the final say and should the dog be deemed dangerous, then there were regulations within the ordinance to which the owner must comply. He stated the revised ordinance would make the process easier to work through.

Council Member Applewhite inquired whether a dog that had bitten a child would be considered dangerous. Mr. Moorefield explained under state statute the dog would be considered a dangerous dog; however, the incident would have to be reported to Animal Control for the provisions to apply.

Council Member Arp requested an update related to the wild dogs. Mr. Moorefield stated the contract with the private vendor had been renewed for a second month and would expire at the end of the week. Dr. John Lauby, County Animal Services Director, further reported 105 dogs had been removed to date. Mr. Moorefield stated it had been an aggressive program that the County would not anticipate continuing when the current contract expired because the number of reports of wild dogs was down. He also stated the provision for the apprehension and capture of wild dogs had always been in the Animal Control ordinance and would remain within the ordinance.

### 3. COMMUNICATION CENTER IMPROVEMENTS

Mr. Bradley Chandler, Assistant Police Chief, presented this item. He stated in 2009 both call centers had looked at improving efficiencies and in 2010 both call centers went live with Computer Aided Dispatch (CAD) systems and also standardized their operating procedures with the purchase of a call-taking software. He further explained the City had not gone live in 2010 with emergency medical dispatch in the past and had to wait for approval from the state and local medical directors. He advised the Public Safety Answering Point

## DRAFT

(PSAP) consolidation was broken down into three phases: (1) both communication centers would need to utilize CAD to CAD, (2) both communication centers would need to operate the same CAD, and (3) both communication centers would merge into one building and become one organization. He reviewed the following actions needed by both the City and the County to advance the issue:

1. Complete the assessment of current operations (technology, staffing, and facility);
2. Evaluate the assessment (do we continue or not);
3. Move forward - develop a plan;
4. Develop project management
5. Identify needs for operations, technology, facility, and budget/funding; and
6. City and County leaders enter into a Memorandum of Understanding of intergovernmental agreement, a joint services agreement, and establish project status updates.

Mr. Chandler stated Phase 1 (CAD to CAD) was still operational and would continue to be utilized until December 2011, Phase 2 (using the same CAD) was projected to be operational in December 2011, and planning and identification of a funding source for the consolidation. He stated the projected timeline for Phase 3 was three to five years and possibly longer should the economy not rebound.

Mr. Kenny Currie, County Emergency Services Director, stated City and County Information Technology Departments had worked diligently on the design for Phase 2 and brought a lot of knowledge and skill to the table to eliminate any possible hiccups when the Phase 2 system went live. He stated the hope was to have Phase 2 completed by March 2012 and a steering committee organized with representatives from the City of Fayetteville, Spring Lake, Hope Mills, Cumberland County, and EMS from Cape Fear Valley Hospital System to make certain every agency had input and the right decisions were being made as the process moved forward.

Council Member Crisp inquired about estimated start-up costs and grant monies. Mr. Chandler responded the start-up cost would be between \$5 and \$7 million, to include costs associated with a new facility, and grants would be available through E-911 if certain criteria were met. He briefly reviewed some of the possible barriers for grants and the commitments that would be needed before moving forward with the grant applications.

Council Member Davy inquired whether existing facilities had been explored. Mr. Currie responded an existing facility would not meet new requirements and codes for a combined 911 center.

Council Member Bates inquired about County residents who would possibly be landlocked by the I-295 construction. Mr. Chandler explained the City would take the calls and they would automatically be transferred and dispatched.

Council Member Crisp inquired how a situation would be handled were an accident to occur in Hoke County with a call coming from a resident of Fayetteville/Cumberland County. Mr. Currie explained the ring-down system would be employed since Hoke County utilized a different call-taking software.

Council Member Applewhite inquired whether federal funding would be available through Fort Bragg. Mr. Chandler responded a lot of the Homeland Security grants were drying up and although there had been conversations with Fort Bragg, a lot of decisions were not made locally and money had not come from Fort Bragg.



## DRAFT

Mr. Dale Iman, City Manager, cautioned elected officials that the estimated budget was simply an estimate until an in-depth analysis and assessment was conducted.

Mr. Kenneth Edge, Chairman, explained the County had looked at using a floor of the former public health building as a possible location; however, due to the change in the codes, it turned out to be cost prohibitive. He stated the County would like to take advantage of grants for brick and mortar and would be looking at a new site and a new call center.

#### 4. PARKS AND RECREATION PROPOSED BOND REFERENDUM

Mr. Michael Gibson, Parks and Recreation Director, presented this item and provided background information leading up to the development of the 15 projects within the 2006 Master Plan. He stated a vote of the people would be required to authorize the issuance of general obligation bonds to refinance the proposed capital projects. He emphasized that neither the City nor the County general fund would be stressed by the project and when the package was put together, it was decided that citizens who use the facilities the most could help support the facilities through the implementation of user fees. He reviewed the following timeline and stated he believed all the appropriate vetting processes would be completed before the financing had gone before the voters:

Late September	Finish structural plan and project costs for each project
Early October	Finish financial plan and payment schedule for all projects
Early October	Working session with City and County Finance Directors
Mid October	Presentation of final projects and financial plan to City Manager and County Manager
Mid November	Presentation of final projects and financial plan to Fayetteville City Council and Board of County Commissioners
December	Request ordinance approval for ballot initiative to support general obligation bonds to fund Parks and Recreation capital improvement

Mr. Gibson responded to questions about the Martin Luther King (MLK) Park and the MLK Committee.

Mayor Chavonne inquired whether a market analysis had been conducted to determine whether the bond referendum was timed appropriately for the current economic climate. Mr. Gibson responded he hoped that would be vetted over the next 60 days before coming before City and County elected officials.

Commissioner Evans inquired whether the project was too aggressive and whether it could be scaled back. Mr. Gibson responded the project was aggressive due to the need within the community for quality of life services and part of the vetting process would be to scale back some of the projects.

Commissioner Evans inquired about a 3-cent increase in property taxes and whether it would place a burden on citizens. Mr. Gibson stated the 3-cent increase was the worst case scenario and the tax increase would likely be lower.

## DRAFT

Commissioner Evans inquired about efforts being made to ensure all citizens would have access to the facilities but no plan had been developed to get them to the facilities. Mr. Gibson explained some of the designs created in the rural areas.

Council Member Applewhite inquired if options could be presented that would look at service needs and access to those services. Mr. Gibson stated the multi-purpose senior center would always remain within the plan and options could be included if requested by the elected bodies.

Council Member Arp inquired about the timeframe for completion of the interlocal agreement and what was in place to capture revenue generated by current facilities. Mr. Gibson stated the timeframe was the last of November or first part of December. He described the Sports Authority that had been developed for revenue generating athletics.

Council Member Arp suggested a phased approach be used that would capitalize on outdoor facilities first so they could begin generating revenue that could be used for the indoor facilities.

Council Member Bates inquired about the financial model for handling the 3-cent property tax. Mr. Gibson stated no citizen would be double taxed and the model would be vetted by both City and County financial directors.

Council Member Bates inquired whether the Department was working with the Fayetteville-Cumberland County Chamber of Commerce. Mr. Gibson stated the Chamber was interested based on the increased quality of life the project would bring.

### 5. MURCHISON ROAD CORRIDOR - REVITALIZATION TIMEFRAME

Mr. Victor Sharpe, City Community Development Director, presented this item. He stated the study of the Murchison Road corridor had yielded nine catalyst sites and the Murchison Road Corridor Redevelopment Plan focused on three of the catalyst sites. He reviewed the location of the three catalyst sites. He stated the Fayetteville-Cumberland County Chamber of Commerce was managing the City's economic development activities and City staff had met with the Chamber to explore the process for acquiring land within the three catalyst sites for the development of projects identified in the Murchison Road Redevelopment Plan. He also stated the City was working to locate funds to support property acquisition efforts. He reviewed the efforts that had been undertaken with Fayetteville State University for the redevelopment of the Washington Drive School located in one of the catalyst sites.

Council Member Haire inquired about the difficulties involved with the search for a developer and funding for the project. Mr. Sharpe responded without a developer, the application for the Section 108 loan would be weak. He stated should the City and/or County allocate the \$2.25 million, then the project could move forward but in the meantime, the City was moving forward with acquisition efforts so the plan could progress in smaller stages and accomplish the same goal.

Council Member Haire stated he could not understand nor had he heard that a developer could not be located. Mr. Sharpe stated bringing a developer into the plan was based on having the land assembled so a developer could make use of it. He stated once the land acquisitions were complete, a developer would be located to work on the sites.

Commissioner Evans inquired if there was a priority for the redevelopment of the catalyst sites. Mr. Sharpe responded there was no priority but the current focus was on catalyst 2 because of

## DRAFT

activity that was occurring at the site and catalyst 1 would likely be the Rowan Street Bridge.

Commissioner Evans inquired if focus could be shifted to the Jasper Street area. Mr. Sharpe responded there could be some things that could be done as property was acquired in the area but the return of businesses would be part of the development phase.

Commissioner King inquired about local funding. Mr. Sharpe responded the first phase of the plan involved the City borrowing \$2.25 million through a Section 108 loan and the same thing could be accomplished through the use of local dollars.

Commissioner King inquired if the project could move forward if the leadership of the community committed local dollars. Mr. Sharpe confirmed it could move forward if that were to happen.

### 6. IMPROVEMENTS TO CITY AND COUNTY TRANSIT

Mr. Randy Hume, City Transit Director, presented this item and stated the City and County provide transportation services to area residents and visitors. He provided a brief summary of the City's transit operations and the Cumberland County Community Transportation Program (CCCTP). He stated citizens sometimes experience difficulties understanding which programs apply to them and which do not.

Council Member Davy inquired about services within the City for citizens 60 and over. Ms. Kristine Wagner, County Transportation Community Planner, stated the CCCTP operated programs to take citizens to work and school in urbanized areas when either the F.A.S.T. schedule would not work for them or they were more than one and one half miles from a F.A.S.T. route.

Council Member Davy inquired about the agreement to support the Phase III work program. Mr. Dale Iman, City Manager, responded the City and County were to fund the next phase.

### 7. SUGGESTIONS FOR IMPROVING WORKING RELATIONSHIP BETWEEN CITY AND COUNTY GOVERNMENT BODIES

Chairman Edge stated in the essence of time, Item 7 would be delayed for another discussion period.

### 8. ADJOURN

MOTION: Mayor Pro Tem Hair moved to adjourn.  
SECOND: Council Member Applewhite  
VOTE: UNANIMOUS (6-0)

MOTION: Commissioner Evans moved to adjourn.  
SECOND: Commissioner Council  
VOTE: UNANIMOUS (4-0)

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

Respectfully submitted,

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PAMELA J. MEGILL  
City Clerk

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ANTHONY G. CHAVONNE  
Mayor

092911

# DRAFT

FAYETTEVILLE CITY COUNCIL  
WORK SESSION MINUTES  
CITY HALL COUNCIL CHAMBER  
OCTOBER 3, 2011  
5:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2) (arrived at 5:23 p.m.); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4) (departed at 6:43 p.m.); 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) (arrived at 5:10 p.m.)

Others Present: Dale E. Iman, City Manager  
Doug Hewett, Assistant City Manager  
Kristoff Bauer, Assistant City Manager  
Karen M. McDonald, City Attorney  
Brian Leonard, Assistant City Attorney  
Tom Bergamine, Chief of Police  
Patricia Bradley, Police Attorney  
Lisa Smith, Chief Financial Officer  
Ron McElrath, Human Relations Director  
David Nash, Planner II  
Elliott Susseles, Senior Vice President, Segal  
Vincent Higgins, Face in the City, Sister City  
Committee Chair  
Vincent Frances, Co-Chair, Fayetteville-Cumberland  
Human Relations Commission Youth Council Ad Hoc  
Committee  
Jennifer Lowe, Public Information Officer  
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 APPROVAL OF AGENDA

MOTION: Mayor Chavonne moved to approve the agenda with the removal of Items 4.6, 4.7, and 4.10.

SECOND: Mayor Pro Tem Haire

VOTE: UNANIMOUS (9-0)

## 4.0 OTHER ITEMS OF BUSINESS

### 4.1 Traffic Stop Consent Search Policy

Mr. Tom Bergamine, Chief of Police, presented this item and reviewed a power point presentation. He stated that citizens were stopped as a result of observed traffic violations and not randomly because of race. He stated staff was requesting that Council allow a policy change by requiring articulation of a fact before consenting, but not mandating written consent. He stated it was legal for officers to ask for consent absent reasonable suspicion or probable cause and written consent forms were not required. He stated no other cities in the state of North Carolina had a policy mandating written consent. He stated staff had confirmed with the District Attorney's Office and the Superior Court that no cases had been dismissed for biased-based policing practices or evidence suppressed as a result of bias-based consent searches. He stated to their knowledge no defense attorney had filed a motion to suppress such evidence based on consent

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searches. He stated there had been no lawsuits filed against the Fayetteville Police Department for racial profiling. He presented a live mapping demonstration of crime in Fayetteville. A lengthy discussion followed the presentation.

Council Member Applewhite recommended the following steps be implemented:

1. Document an articulable reason for the consent search;
2. Track the location and time of the consent searches;
3. Move forward with purchase of additional in-car cameras; and
4. Reinstitute Study Circles.

Council Member Arp recommended an additional step of developing an implementation plan and schedule.

Consensus of Council was to accept the recommendations with regards to the modifications of the traffic stop consent search procedures along with the Council recommendations, and bring the item back for further discussion and possible action at the October 10, 2011, City Council meeting.

### 4.2 Compensation Study Update

Mr. Elliott Susseles, Senior Vice President of Segal, presented this item and reviewed a power point presentation. He stated that Segal would soon conduct a total compensation market study to determine the City of Fayetteville's market position for both pay and benefits. He stated part of the study involved sending a survey document to the City's peer employers. He stated for the study they had agreed to identify ten peer employers in addition to using published data for private-sector employers. He provided the following three options for conducting the study and briefly reviewed the pros and cons:

- Option 1: - Include the two local area jurisdictions and all of the other large cities in North Carolina
  - Survey all benchmark jobs among all peer employers
- Option 2: - Choose 6 peers for all jobs (managerial and non-managerial)
  - Choose 4 additional North Carolina peers for only managerial jobs
- Option 3: - Choose 6 peers for all jobs (managerial and non-managerial)
  - Choose 2 additional North Carolina cities for only managerial jobs
  - Choose 2 additional cities outside North Carolina for only managerial jobs

A discussion period ensued regarding the three options, the cost of living boundaries, and employment in the local area including Fort Bragg.

Consensus of Council was to select Option 3 and reflect the military market.

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### 4.3 Sister City Approval Process

Mayor Chavonne presented this item and stated the item had been discussed in a prior work session, and thanked Council Member Mohn for working very hard and putting the Sister Cities approval process into a flow chart.

Council Member Mohn stated additional information had been included in the agenda packet and provided an overview of the Sister Cities approval process.

Mr. Vincent Higgins, Faces in the Community, Sister City Committee Chair, provided a history of the International Sister City Committee Inc. He stated there would be a need for a Council liaison to serve on the Committee as potential issues could arise throughout the process. He stated the Committee currently had 13 members and membership was open to anybody.

Consensus of Council was to bring the item back to a future Council meeting for further discussion and possible action.

### 4.4 Update on Youth Council

Mr. Vincent Frances, Co-Chair, Fayetteville-Cumberland Human Relations Commission Youth Council Ad Hoc Committee, presented this item and stated in considering a Youth Council, they had discovered the Chamber of Commerce had a Youth Academy that would meet the interests of the Human Relations Youth Council Ad Hoc Committee. He stated in an effort to avoid duplication, it was being recommended to support the Chamber's Youth Academy and form a formal collaborative relationship or become a supporter informally.

Council Member Davy stated she had been involved with the Chamber's Youth Academy and was concerned with the GPA requirement, as some of the members of the Human Relations Commissions would not want to hinder anyone that was civically engaged and wanting to learn more about their community. Mr. Frances stated they were intending to only ask that the GPA be provided. He also stated that he was hoping to meet with the Chamber next month and have dialogue on the matter.

Council Member Applewhite inquired if it would be possible to set up a meeting with the Chamber, Mr. Gibson, some school board members, and other key people to discuss it further. Mr. Frances stated he would take the request back to the Commission members at the next meeting.

Council Member Massey requested that the "Great Oaks" organization be added to the list of attendees that Council Members Applewhite and Davy had requested.

Mayor Chavonne requested that Mr. Frances meet with the groups listed and with staff, and provide additional insight at a later date.

### 4.5 Privilege License Update

Mr. Brian Leonard, Assistant City Attorney, presented this item and provided background information. He stated the Council had expressed an interest in waiving the prior year taxes for rental management as well as to create classifications for the rental management activities. He stated at the September work session, the Council directed staff to bring back information regarding the financial impact of waiving the prior year taxes and penalties for the businesses for which the City was not requiring privilege license prior to the year in which the business was discovered by the City, as well as to bring back a draft ordinance amendment that would meet the Council's interest. He stated as far as waiving the prior year taxes and penalties, the staff had identified two categories of businesses that the City had not previously required a privilege license for



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prior to fiscal year 2011-2012, which were catalog sales and rental management.

Ms. Lisa Smith, Chief Financial Officer, stated they were able to pull the data for those two businesses. She stated as of August 19, 2011, they had received privilege license fees from 185 rental management companies. She stated the total amount collected for rental agency companies was \$37,287.43 of which \$22,291.28 related to penalties and prior year collections. She stated if it was Council's interest to refund, that was how much they would refund for those companies. She stated in addition to that, the number of companies receiving reimbursement for prior year penalties and collections was 71. She stated if they chose to exempt single residential property management, which would have to be a classification, they would have to identify what the consequence of that would be. She stated if they had collected \$37,000.00 and there was only about \$14,000.00 they were dealing with, there would be some small amount to be reimbursed for that as well, which would be \$22,291.00. She stated in addition to that, they had identified catalog sale businesses of two that they had collected for which was a total collection fee of \$100.00. She stated those were the two categories that they had identified that historically they had not collected privilege license on, but had begun to do that with the Muniservices contract.

A discussion period ensued regarding the issue of privilege licenses.

Mayor Chavonne inquired if the Council had an interest in exempting catalog sales from the privilege fee. The majority of Council was in favor.

Mayor Chavonne inquired if the Council had an interest in exempting one rental property. The consensus of Council was to not exempt one property, one rental unit would be subject to the privilege license.

Council Member Hurst requested that the \$100.00 total from the catalog sales be reimbursed to those that filed.

Mayor Chavonne stated consensus was as follows: catalog sales would be exempt, rental units were not exempt and they were going to refund any permit and privilege license fees paid for catalog sales.

- 4.6 Amending Section 2-65, insurance claims review, and Section 2-66, authority to settle claims, of the City Code related to liability claims administration.

This item was removed from the agenda.

- 4.7 Update on City's Sustainability Plan.

This item was removed from the agenda.

- 4.8 City Council Policy 150.2, Provision of Water and Sewer to Municipal Influence Area.

Ms. Karen McDonald, City Attorney, presented this item and stated this was an amendment regarding the provision of water and sewer to the Municipal Influence Area (MIA). She stated since 2009, the Council had required a petition for annexation in order to receive water and sewer service. She stated the policy did not specify when that petition needed to be submitted and whether Council would need to take action. She stated on several occasions and most recently there was a situation in which a petition was submitted, the PWC began the extension of water and sewer, and it was subsequently found the petition was invalid. She stated the proposed policy amendment was intended to address that situation and make it clear that any properties that were in the MIA, that met the statutory requirements, must submit a petition and Council must act on the petition before the

## **DRAFT**

service was provided or expanded. She stated there could be instances in which entities were already receiving water and sewer and desired to develop further and, therefore, would need an extension of the water and sewer services. She stated the policy amendment was intended to address that. She stated the second portion of the policy was intended to require that those subdivisions be developed consistent with the City's development regulations that were in place at the time of service. She stated the provision of public water and sewer allows subdivisions to develop at a higher standard. She stated the interest of City staff was to ensure that development was consistent with City standards. She stated there were some subdivisions getting permits from the County and in some cases, the development standards were not the same as the City's. She stated it was City staff's position that development should be consistent with City development standards. She stated the policy was before Council for discussion and direction to staff.

A discussion period ensued regarding the provision of water and sewer to the MIA, and the amount of time it would take from first receiving a petition to the services being provided.

Mayor Chavonne requested that a meeting with the stakeholders take place in the near future.

#### **4.9 Update on Probationary Rental Occupancy Permit (PROP) Program.**

Mr. Doug Hewett, Assistant City Manager, presented this item and provided background information on the adoption of the PROP ordinance and ratification of Senate Bill 683. He stated the senate bill invalidated nine of the ten ways in which a property could be entered into the PROP program. He stated given the substantial changes needed to make the City's ordinance compliant with North Carolina law, staff recommended and the City Council approved the repeal of the PROP ordinance on August 8, 2011. He stated since that time, staff had been working to bring back a program consistent with state law which was based upon the only workable model they were able to find in the state which was the Charlotte model. He stated PROP II had a lot of the same elements that PROP I had. He stated the basis of PROP II dealt with crime, as it had in PROP I, and also had something that was a new and was called "social disorder", which largely came from the Charlotte model. He stated it would be applicable to all residential rentals by categories. He stated for simplicity, they had taken what Charlotte had, which were nine categories, and reduced it down to four categories which they believe would be able to manage. He stated the work remaining was to finalize the PROP II eligible conditions and weighting criteria, the remedial action manual, the residential rental property review board, and program design in regards to staffing needs, software/hardware needs, and fee schedule recommendations. He stated the next steps were to continue the meetings with stakeholders to discuss programs and solicit feedback, with community watch leaders and interested citizens, and with property managers/owners.

A discussion period ensued regarding the PROP II program.

Mr. Hewett stated he hoped to present the ordinances and program design to the City Council at the workshop on November 7, 2011, and then present to the Council for formal consideration on November 14, 2011.

#### **4.10 City Council Agenda Item Request (Council Member Mohn - Signed Consent Search Forms for Traffic Stop Consent Searches)**

This item was removed from the agenda.



## DRAFT

### 5.0 ADJOURNMENT

There being no further business, the meeting adjourned at 9:25 p.m.

Respectfully submitted,

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PAMELA MEGILL  
City Clerk

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ANTHONY G. CHAVONNE  
Mayor

100311

# DRAFT

FAYETTEVILLE CITY COUNCIL  
DISCUSSION OF AGENDA ITEMS MEETING MINUTES  
ST. AVOLD ROOM  
OCTOBER 10, 2011  
6:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2) (arrived at 6:25 p.m.); 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 Iman, City Manager  
Kristoff Bauer, Assistant City Manager  
Doug Hewett, Assistant City Manager  
Karen McDonald, City Attorney  
Brian Meyer, Assistant City Attorney  
Scott Shuford, Development Services Director  
Karen Hilton, Planning and Zoning Division Manager  
Members of the Press

Mayor Chavonne called the meeting to order at 6:00 p.m.

MOTION: Council Member Bates moved to go into closed session for consultation with the attorney.  
SECOND: Council Member Arp  
VOTE: UNANIMOUS (9-0)

The regular session recessed at 6:05 p.m. The regular session reconvened at 6:35 p.m.

MOTION: Council Member Mohn moved to go into open session.  
SECOND: Council Member Applewhite  
VOTE: UNANIMOUS (10-0)

Mayor Chavonne reviewed the announcements and items on the agenda.

Council Member Hurst expressed concerns and intent to pull Item 7.2.

Mayor Pro Tem Haire also explained request to amend agenda to consider closing a portion of Farmview Drive through a public hearing.

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

Respectfully submitted,

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KAREN M. MCDONALD  
City Attorney

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ANTHONY G. CHAVONNE  
Mayor

101011

# DRAFT

FAYETTEVILLE CITY COUNCIL  
REGULAR MEETING MINUTES  
CITY HALL COUNCIL CHAMBER  
OCTOBER 10, 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  
Doug Hewett, Assistant City Manager  
Kristoff Bauer, Assistant City Manager  
Karen M. McDonald, City Attorney  
Patricia Bradley, Police Attorney  
Ron McElrath, Human Relations Director  
John Kuhls, Human Resource Development Director  
Tom Bergamine, Chief of Police  
Benjamin Major, Fire Chief  
Randy Thompson, Interim Engineering and Infrastructure Director  
Jerry Dietzen, Environmental Services Director  
Craig Harmon, Planner II  
Rebecca Rogers-Carter, Management Services Manager  
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 Reverend Franklin T. Reid, Franklin Reid Ministries.

## 3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was recited by those in attendance.

## 4.0 APPROVAL OF AGENDA

MOTION: Council Member Arp moved to approve the agenda with the addition of Item 8.5; a public hearing to consider closing a portion of Farmview Drive.  
SECOND: Council Member Massey  
VOTE: UNANIMOUS (10-0)

## 5.0 ANNOUNCEMENTS AND RECOGNITIONS

### 5.1 City of Fayetteville Fire Department Accreditation

Mayor Chavonne, on behalf of the City Council, congratulated the Fire Department for the achievement of attaining International Accreditation. He stated there were only 148 departments in the world that had achieved this accreditation and 10 of those were located in North Carolina. He stated this showed continual improvements and great service to the community. Mr. Benjamin Major, Fire Chief, thanked the Mayor and Council for the recognition and stated this had been a team effort. Mayor Pro Tem Haire presented Chief Major with the accreditation certificate.

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Mr. Dale Iman, City Manager, announced the appointment of Mr. Benjamin Major to the permanent position of Fire Chief and presented him with a new badge. Chief Major thanked the Council and Mr. Iman and stated this was not all about himself, it was about the organization, and stated he planned to make all of his former Fire Chiefs and the City proud of him.

Council Member Crisp recognized Mr. Thompson Avornyotes who was a special visitor from Ghana, West Africa, and here to honor an invitation from the Umoja Group in partnership with Fayetteville State University to present a "Textile of Unity" exhibition. Council Member Crisp presented Mr. Avornyotes with the City Coin. Mr. Avornyotes presented two weaving gifts to the Mayor and City and thanked all in attendance for the warm reception.

Mayor Pro Tem Haire recognized Ms. Sandra Mitchell, Cumberland County Coordinator for the Toys for Tots program. Ms. Mitchell announced the Flag Football Super Bowl was won by the Fayetteville Police Department and presented a trophy to Mr. Tom Bergamine, Chief of Police. Chief Bergamine thanked Ms. Mitchell for the trophy.

Council Member Davy announced the "Fall Into Work" job fair would be held on October 12, 2011, from 9:00 a.m. to 2:00 p.m. at the Crown Exposition Center. She stated this was a free event and open to the public.

### 6.0 PUBLIC FORUM

Mr. James Popp, 101 Goodyear Avenue, Fayetteville, NC 28303, reviewed a brief power point presentation on crime in neighborhoods. He requested that elected officials during the election not handicap law enforcement by seeming concerned just for votes.

Mr. Eronomy Mohammed, 2700 Murchison Road, Fayetteville, NC 28303, announced Fayetteville State University was hosting its homecoming week and requested the City be cleaned up. He also stated 100 jobs were being cut from the University.

Ms. Louise Hammond, 1600 Vienna Drive, Fayetteville, NC 28301, expressed concern for the rudeness and unprofessionalism she experienced at the Magistrate's Office and stated she was also speaking on behalf of all the North Carolina citizens who were not able to speak for themselves.

### 7.0 CONSENT

MOTION: Council Member Hurst moved to approve the consent agenda with the exception of Item 7.2.

SECOND: Council Member Bates

VOTE: UNANIMOUS (10-0)

7.1 Amending Section 2-65, insurance claims review, and Section 2-66, authority to settle claims, of the City Code related to liability claims administration.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 2, ADMINISTRATION, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. ORDINANCE NO. S2011-011.

7.2 Pulled for discussion by Council Member Hurst.

7.3 Budget Ordinance Amendment 2012-3 (Encumbrances and Designations).

The amendment appropriated \$2,289,231.00 across several annually budgeted funds for purchase orders and contracts outstanding at the close of fiscal year 2010-2011, and \$1,659,751.00 in the General Fund for specific items designated from the fiscal year 2010-2011 budget

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and for unspent donations. An additional \$40,000.00 was appropriated in the Transit Fund for marketing enhancements. Funding for these expenditures was included or available in the fiscal year 2010-2011 budget and was being re-appropriated from fund balance in the various funds.

- 7.4 Case No. P11-16F. Request for rezoning from SF-6 Single Family Residential to CC Community Commercial on a portion of property located at 3849 Murchison Road. Containing one acre more or less and being the property of Alicia Geary.
- 7.5 Case No. P11-46F. Request for rezoning from HI Heavy Industrial to CC Community Commercial for properties located around the intersection for Clinton Road and Cedar Creek Road to clean up properties improperly zoned through the Unified Development Ordinance remapping process.
- 7.6 Case No. P11-48F. Request for rezoning from SF-6 Single Family Residential to LC Limited Commercial on property located at the northwest corner of the intersection of All American Highway and Santa Fe Drive. Containing 1.4 acres more or less and being the property of Dohn and Nancy Broadwell.
- 7.7 Case No. P11-51F. Request for rezoning from MR-5 Mixed Residential to OI Office and Institutional on property located at 337 Dick Street. Containing 0.52 acres more or less and being the property of Woodbridge Investment Group LLC.
- 7.8 Case No. P11-53F. Request for rezoning from NC Neighborhood Commercial to SF-10 Single Family on property located at 4937 Cottonwood Drive. Containing 0.26 acres more or less and being the property of Tommie W. Hodges.
- 7.9 Finance - Capital Project Ordinance 2012-3 (FY 2012 Transit New Freedom Grant for Pedestrian Walkways).

The ordinance appropriated the budget for the FY 2012 Transit New Freedom Grant for the construction of ADA accessible pedestrian walkways.

- 7.10 Finance - Capital Project Ordinance Amendments 2012-14 and 2012-15 (North Carolina Veterans Park).

The amendments appropriated an additional \$170,275.00 in projected investment income for the North Carolina Veterans Park project.

- 7.11 Finance - Special Revenue Fund Project Ordinance Amendment 2012-3 (Community Gardens Project).

The amendment appropriated a total of \$261.00 in interest earned on donated funds.

- 7.12 Surplus 1994 HME Boardman pumper/fire engine to sell.
- 7.13 PWC - Bid recommendation for purchase of one 35,000 GVWR crew cab and chassis with enclosed service body and air compressor provision awarded to Piedmont Truck Center, Greensboro, NC, low bidder, in the amount of \$96,795.00.

Bids were received August 31, 2011, as follows:

Piedmont Truck Center (Greensboro, NC)	\$96,795.00
Tri-Point Truck Center (Raleigh, NC)	\$102,864.00
Rush International (Charlotte, NC)	\$103,764.27

- 7.14 PWC - Bid recommendation - Annual contract for purchase of miscellaneous water and sewer inventory items awarded to HD

## DRAFT

Supply Waterworks, Inc., Fayetteville, NC, low bidder, in the amount of \$544,283.97.

Bids were received August 11, 2011, as follows:

HD Supply Waterworks, Inc. (Fayetteville, NC) ..... \$544,283.97  
Water Works, Inc. (Fayetteville, NC) ..... \$718,731.94

### 7.2 Amending Section 15-33, exemptions from chapter provisions; catalogue sales.

This item was pulled for discussion by Council Member Hurst.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 15, LICENSES, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. ORDINANCE NO. S2011- 012.

MOTION: Council Member Hurst moved to waive and reimburse the fees, penalties, and taxes for the rental management category and to adopt the ordinance amendment pertaining to catalogue sales.

SECOND: Council Member Arp

VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Bates)

### 8.0 OTHER ITEMS OF BUSINESS

#### 8.1 Police - Consent Search Suggestions

Mr. Dale Iman, City Manager, presented this item and stated at the October 3, 2011, Council meeting, Mr. Tom Bergamine, Chief of Police, provided a presentation regarding the traffic stop consent search procedures that were currently in place. He stated at the conclusion of that presentation, the City Council indicated a majority concurrence with the recommendations of the Fayetteville Police Department and Chief Bergamine with regards to the modifications of the traffic stop consent search procedures. He stated the recommendation was in five parts as follows:

1. From this date forward police officers would document an articulable reason for conducting a consent search or asking for consent search.
2. The Police Department would start tracking the location and the time when consent searches took place and where.
3. The City would move forward at an aggressive pace of putting in-car cameras in all police cars. The department applied for two grants totaling \$150,000.00, which should enable them to equip the entire fleet with cameras.
4. Reinstitute study circles. Mr. McElrath initiated that process and identified the budget necessary to carry that out.
5. Develop an implementation plan and schedule for putting the above items in place and the timeline for doing so.

A discussion period ensued regarding the recommendations.

MOTION: Council Member Applewhite moved to approve with the inclusion of (1) documenting the articulable reason for the consent search, (2) tracking the location and time of the consent searches, (3) moving forward with the purchase of additional in-car cameras, (4) reinstituting the study circles, and (5) developing an implementation plan and schedule and also providing monthly updates at the Council work sessions.

SECOND: Council Member Hurst

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### SUBSTITUTE MOTION:

Council Member Massey moved to encompass the five elements listed by Council Member Applewhite with the addition of the re-application of the 1999 consensus search form which was to be signed by taxpaying citizens granting permission for the Fayetteville Police Officers to search residents, person, property, and all motor vehicles allowing officers to take whatever items or property they deem pertinent to the investigations.

SECOND Mayor Pro Tem Haire

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

### ORIGINAL MOTION VOTE:

UNANIMOUS (10-0)

### 8.2 Update of the City's Sustainability Plan

Mr. Jerry Dietzen, Environmental Services Director, gave an annual report on the Sustainability Master Plan for the City and provided a power point presentation.

MOTION: Council Member Arp moved to accept the annual report.

SECOND: Council Member Bates

VOTE: UNANIMOUS (10-0)

### 8.3 Presentation of Appointment Committee Recommendations for Boards and Commissions Appointments

Council Member Hurst, Appointment Committee Chair, stated the Appointment Committee met to decide on recommendations to four boards and commissions that were in need of additional members. He requested the City Council accept the following recommendations for the vacancies:

BOARDS/COMMISSIONS	RECOMMENDATIONS
Fayetteville-Cumberland Human Relations Commission (4)	Tanya Stanley
	Cathy Waddell
	Joseph Williams
	Bruce Lee
Joint City and County Appearance Commission (2)	Joseph Humphries
	Jerome Bell, Sr.
Joint City and County Senior Citizens Advisory Commission (5)	Willie Wright
	Wayne Wampler
	Lawrence Ashton
	Livia Funkhouser
	Bessie Magby

MOTION: Council Member Hurst moved to approve the recommendations.

SECOND: Council Member Crisp

VOTE: UNANIMOUS (10-0)

### 8.4 Sister City Approval Process

Mayor Chavonne stated that this item was a follow up from the October 3, 2011, work session. He stated Council Member Mohn had led the Council through the approval process for adopting a Sister City program.

MOTION: Council Member Mohn moved to approve.

SECOND: Council Member Massey

VOTE: PASSED by a vote of 8 in favor to 2 in opposition (Council Members Bates and Crisp)

## DRAFT

### 8.5 Public hearing to consider closing a portion of Farmview Drive.

Mr. Rusty Thompson, Interim Engineering and Infrastructure Director, presented this item. He stated access to the adjacent properties would not be denied as a result of the closure, the paved portion of Farmview Drive would remain open, and none of the portion requested for closing was paved. He stated all of the area being closed would be retained by the City as easements for drainage and other utilities.

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.

### RESOLUTION AND ORDER CLOSING A PORTION OF FARMVIEW DRIVE. RESOLUTION NO. R2011-46

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

### 9.0 ADJOURNMENT

There being no further business, the meeting adjourned at 8:25 p.m.

Respectfully submitted,

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PAMELA J. MEGILL  
City Clerk

---

ANTHONY G. CHAVONNE  
Mayor

101011



# DRAFT

FAYETTEVILLE CITY COUNCIL  
SPECIAL JOINT MEETING WITH  
CUMBERLAND COUNTY LEGISLATIVE DELEGATION  
HUMAN RESOURCES DEVELOPMENT TRAINING ROOM  
OCTOBER 18, 2011  
8:00 A.M.

Present: Mayor Anthony G. Chavonne

Council Members Kady-Ann Davy (District 2); Darrell J. Haire (District 4); Bobby Hurst (District 5); Valencia A. Applewhite (District 7); James W. Arp (District 9) (departed at 8:55 a.m.)

Absent: Council Members Keith Bates, Sr. (District 1); Robert A. Massey Jr. (District 3); William J. L. Crisp (District 6); Theodore W. Mohn (District 8)

Delegation Present: Senator Wesley Meredith (19th District) and Representatives Rick Glazier (45th District); Elmer Floyd (43rd District); Diane Parfitt (44th District)

Others Present: Dale E. Iman, City Manager  
Doug Hewett, Assistant City Manager  
Kristoff Bauer, Assistant City Manager  
Karen M. McDonald, City Attorney  
Rebecca Rogers-Carter, Management Services Manager  
Doug Byrd, Government Liaison, Fayetteville-  
Cumberland County Chamber of Commerce  
Pamela Megill, City Clerk

## CALL TO ORDER

Mayor Chavonne called the meeting to order at 8:15 a.m. and welcomed the Legislative Delegation.

Representative Glazier stated the meeting was the 16th of 17 scheduled over the past 45 days. He stated the goals of the meetings were to receive feedback regarding the effect of recently passed legislation, provide updates of pending legislation, and engage in dialogue. He provided an overview of the ongoing judicial dispute concerning preschools and stated the issue would probably be tied up in the courts for some time. He stated school funding was another issue. He further stated Medicaid expenditures were another problematic item and options to resolve the big gap in funding were to: (1) cut services, (2) cut eligibility, and (3) cut provider rates. Finally, he stated the 10.4 percent unemployment rate was another major challenge for the state.

Representative Floyd asked for a swift response to phone calls when the legislators were attempting to research opinions and gather additional information, and stressed the importance of timeliness due to the speed that a bill could be changed.

Senator Meredith echoed the request of Representative Floyd and stated the annexation issues moved quickly.

Representative Parfitt stated she had worked hard on the rental property bills and annexation issues, and provided an overview of the two recently passed annexation bills.

Representative Glazier thanked Mr. Dale Iman, City Manager, and all of his staff for providing exceptional feedback.

Mayor Chavonne stated the City had been very transparent on all matters and operated an open government. He stated the City had been consistent in its position on the bills that effected the City.

## DRAFT

Representative Parfitt acknowledged the City government was indeed open and transparent.

A discussion on funding road improvements and road building took place. The possibility of toll roads and gas taxes were also discussed.

Representative Floyd stated the state currently had \$60 billion worth of road projects.

Council Member Davy introduced discussion on House bill 219, sex offender registry amendments. Representative Glazier acknowledged there were oversights in the legislation that needed to be addressed.

Mr. Iman introduced discussion on Senate Bill 315, an act to permit campaign signs in highway rights-of-way with reasonable time, place, and manner restrictions and explained the confusion that was occurring in the City.

Council Member Applewhite stated her concerns for veterans returning from combat zones that were facing mental health problems and homelessness. She stated cities that host significant numbers of military members need funding assistance.

Mr. Doug Byrd, Government Liaison, Fayetteville-Cumberland County Chamber of Commerce, announced the Economic Development Committee would be holding its quarterly meeting November 3-4, 2011, at the Special Operations Museum, and invited everyone to attend.

### ADJOURN

There being no further business, the meeting adjourned at 9:15 a.m.

Respectfully submitted,

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PAMELA J. MEGILL  
City Clerk

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ANTHONY G. CHAVONNE  
Mayor

101811

# DRAFT

FAYETTEVILLE CITY COUNCIL  
SPECIAL MEETING MINUTES  
CITY HALL COUNCIL CHAMBER  
AUGUST 22, 2011  
6:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2) (arrived at 6:20 p.m.); 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 Iman, City Manager  
Kristoff Bauer, Assistant City Manager  
Doug Hewett, Assistant City Manager  
Karen M. McDonald, City Attorney  
Lisa Smith, Chief Financial Officer  
Victor Sharpe, Community Development Director  
John Kuhls, Human Resource Development Director  
Scott Shuford, Development Services Director  
Frank Lewis, Senior Code Enforcement Administrator  
Rusty Thompson, Engineering and Infrastructure  
Interim Director  
Bart Swanson, Housing and Code Enforcement Division  
Manager  
Craig Harmon, Planner II  
David Nash, Planner II  
Randy Hume, Transit Director  
Jeff Thompson, Fayetteville Advisory Committee on  
Transit  
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 Mayor Pro Tem Haire.

## 3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was recited by those in attendance.

## 4.0 APPROVAL OF AGENDA

MOTION: Council Member Mohn moved to approve the agenda.  
SECOND: Council Member Massey  
VOTE: UNANIMOUS (9-0)

## 5.0 CONSENT

MOTION: Council Member Hurst moved to approve the consent agenda.  
SECOND: Mayor Pro Tem Haire  
VOTE: UNANIMOUS (9-0)

### 5.1 Municipal agreements for railway crossing signals and gates at McLamb Street and for Dobson Drive.

COPY OF A RESOLUTION PASSED BY THE CITY COUNCIL OF THE CITY OF  
FAYETTEVILLE, NORTH CAROLINA (MCLAMB STREET). RESOLUTION NO.  
R2011-039.

## DRAFT

COPY OF A RESOLUTION PASSED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA (DOBSON DRIVE). RESOLUTION NO. R2011-040.

- 5.2 Municipal agreement for a right-turn lane on Morganton Road.
- 5.3 Acquisition of residential lot located at 1633 Rosebud Drive.
- 5.4 Fee schedule adjustment for renovation projects.
- 5.5 Special Revenue Fund Project Ordinance Closeout 2012-1 (FY 2006 Justice Assistance Grant).

Annually the City closes out several projects that were completed and no longer active. The FY 2006 Justice Assistance Grant project was completed in a previous fiscal year and the revenues and expenditures related to the project were audited.

- 5.6 Capital Project Ordinance Amendment Change 2012-12 (NCDOT Municipal Grant Agreements) and Budget Ordinance Amendment 2012-1 (General Fund).

The amendment appropriated \$45,000.00 for the funding of transportation and railroad crossing safety improvements at McLamb Street and Dobson Drive, as well as appropriated an additional \$100,000.00 for the Morganton Road widening project. The accompanying budget ordinance amendment appropriated \$135,000.00 from General Fund fund balance to provide required local funding for the project.

- 5.7 Award contract for Summerhill storm drainage improvements to the lowest, responsible bidder, Pipeline Utilities, Inc., Raleigh, NC, for the bid amount of \$969,736.00.

Bids were received August 4, 2011, as follows:

Pipeline Utilities, Inc. (Raleigh, NC) .....	\$969,736.00
T. A. Loving Company (Goldsboro, NC) .....	\$1,098,590.00
Triangle Grading & Paving, Inc. (Burlington, NC) ...	\$1,117,022.00
Lanier Construction Company, Inc. (Snow Hill, NC) ..	\$1,138,366.50
L-J, Inc. (Columbia, SC) .....	\$1,175,843.25
Colt Contracting Company (Clinton, NC) .....	\$1,417,043.55

## 6.0 OTHER ITEMS OF BUSINESS

### 6.1 Approval of Transit service improvements.

Mr. Randy Hume, Transit Director, presented this item and stated two community meetings and a City Council public hearing were held wherein concerns were raised regarding changes to Route 9. He briefly reviewed the recommended service changes as follows:

- Add evening hours to Route 5 until 9:00 p.m., Route 8 until 10:00 p.m., and Route 15 until 10:30 p.m.
- Extend Route 9 to Andrews Road (Cape Fear Valley North Pavilion)
- Reduce last trip on Route 9 (end at 9:30 p.m.)
- FASTTRAC! Paratransit services expanded

Mr. Hume stated the changes would become effective on September 26, 2011, if approved.

A question and answer period ensued regarding the change to Route 9. Mr. Hume explained in response to the concerns raised on Route 9, the bus, after making a stop at University Estates, the bus would make

## DRAFT

a stop at Wal-Mart at 9:30 p.m. and then continue to downtown for those who wanted to make a transfer to Route 12.

**MOTION:** Council Member Bates moved to approve the recommended changes with an effective date of September 26, 2011.  
**SECOND:** Council Member Applewhite  
**VOTE:** UNANIMOUS (10-0)

### 6.2 Presentation of Appointment Committee Recommendations for Boards and Commissions Appointments

Council Member Hurst presented this item and requested the City Council accept the following recommendations for the September 2011 vacancies:

BOARDS/COMMISSIONS	RECOMMENDATIONS
Airport Commission	Katherine Marable
	Mark J. Cluff
	Sailaja Vallabha
Animal Service Board	Dell Caramanno
Board of Adjustment	Carolyn Long Gaskins
Board of Appeals on Dwellings and Buildings	Beverly Keller
	Paul Rodriguez
	Ronald W. Adams
Ethics Commission	Alesia M. Shaw
Fayetteville Advisory Committee on Transit	Jeff Thompson
	Scott A. Gibson
	Carlos Manuel
	Tony Paschall
Fayetteville-Cumberland Human Relations Commission	Tyran Jamail George
	Yanive Jensen
	Asim Raja
	Judy Swanson
Fayetteville-Cumberland Parks and Recreation Advisory Commission	Burton Lawson
	Robert Lints
	Nancy Shakir
Fayetteville Finance Corporation	William Brooks
	C. Keith Love
Fayetteville Metropolitan Housing Authority	Calvin P. Poole, Jr.
Fayetteville Planning Commission	Jimmy Holland, Jr.
	Maurice W. Wren
	Ronald Michael
	Jessica Ranavaya
	John L. Johnson (Alternate)
Fayetteville Zoning Commission	Martin J. Hendrix
	Marshall Isler
	Jamie L. Bashore-Watts
	David Baran (Alternate)
Joint City and County Appearance Commission	George M. Dudley
Joint Fayetteville-Cumberland County Senior Citizens Advisory Commission	Saroja N. Pendleton-Brown
	Carey D. Berg
Linear Park, Inc.	Robert A. Barefoot
Personnel Review Board	JurLonna Walker
Public Works Commission	Luis J. Olivera
Storm Water Advisory Board	Charles A. Donnell
	Carlton G. Mercer
	Kevin Briscoe
Taxicab Review Board	George Butterfly
	Joseph A. Robinson
	Jeffery John Rivers

**MOTION:** Council Member Hurst moved to approve the appointments as recommended.  
**SECOND:** Council Member Crisp

Council Member Mohn inquired if there would be a conflict of interest if an appointee was also someone the City could contract with for services. Ms. Karen McDonald, City Attorney, responded in the negative and explained the appointee would need to comply with the conflict of interest rules set forth in the ordinance and the statute.

## DRAFT

VOTE: UNANIMOUS (10-0)

Council Member Hurst announced that vacancies were remaining on the Fayetteville-Cumberland Human Relations Commission, Joint Fayetteville-Cumberland County Senior Citizens Advisory Commission, Storm Water Advisory Board, and Joint City and County Appearance Commission.

### 6.3 Uninhabitable Structures Demolition Recommendations:

#### 301 Cochran Avenue

Mr. Bart Swanson, Housing and Code Enforcement Division Manager, reviewed background information and photos and stated the structure on the property was blighted and there was no historical value. He stated the utilities to the structure had been disconnected since 2005 and stated within the last two years there had been seven 911 calls for service and six code violations. He stated there were assessments totaling \$393.92 and the low bid for demolition of the structure was \$2,900.00.

#### 1504 Gillespie Street

Mr. Swanson reviewed background information and photos and stated the structure on the property was blighted and fire damaged in 2010 and there was no historical value. He stated the utilities to the structure had been disconnected since 2009 and within the last two years there had been two 911 calls for service and two code violations. He stated there were no outstanding assessments and taxes and the low bid for demolition of the structure was \$1,400.00.

#### 6418 Ginger Circle

Mr. Swanson reviewed background information and photos and stated the structure on the property was blighted and fire damaged in 2010 and there was no historical value. He stated the utilities to the structure had been disconnected since 2005 and within the last two years there had been one 911 call for service and two code violations. He stated there were assessments totaling \$840.28 and the low bid for demolition of the structure was \$1,400.00. He stated late last Thursday they were contacted by the property owner who expressed a strong interest in rehabilitating the property. He stated as of this morning, the property owner did come down and take out a building permit for \$20,000.00 in improvements. He stated staff was recommending that no action be taken on the property to give the owner a chance to clean up the property.

Council Member Applewhite inquired if there would be a timeline for improvements. Mr. Swanson responded in the affirmative and stated it would come back to Council if there was no progress made on the improvements. Council Member Applewhite requested she be informed of the timeline so that she could respond to citizen inquiries as to the status and expectations. Mr. Swanson responded he could do that.

Council Member Bates inquired of the City Attorney if they could take action to approve the demolition of the property. Ms. McDonald responded that since the building permit was issued, she would have concerns with Council adopting the ordinance. She stated staff would be prepared to bring the property back to Council to adopt a demolition ordinance if the timelines were not met.

Council Member Bates inquired of the City Attorney if they would have to re-advertise and re-bid if the requirements were not met and it came back to Council and could that cost be added to what they were charging the homeowner or be a part of the lien process. Ms. McDonald responded they would need to look into that as a staff.

Council Member Crisp inquired if they could adopt the demolition ordinance but put a condition that it be demolished in four months,



## DRAFT

and could they rescind the ordinance if progress was not made. Ms. McDonald responded during their research they had not found the proper mechanism to adopt an ordinance and then rescind it for this type of situation. She explained Mr. Swanson would put progress steps in place as soon as he met with the Building Inspector and those steps would be very clear as to the progress required to meet the deadlines. She stated if those steps were not met within the timeline, it would be brought back to Council for action.

Council Member Applewhite inquired if a three-year threshold could be established and the blighted properties would have to come before Council before permits were issued and provide an opportunity for citizens in the neighborhood to voice their concerns. Ms. McDonald responded it could be researched.

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 (301 COCHRAN AVENUE). ORDINANCE NO. NS2011-008.

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 (1504 GILLESPIE STREET). ORDINANCE NO. NS2011-009.

MOTION: Council Member Davy moved to adopt the ordinances authorizing demolition of 301 Cochran Avenue and 1504 Gillespie Street.

SECOND: Council Member Applewhite

Council Member Mohn inquired if the structures were structurally sound. Mr. Swanson responded in the affirmative and stated they were in the blighted area and that was the reason they were added to the list.

Council Member Mohn inquired what areas were blighted. Mr. Frank Lewis, Senior Code Enforcement Administrator, responded there was a map with the blighted areas designated as a result of special legislation that the City Council petitioned for in 2006. He stated if the structures were outside the blighted area, they would require significant structural damage to be considered for demolition.

### FRIENDLY AMENDMENT:

Council Member Bates made a friendly amendment to request a 30-day update on 6418 Ginger Circle.

Council Members Davy and Applewhite accepted the friendly amendment.

VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Mohn)

### 7.0 ADMINISTRATIVE REPORTS

#### 7.1 Monthly statement of taxes for July 2011.

2011 Taxes .....	\$144,263.48
2011 Vehicle .....	208,537.27
2011 Revit .....	12.65
2011 Vehicle Revit .....	367.68
2011 FVT .....	25,765.50
2011 Transit .....	25,765.50
2011 Storm Water .....	5,291.54
2011 Fay Storm Water .....	10,582.99
2011 Fay Recycle Fee .....	11,024.65
2011 Annex .....	0.00

# DRAFT

2010 Taxes .....	64,740.45
2010 Vehicle .....	124,089.50
2010 Revit .....	1,394.68
2010 Vehicle Revit .....	0.00
2010 FVT .....	17,797.01
2010 Transit .....	17,802.00
2010 Storm Water .....	1,952.45
2010 Fay Storm Water .....	3,904.88
2010 Fay Recycle Fee .....	4,625.41
2010 Annex .....	0.00

2009 Taxes .....	3,673.52
2009 Vehicle .....	3,563.58
2009 Revit .....	29.03
2009 Vehicle Revit .....	0.00
2009 FVT .....	850.23
2009 Transit .....	850.23
2009 Storm Water .....	124.76
2009 Fay Storm Water .....	249.54
2009 Fay Recycle Fee .....	395.11
2009 Annex .....	0.00

2008 Taxes .....	1,813.54
2008 Vehicle .....	1,151.89
2008 Revit .....	0.00
2008 Vehicle Revit .....	0.00
2008 FVT .....	282.24
2008 Transit .....	194.03
2008 Storm Water .....	130.61
2008 Fay Storm Water .....	197.74
2008 Fay Recycle Fee .....	346.05
2008 Annex .....	0.00

2007 and Prior Taxes .....	1,024.28
2007 and Prior Vehicle .....	1,574.77
2007 and Prior Revit .....	11.16
2007 and Prior Vehicle Revit .....	0.00
2007 and Prior FVT .....	356.08
2007 and Prior Storm Water .....	108.00
2007 and Prior Annex .....	24.00

Interest .....	13,172.57
Revit Interest .....	94.77
Storm Water Interest .....	228.08
Fay Storm Water Interest .....	339.20
Annex Interest .....	37.13
Fay Recycle Interest .....	439.59
Fay Transit Interest .....	922.66

Total Tax and Interest ..... \$700,213.25

7.2 Revenue and expenditure report for annually budgeted funds for the ten-month period ended April 30, 2011.

## 8.0 ADJOURNMENT

There being no further business, the meeting adjourned.

Respectfully submitted,

JENNIFER PENFIELD  
Deputy City Clerk

ANTHONY G. CHAVONNE  
Mayor

080811



## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of the City Council  
**FROM:** Pamela Megill, City Clerk  
**DATE:** November 28, 2011  
**RE:** Resolution to Adopt the 2012 Proposed City Council Meeting Dates Calendar

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**THE QUESTION:**

Does the proposed calendar reflect the interest of the City Council for meetings in 2012?

**RELATIONSHIP TO STRATEGIC PLAN:**

More efficient City government.

**BACKGROUND:**

To ensure that citizens are aware of all the public meetings and events for 2012 and the City adheres to the NC Open Meetings Act. Staff has prepared the attached 2012 City Council Meeting Dates Calendar. The calendar takes into account all City holidays, Council retreats and conferences identified by staff.

Staff proposes that the generally scheduled Monday, April 9, 2012 regular meeting be held on Tuesday, April 10, 2012 due to Good Friday. Staff proposes the Council to forgo the July 2012 work session meeting, which customarily follows the budget review and adoption process. Staff also proposes to forgo the agenda briefing meeting scheduled the day before Thanksgiving.

Should the proposed calendar meet with Council's preference; staff requests Council approve the attached resolution; adopting the 2012 City Council Meeting Dates Calendar

**ISSUES:**

**BUDGET IMPACT:**

**OPTIONS:**

1. Approve the resolution to adopt the meeting calendar as presented.
2. Approve the resolution to adopt the meeting calendar, as amended.
3. Take no action at this time.

**RECOMMENDED ACTION:**

Approve the resolution to adopt the City Council Meeting Dates Calendar.

**ATTACHMENTS:**

Resolution - 2012 City Council Meeting Dates Calendar  
2012 Council Meeting Dates Calendar

RESOLUTION NO. R2012-\_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL, CITY OF FAYETTEVILLE, NORTH CAROLINA TO ADOPT THE 2012 CITY COUNCIL MEETING DATES CALENDAR TO CLARIFY THE TIME AND LOCATION OF THE CITY COUNCIL REGULAR MEETINGS

WHEREAS, the Fayetteville City Council has enacted a strategic plan that promotes efficient and effective government; and

WHEREAS, the City's strategic plan includes targets for action that require significant commitments on city resources and time to complete; and

WHEREAS, the City Council is committed to ensuring that the public is informed about the issues, activities and actions of the City; the City Council

HEREBY RESOLVES to adopt the attached calendar titled City Council Meeting Dates to clarify the time and location of the City Council regular meetings for 2012; and

RESOLVES that any deviations of these regular meetings will be done consistent with the North Carolina Open Meetings Law.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_,

CITY OF FAYETTEVILLE

(SEAL)

By: \_\_\_\_\_  
ANTHONY G. CHAVONNE, MAYOR

ATTEST:

\_\_\_\_\_  
PAMELEA J. MEGILL, CITY CLERK

## Proposed 2012 Fayetteville City Council Meeting Schedule

### JANUARY

Mon., Jan. 2	New Year Holiday
Tues., Jan 3	Council Work Session, 5 p.m., Lafayette Room
Mon., Jan. 9	Regular Council Meeting, Discussion of Agenda Items
Mon., Jan. 16	MLK Holiday
Wed., Jan. 18	Agenda Briefing, 4 p.m., Lafayette Room
Mon., Jan. 23	Regular Council Meeting, Discussion of Agenda Items
Tue., Jan 31-Feb 4	Strategic Planning Retreat

### FEBRUARY

Mon., Feb. 6	Council Work Session, 5 p.m., Lafayette Room
Mon., Feb. 13	Regular Council Meeting, Discussion of Agenda Items
Wed., Feb. 22	Agenda Briefing, 4 p.m., Lafayette Room
Mon., Feb. 27	Regular Council Meeting, Discussion of Agenda Items

### MARCH

Mon., March 5	Council Work Session, 5 p.m., Lafayette Room
March 10-14	NLC Congressional City Conference, Washington, D.C.
Mon., March 12	Regular Council Meeting, Discussion of Agenda Items
Wed., March 21	Agenda Briefing, 4 p.m., Lafayette Room
Mon., March 26	Regular Council Meeting, Discussion of Agenda Items
Thurs., March 29	Council Strategic Plan Retreat

### APRIL

Mon., April 2	Council Work Session, 5 p.m., Lafayette Room
Fri., April 6	Good Friday – City Offices Closed
Tues., April 10	Regular Council Meeting, Discussion of Agenda Items
Wed., April 18	Agenda Briefing, 4 p.m., Lafayette Room
Mon., April 23	Regular Council Meeting, Discussion of Agenda Items

### MAY

Mon., May 7	Council Work Session, 5 p.m., Lafayette Room
Mon., May 14	Regular Council Meeting, Discussion of Agenda Items
Wed., May 16	Agenda Briefing, 4 p.m., Lafayette Room
Mon., May 28	Memorial Day – City Offices Closed
Tues., May 29	Regular Council Meeting, Discussion of Agenda Items

### JUNE

Mon., June 4	Council Work Session, 5 p.m., Lafayette Room
Mon., June 11	Regular Council Meeting, (Budget Adoption) Discussion of Agenda Items
Wed., June 20	Agenda Briefing, 4 p.m., Lafayette Room
Mon., June 25	Regular Council Meeting, Discussion of Agenda Items

### JULY

Wed., July 4	Independence Day – City Offices Closed
Mon., July 9	Regular Council Meeting, Discussion of Agenda Items
Wed., July 18	Agenda Briefing, 4 p.m., Lafayette Room
Mon., July 23	Regular Council Meeting, Discussion of Agenda Items

### AUGUST

Mon., Aug. 6	Council Work Session, 5 p.m., Lafayette Room
Mon., Aug. 13	Regular Council Meeting, Discussion of Agenda Items
Wed., Aug. 22	Agenda Briefing, 4 p.m., Lafayette Room
Mon., Aug. 27	Regular Council Meeting, Discussion of Agenda Items

### SEPTEMBER

Mon., Sept. 3	Labor Day- City Offices Closed
Tues., Sept. 4	Council Work Session, 5 p.m., Lafayette Room
Mon., Sept. 10	Regular Council Meeting, Discussion of Agenda Items
Wed., Sept. 19	Agenda Briefing, 4 p.m., Lafayette Room
Mon., Sept. 24	Regular Council Meeting, Discussion of Agenda Items

### OCTOBER

Mon., Oct. 1	Council Work Session, 5 p.m., Lafayette Room
Mon., Oct. 8	Regular Council Meeting, Discussion of Agenda Items
Oct 20-22	NCLM Annual Conference

### NOVEMBER

Mon., Nov. 5	Council Work Session, 5 p.m., Lafayette Room
Mon., Nov. 12	Veterans Day – City Offices Closed
Tues., Nov. 13	Regular Council Meeting, Discussion of Agenda Items
Nov., 22-23	Thanksgiving Holiday – City Offices Closed
Mon., Nov. 26	Regular Council Meeting, Discussion of Agenda Items
Nov 27 – Dec 1	NLC Congress of Cities & Exposition, Boston, MA

### DECEMBER

Mon., Dec. 3	Council Work Session, 5 p.m., Lafayette Room
Mon., Dec. 10	Regular Council Meeting, Discussion of Agenda Items
Dec., 24-25	Christmas – City Offices Closed

## CITY COUNCIL ACTION MEMO

**TO:** Mayor & Members of City Council  
**FROM:** Doug Hewett, Assistant City Manager  
**DATE:** November 28, 2011  
**RE:** **Rental Action Management Program (RAMP)**

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**THE QUESTION:**

Does the City Council wish to clarify the guidelines to be used for the planned public hearing on the Rental Action Management Program (RAMP)?

**RELATIONSHIP TO STRATEGIC PLAN:**

Growing City, Livable Neighborhoods - A Great Place to Live

**BACKGROUND:**

At the City Council's November 7, 2011 Work Session, staff was directed to set a public hearing for the City Council to receive feedback on the Rental Action Management Program, RAMP. The public hearing is slated for Monday, December 12, 2011 at 7:00 PM - City Hall. Additional information about RAMP is also available online at [www.ci.fayetteville.nc.us/rrpp](http://www.ci.fayetteville.nc.us/rrpp).

**ISSUES:**

As RAMP may impact multiple residents and property owners, there may be numerous RAMP stakeholders who wish to speak at the December 12 public hearing. As such, the City Council may wish to consider defining the guidelines for that public hearing so that all speakers will be able to plan accordingly.

**BUDGET IMPACT:**

None

**OPTIONS:**

1. Allow each speaker to address the City Council for a maximum of three (3) minutes, with up to sixty (60) minutes allocated for the RAMP public hearing.
2. Use standard City Council public hearing guidelines which allow each speaker to address the City Council for a maximum of two (2) minutes, with up to fifteen (15) minutes allocated for those speakers in favor of the issue, and up to fifteen (15) minutes allocated for those speakers opposed to the issue.
3. Take no action at this time.

**RECOMMENDED ACTION:**

Allow each speaker to address the City Council for a maximum of three (3) minutes, with up to sixty (60) minutes allocated for the RAMP public hearing.

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Karen S. Hilton, AICP, Manager Planning and Zoning Division, Development Services  
**DATE:** November 28, 2011  
**RE:** **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 non-conforming lots.**

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### **THE QUESTION:**

Do the proposed changes remain consistent with and better achieve public objectives and purposes and not conflict with other regulations, while being considerate of environmental and development needs? (Also see 30-2.C.2.e attached - standards for considering amendments)

### **RELATIONSHIP TO STRATEGIC PLAN:**

Greater Tax Base Diversity - strong local economy  
Growing City, Livable Neighborhoods - a great place to live  
A More Attractive City - clean and beautiful

### **BACKGROUND:**

On July 25, 2011, the City Council adopted the Unified Development Ordinance (UDO) and Amendment Set #1. The UDO became effective August 1, 2011, and staff began noting other potential clarifications and adjustments based on daily application of the ordinance.

Amendment Set #2 was considered at a Planning Commission public hearing on October 15th. There was one speaker in favor of deferring action on the portions affecting setbacks, to allow time for the UDO Advisory Committee to offer comments. [The Committee met 12/1 and its comments are incorporated on these items in Set # 3.] With deferral of the portions on setbacks, the Commission voted unanimously (8-0) to recommend approval.

### **ISSUES:**

The headings for each section in the draft Ordinance in the packet include a very brief explanation of the reason or purpose for each item. A large number of the changes are correcting references or resolving conflicting sections/standards. More substantive changes for child care, cell towers, and PODs were to re-establish standards from recent amendments for those uses. The change to the non-conforming standards fills a gap regarding a non-residentially zoned lot that doesn't meet lot minimum requirements. The NC Neighborhood Commercial changes better accommodate existing buildings and allow all retail uses, relying on the form and scale to keep uses neighborhood-oriented. Changes to temporary use standards clarify where construction offices can be located and the procedure involved for that and related temporary construction uses/activities. Changes to the cul-de-sac and street stubs correct certain dimensions and clarify how temporary stubs are to be treated.

### **BUDGET IMPACT:**

No immediate impact.

### **OPTIONS:**

1. Approve as recommended;
2. Modify portions and Approve as modified;

3. Defer action;
4. Deny.

**RECOMMENDED ACTION:**

The staff and Planning Commission recommend that the City Council move to APPROVE the ordinance as recommended.

**ATTACHMENTS:**

Standards for evaluating text amendments  
Minutes of the Planning Commission meeting  
UDO Amendment Set 2 CC draft 11-28-2011

Excerpt, Unified Development Ordinance:

**Art. 30-2.C.2(e)      Text Amendment Standards**

Amending the text of this Ordinance is a matter committed to the legislative discretion of the City Council. In determining whether to adopt or deny the proposed amendment, the City Council shall consider and weigh the relevance of the following factors:

- (1)** Whether and the extent to which the proposed amendment is consistent with all City-adopted plans that are applicable;
- (2)** Whether the proposed amendment is in conflict with any provision of this Ordinance, and related City regulations;
- (3)** Whether and the extent to which there are changed conditions that require an amendment;
- (4)** Whether and the extent to which the proposed amendment addresses a demonstrated community need;
- (5)** Whether and the extent to which the proposed amendment is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and would ensure efficient development within the City;
- (6)** Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern; and
- (7)** Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, storm water management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

Planning Commission  
Regular Meeting  
October 18, 2011  
Lafayette Room, City Hall

<u>Attending</u>	<u>Absent</u>	<u>Staff / Guests</u>
Jack Cox	Jimmy Holland	Karen Hilton, Manager, Plng & Zng
Dr. Bill Fiden		Scott Shuford, Director, Dev. Svcs.
John Johnson		Charles Astrike, outgoing Chair
Mary Lavoie		Brian Meyers, Assist. City Attorney
Larnie McClung		David Nash, Planner
Ron Michael		
Bill Snuggs		
Bill Watt		
Maurice Wren		
Jessica .....		

Pamela Meguire, City Clerk, swore in the new and newly reappointed members John Johnson and Ron Michael.

Item 1, Approval of the Agenda:

Charles Astrike, outgoing Chairman, called the meeting to order. Jack Cox made a motion to approve the agenda, seconded by Maurice Wren, and approved unanimously.

Item 2, Approval of the Minutes:

Jack Cox made a motion to approve the minutes of the September 20, 2011 meeting, seconded by Larnie McClung and approved unanimously.

Item 3, Election of Officers:

Prior to election of officers, Karen Hilton presented Mr. Astrike with a plaque of appreciation for his four years of service, including two as Chairman and, notably, with 100% attendance.

Following thanks and encouragement from Mr. Astrike to the Commission members, Maurice Wren nominated Jack Cox as Chair, seconded by Ron Michael, and approved unanimously. Bill Snuggs nominated Ron Michael as Vice Chair, seconded by Bill Watt and approved unanimously.

Item 4, Public Hearing: UDO Text Amendments:

As the new Chair, Mr. Cox opened the next item and called on staff for a summary of the report. Karen Hilton briefly reviewed the key items, noting that of the nineteen items advertised, some were combined, and some involved multiple changes. The first item included several corrections to references or corrections of conflicting language. Where conflicts involved recent amendments (such as the PODs and the Child Care Center regulations), the correction was made consistent with the recent amendment. She distributed additional reference corrections to be added as Section 1.9. She explained the next two handouts, which were staff-recommended modifications to the material in the packet on Temporary Uses (construction-related) in draft





## ITEM 4

Ordinance No. S2011-\_\_\_\_\_

**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, AND DEFINITION AND STANDARDS FOR NON-CONFORMING LOTS.**

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that the Unified Development Ordinance adopted December 13, 2010 as Chapter 30 of the Code of Ordinances of the City of Fayetteville be amended as follows:

### **Section 1. Correct the following references and errors:**

**Sec. 1.1: Establish a viable reference for signs for Real Estate Sales Office and Model Sales Home and correct a reference in a Sign table as follows:**

**Sec. 1.1a: In 30-4.E.6(b)(1) Real Estate Sales Office and Model Sales Home, modify item “b” to read as follows: “Signage complies with the standards of Section 30-5.L. 6.”**

**Sec. 1.1b: In Table 30-5.L.6 Signs Allowed Without a Permit, for Temporary signs, add language to include model sales home or sales office for one- or two-family dwellings, as follows:**

“Temporary (Real estate sale/lease/rent of one- or two-family dwelling or lot; includes Real Estate Sales Office/Model Home Sales)”

**Sec. 1.1c: In Table 30-5.L.6 Signs Allowed Without a Permit, delete the last row in the table beginning “Temporary real estate signs shall not include...” because this entry duplicates language appropriately located as footnote (18).**

**Sec. 1.2:** In 30-5.A.8 Table Dimensional Standards for Parking Spaces and Aisles, change Table title to 30-5.A.7 and delete the footnote 1 reference in the heading in the last column. No footnote exists.

**Sec. 1.3:** Correct the circular references to standards for Swimming Pools by deleting the second sentence in 30-4.C.4(g)(2), as follows:

“Swimming pools that are a principal use of a lot shall comply with the following standards. ~~Swimming pools that are accessory uses shall comply with Section 30-4.D.3.t, Swimming Pools, Spas, and Hot Tubs.”~~

**Sec. 1.4:** Eliminate conflicting standards regarding accessory Dwelling Units and Home Occupations, as follows:

**Sec. 1.4a:** In 30-4.D.3(a) Accessory Dwelling Units, delete item (7) in its entirety, beginning “Accessory dwelling units may be... .”

**Sec. 1.4b:** In 30-4.D.3(h) – Home Occupations, modify item (1) to read:

“The business or service is located within the dwelling or an associated accessory building ~~(but not an accessory dwelling unit), which may include an accessory dwelling unit,~~ and does not exceed 20 percent of the heated floor area of the principal structure or 600 square feet, whichever is less. In no instance shall more than one home occupation use be conducted on a single lot.”

**Sec. 1.5:** In 30-4.A Use Table Retail Sales and Services, correct the following references under the column Additional Requirements:

Gasoline sales	30-4.C.4h.56
Personal Services Establishment	30-4.C.4.h68
Tattoo parlor/body...	30-4.C.4.h.911
Repair Establishment	30-4.C.4.h.79
Flea market	30-4.C.4.h.5
Grocery store	30-4.C.4.h.7
Electronic Gaming [old Internet]	30-4.C.4.h.4012

**Sec. 1.6:** In 30-5.F.10(c) Street Trees, in item (1) beginning “Except where authorized...”, delete all the material enclosed by parentheses at the end of the sentence, because the Figure being referenced has been deleted from the ordinance.

**Sec. 1.7:** In 30-2.B.12(c)(1)d Mailed Notice-Recipients, change to read “commander of Fort Bragg or his designated representative and ~~Pope Army Air Force Base.~~”

**Sec. 1.8: Make the following corrections to references:**

30-2.c.7.c reference to 30-2.A.1 should be to 30-2.B.1.  
30-2.c.9.g reference to Table 30-5.B.e should be 30-5.B.3.d.  
30-2.C.15.c.2 reference to 30-2.C.16.d should be 30-2.C.15.d.  
30-2.c.16.d.2 reference to 30-2.c.17.e should be 30-2.c.16.e.  
30-4.a.2 Use Table reference in footnote to 30-5.K.3 should be 30-5.K.3.a.  
30-4.C.4.f.1.c reference to 30-5.A.5 should be 30-5.B.1.e.  
30-4.C.4.j.1.c reference to 30-5.D, change heading "~~Fencing Standards~~ and Walls"  
30-4.C.5.e.2.a reference to 30-5.B should be to Table 30-5.B.1.F.3 Buffer Types  
30-4.C.5.e.3 reference to 30-5.B.1.f should be to Table 30-5.B.1.F.3 Buffer Types  
30-4.C.5.f reference to 30-4.D.3.i should be to 30-4.D.3.l (as in lower case L not i).  
30-4.D.3.j reference to 30-5.D "Exterior Lighting" should be to 30-5.E.  
30-5.A.11.a reference to 30-5.A.11 should be to 30-5.A.11.e.  
30-5.B.2.a section organization – section numbers do not match the way the four items are organized. Change 5.B.3, 5.B.4 and 5.B.5, to B.2.c, B.2.d, and B.2.e and renumber the material in each subsection accordingly. The last three items would then match the references in 30-5.B.2.a.  
30-5.B.5.b reference to 30-5.A.8.h should be to 30-5.A.8.i.  
30-5.F.4.g.4 reference to 30-5.C.6.e should be 30-2.C.6.e. There is also a missing reference at the end of this subsection. The following should be added: "(Also see Subdivision 30-6.A.4.a.)" [Subdivision Design Standards]  
30-5.M.2 references to three sections should be changed as follows:  
    30-5.C.5 should be 30-2.C.5  
    30-5.C.7 should be 30-2.C.7.  
    30-5.C.6 should be 30-2.C.6.  
30-6.A.3.e.1.d reference to 30-6.A.2 should be to 30-6.A.3.e.2.  
30-6.A.4.f reference to 30-5.F.4.d should be to 30-5.F.4.c.  
30-6.B.3 reference to 30-3.D.2 should be to 30-3.B.2.

**Section 2. Correct sections in 30-4.C Use-Specific Standards regarding Child Care Centers and Telecommunication Facilities, to restore key standards from the previous ordinances regarding spacing and preference for monopoles and use of photo imagery.**

**Sec. 2.1: In 30-4.C.3(a)(1) Child Care Centers (non-residential), correct item c.ii Separation as follows, to distinguish between centers in residential districts and those in office or commercial districts and to make separation requirements consistent with recent amendments:**

**3(a). Day Care**

**(1) Child Care Centers (non-residential) in any district**

Child care centers, including pre-schools, shall be licensed as a child care center by the State and comply with all State regulations for child care centers and the following standards:

**a. Separation**

Child care centers shall be located at least 500 linear feet from the following uses:

- i. Adult entertainment;
  - ii. Bar, nightclub, or cocktail use; or
  - iii. Entertainment establishment.
- b. Parking Area, Vehicular Circulation, and Drop-Off and Pick-Up

The parking areas and vehicular circulation for the child care center shall be designed to:

- i. Enhance the safety of children as they arrive at and leave the facility; and
  - ii. Provide a designated pickup and delivery area that includes at least one parking space per 20 children and is located adjacent to the child care center in such a way that children do not have to cross vehicular travel ways to enter or exit the center.
- c. Accessory Uses
- If allowed as an accessory use to a Retail Sales and Service or Office use, the heated floor area of a child care center shall not exceed 20 percent of the heated floor area of the principal use.
- d. Outdoor Play Areas
- i. Outdoor play areas shall be provided, and shall:
    - A. Be located to the side or rear yard areas;
    - B. Be completely enclosed by a fence that is at least four feet in height;
    - C. Be safely segregated from parking, loading, or service areas; and
  - ii. Outdoor play areas adjacent to a residential lot shall be screened by a six-foot solid fence or wall along with a ten-foot-wide landscaping buffer with evergreen shrubs capable of reaching six feet in height at maturity, planted six feet on-center.
- e. Capacity Information
- Applications or site plans associated with a child care center shall indicate the maximum number of children, proposed hours of operation, and size of the outdoor play area.

[new] (2) Child Care Centers (non-residential) in Residential Districts  
In addition to meeting the standards of 30-4.C.3(a)(1) above, child care centers (non-resident) in residential districts shall meet the following standards:

- a. Minimum Lot Size
- A child care center (non-resident) shall be located upon a lot of 20,000 square feet in area or more.
- b. Location

- i. If not located in a stand-alone building, a child care center shall be segregated (including the restrooms) from the remaining portion of the building in which it is located.
- ii. New child care centers shall be located on a designated major or minor thoroughfare street.
- c. Separation  
Child care centers (non-resident) within any residential district shall be at least 1,000 linear feet from any other child care center (non-resident) except as follows. (excluding child care centers operated by community centers, religious institutions, or educational facilities). Centers operated in schools, churches and on university campuses in a residential district are exempted from this spacing requirement and will not be considered in the separation requirements for other centers.
- d. Outdoor Play Areas  
Child Care Centers (non-resident) in residential districts shall not be operated for outdoor play activities after 8:00 P.M.

**Sec. 2.2:** In 30-4.A Use Table and 30-4.C.3(i) Telecommunication Facilities, correct references and restore specific standards omitted in the adopted ordinance, as follows:

**Sec. 2.2a:** In the Use Table, 30-4.A, Transportation / Communication Use Category, delete the last letter of the reference to the additional requirements for all three telecommunications entries, so that all three references read “30-4.C.3.i.1”.

**Sec. 2.2b:** In 30-4.B.4 Public and Institutional Use Classification, in Item (j) Utilities, modify item (2)c to read “Examples of wireless telecommunications ~~towers~~ facilities (free-standing, collocated, ....”

**Sec. 2.2c:** In 30-4.C.3(i)(4)c Aesthetics, add the following two new items as the first and last items and renumber the existing items:

“[new] i. A monopole shall be used unless a different structure is explicitly approved by City Council.

[renumber the next three items ii., iii, and iv]

[new] v. Photo imagery shall be used to illustrate the appearance of the facility and its visual impact on the area.”

**Section 3.** In 30-6.B Zero Lot Line Development, reorganize and renumber as follows to separate the items under B.3 because some of these items can apply to subdivisions other than Zero Lot Line:

**Sec. 3.1:** Move the Zero Lot Line sections 1. Purpose and Intent, 2. Procedure, and 3. Zero Lot Line Development Standards first paragraph only, to be a new section A(i) immediately above this section.

**Sec. 3.2: Change the last sentence of the first paragraph in item 3. Zero Lot Line Development Standards to read as follows:**

“In addition, zero lot line development that includes a subdivision of land shall comply with the ~~following standards:~~ of 30-6.B Common Area Standards.”

**Sec. 3.3: Make items 3(a) – (g) a new section “B” titled “Common Area Standards” with the items renumbered as 1 through 7.**

**Section 4. In Article 2, change posting requirements related to City Hall and to on-site posting for Certificates of Appropriateness as follows, remaining consistent with State requirements.**

**Sec. 4.1: In 30-2.B.12(d) Posted Notice, delete item (4) beginning “In addition to...” and renumber remaining items.**

**Sec. 4.2: In Table 30-2.B.12.(g) Public Hearing Notice Requirements, in the fourth column titled “Posted”, last row titled “Certificate of Appropriateness”, delete “At least 10 days before hearing” and leave the cell blank with grey filler.**

**Section 5. In 30-2.B.5 Pre-Application Conference Mandatory, add a new item as follows, and adjust the punctuation and grammar in (7) and (8):**

“[new] (9) Major Certificate of Appropriateness.”

**Section 6. In Article 2, adjust various procedures and tables for consistency, practice, State law, and appropriate timetables, as follows:**

**Sec. 6.1: With regard to major and minor site plan procedures:**

**6.1a: In Table 30-2.A.2 Development Review Structure, change both Major and Minor Site Plan procedures to show “<A>” under Planning Commission, thus indicating that appeal of a TRC action shall be a public hearing before the Planning Commission.**

**6.1b: In Table 30-2.B.11 Required Public Hearings and Publicly Noticed Meetings, change the entries for both Major and Minor Site Plan Appeal to show “Q” under Planning Commission and to delete the entries [Q] under the Board of Adjustment columns.**

**6.1c: In Sec. 30-2.C.5 Site Plan, change items (d)(4) and (e)(4) regarding Major and Minor Site Plan Appeal, as follows:**

“(d) Major Site Plan Procedure

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(4) Except for decisions related to new street connections to streets or street stubs in an existing single-family residential neighborhood (see Section 30-5.F.4.G, External Street Connectivity), an appeal from the Technical Review Committee's decision on a Major Site Plan application shall be reviewed and decided by the ~~Board of Adjustment~~ Planning Commission in accordance with Section 30-2.C.18, Appeal.

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**(e) Minor Site Plan Procedure**

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(4) An appeal from the City Manager's decision on a Minor Site Plan application shall be reviewed and decided by the ~~Board of Adjustment~~ Planning Commission in accordance with Section 30-2.C.18, Appeal."

**6.1d: In Sec. 30-2.C.18 Appeal, change as follows:**

**"(a) Right of Appeal**

(1) Any aggrieved party affected by (1) an interpretation of the City Manager, or (2) a decision of the Technical Review Committee in administering or enforcing this Ordinance may, in accordance with this section, appeal such interpretation or decision to the Board of Adjustment or other body as designated by this ordinance."

**Sec. 6.2: Correct two tables in Article 2 to be consistent with 30-2.C.19 Vested Rights Certificate.**

**6.2a: In Table 30-2.A.2 Development Review Structure, for Vested Rights Certificate procedures, add "<A>" under Board of Adjustment for this entry.**

**6.2b: In Table 30-2.B.11 Required Public Hearings and Publicly Noticed Meetings, add a new entry "Vested Rights Certificate Appeal" and show "Q" under the Board of Adjustment column for this entry.**

**Section 7. In 30-3.E, for the OI, LC, CC, LI and HI districts, consider requiring a 10' increase per story over three stories in the minimum separation between multi-story buildings in Sections 30-3.**

*After further analysis, no change is recommended.*

**Section 8. In Articles 3 and 4, adjust (expand) the range of retail uses allowed by right, and clarify references to maximum size, for uses in the NC Neighborhood Commercial District, as follows:**

**Sec. 8.1: In 30-3.E.3 NC District, modify the Purpose statement as shown:**



“The Neighborhood Commercial (NC) District is established and intended to accommodate small-scale, low-intensity, and “convenience” retail and service uses that provide goods and services serving the residents of the immediately surrounding neighborhood (e.g., personal service uses, small restaurants, and limited retail). Development in the district should not include uses of a size that is out of scale with a residential neighborhood or that attracts traffic from outside the surrounding neighborhood. New construction shall not create individual retail uses shall not exceed over 2,500 square feet without obtaining a Special Use Permit (See Section 30-2.C.7). Residential uses are encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is consistent with the neighborhood scale and compatible with surrounding uses and the design standards in Article 30-5 Development Standards.”

**Sec. 8.2: In 30-3.E.3 NC District, modify Note 1 as follows:**

“[1] New construction of individual retail space larger than 2500 square feet in floor area shall first obtain a Special Use Permit (see Section 30-2.C.7).  
....”

**Sec. 8.3: In Table 30-4.A Use Table, change the following uses from “S” to “P” or “P/S” in the NC Neighborhood Commercial District, and for all retail uses shown as “P” in the NC column, change to “P/S” and add a footnote “[3]” placed in the Additional Requirements column and a new Note 3 at the end of the table reading as follows “[3] New construction for individual retail uses over 2,500 square feet must be approved through the Special Use Permit process.”**

**Table:**

Household Living	Dwelling, single-family attached	S <u>P</u>
Health Care Facilities	Medical or dental clinic	S <u>P</u>
Retail Sales and Services	Other retail sales establishments	S <u>P/S</u>

**Section 9. [initially Section 14 during Commission consideration]**

**. In 30-4.E.6 Specific Regulations for Certain Temporary Uses and Structures, make the following modifications to correct when a permit is required for certain temporary uses; eliminate duplication of heading and overlapping descriptions; guide the siting of temporary uses; address the staging needs of construction projects; and align standards with a recent amendment, all as follows:**

**Sec. 9.1: In Table 30-4.E Permitted Temporary Uses and Structures, change the Specific Regulations column and change the number of occurrences in Note D to match a recent amendment, as follows:**

“Temporary Storage in a Portable Shipping Container “No permit required”

[new] Temporary Project Office other than Construction Office “Permit Required; see Section 30-4.3.6(c)

Note D “... and no more than ~~three~~two occurrences....” “

**Sec. 9.2: In 30-4.E.6(a) Expansion or Replacement of Existing Facilities, modify to eliminate duplication and overlap by deleting item “c. Temporary Offices” and renumbering this section.**

**Sec. 9.3: In 30-4.E.6(a) Expansion or Replacement of Existing Facilities, modify item (2) Standards as follows to allow some clear options in siting a temporary structure:**

**(2) Standards**

In addition to meeting the general standards of Section 30-4.E.5, General Standards for All Temporary Uses and Structures, all temporary structures approved in accordance with this section shall meet the following standards:

- a. ~~The structure may be located anywhere on the site except within the following areas:~~
  - ~~i. Existing required landscaping or perimeter buffer areas;~~
  - ~~ii. Areas designated as future required landscaping areas, whether or not vegetation currently exists; and~~
  - ~~iii. Other areas designated on the site for open space, vehicular use, or ingress/egress.~~ shall be placed to avoid obstructing emergency access and pedestrian and vehicular circulation; disturbing or damaging required landscaping or buffer areas being retained, including heritage or specimen trees being retained; or impacting future open space or areas to be landscaped.
- b. The temporary structure shall be factory-fabricated and transportable;
- c. In addition to any other off-street parking required on the site in accordance with Section 30-5.A, Off-Street Parking, Loading, and Circulation adequate off-street parking shall be provided for the temporary use;
- d. All permits required by applicable building, electrical, plumbing, and mechanical codes shall be obtained prior to installation of the temporary structure; and
- e. The temporary structure shall be compatible with the existing buildings on the site in terms of exterior color, design, and placement, to the maximum extent practicable.

**Sec. 9.4:** In 30-4.E Table and E.6(c) Construction Related Activities for New Construction, modify the heading and adjust the chart and standards to clarify where temporary construction facilities can be located, when a temporary use permit is required, and the specific standards or conditions that may (be) applied:

TABLE 30-4.E: PERMITTED TEMPORARY USES AND STRUCTURES		
TEMPORARY USE OR STRUCTURE	ALLOWABLE TIME FRAME	SPECIFIC REGULATIONS
TEMPORARY STRUCTURES		
Expansion or Replacement of Existing Facilities (including temporary offices for construction and/or security personnel)	(A)	Permit Required; see Section 30-4.E.6.a
Real Estate Sales Office/Model Sales Home	(A)	Permit Required; see Section 30-4.E.6.b
Construction-Related Activities for new Construction	(A)	No Permit Required; see Section 30-4.E.6.c
Temporary Storage in a Portable Shipping Container	(D)	No Permit Required; see Section 30-4.E.6.d
TEMPORARY SALES		
Outdoor Seasonal Sales	(B)	Permit Required; see Section 30-4.E.6.e
Garage and/or Yard Sales	(E)	Permit Required by City Code of Ordinances
SPECIAL EVENTS		
Special Events	(C)	Permit Required; see Section 30-4.E.7
TIME FRAMES:		
(A) Such structures may be in place for no more than one to three years.		
(B) Such sales are limited to a maximum of 30 days per calendar year and no more than three occurrences per parcel, per year.		
(C) Such events are limited to 14 total days per calendar year, per parcel.		
(D) Such structures may be in place for no more than 30 days per calendar year, and no more than <del>three</del> <u>two</u> occurrences per parcel, per year.		
(E) Such uses are limited to a maximum of three occurrences per parcel per year, for a maximum duration of two days per occurrence.		

## **(c) Construction-Related Activities for New Construction**

### **(1) General**

Temporary construction-related activities for new construction including construction offices, storage buildings, outdoor storage, and employee parking areas, may occur in all zones subject to the issuance of a Temporary Use Permit (see Section 30-2.C.10).

### **(2) Exception**

Construction-related activities on the same site parcel as the construction activity is permitted subject to conditions that may be included in the building permit without obtaining a Temporary Use Permit. Such uses shall be removed within 30 days after issuance of a Certificate of Occupancy.

### **[new number] Duration Adjacent Site**

Temporary Use Permits for construction-related activities may be approved for a period of up to one year. This period may be extended in six-month periods, for good cause shown, upon approval of a written request for such an extension, submitted to the City Manager, 30 days prior to the expiration of the permit. Such extension may include additional or revised conditions. In no event shall the extension allow the temporary use to remain on the site for more than two years. All such uses shall be removed and the site restored to its previous condition within 30 days after issuance of a final Certificate of Occupancy or Certificate of Completion, and the site restored to its previous condition

**Sec. 9.5: In 30-4.E.6(d) Temporary Storage in a Portable Shipping Containers, delete “s” at the end of Containers in the heading.**

**Section 10. In Table 30-5.A.4.B: Minimum Off-Street Parking Standards, for hotel or motel use types in the Visitor Accommodations use category, modify and make the standards the same for hotel and motel, as follows:**

Visitor Accommodations	Bed and breakfast inn	2 spaces + 1 per guest bedroom
	Hotel or motel	<del>Hotel: 1 per every 3 guest rooms</del> <u>Hotel or Motel: 1 per every guest room plus</u> <del>Both: 75% of spaces required for on-site accessory uses</del>
	Tourist Home	2 spaces + 1 per guest room

**Section 11. In 30-5.A.4.B Minimum Off-Street Parking Standards, change the standards for medical or dental clinics: “~~1 per every 300 sf~~ 1 per every 250 sf”**

**Section 12. Clarify the standards for cul-de-sacs and street stubs, correct dimensions, and add cross-references regarding connections to existing stubs, as follows:**

**Sec. 12.1: In Table 30-6.A.4, distinguish single-family and change the Maximum Right-of-Way Widths as follows:**

“Minor and residential	<del>45</del> <u>40</u>
Cul-de-sac residential – single-family	<del>50</del> <u>90</u>
Cul-de-sac commercial	<del>53</del> <u>106</u> ”

**Sec. 12.2: In 30-5.F.4 Streets, Item (d) Cul-de-Sac and Dead End Streets, change as follows to provide safe, functional interim design and standards consistent with the Public and Private Street Standard manual:**

**“(d) Cul-de-Sacs and Street Stubs”**

(1) Street Stubs shall be allowed only on a temporary basis to serve a phase or portion of a subdivision. Street stubs longer than 150 linear feet shall include a paved hammerhead turnaround or cul-de-sac that meets the city’s minimum standards and shall be located within the dedicated right-of-way or easement. In the event that a final plat (See Section 30-2.C.6.e Final Plat) for the phase or portion of a subdivision served by a temporary ~~dead-end street stub~~ is submitted for approval or recording, the Final Plan shall include a notation

that the street is temporary, and that additional modifications to the street will occur when the adjacent area is developed.

(2) ...

~~(3) Cul-de-sacs or dead-end streets longer than 150 linear feet shall include a paved turnaround having a minimum radius of 50 feet from the center to the property line in single-family residential areas shall include a paved turnaround having a minimum radius of 37 feet from the center to the back of curb. Within multi-family residential areas or commercial areas a minimum radius of 45 feet shall be provided.~~

~~(4) All street stubs shall include a paved temporary turnaround that meets the City's minimum standards.~~

~~(5)~~(4) In no case shall a cul-de-sac serve more than 25 lots in a development.”

**Sec. 12.3: In Section 30-6.A.4(a) Public Streets and Alleys, make the following changes to items (3) and (5) to coordinate standards and provide consistency with the Public and Private Street Standard manual:**

“(3) Cul-de-Sac Streets and Street Stubs

~~Cul-de-sac streets shall be configured in accordance with the standards in Section 30-5.F.4(d) Cul-de-Sac and Dead End Streets. Cul-de-sac streets shall not be more than 800 feet in length and shall have at the closed end a paved turnaround with a minimum radius of 37 feet for single family residential and 45 feet for multi-family residential or commercial. Street Stubs longer than 150 linear feet shall include a paved hammerhead turnaround or cul-de-sac that meets the city's minimum standards and shall be located within the dedicated right-of-way or easement. (See Section 30-5F.4(d))~~

(4) Street Names

.....

~~(5) Street Stubs~~

~~Temporary and stub streets shall include a temporary turnaround developed in accordance with the City's minimum standards.~~

**Section 13. In 30-6.C.1 Performance Guarantees, make the following changes to item (a)(1) to coordinate requirements with Chapter 23 for stormwater:**

- (1) To ensure the completion of public infrastructure improvements that are required as part of an approved Subdivision Plan (e.g., streets, sidewalks, ~~stormwater management facilities~~, potable water facilities, wastewater facilities, street lights), but are not approved by the City Manager as complete before application for approval of a Final Plat (Section 30-2.C.6.d.4). Note: Stormwater management facilities shall comply with Chapter 23.”

**Section 14. In Articles 7 Nonconformities and 9 Definitions, make the following changes to better define and allow reasonable use of nonconforming lots, particularly nonconforming non-residential lots:**

**Sec. 14.1: Modify 30-7.D.2 Development of Unimproved Lots in Residential Lots, to create a heading for all Unimproved Lots and two subsections (a) and (b) for Residential Lots and for Non-residential Lots, adding new language for item (b) to address development of lawfully nonconforming non-residential lots, as follows:**

**“2. Development of Unimproved Lots in Residential Districts**

**(a) In Residential Districts**

~~(a)~~(1) In the residential zoning districts, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family detached dwelling and customary accessory structures may be developed on any single lot of record existing prior to July 1, 2011. This provision applies even if the lot of record fails to comply with the district’s dimensional standards for area or width. Development of a single-family detached dwelling on the lot of record shall comply with the other district dimensional standards, to the maximum extent practicable.

~~(b)~~(2) A Minor Site Plan (see Section 30-2.C.5.b.2, Minor Site Plan) is required in cases where the nonconforming lot proposed for development fails to conform with any standard of the applicable base or overlay district by 17 percent or more.

~~(c)~~(3) In the event that a vacant nonconforming lot is located adjacent to a lot under common ownership, and the adjacent lot has sufficient size to allow for a lot line adjustment (see Section 30-2.C.6.f, Subdivision Exemption) as a means of bringing the vacant lot closer into conformity with the requirements of the zoning district where it is located, then such lot line adjustment shall be required as a condition of approval for development on the vacant nonconforming lot.

**(b) In Non-residential Districts**

(1) A lawfully established nonconforming lot having one or more dimensional nonconformities may be used for any permitted or special use allowed in the zoning district in which the lot is located provided that any structure proposed for the use meets all applicable dimensional and numerical requirements and all applicable procedures are followed. Such lots may be recombined with adjoining lots to increase the extent of their conformity provided new nonconformities are not created.

**Sec. 14.2: Replace the definition of “nonconformity” in Article 9 Definitions with the following:**

~~“Nonconformity~~

~~A nonconforming use, structure, lot of record, site feature, or sign.~~

**Nonconformity, Lawful**

Any nonconformity involving a dimensional or numerical requirement or use of property that affects a structure erected or a lot created in conformity with the then-applicable development requirements of the city/then-governing body, but subsequently made nonconforming by action of the city through a zoning map or unified development code amendment.”

**Section 15. The City Clerk is hereby authorized to revise formatting, correct typographical errors, verify and correct cross references, indexes, and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future text amendments as long as doing so does not alter the material terms of the Unified Development Ordinance.**

**Section 16. 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 of Ordinances, City of Fayetteville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.**

ADOPTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

CITY OF FAYETTEVILLE

\_\_\_\_\_  
ANTHONY G. CHAVONNE, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Karen S. Hilton, AICP, Manager Planning and Zoning Division, Development Services  
**DATE:** November 28, 2011  
**RE:** **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.**

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### **THE QUESTION:**

Do the proposed changes remain consistent with and better achieve public objectives and purposes and not conflict with other regulations, while being considerate of environmental and development needs? (Also see 30-2.C.2.e attached - standards for considering amendments)

### **RELATIONSHIP TO STRATEGIC PLAN:**

Greater Tax Base Diversity - strong local economy  
Growing City, Livable Neighborhoods - a great place to live  
A More Attractive City - clean and beautiful

### **BACKGROUND:**

On July 25, 2011, the City Council adopted the Unified Development Ordinance (UDO) and Amendment Set #1. The UDO became effective August 1, 2011, and staff began noting other opportunities for improvements and adjustments based on daily application of the ordinance.

Staff received comments on these proposed changes from the UDO Advisory Committee at a meeting on November 1. With some adjustments in response to those comments, this Amendment Set #3 was considered at a Planning Commission public hearing on November 15th. There was one speaker in favor of deleting the separation requirement for tattoo parlors and auto repair shops. The Commission voted unanimously (8-0) to recommend approval with some modifications as noted in the minutes (draft is attached) and already incorporated in the draft ordinance (also attached).

### **ISSUES:**

The draft Ordinance in the packet includes an explanation for each substantive change. During the hearing and discussion at the 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 non-conforming multi-family developments experiencing major casualty damage. The resulting adjustments recommended by the Commission are reflected in the attached ordinance.

### **BUDGET IMPACT:**

The overall impact should be positive, with the most immediate and direct impact occurring mostly with the amendment non-conforming multifamily development with over 50% damage to a portion of the development.

### **OPTIONS:**

1. Approve as recommended;
2. Modify portions and Approve as amendment;
3. Defer action; or
4. Deny.



**RECOMMENDED ACTION:**

The staff and Planning Commission recommend that the City Council move to APPROVE the ordinance as recommended.

**ATTACHMENTS:**

Standards for Text Amendments

Planning Commission Minutes-draft

UDO Admendment Set #3 CC Draft

Excerpt, Unified Development Ordinance:

**Art. 30-2.C.2(e)      Text Amendment Standards**

Amending the text of this Ordinance is a matter committed to the legislative discretion of the City Council. In determining whether to adopt or deny the proposed amendment, the City Council shall consider and weigh the relevance of the following factors:

- (1)** Whether and the extent to which the proposed amendment is consistent with all City-adopted plans that are applicable;
- (2)** Whether the proposed amendment is in conflict with any provision of this Ordinance, and related City regulations;
- (3)** Whether and the extent to which there are changed conditions that require an amendment;
- (4)** Whether and the extent to which the proposed amendment addresses a demonstrated community need;
- (5)** Whether and the extent to which the proposed amendment is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and would ensure efficient development within the City;
- (6)** Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern; and
- (7)** Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, storm water management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

Minutes  
Fayetteville Planning Commission  
November 15, 2011

Attending:

Jack Cox (Chair)  
Dr. Fiden  
Jimmy Holland  
John Johnson (alt.)  
Mary Ellen Lavoie  
Larnie McClung (alt.)  
Ronald Michael (Vice-Chair)  
Bill Snuggs  
Bill Watt  
Maurice Wren

Absent:

Jessica Ranavaya

Staff:

Scott Shuford  
Karen Hilton  
Brian Myers

Approval of the Agenda and Minutes

Vice Chair Ron Michael called the meeting to order. Maurice Wren made a motion to approve the agenda as corrected, seconded by Bill Snuggs. Corrections to the minutes of October 18 were requested: Correct Mr. Johnson's name, and Mr. McClung was not one of the members reappointed. Bill Watt made a substitute motion to approve the minutes of the October 18 meeting as corrected, seconded by Jimmy Holland and approved unanimously (8-0).

PUBLIC HEARING ON PROPOSED UDO AMENDMENT SET #3:

Background and Staff Recommendations:

Staff summarized the standards to consider in reviewing the proposed amendments, the eight sections of the proposed ordinance, and the list of corrections distributed at the meeting. Staff noted the comments from members of the UDO Advisory Committee, which met November 1 to review these proposed changes and discuss upcoming amendments.

Questions of staff focused primarily on two items: the separation requirements and the changes to the non-conforming standards. Staff clarified that the auto repair uses have to be located in a commercial district to begin with, the use does not include body shops, and most of the uses locate in strip commercial areas that are usually not more than about 150 to 200 feet deep. A 125 foot setback leaves no room for the actual building and parking. Tattoo parlors, which now have a 500 foot separation requirement from residentially zoned property, have even greater problems. There was no separation requirement in the previous ordinance for either use.

Discussion on the reestablishment of legal nonconforming multifamily development focused primarily on how much time should be provided before either construction was finished or the use lost its right to be reestablished. Some members expressed great concern that the damaged structure may continue to sit for what appeared to be as long as four or more years, while others described the current problems with both

insurance and financing that resulted in needing at least 2 to 3 years and in many instances longer, before reconstruction might be completed. Mr. Cox arrived and the Commission voted to seat him as

#### Public Hearing

There was one speaker in favor of deleting the separation requirements. Mr. Myiar [check spelling] described the circumstances of his shop along Yadkin Road, where properties are usually only 150 feet deep. Without this change, he could not reestablish his business. He also summarized the steps and timetable in getting permits and being ready to start reconstruction (over six months to complete the insurance process and various permits for construction following extensive tornado damage).

#### Discussion

Discussion focused on the distinctions, especially considering the additional standards for auto repair shops, between the impacts of these uses and other commercial uses such as restaurants or hair salons, and on the appropriate amount of time to allow for securing a building permit and for completing construction. Members indicated 36 months was an adequate maximum time frame, and Mr. Shuford prepared alternative language for consideration.

#### Recommendation

Bill Watt made a motion to approve the staff recommendations. Attorney Brian Myers recommended that the members repeat the modifications that were part of the recommendation. Maurice Wren proposed a substitute amendment to recommend approval of Amendment Set #3 with the following changes: (1) in the front setbacks for residential districts, add the word “or” in place of the semicolon and underline the phrase “of private streets”; (2) change the table with buffer standards to delete “DT” in both locations (column and row) and indicate that for Heavy Industrial adjacent to LC or CC, the standards should be “B” type buffer and between Heavy Industrial and Light Industrial, a buffer should not be required; (3) change the wording in section 7.1 to read as follows: “... Article 30-5 are met. The City Manager may extend these time periods, allowing up to a cumulative total of 36 months for completion of construction for due cause.” The motion was seconded by Dr. Fiden, and approved unanimously (8-0).

#### Upcoming meetings

Staff indicated that there would be some additional amendments that should be ready for the December meeting. Two members indicated they would not be available for the meeting in December. Instead of the meeting on December 20, staff will identify a date earlier in January for the next Commission meeting.

The meeting adjourned at approximately 9 o'clock.

Prepared By: Karen Hilton, Manager

Approved By: \_\_\_\_\_  
(Chair/Vice Chair and date)



**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 TATOO PARLORS AND AUTO REPAIR; PENALTIES FOR NON-COMPLIANT AUTO/JUNK SALVAGE YARDS; LANDSCAPING STANDARDS; STANDARDS FOR CERTAIN NON-CONFORMITIES.**

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that the Unified Development Ordinance adopted December 13, 2010 as Chapter 30 of the Code of Ordinances of the City of Fayetteville and last amended July 25, 2011, be amended as follows:

**Section 1. Modify the following sections of Article 3 Zoning Districts to clarify and provide consistent treatment where appropriate among the front and corner side yard setbacks in various districts:**

**Sec. 1.1: In 30-3.C.3 AR Agricultural Residential District, dimensional table, change Front and corner side setback, min. (ft.) from 40 to 30 in the column for Principal Uses.**

*Explanation: The change helps minimize creation of any non-conformity in setbacks.*

**Sec. 1.2: In the Dimensional Standards tables for the SF-15, SF-10, SF-6 and MR5 Residential Districts, make the following change in each: For the entry “Front and corner side setback, min. (ft)” in each district, modify as shown below, using SF-10 as an example:**

**SF-10**

Front and corner side setback, min. (ft)[3]	30 <del>feet</del> or 55 <del>feet</del> from centerline of private streets	Not allowed...
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*Explanation: While the centerline situation occurs infrequently, allowing the choice of setbacks when it is relevant is more likely to encourage the greatest compatibility with established dwelling units.*

**Sec. 1.3: In the Dimensional Standards tables for the OI, LC, CC, MU, LI and HI Districts, make the following change for each district: For the entry “Front and corner side setback, min. (ft)” in each district, begin the entry in the next column for the dimensions with the phrase “ lesser of”. Using OI as an example:**

OI

Front and corner side setback, min. (ft)[3]	The lesser of: 25; 60 from street centerline	Not allowed...
---	--	----------------

*Explanation: In this instance, using the smaller measure will provide greater flexibility in siting the structure, and could encourage a more urban form along a street.*

**Sec. 1.4. In the Dimensional Standards table for the CC Community Commercial district, modify the rear yard standard for accessory uses as follows:**

CC

Rear setback, min. (ft)[3]	3; 20 where abutting an alley or single-family zoning district or use	<del>20</del> 5
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*Explanation: The CC Community Commercial district is the most intense district, and this change allows fuller use of the property and is consistent with other commercial districts in pattern and dimensions.*

**Section 2. In Section 30-3.H.2(i) for the Hospital Area Overlay, modify Item (1) Perimeter Buffer as follows:**

**(i) Buffering Requirements  
(1) Perimeter Buffer**

~~Where a property line abuts another property zoned or used residentially, there shall be a ten-foot-wide Type D perimeter landscaping buffer along all that property lines, regardless of the adjoining land use. No buildings or parking areas may encroach into the such perimeter buffer. Permitted encroachments (like walls or fences) are allowed as specified under Permitted Encroachments into Required Setbacks (see Section 30-9.B.1.f.2).~~

*Explanation: The objective of encouraging evolution to a more urban, pedestrian-friendly development pattern in the hospital area is not well-served by requiring a dense 10 foot deep buffer from each of the abutting properties when the properties are not residential in use and are zoned for office, institutional or commercial use within the Overlay.*

**Section 3. In 30-4.A Use Table, Educational Facilities, change the middle school use from “S” to “P” in both the OI Office and Institutional and NC Neighborhood Commercial districts, and change the high school use from “S” to “P” in the OI Office and Institutional district.**

*Explanation: With regard to the listing in the OI district, neither the middle or high school use should have a greater impact than a university or college, which is permitted in the district titled “Institutional.” Middle schools are typically reasonable uses in less commercial, more neighborhood-oriented areas and thus are recommended as permitted uses in the NC district as well. However, since*

*both colleges and high schools typically hold evening sporting events or performances and generate significant daily traffic, they are appropriate only through the Special Use Permit process in the NC district because of its emphasis on small scale and proximity to residential uses.*

**Section 4. Delete the requirements for separation between the following uses and residentially zoned properties and adjust the Use Table as indicated:**

**Sec. 4.1: In 30-4.C.4.h(11) Use-Specific standards for Tattoo parlor/body piercing establishments, delete the entire entry and replace with “Reserved for Future Use” and in Table 30-4.A under the Retail Sales and Services use category, for Tattoo Parlors, delete the reference to Use-Specific Standards under the Additional Requirements column.**

**Sec. 4.2: In 30-4.C.4.j(3) Use-Specific standards for Auto Repair and Service (Without Painting/Bodywork), delete Item (a) and renumber remaining items, as follows:**

**(3) Automotive Repair and Service (Without Painting/Bodywork)**

Automotive repair and service uses not involving painting or bodywork service shall comply with the following standards:

- ~~a.~~ The repair facility shall be located at least 125 feet from any residential building, educational facility (except vocational school), or child care center.
- ~~ab.~~ The use shall be designed to ensure proper functioning of the site as related to vehicle stacking, circulation, and turning movements.
- ~~bc.~~ Repair of all vehicles shall occur within an enclosed building. Temporary outdoor vehicle storage may be allowed in an outdoor storage area that is no larger than 25 percent of the buildable area of the lot, located behind or to the side of the principal structure, and screened with a wooden fence or masonry wall in accordance with Section 30-5.D, Fencing Standards.
- ~~cd.~~ The use shall provide adequate, enclosed trash storage facilities on the site.
- ~~de.~~ If gasoline is sold on-site, the use shall also comply with the standards for a gasoline sales use in Section 30-4.C.4.h.6.
- ~~ef.~~ Vehicles shall not be parked or stored as a source of parts or the purpose of sale or lease/rent.
- ~~fg.~~ Vehicles that are repaired and are awaiting removal shall not be stored or parked for more than 30 consecutive days. In cases where a vehicle is abandoned by its lawful owner before or during the repair process, the vehicle may remain on site as long as is necessary after the 30 day period, provided the owner or operator of the establishment demonstrates steps have been taken to remove the vehicle from the premises using the appropriate legal means.

*Explanation: Both uses are frequently located within strip shopping areas adjacent to residential areas. Since these areas typically do not have the depth for such separation from the residential areas, the standard has created a large number of non-conforming uses. Staff found no basis sufficiently distinguishing*



*tattoo parlors from other retail sales and services to warrant the spacing requirement. For auto repair without painting or bodywork, the remaining use-specific standards appear sufficient to mitigate projected impacts of such uses near residential development.*

**Section 5. In 30-4.C.5(e)(6) Use-Specific Standards for Salvage and Junkyard uses, modify Item “iv” as follows regarding the fine for non-compliance:**

**NO CHANGE IS RECOMMENDED.**

*Explanation: Instead of modifying the zoning ordinance to make the use-specific standards consistent with the original ordinance amortizing these uses, an amendment to the Fee Ordinance is being considered by the City Council.*

**Section 6. Adjust site landscaping standards and required buffers:**

**Sec. 6.1: Change Table 30-5.B.1.d Required Site Landscaping Plantings to read as shown:**

<b>TABLE 30-5.B.1.D: REQUIRED SITE LANDSCAPING PLANTINGS</b>	
<b>TYPE OF USE[1]</b>	<b>REQUIRED PLANTINGS PER SITE [2][3][4]</b>
Multi-family dwellings, nursing homes, and assisted living facilities <u>Detached single family residential uses</u>	8 caliper inches of canopy trees (including at least 1 evergreen tree) per acre + at least 1 shrub per each 5 feet of outer building perimeter  <u>Exempt from the requirements of this Section 30-5.B.1(d) Site Landscaping</u>
<u>Public and Institutional Uses</u> <u>Other household living uses;</u> <u>group living uses</u>	8 caliper inches of canopy trees (including at least 1 evergreen tree) per acre + at least 1 shrub for each 5 feet of outer building perimeter
<u>Commercial Uses</u> <u>All other uses</u>	<u>2 4</u> caliper inches of canopy trees (including at least 1 evergreen tree) per acre + at least 1 shrub for each 5 feet of outer building perimeter
NOTES: [1] See Table 30-4.A, Use Table. [2] At least one-half the required shrubs shall be of an evergreen variety. [3] Each evergreen tree meeting the minimum size standards of this section ( <u>see Section 30-5.B.1(c)(3)iii</u> ) shall count as two caliper inches towards the total number of required canopy tree caliper inches. [4] <u>Understory trees may be substituted for up to 50% of the required number of shrubs at the substitution rate of 1 understory tree for 3 shrubs.</u>	

*Explanation: The use categories in the current table are not comprehensive, leaving a large number of uses not covered by site landscaping standards. The required planting rates are disproportionate to the intensity and character of development in these use categories. In footnote 3 the requirement relative to evergreen trees is clearer with the cross-reference. The new footnote 4 provides greater flexibility in meeting the objectives of attractive and functional landscaping softening buildings and landscaping, screening less attractive uses, and adding shade and canopy to the community.*

Sec. 6.2: Change Table 30-5.B.1.f(4) Buffer Type Application as shown, with the additional changes to delete DT from both the column and the row, and change buffer type C between LC CC uses and HI uses to buffer type B, and change buffer type B between LI and HI uses to buffer type A:

(4) Buffer Type Application

Table 30-5.B.1.F.4, Buffer Type Application, specifies the type of perimeter landscape buffer that new development shall provide between it and adjacent property, based on the zoning district of the development site and that of the adjacent property. The buffer type is indicated by a letter corresponding to one of the four buffer types depicted in Table 30-5.B.1.F.3, Buffer Types.

TABLE 30-5.B.1.F.4: BUFFER TYPE APPLICATION [1]							
A = TYPE A BUFFER B = TYPE B BUFFER C = TYPE C BUFFER D = TYPE D BUFFER N/A = NOT APPLICABLE (NO BUFFER REQUIRED)							
ZONING CLASSIFICATION OF PROPOSED DEVELOPMENT SITE [2]	ZONING CLASSIFICATION OF ADJACENT PROPERTY						
	CD AR	SF-15, SF-10, SF-6 OR EXISTING SINGLE- FAMILY DEVELOPMENT	MR-5 MH	OI NC MU	LC CC DT	LI	HI
CD, AR	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SF-15, SF-10, SF-6	N/A	N/A	N/A	N/A	N/A	N/A	N/A
MR-5, MH [3]	A	A	N/A	N/A	N/A	N/A	N/A
OI, NC, MU	B	B	A	N/A	N/A	N/A	N/A
LC, CC, <del>DT</del>	<del>B</del>	<del>B</del>	<del>C</del>	A	N/A	N/A	N/A
LI	<del>B</del>	<del>B</del>	<del>C</del>	B	A	N/A	N/A
HI	D	D	D	D	<del>C</del>	<del>B</del>	N/A

NOTES:

[1] Letters in cells correspond to the buffer types depicted in Table 30-5.B.1.F.3, Buffer Types.

[2] Development in PD districts is subject to perimeter buffer requirements in the PD district standards. In cases where development is proposed next to an existing PD district having no perimeter buffer, the proposed development shall provide a perimeter buffer that is consistent with the type of buffer required if the adjacent use was in a differing base district appropriate for the type of use.

[3] Mobile home parks shall provide a perimeter buffer around the park in accordance with the standards in Section 30-4.C.2.a.4, Manufactured Home Parks.

*Explanation: The primary purpose of the buffer between residential and commercial uses is to effectively screen the more intense site lighting, activity, parking areas (both appearance and headlights at night), and, usually, the noise and appearance of back service areas. Buffer Type D, a more opaque screening planting, is therefore recommended between commercial and residential development. For similar reasons (where screening is either more or less important relative to buffer type shown in the current standards), the other changes in the designated buffer types are recommended. Downtown is deleted from **both the row and the column** in the table because a primary objective in downtown development is the more dense, visible, walkable built fabric, with less separation of uses and buildings.*

**Section 7. Make the following changes to Article 7, to clarify and expand circumstances for legally re-establishing certain uses in the same location or at the same density.**

**Sec. 7.1 Revise 30-7.B.8(a) to read:**

**8 (a) Destruction or Damage Beyond 50 Percent of Value**

- (1) In the event a structure housing any nonconforming use is damaged or destroyed, by any means, to an extent more than 50 percent of its replacement value at the time of damage or destruction, it shall only be restored in a manner that conforms with the provisions of this Ordinance except as provided in subsection (3) below.
- (2) New construction (including the establishment of off-street parking, landscaping, signs, and other site features) shall be in accordance with the requirements of this Ordinance.
- (3) A lawfully nonconforming multifamily residential structure located in a residential zoning district, if damaged or destroyed, by any means, to an extent more than 50 percent of its replacement value at the time of damage or destruction, shall be eligible for reconstruction to its prior level of density if a Building Permit for such restoration is obtained within six months of the casualty damage, and repair is actually begun within 12 months after the date of such damage or destruction and is diligently pursued to completion provided all other requirements of Article 30-5 are met. The City Manager may extend these time periods, allowing up to a cumulative total of 36 months for completion of construction for due cause.
- (4) Such structures may be reconstructed to their previous form and location under the following circumstances, as applicable:
  - A single multifamily structure has been damaged or destroyed.
  - The structures are duplex, triplex or quadraplex multifamily types.
  - The structures contain five or more units, are part of a larger complex of similar structures and not more than 50 percent of the total number of principal structures within the complex have been damaged or destroyed to an extent more than 50 percent of their replacement value.
  - Conforming buffers are established prior to issuance of the Building Permit(s).

*Explanation: The viability of uses legally established at certain densities depends heavily on that density over a period of time. This change enables re-establishment of that density under specified circumstances, thus*

*making possible a longer term stability and level of maintenance for that use in the neighborhood even though the use remains non-conforming.*

**Section 9. Errors or clarifications are to be made as noted below:**

30-2.A.4(a)(2) b and c; to add item d. Appeal of Major or Minor Site Plans.

30-2.A.6(a)(1)b, to delete “Minor Site Plans” in Item b.i; delete all of Item b.ii; and delete “Technical Review Committee” in Item b.iv. Insert “~~Vested Rights~~” in the empty b.ii position.

30-2.B.18(a): Modify the first line to read: “Any appeal from a final decision by the City Council, Planning Commission, or Board of Adjustment shall be ...”

30-2.C.5(d)(4)a: Replace “Board of Adjustment” with “Planning Commission” in the fourth line of Item a.

30-2.C.18(a)(1) Appeal: Change Items (a) through (d) as shown on the attached.

30-2.C.19(d)(4) Vested Rights – Appeal: Change the first line to read: “An appeal from the City Manager’s ~~approval~~ decision of Vested Rights Certificate shall be reviewed ...”

30-2.C.4(c)(4)i Conditional Zoning – Designation on Official Zoning Map: Consider changing the way a conditional zoning is shown on the map and in text references, from a prefix “C” to a suffix “/CZ” as was the previous practice.

**Section 10. The City Clerk is hereby authorized to revise formatting, correct typographical errors, verify and correct cross references, indexes, and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future text amendments as long as doing so does not alter the material terms of the Unified Development Ordinance.**

**Section 11. 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 of Ordinances, City of Fayetteville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.**

ADOPTED this the 28<sup>th</sup> day of November, 2011.

CITY OF FAYETTEVILLE

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ANTHONY G. CHAVONNE, Mayor

ATTEST:

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City Clerk

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Craig Harmon, AICP, CZO Planner II  
**DATE:** November 28, 2011  
**RE:** **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**

---

### **THE QUESTION:**

Should the subject property be rezoned as requested by the owner?

### **RELATIONSHIP TO STRATEGIC PLAN:**

Strong Local Economy  
Livable Neighborhoods

### **BACKGROUND:**

Owner: Joseph Riddle III  
Applicant: City of Fayetteville  
Requested Action: Rezone the subject property from OI to LC/C or NC/C.  
Size: 10 acres  
Property Address: PIN 0417-26-2808

Land Use Plan Recommendation: The Land Use Plan recommends this property to be developed as Office and Institutional. This request is not consistent with the Land Use Plan. It is also not consistent with the 2003 Glensford Road Area Study.

### **Purpose:**

This case involves property identified by City Council for City-initiated rezoning consideration during the UDO remapping process. This process allows consideration of the requested rezoning in a standard fashion, with specific notice to adjoining property owners and an opportunity for full analysis by staff.

### **ISSUES:**

This roughly 10 acre site is located on an arterial street, Cliffdale Road, and adjoins a single family neighborhood on the north and east, County-zoned (CP) property to the west, and a multifamily neighborhood across Cliffdale to the south. The surrounding uses support development of this property in its current designation. The property was previously zoned P2 and was consequently remapped to its current OI zoning. This property was the catalyst for the 2003 Glensford Area Study and was rezoned to P2 in accordance with the recommendations of this study (and the request of the owner) in 2005.

Staff review of the request suggests that rezoning of this property to LC is inconsistent with the surrounding development pattern. After this request was advertised, the applicant requested a lesser zoning of NC - Neighborhood Commercial with the following conditions.

Conditions offered by applicant:

1. No Outdoor Recreation
2. No Animal Care
3. No Parks
4. No Government Uses
5. No Group Living

## 6. No Multifamily

The owner has stated that he feels he has been down zoned through the UDO mapping process. Rezoning this property even with the conditions offered by the owner to NC/C would constitute an up zoning in allowed uses from the P2 district that it was zoned to in 2005. If the Council feels that the owner has been down zoned during the UDO mapping process, staff suggest that the owner should change his conditions to the following uses that were allowed under the old P2 district. This list comes straight from the old Zoning Ordinance.

- *Agencies and offices rendering specialized services in the professions, finance, real estate and brokerage, including service agencies not involving on-premises retail trade or on-premises services with and to the general public, nor wholesale trade on the premises, nor maintenance of a stock of goods for display or sale.*
- *Banks.*
- *Government buildings: buildings used exclusively by the federal, state, county or city government for public purposes, except garages, repair or storage yards, warehouses, and buildings used or intended to be used as clubs or penal institutions or for housing of prisoners.*
- *Interior decoration studios rendering specialized services in the preparation, illustration and implementation of plans, ideas, layouts and schemes, features, and designs for the decoration of the interior of buildings; provided that no retail sales shall be made on the premises or merchandise kept on the premises for sale, no displays shall be made on the premises other than the decoration and furnishing of the building itself, and including incidental preparation and fabrication of materials for individual customers for use in such decorations, provided that not more than five persons employed on the premises shall be engaged in the preparation of such materials.*
- *Offices of artists, lawyers, architects, and engineers.*
- *Parking lots, commercial or otherwise, for the automobiles and vehicles other than automobiles incidental to a permitted use.*
- *Photographers' studios.*
- *Signs, subject to the provisions of article VIII of this chapter.*
- *Antique shops, tearooms, art shops, specialty clothing boutiques, card and gift shops, watch and clock repair shops, bookstores except those defined in section 30-125, hobby shops such as doll or stamp shops, sewing and knitting supply shops, plant boutiques, catering establishments, special event establishments that allow uses including but limited to weddings, receptions and parties, and similar specialty shops as determined suitable and appropriate by the city council for retail sales and display upon and after obtaining a special use permit to be issued by the city council upon recommendation of the zoning agency after public hearings as required for amendment to this chapter. The primary purpose of providing for such special use permits in this district is to encourage the adoptive use of structures and/or sites deemed historically or architecturally significant to the community and preserve such sites and/or structures as an integral part of the community's heritage. Such special use permits shall be issued only after a finding is made that:*
- *Art galleries*
- *State licensed massage therapists, beauty, barber, nail and tanning salons.*

Zoning Commission and Staff recommend DENIAL of LC/C or NC/C based on:

Wellsford Land Use study and the City's Land Use Plan call for this property to be zoned for office use.

2. The conditions offered by the applicant do not match those uses allowed under the previous P2 Zoning.

3. P2 to OI was defined as a straight translation within the UDO. Rezoning to anything above OI undermines the remapping that occurred for all other P2 properties in the City.

**BUDGET IMPACT:**

None Noted.

**OPTIONS:**

1. Recommend denial of the rezoning as presented (recommended).
2. Recommend approval of rezoning with additional conditions (such as limiting uses to those in the former P2 district).
3. Recommend approval of the rezoning as requested by the applicant.

**RECOMMENDED ACTION:**

Zoning Commission and Staff Recommend: that the City Council move to DENY the rezoning to NC/C as requested by the applicant.

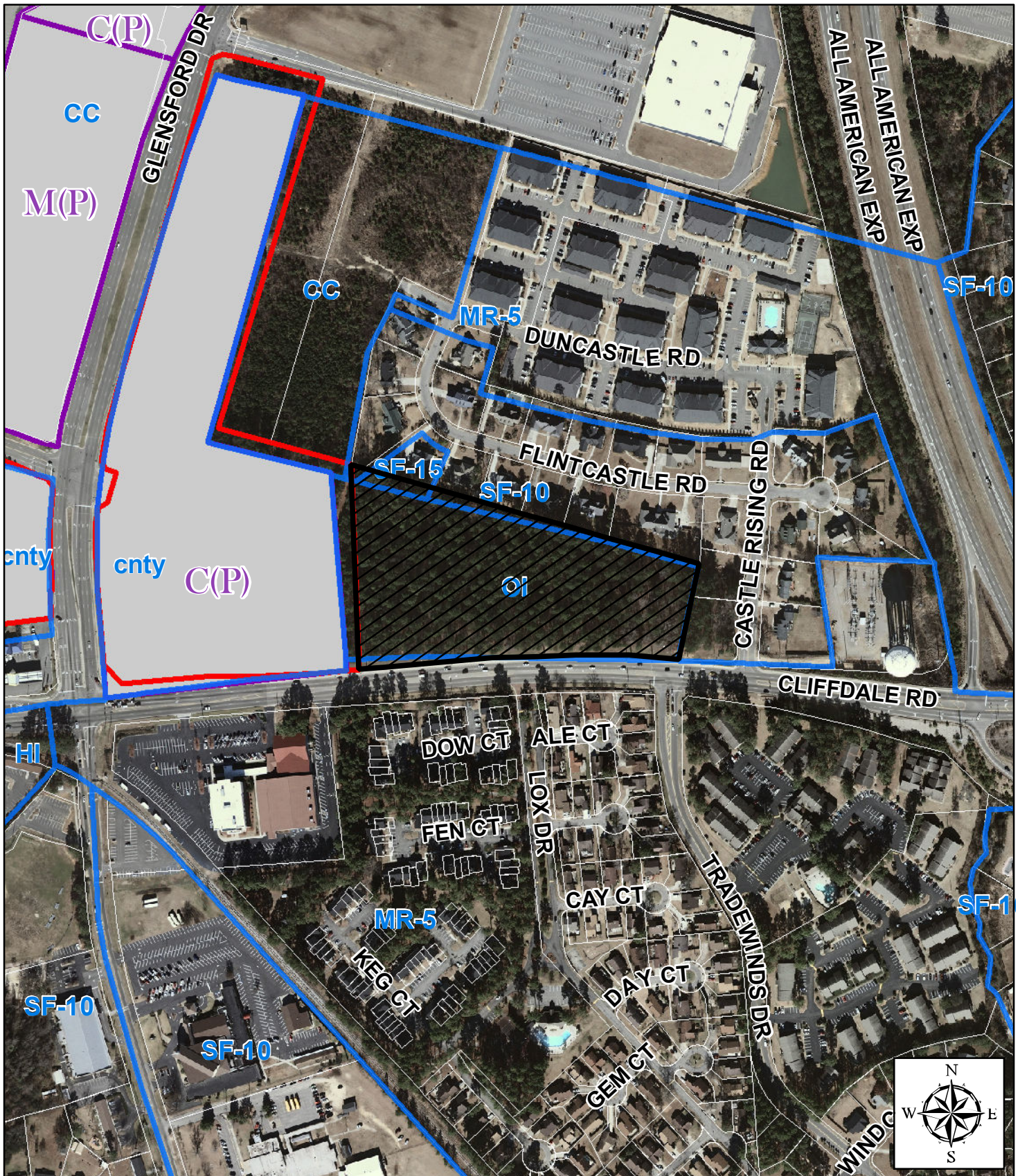
**ATTACHMENTS:**

Zoning Map

Land Use Plan



ZONING COMMISSION  
P11-40F



Request: Rezoning  
Location: North side of Cliffdale Road  
Acreage: +/- 10.0 acres

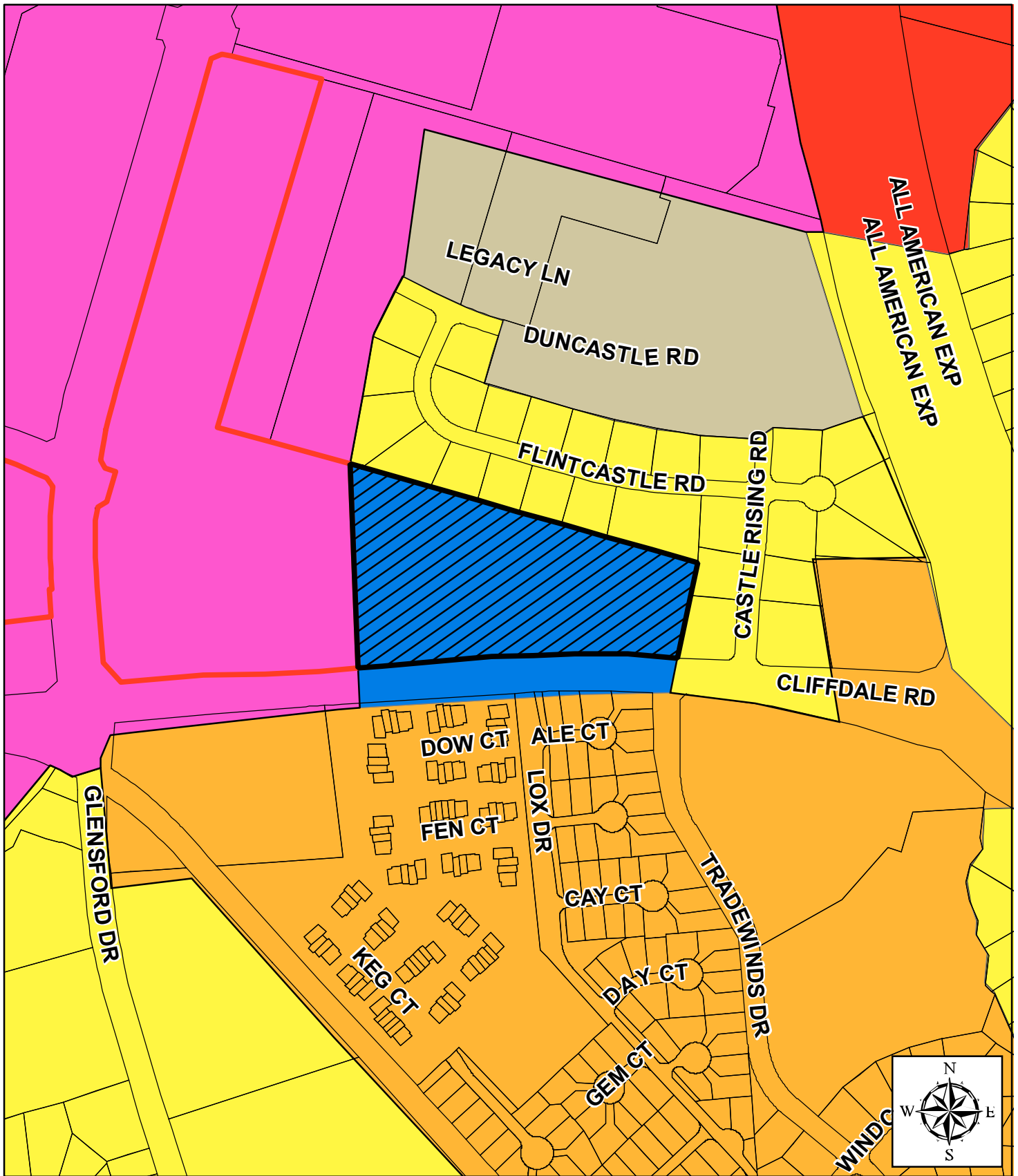
Zoning Commission: 08/18/2011 Recommendation: \_\_\_\_\_  
City Council: \_\_\_\_\_ Final Action: \_\_\_\_\_  
Pin: 0417-26-2808

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



# ZONING COMMISSION

## P11-40F



### Legend

#### updated2010plan(dnash)

<all other values>

#### CLASSDN

Academic Training-Fort Bragg  
Activity Node

Airfield Operations-Fort Bragg  
Community Activity Node  
Downtown  
Farmland  
Governmental

Heavy Commercial  
Heavy Industrial  
High Density Residential  
Historical District-Fort Bragg  
Light Commercial

Light Industrial  
Low Density Residential  
Medium Density Residential  
Neighborhood Activity Node  
Office & Institutional

One Acre Residential Lots  
Open Space  
Policy Directed Heavy Commercial  
Policy Directed Light Commercial  
Policy Directed Office & Institutional

Range & Training-Fort Bragg  
Redevelop/Holding-Fort Bragg  
Suburban Density Residential

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Craig Harmon, Planner II  
**DATE:** November 28, 2011  
**RE:** **Case No. P11-41F - Rezone from LC Limited Commercial to CC/C Community Commercial Conditional District for 15± acres at Sycamore Dairy Rd (PIN 0418-53-3255) owned by Joseph Riddle III.**

---

**THE QUESTION:**

Should the subject property be rezoned as requested by the owner?

**RELATIONSHIP TO STRATEGIC PLAN:**

Strong Local Economy  
Livable Neighborhoods

**BACKGROUND:**

Owner: Joseph Riddle III  
Applicant: City of Fayetteville  
Requested Action: Rezone the subject property from LC to CC/C  
Property Address: Sycamore Dairy Road (PIN 0418-53-3255)

Land Use Plan Recommendation: The Land Use Plan recommends this property to be developed as Heavy Commercial. This request is consistent with the Land Use Plan.

**Purpose:**

This case involves property identified by City Council for City-initiated rezoning consideration during the UDO remapping process. This process allows consideration of the requested rezoning in a standard fashion, with specific notice to adjoining property owners and an opportunity for full analysis by staff.

**ISSUES:**

This roughly 15 acre site is located on an arterial street, Sycamore Dairy Road, and adjoins multifamily-zoned property on the south and east, LC-zoned property to the east and southwest, and partially developed CC-zoned property across Sycamore Dairy to the north and west. Staff review of the case suggests that this rezoning with the limiting conditions is consistent with the surrounding zoning and development pattern due to its location and size. The property is not subject to any small area or corridor plans.

The Zoning Commission voted 3-0 to recommend approval when first heard. The Commission stated that the CC zoning would most closely mimic the previous C1P zoning of this property. The surrounding neighborhood had a variety of concerns about particular uses allowed in CC, so conditional zoning was suggested by Council to address these concerns. A conditional zoning approach required agreement by the owner and that the case be re-advertised for conditional zoning.

After meeting with some of the residents behind this property, the owner has agreed to the following conditions of use which mitigate the impact on nearby residential uses. The conditions are that the following items not be allowed in this CC/C district.

1. Group Homes
2. Halfway Houses
3. Psychiatric Treatment Facility

4. Tower - Freestanding
5. Utility - Major
6. Outdoor Kennel
7. Arena, Amphitheater or Stadium
8. Flea Market
9. Crematory
10. Mini Warehouse
11. Body shop unless with a car dealership
12. Wrecker Service
13. Truck Stop
14. Taxi/Cab Service
15. Building, Heating, Plumbing or Electrical Contractors
16. Electric motor repair
17. Heavy equipment sales
18. Machine shop
19. Light manufacturing
20. Outdoor storage as a principal use
21. Warehouse distribution
22. Landfill
23. Recycling drop-off center, unless it is ancillary to an established store or office
24. Youth club facility
25. Animal Shelter
26. Tattoo/Body Piercing
27. Car Dealership

There was discussion of a buffer condition at both the City Council meeting and the latest Planning Commission meeting. To address this compatibility issue, staff would like to see an additional condition be added. This condition would be for the maintenance of a 50-foot buffer of existing natural vegetation that would be located along the rear property line. This would help to buffer the property from existing residential development behind it. This particular depth is necessary to achieve a satisfactory opacity of buffer due to the existing conditions of the vegetation.

Zoning Commission recommends approval based on:

1. Principles of the UDO remapping project.
2. Consistency with the Land Use Plan.

Staff recommends approval with the following condition added to the applicant's list:

A 50-foot buffer consisting of existing vegetation be maintained along the property boundary with the existing residential development to the rear of the subject property.

**BUDGET IMPACT:**

None noted.

**OPTIONS:**

1. Approval of rezoning with conditions offered by the applicant. (Recommended by Zoning Commission)
2. Approval of rezoning with conditions offered by the applicant and additional condition proposed by the staff which must be accepted by the applicant (Recommended by staff).
3. Denial of the rezoning.

**RECOMMENDED ACTION:**

**Zoning Commission and staff recommend:** that the City Council move to Approve the rezoning of PIN 0418-53-3255 from LC to CC/C with all conditions listed in the issues section above.

**In addition,** staff recommends that the 50-foot buffer described above in "Issues" be included in the list of conditions for approval.

**ATTACHMENTS:**

Zoning Map

Land Use Plan

Proposed Buffer Area



**ZONING COMMISSION**  
**P11-41F**



**Request:** Rezoning  
**Location:** South side of Sycamore Dairy Road  
**Acreage:** +/- 15.0 acres

**Zoning Commission:** 08/18/2011  
**City Council:** \_\_\_\_\_  
**Pin:** 0418-53-3255

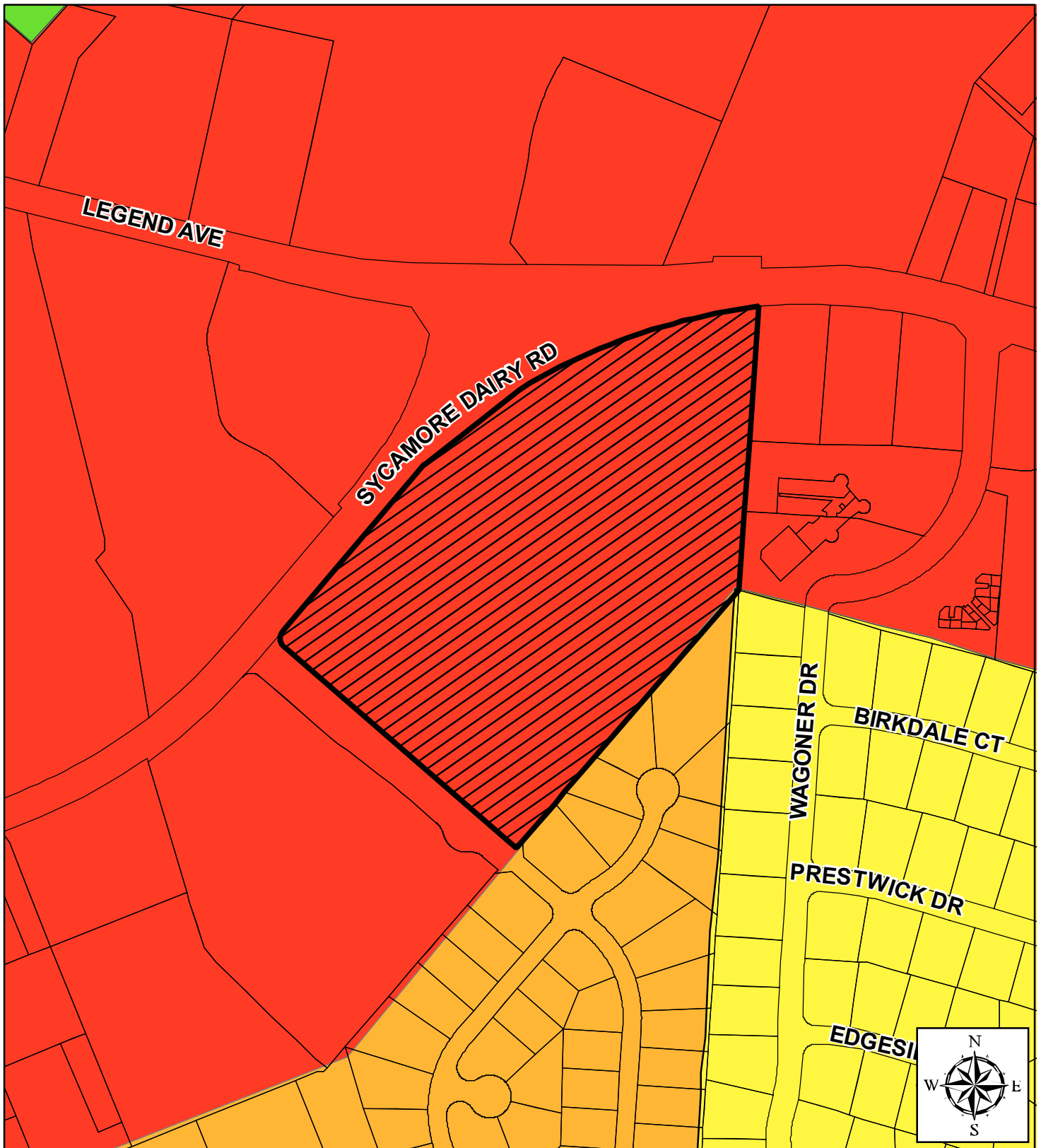
**Recommendation:** \_\_\_\_\_  
**Final Action:** \_\_\_\_\_

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



# ZONING COMMISSION

## P11-41F



### Legend

#### updated2010plan(dnash)

<all other values>

#### CLASSDN

Academic Training-Fort Bragg

Activity Node

Airfield Operations-Fort Bragg

Community Activity Node

Downtown

Farmland

Governmental

Heavy Commercial

Heavy Industrial

High Density Residential

Historical District-Fort Bragg

Light Commercial

Light Industrial

Low Density Residential

Medium Density Residential

Neighborhood Activity Node

Office & Institutional

One Acre Residential Lots

Open Space

Policy Directed Heavy Commercial

Policy Directed Light Commercial

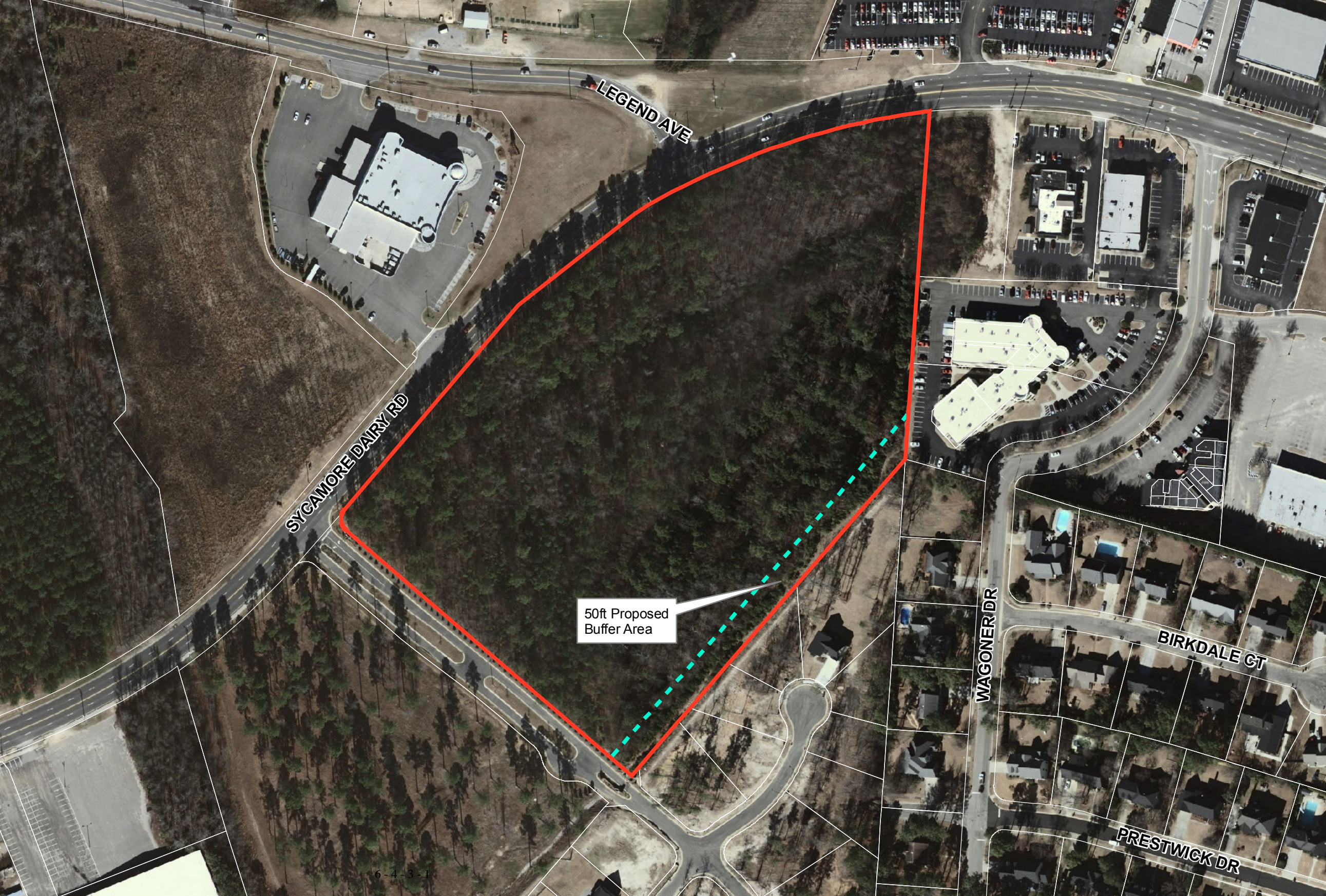
Policy Directed Office & Institutional

Range & Training-Fort Bragg

Redevelop/Holding-Fort Bragg

Suburban Density Residential





LEGEND AVE

SYCAMORE DAIRY RD

50ft Proposed  
Buffer Area

WAGONER DR

BIRKDALE CT

PRESTWICK DR



## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Craig Harmon, Planner II  
**DATE:** November 28, 2011  
**RE:** **P11-57F Rezone from SF-10 Single Family to OI/C Office and Institutional Conditional District for property at 205 S. McPherson Church Rd, being 1.16 acres more or less owned by Charles Stamitoles and Faye S. Stamitoles.**

---

### **THE QUESTION:**

Should the subject property be rezoned as requested by the owner?

### **RELATIONSHIP TO STRATEGIC PLAN:**

Strong Local Economy  
Livable Neighborhoods

### **BACKGROUND:**

Owner: Charles & Faye Stamitoles  
Applicant: Charles & Faye Stamitoles  
Requested Action: SF-10 to OI/C  
Property Address: 205 S. McPherson Church Rd  
Size: 1.16 acres +/-  
Land Use Plan Recommendation: The Land Use Plan recommends this property to be developed as Low Density Residential. This request is not consistent with the Land Use Plan.

### **Current Zoning:**

**SF-10** The Single-Family Residential 10 (SF-10) District is established to accommodate principally single-family detached residential development at low densities, and to accommodate flexibly-designed residential development that provides variable housing types and arrangements that respond to environmental and site conditions. Uses within the district are subject to the design standards in Article 30-5: Development Standards. The district accommodates two- to four-family dwellings designed to appear as single-family detached homes and zero lot line development subject to the requirements of this Ordinance. District regulations discourage any use that substantially interferes with the development of single-family dwellings and that is detrimental to the quiet residential nature of the district. Also allowed are complementary uses usually found in residential zoning districts, such as parks, open space, minor utilities, accessory dwellings of up to 800 square feet in size, schools, and places of worship.

### **Proposed Zoning:**

**OI/CZ** The Office & Institutional (OI) District is established and intended to accommodate a mix of small-scale, low-intensity professional and business offices and institutions, together with limited service uses, single family detached, single-family attached, and multi-family residential uses in close proximity to one another, subject to design and compatibility standards. The districts are generally near residential neighborhoods and often serve as a buffer or transition between neighborhoods and more intense business districts. Uses in the district are subject to the design standards in Article 30-5: Development Standards. In many cases, OI districts are evolving from land that was once primarily residential in character, and as such, office and institutional uses should be configured for consistency with surrounding residential uses in physical design, scale, and character.

### **ISSUES:**

This property is located on South McPherson Church Road on the east side just south of the McPherson Square shopping center. The property was denied a rezoning to P2 professional in

1978. In 1999 this property was part of the McPherson Church Road study which suggested an update to the 2010 Land Use Plan for a section for this road to change to professional uses. This part of the plan, however, was never implemented. McPherson Square has always served as the natural end point for commercial development heading south on McPherson Church Road. Staff recommends that this location continue to serve as the demarcation between residential and nonresidential use in this area. If the Council is inclined to approve this request, then one additional condition that staff recommends be considered is to require site access to the subject property via the McPherson Square parking lot which in turn would provide access to an intersection with a traffic signal. This would allow better management of traffic turning movements and volume, and discourage continued strip commercial development beyond this new edge.

The applicant has requested a conditional zoning district be placed on their property with the following conditions:

1. No patients, clients or the public would have access to the building on Sunday.
2. No patients, clients or the public would have access to the building on any day before 7:00am or after 8pm.

An additional condition was offered and accepted by the applicant at the Zoning Commission meeting: Restrict the height of any development to that allowed in the current SF-10 zoning district.

Zoning Commission recommends approval based on:

1. Size of the property
2. Proximity to existing commercial
3. Conditions placed on the property by the owner

Staff recommends denial based on:

1. Precedent in not extending commercial or office any future south on McPherson Church Rd.
2. Land use plan calls for residential.
3. Although this property is only 1.16 acres, it has a direct impact on 5 low density residential properties.

**BUDGET IMPACT:**

If approved would require additional City services which would be offset by the additional revenue to the City.

**OPTIONS:**

1. Approval of rezoning with conditions offered and accepted by the owner (Zoning Commission Recommendation)
2. Approve the rezoning with additional conditions offered and accepted by the owner (such as the staff-suggested access condition discussed under the Issues section)
3. Deny the rezoning as proposed (Staff Recommendation)

**RECOMMENDED ACTION:**

**Zoning Commission recommended:** that the City Council APPROVE the rezoning to OI/C with conditions as offered and accepted by the owner.

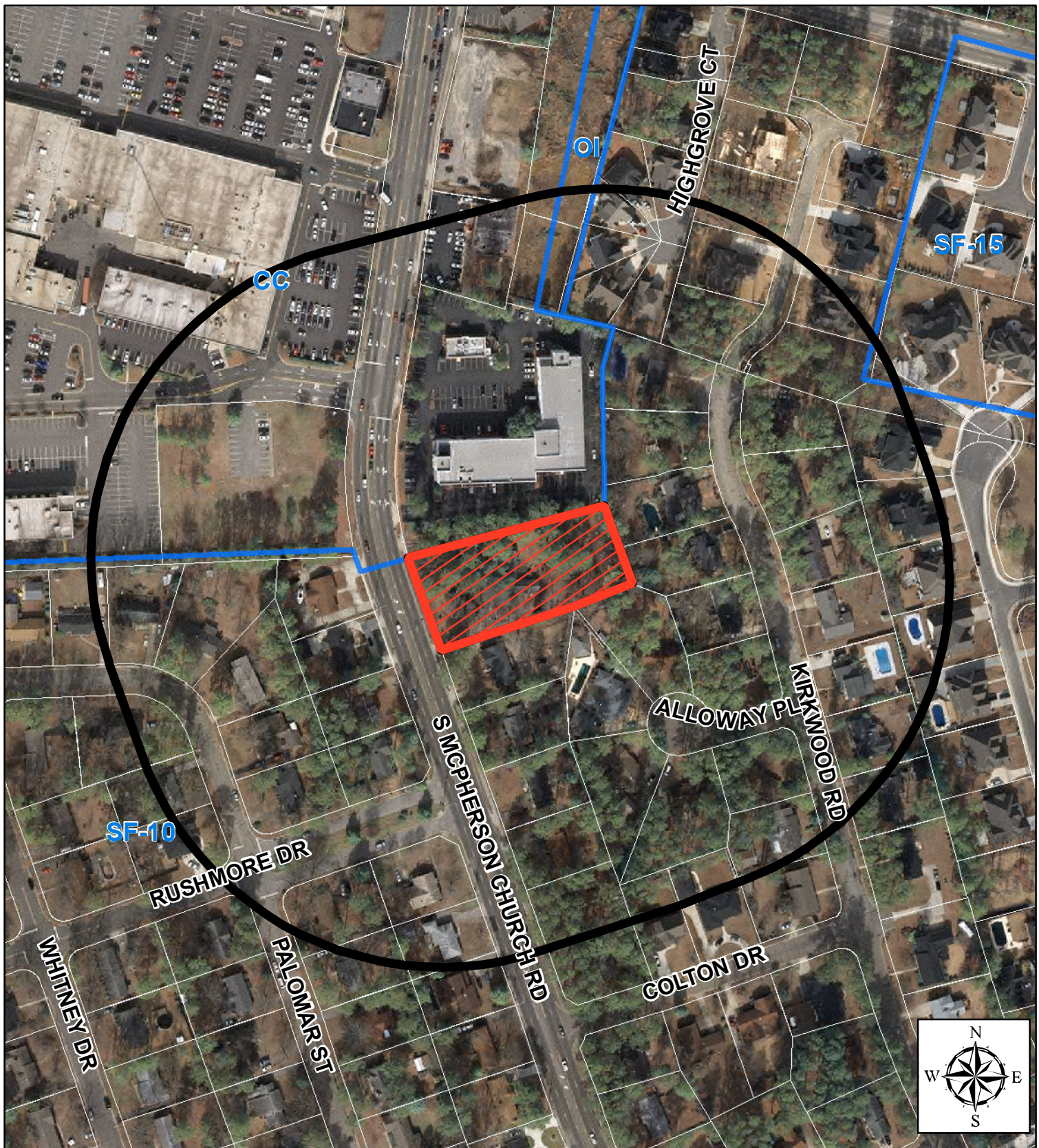
**Staff recommends:** that the City Council DENY the rezoning.

**ATTACHMENTS:**

Zoning Map  
Current Landuse  
Land Use Plan



**ZONING COMMISSION  
CASE NO. P11-57F**



**Request: Rezoning**  
**Location: 205 S. McPherson Church Road**  
**Acreage: +/- 1.16 acres**

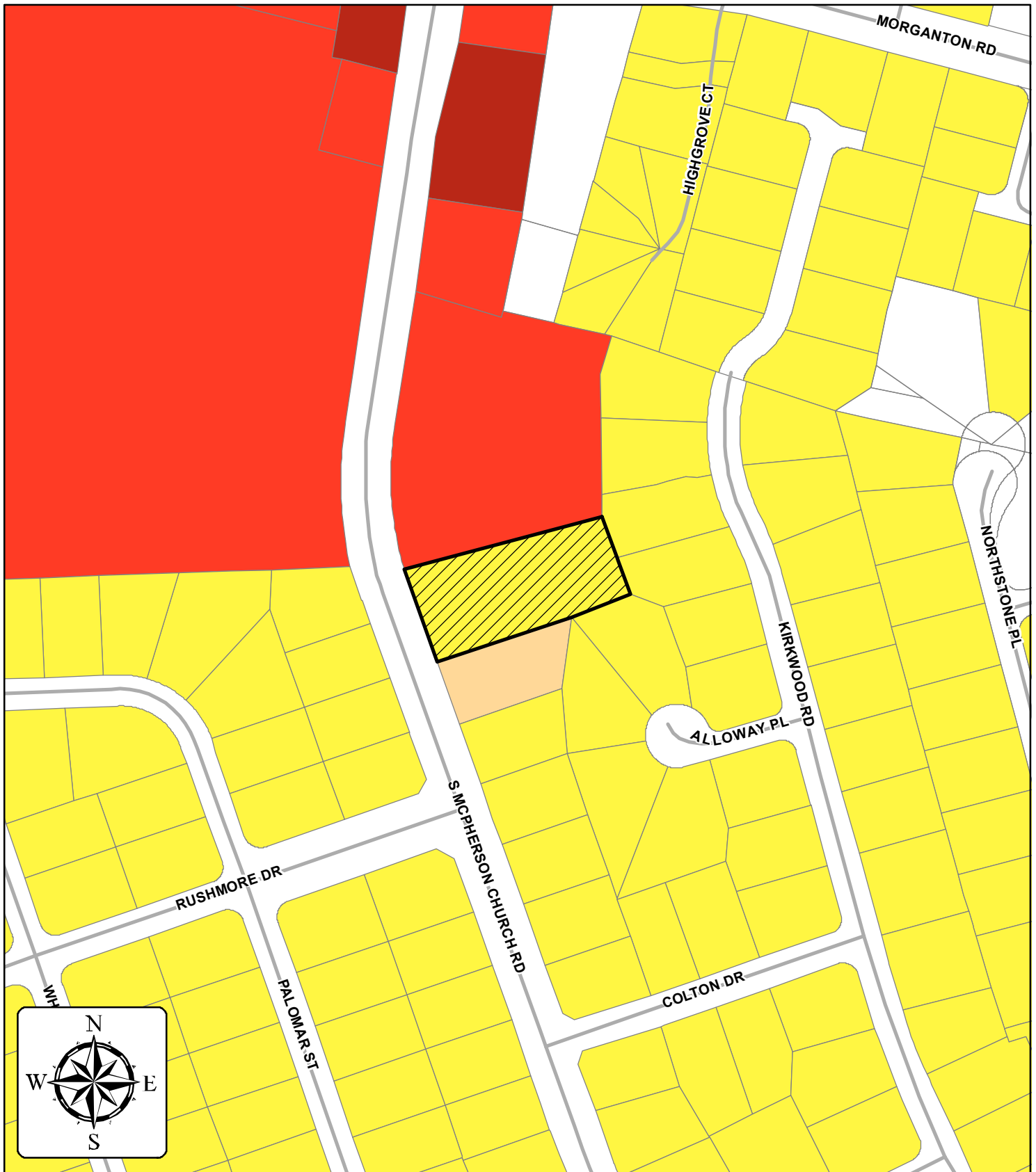
**Zoning Commission: 10/11/2011**   **Recommendation: \_\_\_\_\_**  
**City Council: \_\_\_\_\_**   **Final Action: \_\_\_\_\_**  
**Pin: 0417-48-9322**

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



# Current Land Use

## P11-57F

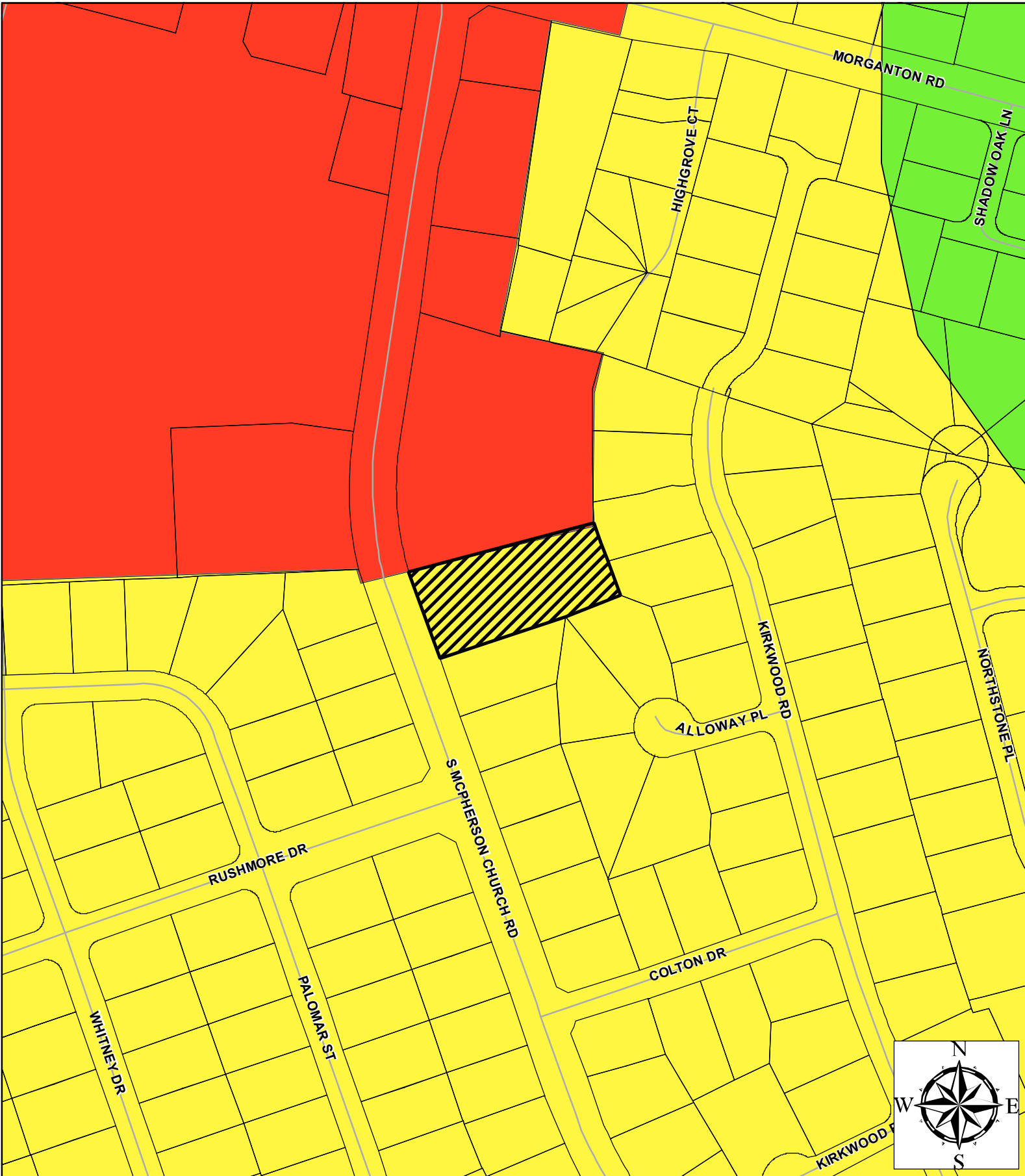


### Legend

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. P11-57F



### Legend

Heavy Commercial  Low Density Residential  5-3-1 Open Space

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Craig Harmon, Planner II  
**DATE:** November 28, 2011  
**RE:** **Case No. P11-10F. Request for Special Use Permit (SUP) 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.**

---

**THE QUESTION:**

Should a Special Use Permit be issued for this property as requested by the owner?

**RELATIONSHIP TO STRATEGIC PLAN:**

Growing City, Livable Neighborhoods - A Great Place to Live.  
Greater Tax Base Diversity - Strong Local Economy.

**BACKGROUND:**

Owner: Tri-Walker Investments, LLC  
Applicant: Tri-Walker Investments, LLC  
Requested Action: SUP for Independent Living Facility  
Property Address: Eastwood Ave.  
Council District: 2 (Davy)  
Size: 3 +/- acres to be rezoned (of 7.31)  
Existing Land Use: Vacant  
Adjoining Land Use & Zoning:  
North - SF-6 ... Single Family Residential  
South - SF-6 ... Single Family Residential  
East - MR-5 ... Apartments/Assisted Living  
West - LC ... Post Office, Restaurant, ABC Store, Dollar Store  
Letters Mailed: 105

Land Use Plan: Light Commercial with Light Commercial to the east and west and Medium Density Residential to the North and South.

Small Area Studies: 2025 Long Range Transportation Plan - No effect on this property.  
Ramsey Street Corridor Plan: Calls for commercial activity

**Current Zoning District Description:**

LC - The Limited Commercial (LC) District is established and intended to accommodate a wider range of moderate-intensity general retail, business, and service uses that serve groups of neighborhoods instead of just an individual neighborhood—e.g., grocery stores, drugstores, large restaurants, gas stations, and higher order retail uses like specialty stores. The district is not intended to accommodate intensive commercial or other business uses. Residential uses are encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is compatible with surrounding residential neighborhoods.

**ISSUES:**

The City received an application for a Special Use Permit on property located on Eastwood Dr. The proposed facility will house 24 homeless veterans in 12 double occupancy efficiencies. Some treatment for various physical and psychiatric conditions may occur at the facility from time to time. There will be an on site manager 24 hours a day.

The City of Fayetteville, through its Community Development Department, is a funding partner for this project.

The developer of this project, RHA, conducted a neighborhood meeting in February of this year (it was not required by the City). Approximately 20 people attended the meeting, only one seemed to be in opposition to the project. There were no speakers in opposition to this proposal at the Zoning Commission meeting.

Approval of this facility is to be based on the attached site plan.

Zoning Commission and Staff recommends approval based on the information presented at the hearing, the commission and staff believe an affirmative finding can be made for all eight required findings.:

(1) The special use complies with all applicable standards in Section 30-4.C, Use-Specific Standards;

**There are no Use-Specific Standards for this use.**

(2) The special use is compatible with the character of surrounding lands and the uses permitted in the zoning district(s) of surrounding lands;

**This property is located beside an existing assisted living facility to one side and commercial to the opposite. The property is currently zoned for commercial.**

(3) The special use avoids significant adverse impact on surrounding lands regarding service delivery, parking, loading, odors, noise, glare, and vibration;

**Since these are recovering and homeless veterans most will not have cars so the impact on delivery, parking and loading will be at a minimum. There are no factors from this facility that would impact the odor, noise, glare or vibrations in the neighborhood.**

(4) The special use is configured to minimize adverse effects, including visual impacts of the proposed use on adjacent lands;

**The attached site plan shows that the facility will be built using architectural features characteristic of single family housing and will be limited to one story.**

(5) The special use avoids significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources;

**The facility is being built on a vacant cleared lot and will be connected to the City's water and sewer system.**

(6) The special use maintains safe ingress and egress onto the site and safe road conditions around the site;

**All ingress and egress will be to Eastwood Ave. This development will cause a minimum amount of traffic increase.**

(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; and

**This development should have no ill effects on property values and will have no impact on neighboring lands developing under the permitted uses for their district.**

(8) The special use complies with all other relevant City, State, and Federal laws and regulations.

**This development has been reviewed and approved through the City's Technical Review Committee (TRC).**

**BUDGET IMPACT:**

New property tax revenue; no significant increase in cost of providing public services.

**OPTIONS:**

Option 1 - Issue a Special Use Permit based on the submitted site plan (recommended);

Option 2 - Issue a Special Use Permit with additional conditions;

Option 3 - Deny the Special Use Permit.

**RECOMMENDED ACTION:**

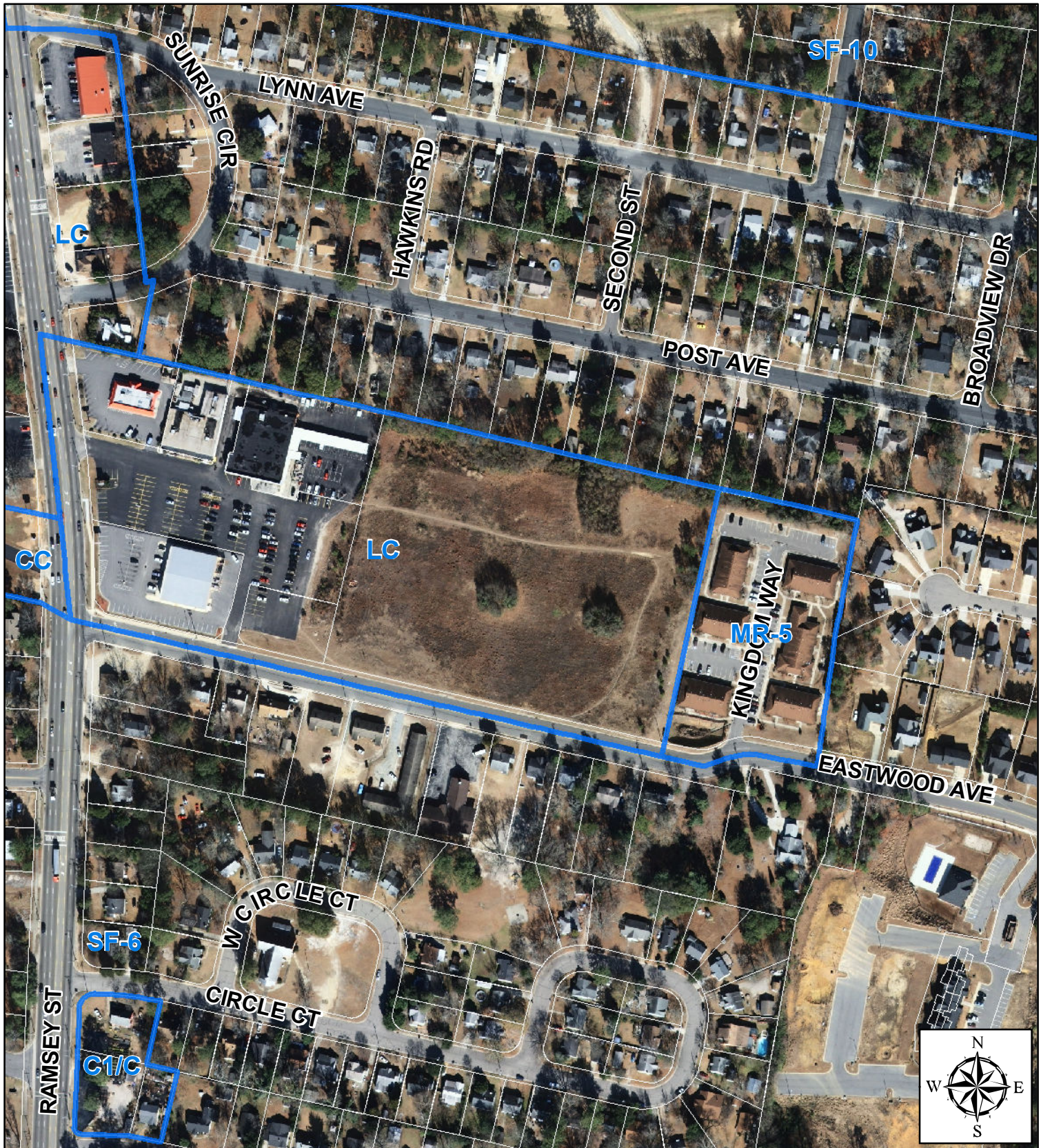
**Zoning Commission and Staff Recommend:** That the City Council move to APPROVE this Special Use Permit based on compliance with the findings of fact as presented by staff.

**ATTACHMENTS:**

Zoning Map  
Current Landuse  
Land Use Plan  
Site Plan



**ZONING COMMISSION**  
**CASE NO. P11-10F**



**Request:** Special Use Permit  
**Location:** North side of Eastwood Ave.  
**Acreage:** +/- 3.0 acres

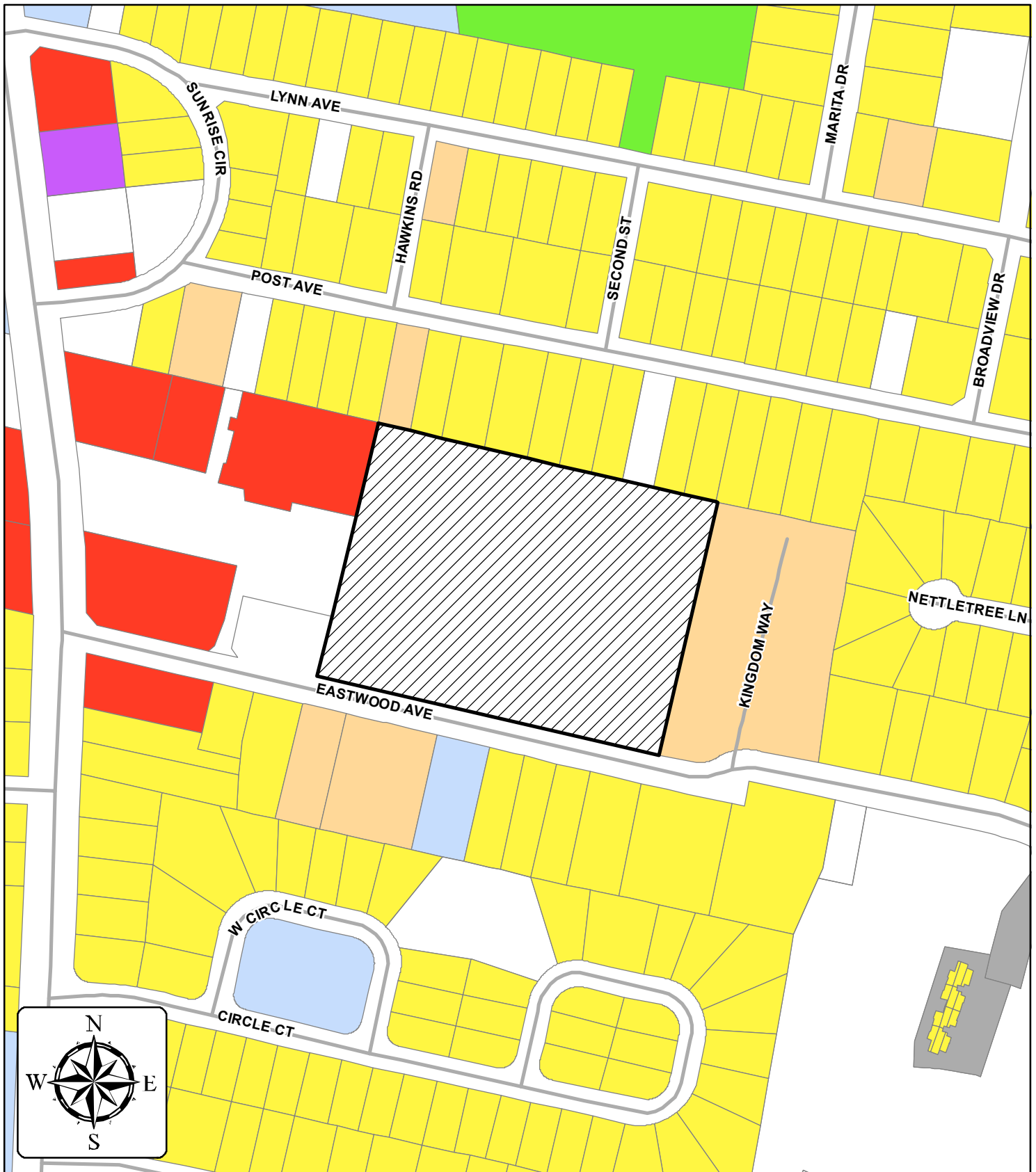
**Zoning Commission:** 08/09/2011    **Recommendation:** \_\_\_\_\_  
**City Council:** \_\_\_\_\_    **Final Action:** \_\_\_\_\_  
**Pin:** 0439-70-5080

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



# Current Land Use

## P11-10F

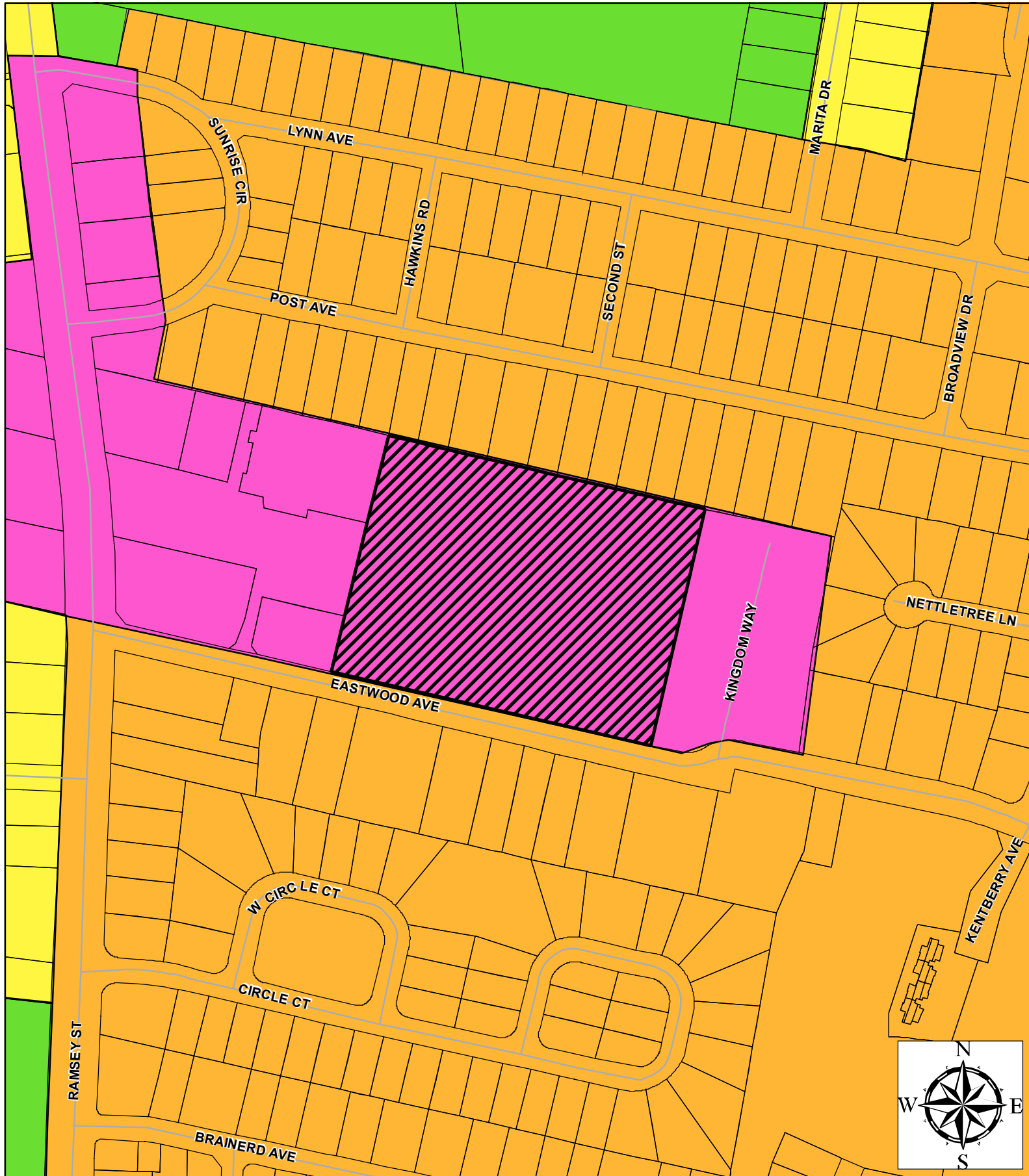


Legend







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. P11-10F

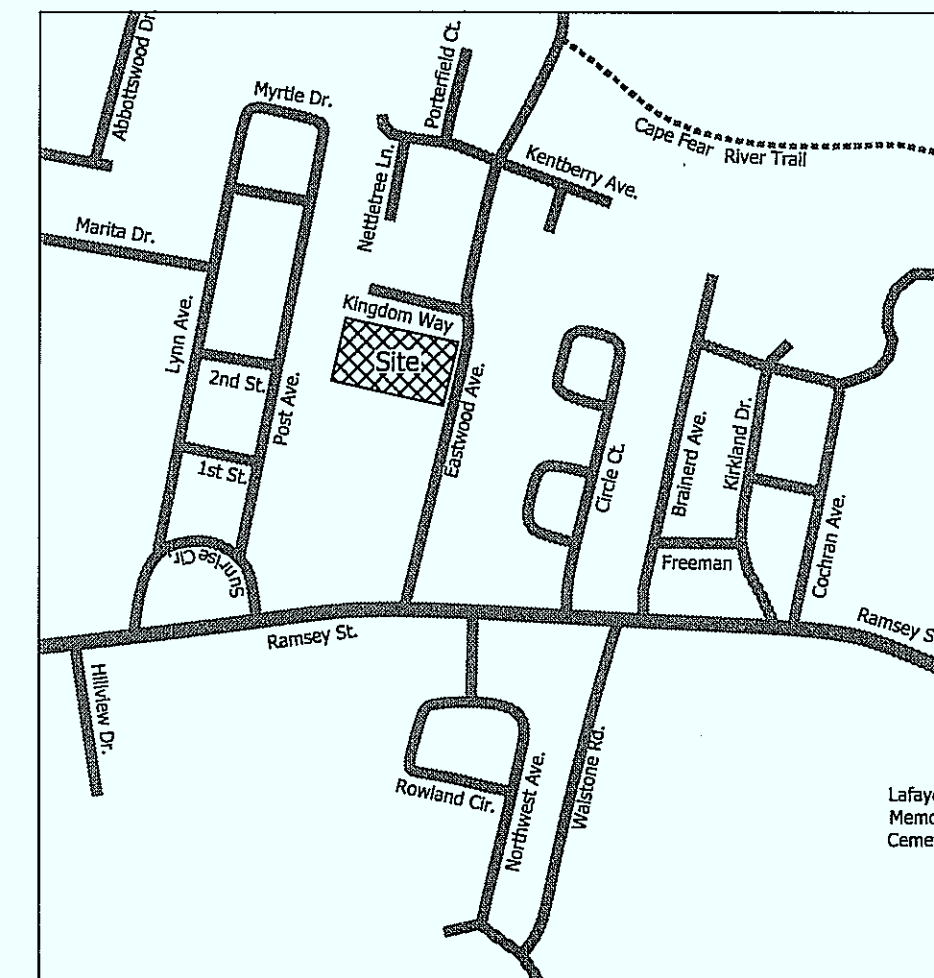
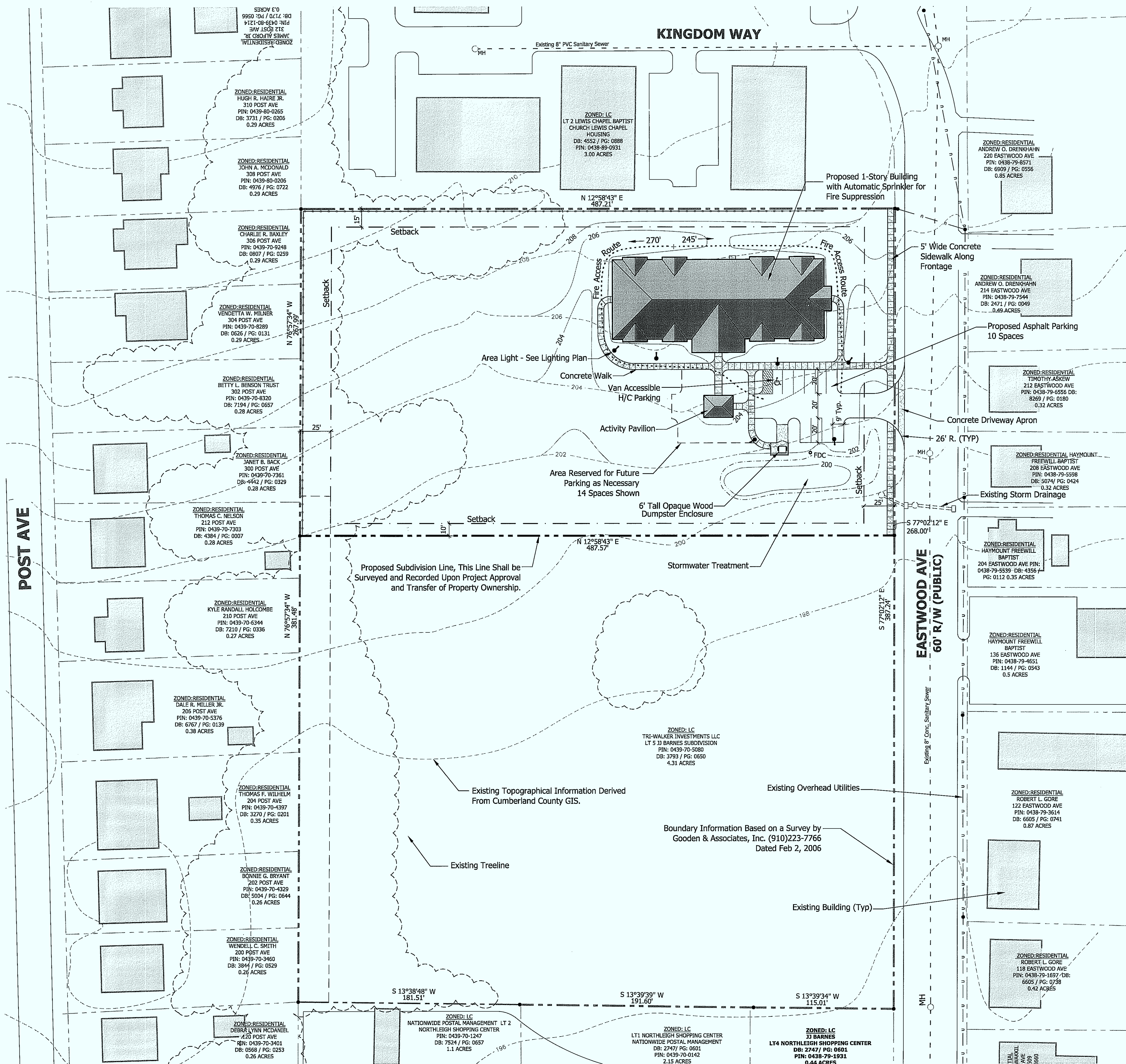


### Legend

 Medium Density Residential	 Office / Institutional	 Governmental
 Light Commercial	 Heavy Commercial	 Low Density Residential

6-6-3-1



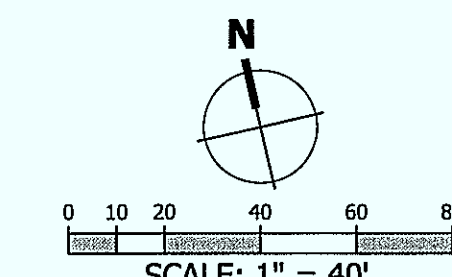
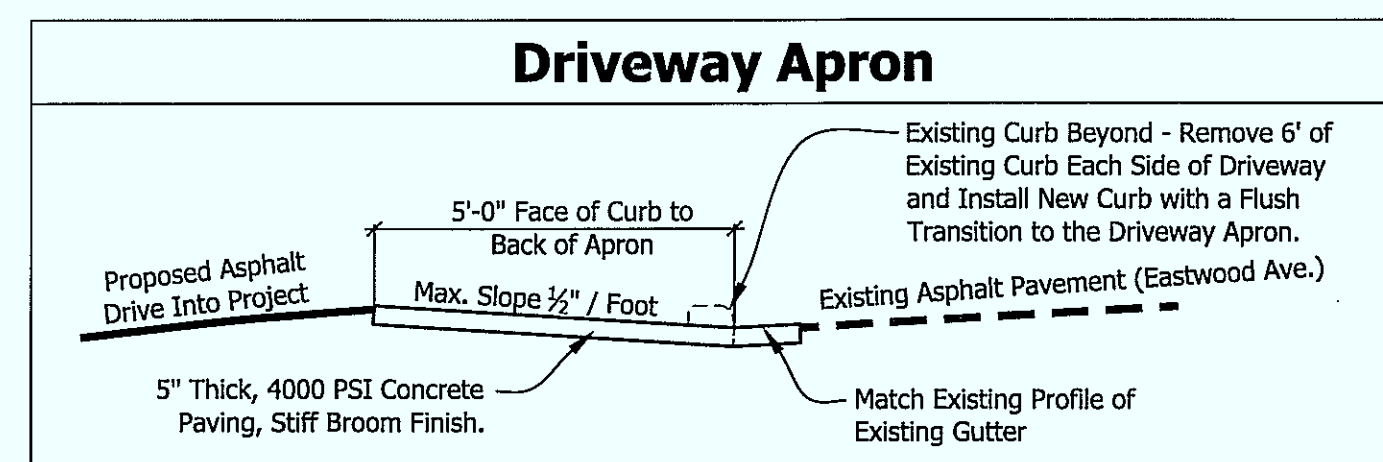


Vicinity Map  
1" ≈ 800'

Property Information	
PIN:	0439-70-5080
Area	3.00 Acres
Existing Zoning	LC
Design Team	
<b>Developer</b> RHA Health Services 1701 Westchester Dr. Suite 940 Highpoint, NC 27262 336.885.5090	
<b>Housing Consultant</b> Scott A Redinger, Inc. 4553 Technology Drive Suite 3 Box 15 Wilmington, NC 28405 910.793.2850	
<b>Architect</b> Rowhouse Architects One North Pack Square Asheville, NC 28801 828.281.2344	
<b>Landscape Architect</b> Landform Studio P.O. Box 2359 Asheville, NC 28802 828.252.9336	

Building Summary	
Use Type	Household Living-Multi-Family
Building Area	10,658 SF
Building Height	<35'
Building will be Sprinkled	
Units	1
2 Bedroom	
Double Occupancy Efficiencies	12
Parking Summary	
Parking Required (1.8/ Unit)	24
Parking Provided Standard	9
H/C Van Accessible	1
Total	10
Vehicle Use Area	4,615 SF
Impervious Surface	
Pre-Development	0 SF
Post-Development	21,334.2 SF
Built Upon Area	16.3%

General Notes	
1. Do not Scale From Drawing.	
2. All Dimensions are to Face of Wall or Curb Unless Otherwise Noted.	
3. All Radii are 5' Unless Otherwise Noted.	
4. Contact Architect Immediately if Layout Conflicts or Ambiguities Arise.	
5. All Site Infrastructure Shall be Installed in Accordance with City of Fayetteville Standards.	
6. Fire Department Connection (FDC) Location is Conceptual, Final Location will be Coordinated with the City of Fayetteville Fire Department.	



**ROWHOUSE**  
**R**  
**ARCHITECTS, INC**  
one north pack square  
asheville, nc  
28801  
T 828.281.2344  
F 828.281.2308

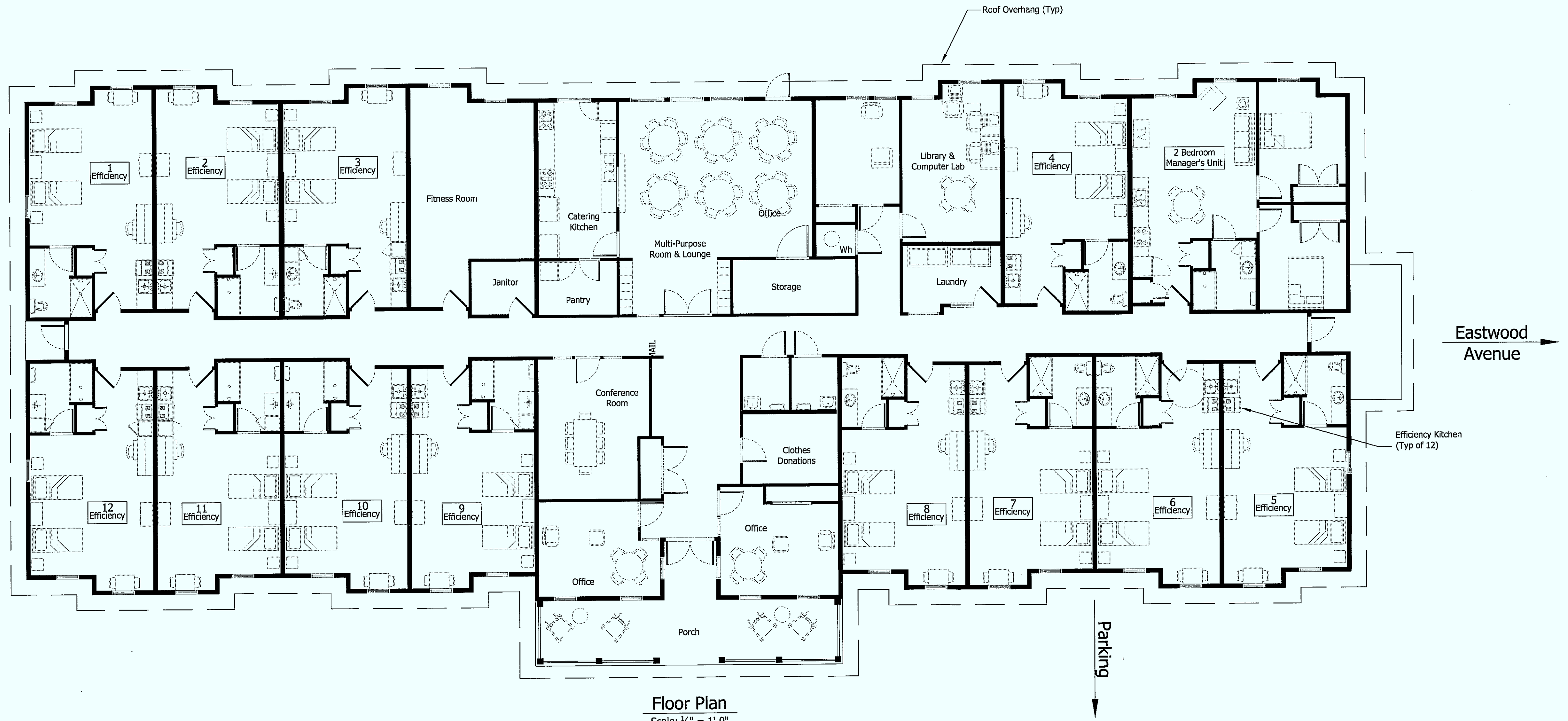
Land Planning Landscape Architecture  
**Landform**  
studio  
www.landformstudio.com  
P.O. Box 2359  
Asheville, NC 28802  
828.252.9336

Preliminary Site Plan for  
**Freedom Ridge**  
Eastwood Avenue - City of Fayetteville, NC





West Elevation (Parking)

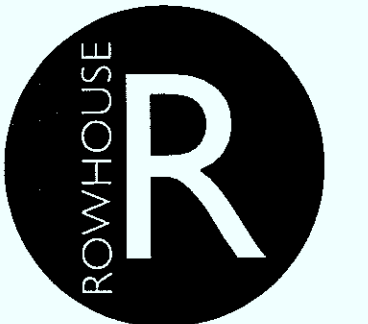


Floor Plan  
Scale: 1/8" = 1'-0"



South Elevation (Eastwood Ave.)

Scale: 1/8" = 1'-0"



ARCHITECTS, INC  
one north pack square  
asheville, nc  
28801

T 828.281.2344  
F 828.281.2308

Land Planning | Landscape Architecture



www.landformstudio.com  
P.O. Box 2359  
Asheville, NC 28802  
828.2529336

Building Architecture  
**Freedom Ridge**  
Eastwood Avenue - City of Fayetteville, NC

Date  
07.25.2011

Page  
4 of 4

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Craig Harmon, Planner II  
**DATE:** November 28, 2011  
**RE:** **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.**

---

### **THE QUESTION:**

Does the proposed rezoning to Mixed Residential fit with the character of the neighborhood and the long range plans of the city of Fayetteville?

### **RELATIONSHIP TO STRATEGIC PLAN:**

Growth and Development

### **BACKGROUND:**

Owner: Willie J Sigler and wife Gabriele  
Applicant: Milo Homes  
Requested Action: SF-10 to MR-5/C  
Property Address: North of Fisher Road  
Status of Property:  
Undeveloped Size: 8.29 acres +/-  
Existing Land Use:  
Letters Mailed: 356

2010 Land Use Plan: Medium Density Residential

**SF-10.** The Single-Family Residential 10 (SF-10) District is established to accommodate principally single-family detached residential development at low densities, and to accommodate flexibly-designed residential development that provides variable housing types and arrangements that respond to environmental and site conditions. Uses within the district are subject to the design standards in Article 30-5: Development Standards. The district accommodates two- to four-family dwellings designed to appear as single-family detached homes and zero lot line development subject to the requirements of this Ordinance. District regulations discourage any use that substantially interferes with the development of single-family dwellings and that is detrimental to the quiet residential nature of the district. Also allowed are complementary uses usually found in residential zoning districts, such as parks, open space, minor utilities, accessory dwellings of up to 800 square feet in size, schools, and places of worship.

**MR-5.** The Mixed Residential 5 (MR-5) district is established and intended to meet the diverse housing needs of City residents by accommodating a wide variety of residential housing types and arrangements at moderate to high densities, including single-family detached dwellings, two- to four-family dwellings, multi-family dwellings, and other residential development that may include single-family attached dwellings, and zero lot line development subject to the requirements of this Ordinance. All development in the district shall comply with the design standards in Article 30-5: Development Standards. MR-5 districts may also include centrally-located open space, complementary institutional uses (e.g., religious institutions, post offices, police sub-stations), day care facilities, and limited small scale neighborhood-serving convenience retail uses.

### **ISSUES:**

This is a conditional rezoning. The owner is conditioning down the requested number of units on this lot to 78 from the 346 that would be allowed under MR-5 zoning without this condition. The existing SF-10 density would allow up to 40 units. This property has low density residential to the

rear and a large mobile home park to the east. The level of density proposed by the applicant appears to be compatible with surrounding development and is consistent with the Land Use Plan's designation as medium density residential.

This case was tabled by the City Council in August in order for the developer to bring his plans up to UDO standards. This property has a large number of specimen trees located on it. While the developer has proposed submitting an alternative landscaping plan for this development, that plan has not been received. Staff is not opposed to multifamily development on this property, as noted above, so rather than delay this case to allow the submittal of a final site plan meeting the specific standards of the Unified Development Ordinance, we recommend approval of the rezoning with the 78-unit density limitation proposed by the applicant. A final site plan addressing all UDO requirements would be required of the applicant prior to site development; this plan would address the specimen tree mitigation requirements.

The Zoning Commission recommended approval with the following conditions by a 5-0 vote.

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.

Staff also recommends the request be approved subject to those conditions, with the understanding that the final site plan will be fully compliant with the UDO.

**BUDGET IMPACT:**

The City would be required to provide an increase in public services that should be offset by the increase that 78 new housing units would bring to the City's tax base.

**OPTIONS:**

- 1) Approval of rezoning with conditions as offered and accepted by the applicant (recommended by Zoning Commission and staff);
- 2) Approval of rezoning with additional conditions accepted by the applicant;
- 3) Denial of the rezoning request.

**RECOMMENDED ACTION:**

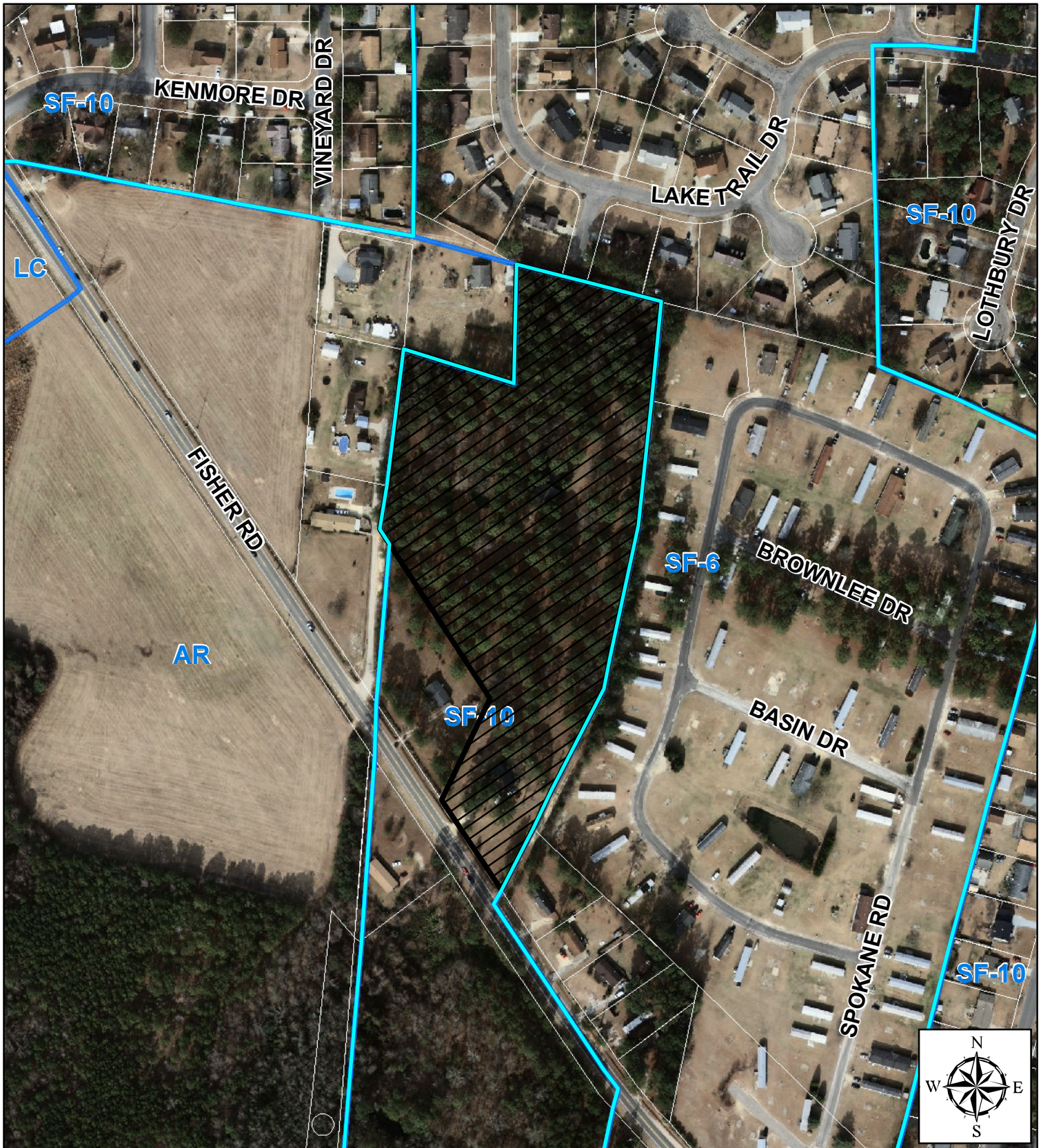
**Zoning Commission Recommendation:** Recommend that the City Council move to APPROVE the rezoning to Mixed Residential-5 Conditional Zoning with conditions as outlined in the staff report.

**ATTACHMENTS:**

Zoning Map  
Current Landuse  
2010 Plan



**ZONING COMMISSION  
CASE NO. P11-13F**



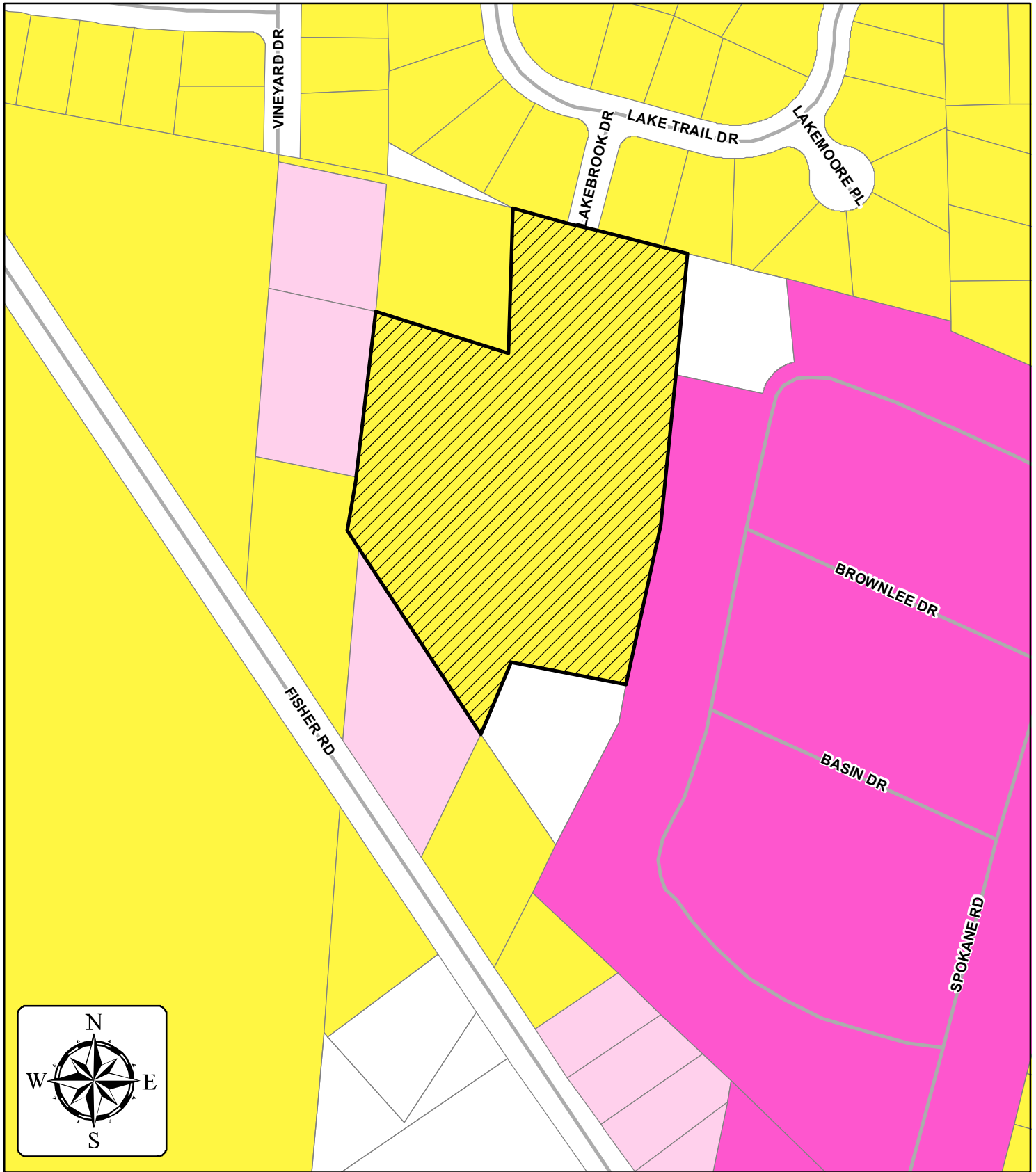
**Request:** Rezoning  
**Location:** North side of Fisher Road.  
**Acreage:** +/- 8.29 acres

**Zoning Commission:** 08/09/2011    **Recommendation:** \_\_\_\_\_  
**City Council:** \_\_\_\_\_    **Final Action:** \_\_\_\_\_  
**Pin:** 9495-99-2412



# Current Land Use

## P11-13F

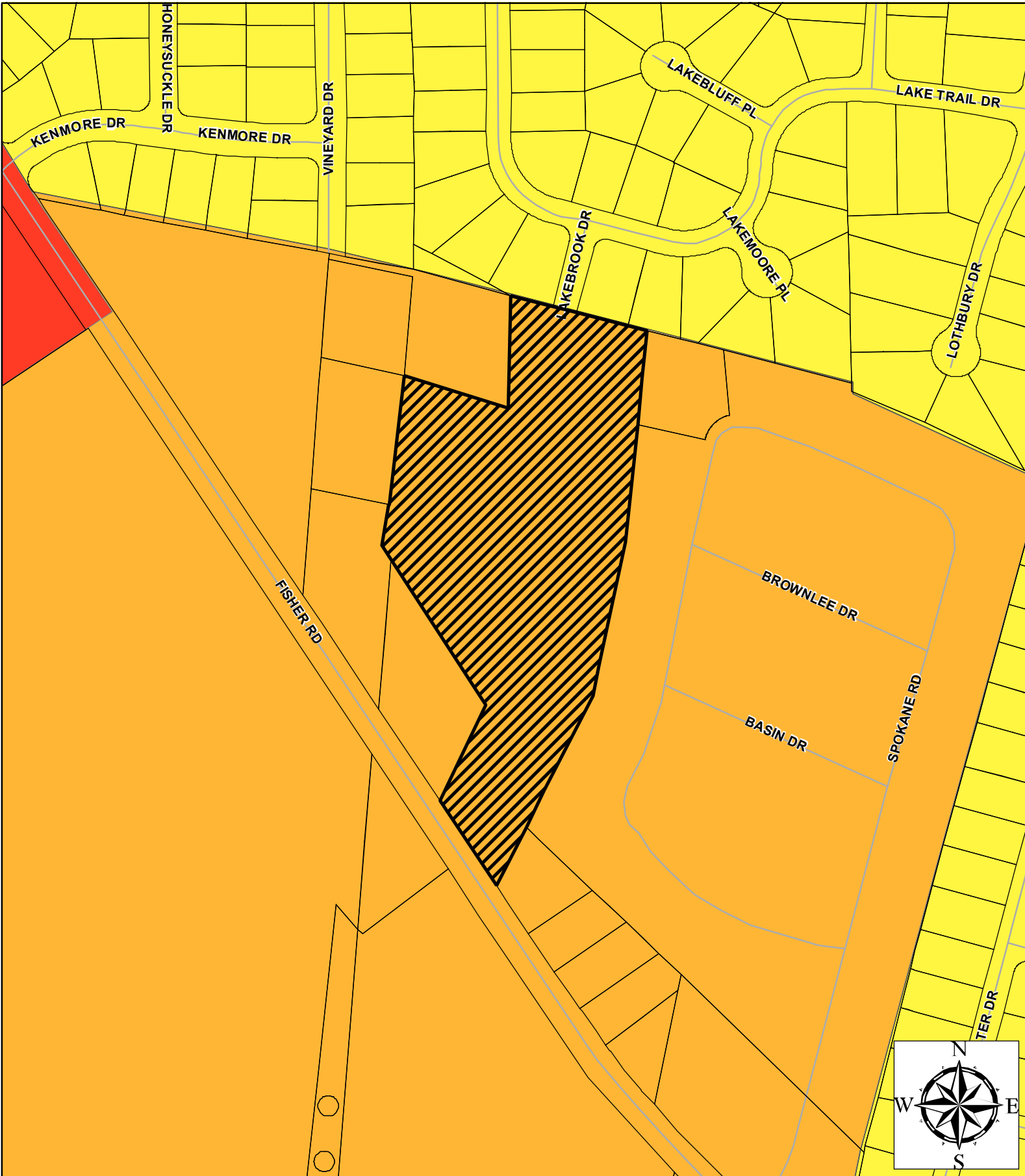


Legend







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. P11-13F



### Legend

 Medium Density Residential	 Office / Institutional	 Governmental
 Light Commercial	 Heavy Commercial	 Low Density Residential

6-7-3-1

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Craig Harmon, Planner II  
**DATE:** November 28, 2011  
**RE:** **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.**

---

### **THE QUESTION:**

Does the proposed rezoning to Limited Commercial fit with the character of the neighborhood and the long range plans of the City of Fayetteville?

### **RELATIONSHIP TO STRATEGIC PLAN:**

Strong Local Economy  
Liveable Neighborhoods

### **BACKGROUND:**

Owner: Regina M. Mock  
Applicant: Regina M. Mock and Eugene Mock  
Requested Action: SF-6 to LC/C  
Property Address: 521 Cedar Creek Road, Fayetteville, NC  
Council District: 2 (Davy)  
Status of Property: Developed  
Size: 1.49 acres +/-  
Existing Land Use: Residential – Single family home SF-6  
Letters Mailed: 214

2010 Land Use Plan: Medium Density Residential

SF-6. The Single-Family Residential 6 (SF-6) District is established and intended to accommodate principally single-family detached residential development at moderate densities that is designed to respond to environmental and site conditions. It also accommodates two- to four-family dwellings, single-family attached, and zero lot line development subject to the requirements of this Ordinance. All uses in the district are subject to the design standards in Article 30-5: Development Standards. District regulations discourage any use that substantially interferes with the development of single-family dwellings and that is detrimental to the quiet residential nature of the district. Also allowed are complementary uses usually found in residential zoning districts, such as parks, open space, minor utilities, accessory dwellings, schools, and places of worship.

LC - The Limited Commercial (LC) District is established and intended to accommodate a wider range of moderate-intensity general retail, business, and service uses that serve groups of neighborhoods instead of just an individual neighborhood—e.g., grocery stores, drugstores, large restaurants, gas stations, and higher order retail uses like specialty stores. The district is not intended to accommodate intensive commercial or other business uses. Residential uses are encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is compatible with surrounding residential neighborhoods.

### **ISSUES:**

The applicant is proposing to use this property for log cabin sales and residents. Please see the

attached site plan. It is the applicants' desire to renovate the existing home on the site and use it for a sales center. Model homes (log cabins) would then be built on the remaining part of the property. The applicant must be able to use these model cabins for both show houses and living spaces.

The Zoning Commission likened this proposal to a new subdivision with a model home sales center. Where model homes are on display with a sales office, only this would be on a permanent basis. Staff would assert that a change to any commercial district in this area would give the appearance that properties in this area are changing over to commercial zoning. This property is surrounded by residential zoning and uses. The attached site plan has not been approved by the Technical Review Committee (TRC) and does not meet all City requirements. The project could not be constructed as shown on the site plan.

The 2010 Land Use Plan calls for medium density residential in this area.

This could be considered spot zoning since it is not adjacent to any other commercial and no other commercial is on the same side of the street as this project. Spot zoning is defined as a zoning ordinance or amendment that "singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, as to...relieve the small tract from restrictions to which the rest of the area is subjected." The owner has offered the following conditions as part of this request.

1. Attached 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 8am and 8pm.
4. Allowed uses in the SF-6 district.

Zoning Commission recommended approval based on:

1. Their view that this was the same as a subdivision with a model home for sale, but on a permanent basis.
2. The Commission did not believe this was a case of illegal spot zoning, noting that it is mostly a residential use.

Staff Recommended Denial based on:

1. Land use plan calls for Medium Density Residential.
2. Property is surrounded by residential zoning and uses.
3. Property may meet the tests for illegal spot zoning.
4. Rezoning would convey the appearance of an approved evolution to more commercial uses.

**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 with conditions as offered by the owner (recommended by Zoning Commission);
- 2) Approval of rezoning with additional conditions offered and accepted by the owner;
- 3) Denial of the rezoning request (recommended by staff).

**RECOMMENDED ACTION:**

**Zoning Commission Recommended:** that the City Council move to APPROVE the rezoning to Limited Commercial Conditional Zoning as requested by the owner.

**Staff Recommends:** that the City Council move to DENY the rezoning to Limited Commercial Conditional Zoning.

**ATTACHMENTS:**

Zoning Map  
Current Landuse

2010 Plan  
Site Plan  
Spot Zoning Memo



**ZONING COMMISSION  
CASE NO. P11-14F**



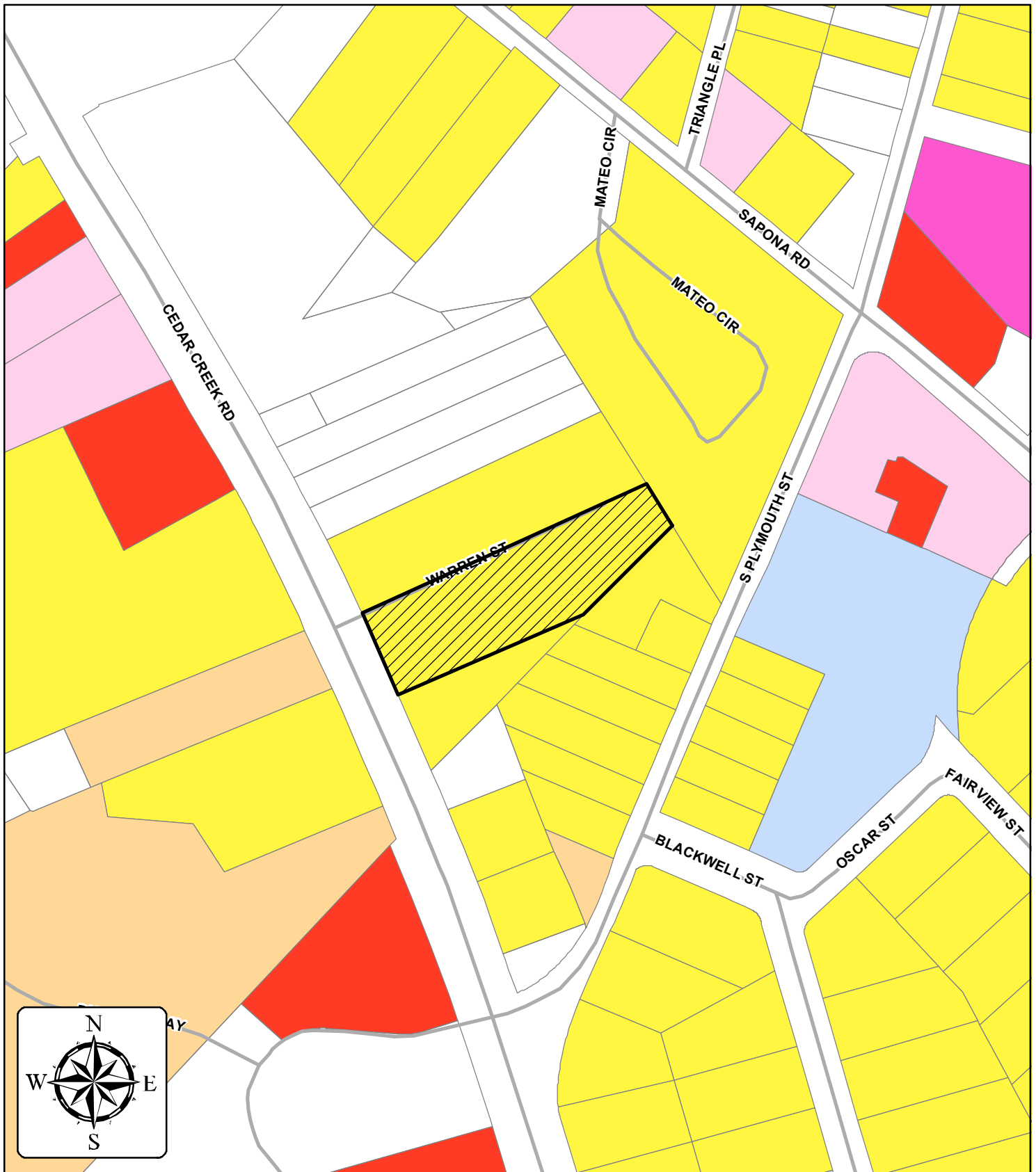
**Request:** Rezoning  
**Location:** East side of Cedar Creek.  
**Acreage:** +/- 1.49 acres

**Zoning Commission:** 08/09/2011    **Recommendation:** \_\_\_\_\_  
**City Council:** \_\_\_\_\_    **Final Action:** \_\_\_\_\_  
**Pin:** 0446-68-0806



# Current Land Use

## P11-14F

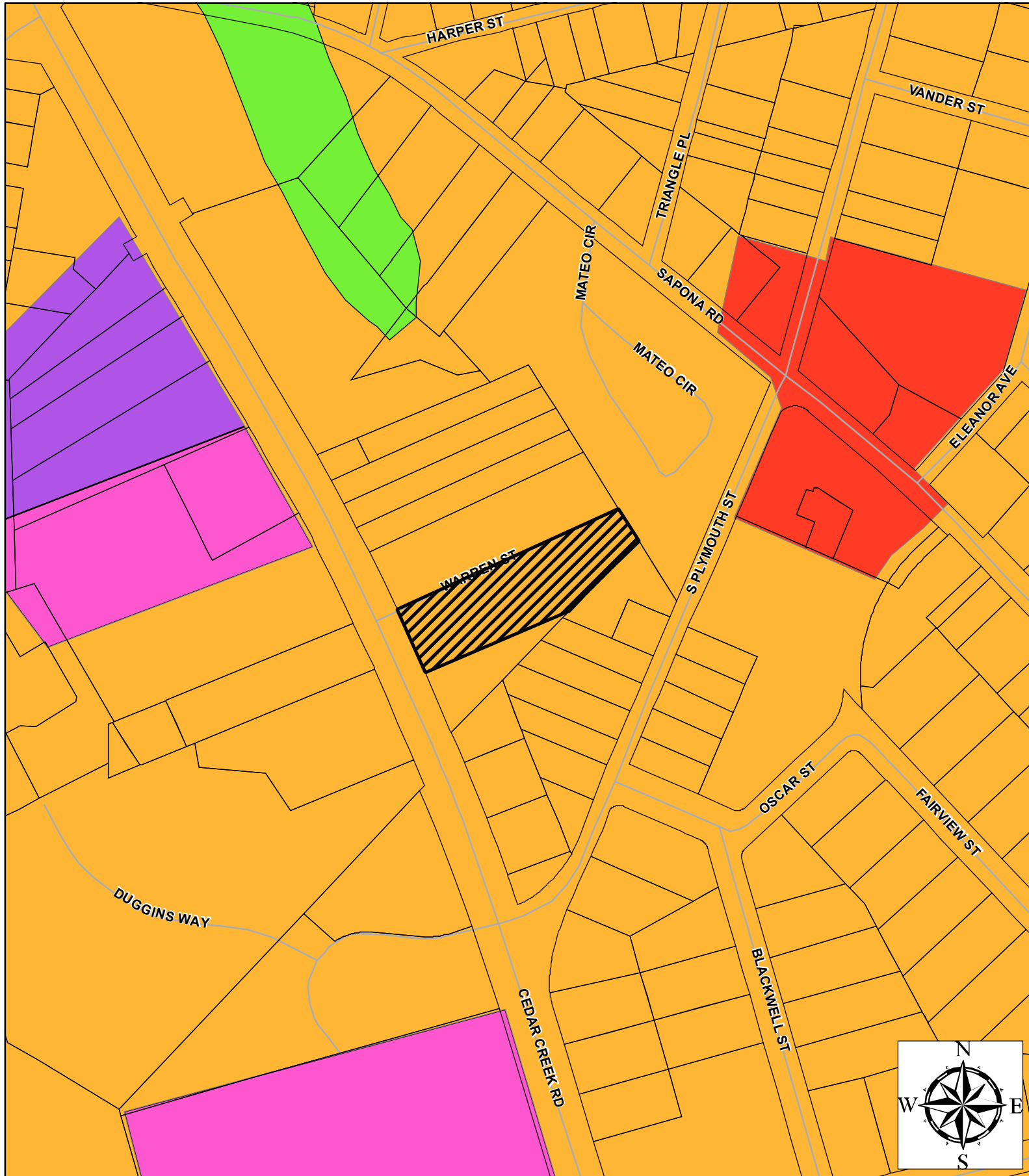


Legend

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. P11-14F

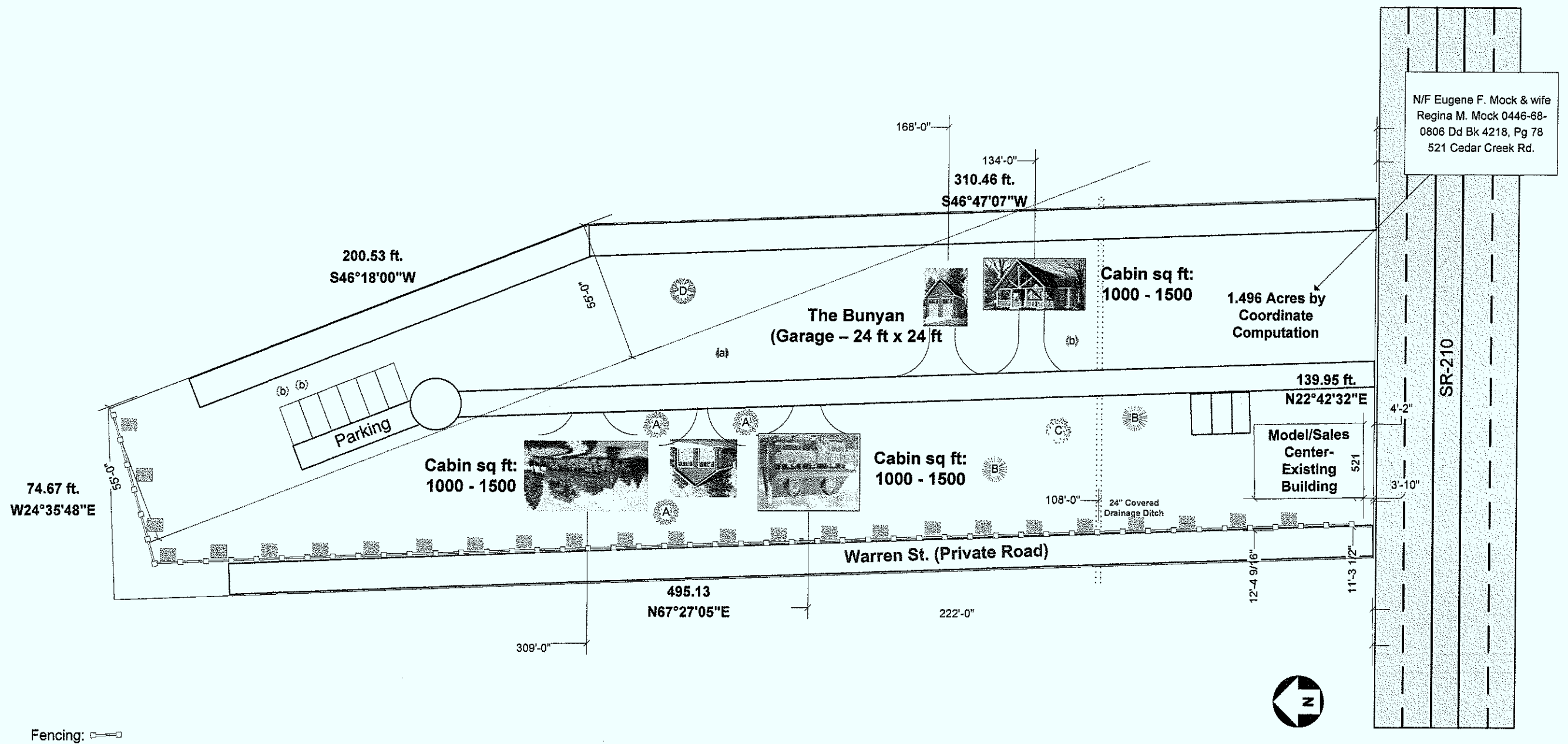


### Legend

- |                            |                        |                         |
|----------------------------|------------------------|-------------------------|
| Medium Density Residential | Office / Institutional | Governmental            |
| Light Commercial           | Heavy Commercial       | Low Density Residential |

6-8-3-1





N/F Eugene F. Mock & wife  
Regina M. Mock 0446-68-  
0806 Dd Bk 4218, Pg 78  
521 Cedar Creek Rd.

Date: 03 April 2011

Site Plan for 521 Cedar Creek Rd., Fayetteville, NC				
Drawn by: EM	SIZE	FSCM NO	DWG NO	REV
			2010-0825-001	0
	SCALE	1in = 40ft. 0in.	SHEET 1	1 OF 2

## Spot Zoning:

Spot Zoning occurs when one parcel is treated differently with regard to zoning from the surrounding property. It has been defined by the North Carolina Supreme Court as:

Spot zoning is defined, in pertinent part, as a zoning ordinance or amendment that “singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, as to...relieve the small tract from restrictions to which the rest of the area is subjected.” (Musi v. Town of Shallotte, 684 S.E. 2d 892, 895 (2009), citing Good Neighbors of S. Davidson v. Town of Denton, 355 N.C. 254, 257, (2002), quoting Blades v. City of Raleigh, 280 N.C. 531, 549 (1972).

Spot zoning is not illegal in North Carolina, but, if permitted, must have a reasonable basis for the zoning. Factors which a court considers when determining whether an impermissible “spot zoning” has occurred are:

1. The size and nature of the parcel
  - a. an individual lot which is given special zoning treatment is suspect
  - b. the lot characteristics may be considered such as topography or utility availability, or access to transportation.
2. Compatibility with existing plans for that area, that lot, or ones with similar characteristics
  - a. for example, the 2010 or 2030 plans
3. Will the individual landowner benefit from the rezoning to the detriment of the surrounding properties, or will the other landowners benefit?
4. The difference in the proposed uses and the current uses of the property’s zoning district.
  - a. Are they similar?
  - b. What is the relationship between the uses?

David Owens of the School of Government cites the “key question” of a court’s review as “...whether the zoning power is being exercised in the public interest rather than for the benefit of a few owners at the expense of the community.” (Introduction to Zoning, Third Edition, 2007, p.47)

When faced with a rezoning, the decision making board must consider all the uses allowed in the zoning district even though an applicant may say that he plans to do a specific business or use. The truth is, when a rezoning is approved, the board has approved the land for ANY of the uses in that zoning classification and has, therefore, stated that ANY of the uses is proper.

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Craig Harmon, Planner II  
**DATE:** November 28, 2011  
**RE:** **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 & Dorise Bonds.**

---

### **THE QUESTION:**

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

### **RELATIONSHIP TO STRATEGIC PLAN:**

Growth and development.  
Growing City Livable Neighborhoods

### **BACKGROUND:**

Owner: Leamon & Doris Bonds  
Applicant: Leamon & Doris Bonds  
Requested Action: SF-10 to LC  
Property Address: 792 Bunce Road, Fayetteville, NC  
Council District: 7 (Applewhite)  
Status of Property: Developed  
Size: 0.28 acres +/-  
Existing Land Use: Single Family Detached  
Adjoining Land Use & Zoning:  
North - SF-10 Single Family Residential  
South - SF-10 Single Family Residential  
East - SF-10 Single Family Residential  
West - OI Office and Institutional  
Letters Mailed: 50

Land Use Plan: Low Density Residential.

Small Area Studies: 2025 Long Range Transportation Plan - No effect on this property.  
71st District Redevelopment Plan - Single Family Housing

### **Current Zoning District Description:**

**SF-10.** The Single-Family Residential 10 (SF-10) District is established to accommodate principally single-family detached residential development at low densities, and to accommodate flexibly-designed residential development that provides variable housing types and arrangements that respond to environmental and site conditions. Uses within the district are subject to the design standards in Article 30-5: Development Standards. The district accommodates two- to four-family dwellings designed to appear as single-family detached homes and zero lot line development subject to the requirements of this Ordinance. District regulations discourage any use that substantially interferes with the development of single-family dwellings and that is detrimental to the quiet residential nature of the district. Also allowed are complementary uses usually found in residential zoning districts, such as parks, open space, minor utilities, accessory dwellings of up to 800 square feet in size, schools, and places of worship.

**LC.** The Limited Commercial (LC) District is established and intended to accommodate a wider range of moderate-intensity general retail, business, and service uses that serve groups of neighborhoods instead of just an individual neighborhood—e.g., grocery stores, drugstores, large

restaurants, gas stations, and higher order retail uses like specialty stores. The district is not intended to accommodate intensive commercial or other business uses. Residential uses are encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is compatible with surrounding residential neighborhoods.

**ISSUES:**

The owner has indicated that they would like to expand their current beauty shop, which is next door and zoned OI, to include this property as well. In 2002 the City rezoned the next door property from R10 to P4, the applicant had requested a C1A district.

Zoning Commission recommends approval of a more restrictive district of OI based on:

1. The adjoining property being zoned OI.
2. Support from the neighborhood.
3. Location at an intersection.

Staff recommended denial to the Zoning Commission based on:

1. Land use plans for the area call for single family residential
2. The property borders single family zoning and uses on three sides.
3. Uses in the LC and OI districts are too intense for a straight rezoning in a neighborhood setting.

**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 requested by the applicant.
- 2) Approval of rezoning to a more restrictive zoning district (recommended by Zoning Commission);
- 3) Denial of the rezoning request (recommended by staff).

**RECOMMENDED ACTION:**

**Zoning Commission Recommends:** that the City Council move to APPROVE the rezoning to Office and Institutional, a more restrictive zoning district than that applied for.

**ATTACHMENTS:**

Zoning Map  
Current Landuse  
Land Use Plan



**ZONING COMMISSION  
CASE NO. P11-22F**



**Request: Rezoning**  
**Location: West side of Bunce Road.**  
**Acreage: +/- .3 acres**

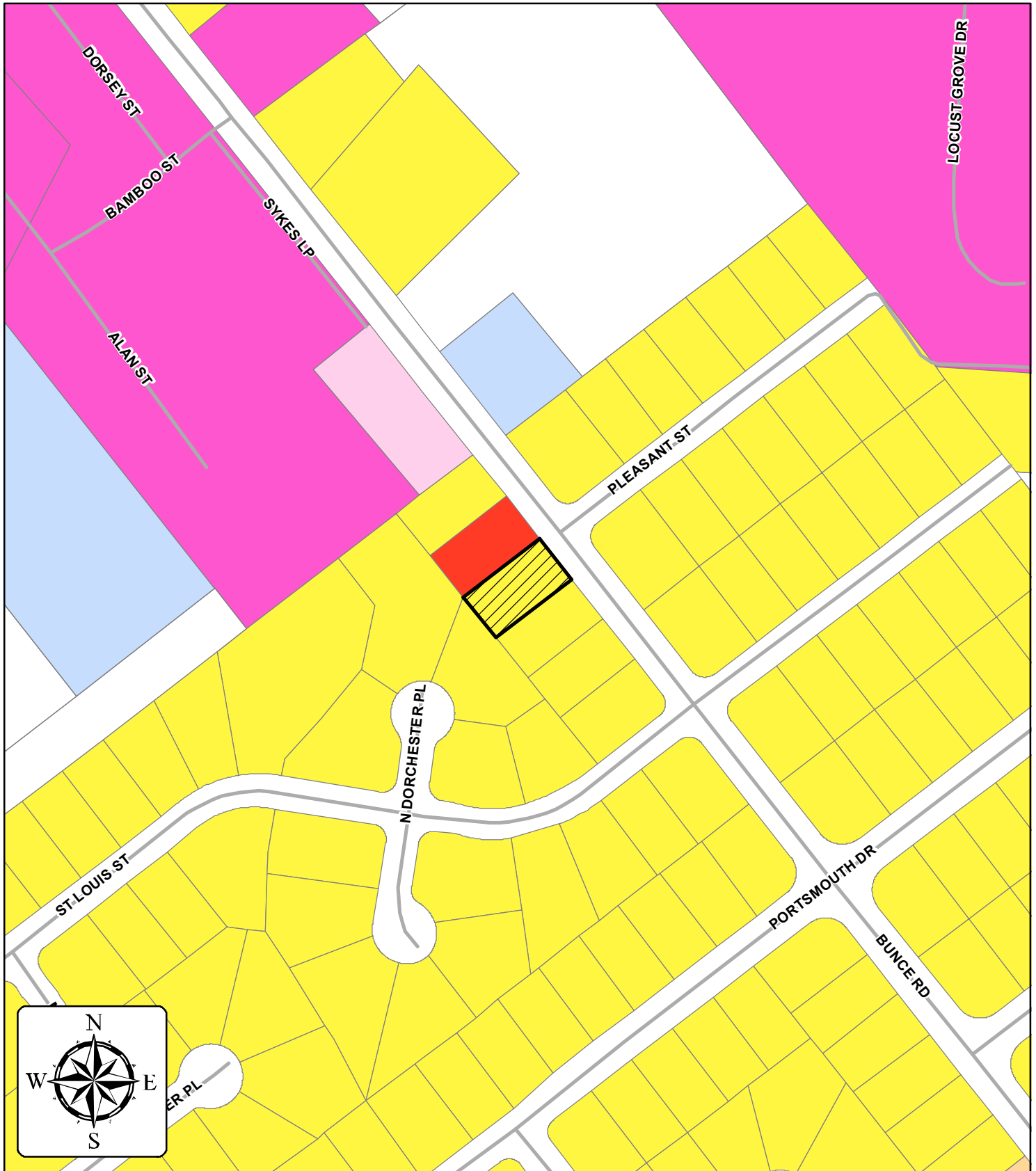
**Zoning Commission: 08/09/2011**    **Recommendation: \_\_\_\_\_**  
**City Council: \_\_\_\_\_**    **Final Action: \_\_\_\_\_**  
**Pin: 0407-03-1747**

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



# Current Land Use

## P11-22F



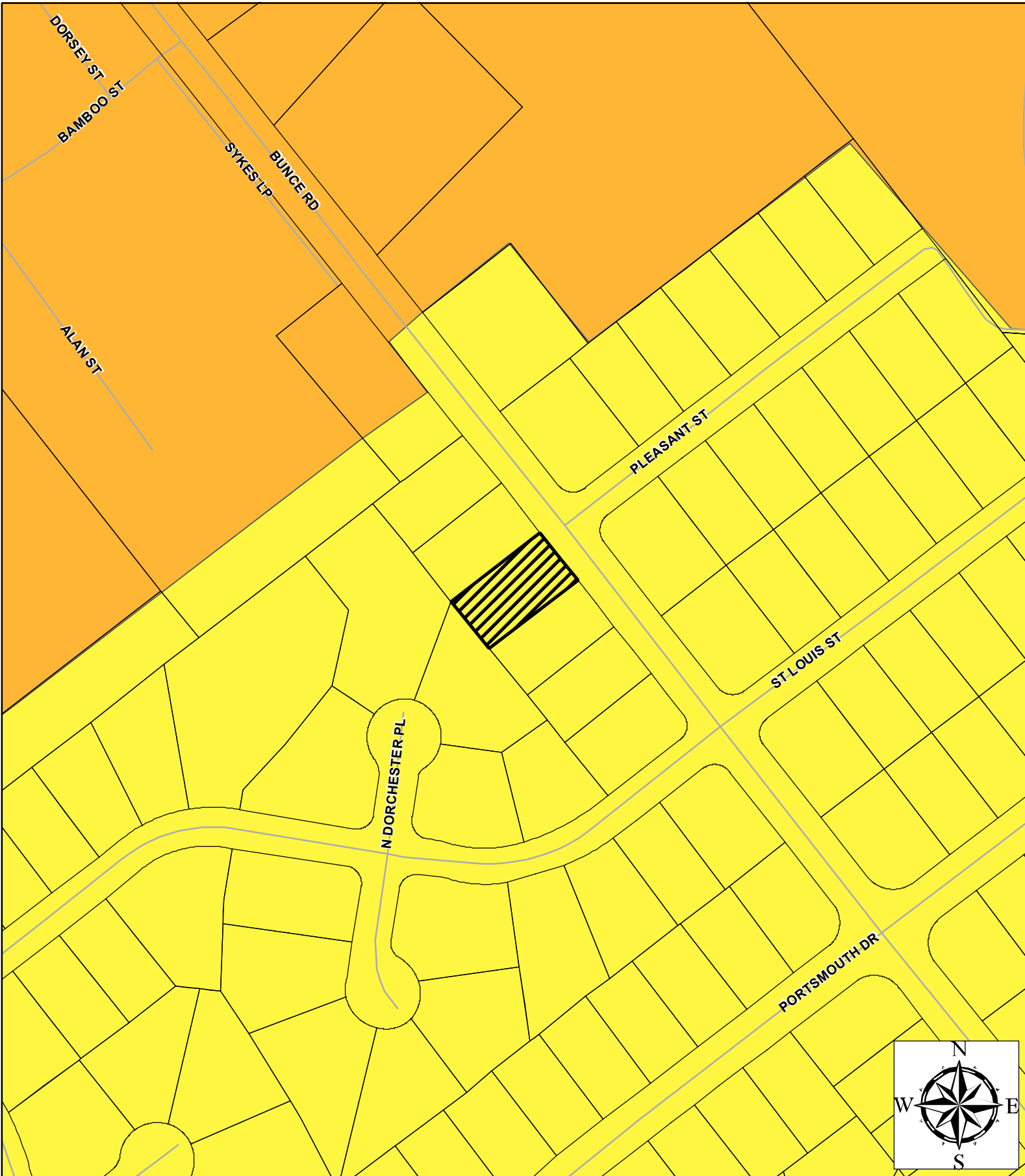
### Legend

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. P11-22F



### Legend

- |  |  |   |
|--|--|---|
|  Medium Density Residential |  Office / Institutional |  Governmental            |
|  Light Commercial           |  Heavy Commercial       |  Low Density Residential |

6-9-3-1

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Craig Harmon, Planner II  
**DATE:** November 28, 2011  
**RE:** **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.**

---

### **THE QUESTION:**

Does the proposed rezoning to Limited Commercial fit the with the character of the neighborhood and the long range plans of the city of Fayetteville?

### **RELATIONSHIP TO STRATEGIC PLAN:**

Growth and Development

### **BACKGROUND:**

Owner: Matilda Autry  
Applicant: Larry Stone  
Requested Action: SF-10 to LC  
Property Address: 1520 Hope Mills Rd.  
Council District: 6 (Crisp)  
Status of Property: Undeveloped  
Size: 1.59 acres +/-  
Existing Land Use: Residential – Single family (SF-10)  
Letters Mailed: 57  
2010 Land Use Plan: Office and Institutional  
Hope Mills Road Area Plan: Calls for Office use on this property.

**SF-10.** The Single-Family Residential 10 (SF-10) District is established to accommodate principally single-family detached residential development at low densities, and to accommodate flexibly-designed residential development that provides variable housing types and arrangements that respond to environmental and site conditions. Uses within the district are subject to the design standards in Article 30-5: Development Standards. The district accommodates two- to four-family dwellings designed to appear as single-family detached homes and zero lot line development subject to the requirements of this Ordinance. District regulations discourage any use that substantially interferes with the development of single-family dwellings and that is detrimental to the quiet residential nature of the district. Also allowed are complementary uses usually found in residential zoning districts, such as parks, open space, minor utilities, accessory dwellings of up to 800 square feet in size, schools, and places of worship.

**LC -** The Limited Commercial (LC) District is established and intended to accommodate a wider range of moderate-intensity general retail, business, and service uses that serve groups of neighborhoods instead of just an individual neighborhood—e.g., grocery stores, drugstores, large restaurants, gas stations, and higher order retail uses like specialty stores. The district is not intended to accommodate intensive commercial or other business uses. Residential uses are encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is compatible with surrounding residential neighborhoods.

### **ISSUES:**

The applicant is looking to market this property for sale under what they see as the highest and best use, Limited Commercial. The property is bordered by LC on one side and has LC zoning across the street. SF-10 zoning is however to the south and west of this property. Under the Hope Mills Land Use Plan, adopted in 2006, this property is planned for O&I (Office and

Institutional). This property also sets at an intersection that is the entrance to a neighborhood.

Zoning Commission and Staff Recommend a more restrictive zoning of OI based on:

1. It is the entrance to a residential development.
2. Hope Mills Land Use Plan calls for Office use.
3. Two sides of this property are zoned for single family residential.

**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 requested by the applicant;
- 2) Approval of rezoning to a more restrictive zoning district (OI recommended);
- 3) Denial of the rezoning request.

**RECOMMENDED ACTION:**

**Zoning Commission and Staff Recommend:** That the City Council move to APPROVE of the rezoning to a more restrictive district of Office and Institutional as presented by staff.

**ATTACHMENTS:**

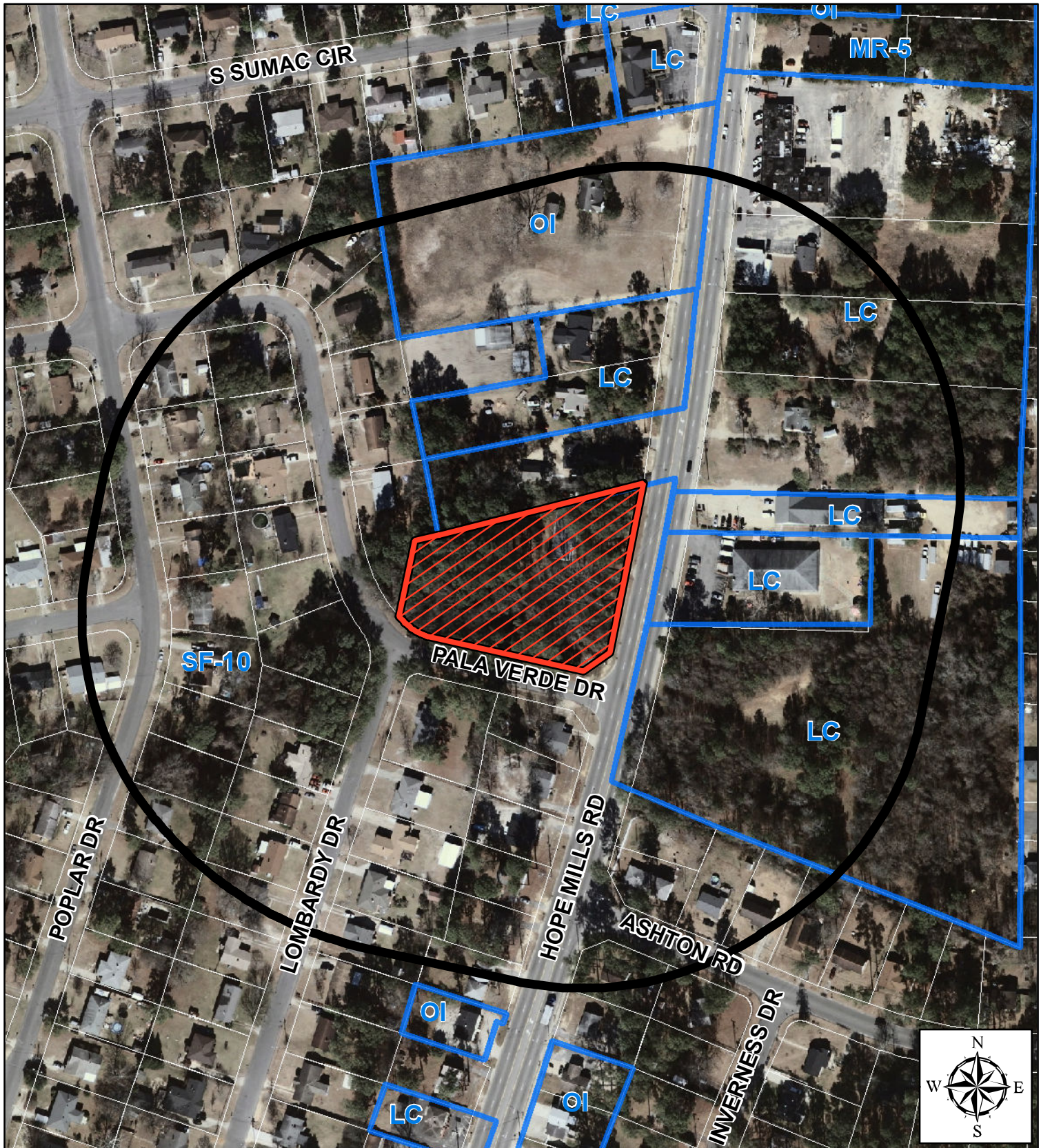
Zoning Map

Current Landuse

Land Use Plan



**ZONING COMMISSION**  
**CASE NO. P11-47F**



**Request:** Rezoning  
**Location:** West side of Hope Mills Road  
**Acreage:** +/- 1.54 acres

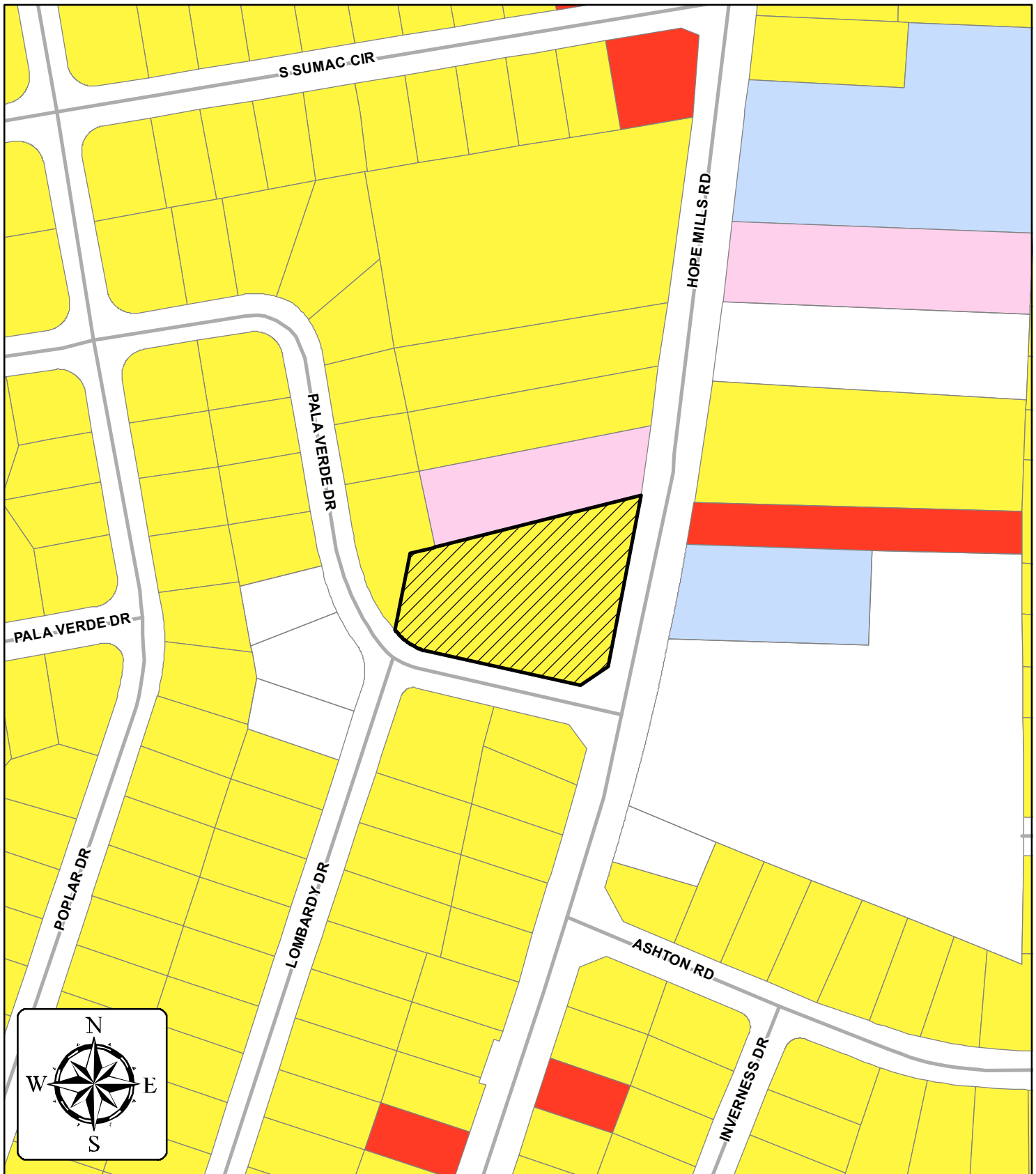
**Zoning Commission:** 09/13/2011    **Recommendation:** \_\_\_\_\_  
**City Council:** \_\_\_\_\_    **Final Action:** \_\_\_\_\_  
**Pin:** 0416-13-2264

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



# Current Land Use

## P11-47F

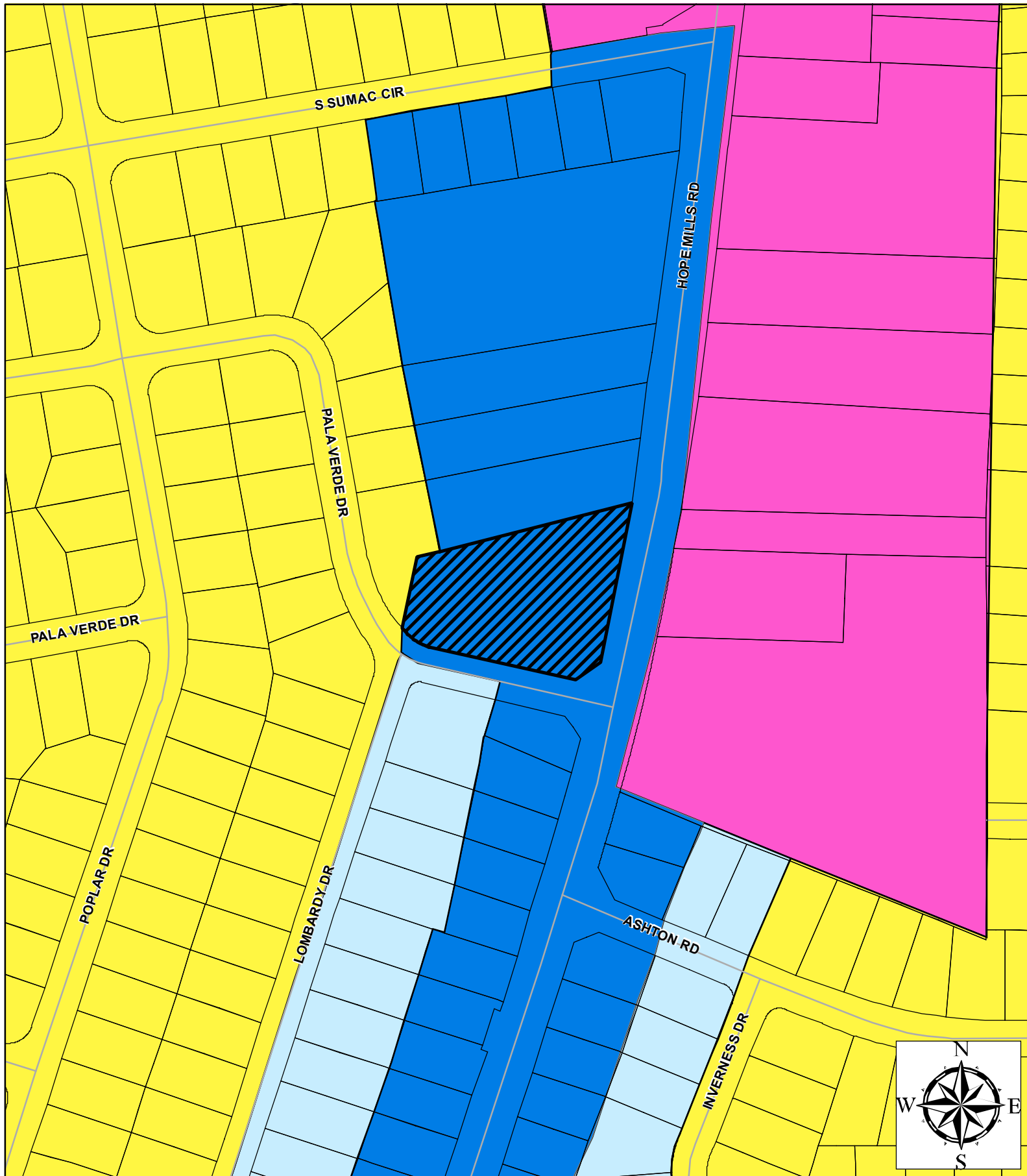


### Legend

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. P11-47F



### Legend

Light Commercial
  Low Density Residential
  Office & Institutional
  Policy Directed Office & Institutional

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Craig Harmon, Planner II  
**DATE:** November 28, 2011  
**RE:** **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.**

---

### **THE QUESTION:**

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

### **RELATIONSHIP TO STRATEGIC PLAN:**

Growth and development.  
Livable Neighborhoods

### **BACKGROUND:**

Owner: Dorothy Quick  
Applicant: Athena Quick  
Requested Action: AR to LC  
Property Address: SW corner of Dundle and Stoney Point Roads, Fayetteville, NC  
Council District: 6 (Crisp)  
Status of Property: Vacant  
Size: 6.18 acres +/-  
Existing Land Use: Vacant Land  
Adjoining Land Use & Zoning:  
North - NC Neighborhood Commercial; SF-6 Single Family Residential; SF-10 Single Family Residential  
South - AR Agricultural Residential  
East - NC Neighborhood & CC Community Commercial; SF-10 Single Family Residential  
West - AR Agricultural Residential  
Letters Mailed: 33

Land Use Plan: Low Density Residential.

Small Area Studies: 2025 Long Range Transportation Plan - No effect on this property.

### **Current Zoning District Description:**

**AR.** The Agricultural-Residential (AR) District is established and intends to accommodate rural uses, including agricultural uses, uses that complement or support agricultural uses, and very low-density residential uses. It encourages residential development that preserves farmland and other open space through flexibly-designed conservation subdivisions.

**LC.** The Limited Commercial (LC) District is established and intended to accommodate a wider range of moderate-intensity general retail, business, and service uses that serve groups of neighborhoods instead of just an individual neighborhood—e.g., grocery stores, drugstores, large restaurants, gas stations, and higher order retail uses like specialty stores. The district is not intended to accommodate intensive commercial or other business uses. Residential uses are encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is compatible with surrounding residential neighborhoods.

### **ISSUES:**



The applicant is requesting a rezoning to Limited Commercial. There have been other rezoning requests in this area in the recent past. Case P07-58F rezoned a small property on Stoney Point from AR to C1 (now NC). Case P09-38F was a request to go from R-10 to C1. This request was denied. This was for the conversion of approximately 8 acres to a strip center. Then lastly, earlier this year case P11-45F rezoned property at the corner of Stoney Point and Dundle from AR to LC. This rezoning was done to correct a nonconforming use. The existing store has been there for 30 +/- years while zoned AR. The rezoning now gives this property an appropriate zoning district.

Zoning Commission denied this case and it is now coming to Council on appeal:

1. Land use plan calls for residential.
2. 6 acres being a large amount of commercial property for a rural area.
3. Recent denial of similar rezoning request across the intersection.
4. Straight rezoning opens the property up to all allowed uses in the LC 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 requested by the applicant;
- 2) Approval of rezoning to a more restrictive zoning district;
- 3) Denial of the rezoning request (recommended).

**RECOMMENDED ACTION:**

**Zoning Commission and Staff Recommend:** that the City Council move to DENY the rezoning to Limited Commercial as presented by staff.

**ATTACHMENTS:**

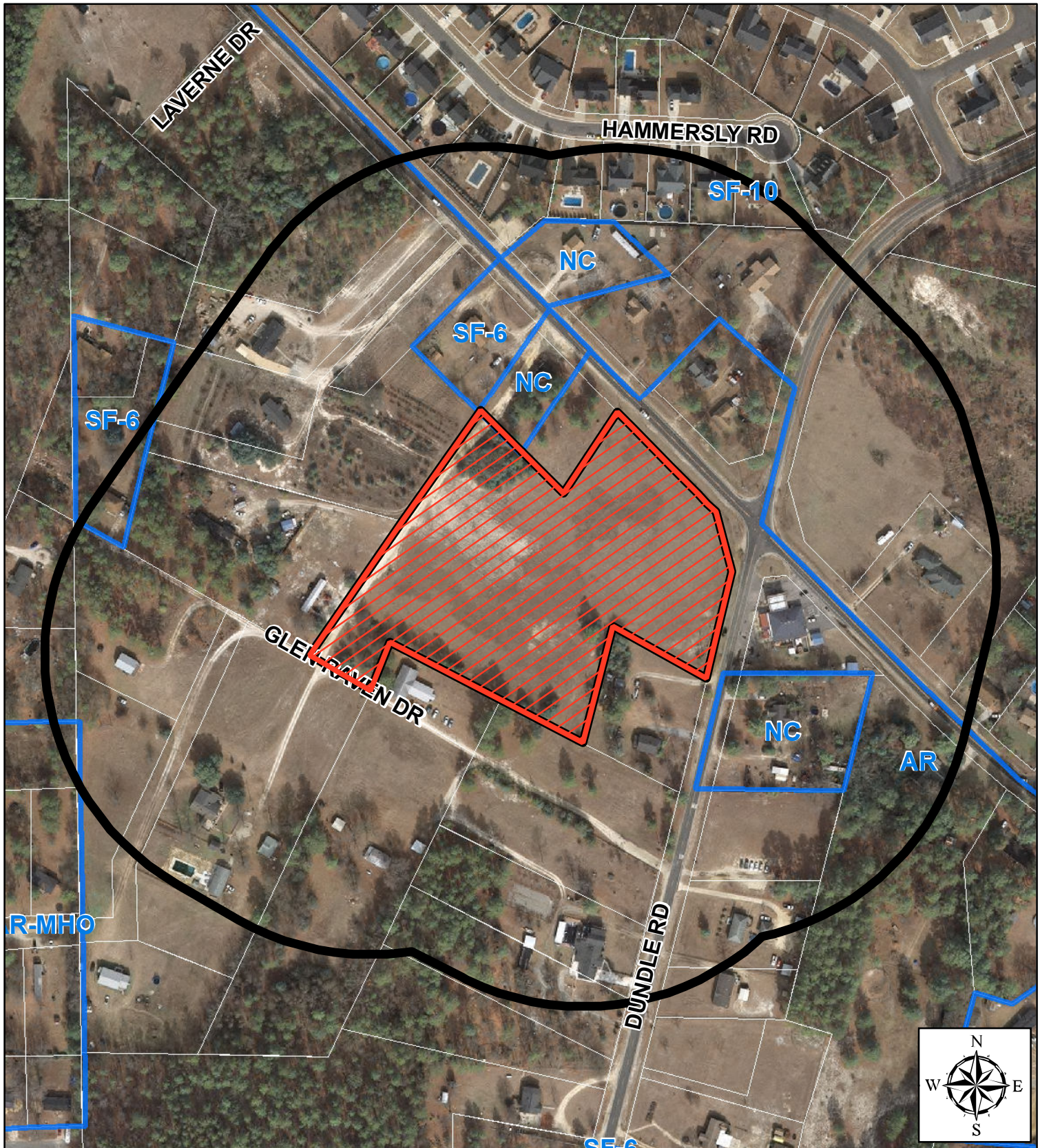
Zoning Map

Current Landuse

Land Use Plan



**ZONING COMMISSION**  
**CASE NO. P11-50F**



**Request:** Rezoning  
**Location:** Southwest corner of Stoney Point &  
Dundle Road  
**Acreage:** +/- 6.18 acres

**Zoning Commission:** 09/13/2011  
**City Council:** \_\_\_\_\_  
**Pin:** 9495-10-1561

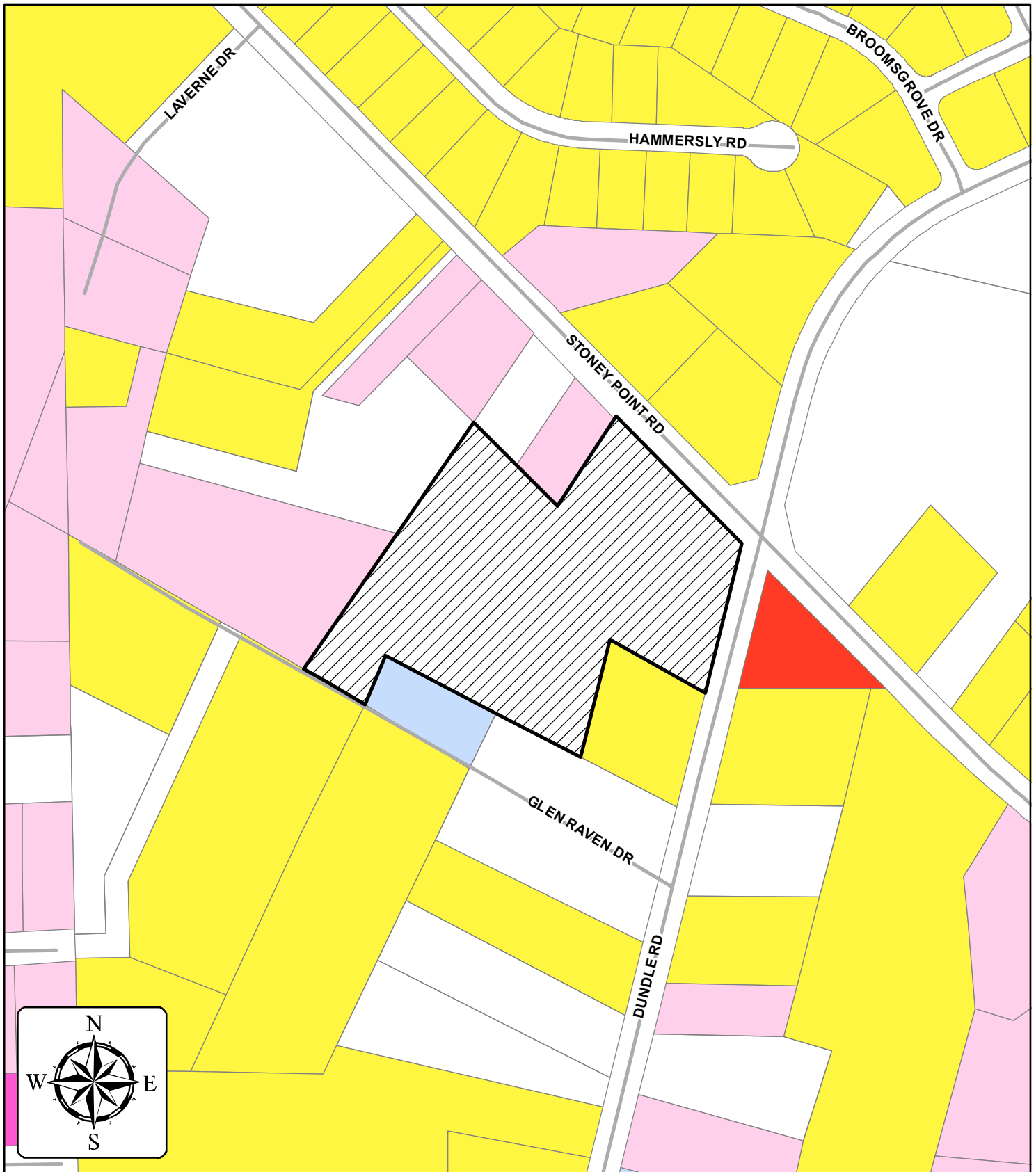
**Recommendation:** \_\_\_\_\_  
**Final Action:** \_\_\_\_\_

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



# Current Land Use

## P11-50F

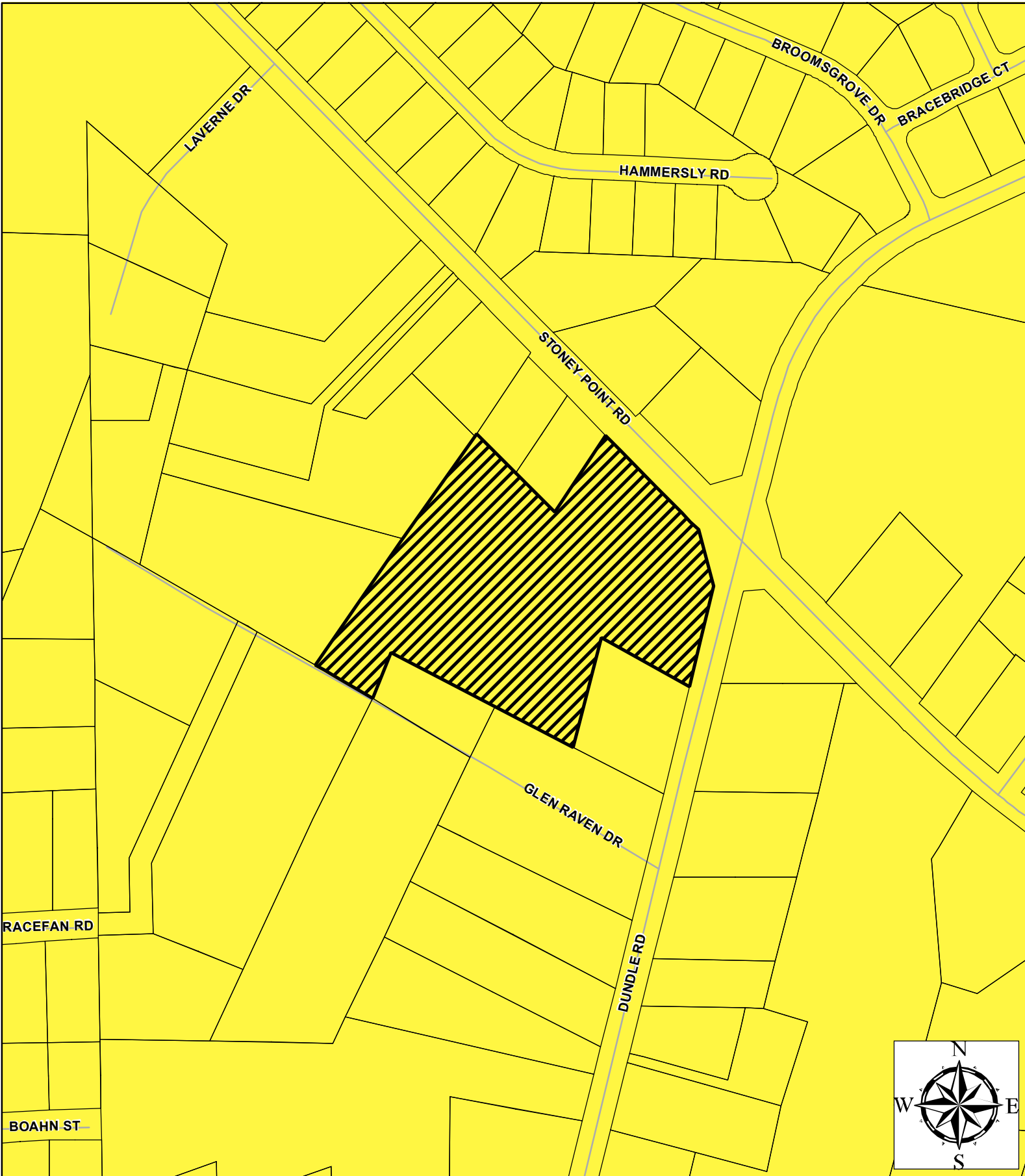


### Legend

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. P11-50F



### Legend

 Low Density Residential

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Craig Harmon, Planner II  
**DATE:** November 28, 2011  
**RE:** **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.**

---

### **THE QUESTION:**

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

### **RELATIONSHIP TO STRATEGIC PLAN:**

Growth and development.  
Livable Communities

### **BACKGROUND:**

Owner: Sherril Watkins and Ed Blanchard  
Applicant: Sherril Watkins and Ed Blanchard  
Requested Action: NC to LC  
Property Address: 3530 Boone Trail  
Council District: 5 (Hurst)  
Status of Property: Built on  
Size: 0.3 acres +/-  
Existing Land Use: Commercial Building  
Adjoining Land Use & Zoning:  
North - SF-10 Single Family Residential  
South - SF-10 Single Family Residential, NC Neighborhood Commercial  
East - SF-10 Single Family Residential  
West - SF-10 Single Family Residential  
Letters Mailed: 46

Land Use Plan: Low Density Residential

Small Area Studies: 2025 Long Range Transportation Plan

### **Current Zoning District:**

NC. The Neighborhood Commercial (NC) District is established and intended to accommodate small scale, low-intensity, and “convenience” retail and service uses that provide goods and services serving the residents of the immediately surrounding neighborhood (e.g., personal service uses, small restaurants, and limited retail). Development in the district should not include uses of a size that is out of scale with a residential neighborhood, or that attracts traffic from outside the surrounding neighborhood. Individual retail uses shall not exceed 2,500 square feet without obtaining a Special Use Permit (See Section 30-2.C.7.). Residential uses are encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is consistent with the neighborhood scale and compatible with surrounding uses and the design standards in Article 30-5: Development Standards.

LC. The Limited Commercial (LC) District is established and intended to accommodate a wider range of moderate-intensity general retail, business, and service uses that serve groups of neighborhoods instead of just an individual neighborhood—e.g., grocery stores, drugstores, large restaurants, gas stations, and higher order retail uses like specialty stores. The district is not intended to accommodate intensive commercial or other business uses. Residential uses are

encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is compatible with surrounding residential neighborhoods.

**ISSUES:**

The applicant is looking to rezone a property located in the "V" intersection of Boone Trail and Roxie Avenue. This property was recently remapped during the UDO process from C1 Commercial to NC Neighborhood Commercial. The applicant is of the opinion that NC zoning is a down zoning to their property and would cause undue hardship to them when trying to market this property.

During the UDO remapping process this property was mapped to NC to serve as an end point for commercial development on Boone Trail. The uses allowed in NC fit more with the surrounding residential development. The current use on this property fits in the NC district and the nearest non-residential zoning to this property is also zoned NC.

Zoning Commission denied this case and it is now coming to Council on appeal:

1. Property is the last commercial property in this area of Boone Trail.
2. NC allows this property to become a property buffer to the surrounding residential development.
3. There is other NC on the opposite side of the street ending commercial development on that side.

**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 requested by the applicant;
- 2) Approval of rezoning to a more restrictive zoning district;
- 3) Denial of the rezoning request (recommended).

**RECOMMENDED ACTION:**

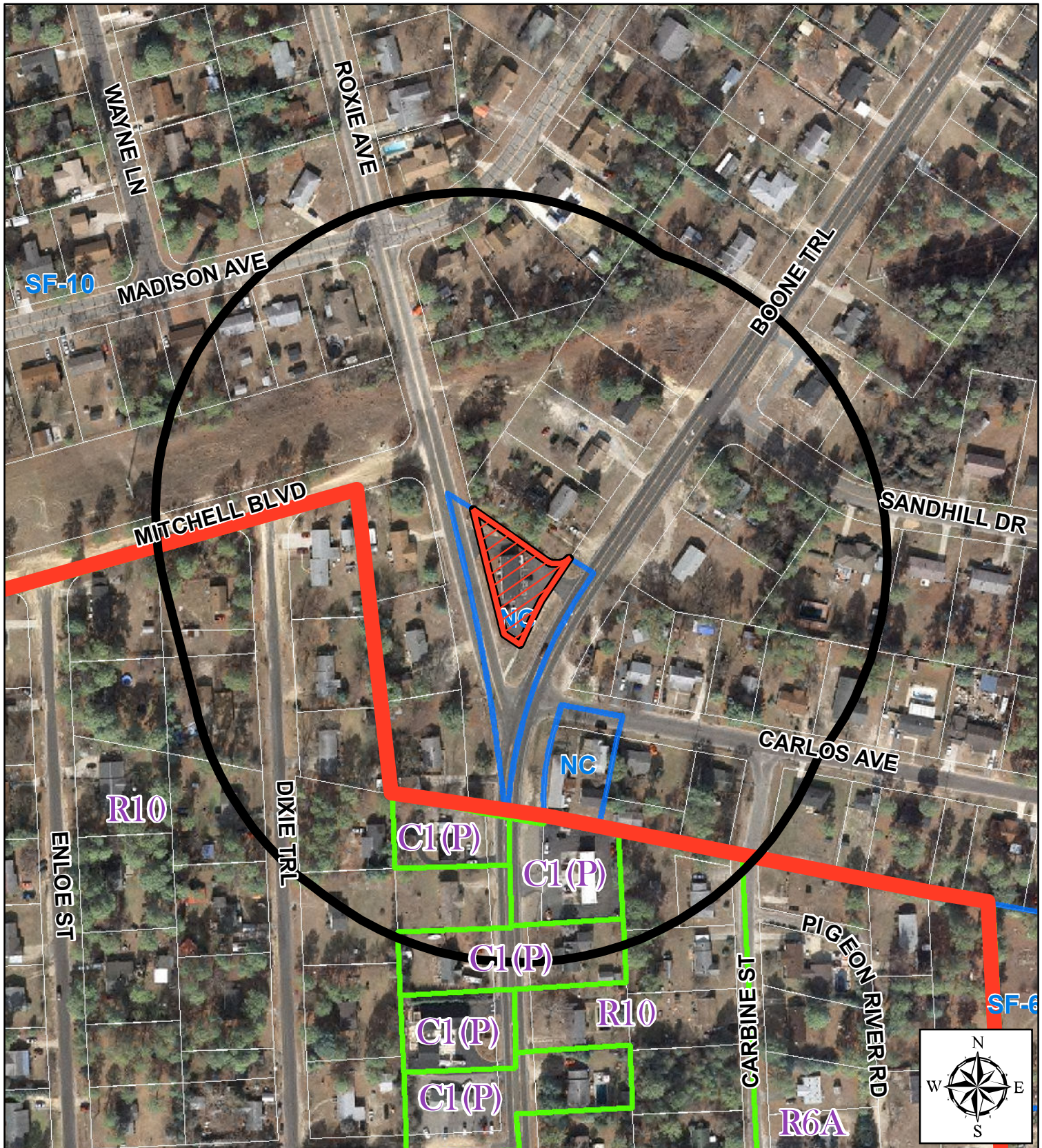
**Zoning Commission and Staff Recommend:** that the City Council move to DENY the rezoning to Limited Commercial as presented by staff.

**ATTACHMENTS:**

Zoning Map  
Current Landuse  
Land Use Plan



**ZONING COMMISSION**  
**CASE NO. P11-54F**



**Request: Rezoning**  
**Location: 3530 Boone Trail**  
**Acreage: +/- 0.3 acres**

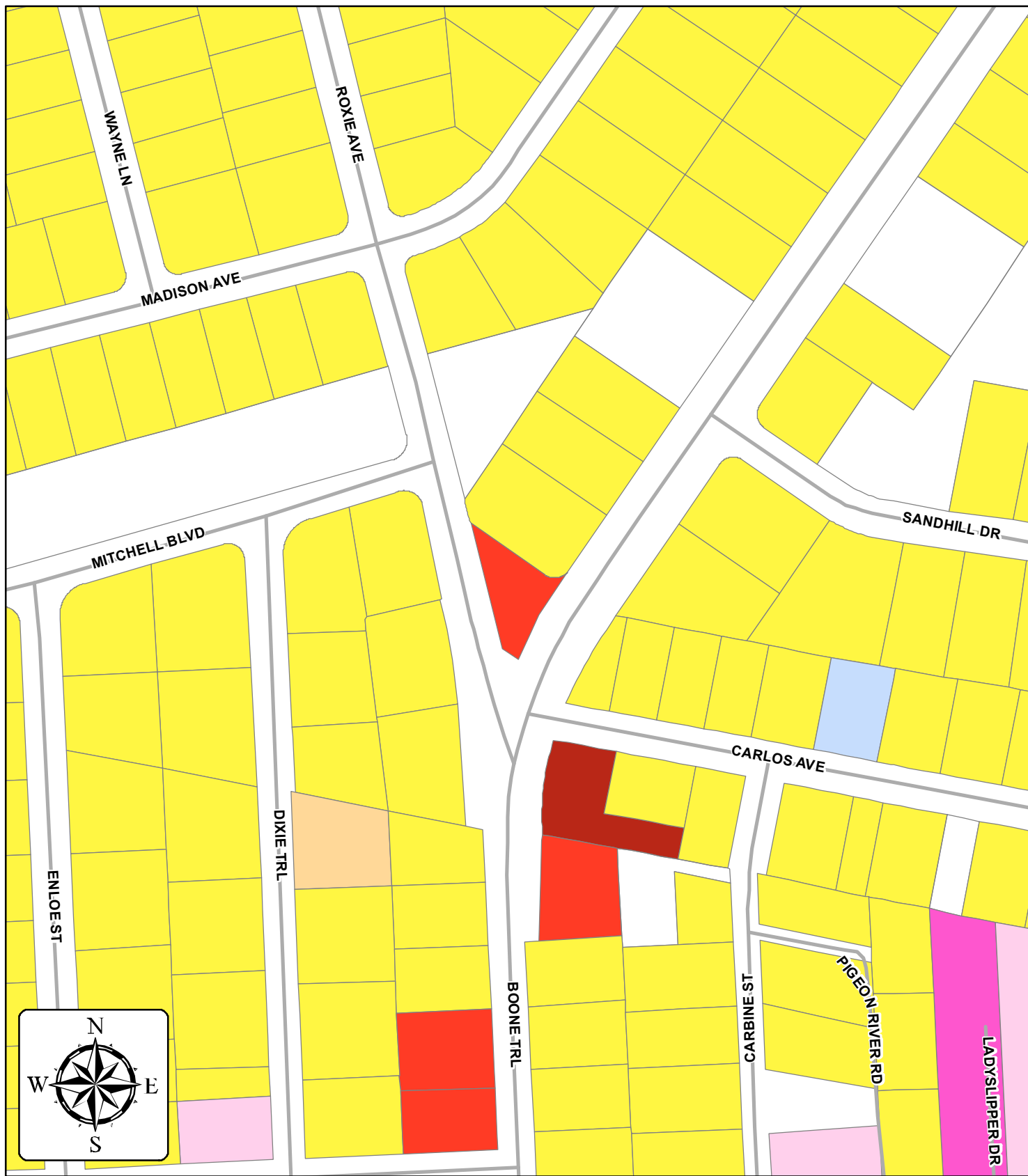
**Zoning Commission: 09/13/2011**    **Recommendation: \_\_\_\_\_**  
**City Council: \_\_\_\_\_**    **Final Action: \_\_\_\_\_**  
**Pin: 0416-17-8241**

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



## Current Land Use

**P11-54F**




### Legend


## Existing Landuse

☐ Single Family Detached

☐ Single Family Attached

 Common A

Commerci


 Cemetery Group Quarters Golf Course

 Government Office


 Indust

 Institut

 Lake

 Multi-Family

 Mobile Home


 Mobile Home Open Space

 Parking

 Predominantly Vacant

## ■ Communications-Utilities

 Under Construction

☐ Vacant Land Vacant Commercial

Not Verified

Null PIN

# 2010 Land Use Plan

## Case No. P11-54F



### Legend

<span style="display:inline-block; width:15px; height:15px; background-color:lightgreen;"></span> Governmental	<span style="display:inline-block; width:15px; height:15px; background-color:yellow;"></span> Low Density Residential	<span style="display:inline-block; width:15px; height:15px; background-color:lightcoral;"></span> Policy Directed Light Commercial 6 - 12 - 3 - 1
<span style="display:inline-block; width:15px; height:15px; background-color:lightpink;"></span> Light Commercial	<span style="display:inline-block; width:15px; height:15px; background-color:blue;"></span> Office & Institutional	<span style="display:inline-block; width:15px; height:15px; background-color:lightblue;"></span> Policy Directed Office & Institutional

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** David Nash, Planner II  
**DATE:** November 28, 2011  
**RE:** **Public Hearing to Consider a Petition Requesting Annexation-Submitted by Freedom Christian Academy-Property Located at 3130 Gillespie Street**

---

**THE QUESTION:**

Should a non-contiguous area owned by Freedom Christian Academy, Inc., be annexed into the City?

**RELATIONSHIP TO STRATEGIC PLAN:**

Strong local economy

**BACKGROUND:**

Freedom Christian Academy, Inc., the owner of property located at 3130 Gillespie Street, has requested that the property be annexed into the City. The property is located on the eastern side of Gillespie Street, in front of the former Black & Decker site. The property is within the Fayetteville MIA. The owner needs an additional PWC sewer line and has filed an annexation petition, pursuant to Policy 150.2.

This area requested for annexation consists of one tax parcel. There is one existing building on this parcel. In the past, this building was used as a warehouse. The new owner of the property, Freedom Christian Academy, Inc., is converting the warehouse building into a new private church school. The building is already connected to PWC water and sewer. The school will continue to use PWC water and sewer. However, an additional sewer line is needed, in order to install restrooms in the rear of the building.

**ISSUES:**

**Sufficiency:** The City's Real Estate staff has verified that Freedom Christian Academy, Inc., is the owner of the property that has been requested for annexation.

**Services:** This area has been reviewed by City operating departments and by PWC. The Fire Department reports that the area is 4.2 miles from the closest City fire station. This means that the Fire Department will need to contract with Pearces Mill Volunteer Fire Department to provide primary coverage. The Police Department reports that it will be able to serve the area. The Environmental Services Department reports that since the area is non-residential, the department would not serve the area; instead, all waste would be hauled by a contract hauler at the school's expense. The PWC Water and Sewer Division reports that sewer, water, and fire hydrant services are already provided to the area by PWC. The PWC Electrical Division reports that PWC already provides electrical service to the property. Street light services are not currently provided to the area. PWC reports that if the area were annexed, street light services would not be required.

**Do the New Voluntary Annexation Laws (Aimed at High Poverty Areas) Apply?** It is not believed that the new voluntary annexation laws apply in this situation, because the new laws apply only to contiguous annexations, and this is a satellite annexation.

**Effective Date:** Staff is recommending an effective date of November 28, 2011. Recent changes in the state annexation law regarding effective dates did not pertain to satellite areas. The law remains the same: a satellite annexation ordinance may be made effective immediately, or on any specified date within six months from the date of passage.

**Initial Zoning After Annexation:** Assuming that the area is annexed, the area will need to be initially zoned in the City. The area is currently zoned O&I(P) in the County. This suggests that the area

would be initially zoned as OI in the City. However, staff will need to meet with the petitioner to confirm that OI is the best zone for the property, in light of any plans the petitioner might have for future expansion of the school.

**BUDGET IMPACT:**

Fiscal impact analysis involves a comparison of projected revenues with projected costs.

**Projected Revenues:** In projecting ad valorem revenue, it is necessary to realize that a church school might apply for an exemption from property taxes in the future. For the purposes of this projection, it will be assumed that the property remains taxable. The current total taxable value of this property is \$2,027,795. Based on the current City tax rate of \$.456 per \$100 value, it can be projected that the ad valorem revenue would be \$9,247 per year. It is not projected that there will be any population-based revenues.

**Projected Costs:** The Fire Department projects that the cost for contracting with Pearces Mill would be at least \$2,030 per year. (There might be additional costs for debt assumption payments with Pearces Mill, but this cost cannot be determined until debt assumption information is received from Pearces Mill.) It is assumed that the Police Department would have some costs for traveling to the property, but these costs have not been projected. The Environmental Services Department reports that it would have no costs, because this area is non-residential. (The school will be responsible for paying for the cost of waste removal.) To summarize, the only costs that have been projected are \$2,030 for the Fire Department.

**Fiscal Impact:** Projected revenues (assuming the property remains taxable) are \$9,247 per year. Projected costs are \$2,030 per year. The difference is \$7,217. Since revenues exceed costs, the fiscal impact of annexing this area appears to be positive for the City. It should be noted that the costs do not include any costs for police protection. As long as the actual cost for police protection does not exceed \$7,217 per year, the fiscal impact would be positive for the City. This analysis of fiscal impact will be different if the property applies for an exemption from property taxes in the future.

**OPTIONS:**

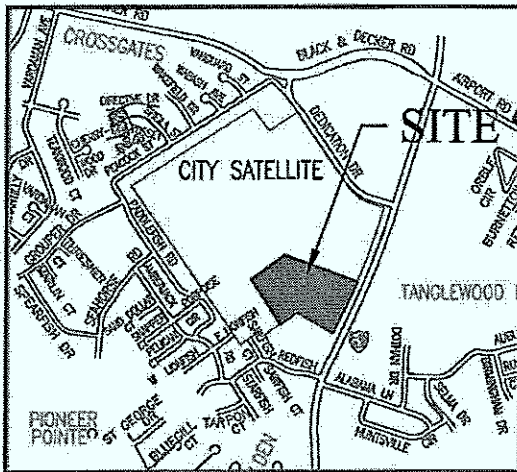
1. Adopt the Annexation Ordinance with an effective date of November 28, 2011. (Recommended)
2. Adopt the Annexation Ordinance with an effective date within six months of the date of passage of the ordinance.
3. Do not adopt the Annexation Ordinance and the property will remain outside the City.

**RECOMMENDED ACTION:**

Staff recommends that Council adopt the Annexation Ordinance approving the requested annexation with an effective date of November 28, 2011.


**ATTACHMENTS:**

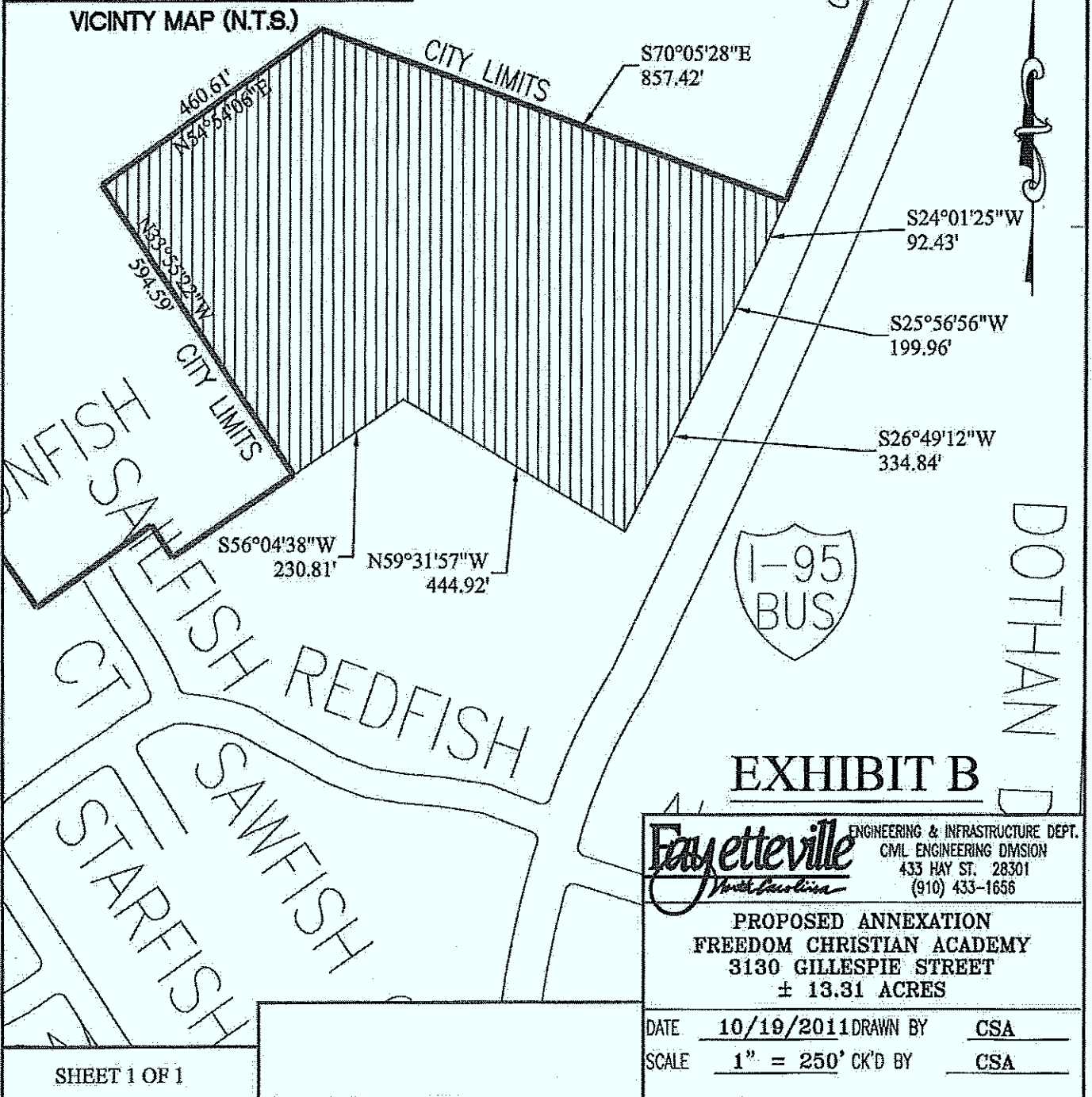
Legal Description Map  
Basic Information About the Area  
Freedom Christian Academy\_Sufficiency Memo  
Freedom Christian Academy\_Proposed Ordinance



VICINITY MAP (N.T.S.)

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.

 PROPOSED ANNEXATION AREA



**BASIC INFORMATION ABOUT THE AREA**  
**Information Updated as of: October 20, 2011**  
**Date Petition Received: October 14, 2011**  
**Annexation Date:                      Effective Date:**  
**Annexation Number:**

1. Name of Area:	Freedom Christian Academy-3130 Gillespie Street
2. Names of Petitioners:	Freedom Christian Academy, Inc. (Joan Dayton, Principal; Hall Powers, Finance Officer)
3. Location:	Western side of Gillespie Street, about 850 ft south of Dedication Dr, adjacent to former Black & Decker site
4. Tax Identification Number (PIN):	0425-82-6757-
5. Fire Department Affected by Annexation:	Pearces Mill
6. Is the Area Contiguous:	No, not contiguous to primary corporate limits of City- but is contiguous to the Black & Decker satellite area.
7. Type of Annexation:	Petition-initiated satellite area
8. Background:	The area consists of one tax parcel. There is one existing building on this parcel; in the past, this was used as a warehouse. The property has recently been purchased by a new group who are converting the building to a private church school. The building was previously connected to PWC water and sewer. The school will use PWC water and sewer. However, an additional sewer line is needed, in order to install restrooms in the rear of the building.
9. Reason the Annexation was Proposed:	Since the new owner needs an additional sewer line, and since the parcel is in the Fayetteville MIA, the owner was required to submit an annexation petition.
10. Number of Acres in Area:	13.31 acres
11. Type of Development in Area:	The parcel is developed with one building.
12. Present Conditions:	<ul style="list-style-type: none"> <li>a. <u>Present Land Use:</u> Being converted to a school.</li> <li>b. <u>Present Number of Housing Units:</u> 0</li> <li>c. <u>Present Demographics:</u> Total Pop=0</li> <li>d. <u>Present Streets:</u> None</li> <li>e. <u>Water and Sewer Service:</u> PWC</li> <li>f. <u>Electrical:</u></li> </ul>
13. Factors Likely to Affect Future of Area:	<ul style="list-style-type: none"> <li>a. <u>Plans of Owner:</u> To convert former warehouse to a private church school.</li> <li>b. <u>Development Controls</u> <ul style="list-style-type: none"> <li>1. <u>Land Use Plan</u> <ul style="list-style-type: none"> <li>a. <u>2010 Plan :</u> Heavy Industrial</li> </ul> </li> <li>2. <u>Zoning</u> <ul style="list-style-type: none"> <li>a. <u>Current Zoning in County:</u> O&amp;I (P)</li> <li>b. <u>Likely Zoning After Annexation:</u> OI</li> <li>c. <u>Maximum number of units allowed based on the zoning:</u></li> </ul> </li> </ul> </li> </ul>
14. Expected Future Conditions:	<ul style="list-style-type: none"> <li>a. <u>Future Land Use</u> –Private church school.</li> <li>b. <u>Future Number of Housing Units:</u> 0</li> <li>c. <u>Future Demographics:</u> Total Pop=0</li> <li>d. <u>Future Streets:</u> None</li> <li>e. <u>Water and Sewer Service:</u> PWC.</li> <li>f. <u>Electric Service-</u></li> </ul>
15. Tax Value of Land and Buildings:	\$2,027,795 (The parcel has a land value of \$281,661, a building value of \$1,727,955, and an extra feature value of \$18,179.)

# MEMO

**To:** David Nash, Planning Department

**From:** Brandy R. Bishop, Senior Paralegal

**CC:** To the file

**Date:** October 19, 2011

**Re:** Sufficiency of Annexation Petition

**SIGNERS OF THE PETITION:** Joan Dayton, Chairperson, Board of Directors  
R. Hall Powers, Jr., Treasurer, Board of Directors  
Freedom Christian Academy, Inc.

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**Freedom Christian Academy, Inc.** per recorded Deed 8576, Page 621, is the record owner for the 13.30 acre tract.

0425-82-6757- 13.30 Acre Tract

My search ended October 17, 2011 at 8:00 a.m.

**Petition is now sufficient!**



**Annexation Ordinance No:** \_\_\_\_\_

**Freedom Christian Academy-  
3130 Gillespie Street  
(PIN 0425-82-6757)**

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE  
CITY OF FAYETTEVILLE, NORTH CAROLINA**

WHEREAS, the City Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

WHEREAS, the City of Fayetteville has investigated the sufficiency of the petition; and

WHEREAS, the City of Fayetteville has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall Council Chambers at 7:00 p.m. on November 28, 2011, after due notice by publication on November 18, 2011; and

WHEREAS, the City Council further finds that the area described therein meets the standards of G.S. 160A-58.1(b), to wit:

- a. The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the primary corporate limits of the City of Fayetteville;
- b. No point on the proposed satellite corporate limits is closer to the primary corporate limits of another municipality than to the primary corporate limits of the City of Fayetteville;
- c. The area described is so situated that the City of Fayetteville will be able to provide the same services within the proposed satellite corporate limits that it provides within the primary corporate limits;
- d. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;
- e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the City of Fayetteville;

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

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described non-contiguous property owned by Freedom Christian Academy, Inc. (Joan Dayton, Principal; Hall Powers, Finance Officer) is hereby annexed and made part of the City of Fayetteville, North Carolina as of November 28, 2011:

**Freedom Christian Academy, Inc.  
13.30 Acres +- Gillespie Street**

**BEGINNING** at a point in the Western right-of-way margin of Gillespie Street, said point of beginning also being the northwest corner of the Lot 2, according to a plat entitled, "DIVISION OF THE BLACK & DECKER, INC. LAND," duly recorded in Book of Plats 91, Page 200, Cumberland County Registry running thence South 24 degrees 01 minutes 25 seconds West 92.43 feet to a point; thence South 25 degrees 56 minutes 56 seconds West 199.96 feet to a point; thence South 26 degrees 49 minutes 12 seconds West 334.84 feet to a point; thence North 59 degrees 31 minutes 57 seconds West 444.92 feet to a point; thence South 56 degrees 04 minutes 38 seconds West 230.81 feet to a point; thence North 33 degrees 55 minutes 22 seconds West 594.59 feet to a point; North 54 degrees 54 minutes 06 seconds East 460.61 feet to a point; thence South 70 degrees 05 minutes 28 seconds West 857.42 feet the **POINT AND PLACE OF BEGINNING**, and containing 13.31 Acres more or less. Said tract of land also described as **BEING** all of Lot 2, according to a plat entitled, "DIVISION OF THE BLACK & DECKER, INC. LAND," duly recorded in Book of Plats 91, Page 200, Cumberland County Registry.

Section 2. Upon and after November 28, 2011, the above-described area and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the City of Fayetteville of North Carolina and shall be entitled to the same privileges and benefits as other parts of the City of Fayetteville of North Carolina. Said area shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor and City of Fayetteville of North Carolina shall cause to be recorded in the office of the Register of Deeds of Cumberland County, and in the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed area, described in Section 1, together with a certified copy of this ordinance. Such a map shall also be delivered to the Cumberland County Board of Elections as required by G.S. 163-288.1.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Anthony G. Chavonne, Mayor

ATTEST: \_\_\_\_\_  
Pamela Megill, City Clerk

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** David Nash, Planner II  
**DATE:** November 28, 2011  
**RE:** **Public Hearing to Consider a Petition Requesting Annexation-Submitted by Mr. and Mrs. Patel-Property Located at 2765 Gillespie Street**

---

**THE QUESTION:**

Should a non-contiguous area owned by Mr. and Mrs. Patel be annexed into the City?

**RELATIONSHIP TO STRATEGIC PLAN:**

Strong local economy

**BACKGROUND:**

Mr. and Mrs. Patel, the owners of a property located at 2765 Gillespie Street, have requested that their property be annexed into the City. The property is located along the eastern side of Gillespie Street, north of Ivan Drive and south of the Airport Inn Motel. The property is within the Fayetteville MIA. There are two residential units located on this property. According to Mr. Patel, the two residential units used to have PWC water service from a line that ran through the motel parcel to the north. However, the owner of the motel parcel to the north has terminated the PWC water service. Mr. Patel has applied for a new water line connection to serve the two residential units. Mr. Patel has applied for water service and filed an annexation petition pursuant to Policy 150.2.

**ISSUES:**

**Sufficiency:** The City's Real Estate staff has verified that Mr. and Mrs. Patel are the owners of the property that has been requested for annexation.

**Services:** This area has been reviewed by City operating departments and by PWC. The Fire Department reports that the area is 3.4 miles from the closest City fire station. This means that the Fire Department will need to contract with Pearces Mill Volunteer Fire Department to provide primary coverage. The Police Department will be able to serve the area. The Environmental Services Department reports that for the time that the two units are rentals, the department will provide garbage pickup services, and the department will contract for recycling services. If the property converts to commercial use, the department will contract for garbage pickup services. The PWC Water and Sewer Division reports that the water and fire hydrants are currently available to the property; sewer is adjacent, but extensions would be needed, per PWC policy. The PWC Electrical Division reports that PWC already provides electrical service to the property. Street light services are not currently provided to the area. PWC reports that if the area were annexed, street light services would not be required.

**Do the New Voluntary Annexation Laws (Aimed at High Poverty Areas) Apply?** It is not believed that the new voluntary annexation laws apply in this situation, because the new laws apply only to contiguous annexations, and this is a satellite annexation.

**Effective Date:** Staff is recommending an effective date of November 28, 2011. Recent changes in the state annexation law regarding effective dates did not pertain to satellite areas. The law remains the same: a satellite annexation ordinance may be made effective immediately, or on any specified date within six months from the date of passage.

**Compliance With Satellite Annexation Standards-**There are five standards that a satellite annexation area must meet in order to be annexed. This area meets the five standards. Staff researched the fourth standard, which requires that if the area proposed for annexation, or any portion thereof, is a subdivision, as defined in G.S. 160A-376, all of the subdivision must be included, to be sure the petition met the standard. A plat recorded on February 4, 2011, was

confirmed to be a combination or recombination plat combining five older lots; it did not fall within the definition of a subdivision as confirmed by the County Planning Director's stamp as "No approval required."

**BUDGET IMPACT:**

Fiscal impact analysis involves a comparison of projected revenues with projected costs.

**Projected Revenues:** The total taxable value of this property is \$118,949. Based on the current City tax rate of \$.456 per \$100 value, it can be projected that the ad valorem revenue would be \$542 per fiscal year. There might be additional population-based revenues, if the two vacant rental units get reconnected to PWC water and then become occupied.

**Projected Costs:** The Fire Department projects that the cost for contracting with Peaces Mill would be at least \$119 per year. (There might be additional costs for debt assumption payments with Pearces Mill, but this cost cannot be determined until debt assumption information is received from Pearces Mill.) It is assumed that the Police Department would have some costs for traveling to the property, but these costs have not been projected. The Environmental Services Department projects that it will cost \$30 per month (\$360 per year) to provide garbage pickup, yard waste pickup, and recycling services to the two residential units. However, if the property is annexed, two recycling fees (\$38 each) would be charged; this would equal revenue to the City of \$76 per year. The net cost for Environmental Services can be projected as \$284 per year (\$360 cost minus \$76 in recycling fees). Total projected costs for all departments can be projected as \$403 (\$119 for the Fire Department plus \$284 for Environmental Services).

**Fiscal Impact:** Projected revenues are \$542 per year. Projected costs are \$403 per year. The difference is \$139 per year. Since revenues exceed costs, the fiscal impact of annexing this area appears to be positive for the City. It should be noted that the costs do not include any costs for police protection. As long as the actual cost for police protection does not exceed \$139 per year, the fiscal impact would be positive for the City.

**OPTIONS:**

1. Adopt the Annexation Ordinance with an effective date of November 28, 2011. (Recommended)
2. Adopt the Annexation Ordinance with an effective date within six months of the date of passage of the ordinance.
3. Do not adopt the Annexation Ordinance and the property will remain outside the City.


**RECOMMENDED ACTION:**

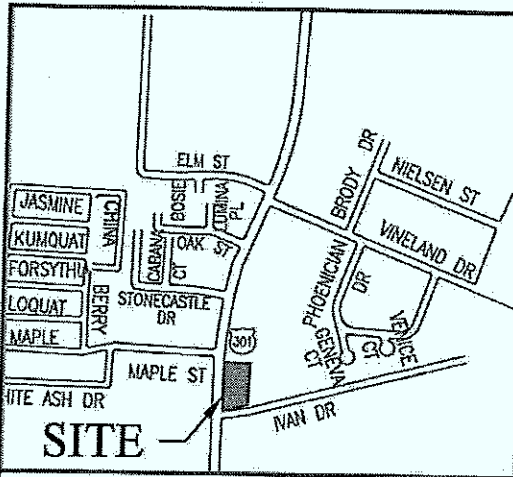
Staff recommends that Council adopt the Annexation Ordinance approving the requested annexation with an effective date of November 28, 2011.

**ATTACHMENTS:**

Legal Description Map  
Basic Information About the Area  
Patel Property\_Sufficiency Memo  
Patel Property\_Proposed Ordinance

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.

 PROPOSED ANNEXATION AREA



SITE

VICINITY MAP (N.T.S.)



S88°39'57"E  
176.77'

S2°35'42"W  
282.99'

N1°20'03"E  
308.21'

N52°13'26"W  
32.34'

S74°13'08"W  
151.22'

ST

IVAN DR

PHOENIX  
CENTRAL

## EXHIBIT B

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

PROPOSED ANNEXATION  
PATEL PROPERTY  
2765 GILLESPIE STREET  
± 1.22 ACRES

DATE 10/19/2011 DRAWN BY CSA  
SCALE 1" = 150' CK'D BY CSA

SHEET 1 OF 1

**BASIC INFORMATION ABOUT THE AREA**  
**Information Updated as of: October 20, 2011**  
**Date Petition Received: October 7, 2011**  
**Annexation Date: Effective Date:**  
**Annexation Number:**

1. Name of Area:	Patel Property-2765 Gillespie Street
2. Names of Petitioners:	Manilal Premabhai Patel and wife, Manuben Manilal Patel
3. Location:	Eastern side of Gillespie Street, northern side of Ivan Drive
4. Tax Identification Number (PIN):	0435-06-4623-
5. Fire Department Affected by Annexation:	Pearces Mill
6. Is the Area Contiguous:	No
7. Type of Annexation:	Petition-initiated satellite area
8. Background:	The area consists of one tax parcel. There are two buildings on this parcel; both have been used in the past as rental residential units. The units used to receive PWC water service from a line that ran through the parcel to the north. However, when the owner sold the parcel to the north, the new owner of the parcel to the north terminated the water service. The owner wants a new connection to an existing PWC water line located adjacent to the parcel.
9. Reason the Annexation was Proposed:	Since the owner wants a new connection to PWC water, and since the parcel is in the Fayetteville MIA, the owner was required to submit an annexation petition.
10. Number of Acres in Area:	1.22 acres
11. Type of Development in Area:	The parcel is developed with two buildings. The County classifies these buildings as "residential structures on commercial valued land."
12. Present Conditions:	<ul style="list-style-type: none"> <li>a. <u>Present Land Use:</u> Residential</li> <li>b. <u>Present Number of Housing Units:</u> 2 (both vacant)</li> <li>c. <u>Present Demographics:</u> Total Pop=0</li> <li>d. <u>Present Streets:</u> None</li> <li>e. <u>Water and Sewer Service:</u> Previously served by by PWC water.</li> <li>f. <u>Electrical:</u></li> </ul>
13. Factors Likely to Affect Future of Area:	<ul style="list-style-type: none"> <li>a. <u>Plans of Owner:</u> To rent the two units, after water service is restored.</li> <li>b. <u>Development Controls</u> <ul style="list-style-type: none"> <li>1. <u>Land Use Plan</u> <ul style="list-style-type: none"> <li>a. <u>2010 Plan :</u> Heavy Commercial</li> </ul> </li> <li>2. <u>Zoning</u> <ul style="list-style-type: none"> <li>a. <u>Current Zoning in County:</u> C(P)</li> <li>b. <u>Likely Zoning After Annexation:</u> LC</li> <li>c. <u>Maximum number of units allowed based on the zoning:</u></li> </ul> </li> </ul> </li> </ul>
14. Expected Future Conditions:	<ul style="list-style-type: none"> <li>a. <u>Future Land Use</u> –Continuation of present uses.</li> <li>b. <u>Future Number of Housing Units:</u> 2</li> <li>c. <u>Future Demographics:</u> Total Pop=5 (when water is restored and both units occupied)</li> <li>d. <u>Future Streets:</u> None</li> <li>e. <u>Water and Sewer Service:</u> Owner hopes to restore PWC water service.</li> <li>f. <u>Electric Service-</u></li> </ul>
15. Tax Value of Land and Buildings:	\$118,949 (The parcel has a land value of \$97,299, a building value of \$17,982, and an extra feature value of \$3,668.)



# MEMO

**To:** David Nash, Planning Department

**From:** Brandy R. Bishop, Senior Paralegal

**CC:** To the file

**Date:** October 19, 2011

**Re:** Sufficiency of Annexation Petition

**SIGNERS OF THE PETITION:** Manilal P. Patel and Manuben M. Patel

---

**Manilal Premabhai Patel and wife, Manuben Manilal Patel** per recorded Deed 2785, Page 197, is the record owner for the 1.22 acre tract.

0435-06-4623- Lt 1 Patel Property 128/20

My search ended October 17, 2011 at 8:00 a.m.

**Petition is now sufficient!**

**Annexation Ordinance No:** \_\_\_\_\_

**Patel Property-2765 Gillespie Street  
(PIN 0435-06-4623)**

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE  
CITY OF FAYETTEVILLE, NORTH CAROLINA**

WHEREAS, the City Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

WHEREAS, the City of Fayetteville has investigated the sufficiency of the petition; and

WHEREAS, the City of Fayetteville has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall Council Chambers at 7:00 p.m. on November 28, 2011, after due notice by publication on November 18, 2011; and

WHEREAS, the City Council further finds that the area described therein meets the standards of G.S. 160A-58.1(b), to wit:

- a. The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the primary corporate limits of the City of Fayetteville;
- b. No point on the proposed satellite corporate limits is closer to the primary corporate limits of another municipality than to the primary corporate limits of the City of Fayetteville;
- c. The area described is so situated that the City of Fayetteville will be able to provide the same services within the proposed satellite corporate limits that it provides within the primary corporate limits;
- d. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;
- e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the City of Fayetteville;

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

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described non-contiguous property owned by Manilal Premabhai Patel and wife, Manuben Manilal Patel, is hereby annexed and made part of the City of Fayetteville, North Carolina as of November 28, 2011:

**Patel Property  
1.22 Acres +- Gillespie Street**

**BEGINNING** at a point in the Eastern right-of-way margin of Gillespie Street, said point of beginning also being the southeast corner of the Lot 1, in a Subdivision known as, "PROPERTY OF MANILAL PREMABHAI PATEL and wife, MANUBEN MANILAL PATEL," according to a plat of the same duly recorded in Book of Plats 128, Page 20, Cumberland County Registry running thence North 01 degrees 20 minutes 03 seconds East 308.21 feet to a point; thence South 88 degrees 39 minutes 57 seconds East 176.77 feet to a point; thence South 02 degrees 35 minutes 42 seconds West 282.99 feet to a point; thence South 74 degrees 13 minutes 08 seconds West 151.22 feet to a point; thence North 52 degrees 13 minutes 26 seconds West 32.34 feet to the **POINT AND PLACE OF BEGINNING**, and containing 1.22 Acres more or less. Said tract of land also described as **BEING** all of Lot 1, in a subdivision known as, "PROPERTY OF MANILAL PREMABHAI PATEL and wife, MANUBEN MANILAL PATEL," according to a plat of the same duly recorded in Book of Plats 128, Page 20, Cumberland County Registry.

Section 2. Upon and after November 28, 2011, the above-described area and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the City of Fayetteville of North Carolina and shall be entitled to the same privileges and benefits as other parts of the City of Fayetteville of North Carolina. Said area shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor and City of Fayetteville of North Carolina shall cause to be recorded in the office of the Register of Deeds of Cumberland County, and in the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed area, described in Section 1, together with a certified copy of this ordinance. Such a map shall also be delivered to the Cumberland County Board of Elections as required by G.S. 163-288.1.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Anthony G. Chavonne, Mayor

ATTEST:

\_\_\_\_\_  
Pamela McGill, City Clerk

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** David Nash, Planner II  
**DATE:** November 28, 2011  
**RE:** **Public Hearing to Consider a Petition Requesting Annexation -Submitted by the Household of Faith Church-Property Located at 468 N. Plymouth Street**

---

**THE QUESTION:**

Should a contiguous area owned by The Household of Faith Church be annexed into the City?

**RELATIONSHIP TO STRATEGIC PLAN:**

Strong local economy

**BACKGROUND:**

Officials with The Household of Faith World Outreach Center, Inc. Church, located at 468 N. Plymouth Street, have requested that the church's property be annexed into the City. The church's property is located within the Fayetteville MIA. Officials of the church have inquired about receiving receiving PWC services, and PWC has given preliminary cost estimates for the services. However, church officials have not actually applied for these services. Therefore, church officials were not required to submit an annexation petition, pursuant to Policy 150.2. Church officials hope that by filing an annexation petition, the church will receive PWC services sooner than if the church does not file an annexation petition.

The church's property consists of two tax parcel. A church building is on the northern parcel; the southern parcel is vacant. The church plans to eventually construct a new building on the southern parcel. Neither parcel is served by PWC water and sewer; the existing church building is served by a well and septic tank. An existing PWC water line in North Plymouth Street terminates at the southwestern corner of the southern parcel.

The church's property is located across the street from an area annexed in the Phase 5 annexation program; this area was referred to as Phase 5-Area 9. The church has discussed utility extensions with PWC. When utilities are extended to Phase 5-Area 9, the church hopes that a water line extension to its property can be part of the project. According to PWC, sewer is expected to be available to the Phase 5-Area 9 annexation area in 2018. According to PWC, the pastor of the church has asked if the church property were annexed, would this mean that the sewer might be extended sooner to the area. PWC reports that the paster was told no.

**ISSUES:**

**Sufficiency:** The City's Real Estate staff has verified that The Household of Faith World Outreach Center, Inc., is the owner of the two parcels.

**Services:** This area has been reviewed by City operating departments and by PWC. The Fire Department reports that the area is 1.9 miles from Station #1; this means that the Fire Department will be able to serve the area from Station #1. The Police Department will be able to serve the area. Environmental Services will not serve the area, because it is non-residential. The PWC Water and Sewer Division reports that PWC water and sewer services are not currently provided to the area; these services would be provided by main extensions by the property owner. The PWC Electrical Division reports that PWC already serves the area with electrical services and with street lights.

**Do the New Voluntary Annexation Laws (Aimed at High Poverty Areas) Apply?**-It is not believed that the new voluntary annexation laws aimed at high poverty areas apply in this situation, because there are no households in the area petitioning for annexation.

Effective Date: Staff is recommending an effective date of November 28, 2011. Recent changes in the state annexation law governing contiguous petition annexations require that a contiguous area be annexed either immediately or on the following June 30. Annexing this area effective November 28, 2011, should not present any problems from the standpoint of compliance with the Voting Rights Act, because no people or registered voters live within the area.

**BUDGET IMPACT:**

Fiscal impact analysis involves a comparison of projected revenues with projected costs.

Projected Revenues: The parcel with the church building is currently classified as an exempt property. However, the vacant parcel is not currently classified as an exempt property. It is assumed that this vacant parcel will remain taxable and that it remains vacant. This vacant parcel has a current taxable value of \$4,042. Based on the current City tax rate of \$.456 per \$100 value, it can be projected that the ad valorem revenue would be \$18 per year. It is not projected that there will be any population-based revenues.

Projected Costs: The Fire Department reports that since it will provide services directly rather than contract, it will have no costs. It is assumed that the Police Department would have some costs for traveling to the area, but these costs have not been projected. The Environmental Services Department reports that it would have no costs, because this area is non-residential. (The church will be responsible for paying for the cost of waste removal.) To summarize, it has been projected that there will be no costs for City operating departments.

Fiscal Impact: Projected revenues (assuming that the vacant parcel remains vacant and taxable) are \$18 per year. Projected costs are \$0. The difference is \$18. Since revenues exceed costs, the fiscal impact of annexing this area appears to be positive for the City. It should be noted that the costs do not include any costs for police protection. As long as the actual cost for police protection does not exceed \$18 per year, the fiscal impact would be positive for the City. This analysis of fiscal impact will be different if the vacant parcel is developed, and/or if it becomes exempt.

**OPTIONS:**

1. Adopt the Annexation Ordinance with an effective date of November 28, 2011. (Recommended)
2. Adopt the Annexation Ordinance with an effective date of June 30, 2012.
3. Do not adopt the Annexation Ordinance and the property will remain outside the City.

**RECOMMENDED ACTION:**

Staff recommends that Council adopt the Annexation Ordinance approving the requested annexation with an effective date of November 28, 2011.

**ATTACHMENTS:**

Legal Description Map

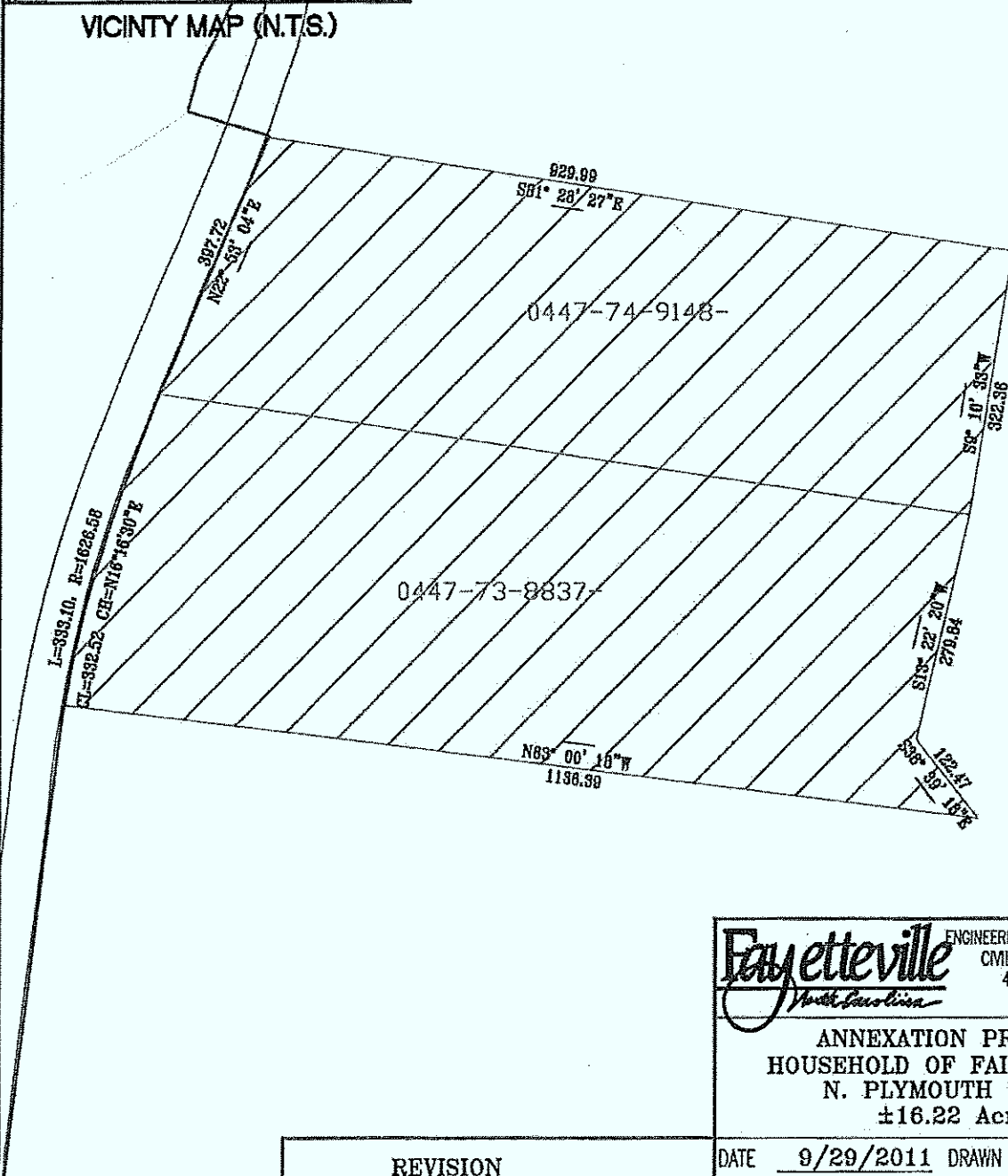
Basic Information About the Area

Household of Faith\_Sufficiency Memo

Household of Faith\_Proposed Ordinance



VICINTY MAP (N.T.S.)



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

**ANNEXATION PROPOSAL**  
**HOUSEHOLD OF FAITH CHURCH**  
**N. PLYMOUTH STREET**  
**±16.22 Acres**

CAD FILE: CAD FILE

REVISION  
DATE

DATE 9/29/2011 DRAWN BY C. ALLEN  
 SCALE 1" = 200' CK'D BY C. ALLEN



**BASIC INFORMATION ABOUT THE AREA**  
**Information Updated as of: October 30, 2011**  
**Date Petition Received: September 21, 2011**  
**Annexation Date:                      Effective Date:**  
**Annexation Number:**

1. Name of Area:	Household of Faith Church-468 N. Plymouth Street
2. Names of Petitioners:	The Household of Faith World Outreach Center, Inc. (Arlene Smith, Treasurer; Michael McLucas, Secretary; Lonnie Evans, Head Deacon)
3. Location:	Eastern side of N. Plymouth Street, about 1,320 feet north of Grove Street (NC 24)
4. Tax Identification Number (PIN):	0447-74-9148- (northern parcel) and 0447-73-8837-(southern parcel)
5. Fire Department Affected by Annexation:	Vander
6. Is the Area Contiguous:	Yes-Contiguous to Phase 5-Area 9 (effective 9/30/05).
7. Type of Annexation:	Petition-initiated contiguous area
8. Background:	The area consists of two tax parcels. A church is on the northern parcel; the southern parcel is vacant. The church plans to construct a new building on the southern parcel. Neither parcel is served by PWC water or sewer. (A water line terminates at the SW corner of the southern parcel). The church has discussed utility extensions with PWC. When utilities are extended to Phase 5-Area 9, the church hopes that a water line extension to its property can be part of the project.
9. Reason the Annexation was Proposed:	Since the church would like to receive services when utilities are extended to Phase 5-Area 9, and since the church is in the Fayetteville MIA, the church has submitted an annexation petition.
10. Number of Acres in Area:	16.22 acres
11. Type of Development in Area:	The northern parcel is developed with a church building. The southern parcel is vacant.
12. Present Conditions:	a. <u>Present Land Use:</u> Church b. <u>Present Number of Housing Units:</u> 0 c. <u>Present Demographics:</u> Total Pop=0 d. <u>Present Streets:</u> None e. <u>Water and Sewer Service:</u> Well & septic tank. f. <u>Electrical:</u> PWC
13. Factors Likely to Affect Future of Area:	a. <u>Plans of Owner:</u> The church plans to construct a new building on the southern parcel. b. <u>Development Controls</u> 1. <u>Land Use Plan</u> a. <u>2010 Plan (Updated with Eastover Plan):</u> One Acre Residential Lots 2. <u>Zoning</u> a. <u>Current Zoning in County:</u> RR b. <u>Likely Zoning After Annexation:</u> OI c. <u>Maximum number of units allowed based on the zoning:</u>
14. Expected Future Conditions:	a. <u>Future Land Use :</u> Additional church bldg b. <u>Future Number of Housing Units:</u> None expected c. <u>Future Demographics:</u> No population expected d. <u>Future Streets:</u> None expected e. <u>Water and Sewer Service:</u> Church hopes future extensions for Phase 5-Area 9 will include it. f. <u>Electric Service:</u> PWC
15. Tax Value of Land and Buildings:	\$4,042 (The northern parcel is exempt. The southern parcel is not exempt; it has a land value of \$4,042.)

# MEMO

**To:** David Nash, Planning Department

**From:** Brandy R. Bishop, Senior Paralegal

**CC:** To the file

**Date:** September 28, 2011

**Re:** Sufficiency of Annexation Petition

**SIGNERS OF THE PETITION:** Lonnie Evans, Head Deacon; Michael McLucas,  
Secretary and Arlene Smith, Treasurer  
The Household of Faith World Outreach Center, Inc.

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**The Household of Faith World Outreach Center, Inc.** per recorded Deed 2958, Page 275, is the record owner for the 7.24 acre tract. **The Household of Faith World Outreach Center, Inc.** per recorded Deed 8059, Page 775, is the record owner for the 9.53 acre tract.

- 1: 0447-74-9148- 7.24 Acres WT Bowen Land
- 2: 0447-73-8837- 9.53 Acres WT Bowen Land

My search ended September 26, 2011 at 8:00 a.m.

**Petition is now sufficient!**

**Annexation Ordinance No: \_\_\_\_\_ Household of Faith Church Church-  
468 N. Plymouth Street  
(PIN 0447-74-9148)  
(PIN 0447-73-8837)**

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE  
CITY OF FAYETTEVILLE, NORTH CAROLINA**

WHEREAS, the City Council has been petitioned under G.S. 160A-31 to annex the area described below; and

WHEREAS, the City of Fayetteville has investigated the sufficiency of the petition; and

WHEREAS, the City of Fayetteville has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall Council Chambers at 7:00 p.m. on November 28, 2011, after due notice by publication on November 18, 2011; and

WHEREAS, the City Council further finds that the petition meets the requirements of G.S. 160A-31;

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

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described contiguous property owned by The Household of Faith World Outreach Center, Inc., is hereby annexed and made part of the City of Fayetteville, North Carolina as of November 28, 2011:

**The Household of Faith World Outreach Center  
16.22 Acres +- North Plymouth Street**

**BEGINNING** at a point in the Eastern right-of-way margin of North Plymouth Street, said point of beginning also being the northwest corner of the parcel described in Deed Book 2958, Page 275, Cumberland County Registry and running thence South 81

degrees 28 minutes 27 seconds East 929.99 feet to a point; thence South 09 degrees 10 minutes 33 seconds West 322.36 feet to a point; thence South 13 degrees 22 minutes 20 seconds West 279.84 feet to a point; thence South 38 degrees 39 minutes 18 seconds East 122.47 feet to a point; thence North 83 degrees 00 minutes 18 seconds West 1136.39 feet to a point; thence with a curve to the right having a radius of 1626.58 feet and running a chord bearing and distance of North 16 degrees 16 minutes 30 seconds East 332.52 feet to a point; thence North 22 degrees 53 minutes 04 seconds East 397.72 feet to the **POINT AND PLACE OF BEGINNING**, and containing 16.22 Acres more or less.

Section 2. Upon and after November 28, 2011, the effective date of this ordinance, the above-described area and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the City of Fayetteville and shall be entitled to the same privileges and benefits as other parts of the City of Fayetteville. Said area shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Fayetteville shall cause to be recorded in the office of the Register of Deeds of Cumberland County, and in the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed area, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Cumberland County Board of Elections, as required by G.S. 163-288.1.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

\_\_\_\_\_  
Anthony G. Chavonne, Mayor

\_\_\_\_\_  
Pamela Megill, City Clerk

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** James Rose, PWC Chief Administrative Officer  
**DATE:** November 28, 2011  
**RE:** **Phase 5 Annexation Areas 12 and 13 Public Hearing**

---

**THE QUESTION:**

Providing utility services to Areas 12 and 13 of the Phase 5 Annexation.

**RELATIONSHIP TO STRATEGIC PLAN:**

Goal 4: More Efficient City Government – Cost-Effective Service Delivery

**BACKGROUND:**

City Council approved the Preliminary Assessment Resolution in their meeting on November 14, 2011 for Areas 12 and 13 of the Phase 5 Annexation. The Resolution set the date of the public hearing for Monday, November 28, 2011 to hear public comment.

A notice was published in the Fayetteville Observer on November 17, 2011 regarding the public hearing and the preliminary assessment letters were mailed November 16, 2011 informing the property owners of the public hearing date. I have attached the certificate of mailing. After the public hearing, the next step in the process is to approve the Resolution Directing Project be Undertaken. This item will be scheduled for December 12, 2011.

**ISSUES:**

N/A

**BUDGET IMPACT:**

N/A

**OPTIONS:**

N/A

**RECOMMENDED ACTION:**

Hold public hearing on November 18, 2011 for the purpose of receiving public comments regarding the Preliminary Assessment Resolution.

**ATTACHMENTS:**

Powerpoint Presentation  
Certificate of Mailing

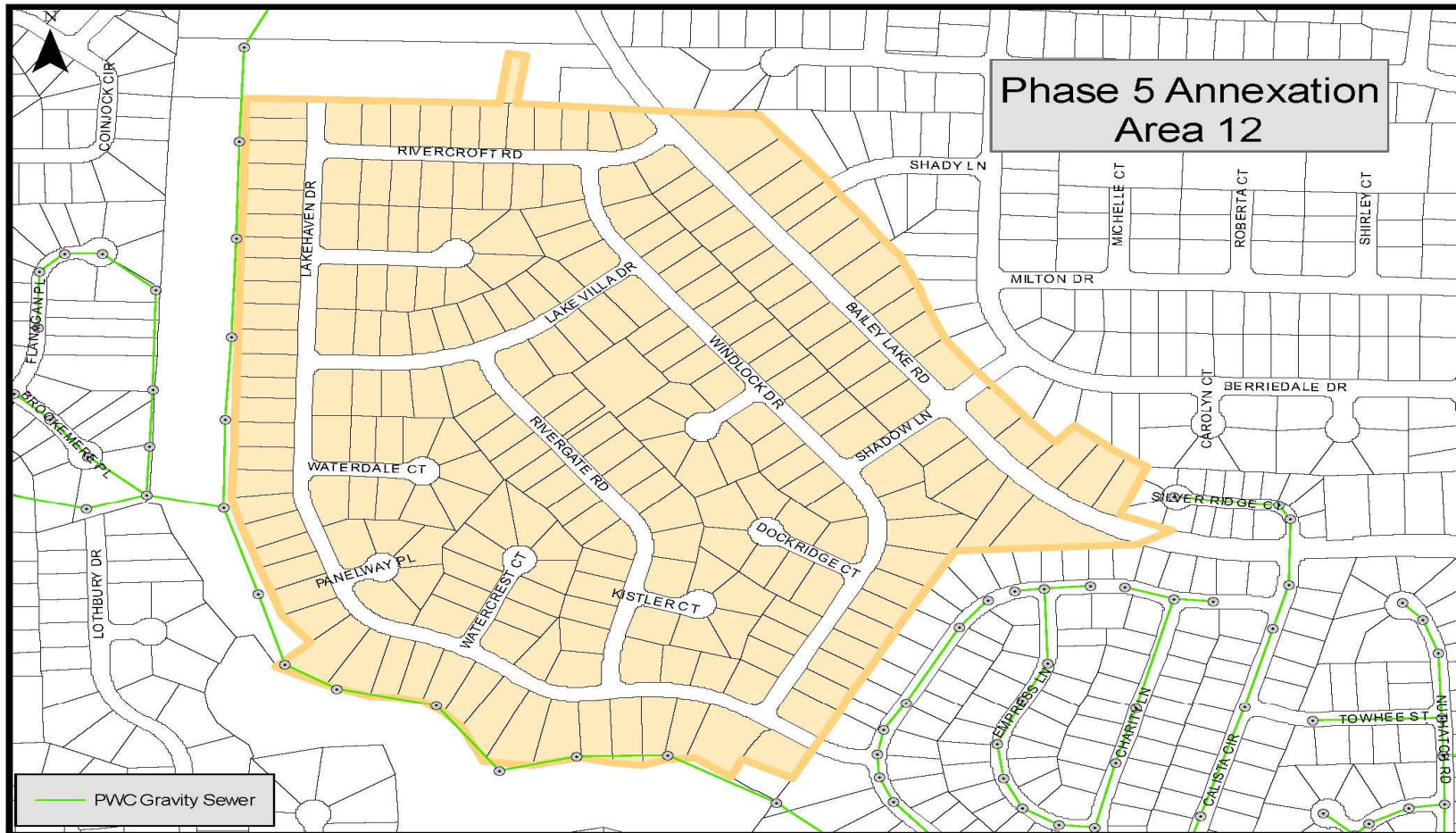


# **Phase V Annexation**

**Construction Areas 12 and 13**

**Public Hearing  
November 28, 2011**

# Construction Area 12









# Project Overview

- Events To Date
- Proposed Project Schedule
- Cost to Property Owners
- Financing Options



# Events To Date

- September 29, 2010 - Survey & Appraisal Notification Letters Mailed to Property Owners
- November 14, 2011 - Council Adopted the Preliminary Assessment Resolution
- November 16, 2011 - Copies of Resolution Mailed to Property Owners



# Proposed Project Schedule

- Advertise Construction Bids – July, 2012
- Construction Complete – September, 2013
- Preliminary Assessment Roll – October, 2013
- Confirm Assessments – November, 2013



# Cost to Property Owners

- Residential: Typical single family residential lot: \$5,000
- Non-Residential: For all other properties, a per front foot rate of \$55.56 with a 90' minimum plus the average lateral charge
- No payment due until construction is complete and assessment roll adopted
- Financial assistance available for those that qualify



# Payment Options

- Pre Pay
- In Full (No interest within 30 days from notice)
- Financing
  - 10 year term at a an interest rate not to exceed 8% \*
  - Annual or monthly installments
    - Example: \$65 per month based on 10 years at 8%

# Questions





**CERTIFICATE OF MAILING OF PRELIMINARY ASSESSMENT RESOLUTIONS**  
**Phase 5 Annexation, Areas 12 and 13**

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF FAYETTEVILLE:

I, Cheryl Jones, do hereby certify that copies of the Preliminary Assessment Resolution providing for the proposed extension of its sanitary sewer collection system in all or a portion of Arrow Ridge Way, Bailey Lake Road, Bingham Drive, Bull Run Street, Carter Baron Place, Cedar Brook Circle, Cold Harbor Court, Dockridge Court, Doyle Court, Eagle Pass Circle, Falcon Crest Circle, Greenock Drive, Highstan Court, Hunters Run, Justin Court, Kistler Court, Lake Terrace Court, Lake Villa Drive, Lakehaven Drive, Natchez Loop, Panelway Place, Rivercroft Road, Rivergate Road, Shadow Lane, Shiloh Court, Shiloh Drive, Shively Court, Vicksburg Court, Watercrest Court, Waterdale Court, and Windlock Drive in Areas 12 and 13 adopted on the 14<sup>th</sup> day of November, 2011 were mailed by first class mail on the 16<sup>th</sup> day of November, 2011 to the owners of all real property subject to assessment should the project be undertaken.

IN WITNESS WHEREOF, I have hereunto signed and sealed this instrument,

Cheryl Jones  
Signature

11-16-11  
Date

---

NORTH CAROLINA -- CUMBERLAND COUNTY

I, Robin M. Crayton, a Notary Public of said County and State, certify that Cheryl Jones came before me this day and acknowledged that she accomplished the mailing in compliance with North Carolina GS 160A-224.

Witness my hand and Notarial Seal, this the 16<sup>th</sup> day of November, 2011.

My Commission expires: May 6, 2014

Robin M. Crayton  
Notary Public

ROBIN M. CRAYTON  
Notary Public  
North Carolina  
Cumberland County

<b>CITY COUNCIL ACTION MEMO</b>
---------------------------------

**TO:** Mayor and Members of City Council  
**FROM:** Lisa Smith, Chief Financial Officer  
**DATE:** November 28, 2011  
**RE:** **Presentation of the Audited FY2010-2011 Comprehensive Annual Financial Report**

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**THE QUESTION:**

Does Council wish to accept the City's FY2010-2011 audited Comprehensive Annual Financial Report?

**RELATIONSHIP TO STRATEGIC PLAN:**

Core Value: Stewardship

**BACKGROUND:**

The City Council's audit firm, Cherry, Bekaert & Holland (CB&H), has completed the audit of the City's FY2010-2011 financial statements. A copy of the audited financial report will be provided with the Council's agenda packet. A hard copy of the audit report will also be provided to you the evening of the Council meeting. Ms. Michelle Thompson, a partner with CB&H, will present the audit report at the November 28, 2011 Council meeting.

**ISSUES:**

None

**BUDGET IMPACT:**

Not applicable.

**OPTIONS:**

1. Accept the audited FY2010-2011 Comprehensive Annual Financial Report.
2. Do not accept the report.

**RECOMMENDED ACTION:**

Accept the audited FY2010-2011 Comprehensive Annual Financial Report

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and City Council  
**FROM:** Scott Shuford, Development Services Director  
**DATE:** November 28, 2011  
**RE:** **Construction Permit Fee Schedule Amendments**

---

**THE QUESTION:**

Should adjustments to the Construction Permit Fee Schedule be made?

**RELATIONSHIP TO STRATEGIC PLAN:**

More Efficient City Government

**BACKGROUND:**

The current Construction Permit Fee Schedule was adopted as part of the FY2011-12 Budget and amended in July 2011. The current fee schedule utilizes a construction value-based fee methodology. Staff experience with this methodology and input from our customers have identified the need for some adjustments to the calculation methodology to address equity and simplicity-of-use issues. The recommended changes will allow contractors and staff to more easily calculate fees and streamline the permit issuance process.

Additionally, the recommended fee schedule establishes 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.

**ISSUES:**

Electrical trade permits for larger homes were significantly higher under the current fee schedule than prior ones. Multiple fee payments for a single construction job are required (this is a continuation of prior practice). Use of standardized construction value tables for various classes of construction do not always properly capture the nature of the actual work being done and create complications for identifying site upgrade requirements under the Unified Development Ordinance. The proposed revisions address all of these issues.

**BUDGET IMPACT:**

The proposed fee schedule has been adjusted to maintain relative revenue neutrality - no impact anticipated.

**OPTIONS:**

Adopt the recommended adjustments to the Fee Schedule (recommended).  
Continue to utilize current fee schedule.  
Provide direction to staff regarding alternative approaches.

**RECOMMENDED ACTION:**

Adopt the recommended adjustments to the Fee Schedule.

**ATTACHMENTS:**

Suggested Changes to Fee Schedule  
PowerPoint Presentation



City of Fayetteville  
Fee Schedule Review for FY2011/2012

Description	Current Fee	Established or Last Changed	Proposed Changes
<b>Development Services</b>			
<i><u>Privilege License, Plan Review, Permit and Inspections Fees:</u></i>			
Building Value: \$100,001 and above		2011	
Single-Family Residential	\$2.60 per \$1,000		
<del>Multi-Family Residential</del>	<del>\$2.85 per \$1,000</del>		
Commercial	\$2.85 per \$1,000		
 All New Construction, Upfits, and Renovations			 \$0.29 per sq. ft.
Major Renovations of existing structures	60% of the building permit fee	2011	
Extensive reconstruction involving 50% or more of existing floor area on one or more floors			
Minor Renovations of existing structures	40% of the building permit fee	2011	
Small and Medium reconstruction involving less than 50% of existing floor area on one or more floors			
<i><b>Electrical Permits</b></i>			
<del>Permit for Residential Construction</del>	<del>\$0.13 per sq ft</del>	2011	
Permit for <del>Residential</del> & Commercial Construction	\$0.16 per sq ft	2011	\$0.08 per sq. ft.
Permit associated with <del>Alteration, Replacement, Modifications, etc.</del>			
Residential thru 200A	\$21.00	2008	
Residential over 200A	\$26.25	2008	
Commercial thru 800A	\$52.50	2008	
Commercial over 800A	\$78.75	2008	
Separately Derived Systems	\$31.50	2008	
Mobile Home Services or Feeders	\$26.25	2008	
New or Replacement Pedestal	\$26.25	2008	
Outlet Installation	\$0.42 per outlet	2008	
Temporary Pole	\$26.25	2008	
Furnace, Condensing Units, Air Handlers, etc.,	\$12.60	2008	
Appliances	\$8.40	2008	
Motor (1HP-5HP)	\$8.40	2008	
Motor (5HP-25HP)	\$10.50	2008	
Motor (25HP-50HP)	\$12.60	2008	
Motor (50 or more HP)	\$21.00	2008	
Commercial Motor Control Units thru 800A	\$42.00	2008	
Commercial Motor Control Units over 800A	\$63.00	2008	
Electric Sign Connection	\$26.25	2008	
Electric Sign (circuit only)	\$6.30	2008	
Fire Alarm System (low voltage)	\$31.50	2008	
Other Low Voltage Systems	\$31.50	2008	
Gasoline/LP Dispenser	\$12.60	2008	
Inspection for Power Reconnection (When disconnected in excess of 6 months)	\$21.00	2008	
Outside Commercial Pole Lights	\$4.20 each	2008	
Swimming Pool Bonding and Grounding	\$21.00	2008	
Swimming Pool Equipment	\$8.40	2008	

City of Fayetteville  
Fee Schedule Review for FY2011/2012

Description	Current Fee	Established or Last Changed	Proposed Changes
(motors, heaters, covers)			
Minimum Fee	\$21.00	2008	
<b>Mechanical Permits</b>			
<del>Permit for Residential Construction</del>	<del>\$0.05 per sq ft</del>	2011	
Permit for Residential & Commercial Construction	\$0.07 per sq ft	2011	\$0.08 per sq. ft.
Permit associated with Alteration, Replacement, Modifications, etc.			
Residential Heat or AC	\$47.25 for the first unit, \$26.25 for each additional unit plus total BTU listing multiplied by .0001	2008	
Commercial Heat or AC	\$52.50 for the first unit, \$36.75 for each additional unit plus total BTU listing multiplied by .0002	2008	
Commercial Hood/Canopy over Cooking Equipment	\$52.50	2008	
Floor Furnaces, Unit Heaters, etc.	\$26.25	2008	
Commercial Refrigeration	\$52.50 for the first unit, \$36.75 for each additional unit plus total BTU listing multiplied by .0002	2008	
Gas Piping	\$21.00	2008	
Each Additional Unit	\$5.25	2008	
Each LP Tank and Piping	\$21.00	2008	
Duct Extensions and Alterations	\$21.00	2008	
Commercial Exhaust and Duct System	\$5.25	2008	
Minimum Fee	\$21.00	2008	
<b>Plumbing Permits</b>			
<del>Permit for Residential Construction</del>	<del>\$0.04 per sq ft</del>	2011	
Permit for Residential & Commercial Construction	\$0.06 per sq ft	2011	
Permit associated with Alteration, Replacement, Modifications, etc.			
Trapped Fixtures, Water Heaters, etc.	\$6.30	2008	
Sewer Connection	\$21.00 each building sewer or sewer tap	2008	
Water Piping	\$21.00 each water service line, irrigation, and fire sprinkler main	2008	
Minimum Fee	\$21.00	2008	
<b>Miscellaneous Inspections and Fees</b>			
Insulation	Same fee structure as Building Permits	2008	
Residential & Commercial	\$0.03 per sq ft	2011	
<del>Commercial</del>	<del>\$0.06 per sq ft</del>	2011	
Certificate of Compliance / Occupancy Inspection for Existing Building	\$50.00		\$100.00

City of Fayetteville  
Fee Schedule Review for FY2011/2012

Description	Current Fee	Established or Last Changed	Proposed Changes
<b><u>Code Enforcement Fees:</u></b>			
<i>Administrative Fee (Abatement Actions)</i>	\$100.00	2008	
<b><u>Citations</u></b>			
Abandoned Vehicle Violation	\$250.00 per day	2002 or prior	
Advertising Violation	\$500.00 per day	2002 or prior	
Animal and Fowl Violation	\$100, \$200, or \$300 per day	2002 or prior	
Landscape Standard Violation	\$50.00 per day	2002 or prior	
Salvage & Junkyard pursuant to Section 30-4-C5e(6) UDO		2011	\$500 per day
Solid Waste Violation (Trash or overgrown lot)	\$100.00 per day	1995	
Substandard Housing Violation	\$50.00 per day	2002 or prior	
Taxicab Violation	\$250.00 per day	2002 or prior	
Trailer/Mobile Home Violation	\$50.00 per day	2002 or prior	
Water Supply Violation	\$500.00 per day	2002 or prior	
Zoning Violation	\$100.00 per day	2002 or prior	



# **CITY OF FAYETTEVILLE**

## **DEVELOPMENT SERVICES DEPARTMENT**



## **CONSTRUCTION PERMIT FEES**



# **Citizen Participation**

- **Personal meetings and discussions with contractors**
- **Initial permit change discussion with Home Builders Association Focus Group**
- **Presentation to Home Builders Association Board of Directors**





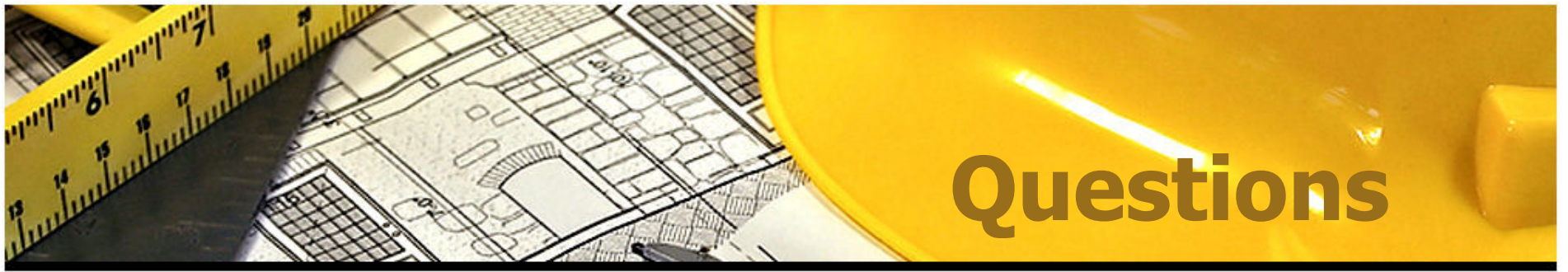
# **Proposed Permit Fee**

- **Permit fee calculated on a square footage basis**
- **54 cents per square foot**
- **Permit fee paid at the time of building permit issuance**



# Proposed permit fee (continued)

Square footage	Old	Current	Proposed
2,791 sq ft			
Building	\$ 691.61	\$ 746.64	\$ 809.39
Plumbing	\$ 189.00	\$ 111.64	\$ 167.46
Mechanical	\$ 327.00	\$ 139.55	\$ 223.28
Electrical	\$ 181.65	\$ 362.83	\$ 223.28
Insulation	\$ 63.00	\$ 83.73	\$ 83.73
	\$1,452.26	\$1,444.39	\$1,507.14



## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Bart Swanson, Housing and Code Enforcement Division Manager  
**DATE:** November 28, 2011  
**RE:** **Uninhabitable Structures Demolition Recommendations:**

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

---

### **THE QUESTION:**

Would the demolition of these structures help to enhance the quality of life in the City of Fayetteville?

### **RELATIONSHIP TO STRATEGIC PLAN:**

Goal 2: More Attractive City- Clean and Beautiful: Goal 3: Growing City, Livable Neighborhoods- A Great Place To Live .

### **BACKGROUND:**

#### **1103 Bunce Road**

The City Inspector is required to correct conditions that are found to be in violation of the Dwellings and Buildings Minimum Standards. The structure is a residential home that was inspected and condemned as a blighted/abandoned structure on March 8, 2011. A hearing on the condition of the structure was conducted on April 29, 2011, in which the owner did not appear. A subsequent Hearing Order to repair or demolish the structure within 60 days was issued and mailed to the property owner on May 5, 2011. To date there have been no repairs done to the property. The utilities to the structure have been disconnected since February 18, 2009. In the past 24 months there have been 3 calls for 911 service at the property. There have been 4 code violations, one of which was abated by the City. The low bid for demolition of the structure is \$3,000.00.

#### **606 Mechanic Street**

The City Inspector is required to correct conditions that are found to be in violation of the Dwellings and Buildings Minimum Standards. The structure is a residential home that was inspected and condemned as a blighted/abandoned structure on July 20, 2011. A hearing on the condition of the structure was conducted on August 10, 2011, in which the owners did not appear. A notice of the hearing was published in the Fayetteville Observer newspaper. A subsequent Hearing Order to repair or demolish the structure was issued and mailed to the owners on August 10, 2011. To date there have been no repairs made to the structure. The utilities to the structure have been disconnected since June 1, 2010. In the past 24 months there no calls for 911 service at the property, and 1 code violation case. The low bid for demolition of the structure is \$1,400.00.

#### **608 Mechanic Street**

The City Inspector is required to correct conditions that are found to be in violation of the Dwellings and Buildings Minimum Standards. The structure is a residential home that **was** vacant and the subject of a fire on February 2, 2011. As a result of the fire the structure was inspected and condemned as a dangerous/abandoned structure on May 17, 2011. A hearing on the condition of the structure was conducted on August 10, 2011, in which the owners did not attend. A notice of the hearing was published in the Fayetteville Observer newspaper. A subsequent Hearing Order to repair or demolish the structure within 60 days was issued and mailed on August 10, 2011; to date there have been no repairs made to the property. The utilities to the property have been disconnected since October 15, 2010. In the past 24 months there have been 18 calls for 911 service at the property. There have been 3 code violation cases, one which resulted in a City abatement. The low bid for demolition of the structure is \$1,400.00.

#### **6526 Portsmouth Drive**

The City Inspector is required to correct conditions that are found to be in violation of the Dwellings and Buildings Minimum Standards. This structure is a residential home that was the subject of a fire

on December 24, 2010. The structure was inspected and condemned as a dangerous structure on March 8, 2011. A hearing on the condition of the structure was conducted on April 29, 2011, which the owner attended. A subsequent Hearing Order to repair or demolish within 120 days was issued and mailed to the property owner on May 5, 2011; to date there have been no repairs to the structure. The utilities to the structure have been disconnected since December 28, 2011. In the past 24 months there have been 21 calls for 911 service at the property. There have been 2 code violations on the property, both abated by the owner. The low bid for demolition of the structure is \$1,800.00.

**ISSUES:**

All subject properties are sub-standard and detrimental to the surrounding neighborhood and promote nuisances and blight, contrary to the City's Strategic Plan.

**BUDGET IMPACT:**

The demolition of these structures will be \$7,600.00; there will be additional costs for asbestos assessment and abatement if necessary.

**OPTIONS:**

- Adopt the ordinances and demolish the structures.
- Abstain from any action and allow the structures to remain.
- Defer any action to a later date.

**RECOMMENDED ACTION:**

Staff recommends that Council move to adopt the ordinances authorizing demolition of the structures.

**ATTACHMENTS:**

Aerial Map- 1103 Bunce Road

Docket-1103 Bunce Road

Ordinance- 1103 Bunce Road

1103 Bunce Road- Photo 1

1103 Bunce Road- Photo 2

1103 Bunce Road- Photo 3

1103 Bunce Road- Photo 4

1103 Bunce Road- Photo 5

Aerial Map- 606 Mechanic Street

Docket- 606 Mechanic Street

Ordinance- 606 Mechanic Street

606 Mechanic Street- Photo 1

606 Mechanic Street-Photo 2

606 Mechanic Street- Photo 3

606 Mechanic Street- Photo 4

Aerial Map-- 608 Mechanic Street

Docket-- 608 Mechanic Street

Ordinance-- 608 Mechanic Street

608 Mechanic Street- Photo 1

608 Mechanic Street- Photo 2

608 Mechanic Street- Photo 3

608 Mechanic Street- Photo 4

608 Mechanic Street- Photo 5



Aerial Map- 6526 Portsmouth Drive  
Docket-- 6526 Portsmouth Drive  
Ordinance-- 6526 Portsmouth Drive  
6526 Portsmouth Drive- Photo 1  
6526 Portsmouth Drive- Photo 2  
6526 Portsmouth Drive- Photo 3  
6526 Portsmouth Drive- Photo 4  
6526 Portsmouth Drive- Photo 5

Current Parcel: 0407-21-4241-

Address: 1103 Bunce Rd Fayetteville, NC (0407-21-4241-)



TO: Mayor  
City Council Members  
City Manager  
City Attorney

Under provisions of Chapter 14, titled Housing, Dwellings and Buildings of the Code of the City of Fayetteville, North Carolina, the Inspection Department is requesting the docket of the owner who has failed to comply with this Code, be presented to the City Council for action. All proceedings that are required by the Code, Section 14-61, have been complied with. We request the Council take action under the provisions of Chapter 14 of the Code and applicable NC General Statutes.

<b>Location</b>	<b>1103 Bunce Road</b>
<b>Property Owner(s)</b>	Hyacinth B Thompson, Fayetteville, NC
<b>Date of Inspection</b>	March 8, 2011
<b>Date of Hearing</b>	April 29, 2011
<b>Finding/Facts of Scheduled Hearing</b>	Notice to repair/demolish the structure within 60 days mailed May 5, 2011
<b>Owner's Response</b>	None
<b>Appeal Taken (Board of Appeals)</b>	No
<b>Other</b>	Utilities disconnected since February, 2009.
<b>Police Calls for Service (past 2 yrs)</b>	3

The Housing Inspector dispatched a letter to the owner(s) with information that the docket would be presented to the City Council for necessary action.

This is the 28th day of November, 2011.

*Frank Lewis, Jr.*

Sr. Code Enforcement Administrator (Housing)

**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**

The City Council of Fayetteville, North Carolina, does ordain:

The City Council finds the following facts:

- (1) With respect to Chapter 14 of the Dwellings and Buildings Minimum Standards Code of the City, concerning certain real property described as follows:

1103 Bunce Road  
PIN 0407-21-4241

Being all of Lot 25, 26, 27, and 28 Anna Mae Waddell Property, according to a plat of the same duly recorded in Book of Plats 18, page 12, Cumberland County Registry, North Carolina, less and except that portion of property deeded out in Book 6482, Page 73 of the CCR to NCDOT.

The owner(s) of and parties in interest in said property are:

Hyacinth B. Thompson  
1863 Windlock Drive  
Fayetteville, NC 28304

- (2) All due process and all provisions of the Dwellings and Buildings Minimum Standards Code of the City having been followed, the Inspections Director duly issued and served an order requiring the owners of said property to: repair or demolish the structure on or before July 5, 2011.
- (3) And said owners without lawful cause, failed or refused to comply with said order; and the Building Inspector is authorized by said Code, and NC General Statute 160A-443(5), when ordered by Ordinance of the City Council, to do with respect to said property what said owners were so ordered to do, but did not.
- (4) The City Council has fully reviewed the entire record of said Inspections Director thereon, and finds, that all findings of fact and all orders therein of said Inspections Director are true and authorized except:

None.

- (5) That pursuant to NC General Statute 160A-443(6), the cost of \$3,000.00 shall be a lien against the real property upon which the cost was incurred.

Whereupon, it is ordained that:

#### SECTION 1

The Building Inspector is ordered forthwith to accomplish, with respect to said property, precisely and fully what was ordered by said Inspections Director as set forth fully above, except as modified in the following particulars:

This property is to be demolished and all debris removed from the premises, and the cost of said removal shall be a lien against the real property as described herein.

#### SECTION 2

The lien as ordered herein and permitted by NC General Statute 160A-443(6) shall be effective from and after the date the work is completed, and a record of the same shall be available in the office of the City of Fayetteville Finance Department, Collections Division, 2nd Floor - City, 433 Hay Street, Fayetteville, NC 28301.

#### SECTION 3

This ordinance shall be in full force and effect from and after its adoption.

Adopted this \_\_28th\_\_\_\_ day of \_\_November\_\_\_\_, 2011.

CITY OF FAYETTEVILLE

BY: \_\_\_\_\_  
Anthony Chavonne, Mayor

ATTEST:

\_\_\_\_\_  
Pamela Megill, City Clerk











1 1 0 3

1 1 0 5



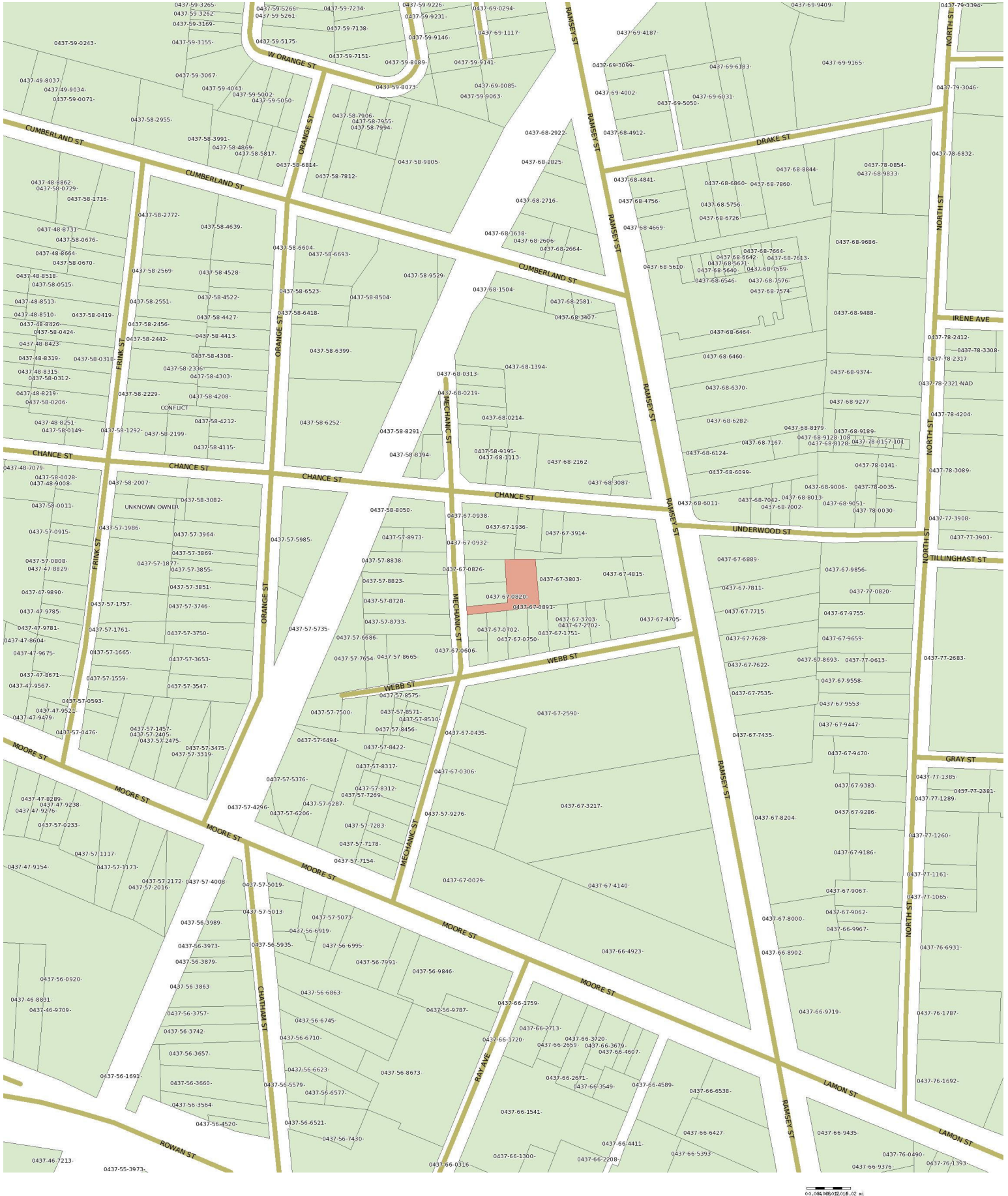






# Current Parcel: 0437-67-0891-

Address: 606 Mechanic St Fayetteville, NC (0437-67-0891-)



TO: Mayor  
City Council Members  
City Manager  
City Attorney

Under provisions of Chapter 14, titled Housing, Dwellings and Buildings of the Code of the City of Fayetteville, North Carolina, the Inspection Department is requesting the docket of the owner who has failed to comply with this Code, be presented to the City Council for action. All proceedings that are required by the Code, Section 14-61, have been complied with. We request the Council take action under the provisions of Chapter 14 of the Code and applicable NC General Statutes.

<b>Location</b>	<b>606 Mechanic Street</b>
<b>Property Owner(s)</b>	Odette R Ray, Duncan, SC
<b>Date of Inspection</b>	July 20, 2011
<b>Date of Hearing</b>	August 10, 2011
<b>Finding/Facts of Scheduled Hearing</b>	Notice to repair/demolish the structure within 60 days mailed August 10, 2011
<b>Owner's Response</b>	None
<b>Appeal Taken (Board of Appeals)</b>	No
<b>Other</b>	Utilities disconnected since June, 2010.
	Hearing was advertised in Fayetteville Observer newspaper.
<b>Police Calls for Service (past 2 yrs)</b>	None

The Housing Inspector dispatched a letter to the owner(s) with information that the docket would be presented to the City Council for necessary action.

This is the 28th day of November, 2011.

*Frank Lewis, Jr.*

Sr. Code Enforcement Administrator (Housing)

**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**

The City Council of Fayetteville, North Carolina, does ordain:

The City Council finds the following facts:

- (1) With respect to Chapter 14 of the Dwellings and Buildings Minimum Standards Code of the City, concerning certain real property described as follows:

606 Mechanic Street  
PIN 0437-67-0891

Being all of Lot 3, of a map entitled "RECOMBINATION OF PROPERTY OF WILLIE MAE JONES AND HUSBAND RICHARD H. JONES," according to a plat of the same duly recorded in Book of Plats 103, Page 93, Cumberland County, North Carolina Registry.

The owner(s) of and parties in interest in said property are:

Odette R. Ray	Melanie Suzette Jones	Myron Ridgley Jones
222 Penick Drive	11802 Fair Green Lane	11802 Fair Green Lane
Duncan, SC 29334	Upper Marlboro, MD 20772	Upper Marlboro, MD 20772

Richard H. Jones, Jr.	Regina Brooks, Now Known As Regina Hestholm
11802 Fair Green Lane	4713 Box Canyon Drive
Upper Marlboro, MD 20772	Temple, TX 76502

Wylie Andrew Jones  
5806 Greenway Vista Lane  
Charlotte, NC 28216

- (2) All due process and all provisions of the Dwellings and Buildings Minimum Standards Code of the City having been followed, the Inspections Director duly issued and served an order requiring the owners of said property to: repair or demolish the structure on or before October 10, 2011.

- (3) And said owners without lawful cause, failed or refused to comply with said order; and the Building Inspector is authorized by said Code, and NC General Statute 160A-443(5), when ordered by Ordinance of the City Council, to do with respect to said property what said owners were so ordered to do, but did not.
- (4) The City Council has fully reviewed the entire record of said Inspections Director thereon, and finds, that all findings of fact and all orders therein of said Inspections Director are true and authorized except:
- None.
- (5) That pursuant to NC General Statute 160A-443(6), the cost of \$1,400.00 shall be a lien against the real property upon which the cost was incurred.

Whereupon, it is ordained that:

#### SECTION 1

The Building Inspector is ordered forthwith to accomplish, with respect to said property, precisely and fully what was ordered by said Inspections Director as set forth fully above, except as modified in the following particulars:

This property is to be demolished and all debris removed from the premises, and the cost of said removal shall be a lien against the real property as described herein.

#### SECTION 2

The lien as ordered herein and permitted by NC General Statute 160A-443(6) shall be effective from and after the date the work is completed, and a record of the same shall be available in the office of the City of Fayetteville Finance Department, Collections Division, 2nd Floor - City, 433 Hay Street, Fayetteville, NC 28301.

#### SECTION 3

This ordinance shall be in full force and effect from and after its adoption.

Adopted this \_\_28th\_\_\_\_ day of \_\_November\_\_\_\_\_, 2011.

CITY OF FAYETTEVILLE

BY: \_\_\_\_\_  
Anthony Chavonne, Mayor

ATTEST:

\_\_\_\_\_  
Pamela Megill, City Clerk





604

POSTED

FOR RENT















Address: 608 Mechanic St Fayetteville, NC (0437-67-0820-)



TO: Mayor  
City Council Members  
City Manager  
City Attorney

Under provisions of Chapter 14, titled Housing, Dwellings and Buildings of the Code of the City of Fayetteville, North Carolina, the Inspection Department is requesting the docket of the owner who has failed to comply with this Code, be presented to the City Council for action. All proceedings that are required by the Code, Section 14-61, have been complied with. We request the Council take action under the provisions of Chapter 14 of the Code and applicable NC General Statutes.

<b>Location</b>	<b>608 Mechanic Street</b>
<b>Property Owner(s)</b>	Willie Mae Jones, Heirs and Richard H. Jones, Life Estate
<b>Date of Inspection</b>	May 17, 2011
<b>Date of Hearing</b>	August 10, 2011
<b>Finding/Facts of Scheduled Hearing</b>	Notice to repair/demolish the structure within 60 days mailed August 10, 2011
<b>Owner's Response</b>	None
<b>Appeal Taken (Board of Appeals)</b>	No
<b>Other</b>	Utilities disconnected since October, 2010.
	Hearing was advertised in Fayetteville Observer newspaper.
<b>Police Calls for Service (past 2 yrs)</b>	18

The Housing Inspector dispatched a letter to the owner(s) with information that the docket would be presented to the City Council for necessary action.

This is the 28th day of November, 2011.

*Frank Lewis, Jr.*

Sr. Code Enforcement Administrator (Housing)

**AN ORDINANCE OF THE CITY COUNCIL  
OF  
FAYETTEVILLE, NORTH CAROLINA**

**Requiring the City Building Inspector  
to correct conditions with respect to,  
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The City Council of Fayetteville, North Carolina, does ordain:

The City Council finds the following facts:

- (1) With respect to Chapter 14 of the Dwellings and Buildings Minimum Standards Code of the City, concerning certain real property described as follows:

608 Mechanic Street  
PIN 0437-67-0820

Being all of Lot 2, as shown on a Plat entitled “Recombination of property of Willie Mae Jones and husband Richard H. Jones” duly recorded in Book of Plat 103, Page 93 CCROD.

The owner(s) of and parties in interest in said property are:

Odette R. Ray	Melanie Suzette Jones	Myron Ridgley Jones
222 Penick Drive	11802 Fair Green Lane	11802 Fair Green Lane
Duncan, SC 29334	Upper Marlboro, MD 20772	Upper Marlboro, MD 20772

Richard H. Jones, Jr.	Regina Brooks, Now Known As Regina Hestholm
11802 Fair Green Lane	4713 Box Canyon Drive
Upper Marlboro, MD 20772	Temple, TX 76502

Wylie Andrew Jones  
5806 Greenway Vista Lane  
Charlotte, NC 28216

- (2) All due process and all provisions of the Dwellings and Buildings Minimum Standards Code of the City having been followed, the Inspections Director duly issued and served an order requiring the owners of said property to: repair or demolish the structure on or before October 10, 2011.



- (3) And said owners without lawful cause, failed or refused to comply with said order; and the Building Inspector is authorized by said Code, and NC General Statute 160A-443(5), when ordered by Ordinance of the City Council, to do with respect to said property what said owners were so ordered to do, but did not.
- (4) The City Council has fully reviewed the entire record of said Inspections Director thereon, and finds, that all findings of fact and all orders therein of said Inspections Director are true and authorized except:
- None.
- (5) That pursuant to NC General Statute 160A-443(6), the cost of \$1,400.00 shall be a lien against the real property upon which the cost was incurred.

Whereupon, it is ordained that:

#### SECTION 1

The Building Inspector is ordered forthwith to accomplish, with respect to said property, precisely and fully what was ordered by said Inspections Director as set forth fully above, except as modified in the following particulars:

This property is to be demolished and all debris removed from the premises, and the cost of said removal shall be a lien against the real property as described herein.

#### SECTION 2

The lien as ordered herein and permitted by NC General Statute 160A-443(6) shall be effective from and after the date the work is completed, and a record of the same shall be available in the office of the City of Fayetteville Finance Department, Collections Division, 2nd Floor - City, 433 Hay Street, Fayetteville, NC 28301.

#### SECTION 3

This ordinance shall be in full force and effect from and after its adoption.

Adopted this \_28th\_\_\_\_\_ day of \_\_November\_\_\_\_\_, 2011.

CITY OF FAYETTEVILLE

BY: \_\_\_\_\_  
Anthony Chavonne, Mayor

ATTEST:

\_\_\_\_\_  
Pamela Megill, City Clerk











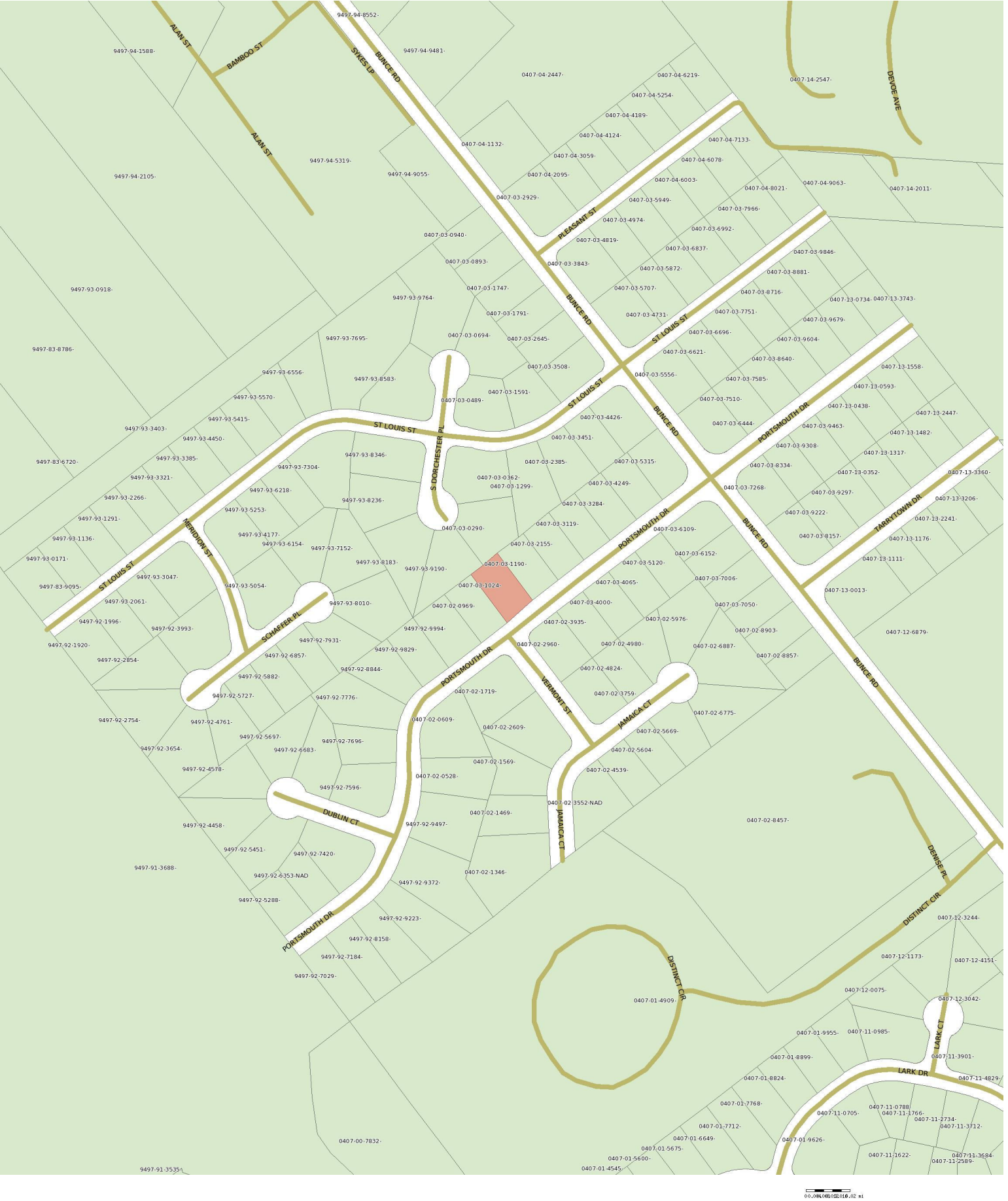






Current Parcel: 0407-03-1024-

Address: 6526 Portsmouth Dr Fayetteville, NC (0407-03-1024-)





TO: Mayor  
City Council Members  
City Manager  
City Attorney

Under provisions of Chapter 14, titled Housing, Dwellings and Buildings of the Code of the City of Fayetteville, North Carolina, the Inspection Department is requesting the docket of the owner who has failed to comply with this Code, be presented to the City Council for action. All proceedings that are required by the Code, Section 14-61, have been complied with. We request the Council take action under the provisions of Chapter 14 of the Code and applicable NC General Statutes.

<b>Location</b>	<b>6526 Portsmouth Drive</b>
<b>Property Owner(s)</b>	M A Monsour Raleigh, NC
<b>Date of Inspection</b>	March 8, 2011
<b>Date of Hearing</b>	April 29, 2011
<b>Finding/Facts of Scheduled Hearing</b>	Notice to repair/demolish the structure within 120 days mailed May 5, 2011.
<b>Owner's Response</b>	None
<b>Appeal Taken (Board of Appeals)</b>	No
<b>Other</b>	Utilities disconnected since December, 2010.
<b>Police Calls for Service (past 2 yrs)</b>	21

The Housing Inspector dispatched a letter to the owner(s) with information that the docket would be presented to the City Council for necessary action.

This is the 28th day of November, 2011.

*Frank Lewis, Jr.*

Sr. Code Enforcement Administrator (Housing)

**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**

The City Council of Fayetteville, North Carolina, does ordain:

The City Council finds the following facts:

- (1) With respect to Chapter 14 of the Dwellings and Buildings Minimum Standards Code of the City, concerning certain real property described as follows:

6526 Portsmouth Drive  
PIN 0407-03-1024

Being all of Lot No. 41 in a subdivision known as GLENBROOK, SECTION FOUR, PART TWO, according to a plat of same duly recorded in Book of Plats 38, Page 56, Cumberland County Registry, NC.

The owner(s) of and parties in interest in said property are:

M.A. Mansour  
5500 N. Hawthorne Way  
Raleigh, NC 27613

- (2) All due process and all provisions of the Dwellings and Buildings Minimum Standards Code of the City having been followed, the Inspections Director duly issued and served an order requiring the owners of said property to: repair or demolish the structure on or before September 5, 2011.
- (3) And said owners without lawful cause, failed or refused to comply with said order; and the Building Inspector is authorized by said Code, and NC General Statute 160A-443(5), when ordered by Ordinance of the City Council, to do with respect to said property what said owners were so ordered to do, but did not.
- (4) The City Council has fully reviewed the entire record of said Inspections Director thereon, and finds, that all findings of fact and all orders therein of said Inspections Director are true and authorized except:

None.

- (5) That pursuant to NC General Statute 160A-443(6), the cost of \$1,800.00 shall be a lien against the real property upon which the cost was incurred.

Whereupon, it is ordained that:

#### SECTION 1

The Building Inspector is ordered forthwith to accomplish, with respect to said property, precisely and fully what was ordered by said Inspections Director as set forth fully above, except as modified in the following particulars:

This property is to be demolished and all debris removed from the premises, and the cost of said removal shall be a lien against the real property as described herein.

#### SECTION 2

The lien as ordered herein and permitted by NC General Statute 160A-443(6) shall be effective from and after the date the work is completed, and a record of the same shall be available in the office of the City of Fayetteville Finance Department, Collections Division, 2nd Floor - City, 433 Hay Street, Fayetteville, NC 28301.

#### SECTION 3

This ordinance shall be in full force and effect from and after its adoption.

Adopted this \_28th\_\_\_\_\_ day of \_\_\_November\_\_\_\_\_, 2011.

CITY OF FAYETTEVILLE

BY: \_\_\_\_\_  
Anthony Chavonne, Mayor

ATTEST:

\_\_\_\_\_  
Pamela Megill, City Clerk







80051745

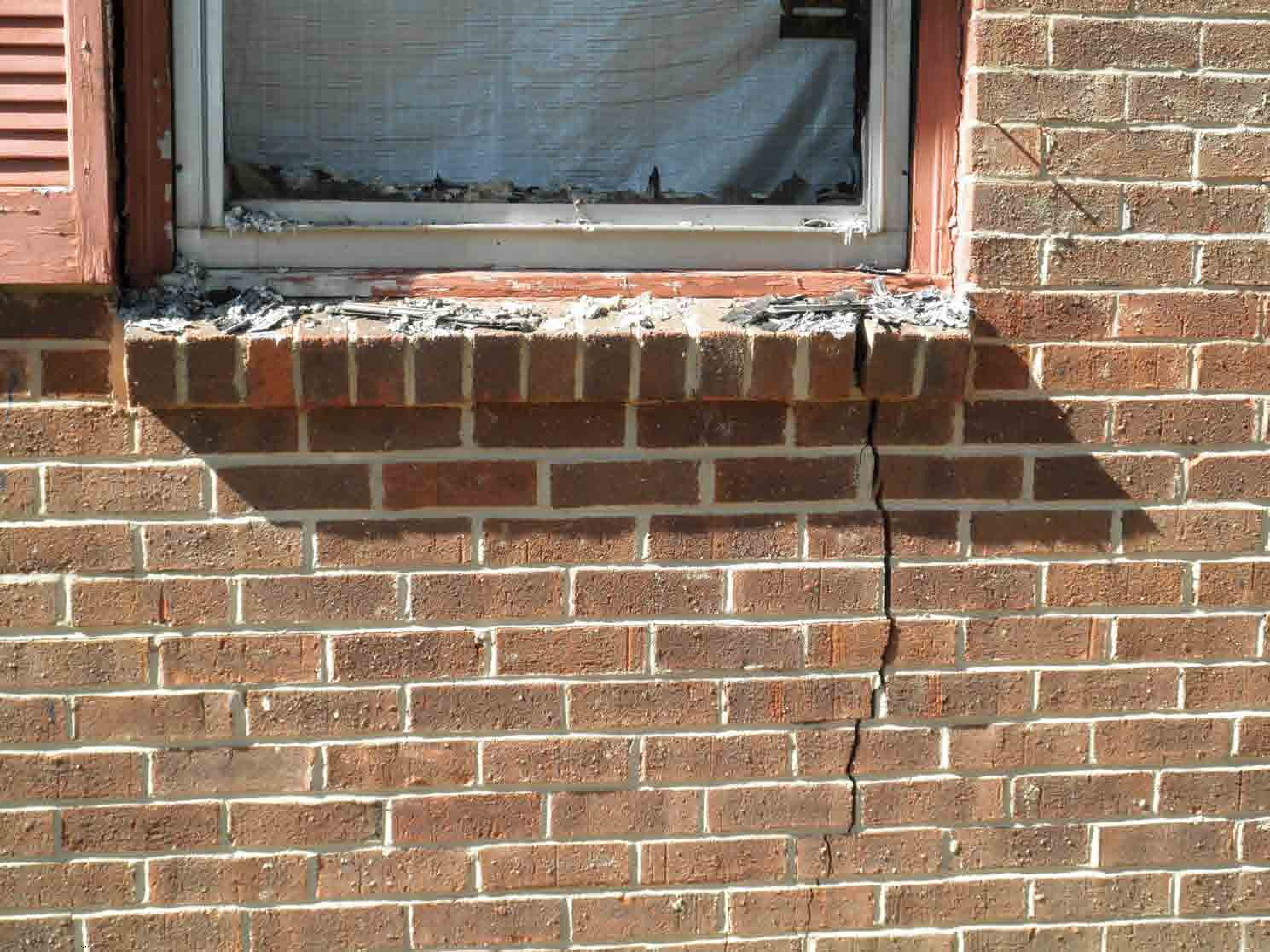












<b>CITY COUNCIL ACTION MEMO</b>
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**TO:** Mayor and Members of the City Council  
**FROM:** Pamela Megill, City Clerk  
**DATE:** November 28, 2011  
**RE:** **Monthly Statement of Taxes for October 2011**

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**THE QUESTION:**

**RELATIONSHIP TO STRATEGIC PLAN:**

**BACKGROUND:**

**ISSUES:**

**BUDGET IMPACT:**

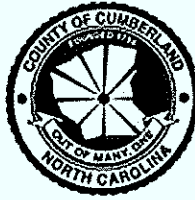
**OPTIONS:**

**RECOMMENDED ACTION:**

**ATTACHMENTS:**

Monthly Statement of Taxes - October 2011





OFFICE OF THE TAX ADMINISTRATOR

117 Dick Street, 5<sup>th</sup> Floor, New Courthouse • PO Box 449 • Fayetteville, North Carolina • 28302  
Phone: 910-678-7507 • Fax: 910-678-7582 • [www.co.cumberland.nc.us](http://www.co.cumberland.nc.us)

MEMORANDUM

To: Pamela Megill, Fayetteville City Clerk

From: Aaron Donaldson, Tax Administrator *AD*

Date: November 1, 2011

Re: Monthly Statement of Taxes

Attached hereto is the report that has been furnished to the Mayor and governing body of your municipality for the month of October 2011. This report separates the distribution of real property and personal property from motor vehicle property taxes, and provides detail for the current and delinquent years.

Should you have questions regarding this report, please contact Sandra Napier at 678-7575

AD/sn

Attachments

*Celebrating Our Past...Embracing Our Future*

*EASTOVER - FALCON - FAYETTEVILLE - GODWIN - HOPE MILLS - LINDEN - SPRING LAKE - STEDMAN - WADE*

8 - 1 - 1 - 2

FVT: FAYETTEVILLE VEHICLE TAX (\$5.00)

8 - 1 - 1 - 3



# FAYETTEVILLE MACC LEDGER

## 2001-2011

OCTOBER 2011

2009 CC	2009 VEHICLE	2009 CC REVIT	2009 VEHICLE REVIT	2009 FVT	2009 TRANSIT	2009 STORM WATER	2009 FAY STORM WATER	2009 FAY RECYCLE FEE	2009 ANNEX	2008 CC	2008 VEHICLE	2008 CC REVIT
23.65	80.84	0.00	0.00	35.00	35.00	0.00	0.00	0.00	0.00	0.00	66.26	0.00
69.56	168.75	0.00	0.00	53.99	53.98	12.00	24.00	76.00	0.00	0.00	174.55	0.00
28.22	32.37	0.00	0.00	25.00	25.00	0.00	0.00	0.00	0.00	0.00	11.93	0.00
0.00	134.51	0.00	0.00	35.00	35.00	0.00	0.00	0.00	0.00	0.00	23.13	0.00
78.84	21.00	0.00	0.00	30.00	30.00	0.00	0.00	0.00	0.00	87.49	15.19	0.00
22.55	35.97	4.94	0.00	15.00	15.00	0.00	0.00	0.00	0.00	0.00	164.48	0.00
39.75	11.13	0.00	0.00	5.00	5.00	0.00	0.00	0.00	0.00	0.00	21.89	0.00
18.46	35.28	0.00	0.00	15.00	15.00	0.00	0.00	0.00	0.00	0.00	65.29	0.00
54.56	169.64	0.00	0.00	35.21	35.20	0.00	0.00	0.00	0.00	0.00	6.63	0.00
0.00	221.25	0.00	0.00	65.00	65.00	0.00	0.00	0.00	0.00	0.00	136.89	0.00
41.76	52.70	0.00	0.00	5.00	5.00	0.00	0.00	0.00	0.00	164.00	9.05	0.00
0.00	120.13	0.00	0.00	30.00	30.00	0.00	0.00	0.00	0.00	4.18	144.61	0.00
36.02	205.38	0.00	6.12	25.00	25.00	0.00	0.00	0.00	0.00	0.00	8.69	0.00
31.80	82.65	0.00	0.00	20.00	20.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
45.60	125.51	0.00	0.00	35.00	35.00	0.00	0.00	0.00	0.00	53.00	23.29	0.00
194.24	134.42	0.00	0.00	21.67	21.67	36.00	72.00	0.00	0.00	0.00	(44.98)	0.00
8.68	43.56	0.00	0.00	10.00	10.00	0.00	0.00	0.00	0.00	11.43	32.93	0.00
0.00	50.80	0.00	0.00	15.00	15.00	0.00	0.00	0.00	0.00	0.00	14.71	0.00
310.99	123.08	0.00	0.00	10.00	10.00	12.00	24.00	38.00	0.00	0.00	0.00	0.00
184.14	104.59	0.00	0.00	25.00	25.00	3.86	7.71	12.21	0.00	89.65	412.59	0.00
71.78	139.52	0.00	0.00	55.00	55.00	0.00	0.00	0.00	0.00	0.00	95.32	0.00
1,260.60	2,093.08	4.94	6.12	565.87	565.85	63.86	127.71	126.21	0.00	409.75	1,382.45	0.00

# FAYETTEVILLE MACC LEDGER

## 2001-2011

OCTOBER 2011

2008 VEH REVIT	2008 FVT	2008 TRANSIT	2008 STORM WATER	2008 FAY STORM WATER	2008 FAY RECYCLE	2008 ANNEX	2007 & PRIOR CC	2007 & PRIOR VEH	2007 & PRIOR CC REVIT	2007 & PRIOR VEH REVIT	2007 & PRIOR FVT	2007 & PRIOR STORM WATER
0.00	15.00	15.00	0.00	0.00	0.00	0.00	0.00	62.21	0.00	0.00	20.00	0.00
0.00	30.00	30.00	0.00	0.00	0.00	0.00	87.02	135.02	0.00	0.00	15.78	48.00
0.00	5.00	0.00	0.00	0.00	0.00	0.00	32.96	37.12	0.00	0.00	0.00	0.00
0.00	10.00	10.00	0.00	0.00	0.00	0.00	0.00	67.27	0.00	0.00	25.00	0.00
0.00	15.00	15.00	12.00	0.00	0.00	0.00	0.00	(137.35)	0.00	0.00	10.00	0.00
0.00	25.00	15.00	0.00	0.00	0.00	0.00	33.77	58.72	0.00	0.00	15.00	0.00
0.00	10.00	10.00	0.00	0.00	0.00	0.00	0.00	47.58	0.00	0.00	10.00	0.00
0.00	10.00	5.00	0.00	0.00	0.00	0.00	0.00	80.63	0.00	0.00	15.43	0.00
0.00	5.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
0.00	30.00	20.00	0.00	0.00	0.00	0.00	0.00	113.45	0.00	0.00	10.00	0.00
0.00	0.00	0.00	0.57	1.14	1.99	0.00	0.00	84.13	0.00	0.00	25.00	0.00
0.00	20.00	20.00	0.00	0.00	0.00	0.00	18.79	46.69	0.00	0.00	14.57	0.00
0.00	5.00	0.00	12.00	0.00	0.00	0.00	26.16	96.10	0.00	0.00	15.00	0.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	129.33	0.00	0.00	10.00	0.00
0.00	15.00	10.00	0.00	0.00	0.00	0.00	304.99	174.34	0.00	0.00	35.00	2.19
0.00	6.64	1.64	36.00	72.00	0.00	0.00	21.08	51.67	0.00	0.00	23.90	216.00
0.00	5.00	0.00	0.00	0.00	0.00	0.00	0.00	18.79	0.00	0.00	5.00	0.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.03	0.00	0.00	5.00	0.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.00	34.35	0.00	0.00	15.00	0.00
0.00	30.00	30.00	1.62	3.23	5.66	0.00	14.78	305.93	0.00	0.00	40.00	0.00
0.00	20.00	10.00	0.00	0.00	0.00	0.00	7.96	66.71	0.00	0.00	21.10	0.00
0.00												
0.00												
0.00												
0.00	256.64	191.64	62.19	76.37	7.65	0.00	553.51	1,474.72	0.00	0.00	330.78	266.19

# FAYETTEVILLE MACC LEDGER

## 2001-2011

OCTOBER 2011

2007 & PRIOR FAY STORM WATER	2007 & PRIOR ANNEX	INTEREST	REVIT INTEREST	STORM WATER INTEREST	FAY STORM WATER INTEREST	ANNEX INTEREST	FAY RECYCLE INTEREST	FAY TRANSIT INTEREST	TOTAL TAX & INTEREST
0.00	0.00	915.21	0.50	7.22	14.43	0.00	12.84	79.76	198,161.21
96.00	0.00	682.71	0.00	19.42	35.83	0.00	28.55	65.34	100,613.69
0.00	0.00	468.01	0.00	5.33	10.67	0.00	13.42	38.56	123,663.79
0.00	0.00	527.43	0.00	0.67	1.34	0.00	2.12	49.93	126,355.91
0.00	0.00	603.21	0.34	9.37	12.04	0.00	19.91	63.67	159,142.85
0.00	0.00	380.16	2.67	0.00	0.00	0.00	0.00	36.41	52,301.07
0.00	0.00	346.75	0.00	1.06	2.12	0.00	3.35	42.50	77,365.12
0.00	0.00	483.46	0.00	2.13	4.26	0.00	3.67	43.01	127,490.30
0.00	0.00	468.31	0.00	6.47	12.94	0.00	3.85	50.91	94,074.65
0.00	0.00	1,153.02	0.00	12.67	25.33	0.00	26.83	89.99	120,218.47
0.00	0.00	790.36	0.65	5.79	11.60	0.00	20.66	60.67	160,866.91
0.00	0.00	458.91	3.71	1.40	2.78	0.00	1.04	47.18	136,978.42
0.00	0.00	314.81	1.75	2.95	2.23	0.00	3.54	25.99	74,222.01
0.00	0.00	534.35	12.04	1.06	2.11	0.00	3.35	37.05	82,464.57
0.00	0.00	742.11	0.00	1.70	2.11	0.00	3.35	44.47	172,563.73
72.00	0.00	421.70	0.00	145.14	64.38	0.00	0.22	39.36	127,825.02
0.00	0.00	424.73	1.28	21.02	42.06	0.00	3.34	27.59	130,719.62
0.00	0.00	360.96	0.00	2.55	5.10	0.00	4.75	32.20	104,057.63
0.00	0.00	366.80	0.00	4.75	9.47	0.00	12.92	25.60	103,991.44
0.00	0.00	779.65	0.09	4.74	3.40	9.56	5.64	44.23	100,997.98
0.00	0.00	828.38	0.00	26.27	49.50	0.00	27.77	63.66	169,997.04
168.00	0.00	12,051.03	23.03	281.71	313.70	9.56	201.12	1,008.08	2,544,071.43