INFORMAL AGENDA

July 2, 2012

5:15 p.m.

1. Discussion of possible utilization of storm shelters at airport site"

2. Any other business

CITY OF JOPLIN MISSOURI

Finance Department
602 S. Main Street
Joplin, Missouri 64801
(417) 624-0820 Ext. 251
(417) 624-4620 (Fax)

TO: MARK ROHR, CITY MANAGER
FROM: LESLIE JONES, FINANCE DIRECTOR
DATE: JUNE 19, 2012
SUBJECT: TEMPORARY TORNADO SHELTERS

Following the devastating EF-5 tornado of May 22, 2011, FEMA placed temporary tornado shelters at all temporary facilities, such as the fire stations, the school locations, and the temporary housing units. FEMA has requested a proposed plan from the City of Joplin for use of the temporary tornado shelters once the temporary facilities are gone. These shelters are currently owned/leased by the federal government and 'provided' to the local government via the direct mission assignment. At the end, USACE will be responsible for dismantling and dispossession of the facilities, unless the City proposes a plan of use for the shelters.

There are approximately 99 temporary tornado shelters. These temporary shelters are not suitable for residential use due to the type of shelter. The shelters range in capacity, some hold 20-30 people, while others hold 50+ people. As with the recent weather radio initiative, it is important to help prepare and protect our community from future devastating tornados in a safe and effective manner.

The City has certain facilities that have no storm shelter provisions. Additionally, based on the tornado that struck on May 22, 2011, there are certain entities that have a potential for a large number of people to be congregated without any storm shelter provisions. The proposed plan is to establish a priority list by types of eligible entities to obtain the shelters for free on a first come, first serve basis.

By charter, the City can't give anything to churches or faith-based schools. Therefore, the proposed priority list is as follows:

*Local Government
*Nursing Homes
*Non-Residential Daycare Facilities
*Assisted Living Facilities
*Private, Non-Faith Based Schools
*Businesses

The priority list would be granted within the City limits of Joplin and Duquesne first. If there are any shelters remaining, the priority list would be used for entities outside this designated area.

The City would require approximately 20 shelters to cover the following locations:

Fire Station #3 City Hall

Fire Station #5	Police South Station
Athletic Complex	Health Building
Airport	Parks Office
Golf Course	Senior Center
Public Works Center	Museum
Maps/R-VIII Building	Library

It will cost approximately $1,000 per shelter to remove the temporary shelters from their current location and move them to a new site. The installation of the shelters at these locations will vary. However, the average cost of installation is estimated at $2,500 per shelter.

FEMA is researching the ability to write a project worksheet to remove the shelters from their current location and move them to the City location. FEMA can only cover the costs of moving the shelters for the governmental entities, such as the City of Joplin or Duquesne.

There are approximately 5-6 nursing homes in the city limits of Joplin. Some of these are large and could house about 120-150 people. It could take as many as 20+ shelters to accommodate these facilities, depending on the number of shelters with the larger capacity. There are around 40 daycares in Joplin. The number of assisted living facilities is unknown, since many of them are not inspected by the health department. It is believed that the proposed plan to distribute 99 shelters will provide significant storm shelter coverage that is not currently available throughout our community.

It is anticipated that the City will apply for funds from the first response fund to cover the cost of moving the shelters, as well as the installation cost in order to provide free shelters as outlined in the proposed plan.

Additionally, the city will propose an initiative with the arts council to paint the storm shelters as a beautification effort.

There is no guarantee that the proposed plan will be approved by FEMA, nor is the City required to actually accept the temporary shelters in the future. However, in order for the City to be able to obtain the temporary shelters, a request with a proposed plan must be submitted to FEMA.

COUNCIL AGENDA

July 2, 2012

6:00 P.M., Council Chambers

General Council Members	MAYOR	Zone Council Members
Mike Woolston	Melodee Colbert-Kean	Gary Shaw
Morris Glaze		Melodee Colbert-Kean
Bill Scearce		Dr. Benjamin D. Rosenberg
(Mayor ProTem)		Michael Seibert
Jack Golden		
Trisha A. Raney		

1. **Call to Order**
   Invocation
   Pledge of Allegiance

2. **Roll Call**

3. **Presentations**
   1. Book presentation by Clayton Lake of Wichita Falls, Texas to the City of Joplin.

   2.Joplin Memorial Run presentation – Audie Dennis

4. **Finalization of Consent Agenda**

5. **Reports and Communications**

6. **Citizen Requests and Petitions**

7. **Public Hearings**
   Public Hearing Procedures

   1. COUNCIL BILL NO. 2012-294 - AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District C-3-PD property as described below and located at the northeast corner of 44th Street and Connecticut Avenue in the City of Joplin, Newton County, Missouri. (Requested by Powell Family Trust. Planning and Zoning recommended denial)

   2. COUNCIL BILL NO. 2012-295 - AN ORDINANCE approving the voluntary annexation by the City of Joplin of property located at 2540 West 32nd Street, in Newton County,

Anyone wishing to address the Council should step to the Podium and state their name and address. If the matter is not a Public Hearing, a request to speak to the Council should be prepared prior to the meeting. Speaking time will be limited to five minutes.

Sound enhancement units are available for hearing impaired customers. You will be asked to provide a form of identification as security, which will be returned when you return the unit.
If you are in need of disability related auxiliary aids or services, contact the City Clerks Office at (417) 624-0820 ext. 220. Forty-eight hours notice is requested.

Missouri. (Requested by Phillip Wilcoxon. Planning and Zoning recommended approval)

3. COUNCIL BILL NO. 2012-296 - AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District R-2 property as described below and located at 2509 and 2519 South Annie Baxter Avenue in the City of Joplin, Jasper County, Missouri. (Requested by Creighton Olson. Planning and Zoning recommended approval).

4. COUNCIL BILL NO. 2012-297- AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District R-2 property as described below and located at 1004 West 26th Street in the City of Joplin, Jasper County, Missouri. (Requested by Creighton Olson. Planning and Zoning recommended approval).

5. COUNCIL BILL NO. 2012-298 - AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District C-0-PD property as described below and located at 2003 South Mississippi Avenue and 2712 East 20th Street in the City of Joplin, Jasper County, Missouri. (Requested by DTS Custom Homes, LLC. Planning and Zoning recommended tabling to their July meeting.)

6. RESOLUTION NO. 2012-019 - A RESOLUTION granting a Special Use Permit (First Request) to Cynthia Croy for a parking lot at 2715 and 2727 South Joplin Avenue, in the City of Joplin, Jasper County, Missouri. (Requested by Cynthia Croy. Planning and Zoning recommended a Permanent Special Use Permit).

7.COUNCIL BILL NO. 2012-299 - AN ORDINANCE designating the name "Mercy Way" for a new street dedication in an area lying south of Interstate 44, north of 50th Street, east of Main Street, and west of Indiana Avenue in the City of Joplin, Newton County, Missouri. (Requested by Mercy Health Systems. Planning and Zoning recommended approval).

8. COUNCIL BILL NO. 2012-300 -AN ORDINANCE designating the name "Wildwood Ranch Parkway" for a new street dedication in an area lying north of 32nd Street and west of Central City Road in the City of Joplin, Jasper County, Missouri. (Requested by Wildwood Ranch Development. Planning and Zoning recommended approval)

8. Consent Agenda

1. Minutes of the June 18, 2012 Council Meeting

9. Resolutions

10. Ordinances – Emergency

1.COUNCIL BILL NO. 2012-009 - AN ORDINANCE approving a Predevelopment Agreement by and between the City of Joplin and Wallace Bajjali and the Joplin Redevelopment Corporation, for Master Development Services to help Joplin recover from the EF-5 tornado that occurred May 22, 2011; authorizing the City Manager to execute said

Predevelopment Agreement by and on behalf of the City of Joplin; and containing an emergency clause.

2. COUNCIL BILL NO. 2012- 138 - AN ORDINANCE approving the City of Joplin to enter into an Agreement with Tri-State Engineering to provide professional services for the Broadway & St. Louis Widening Project, not to exceed Sixty Seven Thousand Two Hundred Eighty Five and No/100 Dollars ($67,285.00) and authorizing the Director of Public Works to execute said Agreement; and containing an emergency clause.

3. COUNCIL BILL NO. 2012-139 - AN ORDINANCE approving change order for Rosetta Construction, LLC for One Hundred Fifteen Thousand Two Hundred Seventy Nine and 90/100 Dollars ($115,279.90) for the Clean, TV & Cap Service Risers in the Tornado Area and containing an emergency clause.

11. Ordinances – First Reading

12. Ordinances – Second Reading and Third Reading

13. Unfinished Business

14. New Business

Notice posted at 4:30 p.m. on this the 28th day of June 2012. (RSMo 610.020)

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: July 2, 2012

Item: COUNCIL BILL NO. 2012-294
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

Attachments: 1) Planning Report
2) Commission Minutes
3) Copy of Council Bill

Public Works Director: David Hertzberg OKH Date: 6/22/2012
City Attorney: Brian Head Date: 6-25-12
City Manager: R. Mark Rohr Date: 6-25-12
Board or Commission: Planning and Zoning Commission Date: 6/11/2012

Recommended Action: Planning and Zoning Commission recommended denial by a vote of "5 in favor, 1 abstention, and 1 absent"

SUMMARY/REQUEST:
Case 057-12: Northeast Corner of 44th Street and Connecticut Avenue – A request to rezone from District R-1 (Single Family Residential) to District C-3-PD (Commercial-Planned Development) for future commercial development – Powell Family Trust.

STAFF SUMMARY:
This property is suited for commercial use given the location at the intersection of 44th Street and Connecticut Avenue.

A Planned Development District designation will provide additional authority to City staff, the Planning and Zoning Commission, and the City Council to work with the developer to design the development in a manner that minimizes any potential negative impacts to nearby residential development.

This property is consistent with development patterns and policies. To be consistent with the nearby zoning of the "Silver Creek Galleria" area, staff recommends the consideration of C-2-PD.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. David Powell purchased the property in this request after St. John's announced their new building. He felt it was inevitable that there would be other commercial development in the area, so he purchased this large piece of property which is one-fourth mile from his home.

Mr. Powell surveyed every household in the Village of Leawood, notifying them of his plans and obtaining their input about uses. More than 70 percent of those who responded to his survey said they were in favor of commercial development, and they even listed those light commercial uses

that they were interested in. He is now asking for the zoning change since the property has been annexed into the City of Joplin. The property was annexed into the City with R-1 zoning.

Mr. Powell has a preliminary site plan but no contracts for anyone to begin building. He is asking for C-2-PD zoning, in that the City staff reported some inquiries from neighbors about uses and had requested a lighter zoning.

Mr. Anderson asked Mr. Powell if he would like for the commissioners to consider amending this case to C-2-PD. He replied he would prefer C-3-PD zoning but would be agreeable to C-2-PD.

After the public comments were received, Mr. Denny Desmond from the Village of Leawood asked if Mr. Eastman will excuse himself from the vote on this request since he represents Keller-Williams, the real estate agency who is listing the property.

Mr. Eastman asked Mr. Bolander if he should abstain from voting. He replied that typically, the guidance from the City Attorney is as long as Mr. Eastman doesn't have a personal financial gain from the sale or transfer of the property or has no involvement in the project whatsoever.

Mr. Eastman does not foresee a financial gain unless he would sell a piece of the property. He asked if he should excuse himself, and Mr. Bolander replied that if he thinks he can have financial gain off of this after it is rezoned in the future, maybe he should excuse himself. Mr. Bolander explained that the only way to continue is to ensure that Mr. Eastman does not financially gain from this parcel.

Mr. Anderson informed Mr. Eastman if his participation in the discussion or vote has been materially impacted by something related to business that he could make a profit in the future, even if he can't benefit directly, he may have a conflict of interest that might prevent him from being impartial.

Mr. Eastman decided to excuse himself from voting on this request and stepped down from the dais at this point.

Mr. Landrith has consistently voted against any type of speculative rezoning since he has empathy for people in the audience who live in the area. He knows this is quite a radical change for the residents to anticipate something of this nature coming into their area.

Mr. Anderson explained that the request is to rezone the property to District C-3-PD, with the staff recommendation of C-2-PD, and Mr. Powell agreeing with that recommendation. Mr. Landrith explained that his first motion is to deny the rezoning to District C-3-PD.

Mr. Anderson asked the City staff if the commissioners really voted on Case 057-12 without modification and are still able to modify that case. Mr. Bolander replied that the commissioners are technically supposed to amend the original request if they wish to rezone to a lower classification. He believes that if they wish to rezone to a lower classification, they can still make that motion since something more intensive was advertised. At this point there is nothing to deny or approve unless someone makes a motion.

Mr. Anderson asked if the commissioners need to amend the case if Mr. Landrith wishes to continue with his motion before they vote again. Mr. Bolander explained that at this point there is nothing to deny, but if someone wishes to make a motion for a less intensive commercial district, someone must make that motion. At this point there is nothing on the table.

Mr. Anderson understood that Mr. Landrith's motion still stands, if C-2 is less intensive than C-3. Mr. Bolander thought he heard a motion to deny the C-2 zoning. Mr. Landrith stated that he made a motion to deny the C-3 zoning and asked if that takes care of everything. Mr. Anderson explained that this takes care of the request unless Mr. Landrith wishes to make a different motion.

PUBLIC COMMENT:
Comments in favor were received from Mark Gibson, who explained that he is the real estate agent who is involved with this property. He is currently working with several different clients, with the main concern at this particular point and time being a nursing home. He previously received an offer by a convenience store, and through Mr. Powell's direction, they escalated the price for the property to keep that from transpiring. They want to build a development that will enhance the neighborhood.

Mr. Gibson discussed a potential apartment complex on one portion of the property and is currently negotiating approximately half the property, or 20 acres, for a nursing or convalescent home. Mr. Powell then hopes to develop the remainder of the property to support that particular function, along with medical offices in support of Mercy Hospital. Mr. Gibson believes that these are the best uses for the property.

Mr. Smith asked about the property line on the top left side and asked Mr. Gibson if Mr. Powell owns that parcel. He replied that this tract is currently owned by Empire District Electric

Comments in opposition were received from the following:
Mr. Eric Roll, 4514 Belmont, Joplin
Mr. Denny Desmond, 111 Hidden Valley Drive, Joplin, representing the Board of Trustees of the Village of Leawood
Mrs. Marcia Long, 1611 East 50th Street, Joplin
Mrs. Vanessa Stephens, 1910 East 44th Street, Joplin
They expressed concerns regarding increased traffic, commercial development, and a decrease in residential property values in their residential area. They also expressed concern about the environmental impact to this area and watershed problems that commercial development would create in this area.

Mr. Anderson noted for the record that three written petitions of protest have been received, with these three residents not being represented at this meeting or have not spoken publicly. He reminded everyone in the audience that this recommendation will be forwarded to the City Council on July 2 at 6:00 p.m.

Z&P Meeting: June 11, 2012
City Council Meeting: July 2, 2012

STAFF PLANNING REPORT

CASE 057-12:

Petition the Council to rezone from District R-1 (Single-Family Residential) to District C-3-PD (Commercial – Planned Development) for a future commercial development.

APPLICANT:

Powell Family Trust

LOCATION:

Northeast corner of 44th Street and Connecticut Avenue

PRESENT ZONING:

R-1 (Single-Family Residential)

REQUESTED ZONING:

C-3-PD (Commercial – Planned Development)

EXISTING CONDITIONS:

PROPERTY SIZE

Approximately 1,280' x 1,280' & 330' x 330' (1,747,300 square feet or 40 acres)

FLOOD PLAIN

Zone X

SITE	LAND USE	EXISTING ZONING
NORTH	Undeveloped	R-1 & Leawood
SOUTH	Single-Family Homes	Leawood
EAST	Head Start & Undeveloped	R-3-PD
WEST	Single-Family Homes and Undeveloped	Leawood

TRAFFIC CONDITIONS:

STREET(S) WITH ACCESS TO PROPERTY

44th Street
Connecticut Avenue

CLASSIFICATION OF STREET(S)

44th Street – Arterial
Connecticut Ave – Arterial

RIGHT-OF-WAY WIDTH

44th Street – 60 feet
Connecticut Ave – 80 feet

WILL TURNING MOVEMENTS OF THE PROPOSED USE CREATE AN UNDUE TRAFFIC HAZARD?

No.

UTILITIES:

The property will need utilities.

CONSISTENT WITH FUTURE LAND USE MAP?

Yes.

STAFF ANALYSIS:

CONSISTENT WITH DEVELOPMENT POLICIES OF THE COMPREHENSIVE PLAN?

Yes.

THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

This property is suited for commercial use given the location at the intersection of 44th Street and Connecticut Avenue.

THE EXTENT THAT THE ZONING CHANGE WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

A Planned Development District designation will provide additional authority to city staff,

P&Z Commission, and City Council to work with the developer to design the development in a manner that minimizes any potential negative impacts to nearby residential development.

DISCUSSION

This property is consistent with development patterns and policies.

To be consistent with the nearby zoning of the "Silver Creek Galleria" area, staff recommends the consideration of C-2-PD.

REZONING APPLICATION FORM

Return Form to:
Planning / Community Development Specialist.
Joplin City Hall
602 South Main Street
Joplin, Missouri 64801
417-624-0820 Ext. 511
FAX 417-625-4738

For Office Use Only

Case No.: 05 7-12
Filing Fee: $ 350.00
Date Advertised: 5-27-12
Date Notices Sent: 5-25-12
Public Hearing Date: 6-11-12

APPLICANT: David and Judy Powell Family Trust PHONE: 417-624-7655
ADDRESS: 104 Hidden Valley Drive, Joplin, MO ZIP: 64804
OWNER: Same as Above PHONE:
ADDRESS: ZIP:
LOCATION OF PROPERTY: N.E. Corner of 44th and Connecticut
LEGAL DESCRIPTION: South One-Half of the East One-Half of the Southwest Quarter of the Northwest Quarter of the Southwest Quarter and the Southwest Quarter of the Southwest Quarter of Section 24; Township 27, Range 33, Newton County, Missouri

Present Zoning ~~Agricultural~~ R-1 Requested Zoning: C3-PD Acreage: 42.5
Present Use of Property: Commercial Development

SURROUNDING LAND USE AND ZONING:

	Land Use	Zoning
North	I-44 and Empire	None / C4
South	Residential	R-1
East	Commercial - Silvercreek Galleria	R-3
West	Residential	R-1 and A-1

CHARACTER OF THE NEIGHBORHOOD: Under Development

RELATIONSHIP TO EXISTING ZONING PATTERN:

1. Would proposed change create a small, isolated district unrelated to surrounding districts? No
2. Are there substantial reasons why the property cannot be used in accord with existing zoning? Yes
   If yes, explain: Not feasible for Agricultural development with Mercy Hospital nearby.

CONFORMANCE WITH COMPREHENSIVE PLAN:

1. Consistent with Development Policies? Yes, in accordance with Leawood Plan.
2. Consistent with Future Land Use Map? Yes

THE FOLLOWING MUST ACCOMPANY YOUR APPLICATION:

1. One copy of a legal description of the property proposed to be rezoned.
2. One copy of a statement describing the reasoning for the rezoning, the impact of the proposed change, including any traffic conditions that may result; any danger from fire hazards; how the proposed change may effect the character of the surrounding properties; and how the proposed change will benefit the City of Joplin.
3. Owner Affidavit, if applicant applying for the rezoning is not the owner of the property be rezoned

TRAFFIC CONDITIONS:

1. Street(s) with Access to Property: 44th and Connecticut
2. Classification of Street(s):
   Arterial _____ Collector Yes _____ Local _____
3. Right-of-Way Width: None
4. Will turning movements caused by the proposed use create an undue traffic hazard?
   Hazard already exists at corner of 44th and Connecticut

IS PLATTING OR REPLATTING REQUIRED TO PROVIDE FOR:

1. Appropriately Sized Lots? Yes
2. Properly Sized Street Right-of-Way? Yes
3. Drainage Easements? Yes
4. Utility Easements:
   - Electricity? Yes
   - Gas? Yes
   - Sewers? Yes
   - Water? Yes
5. Additional Comments: _____

UNIQUE CHARACTERISTIC OF PROPERTY AND ADDITIONAL COMMENT:

I-44 visibility, proximity to Mercy development and other newer Commercial development.

SIGNATURE: David A Powell DATE: March 16, 2012

BY: David A. Powell

TITLE: Trustee



Case 057-12: A request to rezone from District R-1 (Single-Family Residential) to District C-2-PD (Commercial - Planned Development) for the area generally known as the northeast corner of 44th Street and Connecticut Avenue, for future commercial development. - Powell Family Trust

N

Case 057-12: Northeast Corner of 44th Street and Connecticut Avenue – A request to rezone from District R-1 (Single Family Residential) to District C-3-PD (Commercial-Planned Development) for future commercial development -- Powell Family Trust.

Mr. Anderson opened the public hearing for Case 057-12.

Mr. David Powell, 104 Hidden Valley Drive, Joplin, purchased the property in this request after St. John's announced their new building. He felt it was inevitable that there would be other commercial development in the area, so he purchased this large piece of property which is one-fourth mile from his home.

Mr. Powell surveyed every household in the Village of Leawood, notifying them of his plans and obtaining their input about uses. More than 70 percent of those who responded to his survey said they were in favor of commercial development, and they even listed those light commercial uses that they were interested in. He is now asking for the zoning change since the property has been annexed into the City of Joplin. The property was annexed into the City with R-1 zoning.

Mr. Powell has a preliminary site plan but no contracts for anyone to begin building. He is asking for C-2-PD zoning, in that the City staff reported some inquiries from neighbors about uses and had requested a lighter zoning.

Mr. Anderson asked Mr. Powell if he would like for the commissioners to consider amending this case to C-2-PD. He replied that he would prefer C-3-PD zoning but would be agreeable to C-2-PD.

Mr. Anderson asked for comments in favor of this request.

Mr. Mark Gibson, 421 Briarwood Ridge, Carl Junction, Missouri, explained that he is the real estate agent who is involved with this property. He is currently working with several different clients, with the main concern at this particular point and time being a nursing home. He previously received an offer by a convenience store, and through Mr. Powell's direction, they escalated the price for the property to keep that from transpiring. They want to build a development that will enhance the neighborhood.

Mr. Gibson discussed a potential apartment complex on one portion of the property and is currently negotiating approximately half the property, or 20 acres, for a nursing or convalescent home. Mr. Powell then hopes to develop the remainder of the property to support that particular function, along with medical offices in support of Mercy Hospital. Mr. Gibson believes that these are the best uses for the property.

Mr. McClure arrived for the meeting at this time (4:07 p.m.).

Mr. Smith asked about the property line on the top left side and asked Mr. Gibson if Mr. Powell owns that parcel. He replied that this tract is currently owned by Empire District Electric.

Mr. Anderson asked for comments in opposition to this request.

Mr. Eric Roll, 4514 Belmont, Joplin, appeared in opposition and understood that houses could not be developed there since is close to Interstate 44. He had no problems with a nursing home, nice apartments, or doctors' offices, but he expressed concern about what could take place with C-2 or C-3 zoning. He asked about assurance as a land owner that he won't have 24-hour lighting or some low-income housing one block from his home.

Mr. Anderson explained that the commissioners address issues of zoning based on potential uses and don't approve zoning based on specific uses.

Mr. Kellstadt explained that the difference between C-2 and C-3 zoning is not substantial. A couple of things that are not permitted in a C-2 district that are permitted in C-3 include a potential convalescent home or a truck stop. However, as a planned development district (PD), any future development must go through the Planning and Zoning Commission and to the City Council for approval. The developer must provide site plans and meet the buffering and lighting requirements of the code. The uses are specified within the zoning code.

Mr. Kellstadt explained that the real control is in the "PD" designation, in that when a developer is ready to move forward, they come back to this commission for the site plan approvals.

Mr. Roll asked about the traffic in this area, and if traffic signals are proposed. Mr. Kellstadt will be commissioning a traffic study of this area between Range Line Road and Main Street and south of Interstate 44 to 50th Street. The City will hire a consulting engineering firm to conduct this study and make recommendations.

Mr. Denny Desmond, 111 Hidden Valley Drive, Joplin, appeared in opposition to the request. He explained that as chairman of the Board of Trustees of the Village of Leawood, it would be irresponsible for him not to continue to represent the residents of the Village of Leawood to oppose the zoning of the property at the northeast corner of 44th Street and Connecticut Avenue to commercial.

Mr. Desmond explained that the facts and information provided to the commissioners are very clear. The Leawood Planning and Zoning Commission voted on December 1, 2011, to recommend to the Board of Trustees by a vote of 6-0 opposing a zoning request. The minutes also clearly indicate by a vote of attendees, 35 opposed and two in favor. On December 8, 2011, the Leawood Board of Trustees voted 5-0 to deny the rezoning request. As a representative of the residents of the Village of Leawood, Mr. Desmond is committed to oppose any rezoning to commercial by Joplin.

Mr. Desmond discussed the changes since the December hearing. On January 17, 2012, Mr. Powell delivered a de-annexation agreement which stated if the Village of Leawood does not object to the de-annexation from the village of 42.5 acres described in the agreement, Mr. and Mrs. Powell, their affiliates, and trust will not sue the Village of Leawood or its trustees individually for anything related to this real estate issue including legal expenses. On a vote of 3-2, the Board of Trustees approved to proceed with concurrently annexing the property to the City of Joplin in order to avoid significant litigation costs for not only the village, but also the trustees individually.

Mr. Desmond explained that Leawood generates around $75,000 annually in revenue. Ordinance 2012-1 was passed at the May 15, 2012 trustee meeting to annex the property to Joplin. At the

village's planning and zoning hearing, 59 residents opposed the rezoning of the property, with three residents being in favor.

Mr. Desmond explained that the Village of Leawood is a residential village with very little commercial business, in which the village receives no revenue. The landscape of Leawood has already been negatively impacted by two significant developments, South Middle School on 50th Street, and Mercy/St. John's Hospital on 50th and Indiana. This rezoning would yet be another significant undesirable change in Leawood's landscape.

Mr. Desmond explained that with respect to Mr. Powell's zoning request to the Village of Leawood, 13 Leawood residents spoke at the hearing in opposition to the rezoning. Four were residents whose properties border the Powell property. A major concern was paying for road improvements which would be necessary for Mr. Powell's proposal. When asked if he was prepared to invest money in the improvement of existing roads, Mr. Powell replied no.

Mr. Desmond explained that the Village of Leawood has no legal responsibility to pay for any future road improvements. He stated that Mr. Powell indicated that it isn't feasible to develop the property as residential because of the price paid for the property. It is not the responsibility of the Planning and Zoning Commission or the City Council to base its decision for commercial zoning due to a speculative investment by Mr. Powell to the significant detriment of the area residents.

Mr. Desmond explained that with respect to the self-serving survey that Mr. Powell has discussed, he didn't list residential on the survey because he said that residential isn't an option. Even though only 34, or 14 percent of the surveys, were returned in favor of commercial development, still 14 responded by manually indicating residential as a preference. When Mr. Powell was asked if he planned to be the sole owner of the property, he replied so own or lease.

Mr. Desmond explained that the opposition to rezoning the property commercially is based on public safety and welfare of the residents. He expects Joplin's Planning and Zoning Commission, and subsequently the City Council, to listen to the will of the residents and not reward one speculative investor to the detriment of all the residents in the Village of Leawood.

Mr. Smith asked Mr. Desmond how he received those statistics from the survey, and he replied that Mr. Powell provided those at Leawood's planning and zoning hearing.

Mrs. Marcia Long, 1611 East 50th Street, Joplin, appeared in opposition to the request and reminded the commissioners if it were not for the hostile and bullying actions of the current owner, this issue would not even be on the agenda for this meeting. She concurs with the facts and statements that Mr. Desmond just made but asked about the removal of residential zoning in this area. She asked about the doctors and the other professionals who will most likely to move to the area when the new Mercy Hospital opens since it would be convenient to their place of work.

Mrs. Long has heard much discussion about the commercial revenue that everyone is going to make because of Mercy Hospital coming south of Joplin, but she has heard nothing about a new executive housing area in the south end of Joplin. This land is near Silver Creek, which runs into Shoal Creek, with Joplin residents drinking that water. She thought residential development of the property in this request would be far less damaging to the environmental impact and create much less watershed problems than business buildings with a lot of paved ground.

Mrs. Long discussed the argument that this land is near Interstate 44 and would not be conducive to residential homes makes no sense since Hidden Valley Drive is also near I-44. The executive homes on Hidden Valley are very desirable and seem to sell well.

Mrs. Long explained that Mr. Powell knew the zoning on this land would be residential when he forced the Village of Leawood to relinquish it to Joplin. It was very well stated that it would come into Joplin with R-1 zoning, and yet the sign existing on that property at this time indicates that it is available for commercial development. There is no mention on that sign that the property is currently zoned residential. It just says commercial development.

Mrs. Long explained that Mr. Powell and his real estate agent intend to make a huge profit if the commissioners proceed with the commercial zoning, but their financial gain impoverishes the area residents. She asked if the City of Joplin is so intent on making a few people rich that they fail to consider the rest of the residents who would just like to keep a peaceful neighborhood. She stated that this rezoning is purely speculative and only lines the pockets of a few. She recommended leaving this property as it is unless and until there is a definite plan on the table for consideration.

Mrs. Vanessa Stephens, 1910 East 44th Street, Joplin, appeared in opposition to the request and explained that Mr. Powell's proposal is a conciliatory proposal of changing the zoning to C-2-PD does not seem to make much difference to her since she resides directly across the street. She expressed concern about a McDonald's being built across the street, which is something that he mentioned in the Leawood Planning and Zoning Commission meeting. She expressed concern about decreased residential property values, and she did not understand why her property value should be some negatively affected just so Mr. Powell can make a profit.

Mr. Anderson asked for additional comments in opposition to this request, and none were received.

Mr. Desmond asked if Mr. Eastman will excuse himself from the vote on this request since he represents Keller-Williams, the real estate agency who is listing the property.

Mr. Eastman asked Mr. Bolander if he should abstain from voting. He replied that typically, the guidance from the City Attorney is as long as Mr. Eastman doesn't have a personal financial gain from the sale or transfer of the property or has no involvement in the project whatsoever.

Mr. Eastman does not foresee a financial gain unless he would sell a piece of the property. He asked if he should excuse himself, and Mr. Bolander replied that if he thinks he can have financial gain off of this after it is rezoned in the future, maybe he should excuse himself. Mr. Bolander explained that the only way to continue is to ensure that Mr. Eastman does not financially gain from this parcel.

Mr. Anderson informed Mr. Eastman if his participation in the discussion or vote has been materially impacted by something related to business that he could make a profit in the future, even if he can't benefit directly, he may have a conflict of interest that might prevent him from being impartial.

Mr. Eastman decided to excuse himself from voting on this request and stepped down from the dais at this point.

Mr. Anderson closed the public hearing for Case 057-12. He noted for the record that three written petitions of protest have been received, with these three residents not being represented at this meeting or have not spoken publicly. He entertained a motion for Case 057-12.

Mr. Landrith has consistently voted against any type of speculative rezoning since he has empathy for people in the audience who live in the area. He knows this is quite a radical change for the residents to anticipate something of this nature coming into their area.

MR. LANDRITH MOVED, SECONDED BY MR. McCLURE, THAT CASE 057-12 BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR DENIAL, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. ANDERSON, MR. GILSTRAP, MR. McCLURE, MR. LANDRITH, AND MR. SMITH VOTING "AYE"; WITH MR. EASTMAN ABSTAINING, AND WITH MR. HARRINGTON BEING ABSENT (5 IN FAVOR, 1 ABSTENTION, AND 1 ABSENT).

Mr. Anderson explained that the request is to rezone the property to District C-3-PD, with the staff recommendation of C-2-PD, and Mr. Powell agreeing with that recommendation. Mr. Landrith explained that his first motion is to deny the rezoning to District C-3-PD.

MR. LANDRITH MOVED THAT THE REQUEST TO REZONE THE PROPERTY TO DISTRICT C-2-PD ALSO BE DENIED DUE TO THE SPECULATIVE NATURE OF THE REQUEST.

Mr. Anderson asked the City staff if the commissioners really voted on Case 057-12 without modification and are still able to modify that case. Mr. Bolander replied that the commissioners are technically supposed to amend the original request if they wish to rezone to a lower classification. He believes that if they wish to rezone to a lower classification, they can still make that motion since something more intensive was advertised. At this point there is nothing to deny or approve unless someone makes a motion.

Mr. Anderson asked if the commissioners need to amend the case if Mr. Landrith wishes to continue with his motion before they vote again. Mr. Bolander explained that at this point there is nothing to deny, but if someone wishes to make a motion for a less intensive commercial district, someone must make that motion. At this point there is nothing on the table.

Mr. Anderson understood that Mr. Landrith's motion still stands, if C-2 is less intensive than C-3. Mr. Bolander thought he heard a motion to deny the C-2 zoning. Mr. Landrith stated that he made a motion to deny the C-3 zoning and asked if that takes care of everything. Mr. Anderson explained that this takes care of the request unless Mr. Landrith wishes to make a different motion.

MR. ANDERSON CLARIFIED THAT THERE IS A MOTION BY MR. LANDRITH AND A SECOND BY MR. McCLURE TO DENY THE REQUEST FOR REZONING THE PROPERTY TO DISTRICT C-3-PD. THE MOTION FOR DENIAL WAS APPROVED BY A VOTE OF 5 IN FAVOR, 1 ABSENTION, AND 1 ABSENT.

Mr. Anderson reminded everyone in the audience that this recommendation will be forwarded to the City Council on July 2 at 6:00 p.m.

Mr. Eastman returned to the dais at this point.

P & Z Case 057-12
Powell Family Trust
(P & Z Recommended Denial)

COUNCIL BILL NO. 2012-294 **ORDINANCE NO.**

AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District C-3-PD property as described below and located at the northeast corner of 44th Street and Connecticut Avenue in the City of Joplin, Newton County, Missouri.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. Having referred the subject matter of this ordinance to the City Planning and Zoning Commission and having given at least fifteen days notice of time and place of hearing on same by publication in the Joplin Globe, Ordinance No. 2004-256 is hereby amended by removing the following described property from District R-1 and including same in District C-3-PD:

All of the South One-Half (S1/2) of the East One-Half (E1/2) of the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4) AND the Southwest Quarter (SW1/4) of the Southwest Quarter (SW1/4) of Section 24, Township 27, Range 33, Newton County, Missouri.

Section 2. That the City Clerk is hereby ordered to file this ordinance with the Zoning District Map maintained in her office and to note the changes herein provided for thereon.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of _____, 2012.

ATTEST: Melodee Colbert-Kean, Mayor

Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

Brian W. Head, City Attorney

COMPREHENSIVE PLAN

Village of *Leawood*
Missouri

Adopted by the Village Board of Trustees
14 November 2000

Prepared by Ernie Trumbly

8-8 350-5415

STATE OF MISSOURI COUNTY OF NEWTON IN THE RECORDERS OFFICE

I, **PEGGY L. SPICER**, CLERK OF THE CIRCUIT COURT & EX-OFFICIO RECORDER OF DEEDS, WITHIN AND FOR THE COUNTY OF NEWTON, STATE OF MISSOURI, HEREBY CERTIFY THE INSTRUMENT ATTACHED WAS FILED FOR RECORD ON THE 7th DAY OF June ,2001; AT 2:56 P.M. RECORDED IN **BOOK 350 PAGE** 5415 WHEREOF, I HAVE HEREUNTO SET MY HAND & AFFIXED THE SEAL OF SAID OFFICE, DONE IN NEOSHO, MO.

PEGGY L. SPICER
CLERK OF THE CIRCUIT COURT &
EX-OFFICIO RECORDER OF DEEDS
RETURN TO: Robert Harding
12 Horseshoe Dr
Joplin 64804

Lenora Hyder
DEPUTY RECORDER

CK# 1627 $ 36.00
3.00 Cash

RECORDED
COMPARED INDEXED

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Village of Leawood Comprehensive Plan

Background on the Community:

The village of Leawood is a close-knit community located in north central Newton County, Missouri. Map 1 shows Leawood's location within the region. Affordable cost of living in a rural urban setting is offered by the village, which relies on local companies for trash pickup and electrical power services. Street lighting is provided. The village utilizes a system of individual septic tanks and wells. A portion of the village is connected to the local water company that also provides the village with fire hydrants. The Reddings Mill Fire District provides fire and rescue services while law enforcement services are provided by the Newton County Sheriff's Office. Both of these services maintain satellite stations within the village limits. All village roads are asphalt paved.

A Board of Trustees consisting of a Chairman, Vice Chairman, a Treasurer, a Clerk and a Secretary governs the village. Voters elect all of these positions that normally have a two-year commitment. A village collector is also provided. An attorney is on retention for legal assistance. Leawood is located in Shoal Creek Township and is in the 32nd State Senatorial District, the 129th State House of Representatives District, and the 7th US House of Representatives District. Educational services are provided by the Joplin R-8 School District.

Leawood suffers from problems endemic of most small communities. For instance, it is sometimes difficult to enforce some regulations due to the lack of village enforcement mechanisms. The village lacks the manpower to perform tasks and must hire out jobs such as snow removal and street maintenance. On the infrastructure level, the village needs to address street deterioration and storm water runoff in certain areas.

In terms of potential, the village is ideally situated on the south side of Joplin where residential and commercial growth continues to abound. Leawood has unlimited access to a good local collector street, two major state highways and an Interstate highway, the latter basically dividing Leawood and Joplin. However, Joplin's continued residential and commercial growth has begun to encroach around the village. Thus many commercial facilities are within easy and quick reach of Leawood residents. Moderate (to sometimes heavy) traffic on the two state highways brings a significant number of people by the community on a daily basis. Developable property is available to expand commercial growth on one of these highways. Map 2 shows the village of Leawood.

Leawood's 1990 population was 740. Of that number, there were 725 white, nine American Indian, Eskimo, or Aleut, four Asian or Pacific Islander and two other races. By age, there were 242 under the age of 18; 102 between the age of 18 and 30, 361 were between the age of 31 and 65, and 35 above the age of 65.

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In 1990, Leawood consisted of 261 housing units with 218 families and 239 households. Household income ranged from less than $5,000 a year to more than $150,000. There were 21 households with only one person, 68 with two persons, 62 with three persons, 54 with four persons, 28 with five persons, four with six persons and two with seven or more persons.

Within those households, nine persons had less than a ninth grade education, 60 had 9th to 12th grade (no diploma) education and 96 had a High School diploma. Moreover, 155 people had some college (no degree) education, 34 had an Associates Degree, while 93 had a Bachelors degree and 51 had a Graduate or Professional degree.

Current Land Use:

Leawood is primarily a low density R-1 residential community. The village does, however, also incorporate M (trailer court) and C-1/C-2 (neighborhood/general commercial) zoning districts. Moreover, several large tracts of A-1 (agricultural) and smaller C-1/-2 districts remain. (The latter may also be used to provide for R-2/3 residential or C-3 commercial districts.) There are also two churches, a permanently manned volunteer fire station and a county law enforcement sub-station. Additionally, a small federal Post Office and a convention center borders the village. Map 3 identifies the current land use within the village.

Why Leawood Needs a Plan:

A community, like an individual, grows when it is young and faces the prospect of deterioration and decline when it becomes old. It is essential that a person must plan for the future if one intends to achieve a full and satisfying life, and so it is with our village.

Therefore we must plan as a means for preparing for the future. It is a process of thinking ahead and considering all aspects of land use change with intelligent forethought for solving community problems. It is a science and art of promoting the physical growth and development of the community in harmony with its social and economic needs.

The objective of planning is to provide a framework for guiding the community toward orderly growth and development by relating, balancing and harmonizing the physical, social, economic and aesthetic features of the community as it responds to private sector initiatives.

A plan establishes community-wide policy and serves as the basis for making zoning decisions. No zoning laws or plan, however, can provide for the general public good and at the same time accommodate all individual interests so that everyone is satisfied. While there must be proper balance between the public good and individual interests, what is best for the community, as a whole must prevail. Zoning amendments that are based on the benefits to the individual rather than the community as a whole have usually been declared invalid by the courts.

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The Planning Process:

Planning is a process through which a community evolves. Development techniques and community attitudes are continually changing and the plan must establish an evaluation process to consider new ideas and new concepts or the Plan becomes unworkable and, therefore, unusable.

The planning process provides the means for understanding existing conditions and accepted planning principles. It then permits an evaluation of these conditions with respect to the attitudes of the community (goals and objectives,) the need for support facilities and long-range growth patterns. As the Village considers each item of change, it should be carried through this process and the following questions asked:

* What is the relationship of this proposed change to existing conditions?

* Would the change be in conformance with established principles or current community policies?

* Is the change in general agreement with the growth objectives as presented on the Future Land Use Plan?

* What will be the implications of this change to the major thoroughfares system?

* What will be the major impact of this change on the capacity of the Village to maintain and serve future development.

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How the Comprehensive Plan Relates to Zoning:

By state law, zoning must be based on an adopted and up-to-date land use plan. Zoning decisions should include consideration of long-range community goals as well as short-range needs. The recommendations of the Comprehensive Plan should provide the public policy basis for zoning. Because of its importance in the zoning process, the Comprehensive Plan should be reviewed on a regular basis and amended as necessary to insure it remains current.

It is important to zone for land, not people. An error frequently made is approval of a rezoning to accommodate an applicant's personal circumstances without consideration of land use conditions and characteristics. Such zoning amendments are rarely in the public interest and, if challenged, can be held to be invalid. Instead, decisions should be based on whether the land is appropriate for the proposed zoning district. It is the village's prerogative to set standards for how zoning amendment applications are considered. Suggested standards for consideration of a rezoning application include:

* The character of the neighborhood and the zoning and uses of properties nearby;
* The suitability of the subject property for the uses to which it has been restricted;
* The extent to which a zoning change or removal of the restrictions will detrimentally affect nearby property;
* The length of time the property has remained vacant as zoned;
* The relative gain to public health, safety and welfare by not rezoning the property as compared to the hardship imposed on the property owner;
* The recommendation of the Zoning and Planning Committee, and;
* Compliance with the Comprehensive Plan.

Future Land Use Planning:

Leawood is a matured village and thus has very limited space for future growth. A few empty residential lots remain for new homes. Privately owned A-1 zoned properties may one day be sold for development purposes. These properties offer the greatest future growth potential for residential and/or commercial development. Aside from these areas, there also remains several empty lots and strip parcels available for commercial development. However limited, these potential growth areas will ultimately require our attention.

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Leawood Community Goals/Objectives:

Leawood's goals for the future are somewhat defined by the lack of developable land and the continuing encroachment of Joplin around the village. This encroachment basically feeds present and projected village needs thus eliminating the requirement for any further village developmental. Regardless, there are goals or objectives that need addressing. These are:

Street Improvements:

All of Leawood's streets are paved. The asphalt pavement, however, is rather old and is beginning to show need of repair and/or replacement. Some streets have suffered years of heavy construction related traffic during the building of Joplin's Highland and Wildwood subdivisions. In addition, years of increasing amounts of village related traffic and weather has taken its toll. Moreover, the width of the streets (although once adequate for village needs) has become of growing concern for safety especially as increasing numbers of larger cars and SUV's must pass each other. This "two seemingly cannot pass at once " interpretation is often exacerbated by placement of mailboxes on the streets edge.

Along with this issue is the future development, or at least improvement, of major roads around Leawood. Fortunately, this issue is being handled by the city of Joplin. New and expected commercial development and resultant traffic flow in and around the area bounded by 44th Street, I-44, Rangeline (Hwy. 71) and Connecticut Street has already required a new traffic control light at 44th and Rangeline. Moreover, in 2001, 44th Street will be resurfaced, slightly widened and have shoulders added. Again, depending on requirements, 44th may be widened to three, perhaps five, lanes within five years. Likewise, Connecticut Street is being looked at for upgrade into a three or five lane highway from 44th Street into Joplin within the next five or so years, once again, depending on traffic demands. This action, of course, will necessitate widening of the bridge over I-44.

Within the village, we should consider road improvements to Connecticut south of 44th to 50th Street and for 50th Street itself. In anticipation of increased traffic on Rangeline Road and the difficulty it is already imposing on Southern Hills residents for egressing that sub-division; consideration should also be given to working with Joplin for a connecting road between 50th Street and Valley View Drive.

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Storm Water Runoff:

The village primarily relies on natural land slope for drainage of storm water. However, during periods of heavy rain, floodwaters produce destructive runoff that damages property. Even in lesser amounts of rainfall, this problem exists as some streets and/or driveways contribute by "focusing" the uncontained flow of water. In the coming decade, the village should install water runoff measures to include street gutters, drains, drainage pipes. Regardless, this issue may be forced upon the village as DNR environmental regulations may ultimately force the village to convert from septic systems to commercial sewer hook up. Moreover, within two years, DNR regulations (at least on new developments) will require storm water runoff to be controlled both in terms of quantity and quality. It would be wise for the village to be proactive in these matters and begin immediate financial preparations.

Park Construction:

There have been desires expressed to build a village park. However, land limitations and the spread out nature of the village makes this a difficult problem. Besides there are several parks within a very short distance of the village and there is the anticipated construction of a nature center with trails in one of these parks. Regardless, this is an issue that must be considered in areas of the village having a greater population of younger kids.

Storm Sirens:

Installation of a storm siren has been examined. It is felt a single siren could most likely serve the needs of the village. Cost estimates have been obtained but it is the hope of the Board of Trustees that Joplin's expansion of their siren system into the areas surrounding Leawood will negate the need to have one installed within the village.

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Increased Citizen Participation:

Many of the village's recurring needs and perhaps goals are wholly obtainable by increased citizen participation and acceptance of personal responsibility for the village's future. Increased citizen participation is required in a number of issues. These include:

* The effective operation of the recently initiated Neighborhood Watch program. Village residents may enroll in the Joplin Citizen Police Academy (if you work in Joplin) and the Newton County Citizens Sheriff's Academy. Both are highly recommended for overall police familiarization and training.

* Certain maintenance needs especially in areas such as upkeep of village street easement property, traffic control signs, and Leawood village signs.

* Citizens should take pride in their community and a more effective means of communication needs to be established. To this end, the Leawood Ledger (the village newspaper) will be published every two months following the Board of Trustees meeting.

* Points of contact are listed in the paper for residents to become more involved and thus have a more effective participation in village government. In addition, residents should attend the villages' regularly scheduled Board of Trustees meetings.

* Residents should also attend village Zoning and Planning Committee meetings to be aware of continuing development in and around the village.

APPROVED for passage this 13th day of March, 2001.

Robert H. Harding
CHAIRMAN

ATTEST:

VILLAGE CLERK

On this 8th day of May, 2001, before me, the undersigned notary public, personally appeared Robert H. Harding, Known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

Richard M. Webster Jr.
Notary Public

Richard M. Webster Jr., Notary Public
State of Missouri, Jasper County
My Commission Expires June 22, 2001

Information Provided to City of Joplin
Meeting on June 6th @ 3:00

Exhibit	Description
A	Annexation Ordinance 2012-1 - Background and Insert to March 2012 Leawood Ledger
B	Minutes for Leawood P&Z Hearing on Powell Property on December 1, 2011
C	Minutes for Leawood Trustee Hearing on Powell Property on December 8, 2011
D	Copy of Powell Survey to Leawood Residents - Excludes any reference to residential
E	Information of Threats of Litigation - Provided to Joplin Globe
F	Email for Kurt Higgins, Chairman of Leawood P&Z, on Concerns for Commercial Zoning
G	Closing Statement by Chairman of the Board of Trustees for Village of Leawood

Respectfully submitted :

Denny Desmond
Chairman of Board of Trustees for Village of Leawood

Exhibit A

Annexation Ordinance 2012-1

Background and Insert to March 2012 Leawood Ledger

Ordinance 2012-1 for Property at the Northeast corner of 44th Street and Connecticut Avenue Voluntary Annexation of into the City of Joplin

Background The Planning & Zoning Commission voted 6 to 0 at the public hearing on December 1, 2011 to recommend to the Board of Trustees to deny the Powell/Deatherage request to rezone a tract of property (40+ acres) on the northeast corner of 44th Street and Connecticut Avenue from A-1 Agricultural to C-3 Planned Shopping Center. The Board of Trustees voted 5 to 0 at the December 8th public hearing to accept the recommendation of P&Z Commission and deny the rezoning request. On December 15th David Powell submitted a Missouri Sunshine Law Records Request for various types of documents. An initial response with some documents was provided to David Powell.

On December 22nd Powell requested a "meeting of the minds" to deannex Powell's property from Leawood. At the request of Denny Desmond, our Village attorney Mike Talley met with Powell's attorney, Dan Whitworth, on January 9th at Powell's request, to hear why Powell believes the Village should agree to deannexation. At the meeting Whitworth advised that he had been directed by Powell to file a lawsuit against the Village to accomplish either an invalidation of the Village's zoning ordinances or to obtain an order of deannexation based on failure to provide services.

On January 13th Powell contacted Desmond and reiterated the same points from the January 9th meeting and added the following: #1 Desmond would be named personally in the lawsuit, #2) will sue for recovery of legal fees, which are now approximately $10,000, #3 will drop the possible lawsuit against Desmond and Leawood, if the Village agrees to deannexation. # 4 requested that Desmond present this at the scheduled January 17th meeting of the Trustees. Desmond requested that Powell put his request in writing.

Deannexation Agreement from Powell At 11:30 am on January 17th in response to Desmond's request Powell delivered his "Deannexation Agreement". The document included these statements: 1) if "The Village of Leawood does not object to the deannexation from the Village, the 42.5 acres." 2) "The Powells, their affiliates and Trusts will not sue the Village of Leawood or its Trustees for anything related to this real estate sue including legal expenses incurred."#4 "This agreement shall be void if not executed by all parties by 5:00 pm, January 27, 2012. Powell further stated to Desmond upon dropping off the document: "1 will file the lawsuit tomorrow, if the agreement isn't executed. #2 has written another check for $100,000 (didn't say what for) and will seek recovery in litigation with Leawood. Deatherage (current owner of property) is ready to sue Leawood for $865,000 if deannexation isn't approved.

January 17th meeting of Board of Trustees. Since the P&Z Commission met prior to the trustee meeting, Desmond requested members to remain at the trustee meeting to review the Powells' "Deannexation Agreement". After a lengthy discussion, a motion was made by Dale Owen and seconded by Desmond that the Board of Trustees approves simultaneous deannexation of said proper into Joplin with other details of the agreement to be worked out between the attorneys. If approved, Desmond will notify Powell by telephone this evening. Voting in favor 3 (Denny Desmond, Fran Owen, and Dale Owen) Opposed 2 (Brad long and Caleb Head). Motion passed.

The article in the Joplin Globe on this meeting can be viewed at www.leawoodvillage.com under the category "other/news".

Ordinance 2012-1 is an ordinance authorizing, approving, detaching and transferring the approximately 42.5+ acres at the northeast corner of 44th Street and Connecticut Avenue from the Village of Leawood to the City of Joplin. The legal description indicates that all of 44th Street and Connecticut Avenue that borders the Powell's property will be annexed into Joplin. The ordinance can be viewed at www.leawoodvillage.com under "other/news". This ordinance is on the agenda for the P&Z and Trustee meeting on March 20th for approval

Exhibit B

Minutes – Leawood P&Z Hearing
December 1, 2011

Planning and Zoning Commission
Village of Leawood

Leawood's Planning and Zoning Commission held a Public Hearing on December 1, 2011 to consider a proposal for change of zoning.

Chairman Kurt Higgins opened the 6:30 p.m. meeting held at Calvary Baptist Church. Commission members present were Denny Desmond, Kurt Higgins, Brad Long, Rick McCord, Phyllis Sapp, and Don Swanson. R.E. Smith was unable to attend.

Denny Desmond moved that the agenda be accepted and Brad Long seconded. Motion passed.

Don Swanson moved the appointments of Rick McCord as Vice-Chair of the Planning and Zoning Commission and Phyllis Sapp as Secretary be accepted. Denny Desmond seconded and motion carried.

Kurt Higgins read the Rules and Regulations as recommended by Mike Talley, Village attorney, and the motion for approval was made by Rick McCord and seconded by Don Swanson. Motion carried.

Ethical Principles for the Commission were examined, a motion to approve made by Denny Desmond, second by Brad Long, and motion carried.

Kurt stated that to the best of his knowledge the Planning and Zoning Commission had last met in 2004. Previous member Dale Blanchard is no longer residing in the area and past records are not available. Chairman Higgins stated the Commission is now composed of seven Leawood residents and is currently positioned to provide the necessary service to the community.

Tonight's Public Hearing will allow residents to address their opinions to the Commission which, in turn, will provide a recommendation to the Board of Trustees. The Board of Trustees will vote on the zoning request at the Dec. 8, 2011 meeting to be held at Calvary Baptist Church at 6:30 p.m.

The Chairman read the Opening Statement for Public Hearing, read published notices which appeared in The Globe on Nov. 7, 2011 and the Nov. Leawood Ledger, noted four signs of the Hearing were placed on the property on Nov. 18, 2011 and adjacent property owners provided notice of the public hearing on Nov. 28, 2011.

Kurt stated that David and Judy Powell submitted a request for zoning change for property located north of 44th Street and east of Connecticut and requested C-3 zoning for a proposed commercial development. The land is currently zoned A-1 Agricultural. The Oct. 27, 2011 proposal was provided to commission members with a revised request dated Dec. 1, 2011. David Powell received the Nov. 3rd request from Planning and

Zoning for a "Preliminary Development Plan", which listed 10 specific items to be included in the Plan.

Prior to opening the meeting to public comments, Kurt Higgins explained Appearance of Fairness considerations and polled the Commission. Rick McCord stated he owned property across the street from Connecticut, Don Swanson said that he and David Glenn owned a commercial development in Joplin, and Denny Desmond and Kurt Higgins indicated they had extensive communication with David Powell in regard to gaining knowledge of the proposal. These Commission members want to place this on public record and feel it will not prevent them from being fair and objective. No other members had any communications nor did anyone in the audience wish to challenge on appearance of fairness grounds.

Kurt Higgins, P.E. addressed the Public Hearing as a professional engineer who had studied the proposal. The staff report concluded the proposed development will significantly increase the amount of traffic on 44th Street and Connecticut Avenue. However, the developer is not proposing any improvements to either of these roads. The proposed site plan is nice looking, but will have significant impacts on the surrounding areas. How the developer will prevent the parking lot lighting from sheading onto adjacent properties is a concern. Since the village does not collect sales tax and doctors' offices, if employed by the hospitals, and churches are exempt from property taxes, the Village may not generate sufficient property taxes to offset the increase in maintenance costs to our existing roadways caused by the increase in commercial traffic. Tri-State Engineering provided a preliminary report showing the need for three separate detention basins and gravity sewer systems. The developer would need to work out an agreement with the city of Joplin to own and maintain the sewer system since the Village does not have any public sewers.

David Powell, a resident of 104 Hidden Valley Dr. spoke in favor of the proposal he was requesting. He stated the hospital would generate more business in the area, there is not a lot of building going on in town from 20th south as he expects businesses to follow the hospital, and that several lots now zoned Agricultural were later intended to be rezoned for development. Mr. Powell does not believe Residential zoning would be feasible as he thinks building costs of a home in Leawood would exceed $500,000 by the time a lot worth $100,000 was purchased. He states homes in Leawood are worth more now that the hospital is coming.

His proposal is to develop a well-landscaped commercial area within the 42 acres and feels a supermarket, convenience store, pharmacy, retail stores and some of the 250 physicians who lost offices could lease space in a site comparable to Kansas City's Zona Rosa. In his personal survey, he noted that respondents listed medical, grocery, and convenience store in order of preference. He received 48 responses to his survey.

Others in favor of the C-3 zoning proposal were asked to speak with a five minute limit per speaker.

Mark Gibson, non-resident realtor, 421 Briarwood Ridge, Carl Junction emphasized that the drawing presented tonight is only conceptual and stated that St. John's will be dealing with traffic concerns by widening 44th and also Connecticut.

Steve Voegl, non-resident developer, Rt. 2, Galena, KS was invited by David Powell to discuss possible development ideas. His experience with Kohl's at the Mall and Branson's Landing were sited as examples of the convenient and attractive projects, residents could enjoy.

There were no others speaking in favor of the proposal.

Those opposed to the C-3 rezoning proposal were asked to speak with a five minute limit per speaker.

Brad Long presented 2 letters of opposition received from:

John & Ina Dorsey	4402 Connecticut
Randy & Joyce Kastl	1530 E. 44th St.

Denny Desmond presented a lit of 9 residents who had sent e-mails or letters to the Village opposing the change:

Grant & Melinda Hoover	524 Grandview
Mike & Connie Foti	110 Hidden Valley
Paul & Diane Garrett	74 Horseshoe Dr.
Steve Belcher	2018 E. 45th
Dian Doody	1 Emerald Way
Marianna Belcher	2018 E. 45th
Jim & Emily McLaughlin	1504 E. 50th
Gladys Courtney	4425 S. Connecticut
Barbara Isgrigg	1909 E. 46th

An additional 5 surveys requested by Mr. Powell were mailed to the Village, all opposing the change:

Ben and Joan Spurlock	2011 E. 46th
D. Robert Cottingham	2000 E. 44th
Dorthy Owen	2036 E. 44th
Rose DePew	1525 E. 46th
Ben Harding	72 Horseshoe Dr.

Those speaking at the Public Hearing opposed to the rezoning proposal were:

Lauren Stauffer	4 Emerald Dr.
Roger Buchanan	4 Emerald Dr.
Gladys Courtney	4425 S. Connecticut

Beverly Kiehl	2027 E. 47th St.
Cliff Barker	1824 E. 44th St.
Margaret Wunderlin	5006 Brookwood Dr.
Angie Brown	2028 E. 46th
Vanessa Stephens	1910 E. 44th St.
Raymond Grote	2125 E. 50th
Kathy McCord	4300 Connecticut
Marcia Long	1611 E. 50th St.
Brad Eichelberger	1024 E. 44th
Randy Moore	114 Hidden Valley Dr.

Opposition remarks included repeated comments about the desire to keep the land in its natural state where trees and wildlife could continue to be part of the Village. Many stated they had chosen to live in Leawood because it was a quiet and peaceful area. With the tornado devastation, it is even more important to protect our wooded areas. Several commented that once concrete and commercial development came in, it could never again be returned to the tranquil surroundings we have long enjoyed. Questions were raised about traffic lights, traffic increases and road use, would the bridge be widened, would this lead to other rezoning, did we really want gasoline storage at a convenience store or liquor sold? Other major concerns were paying for the road maintenance and the economic viability of the proposal. One remarked he had sent in the informal poll to Mr. Powell in support of the rezoning because he thought his only choices were commercial, or a pig farm. He said he was opposed now that he knew there were other options to consider and had an opportunity to see the anticipated impacts of the development.

Randy Moore, a Leawood resident as stated above commented that he respects what Mr. Powell was proposing but felt that this was a bad time to try to do this in Leawood. His opinion as Chair of Joplin's Economic Development Committee and a member of CART (Citizen Advisory Recovery Team) is that it would be difficult to compete with the incentives the city of Joplin would be promoting for commercial development within the tornado damaged areas and we should let St. John's settle in, then possibly later consider even residential options as so many families have lost homes. Many agreed that any future zoning considerations should lean toward residential as compared to commercial.

With all having spoken who wanted to do so, Chairman Kurt Higgins asked for a show of hands from those residents present who had not spoken. Opposed to rezoning were an additional 35 with 2 in favor of rezoning to C-3. Thirteen non-residents also raised their hands in favor of rezoning to C-3.

David Powell was given the opportunity to make a closing statement and then hear questions only from the Planning and Zoning Members. He said that he knew it was a very emotional consideration, he hoped everyone would keep an open mind, and thanked everyone for coming tonight.

Questions from Planning and Zoning and responses from Mr. Powell were:

Was the developer prepared to put money into the existing roads? No
How many surveys were sent out with 48 being returned? 230
Did the developer plan to be sole owner or build and sell? Sole owner and lease

Totals for the evening's comments from residents were:
Opposed to rezoning (2+9+13+35) = 59
In favor of rezoning (1 +2) = 3

Kurt Higgins then closed the Public Hearing and asked for a motion from the commission members. The motion was made by Rick McCord to not rezone as requested by the proposal. Seconded by Brad Long. Discussion then took place among the members. Kurt said his concern was for the public's health, safety, and welfare, including Mr. Powell's welfare. With the abundance of commercial property available adjacent to the project and the incentives by the city of Joplin, developing the property as commercial is a concern. The increase in traffic without improving Connecticut and 44th is also a major concern. Rick McCord also voiced Similar concerns.

The Planning and Zoning members voted as follows:
In favor of not rezoning 6 (Desmond, Higgins, Long, McCord, Sapp, Swanson)
Opposed 0
Motion carried to recommend to the Board of Trustees **not** to rezone the property to C-3.
This will be presented at the Public Hearing to be held Dec. 8th, 2011
@ 6:30 p.m. at Calvary Baptist Church.

Old Business: None

New Business: Denny Desmond suggested the Comprehensive Plan be revisited at a future meeting.

Kurt Higgins thanked those present for attending and sharing their views.
The motion to adjourn was made by Denny Desmond and seconded by Don Swanson.
Meeting adjourned with recommendation to be presented at the Dec. 8th meeting.

Respectfully submitted,
Phyllis Sapp Phyllis Sapp
Secretary, Planning and Zoning Commission

Minutes approved: _____ Date: _____

Attachments: Meeting Agenda – 12/1/2011
Rule and Regulations
Ethical Principles
Opening/Public Hearing Statement
Notice of Public Hearing as published in The Joplin Globe on 11/7/2011
Request for zoning change from David and Judy Powell dated October 27, 2011 and the supplemental request dated December 1, 2011
The "Preliminary Development Plan" from P & Z sent to David Powell on November 3, 2011
E-mails and letters of opposition to the zoning request from Leawood Residents who could not attend the meeting

LEAWOOD PLANNING AND ZONINING COMMISSION
MEETING AGENDA
12/01/2011

(1) Roll call of P&Z Members
(2) Approve Agenda
(3) Approve the Rules and Regulations. *Mike Talley, Village attorney has recommended these policies. I assume each of you has read this document. Are there any comments? Do I hear a motion to approve? Second?*
(4) Approve the Ethical Principles. *Again, Mike Talley has recommended these principles. Do I hear a motion to approve? Second?*
(5) Read Opening Statement /Public Hearing Statement
(6) Read the Notice of Public Hearings that was published in the Joplin Globe on November 7, 2011. Note that the public hearing notice was also included in the November Leawood Ledger.
(7) Note the four signs of the public hearing were placed on the property on November 18, 2011 and that adjacent property were provided with a notice of the public hearing on November 28, 2011
(8) Acknowledge that David and Judy Powell submitted at a request for zoning change on October 27, 2011, which has been provided to members. A revised request dated December 1st was received on November 30th.
(9) David Powell has acknowledged that he received the November 3rd request from P&Z for a "Preliminary Development Plan", which listed 10 specific items to be included in the Plan.
(10) Appearance of Fairness: Are there any members of the P&Z Commission that have an interest in the subject property, or own property adjacent to the subject property, or stand to gain or lose any financial benefit as a result of the outcome of this hearing, or cannot consider the application in a fair and objective manner? I would like to disclose that Denis Desmond, Don Swanson, and myself have engaged in communications with the applicant and/or representatives of the applicant in order to find out more information about the re-zoning request and want to place on the record this fact and feel this will not prevent us from being fair and objective. Does anyone else on the Commission engaged in

communications with either proponents or opponents of the application, and, if so, please place on the record the substance of any such communications. Are there any members of the audience who wish to challenge on appearance of fairness grounds participation in the matter by any member of the hearing body, including the reasons for the request?

(11) Staff Report: Kurt Higgins, P.E. reviewed the information provided by the applicant from the perspective of how it would affect the public infrastructure, such as water, wastewater, storm water, traffic, noise, light, etc. My concerns are:.....

(12) Will now hear from those in favor of the proposal for the rezoning. Please state your name, address and whether you live in the Village of Leawood, Joplin or some other municipality. Will first hear from Mr. Powell. All other responses should be limited to five minutes. P&Z will ask questions after each respondent has finished.

(13) Will now hear from those opposed to the proposal for rezoning. Please state your name and address for the record. Five minutes to voice their opposition.

(14) Will now have questions/comments from P&Z.

(15) Public hearing is now closed. Read again the specific zoning request and take a vote of the P&Z members for their recommendation to the Board of Trustees at the public hearing on December 8th at 6:30 at Calvary Baptist.

(16) Old Business (none)

(17) New Business

(18) Adjournment

Village of Leawood
P.O Box 2032, Joplin, MO 64803

NOTICE OF PUBLIC HEARINGS

There will be public hearings at the Calvary Baptist Church, located at 600 East 50th Street, Joplin, Missouri, 64804, at 6:30 P.M., on December 1, 2011 before the Planning and Zoning Commission of the Village of Leawood, and on December 8, 2011 before the Board of Trustees of the Village of Leawood, to consider the request of David A. Powell and William R. Deatherage, to rezone a tract of property (totaling 40 acres +/-) on the Northeast corner of 44th Street and Connecticut Avenue, in the Village of Leawood, Missouri from A-1 Agricultural to C-3 Planned Shopping Center.

All interested members of the public are invited to attend the public hearings to hear about the proposal and voice their comments for or against. **The P&Z Commission is very interested in hearing public comments from property owners adjacent to Connecticut Avenue and 44th Street.**

If interested members are unable to attend, they are encouraged to send their comments for or against the rezoning request by email to leawoodvillage@msn.com .

Go to www.leawoodvillage.com web site to view the Zoning Ordinance and Comprehensive Plan.

Denny Desmond
Chairman, Board of Trustees for Village of Leawood
781-3558

Kurt Higgins
Chairman, Planning and Zoning Commission for Village of Leawood
680-7370

Request for Zoning Change

Presented to

Leawood Zoning Committee

By

David & Judy Powell

October 27, 2011

David & Judy Powell
104 Hidden Valley Drive
Joplin, MO 64804

HAND DELIVERED

October 27, 2011

Leawood Zoning Committee
C/o Denis Desmond
111 Hidden Valley Drive
Joplin, MO 64804

Dear Committee Members,

We have previously offered a proposal to change the zoning for the part of Leawood that lies north of 44th Street and east of Connecticut. This is our formal request to the Leawood Zoning Committee and Village Board to grant this request. A planned commercial development at this site would generate needed property and sales tax revenue for the county and the Village of Leawood. These taxes will benefit our residents by providing a means for street improvements, storm water management, storm notification improvements, traffic control signs and other maintenance needs. These needs will continue to increase due to the opening of South Middle School and construction of St. John's.

It has been estimated that when fully developed, the annual property taxes from this area will be in excess of $24,000. Mark Gibson, a local commercial real estate expert has prepared that estimate from his analysis of developed property values. Depending on the mix of retail and offices, important sales taxes could also be shared by the County and Leawood.

A survey was conducted concerning the wishes of Leawood residents concerning a commercial development at this site. Seventy one percent of the forty eight respondents favor commercial development there versus agricultural or residential uses. The results of the survey conducted October 18-25th are enclosed and I can provide the names of all respondents. Simply stated, our residents want a planned commercial development by more than a two to one ratio. Because of the changing dynamics in the area, single-family residential development is not feasible.

Leawood's general public and other area residents will benefit from more accessible medical and other services and the tax revenues they will bring. The proposed change is consistent with Leawood's published Comprehensive Plan for future development. For these reasons, we request that you approve the zoning of Leawood, north of 44th street to C3 Commercial, its most appropriate and best use.

We request immediate action by the Committee to set a public hearing date, publish the newspaper notice and hold a Committee meeting to vote on our request. I will have signs made and placed at the site announcing the meeting as soon as you give me the meeting time and location. The publication, Committee meeting need to be completed in time for you to make a zoning change recommendation to the Village Trustees at their November meeting. Thank you for your consideration.

Very Truly Yours,

David A Powell

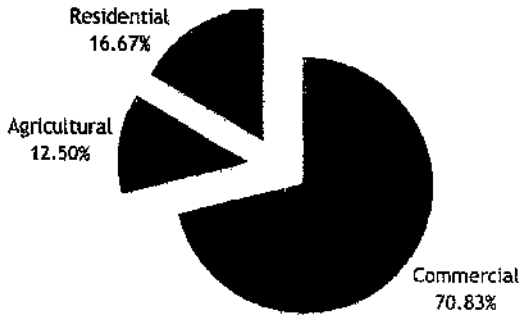
David A. Powell

Received by:_____ Date:_____

Encl: Leawood Zoning Survey
Deatherage Permission Letter
Legal Description of Property
Platt map
Leawood Comprehensive Plan

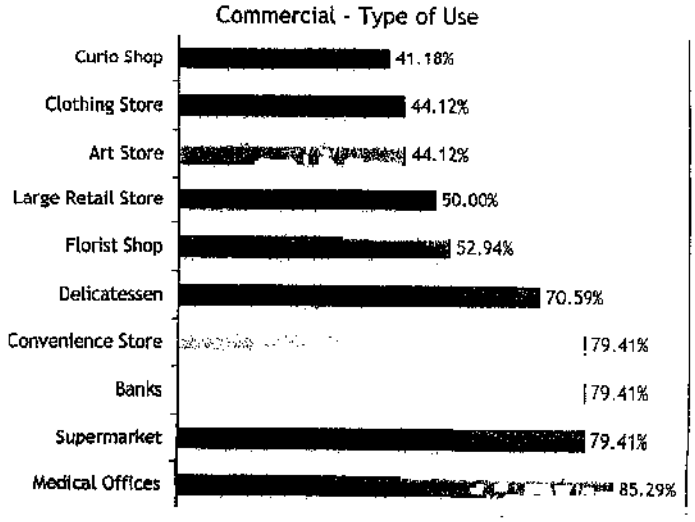
Leawood Zoning Survey

Zoning Preference	Total	Percent of Total
Commercial	34	70.83%
Agricultural	6	12.50%
Residential	8	16.67%
Total	48	100.00%



Commercial

Type of Use	Total	Percent of Total
Medical Offices	29	85.29%
Supermarket	27	79.41%
Banks	27	79.41%
Convenience Store	27	79.41%
Delicatessen	24	70.59%
Florist Shop	18	52.94%
Large Retail Store	17	50.00%
Art Store	15	44.12%
Clothing Store	15	44.12%
Curio Shop	14	41.18%



DATE:October 6, 2011

TO: David Powell

FROM: Warren Deatherage

SUBJECT: Permissions

You have my permission to clear a 50x50 feet area at the Northeast corner of 44th Street and Connecticut to erect a sign showing the proposed use of this property. Please follow the rules and regulations governing the placement of signs in the neighborhood. Also, contact dig safe to prevent hitting any underground utilities.

In addition, you have my permission to seek a change in zoning to allow the development of this tract of land. Mark Gibson, of the Glen Group, has the legal description of said land. If I may be of any further help please feel free to contact me.

Warren R. Deatherage

East 126 Hwy
P'ttsburg, Kansas 66762
620-875-1370

1035 Papaya St.
Hollywood, FL 33019

$27.00
Sims

Image# 003485920002 Type: LAN
Recorded: 11/18/2008 at 08:01:31 AM
Total Amt: $27.00 Page 1 of 2
Newton County Recorder
Lenora Hyder Recorder of Deeds
File# 2008-00009104
BK 357 PG 9075

RECORDER OF DEEDS SEAL NEWTON COUNTY

#5

4402 $27.00

WARRANTY DEED

THIS DEED, made and entered into by and between Warren Deatherage and Gail Deatherage, his wife, "Grantors" and Warren R. Deatherage, Trustee of the Warren R. Deatherage Revocable Living Trust under Agreement dated November 7, 2006, "Grantee". Grantees' mailing address is: 330 E. 126 Highway, Pittsburg, Kansas 66762

WITNESSETH, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, receipt of which is hereby acknowledged;

Grantors do hereby Grant, Bargain and Sell, convey and confirm, to Grantee, and Grantee's heirs and assigns, the following described real property in Newton County, Missouri, to wit:

South One-Half of the East One-Half of the Southwest Quarter of the Northwest Quarter of the Southwest Quarter and the Southwest Quarter of the Southwest Quarter of Section 24; Township 27, Range 33, Newton County, Missouri.

To have and to hold the same, together with all rights, immunities, privileges, and appurtenances, unto Grantee and Grantee's heirs and assigns, forever;

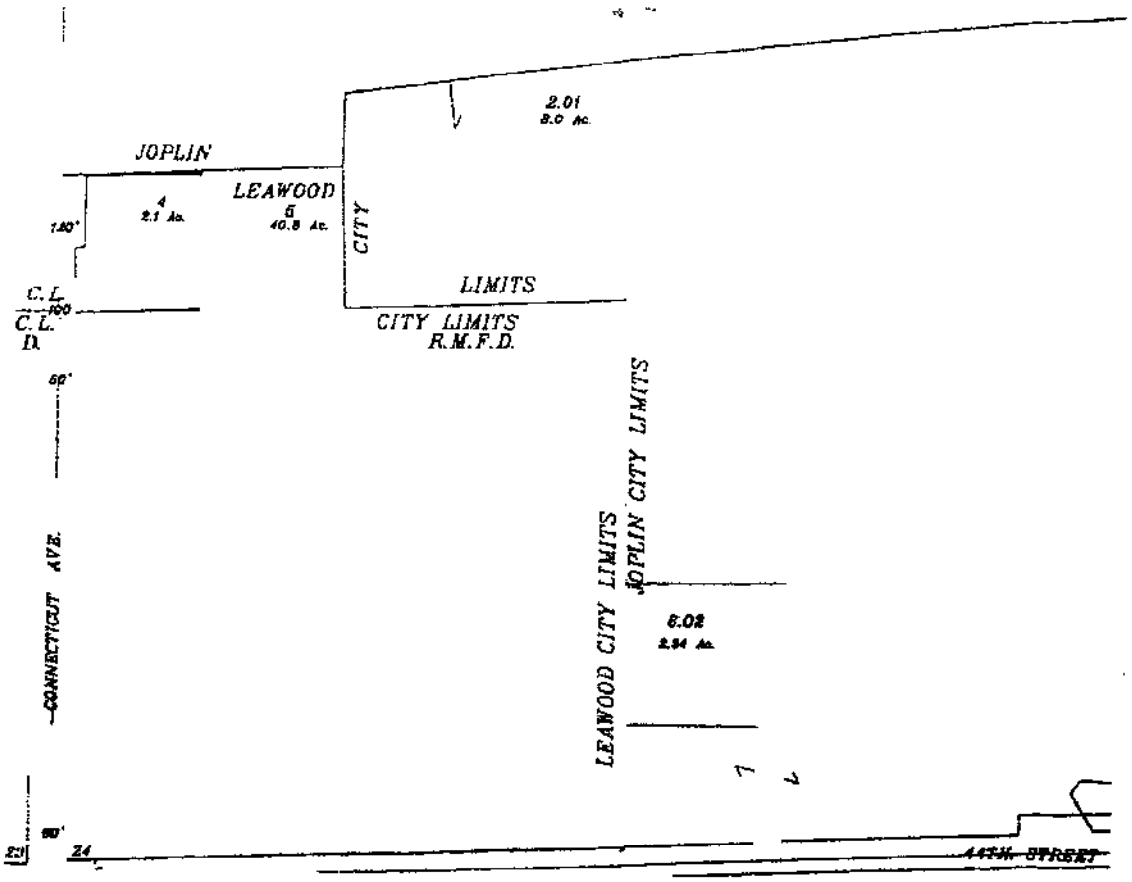
Grantors hereby covenant that these premises are free from all encumbrances except as set forth above, and that Grantors will warrant and defend the title to these premises unto the Grantee, and Grantee's heirs and assigns, forever, against the lawful claims of all persons whomsoever.

Witness the hand of Grantors this 12 day of Nov, 2008.

Grantors:

Warren Deatherage

Gail Deatherage


2.01
3.0 Ac.
JOPLIN
LEAWOOD
4
2.1 Ac.
5
40.8 Ac.
CITY
LIMITS
140'
C. L.
100
C. L.
D.
CITY LIMITS
R.M.F.D.
50'
CONNECTICUT AVE.
LEAWOOD CITY LIMITS
JOPLIN CITY LIMITS
6.02
2.94 Ac.
80'
23
24
44TH STREET

#5

COMPREHENSIVE PLAN

Village of *Leawood*
Missouri

Adopted by the Village Board of Trustees
14 November 2000

Prepared by Ernie Trumbly

Village of Leawood Comprehensive Plan

Background on the Community

The village of Leawood is a close knit community located in north central Newton County, Missouri. Map 1 shows Leawood's location within the region. Affordable cost of living in a rural urban setting is offered by the village, which relies on local companies for trash pickup and electrical power services. Street lighting is provided. The village utilizes a system of individual septic tanks and wells. A portion of the village is connected to the local water company that also provides the village with fire hydrants. Fire and rescue services are provided by the Reddings Mill Fire District while law enforcement services are provided by the Newton County Sheriff's Office. Both of these services maintain satellite stations within the village limits. All village roads are asphalt paved.

A Board of Trustees consisting of a Chairman, Vice Chairman, a Treasurer, a Clerk and a Secretary governs the village. Voters elect all of these positions which normally have a two-year commitment. A village collector is also provided. An attorney is on retention for legal assistance. Leawood is located in Shoal Creek Township and is in the 32nd State Senatorial District, the 129th State House of Representatives District, and the 7th US House of Representatives District. Educational services are provided by the Joplin R-8 School District.

Leawood suffers from problems endemic of most small communities. For instance, it is sometimes difficult to enforce some regulations due to the lack of village enforcement mechanisms. The village lacks the manpower to perform tasks and must hire out jobs such as snow removal and street maintenance. On the infrastructure level, the village needs to address street deterioration and storm water runoff in certain areas.

In terms of potential, the village is ideally situated on the south side of Joplin where residential and commercial growth continues to abound. Leawood has unlimited access to a good local collector street, two major state highways and an Interstate highway, the latter basically dividing Leawood and Joplin. However, Joplin's continued residential and commercial growth has began to encroach around the village. Thus many commercial facilities are within easy and quick reach of Leawood residents. Moderate (to sometimes heavy) traffic on the two state highways brings a significant number of people by the community on a daily basis. Developable property is available to expand commercial growth on one of these highways. Map 2 shows the village of Leawood.

Leawood's 1990 population was 740. Of that number, there were 725 white, nine American Indian, Eskimo, or Aleut, four Asian or Pacific Islander and two other races. By age, there were 242 under the age of 18; 102 between the age of 18 and 30, 361 were between the age of 31 and 65, and 35 above the age of 65.

In 1990, Leawood consisted of 261 housing units with 218 families and 239 households. Household income ranged from less than $5,000 a year to more than $150,000. There were 21 households with only one person, 68 with two persons, 62 with three persons, 54 with four persons, 28 with five persons, four with six persons and two with seven or more persons.

Within those households, nine persons had less than a ninth grade education, 60 had 9th to 12th grade (no diploma) education and 96 had a High School diploma. Moreover, 155 people had some college (no degree) education, 34 had an Associates Degree, while 93 had a Bachelors degree and 51 had a Graduate or Professional degree.

Current Land Use

Leawood is primarily a low density R-1 residential community. The village does, however, also incorporate M (trailer court) and C-1/C-2 (neighborhood/general commercial) zoning districts. Moreover, several large tracts of A-1 (agricultural) and smaller C-1/-2 districts remain. (The latter may also be used to provide for R-2/3 residential or C-3 commercial districts.) There are also two churches, a permanently manned volunteer fire station and a county law enforcement sub-station. Additionally, a small federal Post Office and a convention center borders the village. Map 3 identifies the current land use within the village.

Why Leawood Needs a Plan

A community, like an individual, grows when it is young and faces the prospect of deterioration and decline when it becomes old. It is essential that a person must plan for the future if one intends to achieve a full and satisfying life, and so it is with our village.

Therefore we must plan as a means for preparing for the future. It is a process of thinking ahead and considering all aspects of land use change with intelligent forethought for solving community problems. It is a science and art of promoting the physical growth and development of the community in harmony with its social and economic needs.

The objective of planning is to provide a framework for guiding the community toward orderly growth and development by relating, balancing and harmonizing the physical, social, economic and aesthetic features of the community as it responds to private sector initiatives.

A plan establishes community-wide policy and serves as the basis for making zoning decisions. No zoning laws or plan, however, can provide for the general public good and at the same time accommodate all individual interests so that everyone is satisfied. While there must be proper balance between the public good and individual interests, what is best for the community as a whole must prevail. Zoning amendments that are based on the benefits to the individual rather than the community as a whole have

usually been declared invalid by the courts.

The Planning Process

Planning is a process through which a community evolves. Development techniques and community attitudes are continually changing and the plan must establish an evaluation process to consider new ideas and new concepts or the Plan becomes unworkable and, therefore, unusable.

The planning process provides the means for understanding existing conditions and accepted planning principles. It then permits an evaluation of these conditions with respect to the attitudes of the community (goals and objectives,) the need for support facilities and long-range growth patterns. As each item of change is considered by the Village, it should be carried through this process and the following questions asked:

* What is the relationship of this proposed change to existing conditions?
* Would the change be in conformance with established principles or current community policies?
* Is the change in general agreement with the growth objectives as presented on the Future Land Use Plan?
* What will be the implications of this change to the major thoroughfares system ?
* What will be the major impact of this change on the capacity of the Village to maintain and serve the development.

How the Comprehensive Plan Relates to Zoning

By state law, zoning must be based on an adopted and up-to-date land use plan. Zoning decisions should include consideration of long-range community goals as well as short-range needs. The recommendations of the Comprehensive Plan should provide the public policy basis for zoning. Because of its importance in the zoning process, the Comprehensive Plan should be reviewed on a regular basis and amended as necessary to insure it remains current.

It is important to zone for land, not people. An error frequently made is approval of a rezoning to accommodate an applicant's personal circumstances without consideration of land use conditions and characteristics. Such zoning amendments are rarely in the public interest and, if challenged, can be held to be invalid. Instead, decisions should be based on whether the land is appropriate for the proposed zoning district. It is the village's prerogative to set standards for how zoning amendment applications are considered. Suggested standards for consideration of a rezoning application include:

*The character of the neighborhood;
*The zoning and uses of properties nearby;
*The suitability of the subject property for the uses to which it has been restricted;
*The extent to which removal of the restrictions (or change of zone) will

detrimentally affect nearby property;
*The length of time the property has remained vacant as zoned;
*The relative gain to public health, safety and welfare by not rezoning the property as compared to the hardship imposed on the property owner;
*The recommendation of the Zoning and Planning Committee, and;
*Compliance with the Comprehensive Plan.

Future Land Use Planning

Leawood is a matured village and thus has very limited space for future growth. A few empty residential lots remain for new homes. Privately owned A-1 zoned properties may one day be sold for development purposes. These properties offer the greatest future growth potential for residential and/or commercial development. Aside from these areas, there also remains several empty lots and strip parcels available for commercial development. However limited, these potential growth areas will ultimately require our attention.

Leawood Community Goals/Objectives

Leawood's goals for the future are somewhat defined by the lack of developable land and the continuing encroachment of Joplin around the village. This encroachment basically feeds present and projected village needs thus eliminating the requirement for any further village development. Regardless, there are goals or objectives that need addressing. These are:

Street Deterioration/Improvements

All of Leawood's streets are paved. The asphalt pavement, however, is rather old and is beginning to show need of repair and/or replacement. Some streets have suffered years of heavy construction related traffic during the building of Joplin's Highland and Wildwood subdivisions. In addition, years of increasing amounts of village related traffic and weather has taken its toll. Moreover, the width of the streets (although once adequate for village needs) has become of growing concern for safety especially as increasing numbers of larger cars and SUV's must pass each other. This "two seemingly cannot pass at once " interpretation is often exacerbated by placement of mailboxes on the streets edge.

Along with this issue is the future development, or at least improvement, of major roads around Leawood. Fortunately, this issue is being handled by the city of Joplin. New and expected commercial development and resultant traffic flow in and around the area bounded by 44th Street, I-44, Rangeline (Hwy. 71) and Connecticut Street has already required a new traffic control light at 44th and Rangeline. Moreover, in 2001, 44th Street will be resurfaced, slightly widened and have shoulders added. Again, depending on requirements, 44th may be widened to three, perhaps five, lanes within five years. Likewise, Connecticut Street is being looked at for upgrade into a three or five lane highway from 44th Street into Joplin within the next five or so years, once again,

depending on traffic demands. This action, of course, will necessitate widening of the bridge over I-44.

Within the village, we should consider road improvements to Connecticut south of 44th to 50th Street and for 50th Street itself. In anticipation of increased traffic on Rangeline Road and the difficulty it is already imposing on Southern Hills residents for egressing that sub-division; consideration should also be given to working with Joplin for a connecting road between 50th Street and Valley View Drive.

Storm Water Runoff

The village primarily relies on natural land slope for drainage of storm water. However, during periods of heavy rain, floodwaters produce destructive runoff that damages property. Even in lesser amounts of rainfall, this problem exists as some streets and/or driveways contribute by "focusing" the uncontained flow of water. In the coming decade, the village should install water runoff measures to include street gutters, drains, drainage pipes. Regardless, this issue may be forced upon the village as DNR environmental regulations may ultimately force the village to convert from septic systems to commercial sewer hook up. Moreover, within two years, DNR regulations (at least on new developments) will require storm water runoff to be controlled both in terms of quantity and quality. It would be wise for the village to be proactive in these matters and begin immediate financial preparations.

Park Construction

There have been desires expressed to build a village park. However, land limitations and the spread out nature of the village makes this a difficult problem. Besides there are several parks within a very short distance of the village and there is the anticipated construction of a nature center with trails in one of these parks. Regardless, this is an issue that must be considered in areas of the village having a greater population of younger kids.

Storm Sirens

Installation of a storm siren has been examined. It is felt a single siren could most likely serve the needs of the village. Cost estimates have been obtained but it is the hope of the Board of Trustees that Joplin's expansion of their siren system into the areas surrounding Leawood will negate the need to have one installed within the village.

Increase Citizen Participation

Many of the village's recurring needs and perhaps goals are wholly obtainable by increased citizen participation and acceptance of personal responsibility for the village's future. Increased citizen participation is required in a number of issues. These include:

- The effective operation of the recently initiated Neighborhood Watch program.

Village residents may enroll in the Joplin Citizen Police Academy (if you work in Joplin) and the Newton County Citizens Sheriff's Academy. Both are highly recommended for overall police familiarization and training.

- Certain maintenance needs especially in areas such as upkeep of village street easement property, traffic control signs, and Leawood village signs.
- Citizens should take pride in their community and a more effective means of communication needs to be established. To this end, the Leawood Ledger (the village newspaper) will be published every two months following the Board of Trustees meeting.
- Points of contact are listed in the paper for residents to become more involved and thus have a more effective participation in village government. In addition, residents should attend the villages' regularly scheduled Board of Trustees meetings.
- Residents should also attend village Zoning and Planning Committee meetings to be aware of continuing development in and around the village.

ZONING REQUEST

Presented: December 1, 2011

Request for Zoning of A-1 Agricultural Land for a C-3 Commercial District
42 acre tract north of 44th street and bordered on the west by Connecticut

The Comprehensive Plan for the Village of Leawood, Missouri was adopted by the Village Board of Trustees on November 14, 2000. It provides for current large A-1 (agricultural) tracts such as the subject property to be used to provide for R-2/3 residential or C-3 commercial districts. The subject property in this proposal is more suitable for commercial development than for multi-family residences.

Description of Property

The forty acres addressed here comprises all of the current Leawood property located between 44th street and I-44, east of Connecticut except for the following: Two acres closest to I-44 and east of Connecticut are not a part of the subject property. That tract is currently owned and used by Empire Electric for Industrial use, primarily large power pole storage. Planned use of building an electric substation may be changed in favor of a larger substation closer to 50th street to accommodate the needs of St. John's.

The east boundary of the property is the Leawood Village line that separates it from Joplin's Silvercreek Galleria commercial development. There is one residence currently on the tract. The condition is a dense thicket bordered by a rusty fence and dead trees. To protect power lines, Empire sprayed chemicals to kill trees along the entire 44th street boundary.

Proposed Use

Owners of the property propose to develop all forty two acres as commercial property including medical offices, retail, a bank, professional offices, a supermarket and a convenience store. The use of a green belt at least thirty feet wide with trees will greatly add to the beauty of Leawood, as will the expected widening of 44th street and Connecticut. The Comprehensive Plan for the Village includes a section on Community Goals/Objectives. Those goals and objectives described include "New and expected commercial development and resultant traffic flow in and around the area bounded by 44th Street, Rangeline (Hwy.71) and Connecticut Street". The Village Board recognized this need long before the construction of South Middle School or the St. John's announcement of the new hospital campus. This proposal will exactly fulfill that objective of the published Leawood Plan.

New Services

Residents in the northern areas of Leawood will benefit from the improved access to many services that they use frequently. Shopping, banking, medical and professional services will be available within a 1-2 minute trip from home. But traffic in Leawood will not increase substantially over what the present school commuters and future medical community will generate. North Leawood residents travel through or away from

the intersection of 44th and Connecticut currently. Those trips can be shortened, resulting in improved convenience and safety for us.

New Taxes

The development for the subject tract for its highest and best use will create substantially more tax revenue for the county and the Village. These taxes will benefit the residents of Leawood by providing for the needs of street improvements, storm water management, storm notification improvements, traffic control signs and other maintenance needs. These needs have become more urgent with the opening of South Middle School and they will multiply when St. John's construction begins. Most of the residents of Leawood will appreciate a revenue source other than their own property assessments to fund these needs.

Zoning Ordinances

The Village of Leawood adopted Missouri State Statute 89.070 on June 25, 2002. That revised statute describes the permitted uses for land in the various Zoning Districts. Approval of a change from A-1 Agricultural Land for a C-3 Commercial District would allow construction of the type of business listed in the attached. But Leawood Zoning and Board members can exercise wisdom and good judgment by approving the proposed change for development by owners who are Hidden Valley residents, David and Judy Powell. As long-term and future members of our residential community, they can be trusted to choose projects that will enhance the beauty of Leawood and our quality of life.

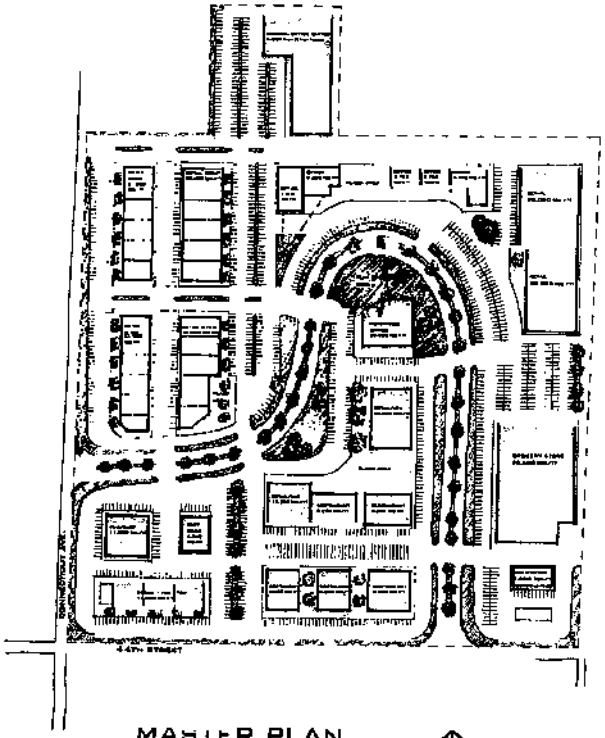
Request

David and Judy Powell request the support of the Zoning Committee and Board of Trustees in their approval of this request for a change in zoning to C-3 Commercial for the forty acre tract described herein at the December 1, 2011 public meeting. The request includes the completion of any required publication, meetings and Board of Trustee approval at their December 8, 2011 public meeting.









MASTER PLAN

1"=100'-0"

MASTER PLAN SCHEME 1

FOR DAVID POWELL

noss
design group

1055
1060
1050
1060
1035
1075
1070
1060
1065
1055
1050
1050
1065
1030
1050
1045
1080
CONNECTICUT AVE
1040
1030
1060
1080
1080
1020

November 9, 2011

TO: David Powell

FROM: Warren Deatherage

SUBJECT: Zoning Permission

Please accept this letter as a statement of permission to seek a change in zoning for the tract of land at the Northeast corner of 44th street and Connecticut in Leawood, Missouri. The purpose of this change is to allow the systematic development of this property. Mark Gibson, of the Glenn Group, has the complete legal description of said land.

Signed _____
Trustee, The Warren R Deatherage Revocable Trust

COUNTY OF BROWARD, STATE OF FLORIDA

The above named Warren R. Deatherage appeared before me and is known to me and signed this document this the 10th day of November, 2011.

_____ Notary Public

My commission expires April 12, 2014

OMAR SHARIEF
MY COMMISSION # DD964050
EXPIRES April 12, 2014
(407) 398-0153 FloridaNotaryService.com

POWELL PROPERTY
Village of Leawood, Newton County, Missouri

LOCATION
The property is located at the northeast corner of 44TH Street and Connecticut Avenue in the Village of Leawood, Newton Co. Missouri. The property is heavily wooded with rolling topography.

PROPOSED DEVELOPMENT
The conceptual plan for the property is a mixed use commercial development.

STREETS & STORM DRAINAGE
Connecticut Avenue is an existing two lane street located along the west boundary of the property. 44TH Street is an existing two lane street located along the south boundary of the property.

The property is divided into three drainage areas. The majority of the property (approximately 23 acres) drains to the southwest corner with an existing culvert under 44TH Street. Another portion of the site (approximately 11 acres) drains to the northeast corner of the property. The remaining portion of the site drains to the southeast corner of the property.

UTILITIES
The property is not currently served by sanitary sewer. The city of Joplin sanitary sewer system is available near the property.

Missouri American Water Company has a 12" water main located on the east side of Connecticut and extends along the west side of property. There is also a 12" water main located near the southeast corner of the property on the north side of 44TH Street. There is no water main along 44TH Street.

Missouri Gas Energy Company has an existing gas main located on the west side of Connecticut and extends along the west side of the property. There is a gas main located at the southeast corner of the property. There is no gas main located on 44TH Street.

PERMITTING
It will be necessary to obtain a storm water permit from the Village of Leawood for development of the property.

It will be necessary to obtain a land disturbance permit from the Department of Natura Resources for construction activities on the property.

CORPS OF ENGINEERS JURISDICTIONAL DETERMINATION
A review of the Joplin East Quadrangle shows a "blue line" designation for the drainage way on the west side of the property. It will be necessary to request a jurisdictional determination from the Corps of Engineers Little Rock District office to determine if the stream is considered a "waters of the United States". If the determination is made that the stream is considered a "waters of the

United States", then a Corps of Engineers permit will be required for any construct'on activities located in the drainage way.

SANITARY SEWER EXTENSION

It will be necessary to enter into an agreement with the City of Joplin to extend sa nitary sewer unless there is an existing agreement in place with the Village of Leawood. It will require approximately 2000 foot off-site extension to serve the west portion of the property; approximately 400 foot off-site extension to serve the southeast portion of the property; and approxi nately 2000 foot off-site extension to serve the northeast portion of the property. It will be necessary to obtain easements from adjacent property owners to extend the sanitary sewer to the property to the northeast portion of the property. It may be necessary to obtain easements from adjacent property owners to extend sanitary sewer to the southwest and southeast portions of the property.

STORM WATER DETENTION

The Village of Leawood has adopted an ordinance for storm water detention. It will be necessary to construct three detention basins on the property because of the topography. The largest basin will be located at the southwest corner of the property. Another basin will have to be constructed at the northeast corner of the property and a third at the southeast corner. The southwest basin will be impacted by the Corps of Engineer's jurisdiction determination.

ESTIMATED DEVELOPMENT COSTS

Off-Site Sanitary Sewer:

There is approximately 4400 lineal feet of off-site sanitary sewer construction required to serve the site for development of the property. The Engineer's opinion of estimated development costs for extending sanitary sewer is $32 to $37 per lineal foot with an estimated cost of $140,800 to $162,800 for the off-site sewer extension.

Storm Water Detention:

There are three detention basins required for development of the site. The Engineer's opinion of estimated development costs for the southeast detention basin is approximately $20,000. The estimated development cost for the northeast basin is approximately $30,000. The estimated development cost for the southwest basin is approximately $45,000.

Leawood Residents Reponses on Rezoning Request

Emails and Letters to leawoodvillage@msn.com							
Date	From	Address	For	Against	Other	Questions	Comments
13-Nov	Grant and Melinda Hoover	524 Grandview (SH)		x			
13-Nov	Mike ands Connie Foti	110 Hidden Valley		x		Yes	
30-Nov	Paull and Diane Garrett	74 Horsehoe Dr			x	Yes	
30-Nov	Steve Belcher	2018 East 45th		x		Yes	
30-Nov	Dian Doody	1 Emerald Way		x			
29-Nov	Marianna Belcher	2018 East 45th		x			
30-Nov	Jim and Emily McLaughlin	1504 E 50th		X			
14-Nov	Gladys Courtney	4425 So. Connecticut		x		Yes	
Respondents to Powells' Survey Sent Directly to Leawood							
	Ben and Joan Spurlock	2011 E 46th		x			Yes
	D. Robert Cottingham	2000 E 44th		X			Yes
	Dorthy Owen	2036 E 44th		x			Yes
	Rose DePew	1925 E 46th		x			Yes
	Bob Harding	72 Horsehoe		x			Yes

20185

12-1-11

To Whom it May Concern:

Due to unexpected circumstances I am unable to attend the meeting at 6:30 to voice my opposition for plans to rezone the property at 44th & Connecticut

Sincerely,

[illegible]

19[illegible] 46th St.

December 1, 2011

We may not be able to attend the zoning meeting, but we wish to register our opposition to any commercial zoning of property at 44th and Connecticut.
We live very near this property (4402 Connecticut) and we feel very strongly that commercial zoning would affect bot า our property value and our home life in a negative way.

Sincerely,

Max
Ina M. Haney
John J. Dorsey

Randy Kastl
Joyce Kastl

1530 East 44th

VILLAGE OF LEAWOOD
P.O. Box 2032, Joplin, Missouri 64803

November 3, 2011
David Powell
104 Hidden Valley Drive
Joplin, MO 64804

David:

As we have discussed the zoning hearing/meeting has been set for December 1st for your October 27th "Request to Zoning Change" for the 40 acres on the Northeast corner of 44th Street and Connecticut Avenue. Consistent with Leawood's Comprehensive Plan and Zoning Ordinance a Preliminary Development Plan should be submitted prior to rezoning the property to C-3. The Plan should include the following:

1. The topography of the property.
2. The location and arrangement of the buildings and their relationship to one another as well as the current boundaries of the property
3. A Traffic Study that will provide anticipated traffic generation reports and the impact on the adjacent traffic and future traffic.
4. Show the parking areas, the landscaping and signage of the property.
5. Provide a drawing of all access off and on property.
6. Provide a typical elevation of the buildings (facades).
7. Show the location of all utilities and a report of their capacities to service the property.
8. Provide a Storm Water Management Plan in compliance with state DNR requirements. The Silver Creek watershed is extensive and close to capacity and any additional loads may create downstream flooding. The Plan should show the collection system and the on-site detention system.
9. This development will significantly impact the traffic circulation in the Village of Leawood and City of Joplin. Studies should show how accesses will reduce the opportunities for traffic conflicts on Connecticut, 44th Street or Richard Joseph Boulevard West.
10. The lighting will directly impact the residential property on the south and west. A lighting study should show the overhead light from any overhead fixtures and recommendations on how this can be mitigated.

Provide a notarized signature of Mr. Deatherage with respect to his October 6th letter, in which he provided permission to you to seek the zoning change.

Sincerely,

Denny Desmond
Chairman, Board of Trustees for the Village of Leawood
Member of Planning and Zoning Commission

Exhibit C

Minutes – Leawood Trustee Hearing
December 8, 2011

LEAWOOD VILLAGE BOARD OF TRUSTEES
Special Hearing
December 8, 2011 – MINUTES

Trustees Present:
Denny Desmond, Chairman
Brad Long, Vice Chairman
Caleb Head, Treasurer
Fran Owen, Secretary
Dale Owen, Clerk

Visitor Present:
List Attached

Prior to the call to order, Mr. David Powell handed out copies to Board of Trustee member of his "Request for Zoning Change" dated October 27, 2011 which contained a copy of his Leawood Zoning Survey, permission letter from Warren Deatherage to erect a sign on the property located at 44th & Connecticut, warranty deed, a computer drawn map, unsigned copy of the Comprehensive Plan dated 14 November 2000, and a Google map.

Denny Desmond, Chairman, called the meeting to order at 6:30 P.M. at the Calvary Baptist Church, 600 East 50th Street, Joplin, MO. Roll call was made with all members being present. Copies of the agenda were handed to board members. Motion made by Fran Owen and second by Caleb Head to approve the agenda as presented by Denny Desmond. In favor 5 Opposed 0. Motion passed.

Purpose of the meeting was to consider the request of David A. Powell and William R. Deatherage to rezone a tract of property (totaling 40 acres +/-) on the Northeast corner of 44th Street and Connecticut Avenue in the Village of Leawood, Missouri from A-1 Agricultural to C-3 Planned Shopping Center, and such other matters that may be presented at the meeting and determined to be appropriate for discussion at this time.

Kurt Higgins, Chairman Planning & Zoning Commission, reported on the public hearing held on December 1, 2011 before the Planning & Zoning Commission. Approximately 100 people attended the meeting with 59 speaking or raising their hands in opposition to the rezoning and three speaking in favor of rezoning. He reported that the committee had voted 6 to 0 not to approve the request to rezone this property based on concerns for public safety and well fare, and traffic 44th & Connecticut Streets; (the developer was not making any improvements to those roads). In addition to traffic the lights coming off the development affecting the local residents was a concern. A high concern was raised that the existing commercial property located east of this location remains undeveloped and therefore having an additional 40 acres to develop may be difficult for that property to be successful as commercial. Recommendation from Planning & Zoning Commission was to not rezone the property from A-1 to C-3.

Kurt Higgins presented the minutes and other attachments from the commission meeting. Each trustee had been given a copy of the minutes. The minutes are drafted and not approved as of this date by the Planning & Zoning Commission and are being submitted to the trustee. Trustees accepted the draft copy of the minutes.

Denny advised those attending that anyone wishing to speak in favor of the zoning change would be given five minutes to do so. They were to state their name, address and whether they were a resident of the village. The five minute limit did not apply to Mr. Powell. Trustees can make comments or ask questions after each speaker is done.

Mr. Powell was given an opportunity to present his reasons why this property should be rezoned to C-3 Planned Shopping Center. He began by stating that he saw a lot of faces that were there the previous meeting and that he would not give the full presentation. He stated that he was able to be non-argumentative during the two hours of harassment he took during the last week. His family members and church family felt pretty harmful and hurtful and asked not to come to tonight's meeting. He said he was making one comment about the vote that was taken as to who was in favor and who was against. The question he said was never asked of those against, where do you live? They only asked that of those who were in favor. He felt that those who attended that were in favor of the zoning change were intimidated by the harassment he took. He also felt that the written responses should never have been read to the crowd.

Mr. Powell questioned that information requested by the Planning & Zoning Commission stating that he had never seen that done. He believes that this property will take off as it is in line with the hospital. The reason he believes the property in the Silver Creek did not take off was because of price and the fact that it is in a flood plain. He believes that the reason for denying the zone change because he won't be successful is none of the committees concern that they were responding to friends and neighbors. Mr. Powell requested that the Board of Trustees send his request back to the Planning & Zoning Commission to work out a reasonable solution. Mr. Powell

believes that neither the Planning & Zoning Commission nor the Board of Trustees can stop progress for this property.

Mr. Powell reported that he sent out a survey to every household in Leawood (238 residents) and only accepted one response per household. Barbara Isgrigg, 1909 E 46th Street, wanted to know the number of surveys that were returned. Mr. Powell reported that he received 48 responses back with an additional 10 being returned as undeliverable. 71% of the surveys returned were in favor of a commercial development. He offered to show residents copies of the surveys with signatures, address and responses, although they were not presented at this meeting. Mr. Powell advised that he did not list residential as an item on this survey because he says it is not an option.

Denny Desmond felt that the survey was not valid (bogus) because it did not contain the choice for residential. Only 16% of the people answered residential. If he had put residential on there would probably have been significantly more who would have said that. Mr. Powell reported that he contacted 10 realtors and asked what is appropriate to spend on a home on a minimum $100,000 one acre lot. He was told $500,000 to $700,000. They are not building any $700,000 homes next to the highway. So it is not feasible to develop this as residential. When asked if this is based on the on the sale price of the property, Mr. Powell responded that is part of it.

Denny Desmond: What is the time frame for this project? Response: Mr. Powell responded he didn't anticipate any construction happening in the next 6 months. Probably 6 to 12 months. Similar construction time frame as the hospital. Mr. Powell doesn't believe all 40 acres will be developed before the hospital complete.

Are you purchasing any other property or have the potential to purchase other property in Leawood Village? Response: No not that he knows of.

When you found out about this property did you contact someone or did someone contact you? Response: contacted some realtors and Mark Gibson contacted him.

Why isn't Mr. Deathridge at this hearing? Response: he is here.

What direct experience do you have in commercial development and shopping centers? Response: I have a 14,000 square foot office on 32nd Street, own the Schlotzy's on Rangeline, and also property on North Rangeline, sold Timberline building one year ago which he built. That's just the Joplin experience. Nothing of this magnitude? No, I have not built at all at this point. Nothing as large as this.

Denny referenced the meeting on December 1 with the realtor of this property who indicated that Mr. Powell did not have the experience in this type of development. Mr. Powell advised that he would not be doing the building himself, just as a visionary and finance guy. Will you act as the developer? Response: He advised that he would not be running a bull dozer. Will you be hiring a developer? How will this work? Response: Mr. Powell will be working with each developer on each individual building site. I am sure they won't be the same.

What is your visionary idea on this, if approved, and how will this work and when will you start. Response: The goal is to have leases on the majority of the property and for those who say they will have to own their building will work out land purchases. Rather be a land lease holder so he can keep control of it.

Will you clear all the land? Response: Clear enough room for a sign. There are two planned entrances into the property one on 44th Street and one on Connecticut. Will use green belt and what will be visible for the most part will be green trees instead of brown trees. Will only clear what will be built on at that time.

Denny Desmond again asked about the one year time frame as reported in the *Joplin Globe*. Response: Mr. Powell didn't anticipate anything happening within 6 months. No clearing of land or removal of trees.

Have you received in any interest? Response Yes. Can you name names? Response: Can't elaborate but has received interest from grocery store, bank, and retail store.

Article in the *Joplin Globe* indicated Mr. Powell owned the property. Who owns the property? Response: Contract is in place. Mr. Deathridge and I have a contract in place. Are there any contingencies expected with buying the property. Response: No. It is a done deal. When was that deal done? Response: It is not complete yet. As of right now who owns the property? Response: Mr. Deathridge.
You indicated you had a commitment on financing and it is a financial institution? Response: Mr. Powell: Yes

If Zoning is approved to C-3 will you provide a copy of the finance commitment (reply no) as a contingency to approve zoning? Response: No then possibly.

Are you away of any existing or potential litigation with respect to legal ownership of this property: Response: No.

What do you envision where this property will go if zoning is not approved? Response: Mr. Powell I think it will go out of the village. Refused to clarify when asked to do so.

What will have to be done for the property to go out of the Village? Village of Leawood will have to approve the annexation and City of Joplin will have to request the annexation.

Dave Smith: almost a billion dollar development at our front door. You can't stop progress and this could be an opportunity. He hasn't made up his mind as he hasn't seen the plans.

Mr. Powell said he would consider multi family development but not single family development. Nice condo would work. Willing to consider all of that if willing to go back to Planning & Zoning and work on it together.

Janice Stephens: Lives in Deer Run Estates and just wanted to state that this not only affects Leawood residents but also the Joplin residents living around here.

Are you planning to develop this property and flip it like you did St. John's Hospital? Could you clarify this. Did you purchase property that you didn't develop that you flipped? Response: Purchased property where he thought St. Johns was going to build. Did you purchase property where the new hospital was going to be prior to where they were going to build and sell it back to them? Response: Something like that. Where was the inside information? Response: I am just a smart guy. That was my intent when I purchased that property. It was pure speculation where the hospital was going.

With all the devastation in Joplin, with all the vacant land, why did you choose this location? You're a developer, you built on Range line, and you built on 32nd Street. Why this location? Response: The next high traffic area is 44th & Connecticut.

Mr. Powell left the meeting at this point before the vote was taken.

Mark Gibson 421 Briarwood Ridge, Carl Junction, is the realtor involved in this project. He spoke in favor of developing this property. He said areas in Joplin are difficult to sell and this property is visible from I-44 and a prime area for development. Mr. Gibson said that 44th Street is going to be widened with an entrance from this street into St. John's. It will go to 5 lanes. Just watch. Mr. Gibson contacted Mr. Deathridge concerning the selling of this property because he could see the vision for this property. They are trying to give the village more economic growth. Mr. Gibson reported that property values in Leawood have gone up. He said it is difficult to develop as residential because of the infra structure and cost involved. Commercial development is less expensive.

Warren Deathridge, 1035 Papaya, Hollywood FL purchased the property from the estate of Susan Warren in 2005 for $850,000 and is the current owner. He spoke in favor of changing the zoning on this property. He is not aware of any potential litigation on this property.

Request by Denny Desmond that those opposed to the zoning change that were in attendance at the Planning & Zoning Hearing and spoke at it not speak tonight as trustees had copies of the minutes from that meeting. No one present had any additional comments.

Denny Desmond closed the hearing at this point.

Denny Desmond asked for a motion to approve the zoning change from agricultural to commercial. None of the trustees made the motion.

Denny Desmond asked for a motion to deny the zoning change from agricultural to commercial. Motion made by Brad Long and second by Dale Owen to deny the zoning change. In favor 5 Opposed 0. Motion passed.

Motion made by Caleb Head and second by Brad Long to adjourn the meeting. In favor 5 opposed 0. Motion passed. Meeting adjourned at 7:47.

Minutes prepared by:

Fran Owen, Secretary Date

Minutes approved by:

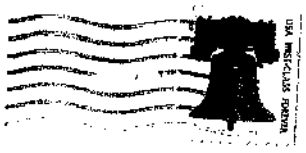
Denny Desmond, Chairman

Exhibit D

Copy of Powell Survey to Leawood Residents
(Excludes any reference to residential)

D. Robert Cottingham
2000 E. 44th Street
Joplin, MO 64804
United States

SPRINGFIELD MO
PM
19 OCT



Village of Leawood
P.O. Box 3032
Joplin, MO 64803

PO Box 3032

54803$3032 B012

David and Judy Powell
104 Hidden Valley Drive
Joplin, MO 64804

Dear Leawood Resident,

In a few months, construction will begin on the St. John's Medical Center between 50th Street and I-44, from Indiana to Main. It is expected that traffic south of I-44 will increase dramatically in the future. The increase in traffic is expected to increase the value of property nearby. The greatest increase in traffic will be seen on Connecticut, 44th and 50th Streets. The part of Leawood that lies north of 44th Street and east of Connecticut is a dense thicket that is currently zoned for agricultural use. The increase in that land value indicates that the zoning be changed for an appropriate use. CHANGE TO RESIDENTIAL ONLY! 10/18/11

The options for zoning changes are Residential and Commercial. A change to Industrial would result in a decrease in the quality of life in the area so that option should not be considered. In Leawood, houses must be built on a minimum of a one-acre lot. Because of the increased value of Leawood land near St. John's, new houses would have to be in the $500,000+ price range. From 2006-2011, the average home sales price in Leawood dropped to below $70,000. It is unlikely that new homes will ever be feasible in this area, in this price range and this close to I-44.

We have been Leawood residents for 15 years and we want to plan this development with your input. We will soon make a formal request of the Village of Leawood to change the zoning north of 44th Street and east of Connecticut to C-3 Commercial. The developers are asking the residents of Leawood for their input as to the uses of this property. The list below is not inclusive so please check those you are interested in and write in any others. Your voice will be heard but it is important that you return this survey and sign it for verification of your residence in Leawood. NO! 10/18/11

Potential Commercial Uses

- ☐ Medical Offices
- ☐ Supermarket
- ☐ Banks
- ☐ Florist Shop
- ☐ Curio Shop
- ☐ Art Store
- ☐ Clothing Store
- ☐ Large Retail Store
- ☐ Convenience Store
- ☐ Delicatessen

NO

☐ Other_____
(please specify)

Potential Agricultural Uses

- ☐ Poultry Farming
- ☐ Hog Farming
- ☒ Cattle Farming
- ☒ Hay Farming
- ☐ Crop Farming
- ☒ Mixed Farming (grain & animal)
- ☐ Log Farming
- ☒ Fruit Farming
- ☐ Dairy Farming
- ☐ Egg Farming

☐ Other_____
(please specify)

See back for more information.

In general, would you prefer that the subject property be developed as commercial or agricultural?

☐ Commercial ☒ RESIDENTIAL ONLY!

☐ Agricultural

10/18/11

Your Name D. ROBERT COTTINGHAM

10/18/11

Your Address 2000 E 44TH STREET

JOPLIN, MO 64804-5105

Please return this form by Saturday, October 22, 2011.

Mail Option

David & Judy Powell, 104 Hidden Valley Drive, Joplin, MO 64804 or

Online Survey Option

You may respond immediately at the following website:

http://www.surveymonkey.com/s/LMT66X2 The password is "Leawood".

Exhibit E

Information of Threats of Litigation
Provided to Joplin Globe

VILLAGE OF LEAWOOD
P.O. Box 2032, Joplin, Missouri 64803

January 23. 2012

Josh Letner
Joplin Globe – fax 623-8598

Josh:

Per your request and in accordance with open public records statues enclosed are the documents that we discussed:

1. Powell's request dated January 17, 2012. The trustees addressed the request for deannexation and the threats of litigation and disavow other statements and therefore, this document wasn't signed by Leawood.
2. The letter to Powell's attorney dated January 20, 2012 for the motion that was approved by the trustees at our January 17th trustee meeting.

Denny Desmond

Denny Desmond
Chairman, Board of Trustees for the Village of Leawood
417-781-3558

DEANNEXATION AGREEMENT

This agreement made and entered into as of the 17th day of January, 2012, by and between David and Judy Powell, their affiliates and trusts and the Village of Leawood and its Trustees.

WITNESSETH:

WHEREAS, David and Judy Powell seek approval from the Village of Leawood to proceed with deannexation of 42.5 acres at the northeast corner of 44th street and Connecticut;

WHEREAS, David and Judy Powell wish to avoid a lawsuit against the Village of Leawood, it's Trustees and others;

NOW, THEREFORE, in consideration of the mutual benefit of reaching a diplomatic resolution, it is mutually agreed that:

1. The Village of Leawood does not object to the deannexation from the Village, the 42.5 acres described above.

2. The Village will have the assistance of the Powells in outlining proper and legal filings of a Comprehensive Plan and Zoning Ordinances.

3. The Powells will not discuss or disclose to anyone except their realtor or attorneys, known defects in existing filings which may be deemed null.

4. The Powells, their affiliates and Trusts will not sue the Village of Leawood or its Trustees for anything related to this real estate issue including legal expenses incurred.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

David A. Powell 1-12-12
David A. Powell Date

Judy M. Powell 1-11-12
Judy M. Powell Date

For the Village of Leawood

Chairman Date Witness Date

This Agreement shall be void if not executed by all parties by 10:00 pm, January 17, 2012.

4/4

VILLAGE OF LEAWOOD
P.O. Box 2032, Joplin, Missouri 64803

January 20, 2012

Daniel D Whitworth, Attorney at Law
Whitworth & McPherson L.L.C.
626 Byers S. Avenue
Joplin, MO 64801

Mr. Whitworth:

At the January 17, 2012 trustee meeting for the Village of Leawood the following motion was approved by the trustees with respect to the request for deannexation dated January 17, 2012 that David A. Powell and Judith M. Powell submitted for approval by the trustees:

That the Leawood Village Board of Trustees approves the simultaneous deannexation of said property into the city of Joplin and subject to other details of Powells' proposed deannexation being worked out by Mike Talley and Dan Whitworth. If approved, Desmond will notify Powell by telephone this evening. In favor 3and Opposed 2. Motion passed.

Denny Desmond

Submitted by,
Denny Desmond
Chairman, Board of Trustees for the Village of Leawood
417-781-3558

Exhibit F

Concerns of Commercial Zoning from
Kurt Higgins, Chairman of Leawood P&Z Commission

Powell Rezoning

Kurt's Proposal

From: **Kurt E. Higgins** (Kurt.Higgins@amce.com)
Sent: Wed 5/02/12 1:24 PM
To: Denis Desmond (the_desmonds@msn.com)
Cc: Brad Long (bradlong11@hotmail.com); Caleb (Empire) Head (chead@empiredistrict.com); Fran and Dale Owen (dwowen@joplin.com)
1 attachment
Leawood P&Z Dec. Minutes.doc (40.0 KB)

Denis, would you like me to send this to the city of Joplin? Notice I don't have the Board of Trustees minutes.

On behalf of the Village of Leawood, I submit the following:

Relative to the Powell zoning request, Leawood requests that Joplin: (1) The minutes from the Leawood's P&Z hearing on December 1, 2012 (copy attached) and Board of Trustees hearing on December 8, 2012 be on record for the Joplin P&Z hearing (Denis will forward by separate email). (2) Joplin require this development be PD and follow the new guidelines, similar to the development on 20th and Range Line that was just rezoned. (#3) Require a minimum 150 foot buffer on 44th and Connecticut to provide sufficient room for utilities, road improvements and a buffer from commercial to residential properties. The City should consider possibly zoning this buffer residential, the same as they did when the property to the East was rezoned commercial. (#4) Either the City, or the developer improve Connecticut Avenue and 44th Street to accommodate the increase in traffic due to the proposed development and the increase in traffic due to Mercy Hospital. Mercy had a traffic study completed that showed improvements to these streets were warranted with any increases to traffic.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Kurt Higgins

Village of Leawood Planning and Zoning Chairman

Exhibit G

Closing (Brief) Statement

As Chairman for the Board of Trustees it would be irresponsible for me not to continue to represent the residents of the Village of Leawood to oppose the zoning of the property at the northeast corner of 44th and Connecticut to commercial. The facts in the previous exhibits are very clear:

1. The Leawood P&Z Commission voted at December 1, 2011 hearing to recommend to the Board of Trustees by a vote of 6 to 0 opposing the zoning request. The minutes also clearly indicate by a vote of attendees 35 opposed to 2 in favor.
2. On December 8, 2011 The Leawood trustees voted 5 to 0 to deny the rezoning request.

Therefore, I am committed to oppose any rezoning to commercial by Joplin.

Dennis Dennard

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: July 2, 2012

Item: COUNCIL BILL NO. 2012-295
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

Attachments: 1) Planning Report
2) Commission Minutes
3) Copy of Council Bill

Public Works Director: David Hertzberg — Date: 6/22/2012
City Attorney: Brian Head — Date: 6-26-12
City Manager: R. Mark Rohr — Date: 6-25-12
Board or Commission: Planning and Zoning Commission — Date: 6/11/2012

Recommended Action: Planning and Zoning Commission recommended approval by a vote of "6 in favor, 1 absent"

SUMMARY/REQUEST:
Case 058-12: 2540 West 32nd Street – A request for Voluntary Annexation into the corporate limits of the City of Joplin – Phillip Willcoxon (Poplar Housing Corporation).

STAFF SUMMARY:
This is a request by the property owner to voluntarily annex a tract of land into the City of Joplin. The tract contains approximately 1.4 acres and is located east of Schifferdecker Avenue south of 32nd Street. The property contains an apartment house facility.

We have received a signed notarized petition from Philip Wilcoxon, CEO for Ozark Center, which operates the facility, indicating their desire for the property to be within the City of Joplin.

Staff has reviewed the petition and does not see any issues with proceeding with the annexation of this property. Staff recommends approval of the voluntary annexation.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Tony Atkins appeared representing Ozark Center as an employee. When Ozark Center first started looking at this project, with the building being in place about two and one-half years now, the City of Joplin requested annexation since Ozark Center was receiving sewer and water services from Joplin. The reason for the delay in requesting this annexation is due to the tornado event, with Ozark Center having to put 29 buildings back together. They are requesting this annexation at this time.

PUBLIC COMMENT:
None.

Z&P Meeting: June 11, 2012
City Council Meeting: July 2, 2012

STAFF PLANNING REPORT

CASE 058-12:

Petition the Council to voluntarily annex into the corporate limits of the City of Joplin property located at 2540 West 32nd Street.

APPLICANT:

Poplar Place Housing Corp.

LOCATION:

2540 West 32nd Street

PRESENT ZONING:

None – Newton County

DISCUSSION:

This is a request by the property owner to voluntarily annex a tract of land into the City of Joplin. The tract is approximately 1.4 acres and is located east of Schifferdecker Avenue south of 32nd Street. The property contains an apartment house facility.

We have received a signed notarized petition from Philip Wilcoxon, CEO for Ozark Center, which operates the facility, indicating their desire for the property to be within the City of Joplin.

ADDITIONAL INFORMATION OR COMMENTS

Staff has reviewed the petition and does not see any issues with proceeding with the annexation of this property.

STAFF RECOMMENDATION:

Staff recommends approval of the voluntary annexation.

ENCLOSURES:

None

BEFORE THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI.

PETITION FOR VOLUNTARY ANNEXATION
PURSUANT TO 71.012, RSMO., 1994

TO WHOM IT MAY CONCERN:

Pursuant to the terms of V.A.M.S. 71.02, the undersigned, being all of the owners of fee interests of record in all tracts of real property attached hereto and incorporated herein as Exhibit "A", do hereby request the voluntary annexation of said land to the City of Joplin, Missouri.

STATE OF MISSOURI)
) ss:
COUNTY OF JASPER)

On this 13th day of April, 2012, before me appeared Philip W. Willcoxon, to me known to be the CEO of Ozark Center, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors of the consideration stated therein and no other, and said Philip Willcoxon acknowledged said instrument to be the free act and deed of said corporation, and that the allegations contained therein are true.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed by official seal, in the County and State aforesaid, the day and year first above written.

My commission expires: 12-5, 2014.

Sheila M. Collier

Notary Public

SHEILA M. COLLIER
My Commission Expires
December 5, 2014
Jasper County
Commission #10392447



Case 058-12: A request to voluntary annex the property commonly known as 2540 West 3[illegible]1 Street. - Willcoxon (Poplar Place Housing Corp.)

N

Case 058-12: 2540 West 32nd Street – A request for Voluntary Annexation into the corporate limits of the City of Joplin – Phillip Willcoxon (Poplar Housing Corporation).

Mr. Anderson opened the public hearing for Case 058-12.

Mr. Tony Atkins, 527 North Washington, Nevada, Missouri, appeared representing Ozark Center as an employee. When Ozark Center first started looking at this project, with the building being in place about two and one-half years now, the City of Joplin requested annexation since Ozark Center was receiving sewer and water services from Joplin. The reason for the delay in requesting this annexation is due to the tornado event, with Ozark Center having to put 29 buildings back together. They are requesting this annexation at this time.

Mr. Anderson asked for comments from the commissioners and the audience, and none were received. He then closed the public hearing for Case 058-12.

MR. McCLURE MOVED, SECONDED BY MR. GILSTRAP, THAT CASE 058-12 BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR APPROVAL, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. ANDERSON, MR. EASTMAN, MR. GILSTRAP, MR. LANDRITH, MR. McCLURE, AND MR. SMITH VOTING "AYE"; AND WITH MR. HARRINGTON BEING ABSENT (6 IN FAVOR, 1 ABSENT).

P & Z Case 058-12
Phillip Willcoxon (Poplar Housing Corporation)
(P & Z Recommended Approval)

COUNCIL BILL NO. 2012-295 **ORDINANCE NO.**

AN ORDINANCE approving the voluntary annexation by the City of Joplin of property located at 2540 West 32nd Street, in Newton County, Missouri.

WHEREAS, pursuant to Section 71.012, RSMo., 2001, as amended, a verified Petition requesting annexation and signed by the owners of all fee interests of record in the tracts of real property described herein, was presented to the governing body of the City of Joplin, Missouri; and,

WHEREAS, pursuant to said Section, having referred this matter to the Planning and Zoning Commission for a Public Hearing thereon and having obtained the favorable recommendation and support of said annexation; and,

WHEREAS, having held a Public Hearing concerning the proposed annexation not less than fourteen (14) nor more than sixty (60) days after the Petition is received after first having given seven (7) days' notice of the Hearing in the Joplin Globe; and,

WHEREAS, after said Public Hearing, the City of Joplin determines that the annexation is reasonable and necessary to the proper development of the City of Joplin, and that the City of Joplin has the ability to furnish normal municipal services to the area to be annexed within a reasonable time; and

WHEREAS, having received no written objections to the proposed annexation within fourteen (14) days after the Public Hearing.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That the following described tract of land be and the same is hereby annexed into the City of Joplin, Missouri, said tract of land described as follows, to-wit:

That portion of Pile and Perry's Subdivision: Beginning at the Northwest corner of Lot 6 thence East 187.91 feet thence South 140.45 feet thence West 50 feet thence South 261 feet thence West 137.89 feet thence North 400.14 feet to the Point of Beginning, in Newton County, Missouri.

Section 2. That the City Clerk is hereby authorized and directed to cause three (3) certified copies of this Ordinance to be filed with the Clerk of Newton County, Missouri.

Section 3. That this Ordinance shall be in full force and effect as of 12:01 a.m., on the First (1st) day of September, 2012.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of _____, 2012.

_____
Melodee Colbert-Kean, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Brian W. Head, City Attorney

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: July 2, 2012

Item: COUNCIL BILL NO. 2012-296
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

Attachments: 1) Planning Report
2) Commission Minutes
3) Copy of Council Bill

Public Works Director: David Hertzberg — Date: 6/22/2012
City Attorney: Brian Head — Date: 6-26-12
City Manager: R. Mark Rohr — Date: 6/25/12
Board or Commission: Planning and Zoning Commission — Date: 6/11/2012

Recommended Action: Planning and Zoning Commission recommended approval by a vote of "6 in favor, 1 absent"

SUMMARY/REQUEST:
Case 059-12: 2509 and 2519 South Annie Baxter Avenue -A request to rezone from District R-1 (Single Family Residential) to District R-2 (Two-Family Residential) for future development of duplexes – Creighton Olson.

STAFF SUMMARY:
The proposed zoning change request is consistent with the policies and practices outlined in the Comprehensive Plan, including the recently adopted identified redevelopment corridors.

This property abuts an apartment house district. Duplexes will provide a transition between the apartment house district and single-family homes, since this property is near 26th Street, an arterial road.

The proposed change should not detrimentally affect nearby properties. This property is consistent with development patterns and policies. Staff recommends approval of this request.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Creighton Olson explained that he and his wife own about 30 rental properties in the Joplin and Webb City area. They had a four-plex at the corner of 26th Street and Annie Baxter Avenue that was destroyed in the tornado and a duplex at 2522 Empire Avenue that was also destroyed. They plan to rebuild those structures and have acquired some property to the north that they would like to have rezoned for more duplexes.

Mr. Olson stated that the duplexes will be very nice units with full brick exteriors and two bedrooms and two bathrooms.

PUBLIC COMMENT: None.

Z&P Meeting: June 11, 2012
City Council Meeting: July 2, 2012

STAFF PLANNING REPORT

CASE 059-12:

Petition the Council to rezone from District R-1 (Single-Family Residential) to District R-2 (Two-Family Residential) for future construction of duplexes.

APPLICANT:

Creighton Olson

LOCATION:

2509 and 2519 South Annie Baxter Avenue

PRESENT ZONING:

District R-1 (Single-Family Residential)

REQUESTED ZONING:

District R-2 (Two-Family Residential

EXISTING CONDITIONS:

Former single family homes

PROPERTY SIZE

180' x 120' (21,600 square feet or 0.5 acre)

FLOOD PLAIN

X

SITE	LAND USE	EXISTING ZONING
NORTH	Former Single-Family House	R-1
SOUTH	Former Apartment House	R-3
EAST	Former Single-Family House	R-1
WEST	Former Single-Family House	R-1

TRAFFIC CONDITIONS:

STREET(S) WITH ACCESS TO PROPERTY

Annie Baxter

CLASSIFICATION OF STREET(S)

Annie Baxter - Local

RIGHT-OF-WAY WIDTH

Annie Baxter – 60 feet

WILL TURNING MOVEMENTS OF THE PROPOSED USE CREATE AN UNDUE TRAFFIC HAZARD?

No.

UTILITIES:

The property has all utilities

CONSISTENT WITH FUTURE LAND USE MAP?

No

STAFF ANALYSIS:

CONSISTENT WITH DEVELOPMENT POLICIES OF THE COMPREHENSIVE PLAN?

Yes. The proposed zoning change request is consistent with the policies and practices outlined in the comprehensive plan, including the recently adopted identified redevelopment corridors.

THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

This property abuts an apartment house district. Duplexes will provide a transition between the apartment house district and single-family homes. Since this property is near 26th Street, an arterial road.

THE EXTENT THAT THE ZONING CHANGE WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

The proposed change should not detrimentally affect nearby properties.

DISCUSSION

This property is consistent with development patterns and policies. Staff recommends approval.

RECEIVED
5-4-12

CITY OF JOPLIN, MISSOURI
REZONING APPLICATION FORM

For Office Use Only
Case No.: 059-12
Filing Fee: $350.00
Date Advertised: 5-27-12
Date Notices Sent: 5-25-12
Public Hearing Date: 6-11-12

Return Form to:
Planning / Community Development Specialist
602 South Main Street
Joplin, Missouri 64801
417-624-0820 Ext. 511
FAX 417-625-4738

APPLICANT: Creighton Olsen PHONE: 417-291-0825
ADDRESS: 11198 Helenben Rd, Joplin, Mo ZIP: 64804
OWNER: C+S Property Management, LLC PHONE: 417-291-0825
ADDRESS: 11198 Helenben Rd, Joplin, Mo ZIP: 64804
LOCATION OF PROPERTY: 2519 and 2529 Annie Baxter, Joplin, Mo 64804
LEGAL DESCRIPTION: All of Lots Numbered 138 and 139 and all of the North 32½ feet of Lot Numbered 140 and all of Lot Numbered 137 in T. W. CUNNINGHAM'S ADITION to the City of Joplin, Jasper County, Missouri
Present Zoning R-1 Requested Zoning: R-2 Acreage:
Present Use of Property: Vacant Land

SURROUNDING LAND USE AND ZONING:

	Land Use	Zoning
North	Vacant Land	R-1
South	Vacant Land	R-3
East	Duplex being built	R-2
West	Vacant Land	R-1

CHARACTER OF THE NEIGHBORHOOD: Tornado Zone

RELATIONSHIP TO EXISTING ZONING PATTERN:

1. Would proposed change create a small, isolated district unrelated to surrounding districts?
No, There is R-3 (Duplex) directly South and duplex to East
2. Are there substantial reasons why the property cannot be used in accord with existing zoning? If yes, explain:
NO

CONFORMANCE WITH COMPREHENSIVE PLAN:

1. Consistent with Development Policies?
2. Consistent with Future Land Use Map?

THE FOLLOWING MUST ACCOMPANY YOUR APPLICATION:

1. One copy of a legal description of the property proposed to be rezoned.
2. One copy of a statement describing the impact of the proposed change, including any traffic conditions that may result; any danger from fire hazards; how the proposed change may effect the character of the surrounding properties; and how the proposed change will benefit the City of Joplin.

TRAFFIC CONDITIONS:

1. Street(s) with Access to Property: Annie Baxter
2. Classification of Street(s):
   Arterial_____ Collector_____ Local _____
3. Right-of-Way Width: _____
4. Will turning movements caused by the proposed use create an undue traffic hazard?
   _____

IS PLATTING OR REPLATTING REQUIRED TO PROVIDE FOR:

1. Appropriately Sized Lots?_____
2. Properly Sized Street Right-of-Way?_____
3. Drainage Easements?_____
4. Utility Easements:
   - Electricity?_____
   - Gas?_____
   - Sewers?_____
   - Water?_____
5. Additional Comments:_____

UNIQUE CHARACTERISTIC OF PROPERTY AND ADDITIONAL COMMENT:

SIGNATURE: Creighton M. Olson DATE: 5-2-12
BY: Creighton Olson
TITLE: Owner

(Note: By signing this application you are signifying that you are either the legal owner of the subject property or are a legal representative of the owner or owners of the subject property.)



Case 059-12: A request to rezone from District R-1 (Single-Family Residential) to District R-2 (Two-Family Residential) for the property commonly known as 2509 and 2519 South Annie Baxter Avenue, for duplex construction - Creighton Olson

Case 059-12: 2509 and 2519 South Annie Baxter Avenue - A request to rezone from District R-1 (Single Family Residential) to District R-2 (Two-Family Residential) for future development of duplexes – Creighton Olson.

Mr. Anderson opened the public hearing for Case 059-12.

Mr. Creighton Olson, 1198 Helenben Road, Joplin, appeared and explained that he and his wife own about 30 rental properties in the Joplin and Webb City area. They had a four-plex at the corner of 26th Street and Annie Baxter Avenue that was destroyed in the tornado and a duplex at 2522 Empire Avenue that was also destroyed. They plan to rebuild those structures and have acquired some property to the north that they would like to have rezoned for more duplexes.

Mr. Olson stated that the duplexes will be very nice units with full brick exteriors and two bedrooms and two bathrooms.

Mr. Anderson asked for comments from the commissioners and the audience, and none were received. He then closed the public hearing for Case 059-12.

MR. McCLURE MOVED, SECONDED BY MR. EASTMAN, THAT CASE 059-12 BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR APPROVAL, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. ANDERSON, MR. EASTMAN, MR. GILSTRAP, MR. LANDRITH, MR. McCLURE, AND MR. SMITH VOTING "AYE"; AND WITH MR. HARRINGTON BEING ABSENT (6 IN FAVOR, 1 ABSENT).

P & Z Case 059-12
Creighton Olson
(P & Z Recommended Approval)

COUNCIL BILL NO. 2012-296 **ORDINANCE NO.**

AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District R-2 property as described below and located at 2509 and 2519 South Annie Baxter Avenue in the City of Joplin, Jasper County, Missouri.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. Having referred the subject matter of this ordinance to the City Planning and Zoning Commission and having given at least fifteen days notice of time and place of hearing on same by publication in the Joplin Globe, Ordinance No. 2004-256 is hereby amended by removing the following described property from District R-1 and including same in District R-2:

All of Lots Numbered One Hundred Thirty-seven (137), One Hundred Thirty-eight (138) and One Hundred Thirty-nine (139) and all of the North 32 ½ feet of Lot Numbered One Hundred Forty (140) in T.W. Cunningham's Addition to the City of Joplin, Jasper County, Missouri, according to the Plat thereof.

Section 2. That the City Clerk is hereby ordered to file this ordinance with the Zoning District Map maintained in her office and to note the changes herein provided for thereon.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of _____, 2012.

ATTEST: Melodee Colbert-Kean, Mayor

Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

Brian W. Head, City Attorney

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: July 2, 2012

Item: COUNCIL BILL NO. 2012-297
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

Attachments: 1) Planning Report
2) Commission Minutes
3) Copy of Council Bill

Public Works Director: David Hertzberg — Date: 6/22/2012
City Attorney: Brian Head — Date: 6-26-12
City Manager: R. Mark Rohr — Date: 6-25-12
Board or Commission: Planning and Zoning Commission — Date: 6/11/2012

Recommended Action: Planning and Zoning Commission recommended approval by a vote of "6 in favor, 1 absent"

SUMMARY/REQUEST:
Case 060-12: 1004 West 26th Street - A request to rezone from District R-1 (Single Family Residential) to District R-2 (Two-Family Residential) for future development of duplexes – Creighton Olson.

STAFF SUMMARY:
The requested rezoning should not detrimentally affect nearby properties. This rezoning request is consistent with the Comprehensive Plan and the newly adopted corridor design standards.

This property is consistent with development patterns and policies. Staff recommends approval of this request.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Creighton Olson explained that this is basically the same floor plan and same type of building as the property in Case 059-12. The property in this request is also zoned R-1 on the corner of 26th Street and Bird Avenue, and he is requesting rezoning to District R-2 to construct two more duplexes there.

Mr. McClure asked Mr. Olson if there will be two duplexes or four households, and he replied that is correct. He stated that the property contains almost one-half acre.

PUBLIC COMMENT:
None.

Z&P Meeting: June 11, 2012
City Council Meeting: July 2, 2012

STAFF PLANNING REPORT

CASE 060-12:

Petition the Council to rezone from District R-1 (Single-Family Residential) to Distric : R-2 (Two-Family Residential) for future construction of duplexes.

APPLICANT:

Creighton Olson

LOCATION:

1004 West 26th Street

PRESENT ZONING:

District R-1 (Single-Family Residential)

REQUESTED ZONING:

District R-2 (Two-Family Residential)

EXISTING CONDITIONS:

Former single-family home

PROPERTY SIZE

Approximately 160' x 130' (20,800 square feet or 0.47 acre)

FLOOD PLAIN

X

SITE	LAND USE	EXISTING ZONING
NORTH	Former single-family home	R-1
SOUTH	Vacant Land	C-O
EAST	Former single-family home	R-1
WEST	Former single-family home	R-1

TRAFFIC CONDITIONS:

STREET(S) WITH ACCESS TO PROPERTY

26th Street and Bird Avenue

CLASSIFICATION OF STREET(S)

26th Street – Arterial
Bird Avenue – Local

RIGHT-OF-WAY WIDTH

26th Street – 100 feet
Bird Avenue – 60 feet

WILL TURNING MOVEMENTS OF THE PROPOSED USE CREATE AN UNDUE TRAFFIC HAZARD?

No. Plans call for the access to be off of Bird Avenue.

UTILITIES:

The property has all utilities

CONSISTENT WITH FUTURE LAND USE MAP?

Yes

STAFF ANALYSIS:

CONSISTENT WITH DEVELOPMENT POLICIES OF THE COMPREHENSIVE PLAN?

Yes

THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

Yes

THE EXTENT THAT THE ZONING CHANGE WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

The requested rezoning should not detrimentally affect nearby properties. This rezoning request is consistent with the Comprehensive Plan and the newly adopted corridor design standards.

DISCUSSION

This property is consistent with development patterns and policies. Staff recommends approval.

CITY OF JOPLIN, MISSOURI
REZONING APPLICATION FORM

RECEIVED 5-4-12

For Office Use Only
Case No.: C60-12
Filing Fee: $350.00
Date Advertised: 5-27-12
Date Notices Sent 5-25-12
Public Hearing Date: 6-11-12

Return Form to:
Planning / Community Development Specialist
602 South Main Street
Joplin, Missouri 64801
417-624-0820 Ext. 511
FAX 417-625-4738

APPLICANT: Creighton Olson PHONE: 417-291-0825
ADDRESS: 11198 Helenben Rd., Joplin, Mo 64804 ZIP: 64804
OWNER: C+S Property management LLC PHONE: 417-291-0825
ADDRESS: 11198 Helenben Rd, Joplin, Mo ZIP: 64804
LOCATION OF PROPERTY: 1004 W. 26th St., Joplin, Mo. 64804
LEGAL DESCRIPTION: All of lots numbered 37 and 38 in BRIARCLIFF ADITION, in the City of Joplin, Jasper County, Missouri

Present Zoning R-1 Requested Zoning: R-2 Acreage: .44
Present Use of Property: Vacant Land

SURROUNDING LAND USE AND ZONING:

	Land Use	Zoning
North	Vacant Land	R-1
South	Vacant Land	C-0
East	Vacant Land	R-1
West	Vacant Land	R-1

CHARACTER OF THE NEIGHBORHOOD: Tornado Zone.

RELATIONSHIP TO EXISTING ZONING PATTERN:

1. Would proposed change create a small, isolated district unrelated to surrounding districts?
   No. Lot is close to present Mercy Hospital and other duplexes
2. Are there substantial reasons why the property cannot be used in accord with existing zoning? If yes, explain: No

CONFORMANCE WITH COMPREHENSIVE PLAN:

1. Consistent with Development Policies?
2. Consistent with Future Land Use Map?

THE FOLLOWING MUST ACCOMPANY YOUR APPLICATION:

1. One copy of a legal description of the property proposed to be rezoned.
2. One copy of a statement describing the impact of the proposed change, including any traffic conditions that may result; any danger from fire hazards; how the proposed change may effect the character of the surrounding properties; and how the proposed change will benefit the City of Joplin.

TRAFFIC CONDITIONS:

1. Street(s) with Access to Property: Access to property will be off of Bird
2. Classification of Street(s):
   Arterial_____ Collector_____ Local _____
3. Right-of-Way Width: _____
4. Will turning movements caused by the proposed use create an undue traffic hazard?
   _____

IS PLATTING OR REPLATTING REQUIRED TO PROVIDE FOR:

1. Appropriately Sized Lots?_____
2. Properly Sized Street Right-of-Way?_____
3. Drainage Easements?_____
4. Utility Easements:
   - Electricity?_____
   - Gas?_____
   - Sewers?_____
   - Water?_____
5. Additional Comments:_____

UNIQUE CHARACTERISTIC OF PROPERTY AND ADDITIONAL COMMENT:

SIGNATURE: Creigh M. Olson DATE: 5-2-12
BY: Creighton Olson
TITLE: Owner

(Note: By signing this application you are signifying that you are either the legal owner of the subject property or are a legal representative of the owner or owners of the subject property.)



Case 060-12: A request to rezone from District R-1 (Single-Family Residential) to District R-2 (Two-Family Residential) for the property commonly known as 1004 West 26th Street for duplex construction - Creighton Olson

Case 060-12: 1004 West 26th Street - A request to rezone from District R-1 (Single Family Residential) to District R-2 (Two-Family Residential) for future development of duplexes – Creighton Olson.

Mr. Anderson opened the public hearing for Case 060-12.

Mr. Creighton Olson, 1198 Helenben Road, Joplin, appeared and explained that this is basically the same floor plan and same type of building as the property in Case 059-12. The property in this request is also zoned R-1 on the corner of 26th Street and Bird Avenue, and he is requesting rezoning to District R-2 to construct two more duplexes there.

Mr. McClure asked Mr. Olson if there will be two duplexes or four households, and he replied that is correct. He stated that the property contains almost one-half acre.

Mr. Anderson asked for comments from the commissioners and the audience, and none were received. He then closed the public hearing for Case 060-12.

MR. McCLURE MOVED, SECONDED BY MR. LANDRITH, THAT CASE 060-12 BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR APPROVAL, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. ANDERSON, MR. EASTMAN, MR. GILSTRAP, MR. LANDRITH, MR. McCLURE, AND MR. SMITH VOTING "AYE"; AND WITH MR. HARRINGTON BEING ABSENT (6 IN FAVOR, 1 ABSENT).

P & Z Case 060-12
Creighton Olson
(P & Z Recommended Approval)

COUNCIL BILL NO. 2012-297 **ORDINANCE NO.**

AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District R-2 property as described below and located at 1004 West 26th Street in the City of Joplin, Jasper County, Missouri.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. Having referred the subject matter of this ordinance to the City Planning and Zoning Commission and having given at least fifteen days notice of time and place of hearing on same by publication in the Joplin Globe, Ordinance No. 2004-256 is hereby amended by removing the following described property from District R-1 and including same in District R-2:

All of Lots Numbered Thirty-seven (37) and Thirty-eight (38) in Briarcliff Addition in the City of Joplin, Jasper County, Missouri, according to the recorded plat thereof.

Section 2. That the City Clerk is hereby ordered to file this ordinance with the Zoning District Map maintained in her office and to note the changes herein provided for thereon.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of _____, 2012.

ATTEST: Melodee Colbert-Kean, Mayor

Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

Brian W. Head, City Attorney

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: July 2, 2012

Item: COUNCIL BILL NO. 2012-298
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

Attachments: 1) Planning Report
2) Commission Minutes
3) Copy of Council Bill

Public Works Director: David Hertzberg OKH Date: 6/22/2012
City Attorney: Brian Head Date: 6-26-12
City Manager: R. Mark Rohr Date: 6-25-12
Board or Commission: Planning and Zoning Commission Date: 6/11/2012

Recommended Action: Planning and Zoning Commission recommended tabling this request to their July meeting by a vote of "6 in favor, 1 absent"

SUMMARY/REQUEST:
Case 061-12: 2003 South Mississippi Avenue and 2712 East 20th Street - A request to rezone from District R-1 (Single Family Residential) to District C-O-PD (Non-Retail Planned Development) for future construction of an office building – DTS Custom Homes, LLC.

STAFF SUMMARY:
This request is consistent with the development policies of the Comprehensive Plan as adopted by the corridor design standards.

The building will be constructed as a model and will subsequently be used as an office. The type of structure to be built will be consistent with single-family home construction.

This property is consistent with development patterns and policies. The development will complement the nearby residential properties since this will be a masonry single-family home to be used as a model home. Staff recommends approval.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Kellstadt has been in contact with DTS Custom Homes and felt that it would be best to table this request so a few modifications can be made to the site home. The City staff worked with them to try to expedite the request but felt like the City would be better served by tabling this request.

Mr. Anderson asked about proceeding with the public hearing before considering tabling the request, and Mr. Kellstadt replied yes.

Mr. Jason Hobbs appeared representing DTS Custom Homes. He thanked the City staff for giving him the extra time to work on improving the site plans so they are easier to understand with the residential model home versus an office complex.

Mr. Anderson asked Mr. Hobbs for confirmation that he would like to table the request at this point, and he replied yes.

PUBLIC COMMENT:
Mr. Jeremy Nelson, Olde Joplin Properties, currently owns the property at 2027 Mississippi Avenue. He also has contracts for three lots, with one lot behind and one lot on each side of 2027 Mississippi. He requested more clarification before this request moves forward and was informed that this development was just going to be a big house. He asked how the development will affect his properties if it is to be a non-residential use. He purposely bought those properties in order to build himself a nice home and have a nice neighborhood.

Mr. Anderson asked Mr. Nelson if he would be opposed to tabling this request and discussing it again next month, and he replied that would be great. Mr. Anderson explained that a representative from DTS Custom Homes in present in the audience and suggested that they meet outside the Council Chambers to provide additional clarification. Mr. Nelson stated that this would be the only commercial zoning in this area and would directly impact his properties.

Z&P Meeting: June 11, 2012
City Council Meeting: July 2, 2012

STAFF PLANNING REPORT

CASE 061-12:

Petition the Council to rezone from District R-1 (Single-Family Residential) to District C-O-PD (Non-Retail Commercial Planned Development) for future construction of office building.

APPLICANT:

DTS Custom Homes, LLC

LOCATION:

2003 South Mississippi Avenue and 2712 East 20th Street

PRESENT ZONING:

District R-1 (Single-Family Residential)

REQUESTED ZONING:

District C-O-PD (Non-Retail Commercial Planned Development)

EXISTING CONDITIONS:

Former single-family home

PROPERTY SIZE

210' x 196' (41,160 square feet or 0.94 acre)

FLOOD PLAIN

X

SITE	LAND USE	EXISTING ZONING
NORTH	Park	R-1
SOUTH	Former single-family home	R-1
EAST	Former single-family home	R-1

WEST	Former single-family home	R-1

TRAFFIC CONDITIONS:

STREET(S) WITH ACCESS TO PROPERTY

20th Street
Mississippi Avenue

CLASSIFICATION OF STREET(S)

20th Street – Arterial
Mississippi Avenue – Local

RIGHT-OF-WAY WIDTH

20th Street – 80 feet
Mississippi Avenue – 50 feet

WILL TURNING MOVEMENTS OF THE PROPOSED USE CREATE AN UNDUE TRAFFIC HAZARD?

No.

UTILITIES:

The property has all utilities

CONSISTENT WITH FUTURE LAND USE MAP?

Yes

STAFF ANALYSIS:

CONSISTENT WITH DEVELOPMENT POLICIES OF THE COMPREHENSIVE PLAN?

Yes, as adopted by the new corridor development guidelines.

THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

Yes. The building will be constructed as a model and will subsequently be used as an office.

THE EXTENT THAT THE ZONING CHANGE WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

No. The type of structure to be built will be consistent with single-family home construction.

DISCUSSION

This property is consistent with development patterns and policies. The development will complement the nearby residential properties since this will be a masonry single-fami_y home to be used as a model home. Staff recommends approval.

RECEIVED
5-10-12

CITY OF JOPLIN, MISSOURI
REZONING APPLICATION FORM

Return Form to:
Planning / Community Development Specialist
602 South Main Street
Joplin, Missouri 64801
417-624-0820 Ext. 511
FAX 417-625-4738

For Office Use Only
Case No.: 061-12
Filing Fee: $350.00
Date Advertised: 5-27-12
Date Notices Sent: 5-25-12
Public Hearing Date: 6-11-12

APPLICANT: DTS Custom Homes, LLC PHONE: 417-434-3443
ADDRESS: 501 S. Madison Suite F Webb City, MO ZIP: 64870
OWNER: Tom Sims PHONE: 479-267-5618
ADDRESS: P.O Box 11 Farmington AR ZIP: 72730
LOCATION OF PROPERTY: South of 20th St. Between Mississippi & Ozark
LEGAL DESCRIPTION: W½ of Lot 23 and Lot 24 in Kindred's Second Addition to the City of Joplin, Jasper County, Missouri, according to the recorded Plat thereof. Except the North 10 feet thereof.
(2712 E. 20th St & 2003 S. Mississippi)
Present Zoning R-1 Requested Zoning: C-O-PD Acreage:
Present Use of Property: Vacant - Former SF Homes

SURROUNDING LAND USE AND ZONING:

	Land Use	Zoning
North	Park	
South	SF Home	R1
East	SF Home & Vacant Lot	R1
West	Vacant Lot	R1

CHARACTER OF THE NEIGHBORHOOD: Destruction Zone. Formerly SF Housing.

RELATIONSHIP TO EXISTING ZONING PATTERN:

1. Would proposed change create a small, isolated district unrelated to surrounding districts?
   NO
2. Are there substantial reasons why the property cannot be used in accord with existing zoning? If yes, explain: Yes
   Would like to construct a residential model home, with future potential for like commercial office.

CONFORMANCE WITH COMPREHENSIVE PLAN:

1. Consistent with Development Policies? Yes
2. Consistent with Future Land Use Map? Yes

THE FOLLOWING MUST ACCOMPANY YOUR APPLICATION:

1. One copy of a legal description of the property proposed to be rezoned.
2. One copy of a statement describing the impact of the proposed change, including any traffic conditions that may result; any danger from fire hazards; how the proposed change may effect the character of the surrounding properties; and how the proposed change will benefit the City of Joplin.

TRAFFIC CONDITIONS:

1. Street(s) with Access to Property: Mississippi
2. Classification of Street(s):
   Arterial_____ Collector_____ Local X
3. Right-of-Way Width: _____
4. Will turning movements caused by the proposed use create an undue traffic hazard?
   NO

IS PLATTING OR REPLATTING REQUIRED TO PROVIDE FOR:

1. Appropriately Sized Lots?_____
2. Properly Sized Street Right-of-Way?_____
3. Drainage Easements?_____
4. Utility Easements:
   - Electricity?_____
   - Gas?_____
   - Sewers?_____
   - Water?_____
5. Additional Comments:_____

UNIQUE CHARACTERISTIC OF PROPERTY AND ADDITIONAL COMMENT:

This will be a residential model home.

SIGNATURE: _____ DATE: 6-4-2012

BY: Jason Hodge

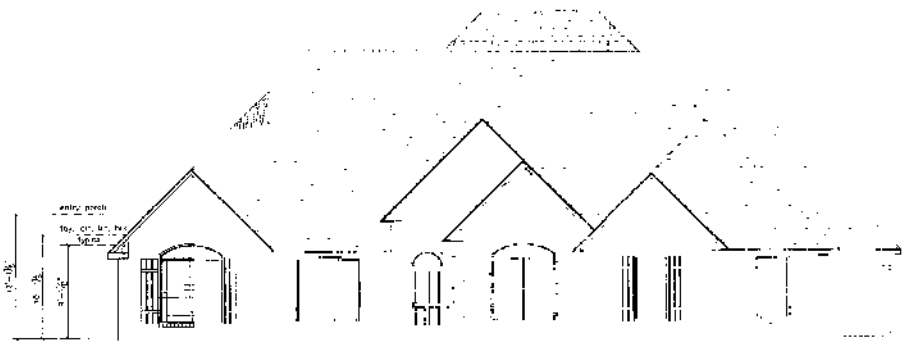
TITLE: Director of Sales & Marketing for RTS Custom Homes, LLC

(Note: By signing this application you are signifying that you are either the legal owner of the subject property or are a legal representative of the owner or owners of the subject property.)

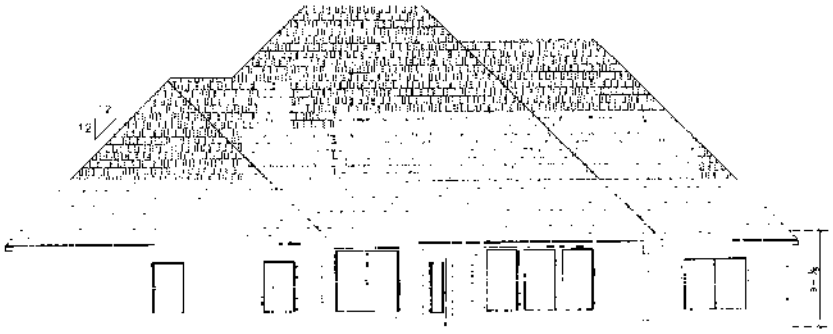


Case 061-12: A request to rezone from District R-1 (Single-Family Residential) to District C-O-PD (Non-Retail - Planned Development) the property commonly known as 2003 South Mississippi Avenue and 2712 East 20th Street, for the construction of an office building - DTS Custom Homes, LLC

N



Front



Rear

Elevations

General Notes

Structural Integrity Design, is a residential design service not a registered architectural firm. The purchaser of this set of plans should consult a building professional prior to construction. The purchaser and builder of this plan releases Structural Integrity Design from any liability and/or claims that may arise during construction or anytime thereafter. Therefore, the builder must carefully inspect all aspects of these drawings, including but not limited to dimensions, details accuracy and overall integrity, and assumes all responsibility. This plan may need to be modified to comply with local and/or governing codes

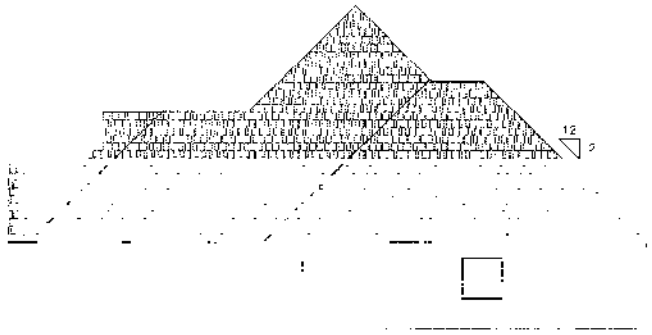
No. Revision/Issue Date

Residential design & drafting

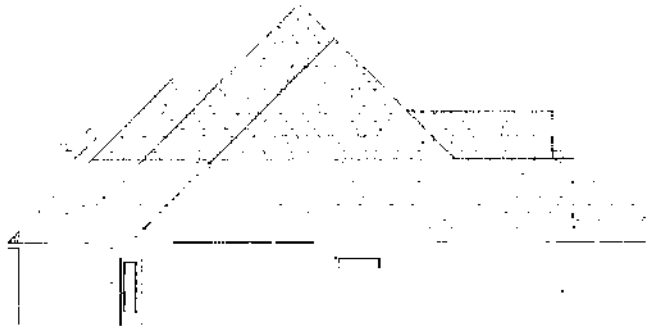
DTS Custom Homes
Lot 5 Twin Falls
Farmington, AR.

DTS Lot 5 TF
1/15/2012
1/4" = 1'-0"

2 of 4



Right



Left

General Notes

Structural Integrity Design is a residential design service and a registered architectural firm. The purchaser of the set of plans should consult a building professional prior to construction. The purchaser and buyer of this plan releases Structural Integrity Design from any liability and/or claims that may arise during construction or anytime thereafter. Therefore, the builder must carefully inspect all aspects of these drawings, including but not limited to dimensions, details, notations, and overall intent of the drawings to assume all responsibility. This plan may need to be modified to comply with local and/or governing codes

No.	Revision/Issue	Date

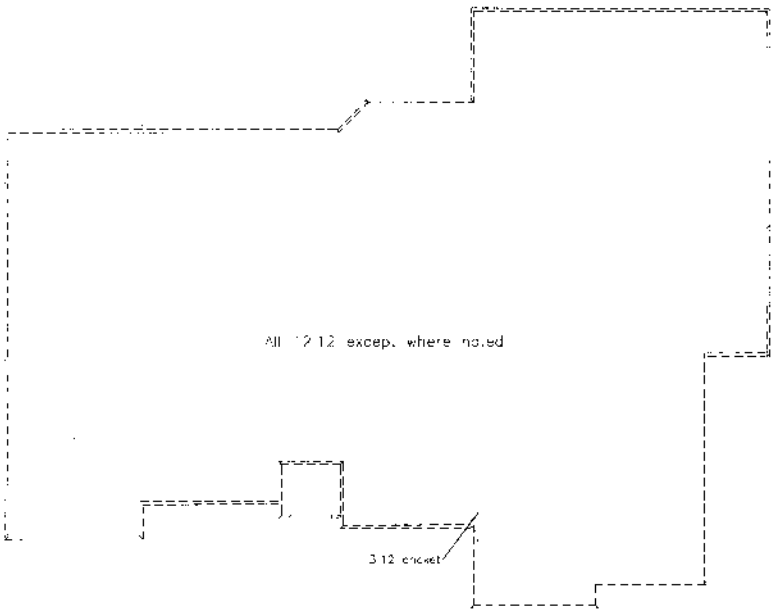
Residential design & drafting

DTS Custom Homes
Lot 3 Twin Falls
Farmington, AR

DTS-Lot 3 TF
1/18/2012
1/4" = 1'-0"

Sheet
3 of 4

Elevations



Roof plan

General Notes

Structural Integrity Design is a residential design service and not a registered architectural firm. The purchaser of this set of plans should consult a building professional prior to construction. The necessary and builder of this plan releases Structural Integrity Design from any claims and/or claims that may arise during construction or anytime thereafter. Therefore, the builder must carefully inspect all aspects of these drawings, including but not limited to dimensions, details, accuracy and overall integrity, and assumes all responsibility. This plan may need to be modified to comply with local and/or governing codes

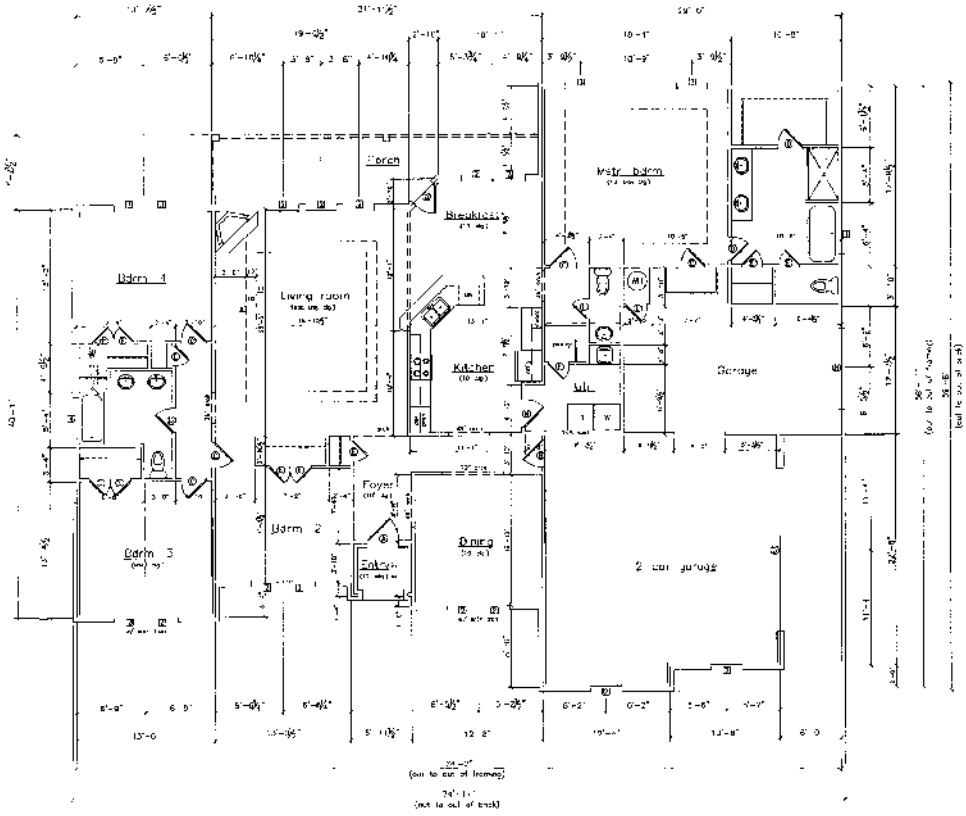
No. | Remarks/Issue | Date

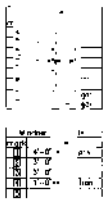
T.C.
Residential design & drafting

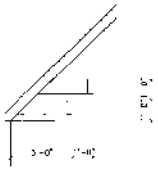
DTS Custom Homes
Lot 5 Twin Falls
Farmington, AR

DTS-lot 5 TF
1/19/2012
1/4" = 1'-0"

Sheet
4 of 4







Tray detail @ LR

Floor plan

Square footage
(to outside of framing)

Heated	=	7487
Garage	=	817
Porches	=	212
Total	=	7495

(total excluding bsmt = 3830 s.f.)

Notes:
1. Ceiling heights are 8'-0" (u.n.o.)

Owners' Notes

Structural integrity design is a residential design service not a registered architectural item. We promote all the set of plans should consult a building professional prior to construction. The purchaser and builder of this plan releases Stroot of Integrity Design from any liability and/or claims that may arise during construction or anytime thereafter. Therefore, the builder must carefully inspect all aspects of these drawings, including but not limited to dimensions, details, accuracy and overall integrity, and assumes all responsibility. This plan may need to be modified to comply with local and/or governing codes

No.	Revision/Issue	Date

Residential design & drafting

DTS Custom Homes
Lot 5 Two Falls
Farmington, AR

File	DTS-Lot 5 II
Date	7/15/2013
Scale	1/4" = 1'-0"
Sheet	1 of 4

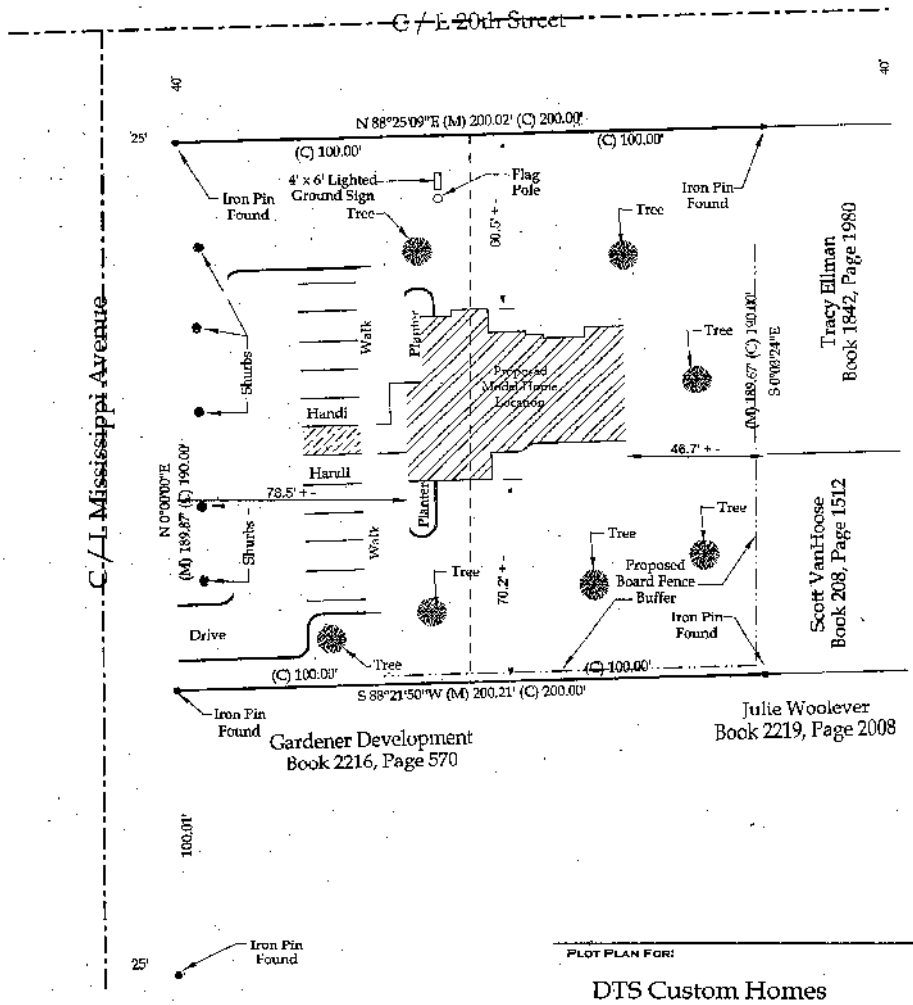
Allgood

SCALE: ONE INCH EQUALS 40 FEET.
0 20 40 60 80

BASIS OF BEARINGS: The East line of Mississippi Avenue assumed as North and South.
CLASS OF PROPERTY:(c) Urban.

LEGAL DESCRIPTION:

All of Lot Numbered Twenty-three (23) Except the North 10.00 feet, & Lot Numbered Twenty-four (24) Except the North 10.00 feet in Kindred's Second Addition, in the City of Joplin, Jasper County, Missouri Being subject to all easements, right-of-ways, and reservations of record.



PLOT PLAN FOR:

DTS Custom Homes

PROPERTY ADDRESS: 2003 Mississippi Avenue
Joplin, Missouri

SECTION - 13	TOWNSHIP - 27	RANGE - 33
SCALE: 1 = 40'.00"		DATE: 6-4-12
FIELD BOOK #		FILE NAME:2003MISS

SURVEYOR'S CERTIFICATE

I, ROBBIE W. NEECE, A REGISTERED LAND SURVEYOR OF JOPLIN, JASPER COUNTY, MISSOURI, DO HEREBY CERTIFY THAT THE ATTACHED PLAT WAS PREPARED UNDER MY DIRECT SUPERVISION AND IS A TRUE AND ACCURATE DESCRIPTION OF THE WORK PERFORMED AND MEASUREMENTS TAKEN. THIS IS NOT A LAND SURVEY; IT IS A PRELIMINARY PLOT PLAN SHOWING THE PROPOSED LOCATION OF IMPROVEMENTS IN RELATION TO PROPERTY BOUNDARY LINES.

Robbie W. Neece 6/7/12
ROBBIE W. NEECE, MO.L.S. #398

STEWART & NEECE LAND SURVEYING COMPANY INC.
1201 EAST 15TH STREET, JOPLIN, MISSOURI 64804
PHONE: 417-624-0311 FAX: 417-624-0365
SERVING SOUTHWEST MISSOURI SINCE THE YEAR 1922.

LAND SURVEYS, LOT SURVEYS, SUBDIVISIONS, MINE DATA, BLUEPRINTS

Case 061-12: 2003 South Mississippi Avenue and 2712 East 20th Street - A request to rezone from District R-1 (Single Family Residential) to District C-O-PD (Non-Retail Planned Development) for future construction of an office building – DTS Custom Homes, LLC.

Mr. Anderson opened the public hearing for Case 061-12.

Mr. Kellstadt has been in contact with DTS Custom Homes and felt that it would be best to table this request so a few modifications can be made to the site home. The City staff worked with them to try to expedite the request but felt like the City would be better served by tabling this request.

Mr. Anderson asked about proceeding with the public hearing before considering tabling the request, and Mr. Kellstadt replied yes.

Mr. Anderson asked for comments from DTS Custom Homes in favor of this request.

Mr. Jason Hobbs, 30 Baker Drive, Bella Vista, Arkansas, appeared representing DTS Custom Homes. He thanked the City staff for giving him the extra time to work on improving the site plans so they are easier to understand with the residential model home versus an office complex.

Mr. Anderson asked Mr. Hobbs for confirmation that he would like to table the request at this point, and he replied yes.

Mr. Anderson asked for comments in opposition to this request.

Mr. Jeremy Nelson, Olde Joplin Properties, currently owns the property at 2027 Mississippi Avenue. He also has contracts for three lots, with one lot behind and one lot on each side of 2027 Mississippi. He requested more clarification before this request moves forward and was informed that this development was just going to be a big house. He asked how the development will affect his properties if it is to be a non-residential use. He purposely bought those properties in order to build himself a nice home and have a nice neighborhood.

Mr. Anderson asked Mr. Nelson if he would be opposed to tabling this request and discussing it again next month, and he replied that would be great. Mr. Anderson explained that a representative from DTS Custom Homes in present in the audience and suggested that they meet outside the Council Chambers to provide additional clarification. Mr. Nelson stated that this would be the only commercial zoning in this area and would directly impact his properties.

Mr. Anderson asked the commissioners for any additional questions for Mr. Nelson, and none were received.

Mr. Anderson asked for additional comments in opposition, and none were received. He then closed the public hearing for Case 061-12.

MR. LANDRITH MOVED, SECONDED BY MR. SMITH, THAT CASE 061-12 BE TABLED TO THE JULY MEETING OF THE PLANNING AND ZONING COMMISSION, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. ANDERSON,

MR. EASTMAN, MR. GILSTRAP, MR. LANDRITH, MR. McCLURE, AND MR. SMITH VOTING "AYE"; AND WITH MR. HARRINGTON BEING ABSENT (6 IN FAVOR, 1 ABSENT).

P & Z Case 061-12
DTS Custom Homes, LLC
(P & Z Recommended Tabling
to their July Meeting)

COUNCIL BILL NO. 2012-298 **ORDINANCE NO.**

AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District C-0-PD property as described below and located at 2003 South Mississippi Avenue and 2712 East 20th Street in the City of Joplin, Jasper County, Missouri.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. Having referred the subject matter of this ordinance to the City Planning and Zoning Commission and having given at least fifteen days notice of time and place of hearing on same by publication in the Joplin Globe, Ordinance No. 2004-256 is hereby amended by removing the following described property from District R-1 and including same in District C-0-PD:

All of Lots Numbered Twenty-three (23) and Twenty-four (24) in Kindred's Second Addition to the City of Joplin, Jasper County, Missouri according to the recorded Plat thereof, EXCEPT the North 10.0 feet thereof.

Section 2. That the City Clerk is hereby ordered to file this ordinance with the Zoning District Map maintained in her office and to note the changes herein provided for thereon.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of _____, 2012.

ATTEST: Melodee Colbert-Kean, Mayor

Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

Brian W. Head, City Attorney

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: July 2, 2012

Item: RESOLUTION NO. 2012-019
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

Attachments: 1) Planning Report
2) Commission Minutes
3) Copy of Resolution

Public Works Director: David Hertzberg — Date: 6/22/2012
City Attorney: Brian Head — Date: 6-26-12
City Manager: R. Mark Rohr — Date: 6-25-12
Board or Commission: Planning and Zoning Commission — Date: 6/11/2012

Recommended Action: Planning and Zoning Commission recommended approval for a permanent Special Use Permit by a vote of "6 in favor, 1 absent"

SUMMARY/REQUEST:
Case 062-12: 2715 and 2727 South Joplin Avenue – A request for a permanent Special Use Permit (1st Request) for a parking lot – Cynthia Croy.

STAFF SUMMARY:
This parking lot is for Dr. Croy's new office building under construction along Main Street opposite the alley.

The following items are conditions for consideration of the Special Use Permit:

1. This Special Use Permit is issued to Cynthia Croy.
2. The permit shall be permanent.
3. Screening, storm water measures, and landscaping shall conform to code.
4. Any other conditions set by the City Council of the City of Joplin.

This request is consistent with the development policies of the Comprehensive Plan as adopted by the corridor design standards.

This property is one-half block west of Main Street and is along Joplin Avenue. This corridor is expected to transition to multi-use residential and commercial land uses.

Screening measures to conform to the newly adopted corridor design standards are being met. This will minimize adverse effects on adjacent properties.

This property is consistent with development patterns and policies.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Carlin Smittle, Security Design Group, appeared representing Croy Properties (Cynthia Croy). Mr. Smittle is seeking a Special Use Permit for the 0.28 acres at 2715 and 2727 South Joplin Avenue to be developed as off-street parking for the new doctor's building under construction at 2718-2724 South Main Street.

Mr. Smittle explained that the parking lot will provide parking for the customers and employees of the doctor's office and other new businesses to occupy the building in the future. The parking area is designed applying development standards for the City of Joplin Comprehensive Plan 2012, multi-use residential/commercial office development standards just south of 26th Street and the South Main Street Gateway Corridor.

Mr. Smittle explained that landscaping for the parking area will be developed to blend with landscaping developed surrounding the new doctor's office on South Main Street. Street trees and shrubs will be provided along Joplin Avenue to temper the commercial use from the residents. Areas to the south and north of the parking area will be landscaped with street trees, shrubbery, and decorative screened walls installed. Interior landscaping islands with street trees and shrubs have been provided to visually break up the parking area.

Mr. Smittle will have engineered controlled lighting for the parking area, and a sprinkler system will be installed in accordance to the developmental standards.

Mr. McClure asked if Mr. Smittle has submitted any plans to the City staff in regard to what this property will look like. Mr. Bolander replied that a plan is included in the commissioners' agenda packet. He explained that the design guidelines identified extending the commercial areas one block off of Main Street and did specify the design for the proposed parking lot on Joplin Avenue. He stated that the developers did the best they can to buffer the parking lot with fencing, trees, and landscaping, knowing that there are residents in this area.

PUBLIC COMMENT:
No public comments were made; however, one written petition of protest was received by the Planning and Zoning Commission.

Z&P Meeting: June 11, 2012
City Council Meeting: July 2, 2012

STAFF PLANNING REPORT

CASE 062-12:

Petition the Council for a permanent Special Use Permit (1st Request) for the use of a parking lot.

APPLICANT:

Cynthia Croy

LOCATION:

2715 and 2727 South Joplin Avenue

PRESENT ZONING:

District R-1 (Single-Family Residential)

PRESENT USE OF PROPERTY:

Former single-family homes

PROPOSED LAND USE ACTIVITY:

Parking Lot

EXISTING CONDITIONS:

Vacant

PROPERTY SIZE

120' x 100' (12,000 square feet or 0.27 acre)

FLOOD PLAIN

SITE	LAND USE	EXISTING ZONING
NORTH	Former single family home	R-1
SOUTH	Undeveloped	R-1

EAST	Formal retail/office	C-3
WEST	Former single family home	R-1

TRAFFIC CONDITIONS:

STREET(S) WITH ACCESS TO PROPERTY

Joplin Avenue

CLASSIFICATION OF STREET(S)

Joplin Avenue – Arterial

RIGHT-OF-WAY WIDTH

Joplin Avenue – 50 feet

WILL TURNING MOVEMENTS OF THE PROPOSED USE CREATE AN UNDUE TRAFFIC HAZARD?

No

UTILITIES:

The property has all utilities

CONSISTENT WITH FUTURE LAND USE MAP?

Yes, as adopted with the corridor design standards.

ADDITIONAL INFORMATION OR COMMENTS:

This parking lot is for Dr. Croy's new office building under construction along Main Street opposite the alley.

CONDITIONS FOR CONSIDERATION:

1. This Special Use Permit is issued to Cynthia Croy.
2. The permit shall be permanent.
3. Screening, storm water measures, and landscaping shall conform to code.
4. Any other conditions set by the City Council of the City of Joplin.

STAFF ANALYSIS:

CONSISTENT WITH DEVELOPMENT POLICIES OF THE COMPREHENSIVE PLAN?

Yes, as adopted by the corridor design standards.

THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

This property is ½ block west of Main Street and is along Joplin Avenue. This corridor is expected to transition to Multi-Use residential and commercial land uses.

THE EXTENT THAT THE ZONING CHANGE WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

Screening measures to conform to the newly adopted corridor design standards are being met. This will minimize adverse effects on adjacent properties.

DISCUSSION

This property is consistent with development patterns and policies.

RECEIVED
5-7-12

SPECIAL USE PERMIT APPLICATION

Return Form to:
Planning / Community Development Specialist.
Joplin City Hall
602 South Main Street
Joplin, Missouri 64801
417-624-0820 Ext. 511
FAX 417-625-4738

For Office Use Only

Case No.: 062-12
Filing Fee: $ 350.00
Date Advertised: 5-27-12
Date Notices Sent 5-25-12
Public Hearing Date: 6-11-12

APPLICANT: Cynthia Croy, MD PHONE: 417-869-7100

ADDRESS: 2715 & 2727 S. Joplin ZIP: 65801

OWNER: Croy Properties PHONE:

ADDRESS: 2715 & 2727 S. Joplin ZIP: 65801

LOCATION OF PROPERTY: 2715 & 2727 S. Joplin

LEGAL DESCRIPTION: See Attached

PRESENT ZONING CLASSIFICATION: R1 ACREAGE: .27

PRESENT USE OF PROPERTY: Formally Residential

PROPOSED LAND USE ACTIVITY: Parking Lot for 2718 - 2714 S. Main

ADJACENT ZONING AND LAND USE:

	Land Use	Zoning
North	Former Single Family	R1
South	Undeveloped	R1
East	Formally Retail/Office	C3
West	Former Single Family	R1

Does the proposed special use meet the following standards? If yes, attach a separate sheet explaining why.

	Yes	No
1. Is deemed necessary for the public convenience at that location.	☒	☐
2. Is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected.	☒	☐
3. Is found to be generally compatible with the neighborhood in which it is proposed.	☒	☐
4. Will comply with the height and area regulations of the district in which it is located unless specifically granted.	☒	☐
5. Off-street parking and loading areas will be provided in accordance with the standards set forth in the zoning regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential use from any injurious effect.	☒	☐
6. Adequate utility, drainage, and other such necessary facilities have been or will be provided.	☒	☐

Should this special use be valid only for a specific time period? Yes ☐ No ☒

If Yes, what length of time? _____

SIGNATURE: _____ DATE: 5/3/12

BY: _____ TITLE: _____

Attachments Required:

1. One copy of a legal description of the property on which the use is to be located.
2. One copy of the necessary descriptive material related to the intensity and extent of the proposed use, including any traffic conditions that may result; any danger from fire hazards; how the proposed use may effect the character of the surrounding properties; and how the proposed use will benefit the City of Joplin

The Special Use Permit that will be issued will have set of conditions that will require information regarding the following: (Additional conditions may be imposed by the Commission and Council)

1. Hours of Operation. _____
2. Days of Operation. _____
3. Number of Off-street Parking Spaces. _____
4. Signs (Generally signs are limited to one sign not larger that one (1) foot by two (2) feet set no more than six (6) feet off the ground and at least ten (10) feet inside the property line.) _____
5. Number of Assistants or employees. _____
6. Nature of the Business. _____
7. Location of the Business. _____

Violation of any condition will cause a complaint to be filed with the Municipal Court and the Permit will be suspended immediately requiring reapplication.



0 75 150 300 450 600 Feet

Case 062-12: A request for a permanent Special Use Permit for a parking lot for the property commonly known as 2715 and 2727 South Joplin Avenue - Cynthia Croy

N

Case 062-12: 2715 and 2727 South Joplin Avenue – A request for a permanent Special Use Permit (First Request) for a parking lot – Cynthia Croy.

Mr. Anderson opened the public hearing for Case 062-12.

Mr. Carlin Smittle, Security Design Group, Springfield, Missouri, appeared representing Croy Properties (Cynthia Croy). Mr. Smittle is seeking a Special Use Permit for the 0.28 acres at 2715 and 2727 South Joplin Avenue to be developed as off-street parking for the new doctor's building under construction at 2718-2724 South Main Street.

Mr. Smittle explained that the parking lot will provide parking for the customers and employees of the doctor's office and other new businesses to occupy the building in the future. The parking area is designed applying development standards for the City of Joplin Comprehensive Plan 2012, multi-use residential/commercial office development standards just south of 26th Street and the South Main Street Gateway Corridor.

Mr. Smittle explained that landscaping for the parking area will be developed to blend with landscaping developed surrounding the new doctor's office on South Main Street. Street trees and shrubs will be provided along Joplin Avenue to temper the commercial use from the residents. Areas to the south and north of the parking area will be landscaped with street trees, shrubbery, and decorative screened walls installed. Interior landscaping islands with street trees and shrubs have been provided to visually break up the parking area.

Mr. Smittle will have engineered controlled lighting for the parking area, and a sprinkler system will be installed in accordance to the developmental standards.

Mr. McClure asked if Mr. Smittle has submitted any plans to the City staff in regard to what this property will look like. Mr. Bolander replied that a plan is included in the commissioners' agenda packet. He explained that the design guidelines identified extending the commercial areas one block off of Main Street and did specify the design for the proposed parking lot on Joplin Avenue. He stated that the developers did the best they can to buffer the parking lot with fencing, trees, and landscaping, knowing that there are residents in this area.

Mr. Anderson asked for comments from the commissioners and the audience, and none were received. He closed the public hearing for Case 062-12 and explained that one written petition of protest has been received.

MR. SMITH MOVED, SECONDED BY MR. McCLURE, THAT CASE 062-12 BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR APPROVAL FOR A PERMANENT SPECIAL USE PERMIT TO BE ISSUED TO CYNTHIA CROY, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. ANDERSON, MR. EASTMAN, MR. GILSTRAP, MR. LANDRITH, MR. McCLURE, AND MR. SMITH VOTING "AYE"; AND WITH MR. HARRINGTON BEING ABSENT (6 IN FAVOR, 1 ABSENT).

P & Z Case 062-12
Cynthia Croy
(P & Z Recommended Approval
for a Permanent Special Use Permit)

RESOLUTION NO. 2012-019

A RESOLUTION granting a Special Use Permit (First Request) to Cynthia Croy for a parking lot at 2715 and 2727 South Joplin Avenue, in the City of Joplin, Jasper County, Missouri.

WHEREAS, the Planning and Zoning Commission at a Public Hearing held on June 14, 2012, recommended that a Special Use Permit be granted to Cynthia Croy for a parking lot at 2715 and 2727 South Joplin Avenue, in the City of Joplin, Jasper County, Missouri.

WHEREAS, a public hearing was held before the City Council on July 2, 2012, in compliance with said request;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Joplin, as follows:

That a Special Use Permit be granted to Cynthia Croy for a parking lot located in the City of Joplin, Missouri, on the following described real estate, to-wit:

All of Lots One Hundred Seven (107) and One Hundred Eight (108) of D. W. Lukes Southern Heights Sub-Division to the City of Joplin, Jasper County, Missouri.

and the said Special Use Permit is hereby issued with the following conditions and made a part thereof:

1. This Special Use Permit is issued to Cynthia Croy.

2. The permit shall be permanent.

3. Screening, storm water measures, and landscaping shall conform to code.

4. Any other conditions set by the City Council of the City of Joplin.

The violation of any condition set forth in this Resolution shall be interpreted as a violation of Appendix 29-A (Zoning Code) of the Municipal Codes of the City of Joplin and shall be administered in accordance with the provisions of Section 34 (Violation and Penalty) of Appendix 29-A of that Code. Conviction in Municipal Court for violation of any condition as set forth in this Resolution shall cause the immediate termination of this Special Use Permit and require the applicant as named in Item No. 1 above to reapply for renewal.

The Municipal Planner is hereby authorized and directed to issue said permit to Cynthia Croy, in accordance with the plans and specifications on file in the Office of the Building Official.

The City Clerk is hereby ordered to file this Resolution with the Zoning District Map maintained in her office and to note the changes herein provided for thereon.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2012.

_____
Melodee Colbert-Kean, Mayor

ATTEST:_____
Barbara L. Hogelin, City Clerk

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: July 2, 2012

Item: COUNCIL BILL NO. 2012-299
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

Attachments: 1) Planning Report
2) Commission Minutes
3) Copy of Council Bill

Public Works Director: David Hertzberg — Date: 6/22/2012
City Attorney: Brian Head — Date: 6-26-12
City Manager: R. Mark Rohr — Date: 6-27-12
Board or Commission: Planning and Zoning Commission — Date: 6/11/2012

Recommended Action: Planning and Zoning Commission recommended approval by a vote of "5 in favor, 1 abstention, and 1 absent"

SUMMARY/REQUEST:
Case 063-12: South of I-44, North of 50th Street, East of Main Street, West of Indiana Avenue – A request for street naming to Mercy Way – Mercy Health Systems.

STAFF SUMMARY:
Mercy Health Systems requested the naming of the interior perimeter roadway for the addressing of structures.

This road will be privately built and owned by Mercy Health Systems. Staff recommends approval of the street name.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Gilstrap wished to abstain from the discussion and vote on Case 063-12 as he is employed by Mercy Health Systems.

Ms. Krista Kirk appeared representing Mercy Health Systems and explained that the current construction address is 4901 Pennsylvania Avenue. She presented a request to name the loop road surrounding the hospital Mercy Way.

PUBLIC COMMENT:
None.

Z&P Meeting: June 1, 2012
City Council Meeting: July 2, 2012

STAFF PLANNING REPORT

CASE 063-12:

Request for Street Naming – Mercy Way

LOCATION OF STREET:

Perimeter road for Mercy Hospital campus – South of I-44, North of 50th Street, East of Main Street, West of Indiana Avenue

TYPE OF STREET:

Local/Private

REASON FOR NAME:

Mercy Health Systems requested the naming of the interior perimeter roadway for the addressing of structures.

ADDITIONAL INFORMATION OR COMMENTS

This road will be privately built and owned by Mercy Health Systems.

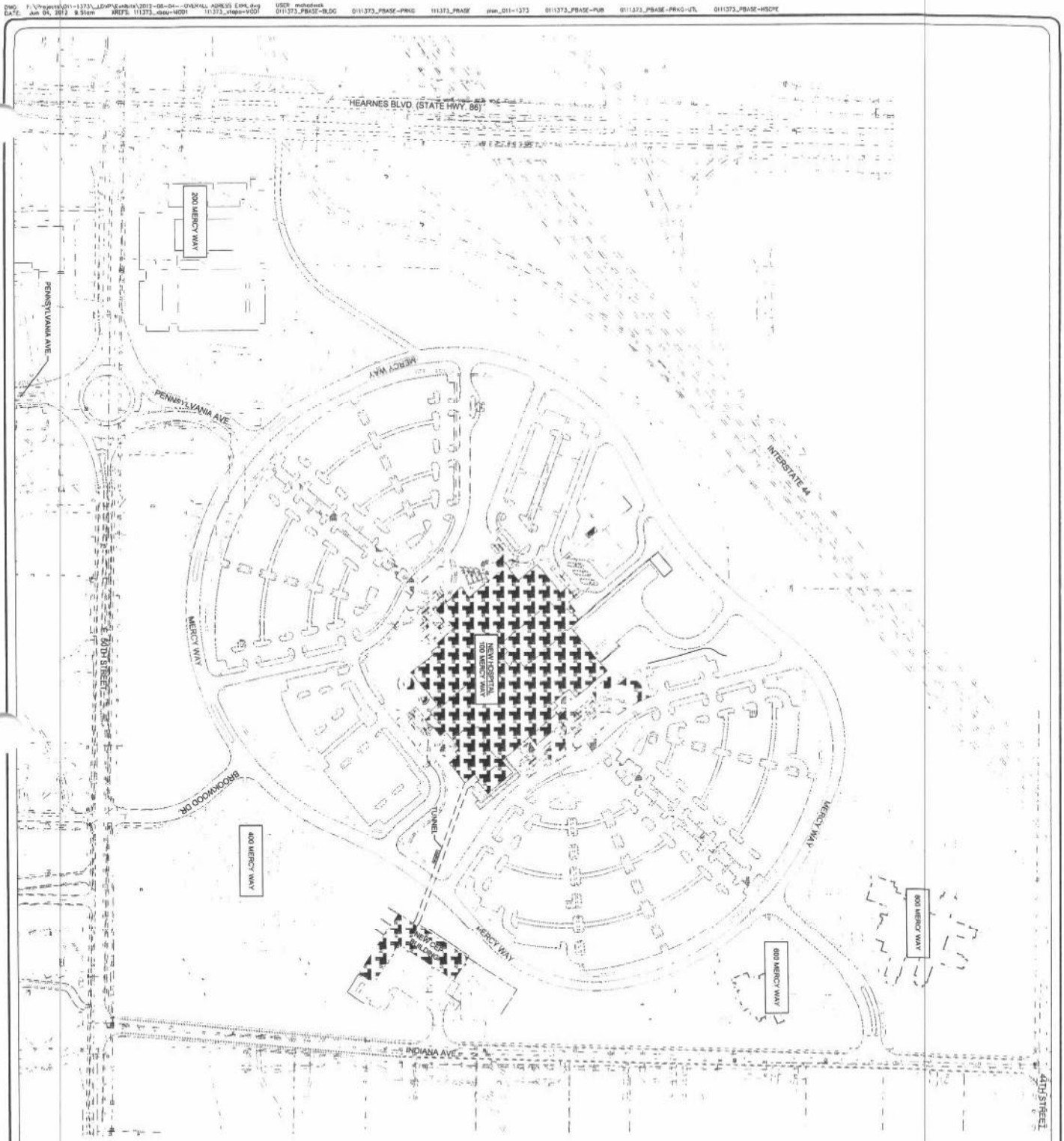
STAFF RECOMMENDATION:

Staff recommends approval of the street name

ENCLOSURES:

Map


ORR LN
I-44 RAMP
I-44 HWY
E 46TH ST
S GRAND AVE
W 47TH ST
JOPLIN AVE
S VIRGINIA AVE
E 47TH St
I-44 RAMP
E 49TH ST
GLENDALE RD
E 50TH ST
BROOKWOOD DR



1 OF 1

Mercy

JOPLIN REPLACEMENT HOSPITAL
JOPLIN, NEWTON COUNTY, MISSOURI

5045-153243-0013

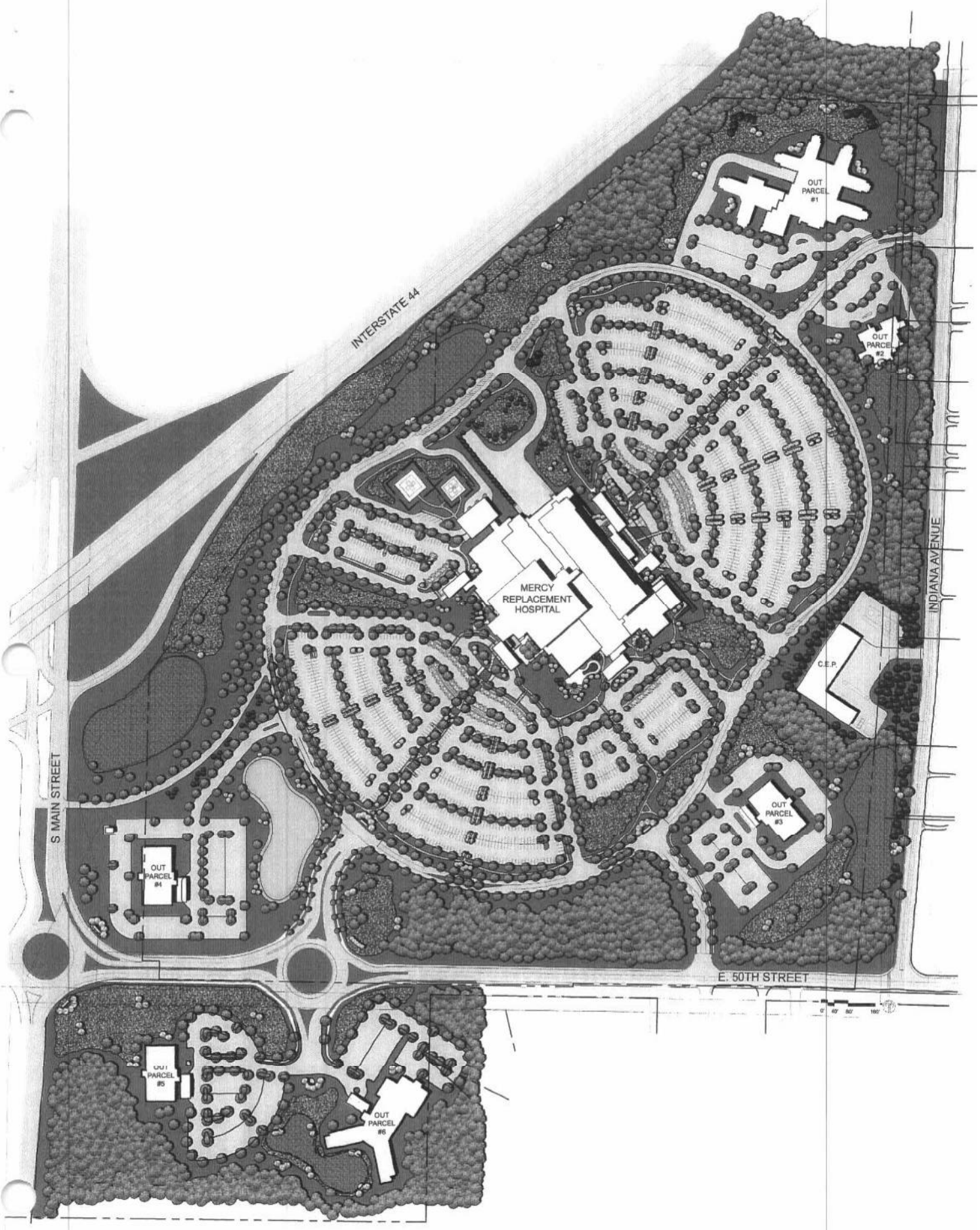
JOPLIN REPLACEMENT HOSPITAL OA# 011-1373

06/04/2012

NOT FOR CONSTRUCTION

ADRESS EXHIBIT

OLSSON ASSOCIATES


INTERSTATE 44
OUT PARCEL #1
OUT PARCEL #2
MERCY REPLACEMENT HOSPITAL
INDIANA AVENUE
C.E.P.
OUT PARCEL #3
S MAIN STREET
OUT PARCEL #4
E. 50TH STREET
OUT PARCEL #5
OUT PARCEL #6

Case 063-12: South of I-44, North of 50th Street, East of Main Street, West of Indiana Avenue – A request for street naming to Mercy Way – Mercy Health Systems.

Mr. Gilstrap wished to abstain from the discussion and vote on Case 063-12 as he is employed by Mercy Health Systems.

Mr. Anderson opened the public hearing for Case 063-12.

Ms. Krista Kirk appeared representing Mercy Health Systems and explained that the current construction address is 4901 Pennsylvania Avenue. She presented a request to name the loop road surrounding the hospital Mercy Way.

Mr. Anderson asked for comments from the commissioners and the audience, and none were received. He then closed the public hearing for Case 063-12.

MR. SMITH MOVED, SECONDED BY MR. LANDRITH, THAT CASE 063-12 BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR APPROVAL, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. ANDERSON, MR. EASTMAN, MR. LANDRITH, MR. McCLURE, AND MR. SMITH VOTING "AYE"; WITH MR. GILSTRAP ABSTAINING, AND WITH MR. HARRINGTON BEING ABSENT (5 IN FAVOR, 1 ABSTENTION, AND 1 ABSENT).

Mr. Gilstrap returned to the dais at this time.

P & Z Case 063-12
Mercy Health Systems
(P & Z Recommended Approval)

COUNCIL BILL NO. 2012-299 **ORDINANCE NO.**

AN ORDINANCE designating the name "Mercy Way" for a new street dedication in an area lying south of Interstate 44, north of 50th Street, east of Main Street, and west of Indiana Avenue in the City of Joplin, Newton County, Missouri.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That the name "Mercy Way" be designated for a new street dedication in an area lying south of Interstate 44, north of 50th Street, east of Main Street, and west of Indiana Avenue in the City of Joplin, Newton County, Missouri.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of _____, 2012.

_____
Melodee Colbert-Kean, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Brian W. Head, City Attorney

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: July 2, 2012

Item: COUNCIL BILL NO. 2012-300
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

Attachments: 1) Planning Report
2) Commission Minutes
3) Copy of Council Bill

Public Works Director: David Hertzberg OKH Date: 6/22/2012
City Attorney: Brian Head Date:
City Manager: R. Mark Rohr Date: 6-25-12
Board or Commission: Planning and Zoning Commission SK Date: 6/11/2012

Recommended Action: Planning and Zoning Commission recommended approval by a vote of "6 in favor, 1 absent"

SUMMARY/REQUEST:
Case 064-12: North of 32nd Street, West of Central City Road – A request for street naming to Wildwood Ranch Parkway – Wildwood Ranch Development.

STAFF SUMMARY:
The reason for the name request is to give identification of the road with the Wildwood Ranch development area.

This roadway lines up with what would be the extension of West 28th Street. Staff recommends approval of the street name.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Jimmer Pinjuv appeared to request the naming of a new street as Wildwood Ranch Parkway. He explained that this request is a marking effort on his part and noted the importance of having the Wildwood Ranch name within this area. The roadway basically extends out from 28th Street but terminates a point around 29th or 30th Streets. The street has no potential for extended further west since it would have to cross Empire District Electric's property to get to the state line.

PUBLIC COMMENT:
None.

Z&P Meeting: June 11, 2012
City Council Meeting: July 2, 2012

STAFF PLANNING REPORT

CASE 064-12:

Request for Street Naming – Wildwood Ranch Parkway

LOCATION OF STREET:

North of 32nd Street west of Central City Road

TYPE OF STREET:

Local

REASON FOR NAME:

The reason for the name request is to give identification of the road with the Wildwood Ranch development area.

ADDITIONAL INFORMATION OR COMMENTS

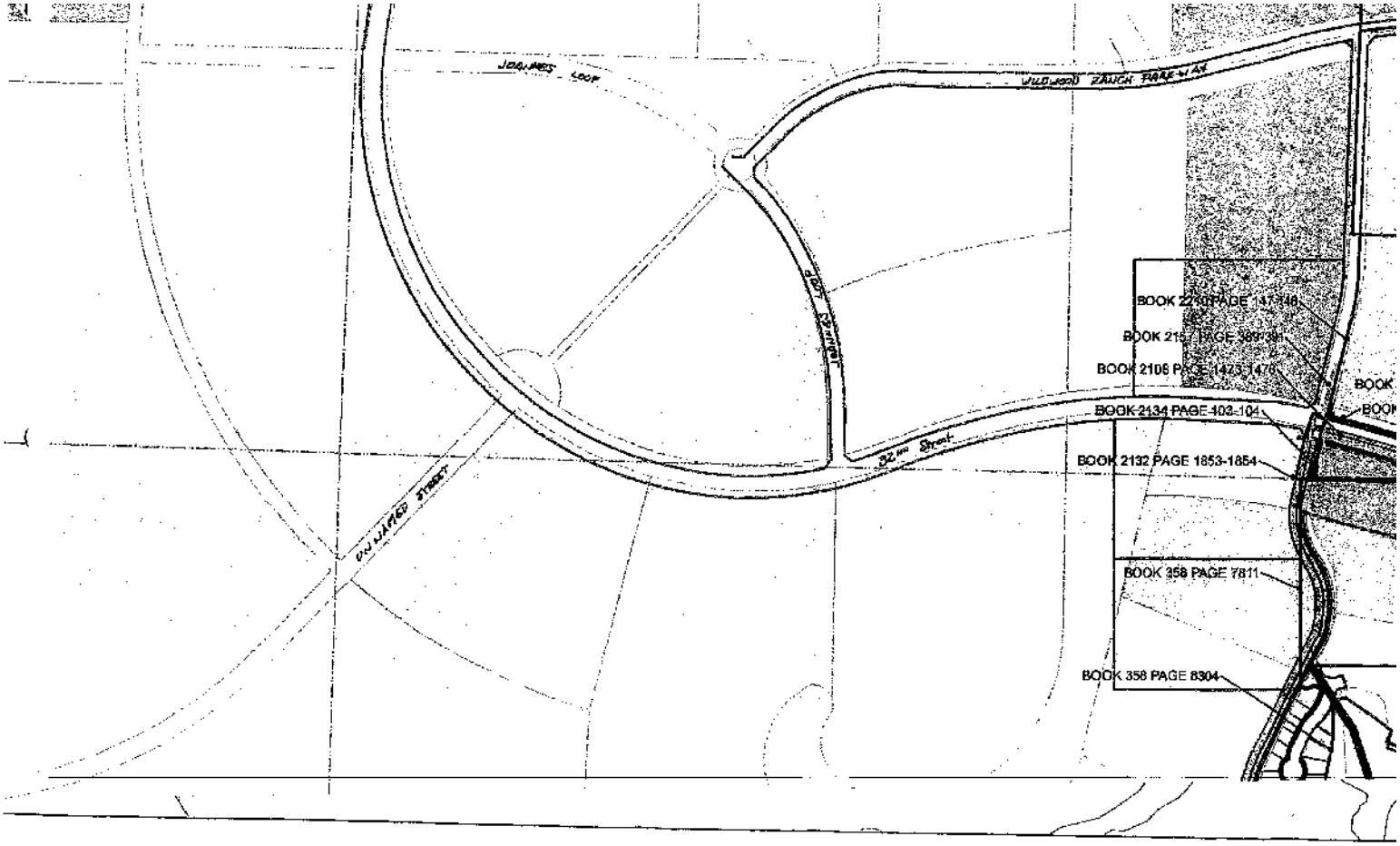
This roadway lines up with what would be the extension of West 28th Street.

STAFF RECOMMENDATION:

Staff recommends approval of the street name

ENCLOSURES:

Map


JOAQUIN'S LOOP
WILDWOOD ZAUCH PARK WAY
32ND STREET
JOAQUIN STREET
BOOK 2134 PAGE 103-104
BOOK 2132 PAGE 1853-1854
BOOK 358 PAGE 7811
BOOK 358 PAGE 8304

Case 064-12: North of 32nd Street, West of Central City Road – A request for street naming to Wildwood Ranch Parkway – Wildwood Ranch Development.

Mr. Anderson opened the public hearing for Case 064-12.

Mr. Jimmer Pinjuv, 615 Hampton Place, Joplin, appeared to request the naming of a new street as Wildwood Ranch Parkway. He explained that this request is a marking effort on his part and noted the importance of having the Wildwood Ranch name within this area. The roadway basically extends out from 28th Street but terminates a point around 29th or 30th Streets. The street has no potential for extended further west since it would have to cross Empire District Electric's property to get to the state line.

Mr. Anderson asked for comments from the commissioners and the audience, and none were received. He then closed the public hearing for Case 064-12.

MR. LANDRITH MOVED, SECONDED BY MR. McCLURE, THAT CASE 064 BE FOWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR APPROVAL, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. ANDERSON, MR. EASTMAN, MR. GILSTRAP, MR. LANDRITH, MR. McCLURE, AND MR. SMITH VOTING "AYE"; AND WITH MR. HARRINGTON BEING ABSENT (6 IN FAVOR, 1 ABSENT).

P & Z Case 064-12
Wildwood Ranch Development
(P & Z Recommended Approval)

COUNCIL BILL NO. 2012-300 **ORDINANCE NO.**

AN ORDINANCE designating the name "Wildwood Ranch Parkway" for a new street dedication in an area lying north of 32nd Street and west of Central City Road in the City of Joplin, Jasper County, Missouri.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That the name "Wildwood Ranch Parkway" be designated for a new street dedication in an area lying north of 32nd Street and west of Central City Road in the City of Joplin, Jasper County, Missouri.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of _____, 2012.

_____
Melodee Colbert-Kean, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Brian W. Head, City Attorney

City of **JOPLIN** City Council Agenda Item

REQUESTED COUNCIL MEETING DATE: July 2, 2012
ITEM: Council Bill No. 2012-009 Developer Agreement between the City of Joplin and Joplin Development Corporation, and Wallace Bajjali for Master Development services.

ORIGINATING DEPARTMENT: Legal Department
ATTACHMENTS: Council Bill No. 2012-009; Developer Agreement

DEPARTMENT HEAD:	Brian W. Head	Date: 6-26-12
PLANNING & C.D. MGR:	Troy Bolander T-B.	Date: 6-26-12
FINANCE DEPARTMENT:	Leslie Jones	Date: 6-26-12
PUBLIC WORKS DEPT:	David Hertzberg	Date: 6/26/12
CITY MANAGER:	R. Mark Rohr RMR	Date: 6-26-12

INTRODUCTION:

This Council Bill approves an Agreement between the City of Joplin, the Joplin Development Corporation, and Wallace Bajjali for Master Development services.

DISCUSSION:

The attached Council Bill is an agreement between the City of Joplin, the Joplin Development Corporation, and Wallace Bajjali for Master Development services. The Council approved a letter of intent on April 2, 2012 that gave staff permission to proceed and begin negotiations between the City of Joplin, Wallace Bajjali and the Joplin Urban Development Corporation for Master Development services. The attached contract is a result of the negotiations that occurred between the City Attorney's office and legal representatives of Wallace Bajjali.

At the request of the City and CART Implementation Task Force, the Joplin Redevelopment Corporation developed a Request for Qualifications (RFQ) for Master Development services. The primary role of the Master Developer is to develop private-public partnerships to help Joplin and Duquesne recover from an EF-5 tornado that occurred on May 22nd, 2011. Responsibilities include leveraging private capital to help initiate recovery efforts and complete recovery projects identified in the CART Plan.

The firm of Wallace Bajjali was selected from six (6) applicants that responded to the RFQ for services. Wallace Bajjali was vetted by a selection committee that was comprised of representatives from the City of Joplin, City of Duquesne, Joplin School District, Joplin Area Chamber of Commerce and citizens from the Citizens Advisory Recovery Team (CART).
Some of the conceptual projects discussed include:

- Replacing lost residential housing, office, commercial, medical, etc.

- Creating ties from the redeveloped area to downtown Joplin
- Expanding opportunities for employment
- Creating destination activity center(s)
- Using the redevelopment efforts as a catalyst to build upon existing goals for development and redevelopment in Joplin, including, providing help for recovering neighborhoods, developing a performance and visual arts center, creating a community and/or event center, and extending bicycle/pedestrian paths.
- Other efforts as may be jointly determined by the developer, Corporation, Committee and City Council(s)

RECOMMENDATION:

Staff recommends this Council Bill be passed on an emergency basis.

TB
attachments

MASTER PREDEVELOPMENT AGREEMENT

by and between

CITY OF JOPLIN, MISSOURI,

JOPLIN REDEVELOPMENT CORPORATION, INC.

and

WALLACE BAJJALI DEVELOPMENT PARTNERS, L.P.

Dated as of [_____], 2012

REDEVELOPMENT OF JOPLIN, MISSOURI

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MASTER PREDEVELOPMENT AGREEMENT

THIS MASTER PREDEVELOPMENT AGREEMENT (this "Agreement") is made and entered into by and between CITY OF JOPLIN, MISSOURI (the "City"), JOPLIN REDEVELOPMENT CORPORATION, INC., an urban redevelopment corporation organized under the Missouri Urban Redevelopment Corporations Law (the "JRC" and together with the City, collectively the "City Group") and WALLACE BAJJALI DEVELOPMENT PARTNERS, L.P., a Texas limited partnership (the "Developer" and together with the City Group, each a "Party" and collectively the "Parties"), effective as of the ____ day of _____, 2012 (the "Effective Date").

RECITATIONS:

WHEREAS, on May 22, 2011, an EF-5 tornado devastated the City of Joplin, Missouri, including a portion of such city described herein as the Redevelopment Area, and destroyed many of the homes and businesses there;

WHEREAS, the City created the Citizens Advisory Recovery Taskforce (the "CART") as the community based advisory board charged with assessing the situation and crafting recommendations for a community response to the tragedy;

WHEREAS, the CART; through an open public process solicited, community input and created a list of recommendations which were adopted by the City;

WHEREAS, the City desires to create and successfully implement a plan for the redevelopment of a significant portion of the Redevelopment Area (the "Redevelopment Project");

WHEREAS, the City issued a Request for Proposal and Qualifications in connection with redeveloping the Redevelopment Area on December 29, 2011 (as supplemented and amended, the "RFQ"), which requested qualifications from interested developers;

WHEREAS, the Developer desires to assist the City Group in creating a series of concept plans and plans of finance (collectively, the "Master Plan") for the Redevelopment Project, which concept may include "Public Sector Assets" such as one or more convention centers, multi-purpose event centers, libraries, workforce development centers, visual and performing arts centers, memorial museums and gardens, depots, various parks, university and higher education facilities, student and faculty housing, the relocation of the post office, parking infrastructure related to the foregoing; "Private Sector Assets" such as single family residential, duplex and fourplex residential, affordable housing residential, multi-family residential, town home, condo residential, loft residential, specialty retail, specialty medical use, assisted living, independent living, memory care, office space facilities, one or more convention center hotels, medical office buildings and wellness centers; and various other Projects identified by the Developer and the City Group;

WHEREAS, the Developer submitted a proposal dated January 30, 2012, which included a summary of the composition of its development team, statements regarding its qualifications to

undertake the Redevelopment Project and its record of development experience, business and financial references, and conceptual approach to the overall Redevelopment Project;

WHEREAS, the City reviewed all proposals submitted by respondents to the RFQ, and, having evaluated and considered said proposals and interviewed four (4) applicants, the City advised the Developer that the Developer was selected to provide the services set out in this Agreement to the City Group on an exclusive basis;

WHEREAS, on April 2, 2012, the City passed a resolution authorizing negotiations with the Developer for the Redevelopment Project;

WHEREAS, the City Group and the Developer executed a Letter of Intent (the "LOI") to confirm the exclusive nature of the negotiations among the parties hereto for the services to be provided hereunder, identify steps that each Party must undertake and to provide for such contingencies as the Parties deem appropriate;

WHEREAS, the City Group anticipates the need to utilize the JRC as the vehicle for the creation of a land bank for the acquisition and assemblage of land in and around the Redevelopment Area and the JRC agrees to assist the City Group in the redevelopment effort.

WHEREAS, the City Group desires to engage the Developer to carry out certain duties regarding the creation and development of the Master Plan, including without limitation the "Predevelopment Services" described below;

WHEREAS, the Parties acknowledge the need to, in connection with creating the Master Plan, undertake promptly a defined series of public and private predevelopment tasks and activities, including publicly sponsored and privately sponsored property assemblage, site investigations, master planning and design, engineering and infrastructure planning, market analysis, financing feasibility and planning, and community engagement and support services;

WHEREAS, the City Group and the Developer agree that in developing a Master Plan they are willing and open to considering the use of various legal structures, the application of all existing local state and federal economic development programs and tools, the creation of new economic development programs, as well as all reasonable means by which those tools and structures may be employed to accomplish the redevelopment of the Redevelopment Area;

WHEREAS, it is proposed that the City Group and the Developer will undertake the creation of the Master Plan as a "team" and in connection therewith the Developer will have the right to consult with and/or contract with such third parties (including architects and other professionals) as may be necessary to properly develop the Master Plan;

WHEREAS, in furtherance of the redevelopment goals for the Redevelopment Area, the City Group and the Developer now do acknowledge the need for and desirability of the participation and financial assistance of other government, philanthropic, civic, business, faith-based, and community organizations and entities in the preparation of a Master Plan and the implementation and funding of the Redevelopment Project;

WHEREAS, in order for the Developer to undertake Projects within the Redevelopment Area, it may be necessary for the City Group to be a participant with the Developer, pursuant to the terms of Final Development Agreement(s) (as defined in Appendix A), in order to provide assistance to accomplish Projects (as defined in Appendix A) and, therefore, the Parties hereto desire to identify issues that must be addressed prior to any such Final Development Agreement(s) are entered into between the Parties;

WHEREAS, the City Group and the Developer desire for the Developer to have the exclusive opportunity, as more specifically set forth in this Agreement and any future Final Development Agreements, to actively participate with the City Group and/or any City Controlled Entity (as defined in Appendix A) in the development and construction of Projects within the Redevelopment Area;

WHEREAS, the Parties desire to enter into this Agreement in order to: (a) designate the Developer as the exclusive developer with which the City Group and/or any City Controlled Entity will be a participant, during the period hereof and continuing thereafter as described below, for the purpose of implementing Projects within the Redevelopment Area; (b) set forth their agreement as to how to create and develop the Master Plan, and the relative responsibilities of the Parties in the creation of the Master Plan; and (c) set forth the issues to be explored and addressed prior to the entering into of any Final Development Agreement(s) between the Parties;

WHEREAS, the City Group, as contemplated by this Agreement, may hereafter in phases acquire for itself or through a City Controlled Entity fee simple title to certain tracts of land located within the Redevelopment Area; and

WHEREAS, the City Group and the Developer desire to enter into this Agreement to evidence the engagement of the Developer by the City Group as an independent contractor in connection with the above and the hereafter described duties and to evidence the respective obligations of the Developer and the City Group in connection therewith.

AGREEMENTS:

For and in consideration of the premises and the mutual covenants and agreements herein contained, the adequacy of all of which consideration is hereby acknowledged, the City Group and the Developer, intending to be legally bound, hereby make and enter into this Agreement on the following terms and conditions:

ARTICLE I
RECITALS AND DEFINITIONS

1.1 **Recitals**. The recitals are hereby incorporated in the terms and provisions of this Agreement and are fully binding on the Parties.

1.2 **Definitions**. Unless the context shall otherwise require, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto at Appendix A.

ARTICLE II
REPRESENTATIVES

2.1 **City Group Representative**. The City Group hereby designates the person from time to time serving as its City Manager (or such successor position), and being Mark Rohr as of the Effective Date, to be the representative of the City Group (the "City Group Representative"). The City Group shall have the right, from time to time, to change the individual who is the City Group Representative by giving at least ten (10) days prior written Notice to the Developer thereof. With respect to any action, decision or determination to be taken or made by the City Group under this Agreement, the City Group Representative shall take such action or make such decision or determination or shall notify the Developer in writing of the person(s) responsible for such action, decision or determination and shall forward any communications and documentation to such person(s) for response or action. Any written Approval, decision, confirmation or determination of any one of the individuals from time to time serving as the City Group Representative acting alone and without the joinder of the other individuals then serving as the City Group Representative shall be binding on the City Group; *provided, however*, that notwithstanding anything in this Agreement to the contrary, the City Group Representative shall not have any right to modify, amend or terminate this Agreement.

2.2 **Developer Representative**. The Developer hereby designates the person from time to time serving as its Chief Executive Officer (or such successor position), and being David G. Wallace as of the Effective Date, to be the representative of the Developer (the "Developer Representative"), who shall be authorized to act on behalf of the Developer under this Agreement. The Developer shall have the right, from time to time, to change the individual who is the Developer Representative by giving at least ten (10) days' prior written Notice to the City thereof. With respect to any such action, decision or determination to be taken or made by the Developer under this Agreement, the Developer Representative shall take such action or make such decision or determination or shall notify the City in writing of the Person(s) responsible for such action, decision or determination and shall forward any communications and documentation to such Person(s) for response or action. Any written Approval, decision, confirmation or determination hereunder by the Developer Representative shall be binding on the Developer; *provided, however*, that notwithstanding anything in this Agreement to the contrary, the Developer Representative shall not have any right to modify, amend or terminate this Agreement.

ARTICLE III
PREDEVELOPMENT SERVICES AND PAYMENT

3.1 **Engagement**. Subject to the provisions of this Agreement, the City Group hereby engages the Developer for the performance of the duties herein set forth, during the Term of this Agreement, regarding the predevelopment and development of the Redevelopment Area. Subject to the provisions of this Agreement, the Developer hereby accepts such engagement and, acting as an independent contractor, shall, during the Term of this Agreement, perform the duties and responsibilities set forth below:

(a) coordinating and overseeing the creation of the Master Plan;

(b) conducting feasibility studies and land assessments necessary to determine the market need and success of potential Projects;

(c) analyzing historic and current site conditions, including soil conditions, depth, direction and flow of groundwater, areas of concern for the presence Hazardous Materials, topographic opportunities and constraints, and current and historic uses;

(d) identifying Projects in the Redevelopment Area or elsewhere that will provide planning anchors for further development within the City of Joplin, Missouri;

(e) consulting with and advising the City Group with respect to the master planning of the development of the Redevelopment Area;

(f) coordinating with contractors and the City Group regarding cost estimates for the studies and assessments relating to the creation of the Master Plan;

(g) selecting architects, engineers, general contractor and sub-contractors with respect to the feasibility, design and construction of any additional infrastructure improvements related to the development of the Redevelopment Area;

(h) negotiating contracts for services necessary to design and plan the Master Plan, including contracts with architects, engineers and other professionals;

(i) coordinating with any architects, engineers and other professionals on matters relating to the preparation of the Master Plan;

(j) conducting a transportation and parking analysis (or entering into a contract with a consultant to do same), together with a description of the transportation improvements that will be necessary to support the implementation of the Master Plan, including a street plan; access locations to Main Street and other major thoroughfares; pedestrian and bicycle facilities; phased transportation improvements; traffic mitigation and parking ratios;

(k) coordinating with the City Group to determine the best strategy or strategies for the acquisition and assembly of portions of the Redevelopment Area not presently owned by the City Group or a City Controlled Entity;

(l) acting as the agent for the City Group in the acquisition of land both within and possibly outside of the Redevelopment Area which will be used in the anticipated Projects;

(m) using reasonable efforts to involve, where appropriate, local businesses of the Joplin, Missouri area such as banks, title companies, real estate brokers and agents, general contractors, architectural firms, civil engineers and public communications services to assist the Developer in performing the Predevelopment Services hereunder;

(n) using reasonable efforts to notify such local businesses of opportunities to provide services and/or products in connection with the Master Plan;

(o) accepting and evaluating bids and preparing analyses of bids submitted, providing consultation regarding acceptance of bids, and reviewing contracts and related documents, all to the extent related to the creation of the Master Plan;

(p) preparing a supplement to the Budget for the creation and completion of the Master Plan;

(q) working with the City Group in the evaluation of all programs, budgets, plans, schedules and other design parameters for the creation of the Master Plan, including estimates of costs of planning, designing, and constructing Projects that part of the Master Plan;

(r) coordinating with the City Group's consultants in connection with obtaining necessary permits, approvals and concessions from Governmental Authorities for creating the Master Plan and Projects contemplated by the Master Plan;

(s) assisting the City Group's consultants in connection with the representation of the City Group in its dealings with the utility companies and utility districts serving the Redevelopment Area, including attendance at meetings at which issues affecting the Master Plan are on the agenda;

(t) creating and implementing a public communications program to disseminate information on the creation of the Master Plan to the general public in a timely manner and provide additional opportunities to gather input from the general public regarding the creation of the Master Plan;

(u) preparing, directing, managing and engaging all aspects of the community planning process for the Redevelopment Area. The community planning process shall include: stakeholders engagement, existing neighborhood conditions, revitalization goals, an extensive public "charrette" process, public infrastructure requirements, identification of collateral investment opportunities, a community support services plan, preliminary estimation of development budget and costs, preliminary development phasing schedules, and preliminary financing feasibility plans for the initial development phases indicating sources and uses of all proposed public and private funding;

(v) consulting with the City Group regarding availability and selection of financing and other monetary sources for the creation of the Master Plan and the Projects contemplated thereby;

(w) coordinating the work of the various professionals involved in performing the planning, feasibility and assessment studies; establishing site organization and lines of authority, and monitoring such professionals, in order to minimize areas of conflict and overlapping of work and to assure compliance with the established Progress Schedule (as defined in Appendix A) and the contract documents;

(x) consulting with contractors and designated parties regarding the status of the work of each and assisting in assessing the state of the progress of the Master Plan or

any part thereof, in order to monitor compliance with the Progress Schedule and contract documents;

(y) recommending necessary or desirable changes in the Predevelopment Services to the City Group, reviewing requests for change orders, negotiating proposals by hired or contracted professionals, and, if changes are approved, preparing change orders for execution by such parties, if necessary, and the City Group;

(z) providing sufficient administrative, management and clerical services, and a sufficient number of capable administrative, management and clerical personnel, to carry out the responsibilities of the Developer set forth in this Article III;

(aa) recommending to the City Group operating procedures and policies to guide the conduct of the City Group's development of the Redevelopment Area and recommend operating policies and practices which maintain the desired identity of the Redevelopment Area; following the enactment by the City Group of such policies, procedures and practices, assisting the City Group in the implementation of such policies, procedures and practices;

(bb) assisting the City Group in coordinating all agreements for electricity, natural gas, and other utility services to the Redevelopment Area;

(cc) consulting with the City Group regarding the selection of, negotiation with, and engagement of, architects, surveyors, engineers, and consultants for the design, development and construction of the Projects;

(dd) generally undertaking any other planning, development and financing efforts necessary to create the Master Plan;

(ee) assembling all information and findings connected with the foregoing into a Master Plan so as to be prepared to formally present such to the City on or before the Completion Date; and

(ff) creating recommendations regarding a local, state and federal legislative agenda for action items, including introducing and promoting modifications to existing legislation as well as drafting and introducing new legislation which would benefit the Redevelopment Area. The Developer will coordinate with the City Group, the City Group's legislative consultant and the area legislative delegation in the creation of any recommendations.

The predevelopment services described in this Section 3.1 above are referred to herein as the "Predevelopment Services". The Developer agrees that all Predevelopment Services shall be prosecuted with due diligence, completed with all reasonable dispatch and conducted in a manner which reflects the standards and procedures that would be followed by a Reasonable and Prudent Developer.

3.2 **Additional Developer Duties.**

(a) Community Meetings. The Developer will arrange for a series of community meetings to be held, in consultation with the City Group, and will be responsible for (i) identifying the local participants (with input from the City Group) and (ii) distributing such materials as determined to be appropriate in order to obtain useful input from the participants at the community meetings. The Developer agrees to provide representatives reasonably acceptable to the City Group to attend these community meetings, to meet with public officials to discuss the development review process necessary to create the Master Plan, and to participate in the regular meetings with the City Group and its departments necessary to create the Master Plan.

(b) Advisor Contracts. The Developer shall have the right to seek the advice and consultation of such third parties as the Developer deems necessary, including architects, traffic engineers, environmental companies and companies that perform market or feasibility studies. The Developer agrees to enter into contracts with all such third parties; *provided, however,* that the City Representative shall have the right if acting in good faith to reject the Developer's use of any such third party based upon the following criteria: failure to meet the standards of a Qualified Advisor, the reasonableness of the fees and costs, past experience with similar projects, and any negative past dealings with the City. Developer shall promptly provide notice to the City Representative of any proposed procurement of a third party, along with such additional information regarding such third party or the services to be provided by same as may reasonably be requested by City Representative. City Representative shall have thirty (30) days after the initial notice from Developer regarding such procurement to accept or reject in writing the proposed contracting by Developer with such third party. City Representative's failure to either accept or reject any proposed third-party contract in writing within such thirty (30) days of notice from Developer shall be deemed an acceptance of such proposed third party contract.

3.3 **Joint Duties**.

(a) Progress Schedule. The Developer and the City Group, within sixty (60) days after the Effective Date, shall prepare an estimated schedule for the performance of the Predevelopment Services ("Progress Schedule"), including the creation of the Master Plan and property assemblage, which Progress Schedule will be incorporated into this Agreement as Exhibit C. The Progress Schedule shall be of sufficient detail and sophistication for the nature and scope of creating the Master Plan and for property assemblage and shall include a reasonable set of major milestones and timelines associated with each. However, the Parties shall have the right, not to be exercised unreasonably, to change by mutual agreement the criteria and priorities of the Progress Schedule during the duration of the Term. Both the City Group and the Developer shall be responsible for adhering to the Progress Schedule and shall monitor, revise and update the Progress Schedule on a monthly basis.

(b) Cooperation and Information Exchange. The Parties agree to meet regularly (which may be implemented by conference calls among all participants) to advise each regarding progress on any one or more of the undertakings required during the Term of this Agreement. The Developer agrees to share with the City Group such

information as may be developed regarding the creation of the Master Plan, including financing, marketing and land-use issues, design questions and construction issues regarding Projects. The City Group shall provide copies of all reports and information in its possession regarding the Redevelopment Area, including design studies, as-builts, traffic studies, environmental assessments, building evaluations and engineering reports, geotechnical assessments, ownership and property tax information, leases, rent rol s, and operating expense reports. To the extent any information is deemed necessary to the fulfillment of this Agreement, but is otherwise unanticipated, unavailable or non-existing, the City Group and the Developer agree to collaborate on developing such information.

(c) Obligations to Consult and Cooperate. The City Group and the Developer shall: (i) meet regularly with community representatives, steering or similar committees and others to review and approve the work being performed by each Party; (i') give prompt notice to the other Party whenever one Party becomes aware of any defect in the work being performed by the other Party; (iii) assist each Party in obtaining approval of governmental authorities as may be necessary for completion of its tasks and duties under this Agreement; (iv) assist each Party in the development, promotion and passage of local, state and federal ordinances and legislation deemed necessary to facilitate the redevelopment of the Redevelopment Area; (v) support efforts by the Parties to explore, pursue, solicit and obtain other private, public and philanthropic funding sources to underwrite and supplement the costs of the creation of the Master Plan or the Projects contemplated thereby; (vi) direct any necessary additional services as agreed upon by the Parties; and (vii) coordinate investigating (A) various legal structures, (B) all existing local state and federal economic development programs and tools, (C) potential new economic development programs and tools and (D) appropriate means by which to implement the foregoing (A) - (C), in each case as they apply to the creation of the Master Plan and the implementation of Projects thereunder.

3.4 **Developer Access**. The Developer shall have the right of access, for itself and its authorized representatives, agents, advisors and contractors, to any portions of the Redevelopment Area now or hereafter owned or controlled by the City Group or any City Controlled Entity, without charges or fees, for the purposes of performing or undertaking any rights or obligations of the Developer under the terms of this Agreement, including performing the Predevelopment Services.

3.5 **Payment of Pursuit Costs**.

(a) Pursuit Costs. On or before thirty (30) days after the Completion Date, the City Group shall reimburse the Developer for fifty percent (50%) of the Pursuit Costs (as defined in Appendix A).

(b) Certification of Pursuit Costs. As a condition to the Developer's being entitled to payment under this Section 3.5, the Developer must submit to the City Group invoices or other evidence showing the amount of Pursuit Costs incurred by the Developer and a reasonable description of the services or costs incurred in connection therewith. Developer shall submit its request for certification of Pursuit Costs incurred within one hundred twenty (120) days of the applicable Completion Date. For all Pursuit

Costs incurred by Developer prior to the Effective Date, such Pursuit Costs shall be submitted for certification within one hundred (120) days after the Effective Date. Upon presentation to City Representative of an application for certification of Pursuit Costs which details Pursuit Costs paid in accordance with this Agreement together with such supporting documentation (including copies of invoices, cancelled checks, wire transfer confirmations, receipts, lien waivers, any agreements with third parties which provide that such third parties shall be paid at such time as City reimburses the Developer for such services, and such other supporting documentation as City Representative shall reasonably require) as City Representative shall reasonably determine to be necessary (the "**Certification Application**"), City Representative shall review, verify and confirm the information included in the Certification Application. The Certification Application shall (1) identify each item of Pursuit Cost by line item category in the Budget separately, (2) aggregate all costs in the Certification Application by line item category as set forth in the Budget, (3) include a report setting forth the total amount, by line item category from the Budget, of all Pursuit Costs set forth in the then-current Certification Application and all prior Certification Applications approved by City Representative or for which approval is pending, and (4) include a report setting forth the percentage of work, by line item category from the Budget, completed as of the date of the current Certification Application. If City Representative determines in good faith that: (i) the Certification Application accurately reflects Pursuit Costs paid in accordance with this Agreement and (ii) the Pursuit Costs for which certification is requested (considered in combination with all prior amounts certified for the same cost category or item, as applicable) are in accordance with the Budget (subject to the foregoing sentence), it shall approve the Certification Application and issue an approval certificate. Developer shall, in each Certification Application, identify the specific line item within the Budget as to which each Pursuit Cost for which certification is requested is assigned. Savings in the amount expended with respect to any specific line item in the Budget may be used to fund cost overruns in another line item of the Budget. If City Representative, pursuant to its review of such Certification Application and supporting documentation, determines in good faith that any portion of the request for certification should not be approved, it shall promptly state the reasons for such disapproval to Developer. No Certification Application will be approved if it causes the total Pursuit Costs to exceed the Budget without prior City Representative approval. Any such disapproval may be appealed by Developer to the City Council, which shall upon Developer's request hold a hearing at which Developer may present new and/or additional evidence. Each Certification Application for Pursuit Costs shall be approved administratively, and no action of the City Council shall be required to approve such Certification Application. The City Representative shall respond within thirty (30) days to all requests by Developer for approval under this Section.

3.6 **Developer's Authority to Bind City Group**. The Developer shall have no authority to bind or commit the City Group in any negotiations with any third party in connection with the creation of the Master Plan or the redevelopment of the Redevelopment Area.

ARTICLE IV
BUDGET

4.1 **Budget**. Attached hereto as Exhibit B is an initial budget showing the costs to be incurred by the Developer for the performance of the Predevelopment Services, including the creation of the Master Plan (as such may be amended from time to time pursuant hereto, the "Budget"). The Developer shall revise and supplement the Budget from time-to-time as reasonably necessary. The City Group and the Developer shall work cooperatively to jointly review revisions and supplements to the Budget in order to reflect the actual incurrence of Pursuit Costs, updated estimates of Pursuit Costs budgeted and/or the progress of the performance of the Predevelopment Services. Any and all supplements and revisions to the Budget prepared by the Developer shall be subject to the Approval of the City Group.

4.2 **Budget Monitoring**. The Developer shall monitor the Budget for costs associated with the performance of the Predevelopment Services showing actual costs for activities in progress and estimates for uncompleted tasks, identifying variances between actual and budgeted or estimated costs, incorporating approved changes as they occur, and consulting with the City Group whenever projected costs exceed the Budget or estimates.

4.3 **Limitation on Liability**. Evaluation of the Budget by the Developer represents the Developer's best judgment as a professional familiar with the commercial real estate development industry. It is recognized, however, that the Developer does not have control over the costs of labor, materials or equipment. Accordingly, the Developer cannot and does not warrant that Pursuit Costs will not vary from the Budget.

ARTICLE V
PROGRESS REPORTS

5.1 **Reports**. The Developer shall record the progress of the performance of the Predevelopment Services and shall, at the reasonable request of the City Group from time to time (no less frequently than monthly), submit written progress reports to the City Group with regard thereto, which progress reports will include information regarding any materially changed conditions as to cost or schedule. The Developer's progress reports shall also provide reasonably detailed updates on all other significant aspects of the performance of the Predevelopment Services, including the status of any negotiations or discourse with Governmental Authorities or civic, community or neighborhood groups.

ARTICLE VI
INDEMNITY

6.1 **Indemnification**. The Developer shall be indemnified (to the extent permitted by law) and held harmless by the City Group from and against any and all claims, demands, liabilities, costs (including reasonable attorneys' fees), damages, and causes of action of any nature whatsoever to the extent caused by any Improper Action on the part of the City Group, a City Controlled Entity and their respective agents, contractors (excluding the Developer) or employees. The City Group shall be indemnified and held harmless by the Developer from and against any and all claims, demands, liabilities, costs (including reasonable attorneys' fees),

camages and causes of action of any nature whatsoever to the extent caused by any Improper Action on the part of the Developer, its agents, contractors or employees. If, with respect to a given event or circumstance occurring or existing during the Term of this Agreement, an indemnified Party pays money to any other person as a result of an Improper Action by the other Party, its agents or employees, then the other Party shall repay to the indemnified Party, on written demand, the sum of (i) such payments actually made by the indemnified party, plus (i) interest thereon at the Default Rate from the respective dates on which such payments were made by the indemnified party until repaid by the other Party.

6.2 **Good Faith**. Notwithstanding any other provisions of this Agreement to the contrary, so long as the judgments made by the Developer in connection with the performance of the Predevelopment Services are made in good faith as a Reasonable and Prudent Developer and the Developer, its agents or employees have not committed an Improper Action, the Developer shall not be responsible or liable to the City Group or any City Controlled Entity for any errors in judgment by the Developer, its agents or employees in connection with the performance of the Predevelopment Services.

ARTICLE VII
INSURANCE

7.1 **Insurance by City Group**. The City Group shall maintain in full force and effect, at its own cost and expense, insurance in accordance with Schedule 1 attached hereto. The City Group will cause the Developer to be named as an additional insured on the insurance policies to be maintained by the City Group.

7.2 **Insurance by Developer**. The Developer shall maintain in full force and effect, at its own cost and expense, the following insurance coverage:

(a) Worker's Compensation coverage, covering all employees or agents of the Developer involved with the performance of the Developer's services hereunder, with policy amounts and coverage in compliance with Applicable Laws and with an Alternative Employer/Borrowed Servant endorsement in favor of the City Group;

(b) Employer's Liability coverage in an amount equal to or greater than an amount that a Reasonable and Prudent Developer would maintain;

(c) Commercial General Liability coverage of no less than $1,000,000 combined single liability limit per occurrence and $2,000,000 annual aggregate. Commercial General Liability shall include bodily injury, contractual liability, products and completed operations; and

(d) Comprehensive Auto Liability coverage of no less than $1,000,000 combined single limit per occurrence for bodily injury and property damage. The policy shall cover non-owned and hired automobiles.

7.3 **Additional Insured**. All of the policies of insurance to be carried by the Developer pursuant to Section 7.2 shall contain endorsements naming the City Group as an additional insured thereunder.

7.4 **Insurance Standard**. The insurance required to be maintained by each Party shall be maintained with financially responsible insurance carriers licensed to do business in Missouri and rated by AM-Best Rating Service as AX or better (unless otherwise agreed to by the City Group and the Developer). Each Party may carry its insurance as part of a blanket insurance policy and in a combination of primary and excess liability coverage.

7.5 **Waiver of Claims and Subrogation**. The City Group and the Developer each waive any and all rights of recovery against the other for or arising out of damage to or destruction of property to the extent that such damage or destruction could be insured against by casualty policies obtained by the City Group and/or the Developer, as applicable. The Developer and the City Group each shall require that all insurance policies obtained by such Party contain waivers of subrogation rights in favor of the other for all claims on account of all matters insured thereby.

7.6 **Insurance Certificates**. Each of the City Group and the Developer shall furnish insurance certificates to the other, and will submit such certificates to the other prior to or contemporaneously with the execution of this Agreement. The insurance certificates shall specifically state that (i) the insurer will not cancel or reduce coverage or fail to renew any policy issued to the City Group or the Developer, as applicable, without first providing thirty (30) days' written notice to the other Party and (ii) the insurers shall have no right of subrogation. Not less than fifteen (15) days prior to the expiration date of any such insurance policies, each Party shall deliver to the other certificates of insurance, in substantially the same form as initially approved by the other party, evidencing renewals thereof. Neither Party shall, however, be deemed to waive these requirements if such Party has failed to request, or the other Party has failed to provide, the aforementioned certificates.

7.7 **Cooperation**. Each of the City Group and the Developer shall furnish to the other whatever information is reasonably requested by the other for the purpose of establishing insurance coverages.

ARTICLE VIII
TERM

8.1 **Term**. This Agreement shall commence as of the date hereof and, subject to earlier termination as hereinafter provided, shall continue until all payments required under Section 3.5 of this Agreement have been duly and fully paid to the Developer (such period, the "Term").

8.2 **Presentation to City Group**. The Developer agrees to use commercially reasonable efforts to complete portions of the Master Plan with reasonable dispatch; *provided, however* that Developer shall use commercially reasonable efforts to be prepared to formally present (i) an initial portion of the Master Plan to the City for City Council's consideration on or before September 30, 2012 and (ii) all portions of the Master Plan to the City for City Council's consideration (through one or several such presentations) on or before _____, in each case subject to Force Majeure and subject to the obligation of the City Group to (a) timely provide all required selections and approvals requested by the Developer so as not to delay the Progress Schedule and (b) timely comply with all of its other obligations under this Agreement.

The portions of the Master Plan to be presented to City Council shall include the Developer's findings, assessments and suggested Projects with respect to the applicable portion of the Redevelopment Area, as well as a master project schedule, financing plan(s) and lists of any co-development partners related thereto and known at that time. Following the formal presentation of each portion of the Master Plan to City Council, City Council shall determine, based on the best interests of the Redevelopment Area and the citizens of the City of Joplin, Missouri, whether to proceed forward with redevelopment of the applicable portion of the Redevelopment Area in accordance with such portion of the Master Plan ("Formal Acceptance") or whether to reject all or any portion of such presented Master Plan.

8.3 **Events of Default and Remedies**.

(a) The following shall constitute Events of Default of the City Group or the Developer, as the case may be:

(i) the filing of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law;

(ii) the consent to an involuntary petition in bankruptcy or the failure to vacate within sixty (60) days from the date of entry thereof of any order approving an involuntary petition;

(iii) the entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating such party a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) days;

(iv) the gross negligence, fraud or willful misconduct in the performance or observance of its obligations or duties provided for under the terms of this Agreement; or

(v) the failure of either the City Group or the Developer to perform, keep or fulfill any of the covenants, undertakings, obligations or conditions set forth in this Agreement, and the continuance of any such default for a period of thirty (30) days after written Notice of said failure or, if the default is not a default in the payment of a monetary sum provided to be paid under this Agreement, the default is susceptible of cure with reasonable diligence, and such party commences such cure promptly following receipt of written Notice of said failure, then for such additional period as the cure shall continue to be pursued with reasonable diligence.

(b) Upon the occurrence of an Event of Default, the non-defaulting Party may, without prejudice to any other recourse at law or in equity which it may have, terminate this Agreement upon written Notice to the defaulting Party and, in such event, this Agreement shall terminate as of the date such Notice is given.

(c) Upon the occurrence of an Event of Default by the Developer, the City Group shall have the right to take such action as shall be necessary to cure such default on behalf of the Developer, and the Developer shall pay to the City Group, immediately upon demand by the City Group, such sums as the City Group has incurred or is obligated to pay in order to cure such default, plus interest thereon from the date of advancement by the City Group at a rate equal to the Default Rate.

8.4 **Termination by City Without Cause**. City may terminate this Agreement at any time, without cause, but only with respect to any portion of the Master Plan for which Formal Acceptance has not been delivered, by giving the Developer at least ninety (90) days prior written notice thereof and paying to the Developer the termination fee described below. Upon the effective date of such termination, the obligations of the parties hereto (except those specified as surviving) shall cease as of the date specified in the notice of termination, except that (i) City shall not be obligated to reimburse the Developer for any Pursuit Costs associated with work or services commissioned or contracted for by the Developer after the date of the notice of termination (except for any such costs the Developer may incur for purposes of reducing Pursuit Costs otherwise payable by the Developer), (ii) City and the Developer shall comply with the applicable provisions hereof and (iii) City shall be obligated to pay to Developer a termination fee on the effective date of termination in an amount as follows:

(a) If the effective date of termination under this Section 8.4 occurs on or before the date that is one (1) year after the Effective Date, Five Million and No/100 Dollars ($5,000,000.00);

(b) If the effective date of termination under this Section 8.4 occurs more than one (1) year after the Effective Date but on or before the date that is two (2) years after the Effective Date, Four Million and No/100 Dollars ($4,000,000.00);

(c) If the effective date of termination under this Section 8.4 occurs more than two (2) years after the Effective Date but on or before the date that is three (3) years after the Effective Date, Three Million and No/100 Dollars ($3,000,000.00);

(d) If the effective date of termination under this Section 8.4 occurs more than three (3) years after the Effective Date but on or before the date that is four (4) years after the Effective Date, Two Million and No/100 Dollars ($2,000,000.00); and

(e) If the effective date of termination under this Section 8.4 occurs more than four (4) years after the Effective Date but on or before the date that is five (5) years after the Effective Date, One Million and No/100 Dollars ($1,000,000.00).

ARTICLE IX
REPRESENTATIONS AND GENERAL COVENANTS

9.1 **Representations of City Group**. The City Group represents to the Developer as follows:

(a) Litigation or Administrative Proceeding. To the City Group's actual knowledge, the City Group has received no service of process or other written

notification of any litigation or administrative proceedings which would materially and adversely affect the ability of the City Group to perform any of its obligations hereunder.

(b) Performance. Performance of this Agreement by the City Group will not result in any breach of, or constitute any default under, any agreement or other instrument to which the City Group is a party or by which the City Group might be bound.

(c) Execution. The execution and delivery by the City Group of, and the City Group's performance under, this Agreement are within the City Group's powers and have been duly authorized by all requisite municipal action. The Person executing this Agreement on behalf of the City Group has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of the City Group enforceable against the City Group in accordance with its terms, subject to the principles of equity.

(d) Environmental. To the City Group's actual knowledge, the City Group has delivered copies, or otherwise made available, to the Developer all documents and reports described in Section 3.3(b) of this Agreement to be provided by the City Group.

(e) Broker. The City Group has not authorized any broker or finder to act on its behalf in connection with the transactions contemplated herein and it has not dealt with any broker or finder purporting to act on behalf of any other party. The City Group agrees to indemnify (to the extent permitted by law) and hold harmless the Developer from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. The terms of this Section will survive any expiration or termination of this Agreement for a period not to exceed five (5) years thereafter.

9.2 **Representations of Developer**. The Developer represents to the City Group as follows:

(a) Authorization. The Developer is duly organized and legally existing under the laws of its state of organization. The Developer is duly qualified to do business in the State of Missouri.

(b) Performance. Performance of this Agreement by the Developer will not result in any breach of, or constitute any default under, any agreement or other instrument to which the Developer is a party or by which the Developer might be bound.

(c) Execution. The execution and delivery by the Developer of, and the Developer's performance under, this Agreement are within the Developer's powers and have been duly authorized by all requisite organizational action. The Person executing this Agreement on behalf of the Developer has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms, subject to the principles of equity.

(d) Broker. The Developer has not authorized any broker or finder to act on its behalf in connection with the transactions contemplated herein and it has not dealt with any broker or finder purporting to act on behalf of any other party. The Developer agrees to indemnify and hold harmless the City Group from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary contained herein, this Section will survive any expiration or termination of this Agreement for a period not to exceed five (5) years thereafter.

ARTICLE X
FINAL DEVELOPMENT AGREEMENTS

10.1 **Individual Projects**. In the event that City Council delivers Formal Acceptance, the Parties agree to negotiate and execute Final Development Agreement(s), satisfactory to both Parties, with respect to each specific Project contemplated by the Master Plan; *provided, however,* that Formal Acceptance is not be a prerequisite to the entering into of any Final Development Agreement(s) between the Parties. Accordingly, due to the nature of the various funding sources to be identified by the Developer, the Developer may submit portions or components of the Master Plan to the City before formally presenting the entire Master Plan to the City, and in the event City Council accepts and approves such portions or components and authorizes pursuit of Projects in accordance with same, the Parties may enter into a Final Development Agreement(s) with regard to such Projects prior to the formal presentation by the Developer of the entire Master Plan described in Section 8.2. Although the specific terms of each Final Development Agreement must be negotiated between the Parties, the Parties presently believe that such terms must necessarily address, at a minimum, the following matters, to-wit:

(a) Determination of Types of Uses/Compliance with Master Plan. The Parties must agree on the types of uses that are to be included in the Projects, such as office, retail, commercial, residential, etc. In addition, the Parties must agree on whether or not the Project(s) are in compliance with the Master Plan, as well as other applicable laws.

(b) Public Assistance. The Parties must determine what types of Financial Assistance is applicable, and/or necessary, for any given Project.

(c) Compliance with Laws. Depending upon the types of Financial Assistance that are used, the Parties must address the relative responsibilities of complying with the requirements related thereto.

(d) Agreement on Land Acquisition. The Parties shall agree on (i) the description of each Site; and (ii) the method by which the Site will be acquired, which may include such things as how the appraisals are to be conducted; how, when, and if the City Group's use of eminent domain will be used; how the financing of these matters will occur; and, provisions regarding reacquisition of the Site by the City in the event the

proposed Project does not proceed as planned. Developer acknowledges that any use of eminent domain shall only be exercised in the sole discretion of the City.

(e) Owner's Representative Fee. Pursuant to each Final Development Agreement on Projects for which Developer or an Affiliate of Developer is the developer, the Developer shall receive a "Owner's Representative Fee" for construction management services equal to Two and One-Quarter Percent (2.25%) of Project Costs with respect to the applicable Project (the "Owner's Representative Fee"), which Owner's Representative Fee shall be earned and payable on a monthly basis or as otherwise agreed and provided for in each Final Development Agreement commencing with the commencement of construction on any such Projects.

(f) Relocation Assistance. The Parties shall address how each will comply with any requirement that relocation assistance be provided to persons required to relocate due to a Project.

(g) Agreement on Traffic Circulation and Access Proposals. The Parties shall agree on the design of all access and circulation elements associated with the development of a Project and adjacent and supporting development. The Parties shall also agree on how to address those necessary traffic improvements which are neither on the Site, nor adjacent thereto, but are made necessary because of the Project. The Parties shall agree upon the method of financing of these improvements and the distribution of costs for each element and the responsibility for meeting these costs.

(h) Agreement on Plans and Specifications. The Parties shall agree on the extent of the City Group approval over the plans and specifications for the design of a Project. Specific agreement may be required with respect to those areas of a Project which directly abut or interface with public spaces.

(i) Agreement on Progress Schedule. The Parties shall agree on a progress schedule by which each Project will be undertaken and completed.

(j) Agreement on Vacation of Streets and Relocation of Utilities. The Parties shall agree upon how streets and utilities within, or adjacent to, the Site are to be addressed by the Project, including the vacation of streets, if necessary, and the relocation of utilities, if necessary. The Parties' agreement shall include how the costs of such matters are to be addressed.

(k) Environmental Approvals. The Parties shall agree on how environmental approvals are to be obtained, and who is responsible for obtaining them. The Parties' agreement shall also address how environmental remediation expenses, if required, are to be paid.

(l) Zoning Changes. The Parties shall agree as to how any necessary zoning changes will be addressed, including the timing of such changes.

10.2 **Development Fee**. In consideration of the administration and management by the Developer of the design, development and creation of the Master Plan and all Projects thereunder, the City Group shall cause the entity controlling the funds with respect to such Project to pay, pursuant to the terms of each final development agreement, to the Developer a "Development Fee" equal to five and three-quarters percent (5.75%) of the Project Costs with respect to any Project undertaken within the Redevelopment Area that, (i) directly or indirectly, includes, references or otherwise makes use of any information and/or concepts contained within the Master Plan and (ii) includes the City Group or a City Controlled Entity as a participant in a proposed Project within the Redevelopment Area (such final development agreements being referred to herein as "City Participant Development Agreements"). The City Group or a City Controlled Entity shall be deemed to be a participant in a proposed project if the City Group or a City Controlled Entity, as applicable, provides Financial Assistance for the Project, assists in the acquisition of property to be used for such Project or adopts ordinances, or promotes or advocates for legislation, the primary purpose or a significant purpose of which is to facilitate the Project. The City Group and any City Controlled Entity shall not be deemed to be a participant in a Project when the City Group or a City Controlled Entity, as applicable, simply performs its Governmental Functions. Notwithstanding the foregoing, the City Group and any City Controlled Entity shall not be deemed to be a participant with regard to any of the projects described on Exhibit D attached hereto and incorporated herein . The Development Fee shall be earned and payable on a monthly basis or as otherwise agreed and provided for in each City Participant Development Agreement commencing with the commencement of construction on any such Projects.

10.3 **Project Budget Payment of Pursuit Costs**. Each City Participant Development Agreement regarding Projects for which Formal Acceptance has been delivered shall require that such Project's budget fully reimburse (i) City Group for all Pursuit Costs associated with such Project and previously reimbursed by City Group to Developer and (ii) the Developer for all Pursuit Costs associated with such Project and not otherwise previously reimbursed to the Developer by City Group pursuant to Section 3.5 hereof.

10.4 **Reasonable Level of Earnings**. The Developer acknowledges that the purpose of affording public assistance to the Projects is to accomplish the stated public purposes and not to subsidize otherwise economically viable Projects. Therefore, in order to ensure that the public assistance being provided does not subsidize an unreasonable level of earnings for the Developer, the Parties agree that provisions may be included in each City Participant Development Agreement establishing a reasonable level of earnings for the Project and providing a process by which the City proportionally shares in earnings in excess of the agreed upon level of earnings, *provided however* that at all times due consideration shall be given to the Developer in light of the amount of risk the Developer has assumed in providing its predevelopment services that directly or indirectly led to each City Participant Development Agreement. The terms of this Article X shall survive the termination or expiration of this Agreement for a period not to exceed five (5) years thereafter.

ARTICLE XI
EXCLUSIVITY AND USE OF MASTER PLAN INFORMATION

11.1 **Exclusive Provider of Services**. The City Group hereby agrees that from and after the Effective Date until the Completion Date, the City Group will not and will not permit a City Controlled Entity to engage or contract with any other person or entity to perform the Predevelopment Services or any portion thereof without the express prior written consent of the Developer.

11.2 **Exclusive Developer**. The City Group hereby grants the Developer, for a period of Five (5) years, from and after the date City Council delivers Formal Acceptance to the Developer, the exclusive right to enter into Final Development Agreement(s) with the City Group and any City Controlled Entity, whereby the City Group or a City Controlled Entity becomes a participant in a proposed Project, substantially similar to those identified in the Master Plan and within the Redevelopment Area. During said period of time, the City Group agrees that it will not and will not permit a City Controlled Entity to become a participant with any other person or entity, in the implementation of any substantially similar Project within the Redevelopment Area, without the express prior written consent of the Developer, which consent shall not be unreasonably withheld. The City Group or a City Controlled Entity shall be deemed to be a participant in a proposed project if the City Group or a City Controlled Entity, as applicable, provides Financial Assistance for the Project, assists in the acquisition of property to be used for such Project or adopts ordinances, or promotes or advocates for legislation, the primary purpose or a significant purpose of which is to facilitate the Project. The City Group and any City Controlled Entity shall not be deemed to be a participant in a Project when the City Group or a City Controlled Entity, as applicable, simply performs its Governmental Functions. The terms of this Section 11.2 shall survive the termination or expiration of this Agreement for a period not to exceed five (5) years thereafter.

11.3 **Prohibition on City Group Use of Master Plan Information**. Neither the City Group nor a City Controlled Entity may, without the Developer's prior written consent, use or permit the use of any information provided by or included in the Master Plan, including any studies, data, assessments, proposals, projections, designs or mock-ups. If any person requests the City to disclose any information of a confidential, proprietary or trade secret nature relating to the Developer or the Master Plan under the Missouri Open Meetings and Records Act, Chapter 610 of the Revised Statutes of Missouri, as amended (the "Sunshine Law"), and such information is subject to, or potentially subject to, an exception to disclosure under the Sunshine Law, then prior to making any such disclosure and to the extent permitted by law, the City shall send Notice to the Developer of such request within three (3) business days of the City's receipt of such request. Within three (3) business days of the Developer's receipt of such Notice from the City, the Developer shall notify the City in writing whether the Developer desires the City to seek a judicial determination or a formal opinion of the Missouri attorney general pursuant to Section 610.027.6 RSMo, as amended, as to whether the requested information must be disclosed pursuant to the Sunshine Law; *provided, however,* that the City shall only be required to comply with the foregoing to the extent that the City, in good faith, believes there is a reasonable basis for claiming that the requested information is subject to an exception to disclosure under the Sunshine Law and the Sunshine Law permits the City to take such action to seek a judicial determination or opinion from the attorney general in the circumstance in

question. Upon receipt of a request from the Developer for the City to seek a judicial determination or opinion from the attorney general and provided the City is required to act on same pursuant to the terms hereof, the City, at the Developer's sole cost and expense, shall, with the Developer's assistance, take all necessary actions to draft the documents to seek a judicial determination or opinion from the attorney general so that it may be completed and filed as provided for by the Sunshine Law. After the documents seeking a judicial determination or opinion from the attorney general have been filed, each Party shall cooperate with each other Party in preparing appropriate documents and responses or filings to the court or the attorney general and to any other person with respect to the information request and the judicial determination or opinion request to the attorney general, including any commercially reasonable appeals involved with respect thereto, to prevent the disclosure of such information. Each Party shall also cooperate with each other Party and use reasonable efforts to promptly identify any possible third person whose privacy or property interests may be compromised by any such information request in order to enable the City to timely furnish to any such third person any statutory notice required by the Sunshine Law and to seek any applicable exceptions from disclosure under the Sunshine Law. The terms of this Section 11.3 shall survive the termination or expiration of this Agreement for a period not to exceed five (5) years thereafter.

11.4 **Injunctive Relief**. Notwithstanding anything to the contrary contained in this Agreement, either Party may, in addition to all other remedies available to it at law or in equity, obtain an injunction prohibiting any violation by the other Party of the terms of Sections 11.1, 11.2 and/or 11.3. In connection therewith, each Party:

(a) recognizes that the Parties have contributed significant costs in its attempts to create the Master Plan and jointly work towards Formal Acceptance, in material part in reliance on the agreements of the Parties contained in this Agreement, including the provisions of this Article XI; and

(b) acknowledges and agrees that monetary damages could not be calculated to compensate a Party for any violation by the other Party of the covenants, duties and obligations contained in Sections 11.1, 11.2 and/or 11.3.

The Parties agree that (i) the other Party may restrain or enjoin any violation as provided above in Sections 11.1, 11.2 and/or 11.3, or threatened violation of any covenant, duty or obligation contained in Sections 11.1, 11.2 and/or 11.3 without the showing of irreparable harm, balance of harms, or the inadequacy of monetary damages as a remedy, (ii) the administration of an order for injunctive relief would not be impracticable and, in the event of any violation of any covenant, duty or obligation contained in Sections 11.1, 11.2 and/or 11.3, the balance of hardships would weigh in favor of entry of injunctive relief, (iii) the Parties may enforce any such covenant, duty or obligation contained in Sections 11.1, 11.2 and/or 11.3, through specific performance, and (iv) the Parties may seek injunctive or other form of relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of Sections 11.1, 11.2 and/or 11.3. The Parties further agree and irrevocably stipulate that the rights of the Parties to injunctive relief pursuant to this Section 11.4 shall not constitute a "claim" pursuant to Section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving the City Group.

ARTICLE XII
GENERAL

12.1 **Assignment**. The Developer shall not, without the City Group's prior written approval, assign or permit to be assigned any of its rights (other than its right to receive payments of fees and reimbursements under this Agreement, which may be assigned or pledged, but any such assignment or pledge shall be subject to all provisions of this Agreement) or its obligations under this Agreement, whether by operation of law or otherwise; *provided, however,* that the Developer may without the City Group's consent assign any of its rights and obligations under this Agreement to an Affiliate of the Developer. The City Group shall not, without the Developer's prior written approval, assign or permit to be assigned any of its rights or obligations hereunder, whether by operation of law or otherwise; *provided, however,* that the City Group may, without the Developer's consent may assign its rights and obligations under this Agreement to a City Controlled Entity. Notwithstanding the foregoing to the contrary, the Developer may engage contractors, consultants and other third parties to assist the Developer with, and otherwise provide, the Predevelopment Services as set forth in this Agreement.

12.2 **Notices**. Any Notice must be in writing and may, unless otherwise in this Agreement expressly provided, be given or be served by depositing the same in the United States Mail, postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to such party or to an officer or agent of such party, or by post paid telegram, telex, private or commercial telecopy, or Federal Express or similar delivery service, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be deemed to have been delivered and be effective from and after the expiration of four (4) days after it is so deposited. Notice given in any other manner shall be deemed to have been delivered and be effective only if and when received or refused by the party to be notified. For purposes of Notice, the addresses of the parties, until changed as hereinafter provided, shall be as follows:

City: City of Joplin
602 Main Street
Joplin, MO 64801
417-624-0820, Ext. 200
Attn: Mark Rohr

JRC
602 Main Street
Joplin, MO 64801
417-624-0820, Ext. 200
Attn: Ron Darby, Chairman

Developer: Wallace Bajjali Development Partners, LP
13135 Dairy Ashford Rd., Suite 150
Sugar Land, Texas 77478
Phone: (281) 768-6700
Fax: (281) 768.6719
Attn: Joe Esch

with a copy to:

Andrews Kurth LLP
600 Travis St., Suite 4200
Houston, Texas 77002
Phone: (713) 220-3938
Fax: (713) 238-7295
Attn: Mark B. Arnold

However, each of the entities named in this Section 12.2 as being entitled to receive Notices shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America, by at least five (5) days written Notice to each such other Party.

12.3 **Entire Agreement**. This Agreement shall constitute the entire agreement between the Parties hereto and shall supersede all other prior agreements written or oral between the parties hereto and relating to the Redevelopment Area. No modification hereof shall be effective unless made by supplemental agreement in writing executed by the Parties hereto.

12.4 **Nature of Contract**. The relationship between the City Group and the Developer under the terms of this Agreement shall be that of independent contractors and, notwithstanding anything to the contrary set forth herein, the Developer shall perform its duties and provide the Predevelopment Services as an independent contractor. Except as expressly provided to the contrary in this Agreement, it is agreed that the City Group is concerned only with the result of the performance of such duties and provision of such services and is not directing the Developer as to particular means and methods of performing such duties and providing such services. Nothing contained in this Agreement or in the relationship of the City Group and the Developer shall be deemed to constitute a partnership, joint venture or any other similar relationship.

12.5 **Payments by Either Party**. All payments required to be made by either Party to the other Party pursuant to the terms of this Agreement shall be paid in such freely transferable coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts at the receiving Party's address as set forth in this Agreement, or at such other address as such Party may specify from time to time in accordance with the terms and conditions of this Agreement. For the purposes of this Agreement, all payments shall be deemed paid and received only when actually received by the other Party and, in the event of payment by check, other than a cashier's check or certified check, shall not be considered to have been actually received in the event of the failure of such check to clear the receiving Party's account

12.6 **Interest on Overdue Obligations and Post-Judgment Interest**. If any sum due hereunder is not paid by the due date thereof, the Party owing such obligation to any other Party shall pay to such other Party interest thereon at the Default Rate concurrently with the payment of the amount, such interest to begin to accrue as of the date such amount was due and until actually paid. Any payment of such interest at the Default Rate pursuant to this Agreement shall not excuse or cure any default or Event of Default hereunder. All payments shall first be applied to the payment of accrued but unpaid interest. The amount of any judgment award obtained by one Party against any other Party in any action or proceeding arising out of an Event of Default by such other Party under this Agreement shall bear interest thereafter at the Default Rate until paid. The terms and provisions of this Section 12.6 shall survive the expiration or earlier termination of this Agreement.

12.7 **Governing Law**. THIS AGREEMENT IS MADE PURSUANT TO, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MISSOURI.

12.8 **No Waiver; Cumulative Remedies**. The failure of the City Group or the Developer to seek redress for violation, or to insist upon the strict performance of any covenant, agreement, provision or condition of this Agreement, shall not constitute a waiver of the terms of such covenant, agreement, provision or condition at subsequent times or of the terms of any other covenant, agreement, provision or condition, and the City Group and the Developer shall have all remedies provided herein and by applicable law with respect to any subsequent act which would have originally constituted a violation.

12.9 **Partial Invalidity**. If any provisions of this Agreement, or the application thereof to any particular party or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to any other particular party or circumstance, shall be valid and enforceable.

12.10 **Captions**. The captions under the Article numbers and beside the Section numbers of this Agreement are for convenience and reference only and in no way define, limit, or described the scope or intent of this Agreement, and in no way affect or constitute a part of this Agreement.

12.11 **Incorporation of Exhibits**. All Exhibits attached hereto are hereby incorporated herein by this reference and made a part hereof for all purposes.

12.12 **Force Majeure**. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of Force Majeure, performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to (but no longer than) the period of such delay.

12.13 **Attorneys' Fees**. In the event of any dispute regarding this Agreement, the Parties shall each be responsible their respective attorneys' fees and costs of court unless otherwise ordered by the court.

12.14 **Effect of Holidays**. In the event any date specified or computed under this Agreement for the performance of an obligation by any party hereto, or for the occurrence of any

event provided for herein, shall be a Saturday, Sunday or "recognized holiday" (defined for purposes hereof as any holiday observed by national banking associations), then the date for such performance or occurrence shall automatically be extended to the next calendar day which is not a Saturday, Sunday or recognized holiday. Time is of the essence in this Agreement.

12.15 **No Third Party Beneficiaries**. The respective rights and obligations of the City Group and the Developer set forth in this Agreement are intended to be for the exclusive benefit of the Party to this Agreement enjoying such right or of the obligee of such obligation, respectively, and it is not the intention of either the City Group or the Developer to create, and this Agreement shall not operate or be construed to create, any third party beneficiary rights or other rights in favor or any person or entity other than the City Group and the Developer, respectively, and their respective permitted successors and assigns, if any, under the terms of this Agreement.

12.16 **Multiple Counterparts; Multiple Signature Pages**. This Agreement and any amendment or supplement thereto may be executed in two or more counterparts (each of which may bear the original signatures of all or some of the parties to this Agreement), and, if each of the parties to this Agreement has executed at least one such counterpart, then all such counterparts together shall constitute one and the same agreement with the same force and effect as if all signatures appeared on a single document. Any signature page of this Agreement or of such an amendment or supplement thereto may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon, and may be attached to another counterpart thereof identical in form thereto but having attached to it one or more additional counterparts of the same or other signature pages to this Agreement.

12.17 **Required Approvals and Consents**. Whenever pursuant to this Agreement any Party exercises any right given to it to approve or disapprove, or consent or withhold consent, or any arrangement or term is to be satisfactory to a Party or is to be in a Party's discretion, the decision of such Party to approve or disapprove, to consent or withhold consent, or to decide whether arrangements or terms are satisfactory or not satisfactory, or acceptable or unacceptable in such Party's discretion shall (except as is otherwise specifically herein provided) be in the reasonable discretion of such Party and shall not be unreasonably withheld, conditioned or delayed.

12.18 **Capacity of Persons Acting on Behalf of City Group**. Notwithstanding anything to the contrary in this Agreement, all references in this Agreement to employees, agents, representatives, contractors and the like of the City Group shall refer only to persons acting in the City's and JRC's capacity under this Agreement and thus all such references specifically exclude any employees, agents, representatives, contractors and the like acting in connection with the performance of the City Group's Governmental Functions. Without limiting the foregoing, all police, fire, permitting, regulatory, water and power, health and safety and sanitation employees of the City shall be deemed to be acting in connection with the performance of the City's Governmental Functions.

12.19 **No Limitation on City Group's Governmental Functions**. The Parties acknowledge that the City and JRC are each a Governmental Authority operating pursuant to their respective charters and statutory authority and that no representation, warranty, consent,

omission, approval or agreement in this Agreement by either the City or JRC shall be binding upon, constitute a waiver by or estop such respective Party from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of this Agreement be deemed to waive any immunities or privileges granted to such respective Party when performing its Governmental Functions, which are provided under Applicable Law. Any consent to jurisdiction by the City or JRC is only with respect to matters arising in its respective capacity as a Party to this Agreement and expressly does not constitute a waiver of such respective Party's legal immunity or a consent to jurisdiction for any actions, omissions or circumstances, in each case solely arising out of the performance by such respective Party of its Governmental Functions.

12.20 **Waiver of Immunity**. To the extent permitted by Applicable Law, the City Group hereby voluntarily, irrevocably and unconditionally (a) agrees that the execution, delivery and performance by it of this Agreement constitute the private, proprietary and commercial acts of the City Group rather than public or governmental acts or Governmental Functions, (b) agrees that should any action or proceedings be brought against it or its assets in relation to this Agreement or any transaction contemplated hereunder, no immunity (sovereign or otherwise) from such actions or proceedings shall be claimed by or on behalf of itself or with respect to its assets and (c) waives any and all such right of immunity, on the grounds of sovereignty or other similar grounds, from suit or liability which it or its assets now has or may in the future acquire with regard to this Agreement.

12.21 **No Indirect Damages**. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY PROVISION OF THIS AGREEMENT OR OTHERWISE FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM SUCH PARTY'S OWN, SOLE OR CONCURRENT NEGLIGENCE OR THE NEGLIGENCE OF ANY OF ITS EMPLOYEES, OFFICERS, OR AGENTS ACTING IN THEIR OFFICIAL CAPACITY, AFFILIATES OR RELATED PARTIES; PROVIDED THAT WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF EACH PARTY ARISING OUT OF THIRD PARTY CLAIMS FOR ANY OF THE FOREGOING.

12.22 **Rules of Usage**. The following rules of usage still apply to this Agreement:

(a) "Include", "includes" and "including" shall be deemed to be followed by ", but not limited to," whether or not they are in fact followed by such words or words of like import.

(b) "Writing", "written" and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

(c) Any agreement, instrument or Applicable Laws means such agreement or instrument or Applicable Laws as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case

of Applicable Laws) by succession of comparable successor Applicable Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(d) References to a person are also to its permitted successors and assigns.

(e) Any term defined by reference to any agreement, instrument or Applicable Laws has such meaning whether or not such agreement, instrument or Applicable Laws are in effect.

(f) "Hereof", "herein", "hereunder" and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to "Article", "Section", "Subsection" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an attachment to such agreement or instrument. All references to exhibits or appendices in any agreement or instrument are to exhibits or appendices attached to such instrument or agreement.

(g) Pronouns, whenever used in this Agreement and of whatever gender, shall include natural persons, corporations, limited liability companies, partnerships and associations of every kind and character.

(h) References to any gender include, unless the context otherwise requires, references to all genders.

(i) The word "or" will have the inclusive meaning represented by the phrase "and/or".

(j) "Shall" and "will" have equal force and effect.

(k) Unless otherwise specified, all references to a specific time of calendar day shall be based upon Central Standard Time or Central Daylight Savings Time, as applicable on the date in question in Joplin, Missouri.

(l) References to "$" or to "dollars" shall mean the lawful currency of the United States of America.

12.23 **Interpretation and Reliance**. No presumption will apply in favor of any Party in the interpretation of this Agreement or in the resolution of any ambiguity of any provision hereof.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the City Group and the Developer have executed this Agreement to be effective as of the date first above written.

"CITY"

CITY OF JOPLIN, MISSOURI,

By: _____
Name: _____
Title: _____

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Brian W. Head, City Attorney

"JRC"

JOPLIN REDEVELOPMENT CORPORATION, INC., an urban redevelopment corporation organized under the Missouri Urban Redevelopment Corporations Law

By: _____
Name: _____
Title: _____

"DEVELOPER"

WALLACE BAJJALI DEVELOPMENT PARTNERS, L.P., a Texas limited partnership

By: Wallace Bajjali Management, LLC, its general partner

By: _____
Name: _____
Title: _____

APPENDIX A

GLOSSARY OF DEFINED TERMS

"Affiliate" of any Person shall mean any other Person directly or indirectly controlling, directly or indirectly controlled by or under direct or indirect common control with such Person. As used in this definition, the term "control," "controlling," or "controlled by" shall mean the possession, directly or indirectly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of such Person or any Affiliate of such lender.

"Approval," "Approve" or "Approved" means (a) with respect to any item or matter for which the approval of the City Group or City Representative, as the case may be, is required under the terms of this Agreement, the specific approval of such item or matter by the City Group pursuant to a written instrument executed by the City Group or City Representative, as applicable, delivered to the Developer, and shall not include any implied or imputed approval, and no approval by the City Group or City Representative pursuant to this Agreement shall be deemed to constitute or include any approval required in connection with any the City Group Code or Governmental Functions of the City Group, unless such written approval shall so specifically state; (b) with respect to any item or matter for which the approval of the Developer is required under the terms of this Agreement, the specific approval of such item or matter by the Developer or the Developer Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of the Developer or the Developer Representative, as permitted pursuant to the terms of this Agreement, and delivered to the City Group, and shall not include any implied or imputed approval; and (c) with respect to any item or matter for which the approval of any other person is required under the terms of this Agreement, the specific approval of such item or matter by such person pursuant to a written instrument executed by a duly authorized representative of such person and delivered to the City Group or the Developer, as applicable, and shall not include any implied or imputed approval.

"Applicable Laws" shall mean any and all laws, ordinances, statutes, regulations, judicial decisions, orders, injunctions, writs, rulings, interpretations, rules, permits or certificates of any court, arbitrator or other Governmental Authority and applicable to the Person or Property in question (including any activities or operations occurring on, under, over, upon, at or from such Property in question). Applicable Laws shall include but not be limited to all the City Group Codes, Environmental Laws and any applicable Federal wage requirements. The Developer acknowledges that there may be certain "Applicable Laws" that apply to the Master Plan as a result of the City Group being involved in its development.

"Budget" shall have the meaning set forth in Section 4.1 of this Agreement.

"CART" shall have the meaning set forth in the recitals of this Agreement.

"City" shall have the meaning set forth in the recitals of this Agreement.

"City Controlled Entity" shall mean any entity created by the City or the JRC in which the City or the JRC has the power to appoint the majority of the members of the board of directors or the legal authority to control the actions of such entity.

"City Council" shall mean the City Council of the City of Joplin, Missouri.

"City Group" shall have the meaning set forth in the recitals of this Agreement.

"City Group Representative" shall have the meaning set forth in Section 2.1 of this Agreement.

"City Participant Development Agreements" shall have the meaning set forth in Section 10.2 of this Agreement.

"Completion Date" shall mean, with respect to any portion of the Master Plan, the earlier to occur of (a) sixty (60) days after the date the Developer notifies the City that a portion of the Master Plan is complete and the Developer is in a position to present such portion of Master Plan formally to the City at a meeting of City Council, (b) the date City Council takes formal action to approve such portion of the Master Plan in its entirety by delivering Formal Acceptance and (c) the date City Council takes formal action to reject all or any portion of such presented portion of the Master Plan.

"Default Rate" shall mean, on any particular date or for any particular period, that annual rate of interest, calculated on the basis of a 360 day year, which is the lesser of (a) the maximum non-usurious rate allowed by applicable law, or (b) that variable rate which is equal to the Prime Rate (as hereinafter defined) in effect on such date or during such period, plus two percent (2%) compounded monthly (and the Default Rate shall change with, and be effective as of the same date as, any changes in the Prime Rate).

"Development Fee" shall have the meaning set forth in Section 10.2 of this Agreement.

"Developer Representative" shall have the meaning set forth in Section 2.2 of this Agreement.

"EDR" shall mean the Extended Disaster Recovery Area that is commonly defined by the City as the area of devastation caused by the May 22, 2011 tornado.

"Effective Date" shall have the meaning set forth in the recitals of this Agreement.

"Environmental Law(s)" shall mean any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of

chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Endangered Species Act, as amended, 16. U.S.C. §§ 1531 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001.

"Events of Default" shall mean and include those events set forth in Section 8.3(a)(i) through Section 8.3(a)(v) of this Agreement.

"Final Development Agreement(s)" shall mean one, or more, agreements between the City Group (or any one of them) and the Developer and/or the Developer's co-development partners, addressing the relative responsibilities of the parties as to the actual development, or redevelopment, of a specific Project within the Redevelopment Area.

"Financial Assistance" shall mean any type of publicly funded financial assistance, including Tax Increment Financing (TIF), Sales Tax and Revenue Bonds (STAR), Neighborhood Revitalization Program (NRP), Housing Tax Credits (HTC), Industrial Revenue Bonds (IRBs), Community Development Block Grants (CDBG), Transportation Development Districts (TDD) or others as appropriate.

"Force Majeure" shall mean any act that (a) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Agreement or delays such affected Party's ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party's fault or negligence and (d) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts, including the expenditure of any reasonable sum of money. Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (vi) fires; (vii) actions or omissions of a Governmental Authority (including the actions of the City Group in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party or brought about by the breach of its obligations under this Agreement or any Applicable Law; and (viii) failure of the other Party to perform any of its obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof; *provided, however*, that under no circumstances shall Force Majeure include any of the following events: (A) economic hardship; (B) any strike or labor dispute involving the employees of the Developer or any Affiliate of the Developer, other than industry or nationwide strikes or labor disputes; or (C) weather conditions which could reasonably be anticipated by experienced contractors operating the relevant location.

"Formal Acceptance" shall have the meaning described in Section 8.2 of this Agreement.

"Governmental Authority" or "Governmental Authorities" shall mean any or all, as applicable, Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a local government corporation. The City Group shall not, in exercising its rights under this Agreement, be considered a Governmental Authority.

"Governmental Function" shall mean any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which the City Group is authorized or required to perform in its capacity as a Governmental Authority in accordance with Applicable Laws. The entering into this Agreement and the performance by the City Group of its obligations under this Agreement shall not be considered a "Governmental Function".

"Hazardous Materials" shall mean (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants", or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment including soil and construction debris that may contain any of the materials described in this definition.

"Improper Action" shall mean any act constituting fraud, gross negligence or willful misconduct, or a material breach of any provision of this Agreement.

"JRC" shall have the meaning set forth in the recitals of this Agreement.

"Master Plan" shall have the meaning set forth in the recitals of this Agreement.

"Notice" shall mean (for convenience, severally and collectively) any notice, statement, communication, request, reply or advice in this Agreement provided or permitted to be given, made or accepted.

"Owner's Representative Fee" hall have the meaning set forth in Section 10.1(e) of this Agreement.

"Predevelopment Services" shall have the meaning set forth in Section 3.1 of this Agreement.

"Prime Rate" shall mean that annual rate of interest announced by JPMorgan Chase Bank, N.A., a national banking association (or its successor) from time to time, as its prime, base or reference rate of interest to borrowers (and which may not be the lowest rate of interest offered to borrowers by such institution).

"Progress Schedule" shall have the meaning set forth in Section 3.3(a) of this Agreement.

"Project" or "Projects" shall mean the development or redevelopment of a Site within the Redevelopment Area for a purpose described in, and in accordance with, the Master Plan.

"Project Costs" means all documented, out-of-pocket, third party costs and expenses incurred or to be incurred by any applicable developer (which may include the Developer) in order for such developer to fulfill its obligations with respect to the design, construction and development of any Project, including (a) the cost of all infrastructure, buildings, improvements, landscaping, furniture, fixtures, equipment and other personal property, (b) construction, architectural, engineering and design costs and fees, (c) legal fees, (d) development fees, (e) permit and approval fees payable to Governmental Authorities, (f) title examination and surveying costs and (g) financing fees and other transactional costs; *provided, however,* in no event shall such costs and expenses include those that are paid or internally allocated to a developer or its Affiliate.

"Pursuit Costs" shall mean the Developer's costs and expenses related to the creation of the Master Plan, the Developer's presentation of the Master Plan to City Council and the performance by the Developer's of the Predevelopment Services hereunder, which are set forth in the Budget and shall include: (a) all third party fees, including all testing, modeling, architectural, engineering, surveying, planning and consultant fees (including the costs associated with drawings and specifications related to creating the Master Plan); (b) costs of (or rentals for) equipment and supplies, (c) printing costs; (d) taxes (including, ad valorem real property taxes, and sales, use, gross receipts or similar taxes related to the Predevelopment Services); (e) legal expenses of attorneys providing legal services to the Developer in connection with the Predevelopment Services and/or this Agreement; (f) the fees and disbursements of third party accountants providing accounting, auditing and tax return preparation services to the Developer in connection with the Predevelopment Services and/or this Agreement; (i) wages and salaries of personnel of the Developer providing the Predevelopment Services; (j) travel and travel-related expenses of the Developer's personnel consistent with the City's adopted travel policy in any instance in which travel is required by the Developer's personnel in order for the Developer to provide the Predevelopment Services; (k) all out-of-pocket costs and expenses incurred by the Developer in connection with providing the Predevelopment Services and (l) all other fees, costs and expenses necessarily incurred in the proper performance of the Predevelopment Services. Notwithstanding the foregoing, absent the City Group's written consent, the City Group shall not be responsible for reimbursing the Developer for costs and expenses not included within the scope of the categories of expenses included in the Budget, nor, absent the City Group's written consent, shall the City Group be responsible for reimbursing the Developer for Pursuit Costs in excess of the total amount set forth in the Budget. To the extent that it is applicable, the Developer shall follow the City's adopted purchasing policies and procedures for the purchase of goods included within this definition of Pursuit Costs.

"Qualified Advisor" means a person or entity who provides services similar in scope, size and complexity to the services to be performed seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertakings, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected

from a skilled and experienced person or entity providing services similar to the services to be performed complying with all Applicable Laws and engaged in the same type of undertaking.

"Reasonable and Prudent Developer" means a person or entity who provides services similar in scope, size and complexity to the Predevelopment Services seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertakings, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or entity providing services similar to the Predevelopment Services complying with all Applicable Laws and engaged in the same type of undertaking.

"Redevelopment Area" shall mean the EDR area directly impacted by the May 22, 2011 storm event. Further, the area will also include the downtown area as well as the Main Street between downtown and 20th street and the five block area either side of Main connecting the downtown to 20th street and other locations as mutually agreed to by the parties. Exhibit A attached hereto and made a part hereof is a visual representation of the Redevelopment Area;

"Site" shall mean a specifically identified tract, upon which a proposed Project is to be developed, or redeveloped.

"Term" shall have the meaning set forth in Section 8.1 of this Agreement.

EXHIBIT A
TO MASTER PREDEVELOPMENT AGREEMENT

PROPERTY DESCRIPTION OF REDEVELOPMENT AREA

See attached _____ (____) pages

EXPERIENCE

DRAFT information:

Estimate of costs incurred and to be incurred

Administration Allocation	$360,000
Consultants, Professional Services, Legal Services and Studies	$1,328,000
Travel	$82,000
Wallace Bajjali Costs to Date	$240,000
Total Estimated Budget:	$2,010,000

Exhibit "B"

EXPERIENCE

Additional Budget Detail by section

Administration Allocation **$360,000**

Consultants, Professional Services, Legal Services and Studies

1. Architect & Engineering Costs $350,000
2. Owner's Representative – Construction management planning and pre-design services $125,000
3. Market Assessments and void analysis–
   a. Commercial and Residential, Demographic trends, Specific Site Assessment $90,000
   b. Hospitality $55,000
   c. Concert and Event Market $70,000
   d. Minor League Baseball $50,000
4. Legal $275,000
5. Legislative Affairs $60,000
6. Public Communications and Education $198,000
7. Security and Public Safety Planning $15,000
8. Other (Appraisal work, misc consultants, etc.) $40,000

Travel **$82,000**

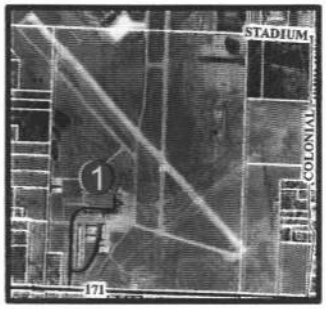
Projected project budget is only an estimate based upon Wallace Bajjali's current understanding of what is involved in the redevelopment of Joplin.

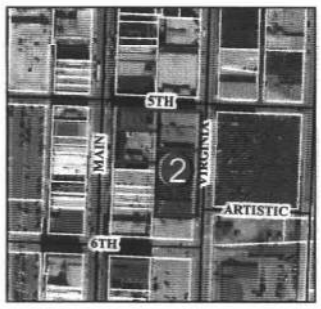
EXHIBIT C
TO MASTER PREDEVELOPMENT AGREEMENT

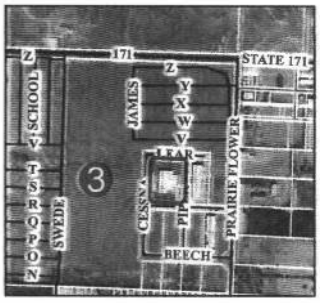
PROGRESS SCHEDULE

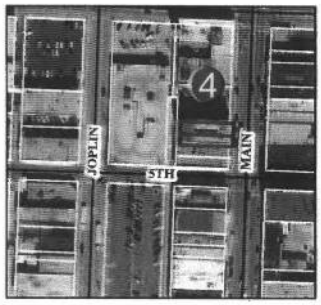
[TO BE DEVELOPED WITHIN SIXTY (60) DAYS AFTER THE EFFECTIVE DATE]

Joplin Tax Abatement Map

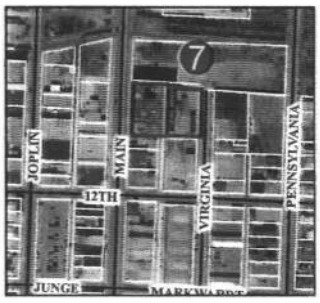




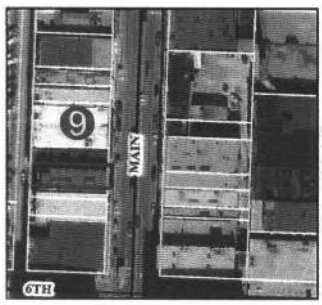


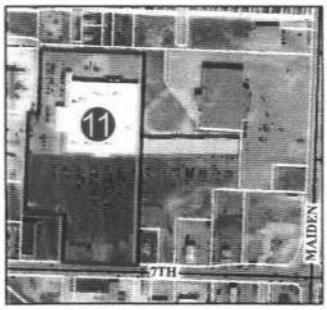


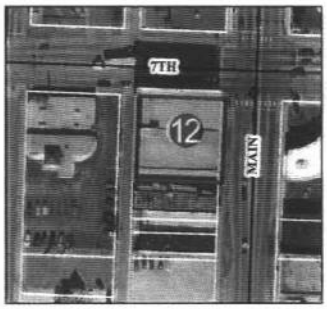


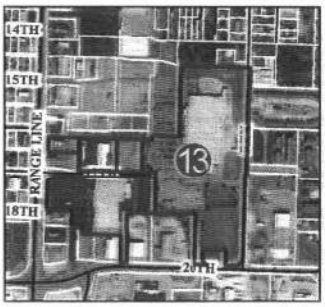


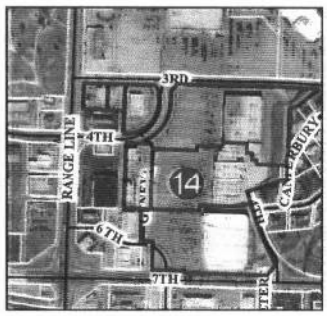












SCHEDULE 1

CITY'S INSURANCE REQUIREMENTS

(a) Worker's Compensation Insurance and Employer's Liability Insurance covering employees or agents of the City Group, with such coverage to be in compliance with all Applicable Laws and with the following limits:

Workers Compensation:	Statutory
Employer's Liability:	$_____ Per Occurrence (Minimum)

(b) Commercial General Liability coverage with minimum limits of liability of not less than $_____ per occurrence/aggregate combined single limit for bodily injury and property damage. This policy shall be endorsed to provide coverage for: contractual liability and products and completed operations.

(c) Comprehensive Automobile Liability coverage covering all owned, hired or non-owned vehicles with minimum limits of liability of not less than $_____ per occurrence/aggregate combined single limit for bodily injury and property damage.

COUNCIL BILL NO. 2012-009 ORDINANCE NO.

AN ORDINANCE approving a Predevelopment Agreement by and between the City of Joplin and Wallace Bajjali and the Joplin Redevelopment Corporation, for Master Development Services to help Joplin recover from the EF-5 tornado that occurred May 22, 2011; authorizing the City Manager to execute said Predevelopment Agreement by and on behalf of the City of Joplin; and containing an emergency clause.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JOPLIN, MISSOURI, AS FOLLOWS:

Section 1. That the Predevelopment Agreement by and between the City of Joplin, Wallace Bajjali, and the Joplin Redevelopment Corporation, relating to private-public partnerships to help Joplin recover from the EF-5 tornado that occurred May 22, 2011, a copy of the same being attached hereto, be and the same is hereby approved.

Section 2. That the City Manager is hereby authorized and directed to execute said Agreement, by and on behalf of the City of Joplin, Missouri.

Section 3. That this Ordinance is an emergency within the meaning of Section 2.12(1)(6) of the Home Rule Charter of the City of Joplin, Missouri, in that said ordinance deals with the preservation of property, health, and safety and relating to public improvements, and as such, is considered an emergency and shall take effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2012, by a vote of _____.

By: _____
Melodee Colbert-Kean, Mayor

ATTEST:

By: _____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

By: _____
Brian W. Head, City Attorney

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: July 2, 2012
Council Bill No. 2012-138

Item: Consultant Agreement, Broadway & St. Louis Widening Project
Originating Department: Public Works – Engineering

Attachments: 1) Location Map
2) Agreement
3) Council Bill No. 2012-138

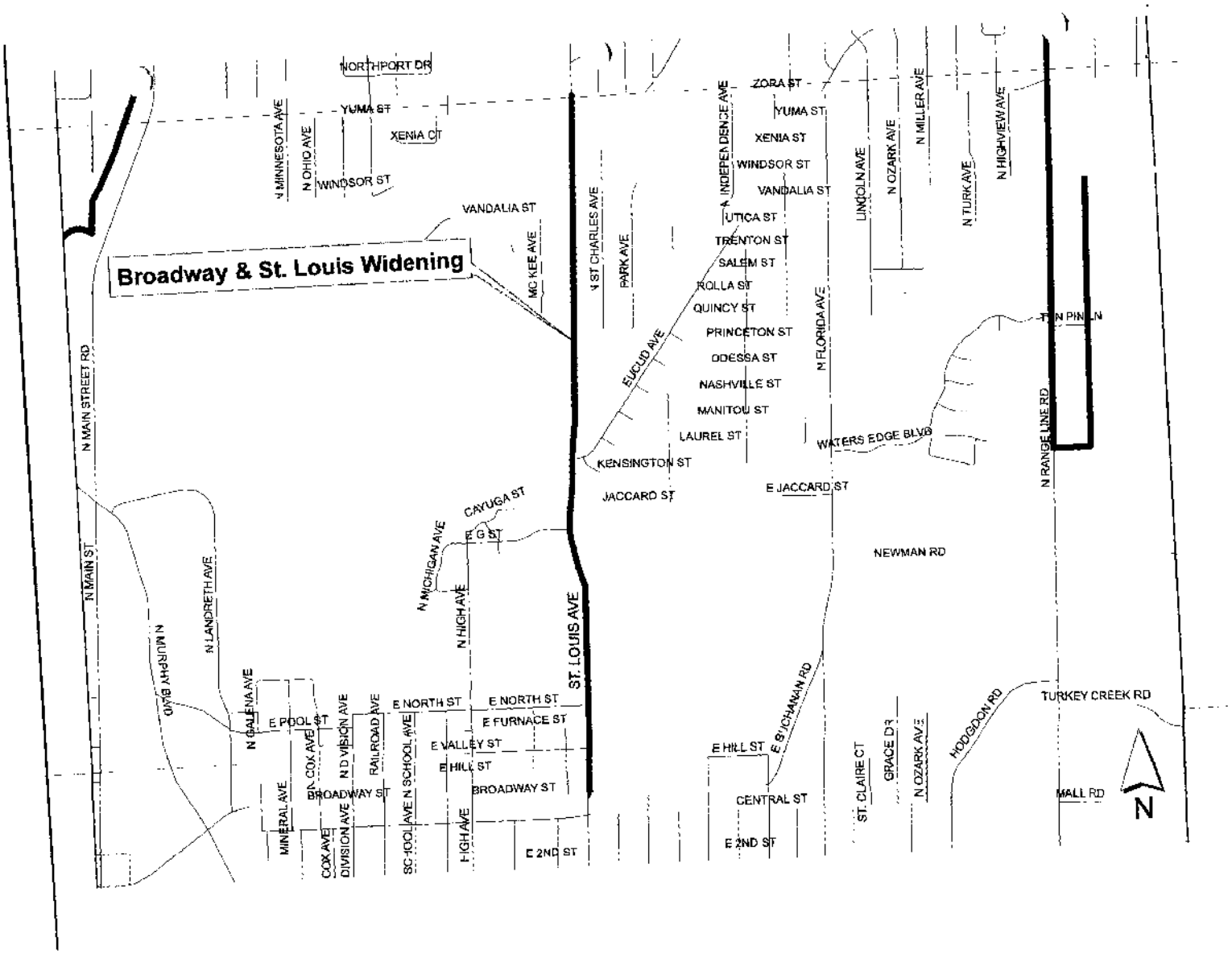
Engineering Department: Jack Schaller	Date: 6-25-12
Department Head: David Hertzberg	Date: 6/25/12
City Attorney: Brian Head	Date: 6-26-12
City Manager: Mark Rohr	Date: 6-25-12
Finance Department: Leslie Jones	Date: 6-26-12

Recommended Action: Approval of Consultant Agreement with Tri-State Engineering not to exceed the amount of $67,285.00 for professional engineering survey services for the Broadway & St. Louis Widening Project.

Background: St. Louis from Broadway to Zora is in need of widening from two lane roads to three lane roads. This project were included in the 3/8-cent Transportation Sales Tax that passed in 2004.

Discussion: The staff recommends Tri-State Engineering to provide the service. Attached is the consultant agreement with the schedule, which provides land surveying. This includes a not to exceed amount of $67,285.00. An original purchase order was issued in January of 2007 but the project was put on hold.

Recommendation: Consultant Agreement with Tri-State Engineering not to exceed the amount of $67,285.00 for professional engineering survey services for the Broadway & St. Louis Widening Project.


Broadway & St. Louis Widening
NORTHPORT DR
YUMA ST
XENIA CT
WINDSOR ST
VANDALIA ST
N MINNESOTA AVE
N OHIO AVE
MC KEE AVE
N ST CHARLES AVE
PARK AVE
ZORA ST
YUMA ST
XENIA ST
WINDSOR ST
VANDALIA ST
UTICA ST
TRENTON ST
SALEM ST
ROLLA ST
QUINCY ST
PRINCETON ST
ODESSA ST
NASHVILLE ST
MANITOU ST
LAUREL ST
KENSINGTON ST
JACCARD ST
E JACCARD ST
N INDEPENDENCE AVE
EUCLID AVE
N FLORIDA AVE
LINCOLN AVE
N OZARK AVE
N MILLER AVE
N TURK AVE
N HIGHVIEW AVE
N RANGELINE RD
WATERS EDGE BLVD
NEWMAN RD
N MAIN STREET RD
N MAIN ST
N LANDRETH AVE
N MURPHY BLVD
N GALENA AVE
E POOL ST
MINERAL AVE
N COX AVE
COX AVE
N DIVISION AVE
DIVISION AVE
RAILROAD AVE
E NORTH ST
N SCHOOL AVE
SCHOOL AVE
E VALLEY ST
E HILL ST
BROADWAY ST
E FURNACE ST
E G ST
CAYUGA ST
N MICHIGAN AVE
N HIGH AVE
HIGH AVE
E 2ND ST
ST. LOUIS AVE
E HILL ST
E BUCHANAN RD
CENTRAL ST
ST. CLAIRE CT
GRACE DR
N OZARK AVE
HODGDON RD
TURKEY CREEK RD
MALL RD
N
TWIN PINES

AGREEMENT
FOR PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT, made on this 26th day of April, 2012, by and between the City of Joplin, Missouri, whose address is 602 Main Street, Joplin, Missouri 64801, hereinafter referred to as the "City" and Tri-State Engineering, Inc., 702 Main Street, Joplin, Missouri, hereinafter referred to as the "Consultant" is for professional services, (the "Project").

WHEREAS, the City desires to retain a professional engineering firm to assist the City in performing surveying services for the St. Louis Avenue Widening Project;

NOW THEREFORE WITNESSETH: That for and in consideration of the mutual covenants and promises between the parties hereto, the parties do hereby agree as follows:

ARTICLE I - SERVICES

The Consultant agrees to diligently perform in a professional and workmanlike manner the following services:

A. Perform surveying services for the St. Louis Avenue Widening Project, as more specifically set forth in the Description of Engineer's Services, attached hereto as Attachment "A" and incorporated herein by reference.

ARTICLE II - AGREEMENT TIME

This Agreement becomes effective upon execution of this Agreement and it will terminate upon the completion of Consultant's duties and obligations under this Agreement. The Consultant will complete its services in accordance with the Project Timeline as set for in Section 9.01, Section C, as more specifically set forth in Attachment "B".

ARTICLE III - GENERAL CONDITIONS

1. The Consultant shall observe and comply with all Federal, State and local laws and ordinances that affect those employed or engaged by it on the project, or the material or equipment used, or the conduct of the work, and shall procure all necessary licenses, permits and insurance.

2. The Consultant shall prosecute the work in a diligent manner.

3. This Agreement, including payment hereunder, shall not be sub-let, assigned or otherwise disposed of, except with the prior written consent of the City.

4. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, gift or contingent fee.

5. In performance of the work covered by this Agreement, the Consultant shall not discriminate against any worker because of race, creed, color, political affiliation, handicap or national origin.

6. Possession of working papers, project reports and other materials produced in connection with this Agreement shall be retained by the Consultant. Consultant shall provide copies for City of such records upon request.

7. City shall have the right to make changes within the general scope of Consultant's services, with an appropriate change in compensation, upon execution of a mutually acceptable amendment or change order signed by an authorized representative of City and the President or Vice President of Consultant.

ARTICLE IV - RESPONSIBILITIES

The Consultant shall:

1. Provide a staff that is experienced in performing the work described in its Proposal, including the staff described in the Proposal.

2. Deliver in a timely manner all services specified in the Proposal.

3. Consultant will exercise reasonable skill, care and diligence in the performance of its services and will carry out its responsibilities in accordance with customarily accepted good engineering and professional surveying practices. If Consultant fails to meet the foregoing standard, Consultant will perform at its own cost, and without additional reimbursement from City, the engineering and professional surveying practices necessary to correct errors and omissions cause by Consultant's failure to comply with above standard and reported to Consultant within one year from the completion of Consultant's services for this Project.

ARTICLE V - COSTS AND PAYMENTS

1. The City will be billed by invoice for professional time and services provided by Consultant in an amount not to exceed Sixty Seven Thousand Two Hundred Eighty Five Dollars ($67,285.00) to be remitted as follows: (a) Consultant shall prepare and submit an Invoice to the City as the work is performed and City will pay said Invoice within thirty (30) days of receipt; and (b) Consultant shall use the fee structure and hourly rate structure as provided in Attachment "B".

ARTICLE VI - AGREEMENT

This Agreement contains the complete and full understanding of the parties; it q may be varied only by written amendment executed by both parties.

ARTICLE VII – MISCELLANEOUS

A. CHOICE OF LAW. This Agreement has been made, and its validity, performance and effect shall be determined, in accordance with the laws of the State of Missouri and venue for litigation between the parties shall be solely and exclusively in Jasper County, Missouri, or the United States District Court for the Western District of Missouri.

B. HEADINGS. The headings of paragraphs in this Agreement are for convenience only. The headings form no part of this Agreement and shall not affect its interpretation.

C. ENTIRE AGREEMENT. This Agreement (including any Attachments) contains the entire understanding of the parties with respect to the subject matter hereof. It may not be altered or amended except by an agreement in writing signed by both parties.

D. WAIVER OR BREACH. Waiver of any provision of this Agreement or breach of this Agreement shall not thereafter be deemed to be a consent by the waiving party to any further waiver, modification or breach by the other party, whether new or continuing, of the same or any other covenant, condition or provision of this Agreement. Failure by one of the parties to this Agreement to assert its rights for any breach of this Agreement shall not be deemed a waiver of such rights. Should City or Consultant be required to institute legal action to enforce any of its rights set forth in this Agreement, then each party shall be entitled to reimbursement for all reasonable attorneys' fees and costs incurred as a result of breaching this Agreement, as determined by the Court in any such cause of action.

E. SEVERABILITY. If any of the provisions of this Agreement shall be construed to be invalid or illegal, the legality or validity of the other provisions of this Agreement shall not be affected thereby. Any illegal or invalid provision of this Agreement shall be severable and any other provisions shall remain in full force and effect.

F. BINDING EFFECT. The provisions herein shall operate as a covenant running with the land and shall bind both parties hereunto and their respective successors and assigns.

G. REPRESENTATIONS. The signatories hereto represent and warrant that they have read this Agreement, that they are fully authorized in the capacities shown, that they understand the terms of this Agreement, and that they are executing the same voluntarily and solely for the consideration described herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last written above.

FOR THE CONSULTANT
BY: _____
Steven G. Lewis
Tri-State Engineering, Inc.

FOR THE CITY
BY _____
David Hertzberg,
Director of Public Works

ATTEST: _____
Barbara Hogelin,
City Clerk

APPROVED AS TO FORM:

_____
Brian W. Head,
City Attorney

Attachment "A"

Description of Engineers Services

Provide Professional Surveying Services on St. Louis Avenue from Broadway to Zora Street. The scope of work for this project is as follows:

Surveying Services to be provided on an as-requested basis:

- Stake proposed right-of-way location for each parcel

Surveying Services to be provided:

- Prepare right-of-way and easement descriptions based on plans provided by the City of Joplin.
- Set right-of-way pins to monument the new right-of-way location.
- Office calculations/Coordination

Attachment "B"

Compensation

All work for this project will be provided at the hourly rates shown below.
Our estimated fees for the project are as follows:

Deliverable: Proposed right-of-way staking	$27,300
Deliverable: Prepare right-of-way descriptions	$21,125
Deliverable: Monument right-of-way	$18,860

Total Not-to-Exceed Fee	$67,285

Hourly Rates:

Professional Land Surveyor	$130
Engineering Tech 1	$85
2 man Survey Crew	$130
1 man Robotic Survey Crew	$110
2 man Robotic Survey Crew	$165
1 man GPS Survey Crew	$110
2 man GPS Survey Crew	$165
Survey Manager/Coordinator	$90

COUNCIL BILL NO. 2012-138 ORDINANCE NO.

AN ORDINANCE approving the City of Joplin to enter into an Agreement with Tri-State Engineering to provide professional services for the Broadway & St. Louis Widening Project, not to exceed Sixty Seven Thousand Two Hundred Eighty Five and No/100 Dollars ($67,285.00) and authorizing the Director of Public Works to execute said Agreement; and containing an emergency clause.

BE IT ORDAINED by the Council of the City of Joplin, Missouri, as follows:

Section 1. That the City enter into an Agreement between the City of Joplin and Tri-State Engineering to provide professional services for the Broadway & St. Louis Widening Project, not to exceed Sixty Seven Thousand Two Hundred Eighty Five and No/100 Dollars ($67,285.00).

Section 2. That the Director of Public Works of the City of Joplin, Missouri, is hereby authorized to execute said Agreement for and on behalf of the City of Joplin.

Section 3. This ordinance is an emergency within the meaning of Section 2.12 (6) in that said ordinance provides for public improvements and is considered an emergency by the Council and as such shall become effective immediately upon this passage as provided by the Home Rule Charter for the City of Joplin.

Passed by the Council of the City of Joplin, Missouri, this _____ day of

_____, 2012, by a _____ vote.

ATTEST: Melodee Colbert Kean, Mayor

Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

Brian W. Head, City Attorney

I hereby certify that a sufficient amount is available in the Capital Improvements Sales Tax Fund No. 145-4565-520-8650 Project TC0515 to pay the amount called for in said Agreement.

Leslie Jones, Director of Finance

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: July 2, 2012
Council Bill No. 2012-139

Item: Clean, TV & Cap Service Risers in Tornado Area – Change Order
Originating Department: PUBLIC WORKS – ENGINEERING

Attachments: 1) Council Bill No. 2012-139

Engineering Department: Jack Schaller	Date: 6-25-12
Public Works: Tim Nyander	Date:
Department Head: David Hertzberg	Date: 6/25/12
Finance Department: Leslie Jones	Date: 6-26-12
City Attorney: Brian Head	Date: 6-26-12
City Manager: Mark Rohr	Date: 6-25-12

Recommended Action: Approval of a change order for Rosetta Construction LLC. in the amount of $115,279.90 for the Clean, TV & Cap Service Risers in Tornado Area.

Background: Due to the May 22, 2011 tornado many sewers in Joplin have been affected due to the loss of homes leaving sewer lines uncapped and have filled with debris. Other lines have been damaged by heavy equipment doing search and rescue along with debris clean up. These lines are in need of cleaning and repair so new construction can continue in the tornado area.

Discussion : The original contract with Rosetta Construction was passed by council on November 21, 2011 in the amount of $897,050.00. The final cost of the project is $1,012,329.90, leaving a difference of $115,279.90. The original contract was based on an estimate of the damaged sewer lines and the number of service lines to be capped. The increase in cost reflects the total number of capped service lines and repairs to damaged sewers. This project is partially funded by FEMA and partially by the City's sanitary sewer fund.

Recommendation: Approval of change order with Rosetta Construction, LLC in the amount of $115,279.90 for the Clean, TV & Cap Service Risers in the Tornado Area.

COUNCIL BILL NO. 2012-139 ORDINANCE NO.

AN ORDINANCE approving change order for Rosetta Construction, LLC for One Hundred Fifteen Thousand Two Hundred Seventy Nine and 90/100 Dollars ($115,279.90) for the Clean, TV & Cap Service Risers in the Tornado Area and containing an emergency clause.

BE IT ORDAINED by the Council of the City of Joplin, Missouri, as follows:

Section 1. Approval of change order for Rosetta Construction, LLC for One Hundred Fifteen Thousand Two Hundred Seventy Nine and 90/100 Dollars ($115,279.90) for the Clean, TV & Cap Service Risers in the Tornado Area in the City of Joplin, Jasper County.

Section 2. Upon the final approval and acceptance of the contractor's work under said contracts in writing by the Director of Public Works and their certification to that effect to the Director of Finance, said contractors shall be paid the sum due there under from Sewer Maintenance Fund No. 415-4542-540-5090 Project FD1101.

Section 2. That the Director of Public Works is hereby authorized to enter into a change order on behalf of the City of Joplin with Rosetta Construction, LLC.

Section 3. This ordinance is an emergency within the meaning of Section 2.12 (6) in that said ordinance provides for public improvements and is considered an emergency by the Council and as such shall become effective immediately upon this passage as provided by the Home Rule Charter for the City of Joplin.

Passed by the Council of the City of Joplin, Missouri, this _____ day of

_____, 2012 by a _____ vote.

ATTEST: _____
Melodee Colbert Kean, Mayor

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Brian W. Head, City Attorney

I hereby certify that a sufficient amount is available in the Sewer Maintenance Fund No. 415-4542-540-5090 Project 1101 to pay the amount called for in said Agreement.

_____
Leslie Jones, Director of Finance