



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-296

A RESOLUTION TO APPROVE POTABLE DOMESTIC WATER ACC

A RESOLUTION TO APPROVE POTABLE DOMESTIC WATER ACCESS TO ELLIS ESTATES SUBDIVISION'S PRELIMINARY PLAT WHICH WAS APPROVED BY THE CITY ON AUGUST 9, 2021 FOR 53 WATER TAPS

WHEREAS, on August 9, 2021, Preliminary Plat PPL-2021-11 was approved by the Planning Department and Engineering Department; and

WHEREAS, the approved preliminary plat was for a 53 residential development in the unincorporated part of Washington County east of Fayetteville and within the City of Fayetteville Water District; and

WHEREAS, the property owner received allowed extensions from the City to begin work with the last extension requiring beginning of development work by August 9, 2024; and

WHEREAS, the property owner applied for a grading permit which was approved, but expired on February 17, 2024; and

WHEREAS, when the property owner applied for a replacement grading permit on May 16, 2024, the request was denied because the City now opined that no grading permit was authorized because of a reinterpretation of Section 51.112 (C) of the *Fayetteville Code* to now require express and individualized approval by the City Council for the City to allow domestic potable water to supply an development beyond the city limits of Fayetteville into an unincorporated area of Washington County within Fayetteville's Water District; and

WHEREAS, unless the City Council promptly and expressly authorizes the extension of potable, domestic water to Ellis Estates Subdivision so a grading permit can be approved, the City approved Preliminary Plat will expire to the financial detriment to the property owner.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby expressly approves the extension of domestic potable water to Ellis Estates Subdivision pursuant to § 51.112 (C) and Preliminary Plat PPL-2021-11.



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Senior Assistant City Attorney

Hannah Hungate
Assistant City Attorney

Stacy Barnes
Paralegal

TO: Mayor
City Council

CC: Susan Norton, Chief of Staff
Tim Nyander, Utilities Director

FROM: Kit Williams, City Attorney

A handwritten signature in blue ink, appearing to read "Kit Williams", with a long horizontal flourish extending to the right.

DATE: June 25, 2024

RE: Resolution to authorize water for the approved Ellis Estates Subdivision

Ellis Estates Subdivision had its Preliminary Plat (PPL-2021-11) approved by Planning and Engineering on August 9, 2021. The approval was extended until August 9, 2024. Engineering approved a grading permit for this preliminary plat, but it expired on February 17, 2024 before grading was accomplished.

When the owner of Ellis Estates Subdivision applied for a replacement grading permit on May 16, 2024, the permit was not approved by Engineering because of a change of interpretation of a *Fayetteville Code* section that now requires the City Council to expressly approve any water to be used in an unincorporated area of our Fayetteville Water District. This changed two decades' of practice and policy that did not require express City Council approval before extending water access into the county.

Please see Mr. Elkins letter to me explaining his situation and his documents showing his Preliminary Plat for Ellis Estates Subdivision had been approved in 2021.

June 20, 2024

Chris Elkins
Ellis Estates Subdivision
PO Box 9175
Fayetteville, AR 72703

Mr. Williams,

I am writing this letter to explain the timeline of events associated with the Ellis Estates Subdivision in East Fayetteville. I started talking to Mr. Roop who was the landowner in 2016 and remained in contact with his son Gary Roop after his father passed away in 2019. Gary decided to sell the property to me in June 2021 and that is when I started working on the project. I hired Blew & Associates to survey, engineer the design and obtain approval of the subdivision. I hired Jack Tyler Engineering on July 26, 2021 to design the step system. After several delays with Jack Tyler due to the original designer leaving the company, Jack Tyler hired PMI to resume the project.

During this time, we were also working through the subdivision approval process with the City of Fayetteville. We received Preliminary Plat approval on August 9, 2021, Plan Number: PPL-2021-000011. Over the past three years we have had to extend the approval due to rising cost associated with construction, timeline on materials and final approval from ADH & ADEQ. The approval process with these agencies has taken longer than expected due to additional requirements that have been newly adopted. One example is a Geological and Hydrogeologic Investigation and Assessment Report which took four months to complete.

I applied for a grading permit which was approved but I decided not to start the grading, since we were still waiting on additional approvals and that permit expired on February 17, 2024. Now that I feel comfortable with the other approvals, I applied for a new grading permit on May 16, 2024, but it did not pass due to the following comment: Based on UDC 51.112(C) water extensions in unincorporated Washington County shall not occur but on the express approval of City Council. Please reach out to utilities (Corey Granderson) if there are any questions concerning this. This is the first time I have heard of this and to my knowledge the City of Fayetteville has not enforced this or interpretation the Code this way since inception, until recently.

In closing I want to state that I have worked on this project for over three years and have purchased the land, paid for interest carry, engineering & design work, step system design just to name a few of the expenses associated with this project. It is hard for me to accept that since Ellis Estates was approved by the City of Fayetteville Planning on August 9, 2021, it would be denied grading approval over a new interpretation of above code. I feel the new interpretation should not affect the grading

approval since I received approval in the past and all subdivisions that have been approved since inception of the code did not have to comply with the new interpretation. I would understand if the code was changed since my approval, but nothing has changed. If the City would like to enforce the new interpretation for a new subdivision, I could see that but not for a subdivision that is already approved. If the city does not recognize the new interpretation should not apply to this subdivision, then I would like to be added to the next City Council meeting to ask for approval for the water extension. My Preliminary Plat approval will expire on August 9, 2024 and I have used all extensions. If the approval expires, I will have to start the entire subdivision approval process over.

As for the moratorium on water taps in East Fayetteville, I feel it should not apply to a subdivision that was approved in 2021 and the moratorium was placed four or so months ago. The city is fully aware of Ellis Estates approval and the 53 water taps should have been taken into consideration when the city approved the subdivision. Fayetteville is a water district and is the only source of water in this area. How can the City of Fayetteville deny water for a subdivision they approved? I have attached a list of all the city approvals for the subdivision which includes the engineering approval which covers water taps.

Thank you



Chris Elkins
479-387-7194

Fwd: Ellis Estates Information

From: Jessica Teal (teal@blewinc.com)
To: broker6933@yahoo.com; buckley@blewinc.com
Date: Thursday, June 20, 2024 at 02:46 PM CDT

Hey Chris,
Please see below!
Thanks!

----- Forwarded message -----
From: **Cody Sexton** <cody.sexton@blewinc.com>
Date: Thu, Jun 20, 2024 at 2:03 PM
Subject: Ellis Estates Information
To: Jessica Teal <teal@blewinc.com>

City of Fayetteville has approved extending the date of the Preliminary Plat of the 59 residential lots - Approval Expires on 8-9-2024
The original Plat reviews from the City are below and are as follows.

Plan Number: PPL-2021-000011

[Plan Details](#) | [Tab Elements](#) | [Main Menu](#)

Type:	Preliminary Plat	Status:	Approved	Project Name:	
Applied Date:	06/02/2021	Expiration Date:			
District:	Default	Assigned To:		Completion Date:	08/09/2021
		Approval Expiration Date:	08/09/2024		
Description:	Preliminary Plat for Ellis Estates S/D - Submitted by Blew & Assoc. Inc. for properties located at 4698 E. Mission Blvd. The propertie the Fayetteville Planning Area and contain approx. 24.70 acres. The request is for the preliminary plat of 59 residential lots. PP 297 59 Lot Residential Subdivision 53 Buildable Lots				

Subdivision Committee Review - CCP

Submittal Status	Received Date	Due Date	Completed Date
Requires Re-submit	07/21/2021	07/26/2021	07/29/2021

❗ 911/Addressing • Requires Re-submit • Coaty Gunder • Completed : 07/23/2021

✅ Urban Forestry • Not Required • Scott John • Completed : 07/23/2021

✅ Solid Waste • Not Required • Cook Andrew • Completed : 07/26/2021

✅ Planning - Tech Plat Review • Approved • Umberger Ryan • Completed : 07/29/2021

✅ Parkland Dedication • Not Required • Scott John • Completed : 07/23/2021

✅ GIS • Approved • Jorgensen Todd • Completed : 07/21/2021

✅ Fire Marshal - Tech Plat Review • Not Required • Wandstrat Brian • Completed : 07/22/2021

✅ Engineering • Approved • Ely Jonathan • Completed : 07/23/2021

The Arkansas Department of Health - I looked it up, it appears that ADH has not fully approved yet, and that their approval is contingent upon the approval of the Sanitary System, which has been submitted by Pollution Management, INC. (PMI). This was as of 6-14-24.

Please let me know if I need to try to find any additional information. I am ignorant of the project, but if there is something else specifically I need to try to find I can do so.

--
Sincerely,

Cody Sexton | PE
Vice President | Engineering

cody.sexton@blewinc.com
O: (888) 933-2111
www.blewinc.com



Jessica Teal
Vice President | Business Operations

teal@blewinc.com
C: 501-620-0483
O: 888-933-2111
www.blewinc.com



Pennington, Blake

From: Berna, Scott
Sent: Tuesday, June 25, 2024 1:34 PM
To: Williams, Kit; Nyander, Tim; Granderson, Corey; Boccaccio, Joshua
Cc: Pennington, Blake
Subject: Re: Authority for moratorium and allowing water to approved development our of town

Please let this email serve as may approval for moving forward with the resolution.

Scott Berna

From: Williams, Kit <kwilliams@fayetteville-ar.gov>
Sent: Tuesday, June 25, 2024 12:16 PM
To: Berna, Scott <scott.berna@fayetteville-ar.gov>; Nyander, Tim <tnyander@fayetteville-ar.gov>; Granderson, Corey <cgranderson@fayetteville-ar.gov>; Boccaccio, Joshua <jboccaccio@fayetteville-ar.gov>
Cc: Pennington, Blake <bpennington@fayetteville-ar.gov>
Subject: RE: Authority for moratorium and allowing water to approved development our of town

Scott,

With pushback and delay from Tim on the ordinance changes, I believe that we need to go to Plan B and also just present a resolution approving the extension of water for Ellis Estates. We will not need an emergency clause for this resolution. We may even not have to have it walked on this afternoon, but if we wait until the July 16th meeting, we are cutting it close for the property owner to apply again for the grading permit, wait for its approval, and get grading actually underway before his preliminary plat expires on August 8th or 9th.

Regardless, we still need those two proposed amendments to the *Fayetteville Code* to correct their reinterpretation of decades' old policy not requiring express authority for extension of water into the unincorporated area of our Fayetteville Water District and to authorize a moratorium to protect our 25 p.s.i. pressure needs.

Please review the proposed Resolution and let me know if changes are needed.

Kit

From: Nyander, Tim <tnyander@fayetteville-ar.gov>
Sent: Tuesday, June 25, 2024 10:17 AM
To: Berna, Scott <scott.berna@fayetteville-ar.gov>; Williams, Kit <kwilliams@fayetteville-ar.gov>
Cc: Granderson, Corey <cgranderson@fayetteville-ar.gov>; Boccaccio, Joshua <jboccaccio@fayetteville-ar.gov>; Pennington, Blake <bpennington@fayetteville-ar.gov>
Subject: RE: Authority for moratorium and allowing water to approved development our of town

With two ordinance revisions of this nature, it is my opinion that we should have the opportunity to present this to the Water, Sewer & Solid Waste Committee on July 9th and allow for discussion.

If the concern is the hot weather and the shortage of water, we are already in that condition. Our plan is to send out the water conservation notice through Lisa Thurber in the very near future.

Please let me know your thoughts.

Thanks,

Tim Nyander
Utilities Director
City of Fayetteville

T 479-575-8386

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



CITY OF
FAYETTEVILLE
ARKANSAS

From: Berna, Scott <scott.berna@fayetteville-ar.gov>

Sent: Monday, June 24, 2024 3:59 PM

To: Williams, Kit <kwilliams@fayetteville-ar.gov>

Cc: Nyander, Tim <tnyander@fayetteville-ar.gov>; Granderson, Corey <cgranderson@fayetteville-ar.gov>; Boccaccio, Joshua <jboccaccio@fayetteville-ar.gov>; Pennington, Blake <bpennington@fayetteville-ar.gov>

Subject: Re: Authority for moratorium and allowing water to approved development our of town

Thanks Kit. I will review. One quick glance I noticed in both ordinances in the emergency clause section you have "facing water shortage west of Fayetteville toward Goshen". That should be East of Fayetteville.

I will await input from Tim and Corey on this as well.

Scott

From: Williams, Kit <kwilliams@fayetteville-ar.gov>

Sent: Monday, June 24, 2024 3:44 PM

To: Berna, Scott <scott.berna@fayetteville-ar.gov>

Cc: Nyander, Tim <tnyander@fayetteville-ar.gov>; Granderson, Corey <cgranderson@fayetteville-ar.gov>; Boccaccio, Joshua <jboccaccio@fayetteville-ar.gov>; Pennington, Blake <bpennington@fayetteville-ar.gov>

Subject: Authority for moratorium and allowing water to approved development our of town

Scott,

Attached are two possible code changing ordinances that would allow non-firefighting water to be extended to county residents within Fayetteville's water district (at their expense) without the need for an individual city council approving resolution or contract. This would basically reinstate what I think had until recently been the longstanding practice before the recent reinterpretation. The second ordinance would provide explicit moratorium power to the Mayor and Tim to declare a moratorium to try ensure we could maintain water pressure of at least 25 p.s.i. for health reasons. I invite Tim and Corey and Josh to provide input and suggest needed changes, additions or deletions.

Scott, To help in the immediate problem of the approved development that is about to expire, these would need to be walked on tomorrow with emergency clauses as I have written. Please let me know whether these are what you would like to sponsor.

Kit