



MEETING OF JANUARY 3, 2023

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Jessica Masters, Development Review Manager

FROM: Melissa Evans, Urban Forester

DATE: December 14, 2022

SUBJECT: **TREE PRESERVATION EASEMENT VACATION (W. MITCHELL ST.)**

RECOMMENDATION:

A RESOLUTION TO APPROVE THE VACATION OF A 16,552.8 SQUARE FOOT PORTION OF A TREE PRESERVATION EASEMENT LOCATED ALONG WEST MITCHELL STREET CONTINGENT ON THE DEDICATION OF TWO REPLACEMENT TREE PRESERVATION EASEMENTS TOTALING APPROXIMATELY 37,519 SQUARE FEET

BACKGROUND:

The tree preservation easement on parcel number 765-07564-000 was dedicated as part of the development of JD China restaurant Large Scale Development when it was built in 2001. The trees were placed in a tree preservation easement to meet the development requirements on the 1.76-acre lot to build the restaurant.

After the restaurant closed, Raising Cane's purchased and subdivided the lot. In 2016, the lot split (LSP 16-5311) was submitted and approved. The lot split created two lots, one with 1.09 acres that was sold to Raising Cane's, and the other with 0.67 acres, 0.38 acres of which is encumbered with the tree preservation easement in question. In exchange for the vacation, the applicant intends to dedicate two additional tree preservation easements off-site as described in Exhibits C and D.

City Council received a vacation request from the previous property owner in 2019 which was tabled indefinitely with additional input requested from the applicant which was not provided. Planning and Urban Forestry staff received inquiries about this property from a realtor and the prospective buyers in the last few months and informed them of the tree preservation easement.

The applicant wishes to vacate the tree preservation easement to facilitate developing the property. According to UDC code, 167.04(L)(2), "The geographic extent and location of tree preservation easements, once recorded, may only be modified, or abolished with the express approval of City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville."

DISCUSSION:

After the lot split (LSP 16-5311) that created two separate parcels, the existing tree preservation easement

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rendered the lot virtually unbuildable in a valuable commercial area. Though the creation of the lot met standard requirements for land subdivision (such as underlying zoning requirements, and access to water and sewer), the lot is inherently unbuildable due to the existing tree preservation easement. Since this lot split, Urban Forestry staff and Planning staff are mindful of lot splits that involve tree preservation easements and would like to avoid any similar situations in the future.

Staff visited all three properties and determined that the two proposed tree preservation easements do not offer more benefit or environmental services than the existing tree preservation easement. The proposed easements are both on relatively unbuildable lots in the streamside protection zone and flood areas which are protected by Code, making development inherently difficult.

The 0.2 acre parcel #765-16157-000 that is proposed as a new tree preservation easement is located on the west side of the city along Owl Creek and adjacent to existing Harmony Pointe Park (Exhibit C). Half of this site is in Flood Zone A.

The 0.6 acre parcel #765-15229-000 that is proposed as a new tree preservation easement is located on the east side of the city near S. Ray Ave. in an industrial area close to a residential neighborhood (Exhibit D). The property runs behind Fire Station #3, CR Crawford Construction, and Promo Life. There is a drainage area running through the site that drains directly into the West Fork of the White River which is part of the Beaver Lake Watershed and is in the streamside protection zone. This parcel is adjacent to an existing tree preservation easement (0.34 acre) that was dedicated as part of the project to build the new Promo Life facility.

The current tree preservation easement is in a commercial district and surrounded by rental housing units and fast food restaurants. The current location offers eco system services such as air cleaning and wildlife habitat. However, it is not directly associated with a creek or drainage area. The site currently collects debris and is a site for illegal trash deposits. Some of the canopy has been removed and red clay has been deposited on the site as well.

Tree canopy for each site

- 16,552.8 sq. ft. of tree canopy at current easement 765-07564-000 (Exhibit B)
- 8,712 sq. ft. of tree canopy at proposed easement 765-16157-000 (Exhibit C)
- 28,707.8 sq. ft. of tree canopy at proposed easement 765-15229-000 (Exhibit D)
- The combined tree canopy for both proposed easements is 37,519 sq. ft. The difference is an increase of 20,966 sq. ft. or ~0.48 acre.

Staff believes that two proposed easements do not offer more eco system services as they are already fairly undevelopable and unbuildable, and large areas of the lots are protected by the streamside protection zone. Fayetteville would be losing eco-system services in a highly developed area of our city if this vacation is approved (see Exhibits E). While many of the existing trees in the Tree Preservation Easement have been damaged and removed, there are still several left and the site could be reforested to allow it to return to its previous condition and ultimately as a healthy forested area. The canopy has been thinned over the years, especially from 2015 to 2022 (as shown in Exhibits F), by the property owner at the time removing trees. Chapter 167.04(K)(3) of the Unified Development Code states that "Property owners wishing to remove diseased or dead trees from within a recorded tree preservation easement shall seek prior approval from the Urban Forester, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the Urban Forester determines that natural replacements of sufficient health and vigor are already present in the tree preservation easement." Additional trees have not been planted in the existing Tree Preservation Easement to replace those removed.

Another consideration is the precedent this vacation may set if approved. Tree Preservation Easements are

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intended to remain in perpetuity, not until they are no longer viable due to degradation or the owner has a wish to develop.

Staff recommends denial of the vacation of the tree preservation easement on parcel 765-07564-000 as shown in Exhibit B. While the applicant intends to dedicate two additional tree preservation easements in exchange (Exhibits C and D), Urban Forestry finds that the loss of canopy in this commercial area would be detrimental to the health of the local ecosystem, and would undermine the integrity of the tree preservation ordinance.

BUDGET/STAFF IMPACT:

There is not a budget impact for this request.

ATTACHMENTS: SRF, Exhibit A - Property Owner Request, Exhibit B - Existing Tree Preservation Easement, Exhibit B1 - Original Tree Preservation Easement Plat JD China, Exhibit B2 - Property Legal Descriptions, Exhibit C - Proposed Tree Pres Easement Harmony Park, Exhibit C1 - Flood Plain map 1 Harmony Park, Exhibit D - Proposed Tree Pres Easement Ray Ave, Exhibit D1 - Flood plain map 2 Ray Ave, Exhibit E - 2000 area pic, Exhibit E1 - 2022 area pic, Exhibit F - 2000 Tree Pres Lot Prior to development, Exhibit F1 - 2015 Tree Pres Lot Prior to Cane's, Exhibit F2 - 2022 Tree Pres Lot current conditions, RES - VAC - TREE PRESERVATION - MITCHELL STREET

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Exhibit A - Property Owner Request

From: Payton Sims <psims@firststarnwa.com>

Sent: Friday, December 2, 2022 12:16 PM

To: Scott, John <jscott@fayetteville-ar.gov>; willginger11@yahoo.com

Subject: Tree Pres. Transfer (Mitchell St. Project)

Good afternoon,

Wild Card ventures, LLC will be appearing before the city council regarding the tree preservation on a prime development site in Fayetteville; Ward 1. We are proposing that the city lift a tree preservation on a site located off Mitchell St. The parcel ID is 765-07564-000 and if lifted it would allow us to develop the area for multifamily housing. This would clean up the trash that is constantly on site, reduce the crime rate in the area and bring more housing for young professionals and students near the University. The green marked area in the attachment named Tree Pres Exhibit A is what currently sits in the preservation. Many of the trees in this area are dead or dying as there is no water source and the area is constantly covered in trash.

We would like to propose the tree preservation be moved to 765-15229-000 and 765-16157-000. We would then deed these two parcels of land to the city of Fayetteville or urban forestry which ever makes most sense for the city. These two parcels have significantly more tree canopy coverage and better habitat to maintain the tree population. Both these parcels adjoin existing city of Fayetteville land. The coverage is broken out below.

Tree Canopy for each site.

Exhibit A: Parcel ID- 765-07564-000 Washington County

Mitchel Street property: +/- .68 Acres total and roughly .38 acres is in the tree preservation. Roughly 8,412 sqft of tree canopy within the tree preservation.

Exhibit B: Parcel ID- 765-15229-000 Washington County

S. Ray Avenue property: +/- .60 Acres total. Roughly 25,102 sqft of tree canopy.

Exhibit C: Parcel ID- 765-16157-000 Washington County

Next to Fayetteville Park (Legacy pointe Ph1): +/- .21 Acres total. Roughly 8,720 sqft of tree canopy

If the city will vacate and transfer the tree preservation off 765-07564-000 to the other two properties (765-15229-000 and 765-16157-000) it would add +/- 25,410 sqft of tree canopy to the city of Fayetteville's tree preservation. It would also add +/- .81 acres of property to the city of Fayetteville and/or who they would like to assign the property to.

Owners' remarks:

I believe this swap would be a great deal for both the city and the people in which call Fayetteville their home. The Eco system around Mitchell Street has change so much over the years and the new proposed eco system would allow for 4X the amount of tree canopy with water on both properties to help insure the livelihood of the trees. Continuous protected tree canopy in drainage areas offers more benefits to the city and the wildlife than the current tree preservation easement. Also, by deeding this property over it will allow for Fayetteville to better maintain the health and wellness of the trees.

I appreciate you for considering this proposal,

Payton Sims

Wild Card Ventures, LLC

479-799-5240

Psims@firststarnwa.com

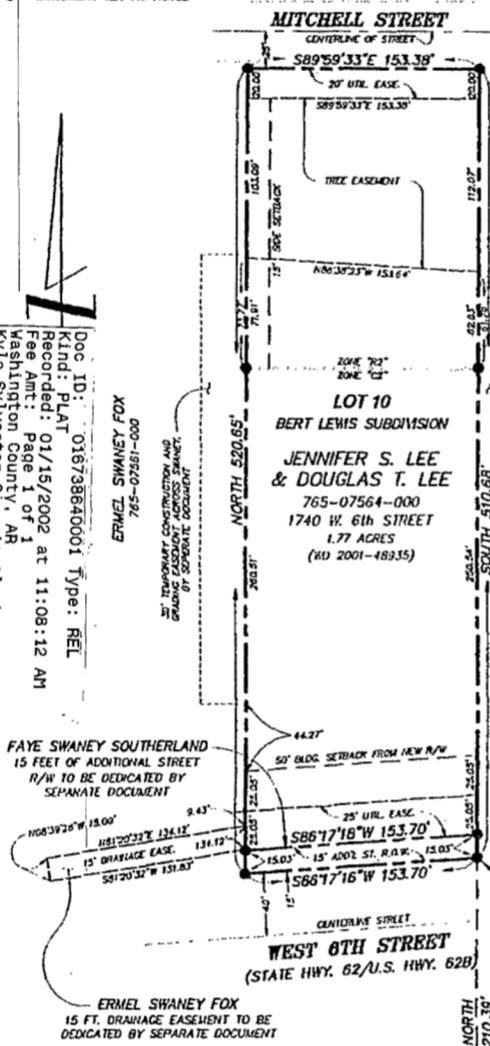
GO HOGS!!!!

LEGEND:

- MONUMENT FOUND AS NOTED
- MONUMENT SET AS NOTED



Doc ID: 016738640001 Type: REL
 Kind: PLAT
 Recorded: 01/15/2002 at 11:08:12 AM
 Fee Amt: Page 1 of 1
 Washington County, AR
 Kyle Sylvester Circuit Clerk



WILLIAM WARD REVOCABLE TRUST
 u/w/v April 5, 1992
 765-07571-001

CKM ENTERPRISES, LLC
 765-07571-000

Tree Preservation Area

The Tree Preservation Areas as indicated on this easement plat constitute a covenant running with the title of the subject property and is denoted for the property owners and their future successors, assignees or transferees to preserve, protect and maintain existing tree canopy. No tree removal or land disturbance as defined within the City of Fayetteville Unified Development Code may occur within the Tree Preservation Area unless approved by the City of Fayetteville. Persons seeking removal of such Tree Preservation Areas, or requesting to modify the property in such a way as to effect the canopy within, must seek approval from the City Council through a request made by the Landscape Administrator of the City of Fayetteville.

Approved by: *Kim J. Gjesse*
 Date: 10-19-01
 City of Fayetteville Landscape Administrator

CERTIFICATE OF OWNERSHIP & DEDICATION:

We the undersigned owners, representing one hundred percent ownership of the real estate shown and described herein, do hereby dedicate to the City of Fayetteville and to the public utility companies (including any cable television company holding a franchise granted by the City of Fayetteville) the easements as shown on this plat for the purpose of installation of new facilities and the repair of existing facilities.

Also established hereby is the right of ingress and egress to said easements, the right to prohibit the erection of buildings, structures, or fences within said easements, and the right to remove or trim trees within said easements.

by: *Demetri Lee* 10/4/01
 by: *Douglas T. Lee* 10/4/01

CERTIFICATE OF APPROVAL FOR RECORDING:

I hereby certify that the Large Scale Development Plan for this project was approved by the Fayetteville Planning Commission at a meeting held on 3-26 2001.

by: *[Signature]* 10-29-01
 City Planner date

CERTIFICATE OF APPROVAL OF UTILITY EASEMENTS:

We hereby certify that all utility easements plotted in this development are shown as required and were approved by the undersigned utilities of the City of Fayetteville, Arkansas.

Electric: *Allen Jensen* 10/11/01
 Gas Service: *Johnny Boles* 10/9/01
 Telephone: *Susan K. Clouser* 10-12-01
 Cable Television: *Don D. [Signature]* 10/17/01
 City of Fayetteville: *Jim Beaman P.E.* 10-26-01

FLOOD CERTIFICATION:

I certify that this property lies within Flood Zone "X" (unshaded), areas determined to be outside 500-year flood-plain, according to the Federal Emergency Management Agency's (FEMA's) Flood Insurance Rate Map (FIRM) No. 05143C0092 D, revised: July 21, 1999.

SURVEYOR'S DECLARATION:

I hereby declare that this plat does not represent an actual ground survey, performed under my supervision. The information shown hereon, is the result of a plot of survey by G. Alan Reid, AR PLS No. 1003, dated May 01, 2000, for the [Signature] Group (Job No. 00115).

by: *Michael B. Moore* 10-15-01
 Michael B. Moore, AR PLS No. 1174

SURVEY DESCRIPTION:

A portion of Lot 10 of Bert Lewis Subdivision to the City of Fayetteville, being situated in the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 17, Township 16 North, Range 30 West of the 5th Principal Meridian, Washington County, Arkansas, being more particularly described as follows, to-wit:

Beginning at a point at the intersection of the Easterly line of said Lot 10 and the Northerly right-of-way line of West 6th Street, said point being 200.18 feet West and 210.39 feet North of the Southeast Corner of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 17, thence along said right-of-way S86 $^{\circ}$ 17'16"W 153.70 feet to a point along the Westerly line of said Lot 10; thence along the Westerly line of Lot 10, North 520.65 feet to a point along the Southerly right-of-way of Mitchell Street; thence along said right-of-way S89 $^{\circ}$ 59'33"E 153.38 feet to a point along the Easterly line of said Lot 10; thence along the Easterly line of Lot 10, South 510.68 feet to the Point-of-Beginning, containing 1.81 acres (79,092 sq. ft.), more or less, subject to all rights-of-way, servitudes and/or easements, of record or otherwise.

File 018A-00000002

EASEMENT PLAT	
J.D. CHINA RESTAURANT Fayetteville, Arkansas	
EDA Engineering Design Associates, P.A. 114 West Emma Avenue Springdale, Arkansas 72764 Tel: (500) 756-1266 Fax: (500) 756-2129	Consisting Engineering Landscape Architecture Land Surveying
	DRAWN BY: MBM CHECKED BY: AWF DATE: 6-15-01 SCALE: 1" = 100' JOB NUMBER: 0491 FILE NAME: 0411EASE.DWG
DESCRIPTION: C:\Land Projects\aed\0191\ndwg\0491EASE.dwg 08/14/2001 04:02:19 PLO CBT	SHEET 1 OF 1

FILED FOR RECORD
 WASHINGTON CO. CLERK
 B. STAMPS
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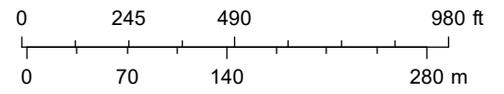
Fayetteville, AR



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|------------------------|--------------------------|------------------------|
| Survey Monument | Error | Conservation Easement |
| Section Corner | GPS Point | Landscape Easement |
| 1/4 Corner | Ref | Trail Easement |
| QQ Corner | General Utility Easement | Tree Preservation Area |
| City Ref | Access Easement | Water/Sewer Easement |
| Corner By GPS | Avigation Easement | Other Easement |
| Destroyed | Drainage Easement | |



The data contained herein was compiled from various sources for the sole use and benefit of the City of Fayetteville Geographic Information System and the public agencies it serves. Any use of the data by anyone other than the City of Fayetteville is at the sole risk of the user; and by acceptance of this data, the user does hereby agree to indemnify the City of Fayetteville and hold the City of Fayetteville harmless from and without liability for any claims, actions, cost for damages of any nature, including the city's cost of defense, asserted by user or by another arising from the use of this data. The City of Fayetteville makes no express or implied warranties with reference to the data. No word, phrase, or clause found herein shall be construed to waive that tort immunity set forth under Arkansas law.