

City of Fayetteville Staff Review Form

2017-0211

Legistar File ID

5/2/2017

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

Andrew Garner

4/14/2017

City Planning /
Development Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a resolution to sell approximately 5 acres of land (part of parcel 765-16578-001) in the Fayetteville Commerce Park located east of 2435 S.Industrial Drive to Brian Faight, Executive Vice President of Adcomm for \$75,000.

Budget Impact:

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

V20140710

Previous Ordinance or Resolution # 143-13

Original Contract Number:

Approval Date:

Comments:

MEETING OF MAY 2, 2017

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff

FROM: Andrew Garner, City Planning Director

DATE: May 2, 2017

SUBJECT: Sale of 5 acres of land in the Commerce District to Brian Faught, Executive Vice President of Adcomm

RECOMMENDATION:

City Staff recommends approval of a contract with Brian Faught, Executive Vice President of Adcomm for the sale of approximately 5 acres of land owned by the City of Fayetteville east of 2435 Industrial Drive in the Fayetteville Commerce Park, for a purchase price of \$75,000.

BACKGROUND:

The property (part of parcel 765-16578-001) is located on an undeveloped parcel east of the City's Water and Sewer Building at 2435 Industrial Drive. The City was recently approached by Brian Faught to purchase this property. Mr. Faught is the Executive Vice President of Adcomm and intends to develop the property under his new company, AR-Canna, with a medical marijuana cultivation facility. The company's plans include the following:

- Construction of a 30,000 sq. ft. medical marijuana cultivation and processing plant, using local construction labor.
- Construction of a 5,000 sq. ft. office complex, using local construction labor.
- Hiring the following employees:
 - 35-40 hourly employees at a starting wage of \$15.00 per hour.
 - 3-5 managerial employees with an annual salary in the \$50,000-\$75,000 range.
 - 2 senior managerial positions with an annual salary in the \$75,000-\$125,000 range.
- AR-Canna is using a Fayetteville architecture firm for the plans and construction drawings for both facilities.
- AR-Canna will hire a local contractor to oversee all aspects of the construction.
- Phase 1 is to build these two facilities now, and with the 5 acres there is room to build a second and third cultivation facility as the industry matures.

DISCUSSION:

The attached land sale agreement has been reached through negotiations between the City and Brian Faught, representing the entity purchasing the property. The proposal is to sell the property for approximately \$15,000 per acre, at a total price of \$75,000. This price represents a reduced rate from the currently advertised \$20,000 per acre of land in the Commerce District, but reflects the purchase price that the City Council approved for a nearby parcel in 2013 to Pacific Vet Group

when that company was looking to locate on the property. The Mayor's office is excited to welcome a new, clean industry to Fayetteville, meeting the goals of our Fayetteville First economic development plan, particularly in the Specialized Technologies sector offering competitive wages. The staff believes a development of this type on the property will increase property value, contribute to our tax base and overall have a positive economic impact for Fayetteville as the Commerce District continues to develop over time.

City Code §34.27 establishes requirements regarding public notice and procedure for the sale of real property owned by the City of Fayetteville. City staff has performed all necessary public notification procedures in compliance with this city ordinance (documentation attached). Additionally, the City Council must establish that this land is no longer needed for municipal purposes. As a purpose of the Commerce District is to encourage economic development that generates revenue for the City by providing new and expanded services, and finding that there is no identified use for the subject property for municipal purposes, this land is no longer needed for municipal purposes.

BUDGET/STAFF IMPACT:

\$75,000 in sale revenue will be paid to the fund that maintains ownership of the land.

Attachments:

- Land Sale Agreement
- Offer Letter
- Proof of Public Notice (sign, letter, and newspaper notice)
- Location Map(s)

LAND SALE AGREEMENT

This Land Sale Agreement is made and entered into by and between the City of Fayetteville, Arkansas, a municipal corporation of the State of Arkansas (hereinafter "City" or "Fayetteville") and AR-Canna LLC.

The City of Fayetteville agrees to sell a parcel of about 5 acres in the Fayetteville Commerce District to AR-Canna LLC for SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) and AR-Canna LLC's performance of all of the terms, conditions and promises set forth in this Agreement.

AR-Canna LLC agrees to pay to the City of Fayetteville SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) for this 5 acre parcel and to perform all of the terms, conditions and promises set forth later in this Agreement.

TERMS AND CONDITIONS

1. *Sale*

Subject to existing easements and rights of way and subject to the terms and conditions, mutual promises and covenants of this Agreement, the City of Fayetteville agrees to sell a parcel of about 5 acres (hereinafter the "**Development Site**") located in the Fayetteville Commerce District by warranty deed to AR-Canna LLC for the amount of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00). This Development Site is shown on the map attached as Exhibit A and shall be more particularly described in a survey obtained by AR-Canna LLC prior to closing.

The Development Site shall be located immediately the east of an 80 foot right of way to be reserved by the City that shall extend from the end of the existing South Industrial Drive to the southwest as shown in Exhibit A.

2. *Purchase*

Subject to the terms and conditions, mutual promises and covenants of this Agreement, AR-Canna LLC agrees to buy the Development Site for SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) to be paid to the City of Fayetteville on or before the Closing Date as follows:

A. Earnest money deposit: An earnest money deposit in the amount of TWO THOUSAND FIVE-HUNDRED DOLLARS (\$2,500.00) shall be paid by AR-Canna LLC to the City of Fayetteville at the time this Agreement, signed by AR-Canna LLC, is submitted to the City for approval. If the purchase and sale is consummated, this earnest money deposit shall be applied to the purchase price at closing. If the City or AR-Canna LLC exercises its option to terminate the Agreement pursuant to paragraphs 8, 9 or 10, this earnest money deposit shall be refunded in full. If the transaction is not consummated for any other reason, the earnest money deposit shall be refunded less the City's actual incurred costs, if any, of obtaining the owner's title policy and title commitment.

B. Balance: The remaining balance of the purchase price in the amount of SEVENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$72,500.00) shall be paid to the City of Fayetteville on or before the Closing Date.

3. *Closing Date and Place*

Closing shall occur within 60 days following the date this Agreement has been executed by both parties unless extended by mutual agreement of the parties in writing. The Closing shall occur at 113 West Mountain Street, Fayetteville, Arkansas in a room supplied by the City of Fayetteville.

4. *Date of Possession*

Possession of the Development Site shall be delivered to AR-Canna LLC on the Closing date free of any tenancies or other third party possessory rights.

5. *Title Insurance*

The City of Fayetteville shall order a title commitment on the Development Site, as soon as practicable following the full execution of this Agreement, through a title insurance company selected by the City and acceptable to AR-Canna LLC. If the report on title, binder or commitment discloses any defects in title (other than liens or encumbrances of a definite or ascertainable amount which may be paid at closing), the City shall have thirty (30) days from the date of AR-Canna LLC's notice of such defects to make a good faith effort to cure such defects and to furnish a report showing the defects cured or removed. If such defects are not cured within thirty (30) days, AR-Canna LLC may terminate this agreement or may, at its election, take title subject to any such defects. The cost of the title commitment and the cost of the owner's title policy shall be borne by the City of Fayetteville. The cost of any lender's title policy and extended owner's title insurance coverage shall be borne by AR-Canna LLC.

6. *Deed and Other Documents*

At least seven days before the Closing date, AR-Canna shall obtain a survey at its sole cost containing a legal description of the Development Site as well as the legal description of future right of way 80 feet wide extending from the northwest corner of the Development Site southwest to the boundary of Parcel # 765-16578-001 as shown in the map attached as Exhibit A.

On the Closing date, the City of Fayetteville shall convey marketable and insurable title to the Development Site by general warranty deed, free and clear of all liens, restrictions, and encumbrances except as provided in this Agreement, subject only to current real estate taxes, if any (to be apportioned between the parties) and existing easements. AR-Canna LLC and the City of Fayetteville shall equally share the cost a reasonable closing fee imposed by the closing agent employed by parties provided however that AR-Canna LLC shall be responsible for any revenue

stamps resulting from this transaction and all recordings fees for the deed and other documents that need to be filed.

7. *Risk of Loss*

Risk of loss as to the Development Site shall remain with the City of Fayetteville until the Closing date.

8. *AR-Canna LLC's Due Diligence*

AR-Canna LLC may enter upon the Development Site to conduct any surveying, testing or inspection it deems necessary to ensure the Development Site will be appropriate for the construction and use for its facility. If AR-Canna LLC discovers any problems that would adversely impact its development and use of the Development Site for its facility, AR-Canna LLC shall notify the City which is granted sixty (60) days to remediate any problem. The City may also terminate this Agreement without penalty rather than remediating any problem or issue discovered by AR-Canna LLC. Likewise, if the City does not remediate the problem, AR-Canna LLC may terminate this Agreement without penalty, being entitled to a return of its earnest money, or proceed under this Agreement to accept the property without resolution of the problem.

9. *Large Scale Development Approval*

AR-Canna LLC shall, at its sole cost and expense, prepare a Large Scale Development plat of the Development Site and obtain any and all approvals necessary for AR-Canna LLC's intended use of the Development Site for its facility. The City shall reasonably cooperate with AR-Canna LLC in AR-Canna LLC's request for development approval of its facility. AR-Canna LLC must present its development proposal through the normal City process and follow the Unified Development Code requirements. AR-Canna LLC may defer Closing hereunder during such time as its Development plat and approvals are pending review by the City, and if such are not approved, AR-Canna LLC may terminate this Agreement without penalty, being entitled to a return of its earnest money, or proceed under this Agreement to accept the property without development plans approved by the City.

AR-Canna, LLC agrees to construct a road to the City's specifications from the cul-de-sac at the end of South Industrial Drive to a stub-out at the southwest corner of the Development Site. Construction of the road (including approval by the City) shall be completed prior to the issuance of a final certificate of occupancy. Any future road extension shall be the responsibility of the City or the future developer of the remaining property to the south.

10. *Cultivation Facility License Approval*

AR-Canna LLC may defer Closing hereunder during such time as cultivation facility license application is pending review by the State of Arkansas, and if such is not approved, AR-Canna LLC may terminate this Agreement without penalty, being entitled to a return of its earnest money, or proceed under this Agreement to accept the property without being approved by the

State.

11. *Compensation to City of Fayetteville if Development Site is Sold Within 10 Years*

AR-Canna LLC is aware that the Development Site is being sold by the City at a discount of approximately \$5,000.00 per acre below its normal selling price. If any portion of the land conveyed by this contract is sold by AR-Canna LLC within the first five years of the date of closing, an independent appraisal of the land's value shall be performed to segregate the actual sales price between that allocable to the raw land as acquired by AR-Canna LLC, and that allocable to the improvements subsequently added by AR-Canna LLC. AR-Canna LLC shall pay 75% of the increase in appraised value of the raw land (with prorated sales cost deducted) to the City of Fayetteville. AR-Canna LLC shall pay the City of Fayetteville 40% of the increase in appraised value of the land (with prorated sales costs deducted) for any sales after 5 years until 10 years from the closing date.

12. *Notices*

Notices required by this Agreement shall be in writing and shall be delivered to:

AR-Canna LLC
ATTN: Brian Faught
7B Tara Mount Drive
Jacksonville, AR 72706

City of Fayetteville
ATTN: Mayor's Office
113 W. Mountain Street
Fayetteville, AR 72701 72701-6083

13. *Authority*

Each of the undersigned individuals represent and warrant that they are authorized to enter into this Agreement on behalf of their respective entities and that execution hereof will bind the entities to this Agreement.

14. *Counterparts*

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

15. *Facsimile*

For purposes of executing this Agreement, a facsimile signature shall be as effective as an actual signature.

16. *Applicable Law*

This Agreement shall be construed and enforced in accordance with the laws and public policies of the State of Arkansas.

17. *Survival*

The representations, warranties, and agreements of the parties contained herein shall survive the closing date.

18. *No Waivers*

The waiver by either party hereto of any condition or the breach of any term, covenant or conditions herein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained.

19. *Time of Essence*

Time is of the essence in this Agreement.

20. *Invalidity*

If for any reason any term or provision of this Agreement shall be declared void and unenforceable by any court of law or equity, it shall only affect such particular term or provision of this Agreement and the balance of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

21. *Complete Agreement*

All understandings and agreements heretofore existing between the parties are merged into this Agreement that alone fully and completely expresses their agreement. This Agreement may be changed only in writing signed by both of the parties hereto and shall apply to and bind the successors and assigns of each of the parties hereto and shall not merge with the deed delivered to AR-Canna LLC at closing.

Date: 4-18-17

Date: _____

AR-CANNA LLC

CITY OF FAYETTEVILLE,

By: 

BRIAN FAUGHT, President

By: _____

LIONELD JORDAN, Mayor

and Chief Executive Officer

WITNESS:

By: Deborah Cabanis
Deborah Cabaniss

ATTEST:

By: _____
Sondra E. Smith, City Clerk



To: Fayetteville, AR City Council

4-4-17

From: Brian Faught, Executive VP, Adcomm

RE: Fayetteville Industrial Park Parcel 765 16578 001, 5 acres

Ladies and Gentlemen,

Adcomm and Brian Faught are planning on applying for a “Medical Marijuana Cultivation License” with the state of Arkansas, and upon receiving said license, plans to construct its facility in the Fayetteville Industrial Park. As you may know, “Medical Marijuana” was approved by the people of Arkansas in the most recent election, and our new company, AR-Canna, is committed to launching this new product in a safe and legal manner in NWA. Please note the attached land plot (5 acres) as the desired piece of property for this endeavor. AR-Canna’s plans include:

- Construction of a 30,000 sq ft cultivation and processing plant, using local construction labor.
- Construction of a 5000 sq ft office complex, also using local construction labor.
- Hiring 35-40 employees to run the facility.
- Starting wage of \$15.00 per hour.
- 3-5 Managerial Positions with pay in the \$50,000 - \$75,000 pay range.
- 2 Senior Managerial Positions in the \$75,000 - \$125,000 pay range.
- AR-Canna is using a Fayetteville architecture firm for the plans and construction drawings of both facilities.
- AR-Canna will also hire a local contractor to oversee all facets of the buildout.

- The plan is to build these two facilities now, and with the 5 acres, have room to build a second and third cultivation facility as the industry matures.

Adcomm and Brian Faught are prepared to offer \$75,000 for the attached 5 acre plot, with a \$2500.00 earnest money deposit, contingent upon AR-Canna being awarded the cultivation and processing license from the state of Arkansas. If AR-Canna is not awarded a license, the earnest money will be returned.

We truly believe that AR-Canna will be a welcome and productive member to the Fayetteville business community, and would like our offer to be considered by the city council in the upcoming April meeting.

Thanking you in advance for your time and consideration,

Sincerely,

Brian Faught, Executive VP Adcomm
501-993-0476



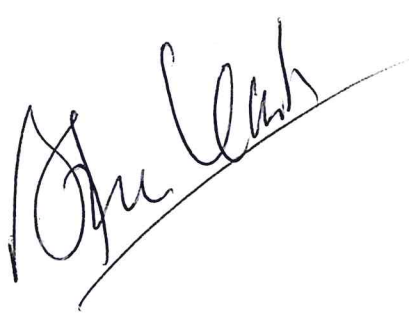
To: Mayor Lioneld Jordan
City of Fayetteville

CC: Don Marr, Chief of Staff

From: Steve Clark, CEO & President

Date: April 17, 2017

Subject: Recommendation to approve the sale of city-owned land, Parcel # 765-16578-001 to AR- Canna, LLC



AR-Canna, LLC is a new business set up by Brian Faught of Little Rock, Arkansas. The company is in the process of applying for a “Medical Marijuana Cultivation License” and the purchase of this piece of land helps in the said application. “Medical Marijuana” was approved by the people of Arkansas in the most recent election (2016) and AR-Canna is committed to launching this new product in a safe and legal manner in northwest Arkansas.

AR-Canna, LLC had looked at a few sites within the Fayetteville Commerce District with the assistance of the Fayetteville Chamber. After holding discussions and communications with the Chamber and the City, AR-Canna, LLC is now ready to offer to buy 5 acres of land owned by the city in the Fayetteville Commerce District. The 5 acres is a portion of the 24 acres, Parcel # 765-16578-000. Attached is the letter of offer from AR-Canna, LLC and a map of the property.

AR-Canna plans to construct a 30,000 SF cultivation and processing plant using local construction labor. There will also be a 5,000 SF office complex. When fully operational, AR-Canna is expected to hire 35-40 employees with starting wage of \$15 per hour for operational workers. Management positions fall within the range of \$50,000 to \$125,000 and the company plans to hire 5-7 managers. AR-Canna has retained a Fayetteville architecture firm to design the property and a local construction company is expected to be retained to help with the construction.

We recommend that the City leadership supports this project by approving the sale of the land to AR-Canna, LLC.

This project:

- 1) Meets the City's and State's goal of creating new jobs for Fayetteville and so the state of Arkansas
- 2) Contributes a minimum of annual payroll of \$1.2 million when fully operational
- 3) Meets the Fayetteville First's target sectors—Entrepreneurship

CERTIFICATE OF SIGN POSTING



I, Andrew Harrison,
attest that the above sign was posted on April 11, 2017 at the corner of Industrial &
Pump Station Rd. and a second sign was posted on the subject parcel east of 2435
Industrial Drive on April 11, 2017.

A handwritten signature in blue ink, appearing to read 'Andrew Harrison', written over a horizontal line.

(signature of person completing the sign posting)

City File No./Name: ADM 17-5787

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached written notice was placed in the U.S. mail, first-class, postage prepaid this 11th day of April, 2017, and

addressed as follows:

*Name: Matrix Investments, LLC
Street: 1197 Happy Hollow Rd.
City, State, Zip: Fayetteville, AR 72701*

*Name: Marshalltown Co.
Street: 2200 S. Industrial DR
City, State, Zip: Fayetteville AR 72701*

*Name: HFNWA, Inc.
Street: 1601 E. Pump Station Rd.
City, State, Zip: Fayetteville, AR 72701*

*Name: Bright Investments, LLC
Street: 2501 S. Armstrong Ave.
City, State, Zip: Fayetteville, AR 72701*

Andrew Harrison

(name of person completing the mailing)

Andrew Harrison

(signature of person completing the mailing)

City File No. /Name: _17-5787



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS

CITY PLANNING DIVISION

125 West Mountain

Fayetteville, AR 72701

Phone (479) 444-3443

April 11, 2017

Name

Address

City, State, Zip

Re: Public Notice – Sale of municipally owned real property

Dear Property Owner:

Please be aware that the Fayetteville City Council will consider a Resolution and Contract to sell to Adcomm, Inc. about 5.0 acres (a portion of parcel 765-16578-001) it owns on S. Industrial Dr. for \$75,000. The property currently contains no structures. It is zoned I-2, General Industrial. Should the sale be approved, planned improvements include the development of a medical marijuana cultivation facility.

This possible sale will be considered by the City Council during its 5:30 p.m. meeting held on May 2, 2017 in Room 219 of City Hall, located 113 W. Mountain Street.

If you wish to learn more about this proposed sale, please contact Andrew Garner, Planning Director at 479-575-8262. You may also attend the May 2, 2017 City Council meeting and ask questions or make comments when this resolution is presented for City Council consideration.

Sincerely,

Andrew Garner
Planning Director
City of Fayetteville, Arkansas

NORTHWEST ARKANSAS Democrat Gazette

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AFFIDAVIT OF PUBLICATION

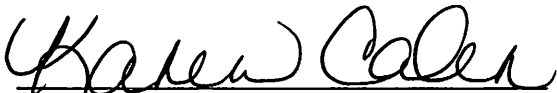
I Karen Caler, do solemnly swear that I am the Legal Clerk of the Northwest Arkansas Democrat-Gazette, printed and published in Washington County and Benton County, Arkansas, and of bona fide circulation, that from my own personal knowledge and reference to the files of said publication, the advertisement of:

CITY OF FAYETTEVILLE
City council meeting

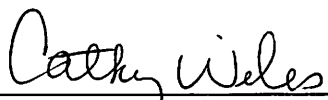
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April 12, 2017

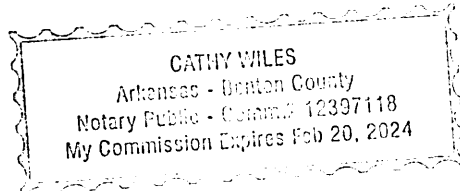
Publication Charges: \$ 54.60


Karen Caler

Subscribed and sworn to before me
This 13 day of Apr, 2017.



Notary Public
My Commission Expires:

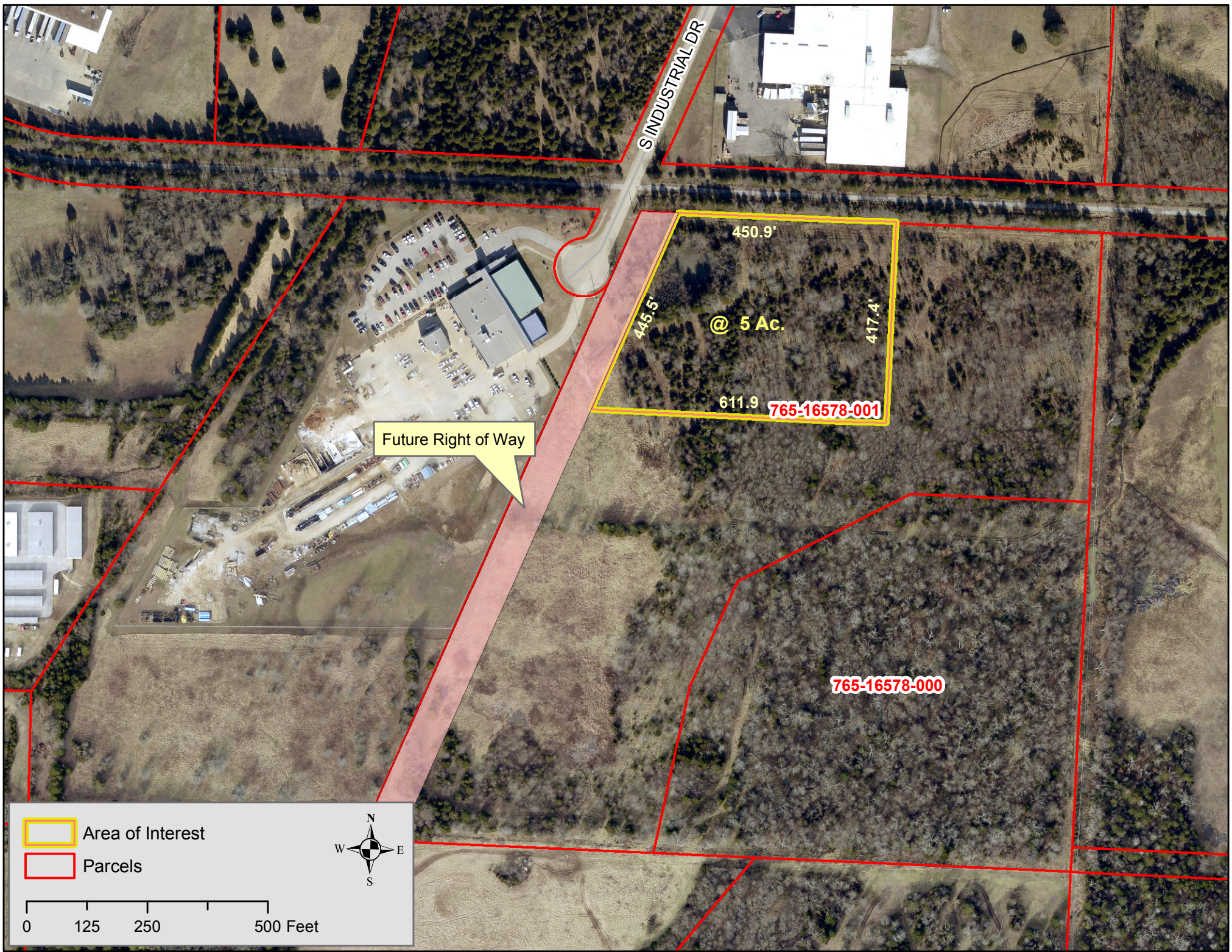


****NOTE****

Please do not pay from Affidavit.
Invoice will be sent.

NOTICE OF PUBLIC HEARING

A meeting of the City of Fayetteville City Council will be held on May 2, 2017 at 5:30 p.m., in room 219, Fayetteville Administration Building at 113 W. Mountain Street, Fayetteville, Arkansas, 72701. The following item is required to be published in the local newspaper pursuant to the Code of Ordinances of the City of Fayetteville and will be heard at the May 2, 2017 Fayetteville City Council meeting. 17-5787: SALE OF MUNICIPALLY OWNED REAL PROPERTY, 642): Submitted by CITY STAFF for property located EAST OF 2435 INDUSTRIAL DRIVE. The Fayetteville City Council is considering the sale of about 5 acres it owns EAST OF 2435 INDUSTRIAL DRIVE to Brian Faught, Executive Vice President of Adcomm, for \$75,000.00. The proposed use of the property is for a medical marijuana cultivation facility. This possible sale will be considered by the City Council during its May 2, 2017 meeting at 113 W. Mountain Street, Room 219.
74096442 April 12, 2017



ADM 17-5787

Current Land Use

CITY OWNED PROPERTY SALE



- Streams
- Street

Streets Planned

MSP Class

- MINOR ARTERIAL
- MINOR ARTERIAL
- Shared Use Paved Trail
- Trail (Proposed)
- Planning Area
- Fayetteville City Limits

Feet

0 180 360 720 1,080 1,440

1 inch = 500 feet

FEMA Flood Hazard Data

- 100-Year Floodplain
- Floodway