

**City of Fayetteville Staff Review Form**

**2015-0169**

**Legistar File ID**

**4/7/2015**

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

Jeremy Pate

3/20/2015

City Planning /  
Development Services Department

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

LSP 15-4985: Lot Split (NW CORNER OF BERSEIS DR. & CASSIUS LN./LOT 62 LIERLY LANE S/D, 244): Submitted by JORGENSEN & ASSOCIATES for property located at NW CORNER OF BERSEIS DR. & CASSIUS LN. The property is zoned RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE, and contains approximately 3.70 acres. The request is to amend Resolution 162-10 revising the Council approved site plan.

**Budget Impact:**

Account Number	Fund
Project Number	Project Title
<b>Budgeted Item?</b> <u>NA</u>	Current Budget            \$            -
	Funds Obligated            \$            -
	Current Balance            \$            -
<b>Does item have a cost?</b> <u>No</u>	Item Cost
<b>Budget Adjustment Attached?</b> <u>NA</u>	Budget Adjustment
	Remaining Budget            \$            -

V20140710

Previous Ordinance or Resolution # \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

Approval Date: \_\_\_\_\_

Comments:



## CITY COUNCIL AGENDA MEMO

### MEETING OF APRIL 7, 2015

**TO:** Fayetteville City Council

**THRU:** Andrew Garner, City Planning Director

**FROM:** Quin Thompson, Current Planner

**DATE:** March 20, 2015

**SUBJECT:** **LSP 15-4985: Lot Split (NW CORNER OF BERSEIS DR, & CASSIUS LN./LOT 62 LIERLY LANE S/D, 244):** Submitted by JORGENSEN & ASSOCIATES for property located at NW CORNER OF BERSEIS DR. & CASSIUS LN. The property is zoned RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE, and contains approximately 3.70 acres. The request is to amend Resolution 162-10 revising the Council approved site plan.

### RECOMMENDATION:

The planning staff recommend approval of a resolution amending Resolution 162-10 revising the Council approved site plan for Lot 62 of the Lierly sub-division.

### BACKGROUND:

The Lierly Lane Subdivision is located within the city limits, north of Clabber Creek and adjacent to the City's northwest Planning Area boundary. The subdivision was approved in 2005 for development in Washington County, to county standards, with a decentralized community septic system. In 2006, the developers petitioned the City of Fayetteville to permit public sanitary sewer to be extended outside the city limits and into the development, which requires City Council approval. The City Council voted to approve the Resolution (76-06) with several stipulations, which included requiring the developer to submit for annexation, payment of impact fees, installation of infrastructure, etc. As part of the agreement, the developer secured rights to construct 16 duplex lots and 43 single-family lots, for a total of 75 dwelling units on 59 buildable lots. The property was eventually annexed, infrastructure installed, and several of the lots were developed.

In August 2010, the City Council amended Resolution 162-10 (attached) to permit the applicant to reduce the amount of duplex units and to increase the number of single-family dwellings on a select 10 lots within the Lierly Lane Subdivision, and required that a portion of Lot 62 be retained as a developed park containing approximately 2.5 acres, formerly the location planned for a community septic area.

Resolution 162-10 required that the park must be developed and open to public use before more than 8 lots were developed. Four of those lots have been developed to date; four more may be developed before the park must be complete.

**DISCUSSION:**

In staff opinion, the proposed plat revision meets City development requirements, and all of the stipulations required by the Council under Resolution 76-06, but must receive Council approval.

**BUDGET/STAFF IMPACT:**

N/A

**Attachments:**

CC Ordinance

Exhibit A

EXHIBIT B (from Res 162-10)

Exhibit C (from Res 162-10)

Exhibit D (from Res 162-10)

Resolution 162-10 (Sept 7, 2010)

**RESOLUTION NO. 162-10**

A RESOLUTION TO AMEND RESOLUTION NO. 76-06 TO AMEND THE SITE PLAN TO REPLACE FIVE DUPLEX LOTS WITH SINGLE FAMILY LOTS AND CHANGE THE LOT ONCE DESIGNATED FOR THE DECENTRALIZED COMMUNITY SEPTIC SYSTEM TO SINGLE FAMILY LOTS AND A DEVELOPED PARK OF ABOUT 2.5 ACRES

**WHEREAS**, on April 1, 2006, the Fayetteville City Council approved Resolution No. 76-06 allowing extension of city sewer to Lierly Lane Subdivision which adjoined our city limits and approved an Annexation Agreement with the development; and

**WHEREAS**, the developer complied and annexed this subdivision into the city of Fayetteville and several lots have been developed with houses or duplexes built; and

**WHEREAS**, the new owner of the Lierly Lane Subdivision wishes to change five duplex lots to single family lots and utilize a portion of the unconstructed community septic system lot for additional single family lots and a developed park of about 2.5 acres.

**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 amends Resolution No. 76-06 by altering the terms and conditions and site plan approved by that Resolution as follows:

- (A) The five duplex lots shown on Exhibit B shall be changed to single family lots.
- (B) The site plan shall be modified to approve the fourteen lots shown on Exhibit C to include the developed park area of about 2.5 acres and thirteen single family lots designed as shown on Exhibit C.
- (C) All new lots must conform to the Unified Development Code.
- (D) The park area must be developed as shown on Exhibit C and detailed on Exhibit D and shall be open to the Lierly Lane Subdivision residents before the 8<sup>th</sup> building permit is issued for lots within Exhibit C.
- (E) Two separate points of public access to the park shall be established from Berseis Drive and Cassius Lane.
- (F) Parks fees for residential units that would be assessed at a higher rate because of this amendment must pay such increase prior to receiving a building permit.

**PASSED** and **APPROVED** this 7<sup>th</sup> day of September, 2010.

APPROVED:

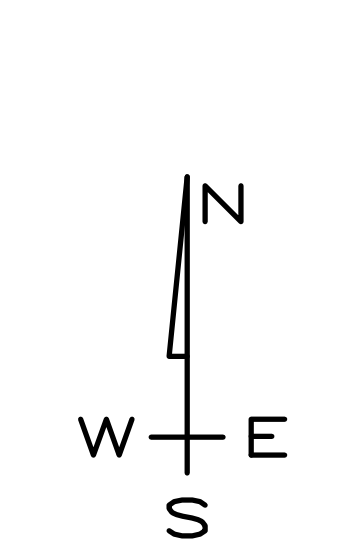
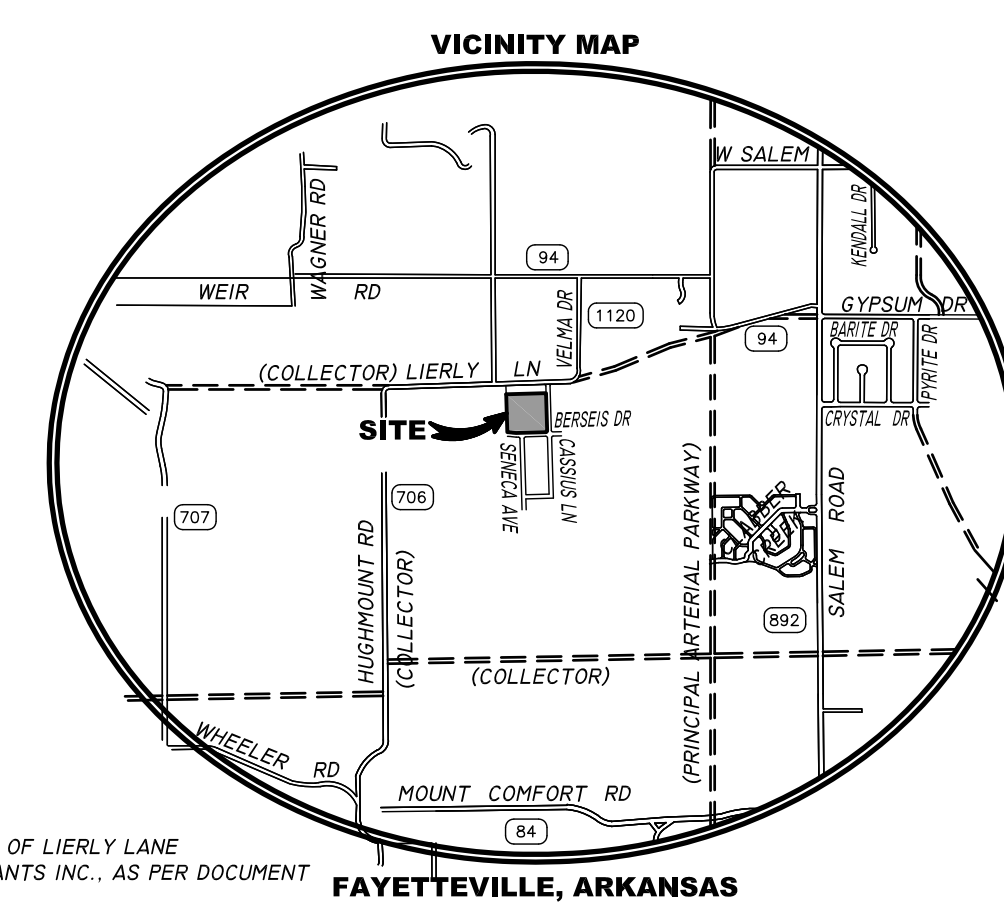
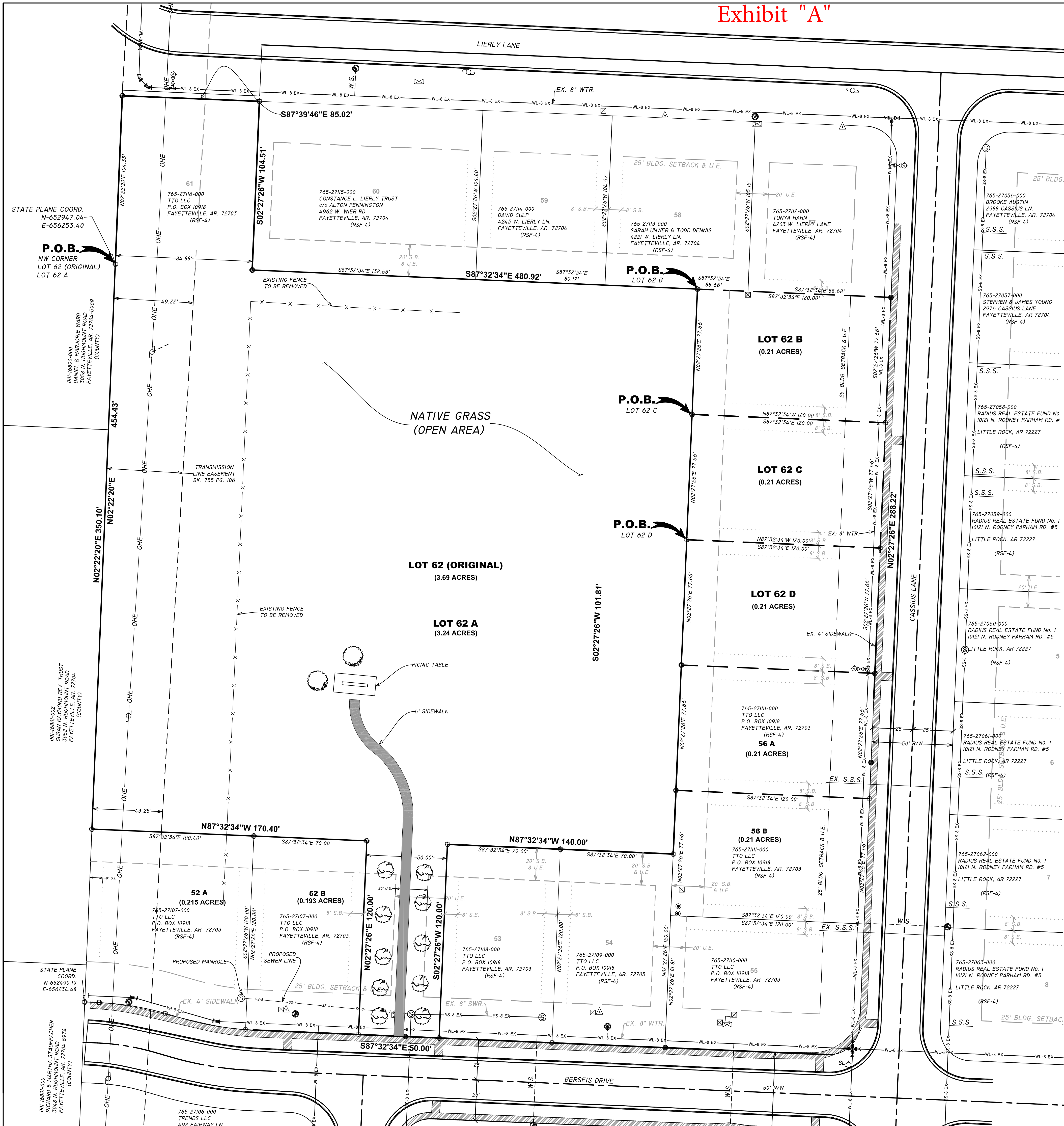
ATTEST:

By:   
LIONELD JORDAN, Mayor

By:   
SONDRA E. SMITH, City Clerk/Treasurer



# Exhibit "A"



**PREPARED BY**  
**JORGENSEN & ASSOCIATES**  
 ESTABLISHED 1985  
 CIVIL ENGINEERING  
 SURVEYING

124 W. SUNBRIDGE SUITE 5,  
 FAYETTEVILLE, AR 72703  
 PH (479) 443-9127  
 FAX (479) 582-4807

- LEGEND**
- ⊗ CALCULATED POINT
  - FOUND IRON PIN
  - SET IRON PIN & CAP
  - ⊕ POWER POLE
  - ⊙ CENTERLINE MARKER
  - ⊕ NEW SEWER MANHOLE
  - ⊕ FIRE HYDRANT
  - ⊕ STREET LIGHT
  - EX. 8" SEWER LINE
  - EX. 6" SEWER LINE
  - EX. 4" SEWER LINE
  - EX. 2" SEWER LINE
  - EX. 12" WATER LINE
  - EX. 8" WATER LINE
  - EX. 6" WATER LINE
  - EX. 4" WATER LINE
  - EX. 2" WATER LINE
  - CENTERLINE STREET
  - BUILDING SETBACK
  - UTILITY EASEMENT

- NOTES:**
- 1) BOOK 23A, PAGE 278
  - 2) PARCEL NUMBERS: 765-27117-000
  - 3) CURRENT ZONING - RSF-4
  - 4) BASIS OF ROTATION - FINAL PLAT OF LIERLY LANE SUBDIVISION BY GEOMATIC CONSULTANTS INC., AS PER DOCUMENT #023A-0000278
  - 5) THIS PROPERTY IS NOT AFFECTED BY THE 100 YEAR FLOOD PLAIN AS PER FIRM #05143C0205F DATED APRIL 2, 2008

## LEGAL DESCRIPTIONS TO BE REVISED

**LEGAL DESCRIPTION: LOT 62 (ORIGINAL)**  
 ALL OF LOT 62 OF THE FINAL PLAT OF LIERLY LANE SUBDIVISION AS RECORDED AS DOCUMENT #023A-0000278 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS CONTAINING 3.693 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

**LEGAL DESCRIPTION: LOT 62 A**  
 A PART OF LOT 62 OF THE FINAL PLAT OF LIERLY LANE SUBDIVISION AS RECORDED AS DOCUMENT #023A-0000278 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS AND BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE NW CORNER OF LOT 62 THENCE S87°32'34"E 360.92 FEET, THENCE S02°27'26"W 210.00 FEET, THENCE S87°32'34"E 120.00 FEET, THENCE S02°27'26"W 38.29 FEET, THENCE N87°32'34"W 120.00 FEET, THENCE S02°27'26"W 101.81 FEET, THENCE N87°32'34"W 310.25 FEET, THENCE S02°22'20"W 112.08 FEET, THENCE ALONG A CURVE TO THE LEFT 41.66 FEET - SAID CURVE HAVING A RADIUS OF 175.00 FEET AND A CHORD BEARING AND DISTANCE OF N80°43'22"W 41.56 FEET, THENCE N87°32'34"W 8.89 FEET, THENCE N02°22'20"E 437.24 FEET TO THE P.O.B., CONTAINING 3.129 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

**LEGAL DESCRIPTION: LOT 62 B**  
 A PART OF LOT 62 OF THE FINAL PLAT OF LIERLY LANE SUBDIVISION AS RECORDED AS DOCUMENT #023A-0000278 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS AND BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE NW CORNER OF LOT 62 THENCE S87°32'34"E 360.92 FEET TO THE P.O.B., THENCE S87°32'34"E 120.00 FEET, THENCE S02°27'26"W 70.00 FEET, THENCE N87°32'34"W 120.00 FEET, THENCE N02°27'26"E 70.00 FEET TO THE P.O.B., CONTAINING 0.19 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

**LEGAL DESCRIPTION: LOT 62 C**  
 A PART OF LOT 62 OF THE FINAL PLAT OF LIERLY LANE SUBDIVISION AS RECORDED AS DOCUMENT #023A-0000278 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS AND BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE NW CORNER OF LOT 62 THENCE S87°32'34"E 360.92 FEET TO THE P.O.B., THENCE S87°32'34"E 120.00 FEET, THENCE S02°27'26"W 70.00 FEET, THENCE N87°32'34"W 120.00 FEET, THENCE N02°27'26"E 70.00 FEET TO THE P.O.B., CONTAINING 0.19 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

**LEGAL DESCRIPTION: LOT 62 D**  
 A PART OF LOT 62 OF THE FINAL PLAT OF LIERLY LANE SUBDIVISION AS RECORDED AS DOCUMENT #023A-0000278 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS AND BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE NW CORNER OF LOT 62 THENCE S87°32'34"E 360.92 FEET, THENCE S87°32'34"E 120.00 FEET, THENCE S02°27'26"W 70.00 FEET, THENCE N87°32'34"W 120.00 FEET, THENCE N02°27'26"E 70.00 FEET TO THE P.O.B., CONTAINING 0.19 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

**LEGAL DESCRIPTION: LOT 52 (ORIGINAL)**  
 ALL OF LOT 52 OF THE FINAL PLAT OF LIERLY LANE SUBDIVISION AS RECORDED AS DOCUMENT #023A-0000278 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS, CONTAINING 0.532 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

**LEGAL DESCRIPTION: LOT 52 A**  
 A PART OF LOT 52 OF THE FINAL PLAT OF LIERLY LANE SUBDIVISION AS RECORDED AS DOCUMENT #023A-0000278 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS AND BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE NW CORNER OF THE ORIGINAL LOT 52 THENCE S87°32'34"E 50.15 FEET TO THE P.O.B., THENCE S87°32'34"E 79.25 FEET, THENCE S02°27'26"W 120.00 FEET, THENCE N87°32'34"W 24.20 FEET, THENCE ALONG A CURVE TO THE RIGHT 44.28 FEET, SAID CURVE HAVING A RADIUS OF 186.00 FEET AND A CHORD BEARING AND DISTANCE OF N80°43'22"W 41.56 FEET, THENCE N87°32'34"W 11.54 FEET, THENCE N02°22'20"E 102.00 FEET TO THE P.O.B., CONTAINING 0.216 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

**LEGAL DESCRIPTION: LOT 52 B**  
 A PART OF LOT 52 OF THE FINAL PLAT OF LIERLY LANE SUBDIVISION AS RECORDED AS DOCUMENT #023A-0000278 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS AND BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE NW CORNER OF THE ORIGINAL LOT 52 THENCE S87°32'34"E 50.15 FEET TO THE P.O.B., THENCE S87°32'34"E 120.00 FEET, THENCE S02°27'26"W 120.00 FEET, THENCE N87°32'34"W 70.00 FEET, THENCE N02°27'26"E 120.00 FEET TO THE P.O.B., CONTAINING 0.193 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

**LEGAL DESCRIPTION: REMAINING PROPERTY (TO BE PART OF PARK AREA)**  
 A PART OF LOT 52 OF THE FINAL PLAT OF LIERLY LANE SUBDIVISION AS RECORDED AS DOCUMENT #023A-0000278 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS AND BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE NW CORNER OF THE ORIGINAL LOT 52 THENCE S87°32'34"E 50.15 FEET, THENCE S02°27'26"W 120.00 FEET, THENCE ALONG A CURVE TO THE LEFT 41.66 FEET, SAID CURVE HAVING A RADIUS OF 175.00 FEET AND A CHORD BEARING AND DISTANCE OF N80°43'22"W 41.56 FEET, THENCE N87°32'34"W 8.89 FEET, THENCE N02°22'20"E 107.14 FEET TO THE P.O.B., CONTAINING 0.125 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

**LEGAL DESCRIPTION: LOT 56 (ORIGINAL)**  
 ALL OF LOT 56 OF THE FINAL PLAT OF LIERLY LANE SUBDIVISION AS RECORDED AS DOCUMENT #023A-0000278 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS, CONTAINING 0.276 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

**LEGAL DESCRIPTION: LOT 56 A**  
 A PART OF LOT 56 OF THE FINAL PLAT OF LIERLY LANE SUBDIVISION AS RECORDED AS DOCUMENT #023A-0000278 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS AND BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE SW CORNER OF THE ORIGINAL LOT 56 THENCE N02°27'26"E 140.00 FEET TO THE P.O.B., THENCE S87°32'34"E 120.00 FEET, THENCE S02°27'26"W 70.00 FEET, THENCE N87°32'34"W 120.00 FEET, THENCE N02°27'26"E 70.00 FEET TO THE P.O.B., CONTAINING 0.193 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

**LEGAL DESCRIPTION: LOT 56 B**  
 A PART OF LOT 56 OF THE FINAL PLAT OF LIERLY LANE SUBDIVISION AS RECORDED AS DOCUMENT #023A-0000278 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS AND BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE SW CORNER OF THE ORIGINAL LOT 56 THENCE N02°27'26"E 70.00 FEET, THENCE S87°32'34"E 120.00 FEET, THENCE S02°27'26"W 70.00 FEET, THENCE N87°32'34"W 120.00 FEET TO THE P.O.B., CONTAINING 0.193 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

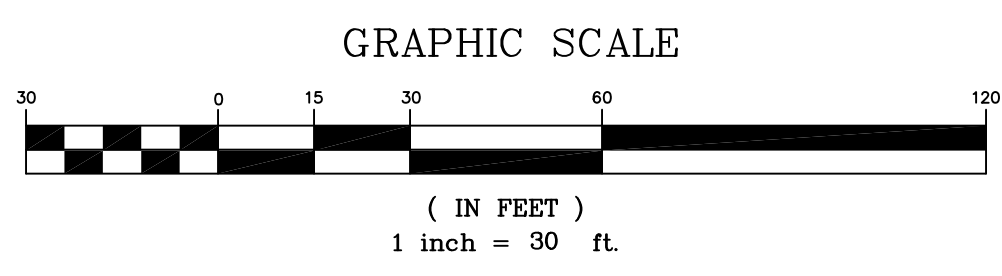
### CERTIFICATE OF ACCURACY OF SURVEY

I CERTIFY THAT THE PLAT SHOWN AND DESCRIBED HEREON IS A TRUE AND CORRECT SURVEY AND THAT THE MONUMENTS HAVE BEEN PLACED AS SHOWN HEREON AS REQUIRED BY "REGULATIONS, STANDARDS AND SPECIFICATIONS FOR THE DIVISION, DEVELOPMENT AND IMPROVEMENT OF UNINCORPORATED LAND IN THE CITY OF FAYETTEVILLE".

DATE \_\_\_\_\_ SURVEYOR \_\_\_\_\_  
 CERTIFICATE OF OWNERSHIP AND DEDICATION

WE, THE UNDERSIGNED OWNERS, REPRESENTING ONE HUNDRED PERCENT (100%) OWNERSHIP OF THE REAL ESTATE SHOWN AND DESCRIBED HEREIN, DO HEREBY DEDICATE FOR PUBLIC OWNERSHIP, ALL STREETS AND ALLEYS AS SHOWN ON THIS PLAT FOR PUBLIC BENEFIT AS PRESCRIBED BY LAW. THE OWNERS ALSO DEDICATE TO WASHINGTON COUNTY AND TO THE PUBLIC UTILITY COMPANIES (INCLUDING ANY CABLE TELEVISION COMPANY HOLDING A FRANCHISE GRANTED BY WASHINGTON COUNTY) THE EASEMENTS AS SHOWN ON THIS PLAT FOR THE PURPOSE OF INSTALLATION OF NEW FACILITIES AND THE REPAIR OF EXISTING FACILITIES. ALSO ESTABLISHED HEREBY IS THE RIGHT OF INGRESS AND EGRESS TO SAID EASEMENTS, THE RIGHT TO PROHIBIT THE ERECTION OF BUILDINGS, STRUCTURES, OR FENCES WITHIN SAID EASEMENT, AND THE RIGHT TO REMOVE OR TRIM TREES WITHIN SAID EASEMENTS.

DATE \_\_\_\_\_ OWNER \_\_\_\_\_  
 DATE \_\_\_\_\_ OWNER \_\_\_\_\_



### PROJECT DETAILS

**PROJECT TITLE:**  
 LIERLY LANE SUBDIVISION

**PROJECT LOCATION:**  
 FAYETTEVILLE, AR

### REVISIONS

NO.	DATE	DESCRIPTION

DATE: 2-2-2015  
 DRAWN BY: SEM  
 PROJECT # 2010111  
 FILE PATH: Z:\SUB\2010111\LOT2  
 SHEET SIZE: 24" x 36"  
 SCALE: 1"=30'

### SHEET TITLE

**LOT LINE ADJUSTMENT LOT SPLIT**

### SHEET NUMBER

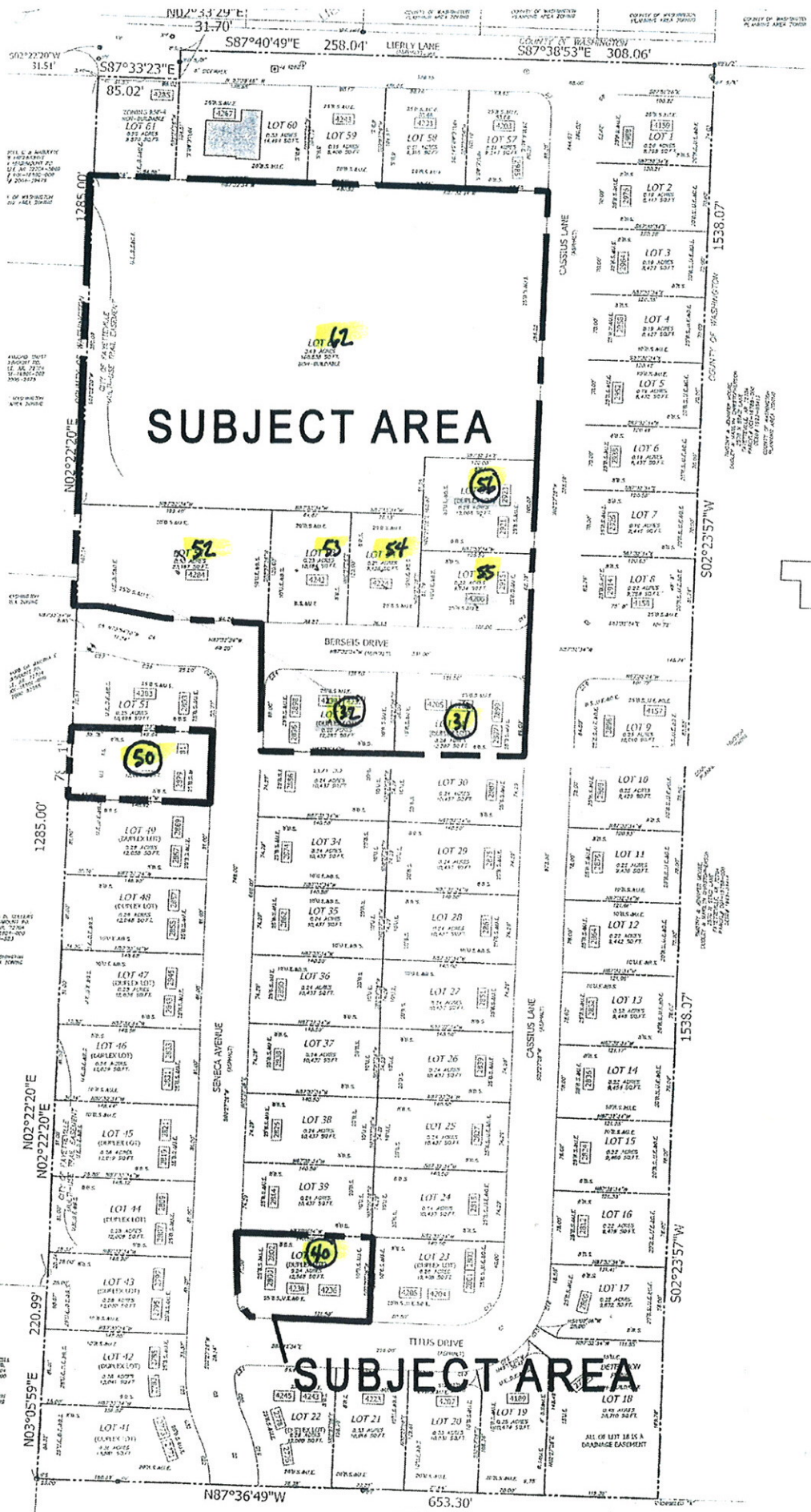
**1 1**

## EXHIBIT A-1

### LIERLY LANE NATURAL PARK AREA AMENITIES

The developer shall be responsible for cleaning up all debris, filling in any holes and ensuring the property drains well and naturally toward the drainage easement. The wire fence and fence line vegetation shall be removed by the developer. The fescue shall be removed and a lawn of native buffalo grass established by seeding (sod is not required).

At least ten shade trees (selected after consultation with the Urban Forester) shall be planted as shown on Exhibit A. The developer will properly install the concrete sidewalk and picnic table also as shown on Exhibit A.



5 DUPLEX LOTS  
 4 SINGLE FAMILY LOTS  
 1 OPEN SPACE LOT  
 14 TOTAL DWELLING UNITS

# EXHIBIT B

**SUBJECT AREA**

COUNTY OF WASHINGTON  
 1538.07  
 502°23'57\"/>

COUNTY OF WASHINGTON  
 1538.07  
 502°23'57\"/>

N87°36'49\"/>
 653.30'



Development Summary

14 Single Family Lots

EXHIBIT "C"

OPTION 1

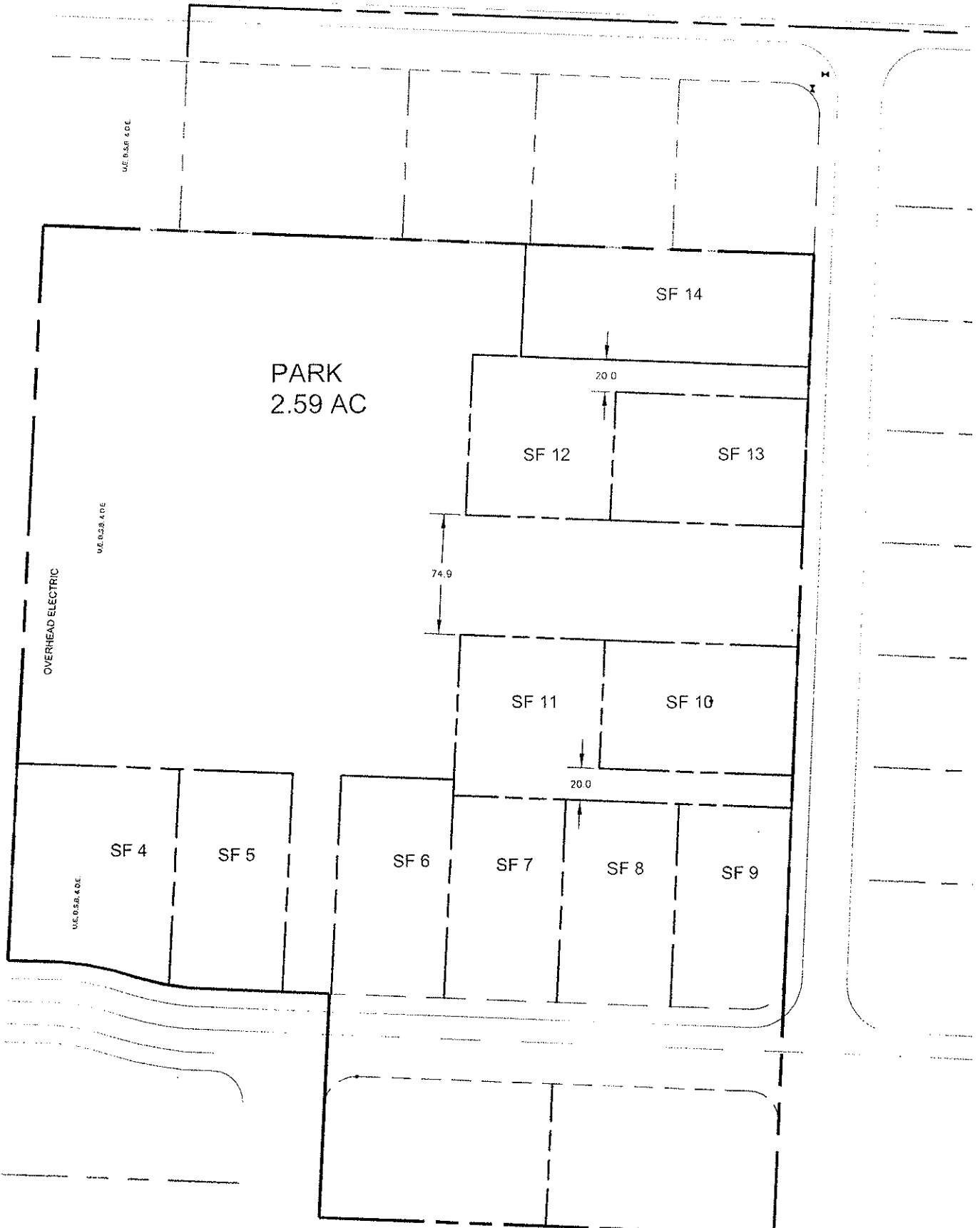
LIERLY LANE



# TANDEM LOT

EXHIBIT "C"

OPTION 2



Lierly Lane Elements To Be Included Within Park

Item No.	Description	Quantity	Unit
<b>GRADING AND SOIL</b>			
1	Grading Labor with Tractor	10.00	Hour
2	Pesticide Spray	1.00	Lump Sum
3	Topsoil Haul-in	3.00	Dump Loads
Sub-total (GRADING)			
<b>ELEMENTS</b>			
4	Benches	2.00	Each
5	Soccer Goal	2.00	Each
6	Frisby Golf Goal	4.00	Each
7	5' gravel path - no steel edging	600.00	LF
Sub-total (PLANTERS AND WALLS)			
<b>TREES, SHRUBS, GRASS</b>			
8	Trees (1" to 2" caliber)	15	Each
9	Shrubs	30	Each
10	Watering	1	Lump Sum
11	Seed and Straw	0.33	Acre
12	Wildflower Meadow	0.44	Acre
Sub-total (TREES AND SHRUBS)			



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Patti Mulford  
Paralegal

TO: **Mayor Jordan**  
**City Council**

FROM: **Kit Williams**, City Attorney

DATE: **March 25, 2015**

**RE: Resolution to amend Resolution No. 162-10 to revise the site plan by reducing the number of single family lots from 13 to 11, to reconfigure the public access to the 2.5 area park; to require the development of and then accept the dedication of this park in lieu of any additional parkland fees for the 11 lots**

The 23 acre development on Lierly Lane has been considered by the Fayetteville City Council twice before. Initially, this development on our City's border was designed to use a decentralized community septic tank system in which over 60 houses would all drain to the main septic tank and its large "drip" field where lateral lines dispersed the contents of the septic tank. These decentralized community septic tank systems usually functioned when first installed, but had a growing and unpleasant failure rate after a few years. In order to avoid those problems on land adjoining Fayetteville neighborhoods, the City Council passed Resolution No. 76-06 in 2006 to allow this not yet annexed property to access our sewer system.

This Resolution (attached) allowed that proposed development to hook onto the City's nearby sewer mains, but required the developers to seek annexation and to comply with many City regulations including impact fees as if the land had already been annexed. The City Council did not want the developer to receive City services, like sewer, without having to follow normal development regulations and pay normal impact and development fees. Otherwise this out of town development would have been treated more favorably than in town developments.

By 2010, the land had been annexed and many of the lots developed. The developer then wanted the five lots designated on the approved 2007 site plan for duplexes changed to single family homes and to design the unconstructed community septic tank lot for additional single family lots and a park of about 2.5 acres. The City Council agreed to these changes for the Lierly Lane site plan by passing Resolution No. 162-10 on September 7, 2010 (attached).

Chambers Bank assumed ownership of the Lierly Lane subdivision from its original developer, Bob Schmitt. Chambers Bank through Riverwood Homes/TTO, L.L.C. now seeks a further relatively minor change to the site plan most recently approved in 2010 by the City Council. It would like to reconfigure and reduce the number of single family lots from 13 to 11 and modify the access easement locations for the 2.5 acre park. The Bank further wants to develop the park as shown by its exhibit and then dedicate this park to the City in lieu of any additional parkland payments for these eleven single family lots. I believe this is the land owner's right pursuant to our Unified Development Code.

There are city parks (Gary Hampton softball complex and another general purpose park) within easy driving distance of the Lierly Lane neighborhood. This Lierly Lane park would require some maintenance, but the proposed design (to be constructed by Chambers Bank) would be for a nature park with a walking trail, trees and maybe a few benches, but nothing else. Therefore, maintenance should not be excessive. This park would be accessible only by foot or bicycle with no offstreet parking lot.

The Unified Development Code states this about parkland dedication or fees in lieu thereof:

"If the developer proposes to dedicate land for a public park . . . which the Planning Commission determines is suitable for park purposes, the **proposed dedication shall be accepted.**" § 166.04 (B)(3)(1)(ii)(d) {emphasis added}.

Thus, if the proposed dedication is "suitable for park purposes, (it) shall be accepted." On rare occasions, the City Council has properly rejected a proposed parkland dedication which was all within a utility easement and

under a large powerline. Although there is a utility easement already dedicated on the western edge of this proposed park, there is ample land for this park outside that utility easement. Therefore, there appears nothing which would render this land not suitable as parkland as so designated by the City Council in 2010.

In 2003, the State Legislature enacted A.C.A. § 14-56-103 **Development impact fees**. This broad authority for cities to enact impact fees allowed Fayetteville to enact both police and fire impact fees which would not have been legally possible before this statute. However, this new impact fee statute requires extensive and expensive studies to establish and prove the proper justification and amount for any proposed impact fee.

Fayetteville's existing impact fees had been based upon A.C.A. § 14-56-417 (b)(6) which authorized the city to require "a reasonable equivalent contribution in lieu of dedication of land" if a developer was not providing parkland, or independent water and sewer facilities on his own property. Our water and sewer impact fee studies were equivalent enough to the new statute's requirements that I was able to convince the sponsors of the **Development impact fee** statute to grandfather them in for most purposes. {See A.C.A. § 14-56-103 (i)(2).}

However, our parkland ordinance had been enacted so early that its supporting studies would not be sufficient under the new law. I explained to the sponsors that it allowed **the option to the developer** to either dedicate parkland or pay a fee in lieu thereof. That convinced the sponsors to draft, propose and support a special exemption for our parkland ordinance based upon the developer retaining the option to pay or dedicate parkland. That exemption was successfully enacted which saved our parkland ordinance. {See A.C.A. § 14-56-103 (i)(3), which I have attached.}

If the City decided it wanted to no longer allow a developer the right to dedicate suitable parkland and instead require monetary payment, not only would our Unified Development Code require such amendment, but we also could no longer require **any** dedication of parkland or payment of park fees until after the extensive and expensive parkland impact fee study similar to what we have done for the police and fire impact fee studies is completed.

We cannot know now whether such a study would determine that any new parkland fee would be more or less than what is now required.

## CONCLUSION

What is clear now is that the Unified Development Code, supported by State law **requires** that a proposed dedication of land suitable for park purposes “shall be accepted.” Neither City staff nor the City Council can force a developer to pay money in lieu of such dedication even if the Parks and Recreation Department and Advisory Board would prefer to take such money to apply it to the development of another park. Therefore, I have drafted the proposed Resolution upon Mayor Jordan’s instructions to authorize such parkland dedication in lieu of any parkland fees to be paid for the eleven single family lots.

**RESOLUTION NO. 76-06**

**A RESOLUTION TO ALLOW EXTENSION OF SEWER SERVICE  
OUTSIDE THE CITY'S CORPORATE LIMITS ON A 23 ACRE  
PARCEL ON LIERLY LANE ADJACENT TO THE CITY LIMITS**

**WHEREAS**, § 51.113 (c) Sewer connections outside the city states that "the city's sewerage system shall not be extended outside the city's corporate limits except on express approval of the City Council"; and

**WHEREAS**, applicant Blind Squirrel, LLC has requested that the City Council grant its express approval to allow extension of City Sewer mains at the applicant's expense to access its 23 acre parcel south of Lierly Lane and adjacent to the City's corporate limits the legal description to such property being attached hereto as Exhibit A (the "Property"); and

**WHEREAS**, applicant has agreed that as a condition of granting this extension of sewer service, the 23 acre parcel will be developed in accordance with the terms and condition of that certain Annexation Agreement for Sewer on Lierly Lane for the City of Fayetteville, Arkansas, a copy which is attached hereto as Exhibit B (the "Contract"); and

**WHEREAS**, the City's sewer service to the Property shall be allowed regardless of whether annexation of the Property into the City is approved or denied by the City Council; and

**WHEREAS**, the applicant has agreed to petition for annexation into the City of Fayetteville in the manner described in the Contract; and

**WHEREAS**, the applicant agrees that any impact fees (now including water, sewer, fire, police, and parks land) including future enacted impact fees if in existence when development occurs shall be paid as if the parcel was within the city limits, and other fees will be paid at the time of final plat approval. The parks fee shall be set at the preliminary plat rate.

**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 approves a resolution to allow extension of sewer service outside the City's corporate limits on a 23-acre parcel owned by the applicant Blind Squirrel, LLC south of Lierly Lane, adjacent to the City's corporate limits the legal description to such property being attached hereto as Exhibit A (the

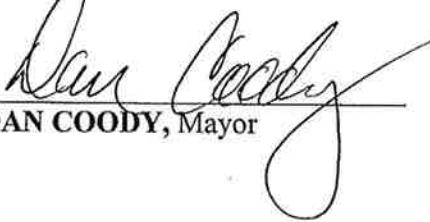




"Property"), conditional upon the applicant or any successor in interest fully complying with and completing all offered conditions as shown in the Whereas clauses of this Resolution.

**PASSED and APPROVED** this 18<sup>th</sup> day of April, 2006.

APPROVED:

By:   
**DAN COODY, Mayor**

ATTEST:

By:   
**SONDRA SMITH, City Clerk**



**RESOLUTION NO. 162-10**

A RESOLUTION TO AMEND RESOLUTION NO. 76-06 TO AMEND THE SITE PLAN TO REPLACE FIVE DUPLEX LOTS WITH SINGLE FAMILY LOTS AND CHANGE THE LOT ONCE DESIGNATED FOR THE DECENTRALIZED COMMUNITY SEPTIC SYSTEM TO SINGLE FAMILY LOTS AND A DEVELOPED PARK OF ABOUT 2.5 ACRES

**WHEREAS**, on April 1, 2006, the Fayetteville City Council approved Resolution No. 76-06 allowing extension of city sewer to Lierly Lane Subdivision which adjoined our city limits and approved an Annexation Agreement with the development; and

**WHEREAS**, the developer complied and annexed this subdivision into the city of Fayetteville and several lots have been developed with houses or duplexes built; and

**WHEREAS**, the new owner of the Lierly Lane Subdivision wishes to change five duplex lots to single family lots and utilize a portion of the unconstructed community septic system lot for additional single family lots and a developed park of about 2.5 acres.

**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 amends Resolution No. 76-06 by altering the terms and conditions and site plan approved by that Resolution as follows:

- (A) The five duplex lots shown on Exhibit B shall be changed to single family lots.
- (B) The site plan shall be modified to approve the fourteen lots shown on Exhibit C to include the developed park area of about 2.5 acres and thirteen single family lots designed as shown on Exhibit C.
- (C) All new lots must conform to the Unified Development Code.
- (D) The park area must be developed as shown on Exhibit C and detailed on Exhibit D and shall be open to the Lierly Lane Subdivision residents before the 8<sup>th</sup> building permit is issued for lots within Exhibit C.
- (E) Two separate points of public access to the park shall be established from Berseis Drive and Cassius Lane.
- (F) Parks fees for residential units that would be assessed at a higher rate because of this amendment must pay such increase prior to receiving a building permit.

**PASSED** and **APPROVED** this 7<sup>th</sup> day of September, 2010.

APPROVED:

ATTEST:

By:   
LIONELD JORDAN, Mayor

By:   
SONDRA E. SMITH, City Clerk/Treasurer



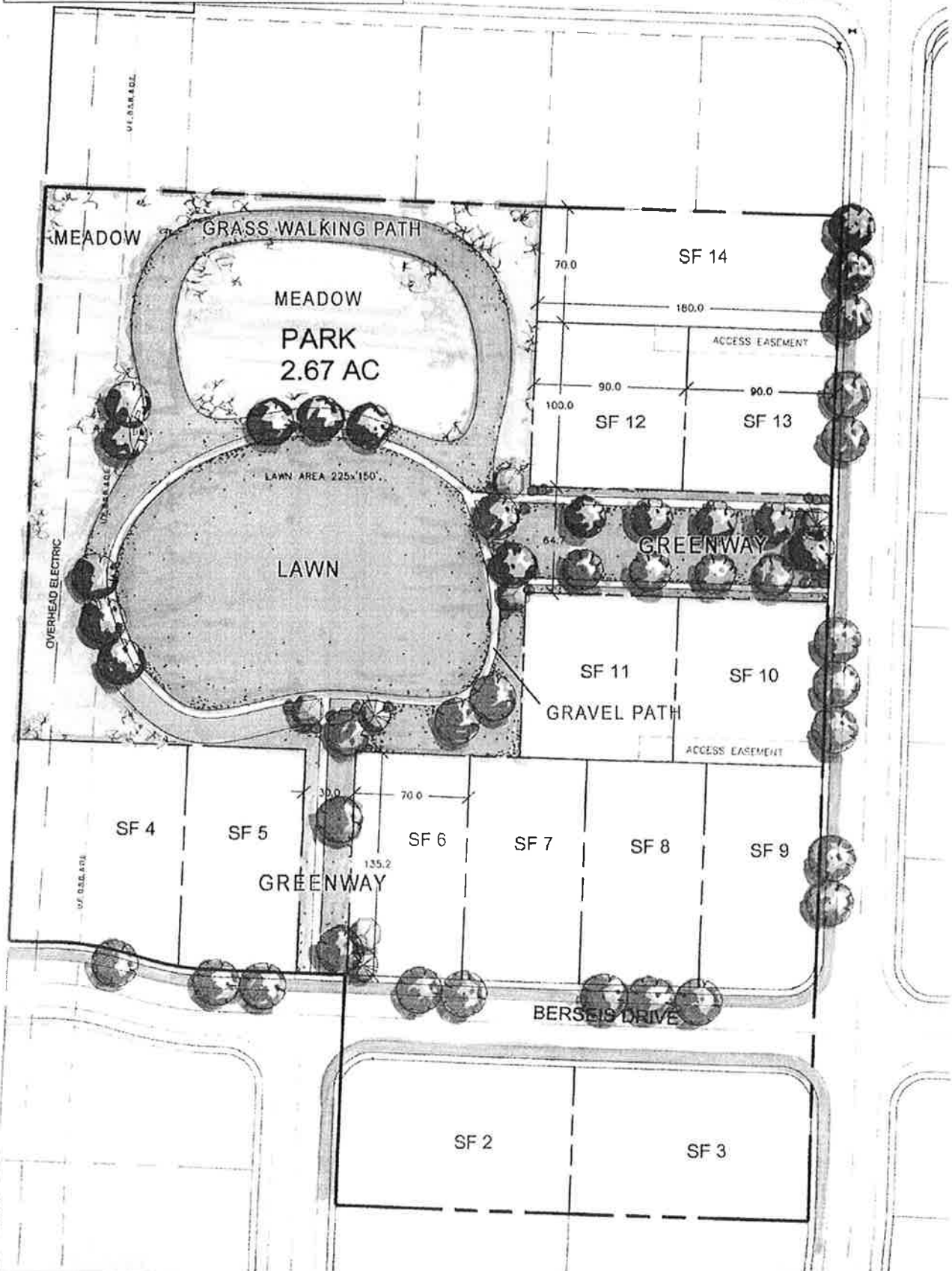
# Development Summary

14 Single Family Lots

EXHIBIT "C"

OPTION 1

LIERLY LANE



TITLE XV UNIFIED DEVELOPMENT CODE

improvements bear a rational nexus and rough proportionality to the needs created by the development.

(l) *Parkland dedication.*

(i) *Applicability.* The requirements of this subsection shall apply to residential lot splits, subdivisions, Large Scale Developments, Planned Zoning Districts and Large Site Improvement Plans; provided, said requirements shall not apply to a Lot Split or subdivision which does not create one or more vacant lots on which a structure could be erected under the city's zoning regulations.

(ii) *Residential development.*

(a) *Dedication or fee-in-lieu.* When a proposed residential development does not provide an area or areas for a public park based on the Fayetteville Parks and Recreation Plan, the developer shall be required to make a reasonable dedication of land for public park facilities, or to make a reasonable equivalent contribution in lieu of dedication of land, such contribution to be used for the acquisition and development of park land that serves the subdivision or development.

(b) *Parks and Recreation Advisory Board.* Prior to the submittal of a Preliminary Plat, Large Scale Development plan, or Large Site Improvement Plan the developer shall submit to the Parks and Recreation Advisory Board a concept plat or plan.

(c) *Planning Commission.* The developer and the Parks and Recreation Advisory Board shall make a joint recommendation to the Planning Commission as to the land dedication or contribution in lieu of dedication. In the event

that they are unable to agree, the developer and advisory board shall make separate

recommendations to the Planning Commission who shall determine the issue.

(d) *Decision.* If the developer proposes to dedicate land for a public park after consultation with the Parks and Recreation Advisory Board which the Planning Commission determines is suitable for park purposes, the proposed dedication shall be accepted. Upon

consent and consultation with the developer and the Parks and Recreation Advisory Board, a developer may dedicate a portion of the required park land dedication and make a contribution of money in lieu of land dedication for the remaining park land dedication requirement. With consent of the Parks and Recreation Advisory Board, this monetary contribution may be used to develop the park land in the development or elsewhere within the quadrant consistent with the Fayetteville Parks and Recreation Plan.

(e) *Approval.* The Planning Commission's decision must be incorporated into the developer's Preliminary Plat, Large Scale Development, or Large Site Improvement Plan prior to plat or plan approval.

(f) *Dedication ratios.* Land shall be dedicated at a ratio of .023 acres of land for each single-family dwelling unit and .014 acres of land for each multi-family dwelling unit.

(g) *Fee-in-lieu formulas.* A contribution in lieu of land dedication shall be made

(3) No other revenues or funds shall be deposited into the special account.

(h)(1) The municipality or municipal service agency shall refund the portion of collected development impact fees, including the accrued interest, that has not been expended seven (7) years from the date the fees were paid.

(2)(A) A refund shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected.

(B) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property no later than thirty (30) days after the date on which the refund becomes due.

(C) The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.

(3)(A) The refund shall be made on a pro rata basis and shall be paid in full not later than ninety (90) days after the date certain upon which the refund becomes due.

(B) If the municipality or municipal service agency does not pay a refund in full within the period set in subdivision (h)(3)(A) of this section to any person entitled to a refund, that person shall have a cause of action against the municipality for the refund or the unpaid portion in the circuit court of the county in which the property is located.

(i)(1)(A) On and after July 16, 2003, a municipality or municipal service agency shall levy and collect a development impact fee only if levied and collected under ordinances enacted in compliance with this section.

(B) Beginning January 1, 2004, a municipality or municipal service agency shall collect development impact fees under ordinances enacted before July 16, 2003, or under ordinances amended after July 16, 2003, only if collected in compliance with subsections (f)-(h) of this section.

(2) However, except for the compliance with the collection requirements under subsections (f)-(h) of this section, this section does not invalidate any development impact fee or a similar fee adopted by a municipality or municipal service agency before July 16, 2003, nor does this section apply to funds collected under any development impact fee or similar fee adopted July 16, 2003.

(3) In addition, a municipality with a park land or green space ordinance that has been in existence for ten (10) years on July 16, 2003, and any amendments to the ordinance, which allows the option to pay a fee or to dedicate green space or park land in lieu of a fee, may continue to be administered under the existing ordinance.

**History.** Acts 2003, No. 1719, § 1;  
2007, No. 310, § 1.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION TO AMEND RESOLUTION NO. 162-10 TO REVISE THE SITE PLAN FOR THE REMAINDER OF THE LIERLY LANE SUBDIVISION BY REDUCING THE NUMBER OF SINGLE FAMILY LOTS FROM 13 TO 11 AND BY RECONFIGURING THE PUBLIC ACCESS LOCATIONS TO THE PARK

**WHEREAS**, on April 18, 2006, the City Council passed Resolution No. 76-06 to allow the extension of sewer service outside the City's corporate limits to a 23 acre parcel on Lierly Lane adjacent to the City limits; and

**WHEREAS**, that Resolution conditioned the extension of sewer service on the Annexation Agreement offered by the owner/developer and upon the developer's agreement that impact fees (including parkland) "shall be paid as if the parcel was within the City limits;" and

**WHEREAS**, on September 7, 2010, the City Council passed Resolution No. 162-10 which amended Resolution No. 76-06 "to replace five duplex lots with single family lots and change the lot once designated for the decentralized community septic system to (thirteen) single family lots and a developed park of about 2.5 acres;" and

**WHEREAS**, Resolution No. 162-10 also included the City Council's approval of a modified site plan "to include the developed park area of about 2.5 acres and thirteen single family lots;" and

**WHEREAS**, the developer now desires to modify the site plan to reconfigure and reduce the number of the single family lots from 13 to 11 and to modify the separate points of public access to the park.

**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 amends Resolution No. 162-10 by adopting the new site plan attached as Exhibit A which reduces the number of single family lots from thirteen to eleven and changes the public access points for the park; and by accepting the dedication of the parkland in lieu of park fees related to these 11 single family lots upon condition that the owner develop this primarily nature, passive park as shown on the site plan prior to its acceptance by the City.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby determines that park area shall be developed and open to the public before the eighth building permit is issued for the single family lots shown on the site plan.

This resolution was revised by the City Attorney after consultation with the Parks Department prior to Agenda Session.

**Page 2**  
**Resolution No.**

PASSED and **APPROVED** this 7<sup>th</sup> day of April 2015.

APPROVED:

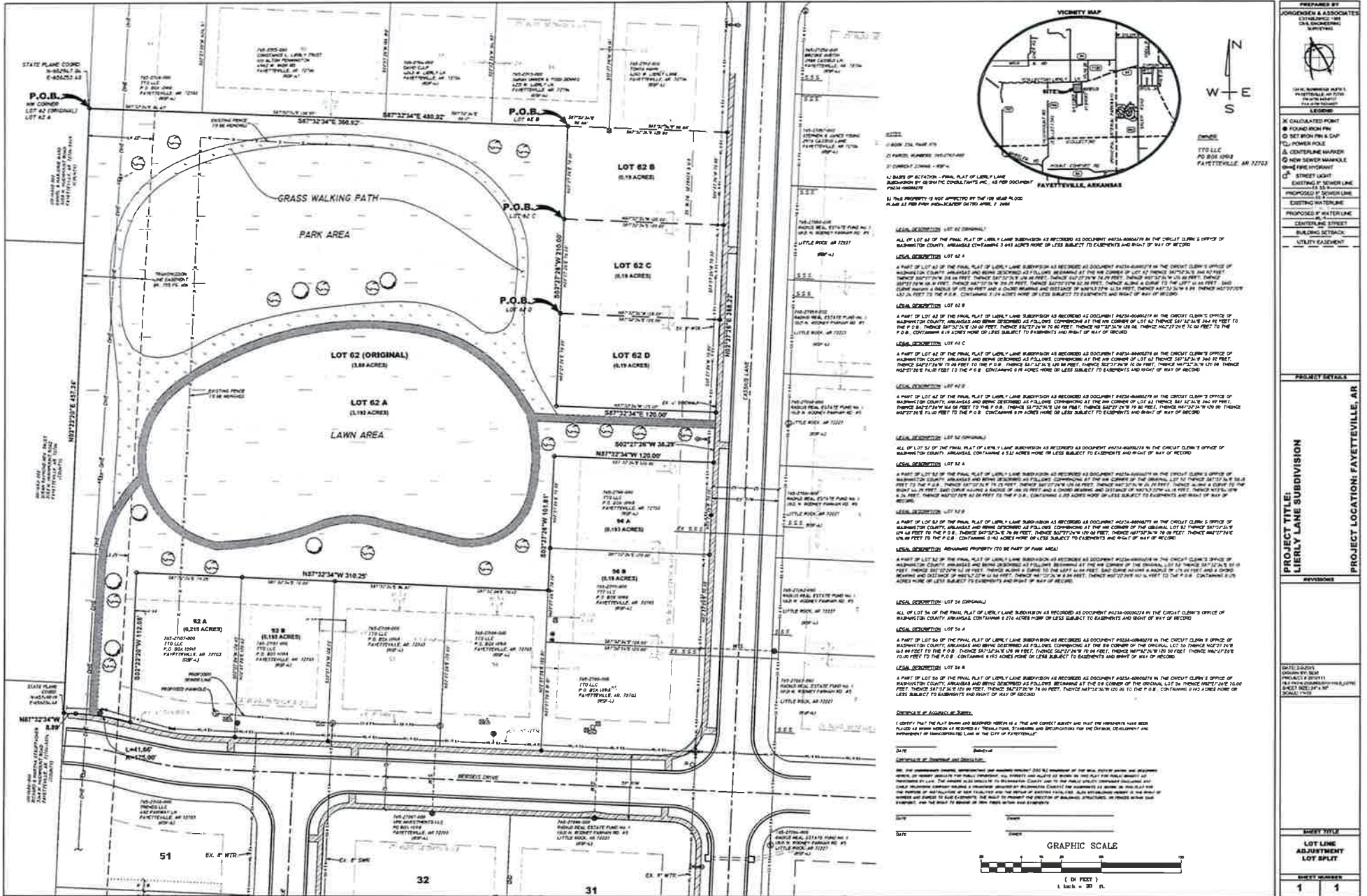
ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN, Mayor**

By: \_\_\_\_\_  
**SONDRA E. SMITH, City Clerk/Treasurer**



This exhibit A was revised by the City Attorney after consultation with the Parks Department prior to Agenda Session.



PREPARED BY <b>JORGENSEN &amp; ASSOCIATES</b> ENGINEERS 1001 W. UNIVERSITY BLVD. FAYETTEVILLE, AR 72703	
<b>LEGEND</b> ○ CALCULATED POINT ● FOUND HIGH P.N. ○ SET BROWN P.N. & CAP ○ CENTERLINE MARKER ○ NEW SOWER MANHOLE ○ NEW FIRE HYDRANT ○ STREET LIGHT ○ EXISTING 6" SOWER LINE ○ PROPOSED 6" SOWER LINE ○ EXISTING WATER LINE ○ PROPOSED 6" WATER LINE ○ CENTERLINE STREET ○ BLOCKING STRUCTURE ○ UTILITY EASEMENT	
<b>PROMISE REFERENCE</b> PROJECT TITLE: <b>LIERLY LANE SUBDIVISION</b> PROJECT LOCATION: <b>FAYETTEVILLE, AR</b>	
<b>REVISIONS</b>	
DATE: _____ DRAWN BY: _____ CHECKED BY: _____ SCALE: _____ SHEET NUMBER: <b>1 of 1</b>	

