

City of Fayetteville Item Review Form

2013-0151

Legistar File Number

11-19-2013

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Jesse Fulcher

Submitted By

Planning

Department

Action Required:

VAC 13-4516: Vacation (BRENDA DRIVE, COURT AND WALTON STREET/UNIVERSITY OF ARKANSAS, 482): Submitted by DEVELOPMENT CONSULTANTS, INC. for property located WEST OF RAZORBACK ROAD AND NORTH OF CENTER STREET. The request is to vacate the right-of-way of Brenda Drive, Court and Walton Street, and a 30-foot wide alley off of Hotz Drive.

Does this item have a cost? No

Cost of this request

Category or Project Budget

Program or Project Name

Account Number

Funds Used to Date

Program or Project Category

\$0.00

Project Number

Remaining Balance

Fund Name

Budgeted Item? No

Budget Adjustment Attached? No

V20130812

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Comments:

11-01-13 P03:07 RCVD

Paul A. Butler 11-1-2013

Don Man 11-1-13

Arnold Jordan 11/2/13

dm

ENT
11/1/13
PH

Kat

This ordinance was tabled to the 12/17/13 City Council meeting and left on the Second Reading 12/15/13.
This ordinance was left on the Second Reading at the November 19, 2013 City Council Meeting.

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Jeremy Pate, Development Services Director 

From: Jesse Fulcher, Senior Planner

Date: October 31, 2013

Subject: VAC 13-4516 Vacation (BRENDA DRIVE, COURT STREET, WALTON STREET,
ALLEY/UNIVERSITY OF ARKANSAS)

RECOMMENDATION

Staff recommends approval of an ordinance to vacate the right-of-way of Brenda Drive, Court Street, Walton Street, and a 30-foot wide alley off of Hotz Drive.

BACKGROUND

The subject properties consist of three developed public streets and an alley right-of-way that is utilized as a driveway for an adjacent house now owned by the University of Arkansas. All four right-of-ways are located between Razorback Road and Palmer Avenue, and Hotz Drive and Center Street. Every property directly adjacent to the four right-of-ways (23 total properties) is owned by the University. Most of the structures along these streets have already been removed and temporary parking lots have been installed.

The applicant's request is to vacate three developed public streets and an alley right-of-way that has been used as a driveway, as indicated on the depicted exhibit. All four right-of-ways are surrounding by property owned by the University, including the residential driveway.

Pursuant to Arkansas Code (A.C.A), Title 14, Chapter 301 Municipal Streets Generally, cities and towns of the first and second class and incorporated towns are given power and authority to vacate public streets and alleys within the cities and towns under the conditions and in the manner herein provided.

In all cases where the owner of property within a city or town shall have dedicated, or may hereafter dedicate, a portion of the property to the public use as streets or alleys by platting the property and causing the plat to be filed for record, as provided by law, and any street or alley, or section thereof, shown on the plat so filed shall not have been actually used by the public as a street or alley for a period of five (5) years and in all cases where all property abutting any street or alley, or section thereof, is owned by any educational institution or college, whether the property shall have been actually used by the public as a street or alley for a period of five (5) years or not, the city or town council shall have power to vacate and abandon the street or alley, or any portion thereof, by proceeding the manner set forth in this subchapter.

In this particular case, all of the right-of-ways have been used by the public in the last five years, either by the residents who lived in the houses along the streets, or those attending University events. At this time, all of the houses have been removed and the property is used exclusively by the University for parking.

DISCUSSION

On October 28, 2013, the Planning Commission forwarded this item to the City Council with a recommendation of approval with a vote of 8-0-0.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE APPROVING VAC 13-4516 SUBMITTED BY DEVELOPMENT CONSULTANTS, INCORPORATED FOR PROPERTY LOCATED WEST OF RAZORBACK ROAD AND NORTH OF CENTER STREET TO VACATE THE RIGHT-OF-WAY OF BRENDA DRIVE, COURT STREET, WALTON STREET, AND A THIRTY FOOT WIDE ALLEY OFF OF HOTZ DRIVE.

WHEREAS, the City Council has the authority under A.C.A. § 14-301-301 to vacate public grounds or portions thereof which are not required for corporate purposes; and

WHEREAS, the City Council has determined that the following described portions of the platted right-of-ways and alley are not required for corporate purposes; and

WHEREAS, all property abutting said right-of-ways are owned by the University of Arkansas.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby vacates and abandons the following described right-of-ways in Exhibit B (attached).

Section 2: That a copy of this Ordinance duly certified by the City Clerk along with the map attached and labeled Exhibit A shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 3: That this vacation approval is subject to the Condition of Approval and shall not be in effect until the condition is met.

1. Development of this site shall include the construction and dedication of two public streets as indicated in Exhibit "C" attached hereto.
2. All right-of-ways shall be retained as general utility easements.
3. Any relocation or, or damage to any existing utility facilities shall be repaired at the property owners expense.

PASSED and APPROVED this day of , 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

12-4-13



Departmental Correspondence



**LEGAL
DEPARTMENT**

www.accessfayetteville.org

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, City Planning Director

FROM: Kit Williams, City Attorney

DATE: December 4, 2013

RE: Possible vacation of Brenda Drive, Court Street, Walton Street and an alley

I needed to redraft the vacation ordinance to bring it more closely into conformity with A.C.A. § 14-301-304 **Ordinance vacating street or alley**. Attached is a newly drafted vacation ordinance which I believe is in substantial compliance with A.C.A. § 14-301-304 (attached).

14-301-304

LOCAL GOVERNMENT

66

History, Acts 1945, No. 17, § 4, A.S.A. 1947, § 19-3827.

CASE NOTES

Abutting Property Owners.

In litigation involving the closing of an alley where the procedure was instituted under this section, which necessitated the written consent of the owners of all abutting lots, while the written consent of those owners actually abutting the two ends of the alley had been obtained, from the practical standpoint upon both ends of the alley being closed, the entire alley would become closed, and therefore, all abutting property owners not having given their consent, the petitioners had to fail. Roberts v. Pace, 230 Ark. 280, 322 S.W.2d 75 (1959).

This section did not repeal § 14-54-104, and the failure of parties to secure the closing of an alley under the procedure set out in this section, requiring the consent of the abutting property owners, would not be res judicata of any future litigation between the same parties instigated under § 14-54-104, the procedure there involving the closing of an alley in order to better provide for the public welfare of the inhabitants of the city. Roberts v. Pace, 230 Ark. 280, 322 S.W.2d 75 (1959).

Cited: Ellington v. Rummel, 226 Ark. 569, 293 S.W.2d 452 (1956).

14-301-304. Ordinance vacating street or alley.

(a) If the council shall find by a majority vote of its members that the petition should be granted, either in whole or in part, the decision of the council shall be incorporated in an ordinance to that effect which shall be substantially as follows:

"Whereas, a petition was duly filed with the City (or Town) Council of the City (or Town) of Arkansas, on the day of 19...., asking the City (or Town) Council to vacate and abandon all that portion of the street (or alley) designated on the plat of the Addition to the City (or Town) now appearing of record in plat book page in the office of the recorder of County, beginning at and ending at

"Whereas, after due notice as required by law, the council has, at the time and place mentioned in the notice, heard all persons desiring to be heard on the question and has ascertained that the street (or alley) or the portion thereof, hereinbefore described, has heretofore been dedicated to the public use as a street (or alley) herein described; has not been actually used by the public generally for a period of at least five (5) years subsequent to the filing of the plat; that all the owners of the property abutting upon the portion of the street (or alley) to be vacated have filed with the council their written consent to the abandonment; and that public interest and welfare will not be adversely affected by the abandonment of the street (or alley).

"Now, therefore, be it ordained by the City (or Town) Council of the City (or Town) of, Arkansas:

"Section 1. The City (or Town) of, Arkansas, releases, vacates, and abandons all its rights, together with the rights of the public generally, in and to the street (or alley) designated as follows:

67

MUNICIPAL STREETS GENERALLY

14-301-305

"Here will be designated the street or alley to be abandoned by reference to the official plat.)

"Section 2. A copy of the ordinance duly certified by the city clerk or town recorder shall be filed in the office of the recorder of the county and recorded in the deed records of the county.

"Section 3. This ordinance shall take effect and be in force from and after its passage."

History, Acts 1945, No. 17, § 5, A.S.A. 1947, § 19-3828.

CASE NOTES

Cited: Ellington v. Rummel, 226 Ark. 569, 293 S.W.2d 452 (1956).

14-301-305. Suit to reject ordinance — Evidence of consent.

(a) The determination, findings, and ordinance of the council shall be conclusive unless, within thirty (30) days after the passage of the ordinance, suit is brought to reject the ordinance in the chancery court of the county where the city or town is located.

(b) In determining whether all abutting property owners have consented to the abandonment, the official and chancery court shall be limited by the record of deeds in the office of the recorder of the county and shall not consider unrecorded instruments.

History, Acts 1945, No. 17, § 6, A.S.A. 1947, § 19-3829.

CASE NOTES

ANALYSIS

Abutting property owners. Nonabutting owners. Ordinances upheld. Res judicata.

Abutting Property Owners.

In litigation involving the closing of an alley where the procedure was instituted under § 14-301-303, which necessitated the written consent of the owners of all abutting lots, while the written consent of those owners actually abutting the two ends of the alley had been obtained, from the practical standpoint upon both ends of the alley being closed, the entire alley would become closed, and therefore, all abutting property owners not having given their consent, the petitioners had to fail. Roberts v. Pace, 230 Ark. 280, 322 S.W.2d 75 (1959).

Nonabutting Owners.

Where nonabutting owners could not show special and peculiar injury suffered in connection with the closing of a street in which city had only an easement, the nonabutting owners did not have standing to challenge city ordinance vacating and abandoning the street. Freeze v. Jones, 260 Ark. 193, 539 S.W.2d 425 (1976).

Ordinances Upheld.

Where city board of directors found that traffic on a portion of a street had declined and that closing of this portion of the street would not work a hardship on many people, and where owners of abutting property consented to closing of the street, an ordinance adopted by the board of directors vacating and abandoning the street was not ultra vires. Freeze v. Jones, 260 Ark. 193, 539 S.W.2d 425 (1976).

12-4-13

ORDINANCE NO. _____

AN ORDINANCE TO APPROVE THE UNIVERSITY OF ARKANSAS' PETITION TO VACATE BRENDA DRIVE, COURT STREET, WALTON STREET AND A THIRTY FOOT WIDE ALLEY ALL WITHIN PROPERTY OWNED BY THE UNIVERSITY OF ARKANSAS

WHEREAS, the City Council has the authority pursuant to A.C.A. § 14-301-301 et seq. to vacate streets where all property abutting said streets are owned by an educational institution; and

WHEREAS, a petition was duly filed by the University of Arkansas asking that the City vacate Brenda Drive, Court Street, Walton Street and an alley within this property; and

WHEREAS, after a public hearing was scheduled by Resolution, public notice of the public hearing was published for two consecutive weeks, and a public hearing was held on this vacation petition, the City Council has determined from the standpoint of public interest and welfare, the streets and alley should be vacated as proposed by the University of Arkansas subject to the conditions set forth below.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby vacates and abandons all of its rights together with the rights of the public generally (subject to the conditions set forth below) in and to Brenda Drive, Court Street, Walton Street and an alley within the University of Arkansas' property as described in Exhibit B (attached).

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby requests that the City Clerk certify this ordinance along with the map attached and labeled Exhibit A and then file these in the office of the recorder of the County and recorded in the deed records of the County.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby determines that this vacation approval is subject to the conditions of approval listed below and shall not be final nor in effect until all of the conditions are met:

1. Development of this University of Arkansas site shall include the construction and dedication of two public streets approximately as shown on Exhibit C (attached).

12-4-13

2. The vacated streets right of way shall be retained as general utility easements and shall be so dedicated to the City.
3. Any relocation or damage to any existing utility facilities shall be repaired at the University of Arkansas' expense.

PASSED and **APPROVED** this 17th day of December, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

EXHIBIT 'A'

VAC13-4516

U OF A

Close Up View



Legend

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

Overview

VAC13-4516

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



EXHIBIT "B"
VAC 13-4516

BRENDA DRIVE:

BRENDA DRIVE AS SHOWN ON THE OFFICIAL PLAT OF DILL ADDITION FILED FOR RECORD AT PLAT BOOK 1, PAGE 143 IN THE RECORDS OF WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF LOT 1 OF SAID DILL ADDITION; THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 105.2 FEET; THENCE AROUND THE CUL DE SAC ALONG THE EAST LINE OF SAID LOT 1 AND ALONG THE SOUTHEAST LINE OF LOT 2 AND ALONG THE SOUTHWEST LINE OF LOT 3 AND ALONG THE WEST LINE OF LOT 4 OF SAID DILL ADDITION ALONG A 37.5 FEET RADIUS CURVE TO THE RIGHT FOR A DISTANCE OF 193.4 FEET; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT 4, A DISTANCE OF 105.4 FEET TO THE SOUTHWEST CORNER OF SAID LOT 4; THENCE WESTERLY FOR A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

COURT STREET:

COURT STREET AS SHOWN ON THE OFFICIAL PLAT OF BLOCK 2 OF MCRAE ADDITION FILED FOR RECORD AT PLAT BOOK 3, PAGE 387 IN THE RECORDS OF WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF LOT 1 OF SAID BLOCK 2; THENCE NORTHERLY ALONG THE EAST LINE OF LOTS 1-3 OF SAID BLOCK 2, A DISTANCE OF 201.68 FEET TO THE POINT OF CURVATURE OF A 22 FEET RADIUS CURVE; THENCE NORTHWESTERLY ALONG THE EAST LINE OF SAID LOT 3 ALONG THE 22 FEET RADIUS CURVE TO THE LEFT FOR A DISTANCE OF 15.63 FEET TO THE POINT OF REVERSE CURVATURE FOR A 40 FEET RADIUS CURVE; THENCE AROUND THE CUL DE SAC ALONG THE EAST LINE OF SAID LOT 3 AND ALONG THE SOUTHEAST LINE OF LOT 4 AND ALONG THE SOUTH LINE OF LOT 5 AND ALONG THE SOUTHWEST LINE OF LOT 6 AND ALONG THE WEST LINE OF LOT 7 SAID BLOCK 2 ALONG THE 40 FEET RADIUS CURVE TO THE RIGHT FOR A DISTANCE OF 182.50 FEET TO THE POINT OF REVERSE CURVATURE FOR A 22 FEET RADIUS CURVE; THENCE SOUTHWESTERLY ALONG THE WEST LINE OF SAID LOT 7 ALONG THE 22 FEET RADIUS CURVE TO THE LEFT FOR A DISTANCE OF 15.63 FEET TO THE POINT OF TANGENCY; THENCE SOUTHERLY ALONG THE WEST LINE OF LOTS 7-9 OF SAID BLOCK 2, A DISTANCE OF 201.68 FEET TO THE SOUTHWEST CORNER OF SAID LOT 9; THENCE WESTERLY FOR A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

30' ALLEY:

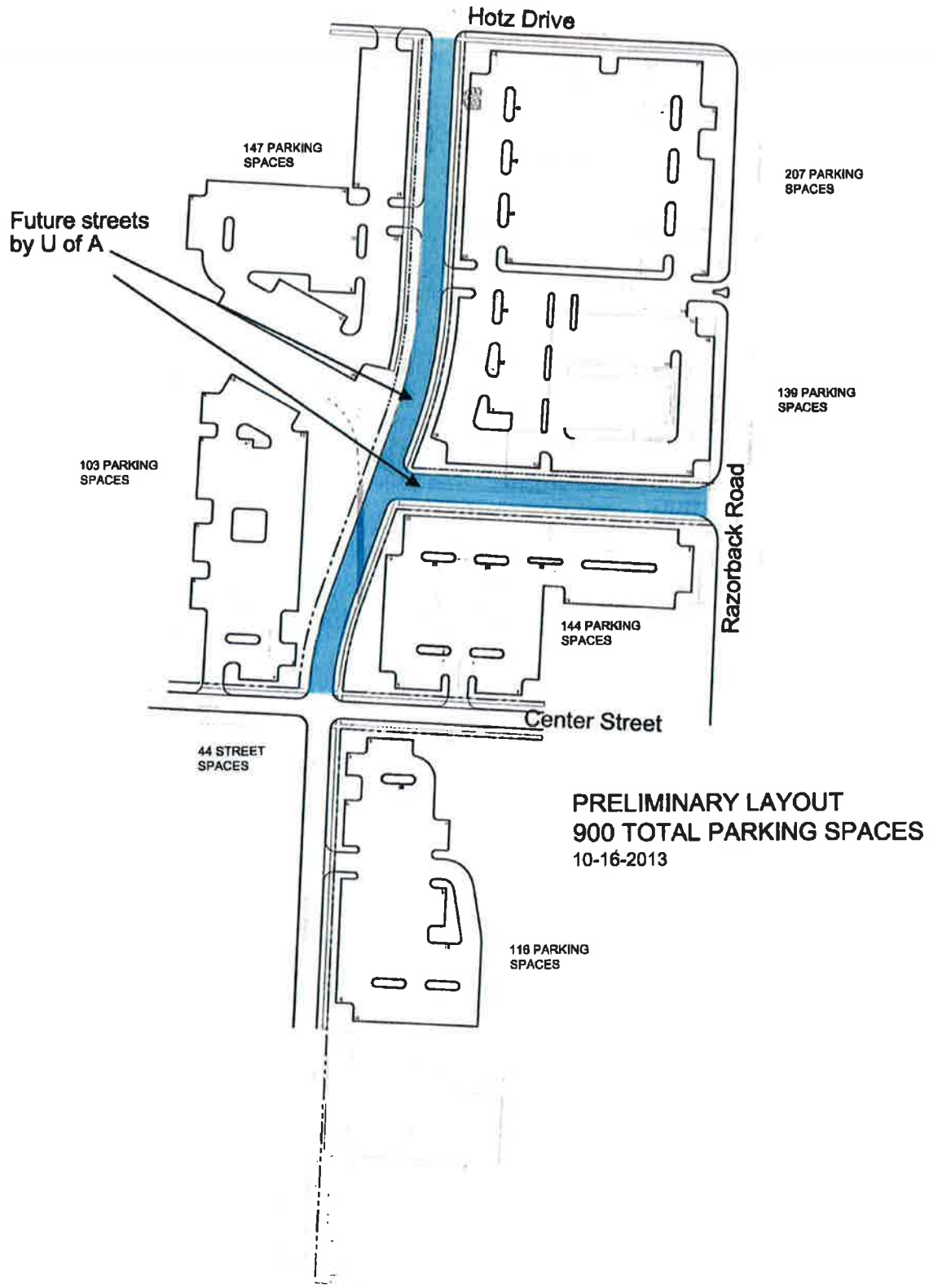
THE 30 FEET WIDE ALLEY BETWEEN LOTS 18 AND 19 AND SOUTH OF LOT 19 OF HOTZ REVISED ADDITION AS SHOWN ON THE OFFICIAL PLAT OF HOTZ REVISED ADDITION FILED FOR RECORD AT PLAT BOOK 1, PAGE 213 IN THE RECORDS OF WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 18; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT 18, A DISTANCE OF 192.68 FEET TO THE SOUTHWEST CORNER OF SAID LOT 18; THENCE WESTERLY FOR A DISTANCE OF 58.64 FEET TO THE EAST LINE OF LOT 5 OF BLOCK 1 OF MCRAE ADDITION; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT 5, A DISTANCE OF 30.00 FEET TO THE SOUTH LINE OF LOT 19 OF HOTZ REVISED ADDITION; THENCE EASTERLY ALONG THE SOUTH LINE OF SAID LOT 19, A DISTANCE OF 29.12 FEET TO THE SOUTHEAST CORNER OF SAID LOT 19; THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOT 19, A DISTANCE OF 164.68 FEET TO THE NORTHEAST CORNER OF SAID LOT 19; THENCE EASTERLY FOR A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

WALTON STREET:

1. WALTON STREET AS SHOWN ON THE OFFICIAL PLAT OF BLOCK 1 OF MCRAE ADDITION FILED FOR RECORD AT PLAT BOOK 3, PAGE 305 IN THE RECORDS OF WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF LOT 5 OF SAID BLOCK 1; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID LOT 5, A DISTANCE OF 48.45 FEET TO THE POINT OF CURVATURE OF A 22 FEET RADIUS CURVE; THENCE NORTHWESTERLY ALONG THE SOUTH LINE OF SAID LOT 5 ALONG THE 22 FEET RADIUS CURVE TO THE RIGHT FOR A DISTANCE OF 15.63 FEET TO THE POINT OF REVERSE CURVATURE FOR A 40 FEET RADIUS CURVE; THENCE AROUND THE CUL DE SAC ALONG THE SOUTH LINE OF SAID LOT 5 AND ALONG THE EAST LINES OF LOTS 3 & 4 AND ALONG THE NORTH LINES OF LOTS 1 & 2 OF SAID BLOCK 1 ALONG THE 40 FEET RADIUS CURVE TO THE LEFT FOR A DISTANCE OF 182.50 FEET TO THE POINT OF REVERSE CURVATURE FOR A 22 FEET RADIUS CURVE; THENCE NORTHEASTERLY ALONG THE NORTH LINE OF SAID LOT 1 ALONG THE 22 FEET RADIUS CURVE TO THE RIGHT FOR A DISTANCE OF 15.63 FEET TO THE POINT OF TANGENCY; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 48.45 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE NORTHERLY FOR A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

2. WALTON STREET AS DESCRIBED IN WARRANTY DEED 526, PAGE 558 IN THE RECORDS OF WASHINGTON COUNTY, ARKANSAS BEING A PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION SEVENTEEN (17) IN TOWNSHIP SIXTEEN (16) NORTH, OF RANGE THIRTY (30) WEST OF THE 5TH P.M., DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS FOUR HUNDRED SEVENTY FIVE AND TWELVE HUNDREDTHS (475.12) FEET NORTH AND TWENTY NINE (29) FEET WEST OF THE SOUTHEAST CORNER OF SAID FORTY ACRE TRACT, AND RUNNING THENCE WEST THREE HUNDRED EIGHTY-NINE (389) FEET; THENCE NORTH FIFTY (50) FEET; THENCE EAST THREE HUNDRED EIGHTY-NINE (389) FEET; THENCE SOUTH FIFTY (50) FEET TO THE PLACE OF BEGINNING, CONTAINING ONE-HALF OF AN ACRE, MORE OR LESS

EXHIBIT "C"

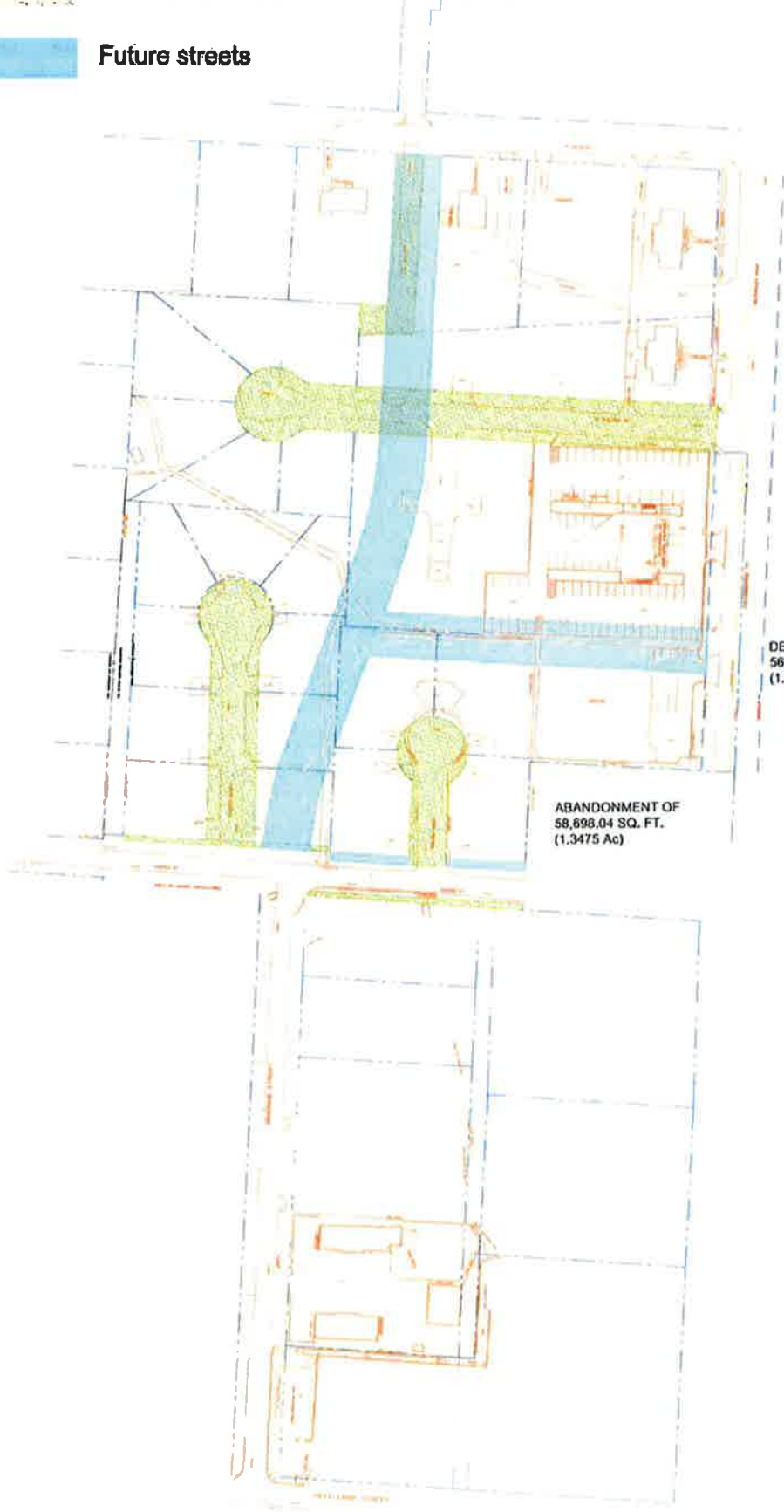


PRELIMINARY LAYOUT
900 TOTAL PARKING SPACES
10-16-2013

EXHIBIT "C"

 ROW to be vacated

 Future streets



DEDICATION OF
56,708.32 SQ. FT.
(1.3018 Ac)

ABANDONMENT OF
58,696.04 SQ. FT.
(1.3475 Ac)



PC Meeting of October 28, 2013

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
 FROM: Jesse Fulcher, Senior Planner
 THRU: Andrew Garner, City Planning Director
 DATE: ~~October 22, 2013~~ Updated October 31, 2013

VAC 13-4516: Vacation (BRENDA DRIVE, COURT STREET, WALTON STREET, ALLEY/UNIVERSITY OF ARKANSAS, 482): Submitted by DEVELOPMENT CONSULTANTS, INC. for properties located WEST OF RAZORBACK ROAD AND NORTH OF CENTER STREET. The request is to vacate the right-of-way of Brenda Drive, Court Street, Walton Street, and a 30-foot wide alley off of Hotz Drive.

Planner: Jesse Fulcher

Findings:

Property and Background: The subject properties consist of three developed public streets and an alley right-of-way that is utilized as a driveway for an adjacent house now owned by the University of Arkansas. All four right-of-ways are located between Razorback Road and Palmer Avenue, and Hotz Drive and Center Street. Every property directly adjacent to the four right-of-ways (23 total properties) is owned by the University. Most of the structures along these streets have already been removed and temporary parking lots have been installed. Surrounding land use and zoning is depicted in *Table 1*.

**Table 1
 Surrounding Land Use and Zoning**

Direction from Site	Land Use	Zoning
North	Single-family on Hotz Drive	RSF-4, Residential Single-Family 4 Units per Acre
South	Single/Multi-family on Center Street	RMF-24, Residential Multi-Family 24 Units per Acre
East	University of Arkansas buildings	RMF-24, Residential Multi-Family 24 Units per Acre
West	Single-family on Palmer Avenue	RSF-4, Residential Single-Family 4 Units per Acre

Request: The applicant's request is to vacate three developed public streets and an alley right-of-way that has been used as a driveway, as indicated on the depicted exhibit. All four right-of-ways are surrounding by property owned by the University, including the residential driveway.

Pursuant to Arkansas Code (A.C.A), Title 14, Chapter 301 Municipal Streets Generally, cities and towns of the first and second class and incorporated towns are given power and authority to vacate public streets and alleys within the cities and towns under the conditions and in the manner herein provided.

In all cases where the owner of property within a city or town shall have dedicated, or may hereafter dedicate, a portion of the property to the public use as streets or alleys by platting the property and causing the plat to be filed for record, as provided by law, and any street or alley, or section thereof, shown on the plat so filed shall not have been actually used by the public as a street or alley for a period of five (5) years *and in all cases where all property abutting any street or alley, or section thereof, is owned by any educational institution or college, whether the property shall have been actually used by the public as a street or alley for a period of five (5) years or not, the city or town council shall have power to vacate and abandon the street or alley, or any portion thereof, by proceeding the manner set forth in this subchapter.*

In this particular case, all of the right-of-ways have been used by the public in the last five years, either by the residents who lived in the houses along the streets, or those attending University events. At this time, all of the houses have been removed and the property is used exclusively by the University for parking.

Easement Vacation Approval: The applicant has submitted the required right-of-way vacation forms to the City Utilities Departments, franchise utilities, and adjacent property owners (the University of Arkansas) with no objections.

UTILITIES

RESPONSE

Ozarks Electric	No objections
Cox Communications	No objections
AEP/SWEPCO	No objections, but retain right-of-ways as easements.
Source Gas	No objections
AT&T	No objections

CITY OF FAYETTEVILLE:

RESPONSE

Water/Sewer	No objections
Transportation	No objections
Solid Waste	No objections

ADJACENT PROPERTY OWNER:

RESPONSE

University of Arkansas	No objections
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Public Comment: No public comment has been received.

Recommendation: This is a unique request, in that the applicant is requesting to vacate public streets that have used by the public for many decades. Removing streets tends to reduce connectivity within a neighborhood, which is contrary to the City's adopted policies. However, in this particular case, all four of the right-of-ways dead-end into University property and provide no connectivity within the neighborhood. Further, it is the University's plan to redevelop this entire area, including constructing two new streets that will increase connectivity in the neighborhood. In staff's opinion, the long-term plan for this block of property will greatly increase connectivity for the neighborhood, University students, and those attending athletic events. Staff recommends forwarding VAC 13-4516 to the City Council with a recommendation for approval with the following conditions:

1. **Development of this site shall include the construction and dedication of two public streets as indicated in Exhibit "C" attached hereto.**
2. **All right-of-ways shall be retained as general utility easements.**
3. **Any relocation or, or damage to any existing utility facilities shall be repaired at the property owners expense.**

CITY COUNCIL ACTION: Required

PLANNING COMMISSION ACTION: Required

Planning Commission Action: Forwarded Denied Tabled

Date: October 28, 2013

Motion: Chesser
Second: Pennington
Vote: 8-0-0

Notes:



1450 E. Zion Road – Suite 7
Fayetteville, AR 72703

File No.: 13-3101

For the use and benefit of: **Development Consultants, Inc**

STATE OF ARKANSAS)
COUNTY OF WASHINGTON)

We the undersigned, being an employee of City Title & Closing LLC, do hereby certify that we have made due and diligent search of the Records in the Assessor's Office within and for Washington County, Arkansas, and find the adjacent owners, which touch the subject property, and addresses as shown in Exhibit "A".

IN-SO-FAR as the same affects the following described property, to-wit:

Brenda Drive, Court Street, West Walton Street and the 30' alley between Lots 18 and 19 and South of Lot 19 of Hotz Addition, in the City of Fayetteville, Washington County, Arkansas..

Dated September 10, 2013

City Title & Closing LLC
1450 E. Zion Road, Suite 7
Fayetteville, AR 72703
479-935-4177

A handwritten signature in black ink, appearing to read 'Jessica L. Wooten', is written over the printed name.

By:
Jessica L. Wooten, Authorized Signatory
Agency License No. 382820
Signing Agent No. 324795

****DISCLAIMER****

This report is being issued from the dates specified above and does not make any representation as to the status or validity of the title and the company assumes no liability by virtue of errors of omission and liability of the company shall not exceed the amount paid for the search.

Exhibit "A"

Parcel Nos.

765-06484-000	765-04742-000
765-06482-000	765-04741-000
765-06483-000	765-04740-000
765-14513-000	765-05219-000
765-08273-000	765-08281-000
765-08272-000	765-08280-000
765-08271-000	765-08279-000
765-08270-000	765-08278-000
765-08269-000	765-08277-000
765-14517-000	765-08276-000
765-14517-001	765-08275-000
765-14508-000	765-08274-000
765-04743-000	

**University of Arkansas
Board of Trustees
316 Administration Bldg
Fayetteville, AR 72701**

**Parcel No. 765-05227-000
Smith Revocable Trust
5835 E Estate View Road
Fayetteville, AR 72703**

****DISCLAIMER****

This report is being issued from the dates specified above and does not make any representation as to the status or validity of the title and the company assumes no liability by virtue of errors of omission and liability of the company shall not exceed the amount paid for the search.

**ADJACENT PROPERTY OWNER WRITTEN CONSENT FORM
FOR STREET AND ALLEY VACATION REQUEST**

Date: September 18, 2013

Location of Vacation: Brenda Drive, Court Street, Walton Street and the 30' Alley between Lots 18 & 19 and south of Lot 19 of Hotz Revised Addition, City of Fayetteville, Arkansas

Adjacent Property Owner: University of Arkansas
Adjacent Property Address: Various along Brenda Dr, Court St, Walton St, Hotz Dr, & Razorback Rd
Property: Lots 1-4 of Dill Addition, Lots 1-5 of Block 1 of McRae Addition, Lots 1-9 of Block 2 of McRae Addition, Lots 18-19 of Hotz Revised Addition and Parts of the SW1/4 NE1/4 Section 17, T16N, R30W all in the City of Fayetteville

REQUESTED VACATION:

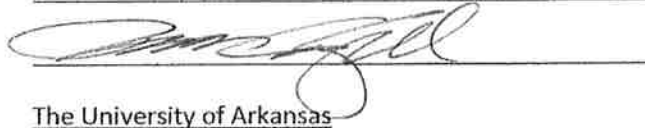
I have requested the petition and I consent to vacate the following streets and alley, as described on the attached legal description and as shown on the attached sketch:

In the matter of the vacation of the aforesaid streets and alley, Allen J. Young of Development Consultants, Inc is authorized to process the petition on my behalf.

Printed Name of Adjacent Owner:

Board of Trustees of The University of Arkansas

Signature of Adjacent Owner:



Applicant Name:

The University of Arkansas

UTILITY APPROVAL FORM

**FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS**

DATE: 9-16-2013

UTILITY COMPANY: AEP-SWEPCO

APPLICANT NAME: Allen J. Young, DCI, For UoFA APPLICANT PHONE: 479-444-7880
REQUESTED VACATION (applicant must check all that apply):

- Utility Easement
- Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- Alley
- Street right-of-way

I have been notified of the petition to vacate the following (alley, easement, right-of-way), described as follows:

General location Address (referring to attached document- must be completed**)

** Brenda Drive, Court Street, Walton Street, 30' Alley south from Home Dr.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

[See attached Legal Description, Survey and Exhibit Maps.]

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

Retain all of the right of ways and alleys as
utility easements.

- No objections provided the following conditions are met:

John Boyer
Signature of Utility Company Representative

Dist. Engineer
Title

UTILITY APPROVAL FORM

**FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS**

DATE: 9-16-2013

UTILITY COMPANY: _____

APPLICANT NAME: Allen J. Young, DCI, For UoFA APPLICANT PHONE: 479-444-7880
REQUESTED VACATION (*applicant must check all that apply*):

- Utility Easement
- Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- Alley
- Street right-of-way

I have been notified of the petition to vacate the following (alley) easement, (right-of-way), described as follows:

General location/ Address (referring to attached document- must be completed)**)

** Brenda Drive, Court Street, Walton Street, 30' Alley south from Hotz Dr.

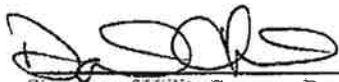
(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

[See attached Legal Description, Survey and Exhibit Maps.]

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

No objections provided the following conditions are met:



Signature of Utility Company Representative

Division Manager

Title

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: 9-16-2013

UTILITY COMPANY: _____

APPLICANT NAME: Allen J. Young, DCI, For UoFA APPLICANT PHONE: 479-444-7880
REQUESTED VACATION (*applicant must check all that apply*):

- Utility Easement
- Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- Alley
- Street right-of-way

I have been notified of the petition to vacate the following alley, easement, right-of-way, described as follows:

General location/ Address (referring to attached document- must be completed**)

** Brenda Drive, Court Street, Walton Street, 30' Alley south from Home Dr.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

[See attached Legal Description, Survey and Exhibit Maps.]

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:

Greg McGee

Signature of Utility Company Representative

Lead Staking Tech

Title

UTILITY APPROVAL FORM

**FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS**

DATE: 9-16-2013

UTILITY COMPANY: _____

APPLICANT NAME: Allen J. Young, DCI, For UoFA APPLICANT PHONE: 479-444-7880
REQUESTED VACATION (applicant must check all that apply):

- Utility Easement
- Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- Alley
- Street right-of-way

I have been notified of the petition to vacate the following alley, easement, right-of-way, described as follows:

General location/ Address (referring to attached document- must be completed**)

** Brenda Drive, Court Street, Walton Street, 30' Alley south from Hotz Dr.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

[See attached Legal Description, Survey and Exhibit Map.]

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

No objections provided the following conditions are met:

Any damage to or relocation of existing facilities will be at owners/developers expense.

Ad S. J. Y.
Signature of Utility Company Representative

Construction Planner III NWA
Title

UTILITY APPROVAL FORM

**FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS**

DATE: 9-16-2013

UTILITY COMPANY: _____

APPLICANT NAME: Allen J. Young, DCI, For UoFA APPLICANT PHONE: 479-444-7880
REQUESTED VACATION (*applicant must check all that apply*):

- Utility Easement
- Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- Alley
- Street right-of-way

I have been notified of the petition to vacate the following (alley easement, right-of-way), described as follows:

General location/ Address (referring to attached document- must be completed**)

** Brenda Drive, Court Street, Walton Street, 30' Alley south from Hotz Dr.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

[See attached Legal Description, Survey and Exhibit Map.]

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

No objections provided the following conditions are met:

RELOCATION OF OR DAMAGE TO ANY EXISTING AT/SUBST FACILITIES
WILL BE CARED FOR ^{AT} BY THE PROPERTY OWNER'S EXPENSE

Susan K. Clouser
Signature of Utility Company Representative

OSP DESIGN ENGINEER
Title

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: 9-16-2013

UTILITY COMPANY: City of Fayetteville - Water/Sewer

APPLICANT NAME: Allen J. Young, DCI, Fu. UoA APPLICANT PHONE: 479-444-7880
REQUESTED VACATION (applicant must check all that apply):

- Utility Easement
- Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- Alley
- Street right-of-way

I have been notified of the petition to vacate the following (alley, easement, (right-of-way)), described as follows:

General location/ Address (referring to attached document- must be completed**)

** Brenda Drive, Court Street, Walton Street, 30' Alley south from Hotel Dr.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

[See attached Legal Description, Survey and Exhibit 1440.]

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:

Shannon Jones
Signature of Utility Company Representative

Utilities Engineer
Title

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: 9-16-2013

UTILITY COMPANY: _____

APPLICANT NAME: Allen J. Young, DCI, For UoA APPLICANT PHONE: 479-444-7880
REQUESTED VACATION (*applicant must check all that apply*):

- Utility Easement
- Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- Alley
- Street right-of-way

I have been notified of the petition to vacate the following (alley, easement, right-of-way), described as follows:

General location/ Address (referring to attached document- must be completed**)

** Brenda Drive, Court Street, Walton Street, 30' Alley south from Horz Dr.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

[See attached Legal Description, Survey and Exhibit 149.]

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:


Signature of Utility Company Representative
ASSISTANT TRANSPORTATION MANAGER
Title

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: 9-16-2013

UTILITY COMPANY: _____

APPLICANT NAME: Allen J. Young, DCI, For UoFA APPLICANT PHONE: 479-444-7880
REQUESTED VACATION (*applicant must check all that apply*):

- Utility Easement
- Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- Alley
- Street right-of-way

I have been notified of the petition to vacate the following (alley) easement, (right-of-way), described as follows:

General location/ Address (referring to attached document- must be completed**) _____

** Brenda Drive, Court Street, Walton Street, 30' Alley south from Hotz Dr.

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

[See attached Legal Description, Survey and Exhibit Map.]

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

 No objections provided the following conditions are met:

Brian Puff

Signature of Utility Company Representative

Waste Reduction Coordinator

Title

Street and Alley Vacation Legal Descriptions

Brenda Drive:

Brenda Drive as shown on the official plat of Dill Addition filed for record at Plat Book 1, Page 143 in the records of Washington County, Arkansas, being more particularly described as follows: Beginning at the southeast corner of Lot 1 of said Dill Addition; Thence northerly along the east line of said Lot 1, a distance of 105.2 feet; Thence around the cul de sac along the east line of said Lot 1 and along the southeast line of Lot 2 and along the southwest line of Lot 3 and along the west line of Lot 4 of said Dill Addition along a 37.5 feet radius curve to the right for a distance of 193.4 feet; Thence southerly along the west line of said Lot 4, a distance of 105.4 feet to the southwest corner of said Lot 4; Thence westerly for a distance of 40.00 feet to the Point of Beginning.

Court Street:

Court Street as shown on the official plat of Block 2 of McRae Addition filed for record at Plat Book 3, Page 387 in the records of Washington County, Arkansas, being more particularly described as follows: Beginning at the southeast corner of Lot 1 of said Block 2; Thence northerly along the east line of Lots 1-3 of said Block 2, a distance of 201.68 feet to the point of curvature of a 22 feet radius curve; Thence northwesterly along the east line of said Lot 3 along the 22 feet radius curve to the left for a distance of 15.63 feet to the point of reverse curvature for a 40 feet radius curve; Thence around the cul de sac along the east line of said Lot 3 and along the southeast line of Lot 4 and along the south line of Lot 5 and along the southwest line of Lot 6 and along the west line of Lot 7 said Block 2 along the 40 feet radius curve to the right for a distance of 182.50 feet to the point of reverse curvature for a 22 feet radius curve; Thence southwestwesterly along the west line of said Lot 7 along the 22 feet radius curve to the left for a distance of 15.63 feet to the point of tangency; Thence southerly along the west line of Lots 7-9 of said Block 2, a distance of 201.68 feet to the southwest corner of said Lot 9; Thence westerly for a distance of 50.00 feet to the Point of Beginning.

30' Alley:

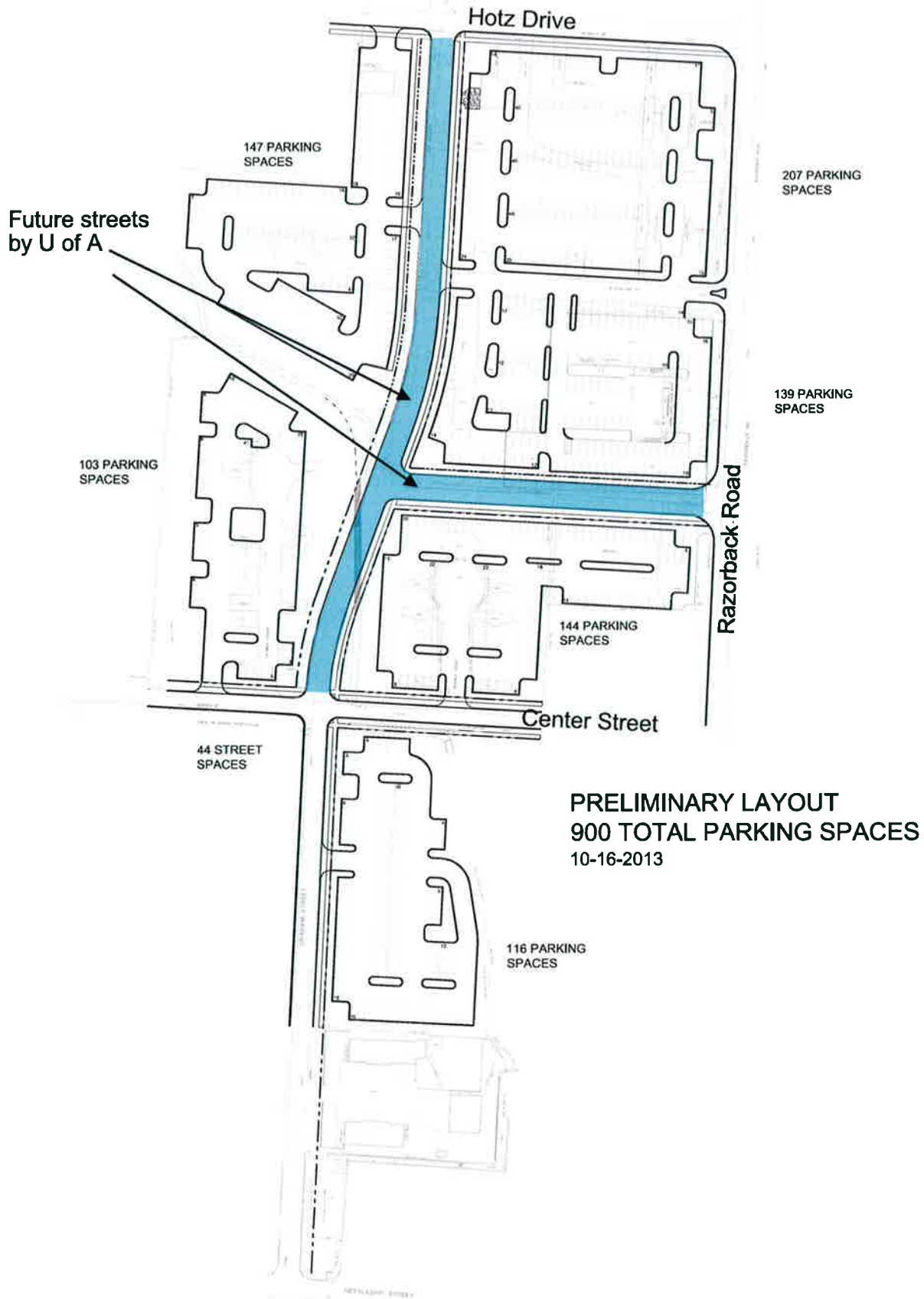
The 30 feet wide Alley between Lots 18 and 19 and south of Lot 19 of Hotz Revised Addition as shown on the official plat of Hotz Revised Addition filed for record at Plat Book 1, Page 213 in the records of Washington County, Arkansas, being more particularly described as follows: Beginning at the northwest corner of said Lot 18; Thence southerly along the west line of said Lot 18, a distance of 192.68 feet to the southwest corner of said Lot 18; Thence westerly for a distance of 58.64 feet to the east line of Lot 5 of Block 1 of McRae Addition; Thence northerly along the west line of said Lot 5, a distance of 30.00 feet to the south line of Lot 19 of Hotz Revised Addition; Thence easterly along the south line of said Lot 19, a distance of 29.12 feet to the southeast corner of said Lot 19; Thence northerly along the east line of said Lot 19, a distance of 164.68 feet to the northeast corner of said Lot 19; Thence easterly for a distance of 30.00 feet to the Point of Beginning.

Walton Street:

1. Walton Street as shown on the official plat of Block 1 of McRae Addition filed for record at Plat Book 3, Page 305 in the records of Washington County, Arkansas, being more particularly described as follows: Beginning at the southeast corner of Lot 5 of said Block 1;

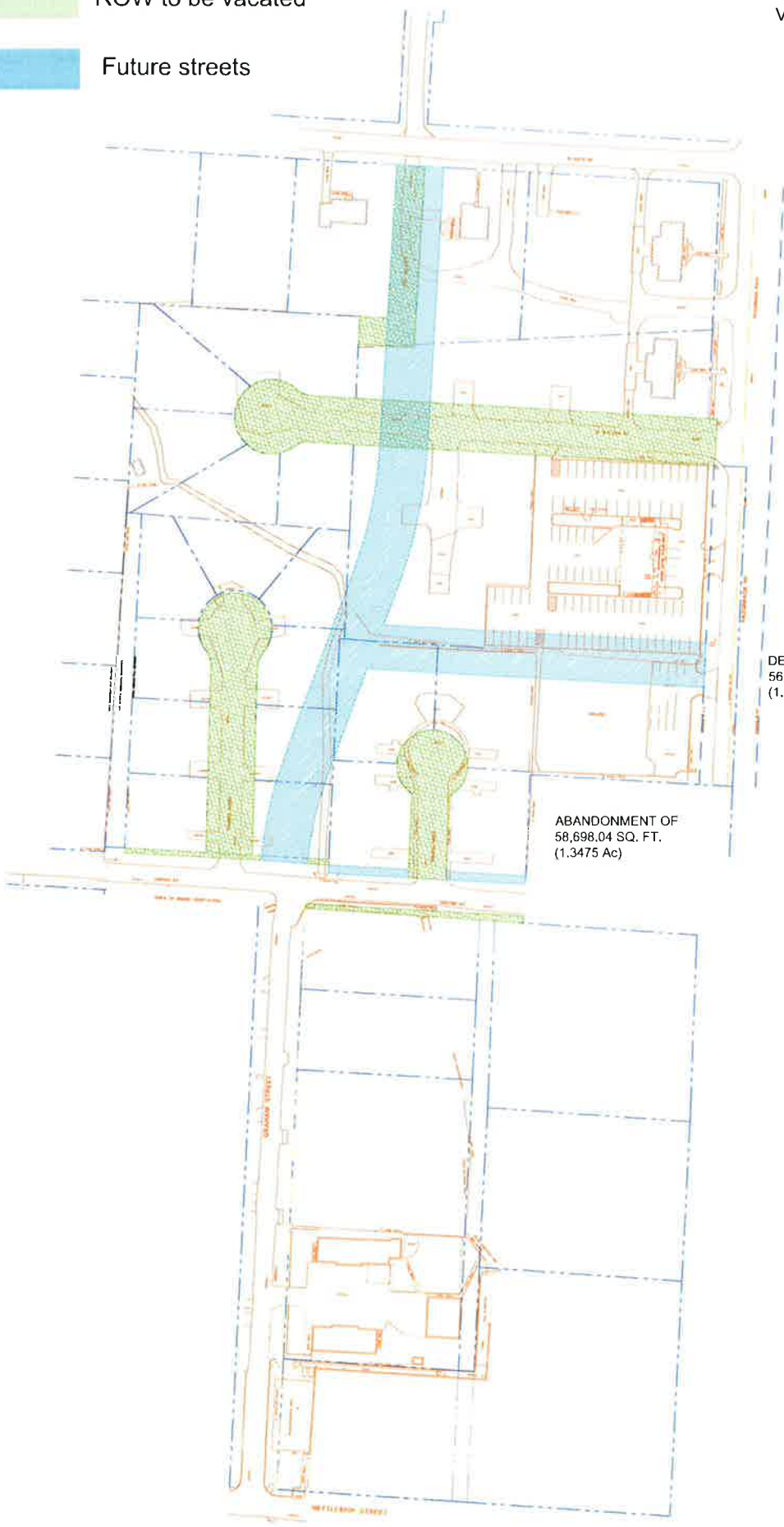
Thence westerly along the south line of said Lot 5, a distance of 48.45 feet to the point of curvature of a 22 feet radius curve; Thence northwesterly along the south line of said Lot 5 along the 22 feet radius curve to the right for a distance of 15.63 feet to the point of reverse curvature for a 40 feet radius curve; Thence around the cul de sac along the south line of said Lot 5 and along the east lines of Lots 3 & 4 and along the north lines of Lots 1 & 2 of said Block 1 along the 40 feet radius curve to the left for a distance of 182.50 feet to the point of reverse curvature for a 22 feet radius curve; Thence northeasterly along the north line of said Lot 1 along the 22 feet radius curve to the right for a distance of 15.63 feet to the point of tangency; Thence easterly along the north line of said Lot 1, a distance of 48.45 feet to the northeast corner of said Lot 1; Thence northerly for a distance of 50.00 feet to the Point of Beginning.

2. Walton Street as described in Warranty Deed 526, Page 558 in the records of Washington County, Arkansas being a Part of the Southwest quarter of the Northeast quarter of Section seventeen (17) in Township sixteen (16) North, of Range thirty (30) west of the 5th P.M., described as follows, to-wit: Beginning at a point which is four hundred seventy five and twelve hundredths (475.12) feet North and twenty nine (29) feet West of the Southeast corner of said forty acre tract, and running thence West three hundred eighty-nine (389) feet; thence North fifty (50) feet; thence East three hundred eighty-nine (389) feet; thence south fifty (50) feet to the place of beginning, containing one-half of an acre, more or less.



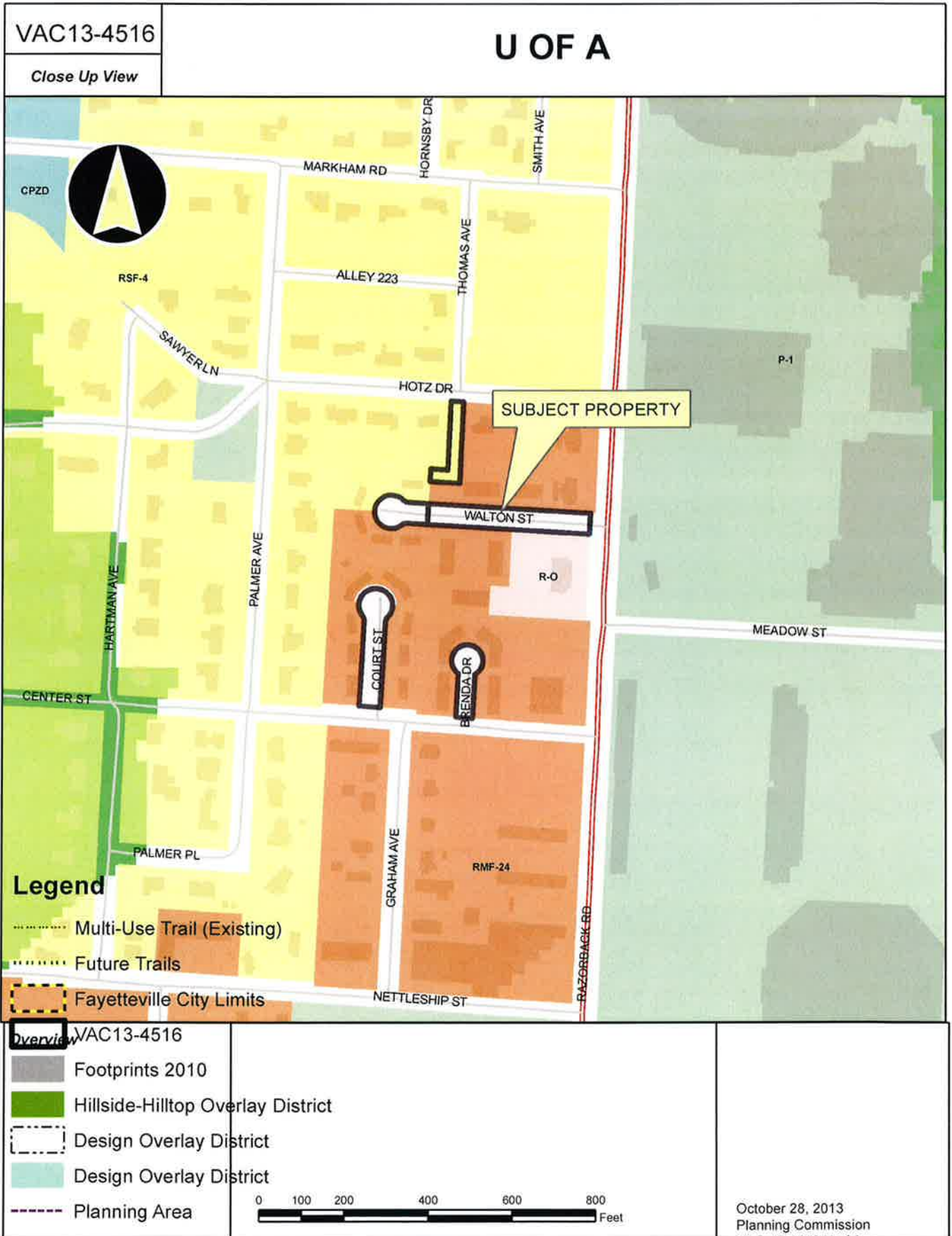
 ROW to be vacated

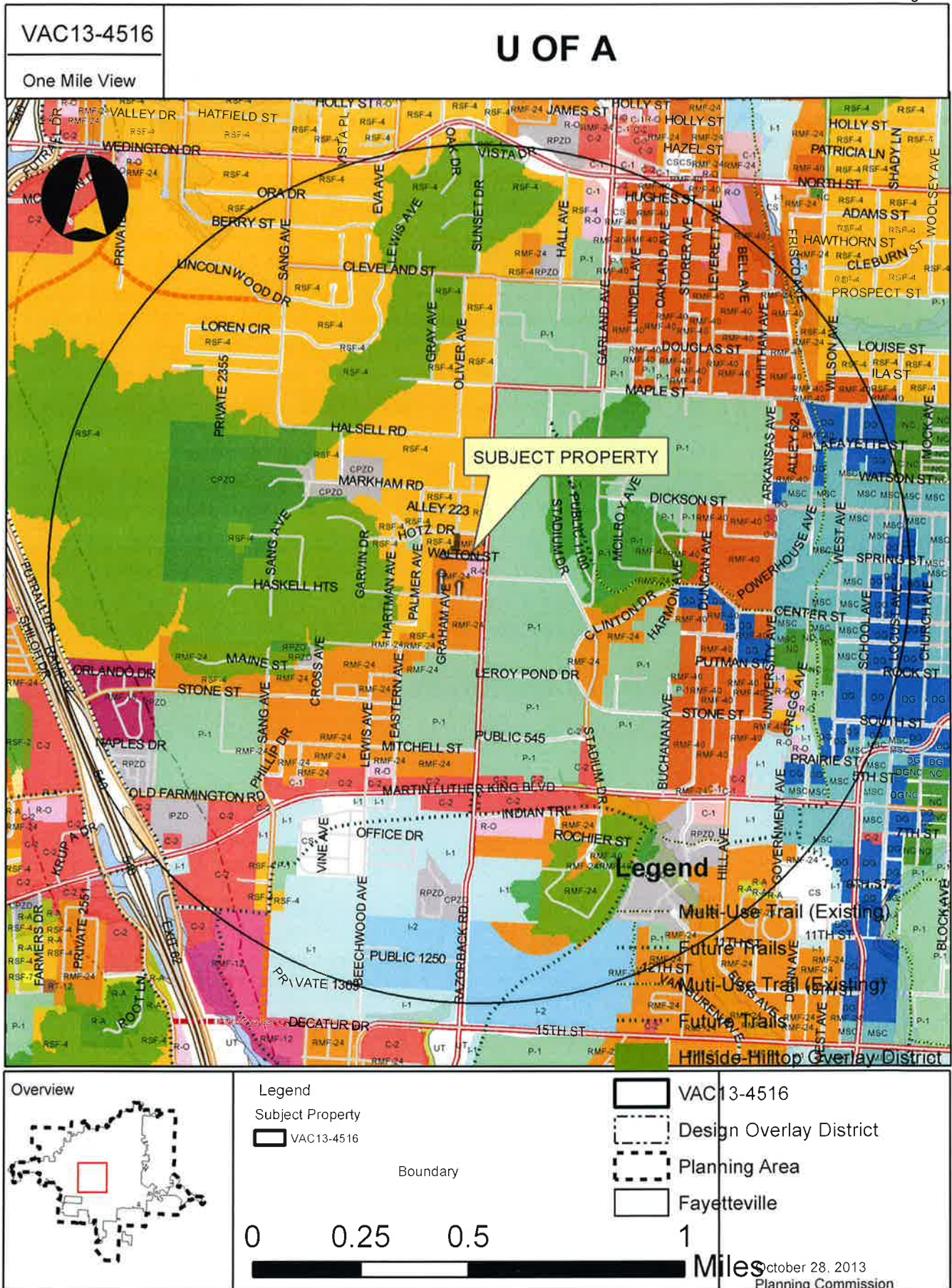
 Future streets



DEDICATION OF
56,708.32 SQ. FT.
(1.3018 Ac)

ABANDONMENT OF
58,698.04 SQ. FT.
(1.3475 Ac)







Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
Sondra Smith, City Clerk/Treasurer
Jeremy Pate, Development Services Director

FROM: Kit Williams, City Attorney

DATE: November 26, 2013

RE: Vacation of street pursuant to A.C.A. § 14-301-301

I think we need to more closely follow the statutory procedures set forth in A.C.A. § 14-301-302 and 303 prior to vacating the streets as requested by the U of A. Our power to vacate streets stated in A.C.A. § 14-301-301 ends: "the city or town council shall have the power to vacate and abandon the street or alley, or any portion thereof, **by proceeding in the manor set forth in this subchapter.**" (emphasis added).

The next section requires the owners of the property abutting to file a petition requesting vacation. I assume our vacation application may suffice for this statutorily required petition. However, the City Council at its next meeting is supposed to "by resolution fix a day for the hearing of the petition" We need to present a Resolution fulfilling this requirement. Then "the city clerk (needs) to give notice of the meeting by publication once a week for two (2) consecutive weeks in some newspaper having a general circulation in the city"

We can still go forward to vacate the streets pursuant to our power in A.C.A. § 14-54-104 although at least our Appellate Court has held that an existing street should be vacated under A.C.A. § 14-301-301 instead of A.C.A. § 14-54-104.

RESOLUTION NO. _____

A RESOLUTION TO FIX THE DATE FOR HEARING THE UNIVERSITY OF ARKANSAS' REQUEST TO VACATE BRENDA DRIVE, COURT STREET AND WALTON STREET ON DECEMBER 17, 2013 AT 6:00 P.M. IN THE CITY COUNCIL CHAMBERS, ROOM 219 OF THE CITY ADMINISTRATION BUILDING

WHEREAS, City Clerk Sondra Smith is requested to publish notice of the hearing date on the petition of the University of Arkansas to vacate Brenda Drive, Court Street and Walton Street once a week for two weeks pursuant to A.C.A. § 14-301-302.

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 fixes the date for hearing the University of Arkansas' request to vacate Brenda Drive, Court Street and Walton Street on December 17, 2013 at 6:00 p.m. in the City Council chambers, Room 219 of the City Administration building.

PASSED and APPROVED this 3rd day of December 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

