

City Council Agenda Items and Contracts, Leases or Agreements

10/1/2013

City Council Meeting Date Agenda Items Only

Andrew Garner

Planning

Development Services

Submitted By

Division

Department

Action Required:

PPL 13-4404: PRELIMINARY PLAT (PERSIMMON STREET MASTER STREET PLAN RIGHT-OF-WAY/LEGACY IV SUBDIVISION, 475): Submitted by BATES AND ASSOCIATES for property located WEST OF 54TH STREET. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE and contains approximately 108 acres. The request is for a lesser dedication of right-of-way for Persimmon Street within the Legacy IV subdivision.

Table with 3 columns: Cost of this request, Account Number, Project Number; Category / Project Budget, Funds Used to Date, Remaining Balance; Program Category / Project Name, Program / Project Category Name, Fund Name.

Budgeted Item

Input box for Budgeted Item

Budget Adjustment Attached

Input box for Budget Adjustment Attached

Department Director (Signature)

09.11.2013 Date

Previous Ordinance or Resolution #

City Attorney (Signature)

9.16.13 Date

Original Contract Date:

Finance and Internal Services Director (Signature)

9/17/13 Date

Original Contract Number:

Chief of Staff (Signature)

9/18/13 Date

Received in City Clerk's Office 9-12-13 13A00:27 RCVD

Mayor (Signature)

9/18/13 Date

Received in Mayor's Office



Comments:

Comments input box

This item was Tabled to the 10/15/13 CC mtg. at the 10/1/13 CC mtg.



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CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director

From: Andrew Garner, Senior Planner

Date: September 10, 2013

Subject: PPL 13-4404 (Persimmon Street Master Street Plan Right-of-way Dedication)

RECOMMENDATION

The Planning Commission recommends approval of a resolution for a reduced right-of-way dedication for Persimmon Street through the Legacy IV Subdivision (PPL 13-4404). Planning Division staff recommends denial of the request.

BACKGROUND

The property is zoned RSF-4, Residential Single Family Four Units per Acre and contains 108 acres located in west Fayetteville, adjacent to 54th Street. The site was approved for a subdivision several years ago and portions of the streets were graded and some infrastructure installed. The property is designated as a Rural Residential Area on the Future Land Use Plan, and a portion of this site is located within the Enduring Green Network identified in City Plan 2030. The property has a relatively unusual configuration with access to 54th Street through narrow strips of land surrounded by existing single family homes not a part of the development. The applicant proposes a preliminary plat with 108 residential lots.

Persimmon Street is a Minor Arterial on the Master Street Plan and traverses east west through the property. This will provide the final linkage for Persimmon between the Legacy subdivision adjacent to the west and the existing street network to the east. 54th Street is a Collector Street adjacent to the eastern property line. Persimmon Street requires 77 feet of right-of-way in accordance with the Master Street Plan. This right-of-way is required to be dedicated with this subdivision pursuant to Fayetteville Unified Development Code Section 166.04(B)(3)(a).

REQUEST

The applicant requests a lesser dedication of the Master Street Plan right-of-way for Persimmon Street. The Master Street Plan requires 77 feet of right-of-way and the applicant proposes 70 feet. The applicant's justification for the request is provided in a letter attached to this packet, discussing they would match the right-of-way width for Persimmon Street in the adjacent subdivision to the west.

STAFF DISCUSSION

Staff does not recommend in favor of the request finding that there is not adequate justification. While Persimmon Street was constructed with a 70-foot right-of-way adjacent to the west, with the most recent update of the Master Street Plan in 2011 Persimmon was upgraded from a Collector to a Minor Arterial. There is still a long undeveloped stretch of Persimmon that would be extended another approximately 0.5-mile beyond the subject property and connecting to the existing improved section of Persimmon Street near the intersection of Broyles Avenue. Persimmon will provide a major east-west connection to this area of the city and, an alternative route to Wedington Drive upon its eventual completion. There are numerous homes west and southwest of this area that will likely use this roadway and staff feels the classification of Persimmon as a Minor Arterial and the 77 feet of right-of-way is the best plan for the ultimate build-out of the street in order to function as intended with four lanes of vehicles, bike lanes on both sides, greenspace, and sidewalks on both sides of the street. While the entire stretch of Persimmon will not be a consistent 77 feet of right-of-way, because of the large amount of undeveloped area to the east, staff feels it is important to maintain the integrity of the Master Street Plan cross section in this instance. It should be noted that staff supports a lesser dedication of right-of-way for the very easternmost section of Persimmon in this subdivision simply because the applicant's property is only approximately 54 feet wide at its narrowest point and staff does not feel that it would meet the rough proportionality test to require the applicant to acquire off-site right-of-way to meet the standard. This additional right-of-way would be dedicated at the time the adjacent property is developed or acquired by the city as part of a street improvement project. It should also be noted that the applicant proposes, and staff agrees, not to have the applicant construct the full Minor Arterial street section at this time with four lanes, and instead construct a cross section with two vehicular lanes and bike lanes, similar in width to a standard street.

DISCUSSION

On September 9, 2013, the Planning Commission approved preliminary plat (PPL 13-4404) with a condition of approval regarding the right-of-way for Persimmon Street. The Planning Commission recommended in favor of the applicant's request for a lesser dedication of right-of-way with a vote of 8-1-0 (Commissioner Chesser voted 'no'). There was no public comment.

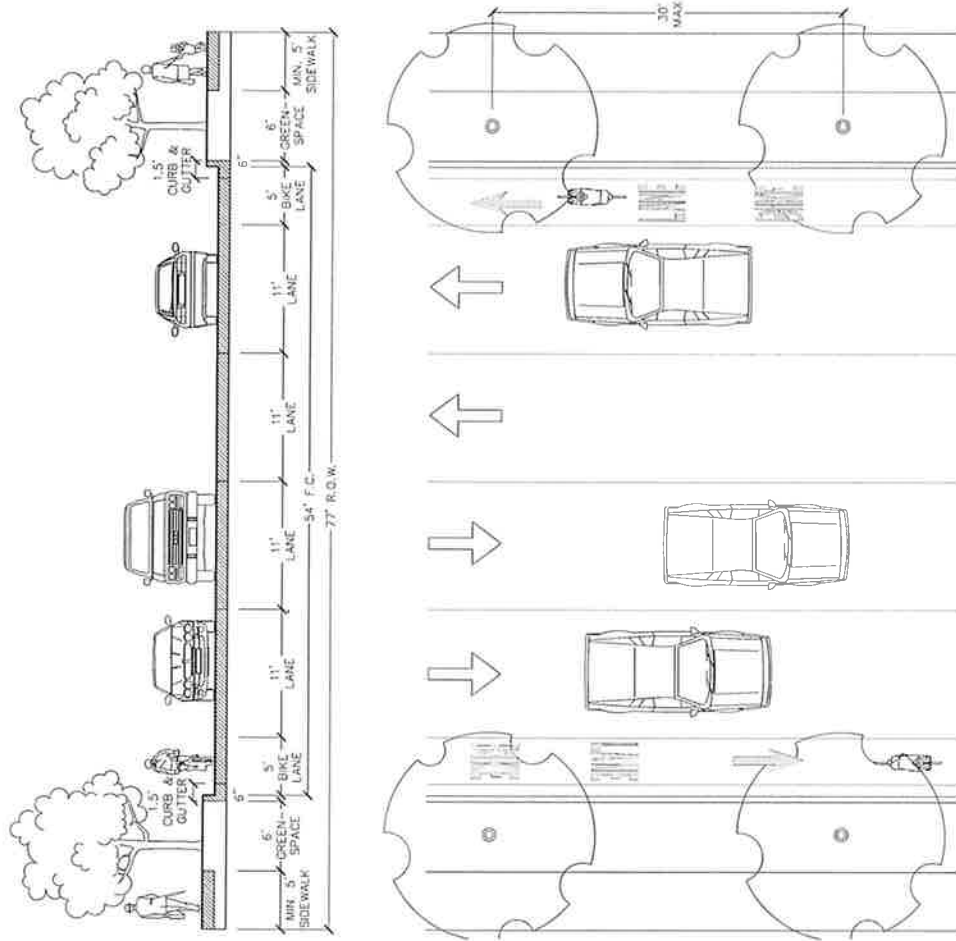
BUDGET IMPACT

None.



12.2.5 MINOR ARTERIAL STREETS

MINOR ARTERIAL STREETS provide mobility throughout the city, encouraging multiple modes of transportation within the arterial network. Access should be limited to controlled intersections where possible. They have a moderate level of access management.



- 5 **MINOR ARTERIAL:**
- Design Service Volume: < 12,200 vpd
- Desired Operating Speed: 30-40 mph
- Travel Lanes: Four 11' lanes
- Bicycle Lanes: 5' wide, both sides of street
- Parking: next to curb
- Paved Width: None
- Right of Way: 54' from face of curb
- Sidewalks: 77'
- Greenspace: Both sides of street, min. 5' wide, located in R.O.W. at R.O.W. line
- Both sides of street, min. 6' wide



Kit Williams
City Attorney
Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director
Andrew Garner, Senior Planner-Current Planning
Jesse Fulcher, Planner-Current Planning
Quin Thompson, Planner-Current Planning

FROM: Kit Williams, City Attorney 

DATE: September 16, 2013

RE: 70' rather than 77' dedication for Persimmon Street

The City of Fayetteville has for decades had a Master Street Plan (frequently amended and altered to meet changing needs) which not only includes existing streets, but the proposed general placement of future streets or extensions of existing, but incomplete streets. The Master Street Plan also includes changing right of way cross sections for streets and sometimes changes the classification for streets. For example, Persimmon was changed from collector to minor arterial. When a proposed collector or arterial street runs through a piece of developing property, the City needs to attempt to ensure such development does not block, but incorporates as much as feasible, the proposed collector or arterial. Indeed, our Unified Development Code requests such right of way dedication unless the Planning Commission recommends a "lesser dedication in the event of undue hardship or practical difficulties." § 166.4 (B)(3)(a) of the U.D.C.

The Planning Commission did recommend almost unanimously (Commissioner Chesser was the lone dissenter) the dedication of 70' instead of the Master Street Plan recommended 77' right of way for Persimmon as it runs through the development. "Such lesser dedication shall be subject to approval by the City Council." *Id.* This is the reason for this agenda item.

Please keep in mind that the City of Fayetteville can only require a developer/land owner to pay money, build infrastructure or dedicate land or right of way to the City if such exactions "**are roughly proportioned and bear a rational nexus to the impact of the development**" upon the City's infrastructure needs. § 166.04 (A)(3) of the U.D.C.

"The exaction is the concession sought by the government, or the condition upon which granting the permit depends. The government may seek land, money, or other concessions in return for the permit." *Garneau v. City of Seattle*, 147 F.3d 802, 809 (9th Cir. 1998).

This "rough proportionality" and "rational nexus" test would limit the City of Fayetteville's power to demand dedication of street right of way, construction of streets, sidewalks, water and sewer mains, etc. even if our Unified Development Code did not include such limitation. This is a **Constitutional limitation** upon our government's power based upon the Fifth Amendment of the United States Constitution as held by the United States Supreme Court.

"In addition to the requisite nexus, the (Supreme) Court went on to require that the city demonstrate that the degree of the exactions demanded in the condition bears "rough proportionality" to the projected impact of the applicant's request. This requirement ensures that the conditioning of a discretionary benefit does not force "some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole" in violation of the Just Compensation Clause." *Pennell v. City of San Jose*, 485 U.S. 1, 9 (1998) (citations omitted).

“According to the controlling Supreme Court decisions, **the City can only require an owner to dedicate land or pay money in “rough proportionality” to the impact that construction of his project causes the City.** *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 2320 (1994) (emphasis added).

“We think a term such as “rough proportionality” best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.” *Id.*

I believe that there is no question that the requested Master Street Plan dedication is related “in nature” to this development which shall certainly use Persimmon as a primary connector to Fayetteville’s street network. **The “extent” of (or how much) dedication that the City can require to be dedicated is the issue.** The developer is already offering to dedicate 70 feet of right of way which is wider than a normal local street or even collector and is equal to the width of Persimmon to the West of this development.

When this land had been approved for development earlier and some street grading accomplished, Persimmon had been designated as the more narrow collector. After that initial development failed, Persimmon was upgraded to minor arterial which bumped up the desired right of way to 77 feet. When Persimmon is extended toward the East from this development, it is anticipated to have 77’ right of way.

The engineer for the developer informed the Planning Commission that increasing the right of way from 70 feet to 77 feet through the development would cost the developer several home building lots, an obviously large burden upon the owner.

The question is not whether the City would prefer a 77 foot wide right of way dedication so the desired minor arterial with four car lanes of travel, two bike lanes of travel, and green space and sidewalks on both sides of the street can be constructed. Of course, this is the preferred right of way width. **The question is whether this developer can be forced to give up this**

full 77 feet right of way width to the City for nothing and so bear the whole burden for a minor arterial's right of way which will obviously serve far more citizens than his future homeowners.

“The Fifth Amendment’s guarantee...was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *City of Monterey v. Del Monte Dunes*, 526 US 687, 703, 119 S.Ct. 1624 (1999); quoting *Armstrong v. United States*, 364 US. 40, 49 (1968).

The Constitution thus limits the amount of exactions that any government can demand for the issuance of a development permit. The Planning Commission and City Council should look at the total amount of street exactions being required to determine whether or not the right of way dedication and on and offsite street construction being demanded exceeds the rough proportionality of this development’s impact upon Fayetteville’s street infrastructure.

CONCLUSION

The need to build the internal residential streets within the subdivision is wholly caused by the development itself and will service primarily the new homeowners and their visitors. Therefore, their right of way dedication and street construction is properly the sole responsibility of the developer.

Persimmon’s much larger right of way and the offsite street improvements on 54th will certainly also serve this development. However, these exactions (whether the right of way is 77 feet or 70 feet) will also serve many others as part of Fayetteville’s backbone of arterial and collector streets.

Planning has properly not sought to require the developer to build Persimmon for a full minor arterial. Planning did recommend pursuant to a U.D.C. section to have the full 77’ right of way now shown for minor arterials to be dedicated. The Planning Commission listened to Planning and the developer and decided that the offered 70 foot of right of way would be as much as could be demanded. Now it is the City Council’s final decision.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE THE DEDICATION OF 70 FEET OF RIGHT OF WAY FOR PERSIMMON STREET ALONG MOST OF THE OWNER'S PROPERTY AS RECOMMENDED BY THE PLANNING COMMISSION

WHEREAS, "On and off-site improvements that are roughly proportional and bear a rational nexus to the impact of the development are required for all development" by § 166.04 (A)(3); and

WHEREAS, the Planning Commission voted 8-1 to recommend to the City Council that a lesser dedication of 70 feet instead of 77 feet be allowed to the owner/developer of Legacy Phase V if the developer also paid for improvements to 54th Street between Persimmon and a street to be built by the developer; and

WHEREAS, the City Council has determined that the dedication of 70 feet for Persimmon and the other on and off-site required street improvements are roughly proportional to the impact that construction of the development will cause Fayetteville.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby confirms and adopts the Planning Commission's recommendation to accept the offered 70 feet of right of way dedication along most of Persimmon through the Legacy Phase V along with all other on and off-site street improvements required of the owner/developer.

PASSED and APPROVED this 1st day of October 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

RESOLUTION NO. _____

A RESOLUTION TO DISAPPROVE THE RECOMMENDATION OF THE PLANNING COMMISSION TO ALLOW THE DEDICATION OF 70 FEET OF RIGHT OF WAY FOR PERSIMMON STREET ALONG MOST OF THE OWNER'S PROPERTY AND REQUIRE DEDICATION OF 77 FEET

WHEREAS, "On and off-site improvements that are roughly proportional and bear a rational nexus to the impact of the development are required for all development" by § 166.04 (A)(3); and

WHEREAS, the Planning Commission voted 8-1 to recommend to the City Council that a lesser dedication of 70 feet instead of 77 feet be allowed to the owner/developer of Legacy Phase V if the developer also paid for improvements to 54th Street between Persimmon and a street to be built by the developer; and

WHEREAS, the City Council has determined that the dedication of 77 feet for Persimmon and the other on and off-site required street improvements are roughly proportional to the impact that construction of the development will cause Fayetteville.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby rejects the Planning Commission's recommendation to accept the offered 70 feet of right of way dedication along most of Persimmon through the Legacy Phase V and instead requires the owner/developer to dedicate 77 feet of right of way for Persimmon along with all other on and off-site street improvements required of the owner/developer.

PASSED and APPROVED this 1st day of October 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Fayetteville Code of Ordinances

district an easement plat shall be filed of record in the office of the circuit clerk dedicating all required easements and rights-of- way.							
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*All plats should meet or exceed the most current State of Arkansas Standards of Practice for Property Boundary Surveys and Plats.

**SIP = Large or Small Site Improvement Plan

***PZD = Planned Zoning District

(C) *Signatures required.* The final plat or concurrent plat may be signed by any officer of the Planning Commission.

(D) *Number of plats.* The Planning Division may require additional copies of plats if the amount required by this chapter is not sufficient for distribution to the various committee members.

(Code 1965, App. C., Art. III, §A(1); Ord. No. 2695, 1-20-81; Ord. No. 3080, 4-2-85; Ord. No. 3201, 8-5-86; Ord. No. 3315, 11-17-87; Code 1991, §§159.05, 159.30k.; Ord. No. 3578, 11-19-91; Ord. No. 3615, §1, 6-2-92; Ord. No. 3738, §1, 11-16-93; Ord. No. 3793, §1, 5-17-94; Ord. No. 3797, §1, 5-17-94; Ord. No. 4068, §1, 11-4-97; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4199, 11-2-99; Ord. No.4454, 01-07-03; Ord. No. 4545, 02-17-04; Ord. 4725, 7-19-05; Ord. 4864, 05-02-06; Ord. 5152, 7-15-08; Ord. 5215, 1-20-09; Ord. 5271, 9-1-09; Ord. 5296, 12-15-09)

166.04 Required Infrastructure Improvements – Development in City Limits

(A) *Generally.* Required of developer.

(1) *On and off-site improvements.* On-site improvements are adjacent to or within a project site; such as widening the street along the project street frontage, constructing interior streets and utilities, etc. Off-site improvements are not adjacent to a project; such as the extension of an off-site sewer line to the property boundary, off-site storm drainage improvements, or an off-site intersection improvement, etc.

(2) *Standards applicable.* Any required on or off-site improvements in the city and within one mile of the city limits shall be installed according to the city's standards; provided on or off-site improvements to roads located outside one mile of the city limits shall be installed to the county's standards. The

developer shall be required to bear that portion of the cost of off-site improvements which bears a rational nexus to the needs created by the development.

(3) *Required Infrastructure Improvements.* On and off-site improvements that are roughly proportional and bear a rational nexus to the impact of the development are required for all development within the City of Fayetteville. The developer shall be required to install on and off-site improvements where the need for such improvements is created in whole or in part by the proposed development.

(4) *Planning Commission and Planning Division.* At the time the Planning Commission or Planning Division (where applicable for administrative approval) grants development approval, the Planning Commission or Planning Division shall determine whether the proposed development creates a need for off-site improvements and the portion of the cost of any needed off-site improvements which the developer shall be required to bear; provided, that portion of the cost of off-site improvements to roads located outside the city's corporate limits but within the city's planning area shall be determined by the county. In determining that portion of the cost of off-site improvements which the developer shall be required to bear, the Planning Commission or Planning Division (where applicable for administrative approval) shall consider the acreage within the proposed development as a percentage of all the acreage which, when fully developed, will benefit from the off-site improvements; provided, the Planning Commission or Planning Division may use a different method of measurement if it determines that use of the acreage standard will not result in the developer bearing that portion of the cost which bears a rational nexus to the needs created by the development.

(5) *Determining necessity for off-site improvements.*

(a) When a proposed development has access to paved streets or roads only by way of substandard or unimproved roads or streets leading from the development to the paved streets or roads, the developer shall be responsible for contributing this proportionate share of the cost of improving the substandard access roads or streets to existing city or county standards. The developer's

TITLE XV UNIFIED DEVELOPMENT CODE

proportionate share of said costs shall be determined by the Planning Commission or Planning Division (where applicable for administrative approval) in accordance with the provisions of 166.04 (A) above.

- (b) When a proposed development has direct access to, or fronts on an existing road or street, which is below current standards, the developer shall be responsible for contributing his/her proportionate share of the cost of improving said street or road to existing city or county standards. The Planning Commission or Planning Division (where applicable for administrative approval) shall determine the developer's proportionate share of said costs in accordance with the provisions of 166.04 (A) above.
- (c) Off-site drainage improvements shall be required whenever a proposed development causes the need for such improvements.
- (6) *Delayed Improvements.* The Planning Commission or Planning Division may determine a required on-site or off-site improvement shall be delayed or payment-in-lieu contributed instead in accordance with Chapter 158 of the UDC. **Cross reference(s)**—Bonds and Guarantees, Ch. 158.
- (7) *Variances.* A variance of off-site improvements may be granted in accordance with Chapter 156 Variances.
- (8) *State highways.* The developer shall be required to dedicate sufficient right-of-way to bring those state highways which the Master Street Plan shows to abut or intersect the proposed subdivision into conformance with the right-of-way requirements of the Master Street Plan. The developer shall be required to install a sidewalk adjacent to that portion of a state highway abutting the proposed development; and provided that the Planning Commission or Engineering Division (where applicable for administrative approval) may waive the sidewalk requirement prescribed by this subsection upon application by the developer and a determination by the Planning Commission or Engineering Division (where applicable for administrative approval) that the topography of the proposed development where it abuts a state highway is such that installation of a sidewalk is not practical. Any other improvements required of the developer by

the Planning Commission or Engineering Division (where applicable for administrative approval) shall be coordinated with the Arkansas Highway and Transportation Department.

- (B) *Minimum improvements by application type.* The property owner/developer shall be responsible for constructing the following minimum improvements.
- (1) *Property Line Adjustment.* No improvements are required unless the action would create or exacerbate a nonconforming infrastructure situation such as cutting off a lot from public water, sewer, or street frontage. In such case the property line adjustment may not be filed of record until the required infrastructure is first constructed to City specifications, or a variance or waiver is granted by the Planning Commission.
- (2) *Lot Split.*
- (a) *Dedication of right-of-way.* Sufficient right-of-way dedication, to bring those streets which the Master Street Plan shows to abut or intersect the property into conformance with the right-of-way requirements of the Master Street Plan for said streets; provided, the Subdivision Committee or Planning Commission may recommend a lesser dedication in the event of undue hardship or practical difficulties. Such lesser dedication shall be subject to approval by the City Council.
- (i) *Dedications.* The City Council accepts all streets and alleys located in Fayetteville that have been previously approved and accepted as dedications by the Fayetteville Planning Commission/Subdivision Committee. The City Council confirms the acceptance of all such streets and alleys dedicated by developers/owners to the city which have been approved by the Fayetteville Planning Commission/Subdivision Committee.
- (b) *Monuments and lot stakes.* The surveyor shall cause, preserve, and/or replace monuments and/or lot stakes marking the corners of a parcel to be set in accordance with Section 3.2, general procedures, of the Arkansas Minimum Standards for Property Boundary Surveys and Plats.

Fayetteville Code of Ordinances

- (c) *Water, sewer, or street frontage.* Any lot that is created shall have adequate street frontage or street access that meets the minimum requirements of the zoning code, and access to public water and sewer as required by city and state code. If a lot split would create or exacerbate a nonconforming situation (such as cutting off a lot from public water, sewer, street frontage, or street access), the lot split may not be filed of record until the required easement is dedicated and/or the infrastructure is first constructed to City specifications, or a variance or waiver is granted by the Planning Commission.
 - (d) *Parkland dedication.* Parks fees shall be assessed for each new residential unit that is constructed on the additional lot(s) in accordance with the parkland dedication requirements outlined in Fayetteville Unified Development Code Chapter 166. Said fees shall be paid prior to issuance of a building permit for construction on the new lot.
- (3) *Preliminary/Final/Concurrent Plat; Large Scale Development; Large or Small Site Improvement Plan.*
- (a) *Dedication of right-of-way.*
 - (i) *On-site.* Sufficient right-of-way dedication, to bring those streets which the Master Street Plan shows to abut or intersect the property and new streets proposed interior to the property, into conformance with the right-of-way requirements of the Master Street Plan for said streets, shall be approved by the Planning Commission or Subdivision Committee; provided, the Planning Commission or Subdivision Committee may recommend a lesser dedication in the event of undue hardship or practical difficulties. Such lesser dedication shall be subject to approval by the City Council.
 - a. *Exemption.* Small Site Improvement Plan applications are exempt from this requirement.
 - (ii) *Off-site.* Off-site right-of-way dedication may be required as needed to construct off-site street improvements that are required

- based on the rough proportionality and rational nexus of the impacts of the project.
- (iii) *Dedications.* The City Council accepts all streets and alleys located in Fayetteville that have been previously approved and accepted as dedications by the Fayetteville Planning Commission/Subdivision Committee. The City Council confirms the acceptance of all such streets and alleys dedicated by developers/owners to the city which have been approved by the Fayetteville Planning Commission/Subdivision Committee.
- (b) *Monuments and lot stakes.* The surveyor shall cause, preserve, and/or replace monuments and/or lot stakes marking the corners of a parcel to be set in accordance with Section 3.2, general procedures, of the Arkansas Minimum Standards for Property Boundary Surveys and Plats.
- (c) *Streets.*
 - (i) *On-site.* Widening the street adjacent to the project frontage and construction of all interior streets to meet Master Street Plan standards. Street grading, base, and paving according to existing city standards and specifications as adopted by the City Council.
 - (ii) *Off-site.* Street widening and/or new street construction off-site may be required to address traffic impacts based on the rough proportion and rational nexus of the impacts of the project. Street grading, base, and paving according to existing city standards and specifications as adopted by the City Council.
 - (iii) *Private street name signs.* Where a structure is addressed on a private street or drive, the developer or property owner(s) shall be required to install, maintain, repair and replace all private street name signs. Any private street name sign existing at the time of passage of this ordinance shall be maintained, repaired and replaced as required by this section. Signs shall meet the standards of the Manual on Uniform



PC Meeting of September 9, 2013

THE CITY OF FAYETTEVILLE, ARKANSAS
PLANNING DIVISION CORRESPONDENCE

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
Glenn Newman, Staff Engineer
THRU: Jeremy Pate, Development Services Director
DATE: ~~September 4, 2013~~ *Updated September 10, 2013*

PPL 13-4404: Preliminary Plat (W. OF N. 54TH ST. AND E. OF W. PERSIMMON ST./LEGACY PH V, 475): Submitted by BATES AND ASSOCIATES for property located WEST OF NORTH 54TH STREET AND EAST OF WEST PERSIMMON STREET. The property is zoned RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE and contains approximately 32.83 acres. The request is for a residential subdivision with 108 single family lots.
Planner: Andrew Garner

Findings:

Background: The property is zoned RSF-4, Residential Single Family Four Units per Acre and contains 108 acres located in west Fayetteville, adjacent to 54th Street. The site was approved for a subdivision several years ago and portions of the streets were graded and some infrastructure installed. A portion of this site is located within the Enduring Green Network identified in City Plan 2030. The property has a relatively unusual configuration with access to 54th Street through narrow strips of land surrounded by existing single family homes not a part of the development. The surrounding zoning and land uses are depicted in *Table 1*.

Table 1

Surrounding Zoning and Land Use

Direction from Site	Land Use	Zoning
North	Single family and undeveloped pasture	RSF-4, Residential Single-Family Four Units Per Acre
South	Single family and undeveloped pasture	RSF-1, Residential Single-Family One Unit Per Acre
East	Undeveloped pasture	RSF-8, Residential Single-Family Eight Units Per Acre
West	Single family residential (Legacy Heights subdivision)	RSF-4

Adjacent Master Street Plan Streets: Persimmon Street is a Minor Arterial on the Master Street Plan and traverses east west through the property, providing the final linkage for Persimmon between the Legacy subdivision adjacent to the west and the existing street network to the east. 54th Street is a Collector Street adjacent to the eastern property line.

Right-of-way to be dedicated: Right-of-way will be dedicated for the internal Local and Residential streets in the amount of 50 feet and 43 feet, respectively, as listed on the street table and indicated on the plat. Persimmon Street is a Minor Arterial traversing through the neighborhood and requires 77 feet of right-of-way in accordance with the Master Street Plan. The applicant requests a variance of the Master Street plan to dedicate 70 feet of right-of-way for Persimmon through the subdivision. Right-of-way shall be dedicated in the amount of 29.5 feet from centerline along the site's 54th Street frontage, a Collector Street.

Proposal: The applicant proposes a preliminary plat with 108 residential lots. The subdivision is proposed in four phases starting at the western side of subdivision and moving east as depicted on the phasing plan:

Phase A	26 lots
Phase B	22 lots
Phase C	22 lots
Phase D	29 lots

Variance Requests:

- Unified Development Code (UDC) Section 166.04(B)(3)(a). The applicant requests a lesser dedication of the Master Street Plan right-of-way for Persimmon Street. The Master Street Plan requires 77 feet of right-of-way and the applicant proposes 70 feet. The applicant's justification for the request is provided in a letter attached to this packet, discussing they would match the right-of-way width for Persimmon Street in the adjacent subdivision to the west. *Staff does not recommend in favor of the request finding that there is not adequate justification for the request. While Persimmon Street was constructed with a 70-foot right-of-way adjacent to the west, with the most recent update of the Master Street Plan in 2011 Persimmon was upgraded from a Collector to a Minor Arterial. There is still a long undeveloped stretch of Persimmon that would be extended another approximately 0.5-mile beyond the subject property and connecting to the existing improved section of Persimmon Street near the intersection of Broyles Avenue. Persimmon will provide a major east-west connection to this area of the city and, an alternative route to Wedington Drive upon its eventual completion. There are numerous homes west and southwest of this area that will likely use this roadway and staff feels the classification of Persimmon as a Minor Arterial and the 77 feet of right-of-way is the best plan for the ultimate build-out of the street in order to function as intended with four lanes of vehicles, bike lanes on both sides, greenspace, and sidewalks on both sides of the street. While the entire stretch of Persimmon will not be a consistent 77 feet of right-of-way, because of the large amount of undeveloped area to the east, staff feels it is important to maintain the integrity of the Master Street Plan cross section in this instance. It should be noted that staff supports a lesser dedication of right-of-way for the very easternmost section of Persimmon in this subdivision simply because the applicant's property is only approximately 54 feet wide at its narrowest point and staff does not feel that it would meet the rough proportionality test to require the applicant to acquire off-site right-of-way to meet the standard. This additional right-of-way would be dedicated at the time the adjacent property is developed or acquired by the city as part of a street improvement project.*

Access Management and Connectivity: The proposed subdivision meets the access management requirements for block length and connectivity. The development provides street connections in all four directions to 54th Street to the east, Persimmon Street to the west, and street stub-outs to the north and south.

Street improvements: Internal streets shall be constructed as indicated on the proposed site plan. Off-site street improvements shall be completed as follows prior to approval of final plat for Phase II:

- Because of the existing sight distance and traffic safety problems at the intersection of 54th Street and Persimmon that will be exacerbated by traffic from this development, the developer shall install signage converting the intersection into a three-way stop. This will likely include additional warning signage and pavement striping, the exact details to be approved by the City Engineering Division.
- Based on the impacts that this development will have to 54th Street, the western half of 54th Street shall be improved from Persimmon Street to the south property line as indicated on the preliminary plat with: 14 feet pavement from centerline, curb, gutter, storm drains, sidewalks, and streetlights.

Water and Sewer System: Water and sewer lines shall be extended through the development as required by the City Engineering Division.

Parks: On April 1, 2013, the Park and Recreation Advisory Board (PRAB) reviewed the project and recommended accepting money lieu because of the project's proximity to Harmony Pointe Park and Bundrick Park. Fees in the amount of \$99,360.00 are due for the proposed 108 single-family units and shall be paid prior to final plat. The fees may be phased as specified in the UDC.

Tree Preservation: Existing: 2.5%
Proposed: 1.3%
Required: 25%
Mitigation: 88 trees on-site mitigation

Public Comment: Staff has not received public comment.

Recommendation: Staff recommends approval of PPL 13-4404 subject to the following conditions:

Conditions of Approval:

1. Planning Commission recommendation to the City Council of a lesser dedication of right-of-way pursuant to UDC Section 166.04(B)(3)(a). The applicant requests a lesser dedication of the Master Street Plan right-of-way for Persimmon Street. The Master Street Plan requires 77 feet of right-of-way and the applicant proposes 70 feet. The applicant's justification for the request is provided in a letter attached to this packet. *Staff does not recommend in favor of the request for a majority of the street based on the*

findings included earlier in this report. Staff supports a lesser dedication of right-of-way for the very easternmost section of Persimmon in this subdivision simply because the applicant's property is only approximately 54 feet wide at its narrowest point and staff does not feel that it would meet the rough proportionality test to require the applicant to acquire off-site right-of-way to meet the standard.

PLANNING COMMISSION RECOMMENDED IN FAVOR OF THE APPLICANT'S REQUEST FOR A LESSER DEDICATION OF RIGHT-OF-WAY (09-09-2013).

2. Planning Commission determination of street improvements. *Staff recommends the following:*
 - a. *All interior streets shall be constructed in conformance with the Master Street Plan requirements with the exception of Persimmon Street.*
 - b. *Persimmon Street through the neighborhood shall be constructed as a fully improved street as indicated on the preliminary plat with a 30-foot wide street, bike lanes and sidewalk on both sides. Staff does not feel that it meets the rough proportionality test for this development to construct the full Minor Arterial street section at this time with four vehicular travel lanes.*
 - c. *Street lights shall be installed at every intersection and with a maximum separation of 300 feet.*
 - d. *Sidewalks shall be constructed or guaranteed prior to final plat approval. Sidewalks along all commonly owned lots, and the off-site sidewalk connections to adjacent surrounding streets shall be constructed prior to final plat.*
 - e. *Off-site street improvements shall be completed as follows prior to approval of the final plat for Phase II:*
 - o *Based on the impacts that this development will have to 54th Street, the western half of 54th Street shall be improved from Persimmon Street to the south property line as indicated on the preliminary plat with: 14 feet pavement, curb, gutter, storm drains, sidewalks, and streetlights. Because of a lack of existing right-of-way to complete these improvements, an assessment shall be paid for these improvements, the amount to be agreed upon with City Engineering staff and the applicant. If there is a disagreement on the assessment amount, this issue may be brought back before the Planning Commission for final determination.*
 - o *Because of the existing site distance and traffic safety problems at the intersection of 54th Street and Persimmon that will be exacerbated by traffic from this development, the developer shall install signage converting the intersection into a three-way stop. This will likely include additional warning signage and pavement striping, the exact details to be approved by the City Engineering Division.*

PLANNING COMMISSION DETERMINED IN FAVOR OF THE STREET IMPROVEMENTS AS RECOMMENDED BY STAFF, MODIFYING THE OFF-SITE IMPROVEMENTS AS NOTED ABOVE TO ACCEPT MONEY-IN-LIEU (09-09-2013).

3. Right-of-way shall be dedicated for the internal streets in the amounts as listed on the street table and indicated on the plat. Right-of-way shall be dedicated in the amount of

29.5 feet from centerline along the site's 54th Street frontage.

4. On April 1, 2013, the Park and Recreation Advisory Board (PRAB) reviewed the project and recommended accepting money lieu because of the project's proximity to Harmony Pointe Park and Bundrick Park. Fees in the amount of \$99,360.00 are due for the proposed 108 single-family units and shall be paid prior to final plat. The fees may be phased as specified in the UDC. The applicant shall remove the designation of Lot 33 as parkland from the plat.

THE PLANNING COMMISSION MODIFIED AND APPROVED THIS CONDITION AS NOTED (09/09/2013).

5. Conditions of approval from Engineering, Solid Waste, Urban Forester, and the Parks Departments are included in the official conditions of approval, attached herein.
6. Future street extensions signs shall be installed at all street stub-outs.
7. Any community club house or recreational facility requires approval by the Planning Commission as a conditional use permit.
8. An assessment shall be paid prior to final plat for the removal of temporary hammerheads. The applicant should provide a cost estimate for this assessment.
9. Comments from the 911 Coordinator on street names, attached herein, shall be addressed.
10. 'No Parking' areas will be identified with signage at the time of final plat as required by the City Fire Marshall, but the parallel parking spaces will not be striped.
11. Identify the offsite signage improvements at 54th and Persimmon.
12. Show the bike lane striping on Persimmon Street through the subdivision.

Standard Conditions of Approval:

13. All signage shall be reviewed and approved by the Planning Department prior to installation. Freestanding signage is not permitted within utility easements, unless otherwise approved by all utility companies.
14. All street names and addresses shall be approved by the 911 coordinator.
15. Plat Review and Subdivision comments (to include written staff comments provided to the applicant or his representative, and all comments from utility representatives - AR Western Gas, SWBT, Ozarks, SWEPCO, Cox Communications).
16. Preliminary plat approval is valid for one year. All permits to complete construction of this preliminary plat are required to be obtained within one year, subject to extensions in accordance with the Unified Development Code.

17. Staff approval of final detailed plans, specifications and calculations (where applicable) for grading, drainage, water, sewer, fire protection, streets (public and private), sidewalks, parking lot(s) and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with City's current requirements.
18. All overhead electric lines under 12Kv shall be relocated underground. All proposed utilities shall be located underground.
19. Street lights shall be installed adjacent to all public and private streets (not alleys), with a separation of no greater than 300 feet.
20. Impact fees for fire, police, water, and sewer shall be paid in accordance with City ordinance.

Subdivision Committee Action: **Forwarded** **Denied** **Tabled**
Motion: Winston
Second: Autry
Vote: 3-0-0
Meeting Date: August 29, 2013
Note: Recommendation for approval

Planning Commission Action: **Approved** **Denied** **Tabled**
Motion: Winston
Second: Pennington
Vote: 8-1-0 (Commissioner Chesser voted 'no')
Meeting Date: September 9, 2013
Note:

**Bates &
Associates, Inc.****Civil Engineering & Surveying**91 W. Colt Square Dr. Suite 3 / Fayetteville, AR 72703
PH: 479-442-9350 * FAX: 479-521-9350

September 3, 2013

Planning Commissioners and Staff
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701**RE: Legacy Subdivision Phase V – Variance Request**

Dear Planning Staff,

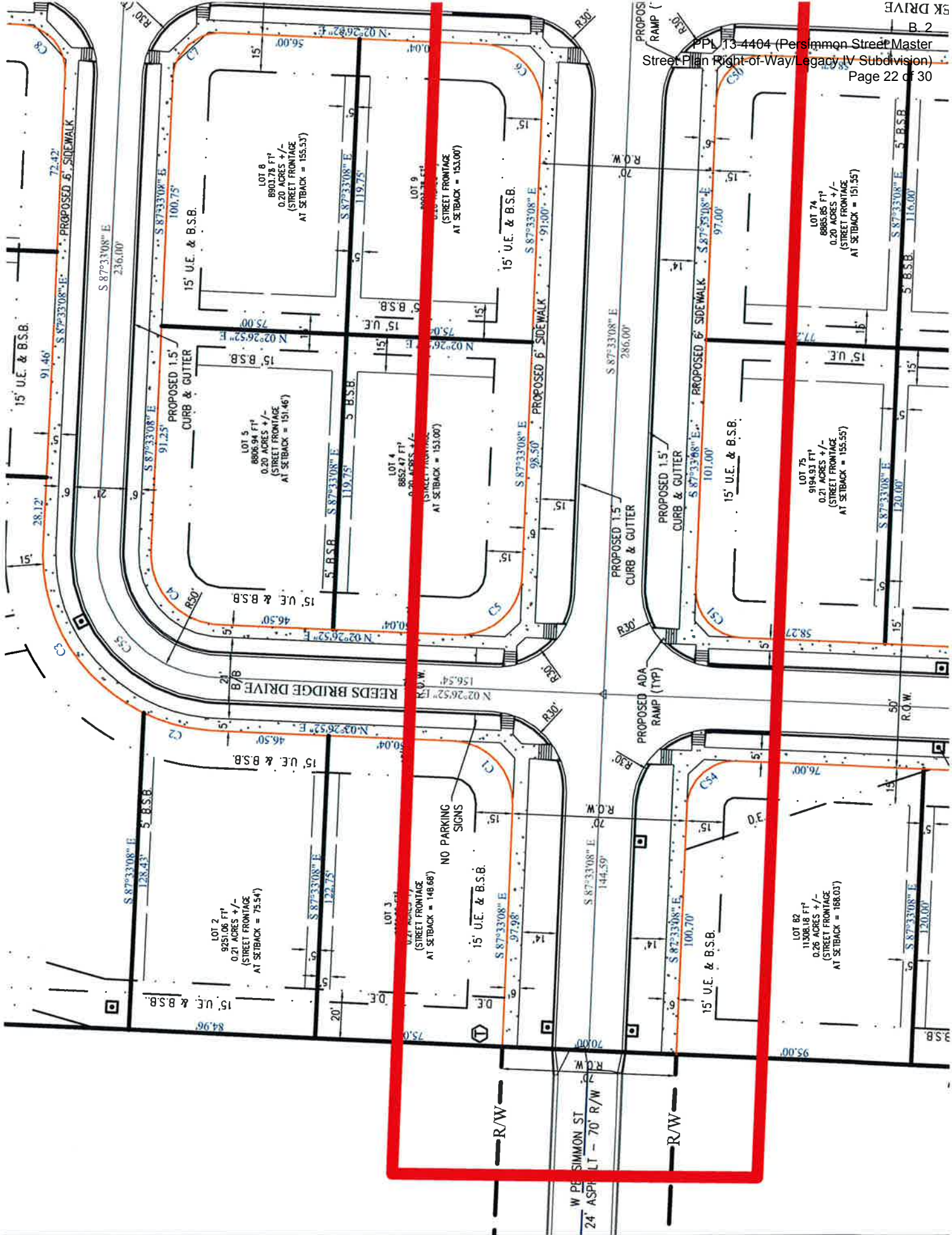
The developer would like to request the following variances:

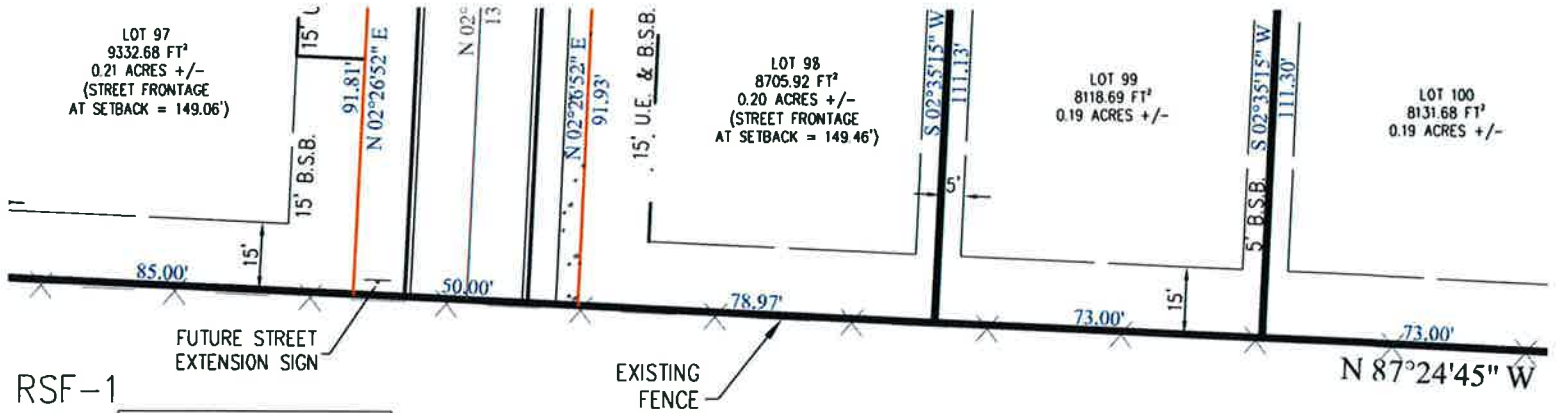
1. The existing right-of-way along Persimmon Drive to the west of the subject property is 70'. The existing right-of-way to the east is 65'. The property owner would like to request a variance to allow a 70' right-of-way in order that we are consistent with the property to the west and the majority of properties to the east. This property was previously approved for a grading permit, and the streets were cut for a 70' right-of-way, so much of this initial road grading is complete. In addition, the existing improved Persimmon to the east connecting to the frontage road along I-540 is 70'. It seems less useful to make this short stretch 77'. Naturally, we think this the best solution is to keep the stretch at 70'

If you have any questions or require additional information, please feel free to contact me at your convenience.

Sincerely
Bates & Associates, Inc.

Geoffrey H. Bates, P.E.





RSF-1

STREET TABLE

NAME	LENGTH	ROW	B/B	S/W	TYPE	GREENSPACE
MARKS MILL DRIVE	705.6'	50'	28'	5'	PUBLIC	6'
MARKS MILL AVENUE	195.8'	43'	21'	5'	PUBLIC	6'
DRYWOOD CREEK DRIVE	1052.1'	50'	28'	5'	PUBLIC	6'
BUCKLAND MILLS DRIVE	549.8'	50'	28'	5'	PUBLIC	6'
BUCKLAND MILLS AVENUE	195.8'	43'	21'	5'	PUBLIC	6'
LONE JACK DRIVE	901.6'	50'	28'	5'	PUBLIC	6'
SNYDER'S BLUFF DRIVE	507.2'	43'	21'	5'	PUBLIC	6'
PERSIMMON STREET	1670.0'	70'	30'	6'	PUBLIC	14'
ROWLETT'S STATION DRIVE	930.5'	50'	28'	5'	PUBLIC	6'
POISON SPRING DRIVE	561.4'	43'	21'	5'	PUBLIC	6'
CANE HILL DRIVE	550.7'	43'	21'	5'	PUBLIC	6'

DRIVE
LOT W
70 FT
50 FT
LESS

LOT C
LOT N
2-32,
33
1, 96

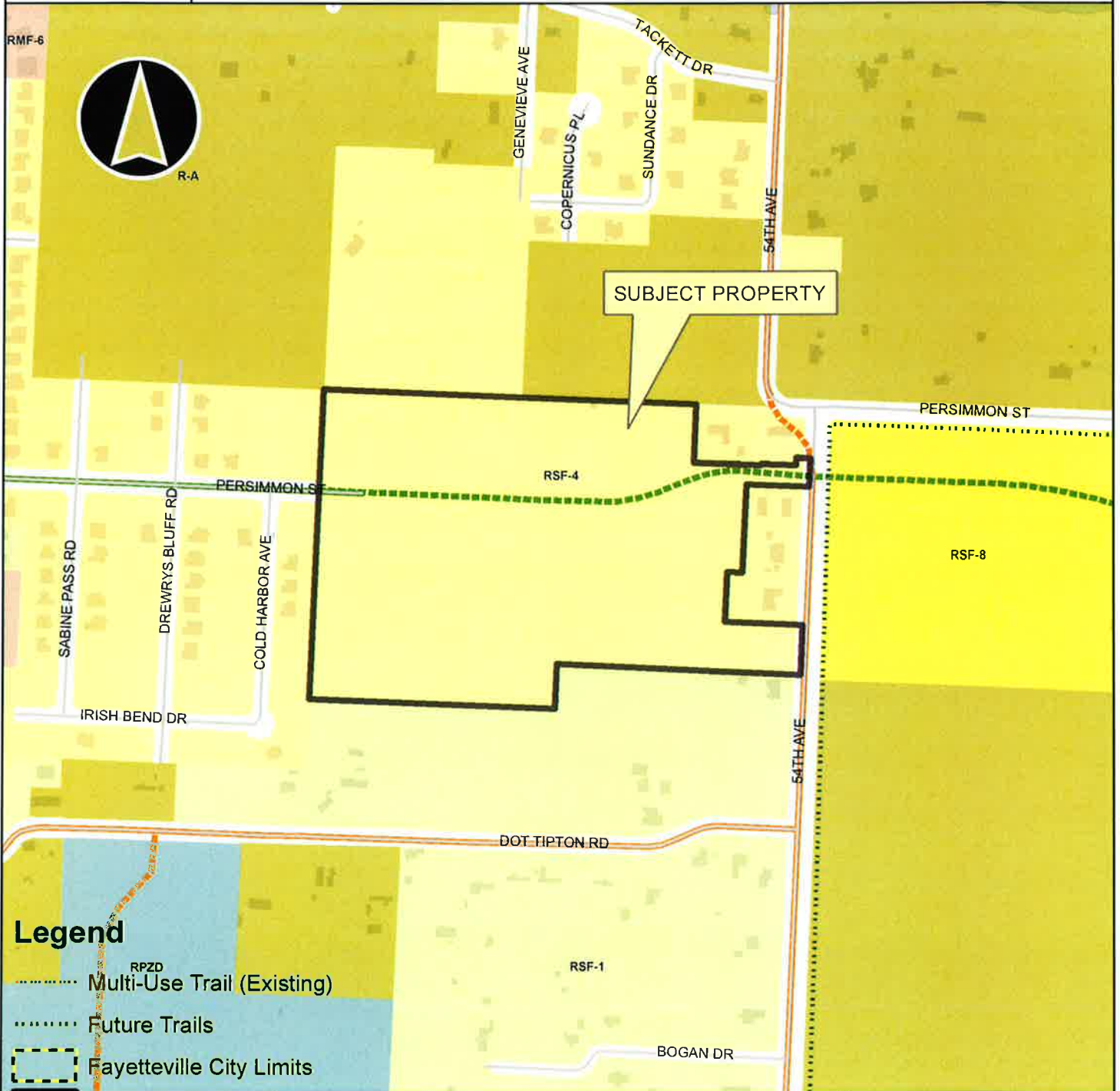


B. 2
 1 inch = 667 Feet
 0 175 350 700 1,050 1,400 Feet

PPL13-4404

LEGACY PHASE V

Close Up View

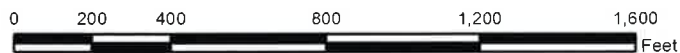


Legend

- Multi-Use Trail (Existing)
- Future Trails
- Fayetteville City Limits

Overview PPL13-4404

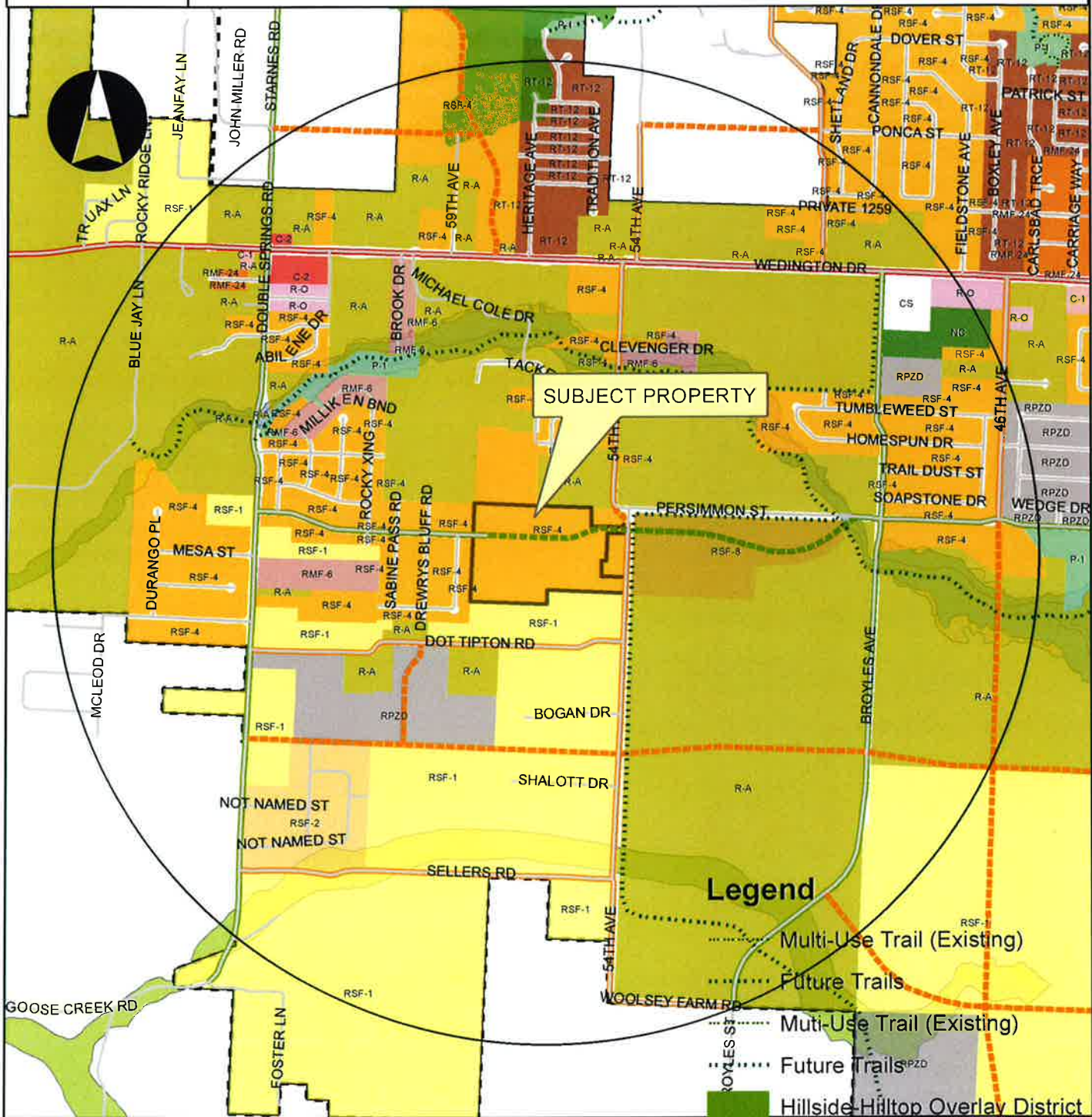
- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Design Overlay District
- Planning Area



PPL13-4404

LEGACY PHASE V

One Mile View

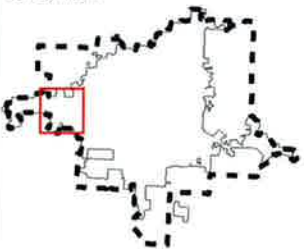


SUBJECT PROPERTY

Legend

- Multi-Use Trail (Existing)
- Future Trails
- Multi-Use Trail (Existing)
- Future Trails
- Hillside-Hilltop Overlay District

Overview



- Subject Property
- PPL13-4404

Boundary

- PPL13-4404
- Design Overlay District
- Planning Area
- Fayetteville

