

# AFFIDAVIT OF C. TAD BOHANNON


I, C. Tad Bohannon, first being duly sworn, upon oath state of personal knowledge:

1. I am C. Tad Bohannon, Chief Legal Counsel at Central Arkansas Water ("CAW"). I am authorized by CAW to submit this affidavit, which I understand will be used to support CAW's Objections to the Petition for Incorporation of the Town of Little Italy.

2. I personally prepared the attached letter dated December 16, 2015, with the assistance of various staff members at CAW.

5. The facts alleged in this affidavit are true and accurate to the best of my knowledge, information, and belief.

FURTHER, AFFIANT SAYETH NOT.



C. Tad Bohannon, Chief Legal Counsel

## ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF SALINE

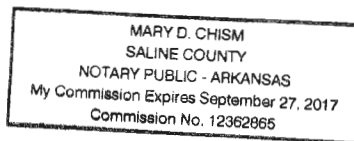
On this the 16<sup>th</sup> day of December, 2015, before me, a Notary Public, personally appeared C. Tad Bohannon, an individual, who executed the foregoing instrument for the purposes therein contained, by signing his name thereto.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

9-27-17



FILED 12/16/15 11:36:21  
Larry Crane  
Pulaski Circuit Clerk

December 16, 2015

Pulaski County Court  
c/o County Records  
Attn: Marriage License Section  
401 West Markham  
Little Rock, AR 72201

Re: Proposed incorporation of the Town of Little Italy, Instrument No. 2015033208

Judge Hyde,

Central Arkansas Water (CAW) by and through C. Tad Bohannon, Chief Legal Counsel for CAW, submits these comments to the County Court for consideration in the above referenced matter.

CAW is a consolidated municipal water system created and existing under the Consolidated Waterworks Authorization Act, Act 982 of the 83<sup>rd</sup> General Assembly of the State of Arkansas. CAW is governed by a Board of Commissioners and is an owner of approximately 28,000 acres of land and water within the Lake Maumelle Watershed in northwest Pulaski County in the vicinity of the proposed Town of Little Italy ("the proposed Town"). Approximately 90% of the proposed Town is within the Lake Maumelle watershed, which is the primary water source for 400,000 individuals throughout central Arkansas.

For reasons stated in more detail below, CAW opposes the incorporation of the proposed Town because the proposed incorporation will automatically remove over 5,600 acres of real property from the water quality protections provided by the Pulaski County Lake Maumelle Watershed Zoning Code and Chapter 8 of the Pulaski County Subdivision and Development Code. CAW believes that the County Court should deny the petition for incorporation because it does not comply with the requirements set forth in state law for the incorporation of a municipality.

CAW states that that the petition for incorporation should be denied because the incorporation is not right and proper and is not in the best interest of the citizens of Pulaski County or the citizens within the proposed Town. Specifically, the petition should be denied because:

1. The proposed Town is unreasonably large;
2. The land to be included in the proposed Town is primarily timber and agricultural land and is therefore not suited for municipal purposes or "adapted for urban use";
3. A primary purpose of the incorporation is to avoid regulation from other municipalities and Pulaski County rather than to obtain municipal benefits;

4. The area to be included in the proposed Town inappropriately includes areas through “stovepipe” connections; and
5. The Petitioners have not obtained appropriate, documented consent of all municipal corporations within 5 miles of the proposed Town that have exercised their planning jurisdiction.

Any of these deficiencies by itself is sufficient to justify denial of the petition for incorporation. Taken together, they demonstrate that the petition suffers from serious procedural and substantive deficiencies that require its denial.

### **I. Background and Statements of Fact**

CAW has thoroughly researched the incorporation of the proposed Town and the area contained within the proposed Town. In gathering the information contained below, CAW has relied upon statements and documents from Little Italy petitioners (“the Petitioners”), information posted on [www.littleitalyarkansas.com](http://www.littleitalyarkansas.com), news coverage regarding the incorporation efforts of the proposed Town, publically available geographic information system (GIS) data and CAW analysis, publically available census data, publically available municipal audit data, and other sources of data. Following are facts regarding the proposed Town, the incorporation efforts, and land within the proposed Town:

#### ***Petition and Signatures:***

- 235 individuals signed the petition for incorporation.
- Petitioners submitted the petition on May 13, 2015.
- The Pulaski County Clerk certified 220 of the signatures on the petition as valid registered voters on May 14, 2015, and provided notice to the County Judge of said certification.
- CAW identified 2 of the 220 certified signatures as improper because the residence and associated property of the signatures are outside of the proposed Town boundary.
- Petitioners state that the purpose of incorporating is to preserve the 100-year history and rural character of the area “by preventing annexation or controls leveraged by another city government.”
- Petitioners state that benefits of incorporation include “prevent[ing] annexation or falling into extra-territorial jurisdictions of other municipalities” and “prevent[ing] a tax program from being established.”

#### ***Geographic Area***

- The proposed Town is approximately 5,606 acres or 8.8 square miles.
- Approximately 90%, or 5,044 acres, of the proposed Town is within the Lake Maumelle watershed.
- The 5,044 acres of the proposed Town within the Lake Maumelle watershed represent approximately 25% of the developable land within the Pulaski County portion of the Lake Maumelle watershed.

### ***Nearby Municipal Corporations***

- The proposed Town is within 5 miles of three municipal corporations that have exercised planning authority: the City of Bigelow, the Town of Fourche, and Pulaski County.
- Petitioners submitted resolutions from the City of Bigelow and the Town of Fourche granting consent for incorporation.
- Pulaski County has exercised its planning jurisdiction through the Pulaski County Subdivision and Development Code (most recently amended as of April 30, 2009) and a Comprehensive Land Use Plan for the Lake Maumelle Watershed and a Lake Maumelle Watershed Zoning Code, including areas within the proposed Town and within five miles of the proposed Town, on April 23, 2013.
- Petitioners have not obtained consent from the Pulaski County Quorum Court for incorporation.

### ***Population and Property Ownership***

- The population of the proposed Town is approximately 380 individuals.
- The population density of the proposed Town is approximately 43.4 individuals per square mile.
- Among a survey of the 153 Arkansas municipalities with populations of 200 to 601, Little Italy would have the second lowest population density and the second largest geographic area.
- Petitioners state that they intend to annex additional property within Perry County into the proposed Town if incorporation is successful.
- The 235 individuals who signed the petition for incorporation own approximately 1,590 acres of the 5,606 acres within the proposed Town, representing only 28% of the land within the proposed Town.
- CAW owns approximately seven acres within the proposed Town boundary (see map attached as Attachment A and deed to property as Attachment B).
- CAW owns 1,006 acres of property that is immediately adjacent to the proposed boundary, consisting of 11 parcels.
- CAW's 11 contiguous parcels include a border with the proposed Town of approximately 2.6 miles.

### ***Budget and Public Facilities***

- The budget for the proposed Town identifies revenue of \$36,643, consisting of \$16,350 of unrestricted revenue and \$20,292.85 in street fund revenue.
- The budget for the proposed Town does not include funds for police protection, professional services, or non-street labor.
- Among a survey of the 153 Arkansas municipalities with populations of 200 to 601, Little Italy would have the lowest revenue of any municipality.
- The proposed Town includes approximately 6.25 miles of County roads that, if incorporation is successful, would become the responsibility of the proposed Town.
- Petitioners have stated that the proposed Town intends to assume maintenance responsibility of some or all of the approximately 10.25 miles of private roads within the proposed Town.

- The proposed budget for the proposed Town allocates \$781 to \$2,064 per mile for street and road maintenance, or \$0.15 to \$0.39 per linear foot.
- Petitioners state that “no new taxes will be collected” from residents within the proposed Town.

### **Land Use**

- The land within the proposed Town is 84% forested, 11% pasture, 2% water, 1% developed, and 2% other unpaved surfaces according to 2009 high resolution land use and land cover data (see map in Attachment C).
- Approximately 65% of the land within the proposed Town is classified and taxed as timber property by the Pulaski County Assessor, 5% is classified as crop or pastureland, 29% is classified as residential property, and 1% is classified as water (see map in Attachment D). The proposed Town divides several tax parcels. Therefore, the classification data from the Pulaski County Assessor’s offices does not exactly match the area from the petition for incorporation and the Pulaski County Assessor’s data encompasses a total of 5,925.71 acres, rather than 5,606 acres. As a result, the percentages contained in this paragraph are based on an area approximately 320 acres larger than the proposed boundary of Little Italy.

## **II. Interested Party Status**

State law provides that “any person interested may appear and contest the granting” of the petition for incorporation. In addition, affidavits in support of or against the petition may be submitted for consideration by the County Judge. Ark. Code Ann. § 14-38-103(a)(2).

As the owner of property within the proposed boundary of Little Italy, the owner of other property contiguous to the proposed boundary of Little Italy, the owner of property in the Lake Maumelle watershed, and the owner of numerous other properties within Pulaski County, CAW is an interested party in these proceedings. As established in *Perkins et al v Holman et al*, 43 Ark. 219, 1884 Ark. LEXIS 46 (1884), “any person interested” under ACA §14-38-103(a)(2) includes all individuals with “any interests to be affected by the determination of the question.” CAW owns property within the proposed boundary of Little Italy. In addition, the substantial amount of property owned by CAW that is adjacent and contiguous to the proposed boundary of Little Italy will be directly affected by the incorporation of Little Italy because of any planning, infrastructure, or development decisions made by the future Town if it is permitted to incorporate. Both the water quality within and the property value of the property adjacent to the proposed Little Italy area may be negatively affected by the incorporation.

In the annexation-based *Perkins* case, the Court also stated that “any person interested” includes individuals that “reside, or own property, either in the old town or in the territory proposed to be annexed.” Interested status is granted to individuals within the “old town” because the “old town” would receive additional property for which residents of the “old town” assume responsibility, and they, therefore, may be affected. In the instance of an incorporation question, property is removed from the jurisdiction and benefit of the county containing the

property. Therefore, the “old town” in an incorporation question is the county that is losing property to the proposed municipality.

In the case of the proposed incorporation of Little Italy, the “old town” is the entirety of Pulaski County. Any individual residing or owning property within Pulaski County may “be affected by the determination of the question” due to loss of tax base and the loss of jurisdiction over the proposed incorporated area.

CAW therefore qualifies as “any person interested” under three distinct tests:

- 1) CAW owns seven acres of real property within the proposed boundary of Little Italy that would be affected by the incorporation;
- 2) CAW owns approximately 1,006 acres of real property that are contiguous to the proposed boundary of Little Italy for approximately 2.6 miles that would be affected by the incorporation; and
- 3) CAW owns approximately 27,520 additional acres of real property within the Lake Maumelle watershed that would be affected by the incorporation, as well as numerous other properties within Pulaski County that would be affected by the incorporation.

### **III. Denial of Petition**

As stated previously, the petition for incorporation should be denied because the incorporation is not right and proper and is not in the best interest of the citizens of Pulaski County or the citizens within the proposed Town. Specifically, the petition should be denied because:

- 1) The proposed Town is unreasonably large;
- 2) The land to be included in the proposed Town is primarily timber and agricultural land and is therefore not suited for municipal purposes or “adapted for urban use”;
- 3) A primary purpose of the incorporation is to avoid regulation from other municipalities and Pulaski County rather than obtain municipal benefits;
- 4) The area to be included in the proposed Town inappropriately includes areas through “stovepipe” connections; and
- 5) The Petitioners have not obtained appropriate, documented, consent of all municipal corporations within 5 miles of the proposed Town that have exercised their planning jurisdiction.

The *Perkins* case cited earlier was an “annexation case.” But the Supreme Court of Arkansas has historically used the same standards and interpretations for both annexation and incorporation cases. See, e.g., *Tuner v. Hiederkerh*, 261 Ark. 72, 546 S.W. 717, 1977 Ark. LEXIS 2043 (1977) (an incorporation case citing *Perkins* for definition of “any interested person”). Therefore, the County Court should apply the law from “annexation cases” and “incorporation cases” in this matter.

- 1) *The proposed Town is unreasonably large.***

State law provides that following the Judge's decision regarding incorporation, a request for an injunction to prevent the incorporation may be submitted to the circuit court. The circuit court may annul the incorporation of the new city or town if it determines that the limits of the proposed city or incorporated town are unreasonably large or small or are not properly and sufficiently described. Ark. Code Ann. § 14-38-107(b). Therefore, it is reasonable for the County Judge to consider and determine if a proposed municipality is "unreasonably large or small" when determining if an incorporation is "right and proper" because those are factors that might be the basis for the later rejection of the County Judge's decision.

In *White v. Lorings*, 274 Ark. 272, 623 S.W.2d 837, 1981 Ark. LEXIS 1468 (1981), the Supreme Court stated that the determination of unreasonably large or unreasonably small **rests upon common sense**. In that case, they determined that a 2 square mile town with 900 residents and 400 buildings that had been platted for over 55 years in town lots was not unreasonably large.

In *Arkansas and Ozark Railway v. Busch*, 223 Ark. 27, 264 S.W.2d 54, 1954 Ark. LEXIS 607 (1954), however, the Supreme Court determined that a 3 mile long and 0.25 mile wide strip with a population of 21 was unreasonably large for incorporation as a town. Furthermore, it was also shown that the incorporation was not intended to provide municipal services, but was to allow one of the incorporators to form a town adjacent to the Missouri state line, which would permit the sale of gasoline at Missouri prices. The Supreme Court therefore ordered the Circuit Court to annul the County Court order of incorporation for the Town of Busch.

In the present case of the Town of Little Italy, the proposed Town is approximately 5,606 acres or 8.8 square miles in size with a projected population of approximately 380 individuals. The proposed Town thus has a population density of 43 persons per square mile. Of the two scenarios described above, the Proposed Town is more similar to the proposed Town of Busch in terms of size and population density. In fact, among a survey of the 153 Arkansas municipalities with populations of 200 to 601, the proposed Town would have the second lowest population density and the second largest geographic area. Petitioners have also stated that they intend to annex additional property within Perry County into the proposed Town if incorporation is successful; this would make the proposed Town even larger than currently proposed. Given the geographic size and population alone, it is clear that the proposed Town is unreasonably large.

However, the proposed Town is also unreasonably large when examined from a public facilities and budgetary perspective. The budget for the proposed Town shows revenue of only \$36,643, consisting of \$16,350 of unrestricted revenue and \$20,292.85 in street fund revenue. The proposed Town would have the lowest revenue of any of the 153 Arkansas municipalities with populations of 200 to 601. The proposed Town would also have to maintain 6.25 – 10.5 miles of roads contained within its proposed boundaries. The proposed budget and mileage of roads to be maintained would only allow \$781 to \$2,064 per mile for street and road maintenance, or \$0.15 to \$0.39 per linear foot. This single item further demonstrates that the size of the proposed Town is unreasonably large because it will not be able to generate sufficient revenue to maintain the expansive public infrastructure within its boundaries. Furthermore, the budget

for the proposed Town does not include funds for police protection, professional services, or non-street labor, all of which are necessary municipal functions.

In *Ouita v. Heidgen*, 247 Ark. 943, 448 S.W.2d 631, 1970 Ark. LEXIS 1373 (1970), the Circuit Court denied the incorporation because, in part, the incorporated area would be unable to offer sufficient municipal services. The court cited the insufficient annual revenue from the existing taxes in the area as evidence of such. The facts in this case are similar, if not identical. Petitioners have failed to demonstrate sufficient revenues to properly operate a town, and they have specifically stated an unwillingness to seek imposition of taxes to provide adequate revenues. Therefore, the petition for incorporation should be denied because the proposed Town is unreasonably large.

**2) The land proposed to be included in the proposed Town is primarily timber and agricultural land and is therefore not suited for municipal purposes or “adapted for urban use.”**

The Supreme Court has determined that an additional consideration in determining if an incorporation is “right and proper” is whether the land included within the proposed boundaries of the new town is suited for municipal purposes or adapted for urban use.

In *Ouita v. Heidgen, supra*, the Supreme Court determined that the area proposed for incorporation was almost exclusively open farmland, pastureland, or timberland with rural homes. The proposed Town of Ouita only included a few platted lots and was generally not “urban territory.” As a result, the Court upheld the lower court’s determination that the incorporation was improper.

In *Waldrop vs. Kansas City Southern Railway Company*, 131 Ark. 453, 199 S.W.369, 1917 Ark. LEXIS 169 (1917), the Supreme Court nullified the Town of Ogden’s incorporation because there was no reasonable anticipation of the use of the timberland and farmland for town lots in the future. Furthermore, the Court determined that incorporation and subsequent taxation of property must provide just compensation to property owners in the protection of life, liberty, or property.

The Supreme Court affirmed the circuit court denial of annexation in *Pine Bluff v. Mead*, 177 Ark. 809, 7 S.W.2d 988, 1928 Ark. LEXIS 189 (1928), of property adjacent to the City of Pine Bluff because the petition improperly included agricultural land that was not adapted to urban use.

The case of *Vestal v. Little Rock*, 54 Ark. 321, 15 S.W.891, 1891 Ark. LEXIS 52 (1891), saw the Supreme Court reverse the annexation of the unincorporated town of Argenta to the city of Little Rock because the proposed area to be annexed included a property not adapted to urban use. The Court based that conclusion on findings that the owner of a forty-acre tract had no need of local government and that the city had no need of his land.

In *Crossett v. Anthony*, 250 Ark. 660, 466 S.W.2d 481, 1971 Ark. LEXIS 1313 (1971), the Supreme Court affirmed the Circuit Court’s denial of an annexation of an area of land to the north of the City of Crossett because there was insufficient evidence that the land was adapted



to urban use. In fact, of the 2,000 acres north of the City of Crossett at issue in the case, at least 682 acres of timber land and farmland (and possibly up to 800 acres) were not adapted to urban use.

Like the incorporation and annexation scenarios discussed above, a vast majority of the proposed Town is clearly not adapted for urban use. According to CAW's 2009 high resolution land use and land cover dataset, land within the proposed Town is 84% forested, 11% pasture, 2% water, 1% developed, and 2% other unpaved surfaces. Furthermore, the Pulaski County Assessor classifies and taxes approximately 65% of the land within the proposed Town as timber property, 5% as crop or pastureland, 1% as water, and 29% as residential property. In many of the Supreme Court cases discussed above, incorporation or annexation was denied because the area included a number of tracts that were not adapted to urban use or because 40% of an area (*Crossett v Anthony*) was rural property. When evaluated on terms of assessed value, the proposed Town contains a minimum of 70% rural property. It is more likely, however, that the current use of the property within the proposed Town is 95% rural, as identified in the 2009 high resolution land use and land cover dataset. Thus, the proposed Town is significantly more rural than the areas in the cases above, which were insufficiently developed to permit incorporation.

At no point have the Petitioners stated or shown that the area within the proposed Town is suited for urban or municipal use. In fact, the Petitioners explicitly state that the proposed Town is primarily rural property when they state that a core intent of the incorporation effort is to protect the "rural character" of the area. In a recent statement posted on the little Italy website, the leaders of the incorporation effort state that the "desire and driving force behind the incorporation is to keep the historic land . . . rural for the next 100 years . . ." Maintaining rural areas is antithetical to the nature of and reasons for municipal incorporation. In addition, a laudable purpose is not sufficient to justify incorporation. In *Waldrop*, the court noted that the petitioners desire to incorporate "for the purpose of organizing a single school district." The court concluded, however, using the power of incorporation to provide for a school district is not a municipal purpose. In this case, petitioners desire to incorporate to preserve rural life; that is not a municipal purpose.

Therefore, the property within the proposed Town should not be incorporated, and the petition should be denied.

**3) *A primary purpose of the incorporation is to avoid regulation from other municipalities and Pulaski County rather than obtain municipal benefits***

In *Ouita v. Heidgen, supra*, the Supreme Court affirmed the Circuit Court's denial of incorporation of the Town of Ouita in part because those desiring incorporation sought it "to avoid municipal handicaps rather than to obtain municipal benefits." In other words, incorporation is not available simply to avoid municipal regulation—it must be to obtain the benefits of becoming a municipality

The Petitioners state in their Business Plan, available at [littleitalyarkansas.com](http://littleitalyarkansas.com), that the purpose of their incorporation effort is to preserve the 100-year history and rural character of the area "by preventing annexation or controls leveraged by another city government." Petitioners also state

that “current services such as police, fire, emergency, and all utilities will continue as they are now” and that “no new taxes will be collected” from residents within the proposed Town. A list of benefits created by the Petitioners specifically states that benefits of incorporation include “prevent[ing] annexation or falling into extra-territorial jurisdictions of other municipalities” and “prevent[ing] a tax program from being established.”

In light of these statements and the aforementioned cases, it is clear that the Petitioners of Little Italy are incorporating to “avoid municipal handicaps rather than to obtain municipal benefits.” The lack of municipal services outlined above demonstrates this point. While the Incorporation Benefits document identifies potential enhancements to municipal services, the Petitioners have not presented a realistic plan to fund and deliver these services other than through contracts with entities currently providing services to the area.

This inability to provide municipal services argues against incorporation in another way as well. In *Waldrop vs. Kansas City Southern Railway Company*, *supra*, the Supreme Court nullified the Town of Ogden’s incorporation because it determined that incorporation and subsequent taxation of property would not provide just compensation to property owners in the form of protection of life, liberty, or property because of an inability to provide sufficient municipal services.

Like those seeking incorporation in *Waldrop*, the Petitioners have not demonstrated the ability to provide “protection of life, liberty, or property” in the proposed Town. In fact, the Petitioners have repeatedly stated that they will not increase taxes, and, therefore, it is unlikely that the proposed Town will be able to deliver any of the promised services.

It should also be noted that the Petitioners only own approximately 1,590 acres of the 5,606 acres within the proposed Town, representing only 28% of the land within the proposed Town. Therefore, the proposed Town would be unable to provide just compensation to the property owners of the remaining 72% of the proposed Town of Little Italy in the form of protection of life, liberty, or property. As in *Waldrop*, the rural property appears to be included in the proposed Town in order to provide a larger potential tax base as well as to connect isolated pockets of rural properties to one another.

Because the incorporation of the proposed Town seeks to avoid regulation from other municipalities and does not have a clear plan for providing municipal services, the petition should not be found to be right and proper and should be denied.

**4) *The proposed area to be included in the proposed Town of Little Italy inappropriately includes areas through “stovepipe” connections.***

The Supreme Court has long held that “stovepipe” annexations or incorporations cannot be used to annex properties into municipalities or to form a city through incorporation.

In *McCarroll, Comm. Of Revenues v. Arnold*, 199 Ark. 1125, 137 S.W.2d 921, 1940 Ark. LEXIS 83 (1940), the Court held that unincorporated areas could not incorporate a strip of land four miles long and one quarter of a mile wide, particularly when it contains large amounts of areas unsuited for municipal purposes. Furthermore, the Court expounded that the incorporation was

also invalid because the effort was intended to circumvent state gasoline taxes and therefore avoid regulation/taxation.

In *Clark v. Holt*, 218 Ark. 504, 237 S.W.2d 483, 1951 Ark. LEXIS 371 (Ark. 1951), the Supreme Court invalidated the annexation of property into Lead Hill that included a strip of land 50 feet wide by 3,600 feet long. The Court invalidated the annexation because the strip, which was not dedicated to public use and included rural and hilly terrain, was not needed for the town's expansion and was clearly included in an effort to avoid higher taxes. The Court cited that in order to travel from "Lead Hill to the area in controversy it is necessary to travel over a county road outside of the corporate limits of the town and running parallel to the 50-foot strip." Citing these "gaps" between portions of the town, the Court noted that "the essential of continuity is lacking," thereby negating the annexation.

In *Park v. Hardin*, the Supreme Court invalidated an incorporation because it included a two-mile long narrow strip of land that allowed the town to be within a two-mile range of the State of Missouri and, therefore, avoid Arkansas gasoline tax rates. The Court stated that towns cannot incorporate by "reaching out, lasso-like, to harness space. Territorial utility must bear some relation to corporate needs." (*emphasis added*)

Many of the stovepipe arguments rest upon the legal treatise 37 Am. Jur., Municipal Corporations, § 27, which states the following: "The legal as well as the popular idea of a municipal corporation in this country, both by name and use, is that of oneness, community, locality, vicinity; a collective body, not several bodies; a collective body of inhabitants -- that is, a body of people collected or gathered together in one mass, not separated into distinct masses, and having a community of interest because residents of the same place, not different places. So, as to territorial extent, the idea of a city is one of unity, not of plurality; of compactness or contiguity, not separation or segregation."

Clearly, incorporations that include stovepipes to include property should not be held to be "right and proper." The proposed Town's irregular borders are formed by such improper stovepipes. The proposed Town includes nearly 1,720 acres that can be accessed solely by stovepipe connections on the southwest and southeast portions of the proposed Town. This is 30% of the area of the proposed Town. The stovepipes are approximately 1,200 feet wide and range in length from 1,100 feet to 4,300 feet. They solely exist to connect multiple isolated areas and, as a result, constitute a stovepipe under well-established case law because they are included solely for the purpose of connection, not for any proper municipal purpose. The areas that are included in the proposed Town of Little Italy are highlighted as Stovepipe Area 1, Stovepipe Area 2, and Stovepipe Area 3 in Attachment E. Simply by nature of the inclusion of significant acreage via stovepipes, the incorporation should be denied.

In addition, the use of stovepipes is clearly an effort to increase the size of the proposed Town in order to secure sufficient signatures to comply with state law and, ultimately, circumvent county land use regulations. Specifically, Stovepipe Area 1 includes 9 signatures, Stovepipe Area 2 includes 29 signatures, and Stovepipe Area 3 includes 5 signatures submitted with the petition. Because these Stovepipe Areas are inappropriately included in the proposed Town through stovepipe connections, these 43 signatures should be removed from the petition. Once

removed, the petition would only contain 177 certified signatures. In addition, there are two signatures on the petition where the residence noted on the petition is not included within the proposed Town but is in the proximity of Stovepipe Area 1 (the address provided on the petition is 40120 Highway 10, signed by Kathy and Jackson Zini). Once these additional signatures are removed, the petition only has 175 of the minimum 200 signatures needed for incorporation. Therefore, the petition should be denied as it would not meet the minimum number of signatures necessary under state law.

It could be argued that the Petitioners could expand the boundaries of the proposed Town to make larger connections to the Stovepipe Areas. However, doing so would add additional rural property that is not adapted for urban use and would also significantly increase the geographic area of the proposed Town. By both adding additional rural property and increasing the size of the proposed Town, any modification of the boundaries to eliminate these stovepipes would further justify denial of the petition under items 2 (unreasonably large) and 3 (not adapted for urban use) that are described in more detail previously.

Yet, in gerrymandering the proposed corporate boundaries, the Petitioners also divided or split many tax parcels. As a result, the proposed boundaries are going to create substantial confusion in the assessment, collection and distribution of future tax revenues.

Finally, the idea that municipalities are “of unity, not of plurality,” does not comport with the boundaries of the proposed Town. The historic Little Italy community was significantly smaller than the 5,606 acres currently proposed. In fact, the proposed Town includes portions of the communities of Little Italy, Wye Mountain, and other areas that do not identify with either community. The proposed Town is not a community with a shared background or identity; rather, it is a clump of communities with little shared interests other than attempting to avoid regulation by Pulaski County.

Because the proposed Town inappropriately includes areas through stovepipe connections and because removal of these areas would cause the petition for incorporation to drop below the 200 signature threshold required under state law, the petition for incorporation should be denied.

**5) *The Petitioners have not obtained appropriate, documented consent of all municipal corporations within five miles of the proposed town that have exercised their planning jurisdiction.***

State law provides that the “court shall not approve the incorporation of any municipality if any portion of the territory proposed to be embraced in the incorporated town shall lie within five (5) miles of an existing municipal corporation and within the area in which that existing municipal corporation is exercising its planning territorial jurisdiction, unless the governing body of the municipal corporation has affirmatively consented to the incorporation by written resolution.” Ark. Code Ann. § 14-38-101(b)(1).

The proposed Town lies within the planning territorial jurisdiction of three municipal corporations: the City of Bigelow, the Town of Fourche, and Pulaski County. The Supreme Court has long-held that “A county is a municipal corporation.” *Stilley v. Henson*, 342 Ark. 346,

28 S.W.3d 274, 2000 Ark. LEXIS 465 (2000); *City of Hot Springs v. Gray*, 215 Ark. 243, 219 S.W.2d 930 (1949). As a result, by specifically listing municipal corporation rather than municipality or city or town in Ark. Code Ann. § 14-38-101(b)(1), the General Assembly clearly intended to include county government as an entity with the authority to exercise planning territorial jurisdiction and of whom affirmative consent is required for an incorporation within its limits.

Pulaski County has clearly exercised its planning territorial jurisdiction through the Pulaski County Subdivision and Development Code (most recently amended as of April 30, 2009), a Comprehensive Land Use Plan for the Lake Maumelle Watershed, and a Lake Maumelle Watershed Zoning Code that includes areas within the proposed Town and within 5 miles of the proposed Town. As a result, the incorporation cannot proceed unless the Quorum Court of Pulaski County has affirmatively consented to the incorporation by written resolution. Yet, the Petitioners have provided no resolution from Pulaski County granting affirmative consent for the proposed Town's incorporation. The Petition must therefore be rejected.

## **CONCLUSION**

Above, we have pointed out many flaws with the petition to form the proposed town of Little Italy, and it could be denied for any one or more of those reasons. Moreover, each of the flaws identified above are connected by a common thread – that of avoiding County regulations rather than increasing governmental benefits and services to the area's citizens. For this reason, the petition is directly contrary to everything that the Arkansas Constitution and General Assembly intend for cities and towns to be and, therefore, should be denied.

Historically, the Arkansas Constitution provides for three levels of government – the state, then counties, then cities. Art. 12, § 3 of the Arkansas Constitution provides that the "General Assembly shall provide, by general laws, for the organization of cities . . . and incorporated towns . . ." Therefore, cities and towns are entities of limited power, controlled by the legislature. As the General Assembly has enacted laws permitting the formation of towns, the General Assembly has recognized that cities and towns are special entities, created for special purposes – providing additional services to citizens that could not be provided by the County government. Even in 1971, the General Assembly recognized that the organization of cities can be important to provide "necessary municipal services to the citizens." Acts 1971, No. 711, § 4.

The General Assembly has also recognized that not every hamlet should be incorporated; the administrative burdens are too great when the population is too small or sparse. In 2001, the General Assembly increased the number of signatures required on a petition for incorporation from 75 to 200. Acts 2001, No. 1233, § 1. More importantly, the General Assembly increased the threshold to incorporation without modifying the traditional requirements discussed above – the area must not be unreasonably large; the area must be suited for municipal purposes and adapted for urban use; the purpose of the incorporation must be for obtaining municipal benefits (trash collection, police protection, fire protection, etc.); and the area must be of reasonable shape. The General Assembly knew and understood that the County Court would apply these accepted standards when considering a petition for incorporation. Petitions such as the one presented for the incorporation of Little Italy are the very reason the General Assembly

increased the signature requirement from 75 to 200. Petitioners have attempted to nullify the increased signature requirements by gerrymandering and expanding its borders to pick up remote signatures from here and there, but the only way the Petitioners could meet the 200 signature threshold was to ignore 200 years of case law regarding the size, purpose and design of a new town.

The area petitioners seek to incorporate as the new town of Little Italy is not appropriate for incorporation under State law, and therefore, the petition should be denied.

Respectfully,

CENTRAL ARKANSAS WATER

A handwritten signature in black ink, appearing to read 'C. Tad Bohannon', is written over a horizontal line. The signature is somewhat stylized and loops back to the left.

By: C. Tad Bohannon, Chief Legal Counsel

Attachments:

Exhibit A

Exhibit B

Exhibit C

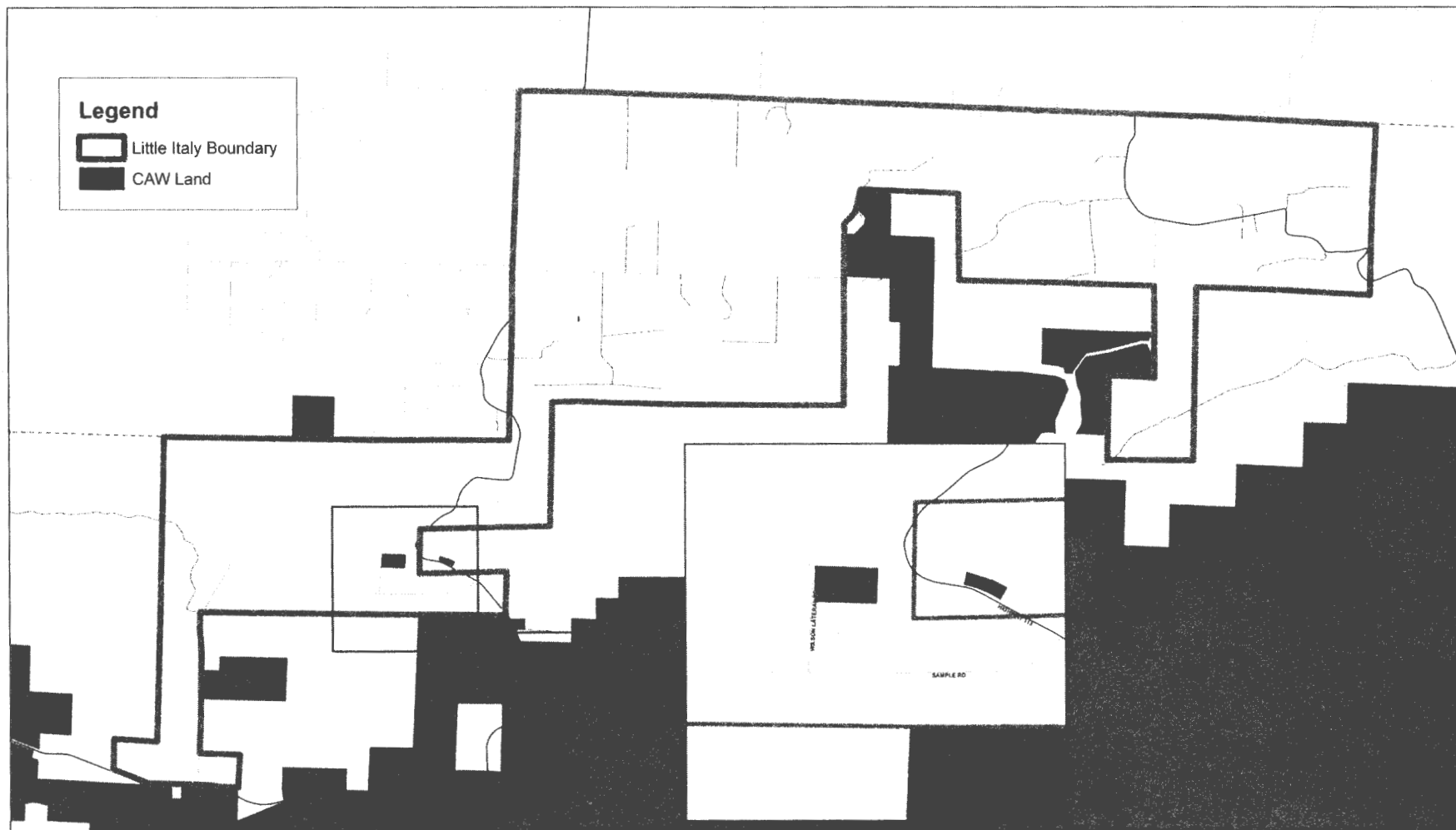
Exhibit D

Exhibit E

Affidavit of Eve Jorgensen

Affidavit of Mary Chism

Attachment A  
Property Map



**Little Italy  
Property Owned  
By CAW**



Print Date: 12/16/2015

0 4,450 8,900 Feet

0 1 2 Miles

Disclaimer of Warranties: This map has been provided as a convenience without guarantees or warranties of any kind, express or implied, arising by law or otherwise. Any improvements, facilities, and other information shown on this map may not be factually, dimensionally or graphically correct. The size and location of all improvements and facilities should be field verified.



# Attachment B Property Deed

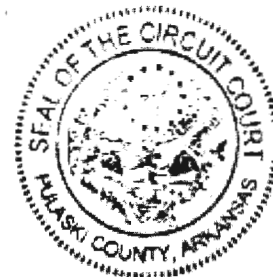
ml 371

2005024593  
03/23/2005 10:30:50 AM  
Filed & Recorded in  
Official Records of  
PAT O'BRIEN  
PULASKI COUNTY  
CIRCUIT/COUNTY CLERK  
Fees \$14.00

## BEACH ABSTRACT & GUARANTY COMPANY

100 Center Street, P.O. Box 2580, Little Rock, AR 72203 (501) 376-3301  
2200 N. Rodney Parham, Suite 101, Little Rock, AR 72212 (501) 225-0846  
5505 John F. Kennedy Blvd, North Little Rock, AR 72116 (501) 758-9147  
500 Edgewood Drive, Maumelle, AR 72113 (501) 851-6633

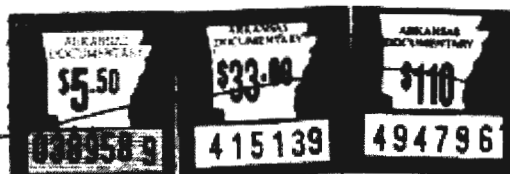
### WARRANTY DEED (Unmarried Person)



THE FORM OF THIS INSTRUMENT APPROVED BY  
WILLIAM L. OWEN, P.A.  
ATTORNEY AT LAW  
917 W. MARKHAM, SUITE B  
LITTLE ROCK, ARKANSAS 72201  
(501) 372-1655

FILE # 20051106

KNOW ALL MEN BY THESE PRESENTS:



That I, Jack N. Armstrong, an unmarried person, for and in consideration of the sum of --TEN AND 00/100-- DOLLARS--(\$10.00)--and other good and valuable consideration in hand paid by Central Arkansas Water, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the said Grantee(s) and unto its successors and assigns forever, the following lands lying in the County of Pulaski and the State of Arkansas to-wit:

A part of the NE1/4 of the SW1/4 of Section 13, Township 3 North, Range 16 West, Pulaski County, Arkansas described as follows: Commencing at the Southeast corner of the NE1/4 SW1/4, Section 13; thence South 87 degrees 49 minutes 00 seconds West 440.49 feet to a found 3/8 inch rebar; thence North 00 degrees 07 minutes 50 seconds East 167.88 feet to the point of beginning being a found 1/2 inch rebar; thence North 00 degrees 08 minutes 47 seconds East 128.50 feet to a found 1/2 inch rebar; thence North 00 degrees 12 minutes 25 seconds East 296.80 feet to a found 1/2 inch rebar; thence North 89 degrees 51 minutes 11 seconds West 715.20 feet to found 1/2 inch rebar; thence North 89 degrees 51 minutes 11 seconds West 36.70 feet to a set 1/2 inch rebar in Wilson Lateral Road; thence South 1 degree 17 minutes 17 seconds West 431.93 feet to a set 1/2 inch rebar in Wilson Lateral Road; thence

*JA*



North 89 degrees 39 minutes 13 seconds East 760.17 feet to the point of beginning. EXCEPT the right of way of Wilson Lateral Road on the West side of subject property and that portion formed by the arc of the 120 foot diameter cul-de-sac at the South end of proposed new road which is to be used as public road right of way.

To have and to hold the same unto the said Grantee(s) and unto its successors and assigns forever, with all appurtenances thereunto belonging.

And I hereby covenant with said Grantee(s) that I will forever warrant and defend the title to the said lands against all claims whatsoever.

WITNESS my hand and seal on this 11 day of March, 2005.

I hereby certify under penalty of false swearing that the legally correct amount of documentary stamps have been placed on this instrument. Exempt or no consideration paid if none shown.  
GRANTEE OR AGENT: Winnie Shaver, Agent  
GRANTEE'S ADDRESS: 1500 West Maryland Avenue  
North Little Rock AR 72120

  
Jack N. Armstrong

**ACKNOWLEDGMENT**

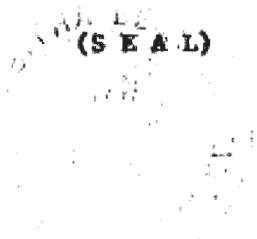
STATE OF KENTUCKY            )  
  ) ss.  
COUNTY OF Jefferson        )

**BE IT REMEMBERED**, that on this day came before me, the undersigned, a notary public within and for the County aforesaid, duly commissioned and acting, Jack N. Armstrong, an unmarried person, to me well known as (or satisfactorily proven to be) the grantor(s) in the foregoing Deed, and acknowledged that he had executed the same for the consideration and purposes therein mentioned and set forth.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal this 11<sup>th</sup> day of March, 2005.

Salutha Beavers  
Notary Public (Signature)

My Commission Expires:  
3/30/2006



Initials: JA

**Attachment C  
Land Use Map**



**Legend**

Little Italy Boundary

CAW Land

**Percent Rural Based on 2009 LULC**

0 - 25%

25 - 50 %

50 - 75%

75 - 90%

90 - 100%

**Road Types**

County Roads

State Highways

Private Roads

**Little Italy  
Land Use**



Print Date: 12/7/2015

0 4,450 8,900 Feet

0 1 2 Miles

Disclaimer of Warranties: This map has been provided as a convenience without guarantees or warranties of any kind, express or implied, arising by law or otherwise. Any improvements, facilities, and other information shown on this map may not be factually, dimensionally or graphically correct. The size and location of all improvements and facilities should be field verified.



# AFFIDAVIT OF VINCE GUILLET

I, Vince Guillet, first being duly sworn, upon oath state of personal knowledge:

1. I am Vince Guillet, GIS Manager at Central Arkansas Water ("CAW"). I am authorized by CAW to submit this affidavit, which I understand will be used to support CAW's Objections to the Petition for Incorporation of the Town of Little Italy.

2. I reviewed the Land Use/Land Cover data set using the process attached hereto and then worked with John Tynan to create the map to which this affidavit is attached.

3. The facts alleged in this affidavit are true and accurate to the best of my knowledge, information, and belief.

FURTHER, AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Vince Guillet, GIS Manager

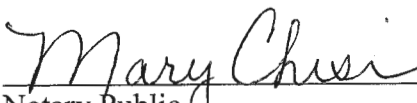
## ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF ~~PULASKI~~ *SALINE*

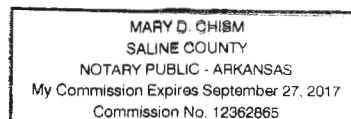
On this the 15<sup>th</sup> day of December, 2015, before me, a Notary Public, personally appeared Vince Guillet, an individual, who executed the foregoing instrument for the purposes therein contained, by signing his name thereto.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

9-27-17



## 2009 Land Use / Land Cover GIS Data Development Process Steps and Results

In November 2009 CAW contracted with a GIS service provider to develop a Land Use/Land Cover (LU/LC) dataset to for the Lake Maumelle Watershed in Perry, Pulaski, and Saline Counties Arkansas.

The LULC classification was done using the following steps:

1. Determined classes to be present in the final LU/LC dataset: Pasture/Bare Ground, Clear Cut, Deciduous Forest, Lake/Pond, River/Stream, Rooftop, Paved Surface, Unpaved Surface, and Natural Rock
2. Used previously obtained 1 foot resolution, color infrared, ortho-rectified aerial imagery. Imagery was rectified using on-board GPS and IMU, the best available elevation model, triangulation, and other adjustment methods.
3. Obtained representative sample points of each category by GPS ground collection.
4. Used the known points for each category to "train" computer image processing software on the spectral signature of each class desired.
5. Used the image processing software to auto-classify the color infrared imagery into desired categories using the training results.
6. Hand reviewed the computer classification and made manual modification to results.
7. Used aerial imagery to manually digitize classes that are easily identifiable by a human technician: Clear Cut, Rooftop, Paved Surface, Unpaved Surface, and Natural Rock
8. Replace auto-classified data with manually digitized features.
9. Use an independent set of test points (not used for previous training) of known classes to quality control the results

The following are the accuracy results from the quality control test data:

	Bare Ground-0	Clearcut-1	Hardwood-2	Lakes & Ponds-3	Pine-4	Rivers & Streams-5	Impervious Surfaces-6	Row Total	Producer's Accuracy
<b>Reference Data</b>	Bare Ground-0	12	0	1	0	1	0	14	85.71%
	Clearcut-1	0	16	0	0	0	0	16	100.00%
	Hardwood-2	0	0	76	0	15	0	91	83.52%
	Lake & Pond-3	0	0	0	24	0	0	24	100.00%
	Pine-4	1	1	17	0	194	0	213	91.08%
	Rivers & Streams-5	0	0	0	0	0	2	2	100.00%
	Impervious Surfaces-6	0	0	2	0	0	0	8	100.00%
	Column Total	13	17	96	24	210	2	8	
<b>User's Accuracy</b>	<b>92.31%</b>	<b>94.12%</b>	<b>79.17%</b>	<b>100.00%</b>	<b>92.38%</b>	<b>100.00%</b>	<b>100.00%</b>		

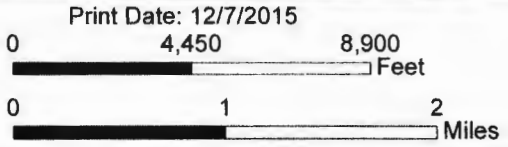
**Attachment D**  
**Tax Assessor Classification Map**



**Legend**

- Little Italy Boundary
- CAW Land
- Tax Parcel Land Types**
- Residential Properties
- Majority Rural Properties
- Rural Properties (Timber, Pasture, Crop)
- Commercial Properties
- Tax Exempt Properties
- Road Types**
- County Roads
- State Highways
- Private Roads

**Little Italy  
Tax Parcel  
Classifications**



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# AFFIDAVIT OF JOHN TYNAN

I, John Tynan, first being duly sworn, upon oath state of personal knowledge:

1. I am John Tynan, Director of Customer Relations & Public Affairs at Central Arkansas Water ("CAW"). I am authorized by CAW to submit this affidavit, which I understand will be used to support CAW's Objections to the Petition for Incorporation of the Town of Little Italy.

2. I am familiar with the above referenced Petition and the Objections to be filed by CAW.

3. CAW's Objections states that approximately 65% of the land within the proposed Town is classified and taxed as timber property by the Pulaski County Assessor, 5% is classified as crop or pastureland, 1% is classified as water, and 29% is classified as residential property.

4. I personally reviewed the Pulaski County Assessor's data for each property in the proposed Town of Little Italy, with the exception of the tax exempt parcels, on or about June 15, 2015, at <http://www.arcountydata.com>. I transcribed the acreage of each tax type for each parcel from the Assessor's website into an excel spreadsheet. I completed quality control efforts on December 8 and 9, 2015. I then determined the percentages noted in item 3 above using the assessed acreage of the entire parcel. This analysis, therefore, assumes that for parcels that are partially within Little Italy, the assessed tax acreage for the portion within Little Italy has the same ratio as the entire parcel. The analysis provided a total of 5,925.71 acres of assessed acreage and is approximately 320 acres larger than the proposed boundary of Little Italy due to the inclusion of acreage for entire parcels when only portions of some parcels are within the proposed boundary. Working with Vince Guillet, GIS Manager at CAW, we created the map to which this affidavit is attached.

5. The facts alleged in this affidavit are true and accurate to the best of my knowledge, information, and belief.

FURTHER, AFFIANT SAYETH NOT.



John Tynan, Director of Customer Relations & Public Affairs at Central Arkansas Water

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF SALINE

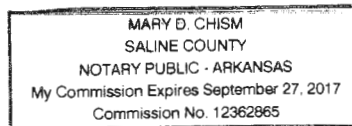
On this the 16<sup>th</sup> day of December, 2015, before me, a Notary Public, personally appeared John Tynan, an individual, who executed the foregoing instrument for the purposes therein contained, by signing his name thereto.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

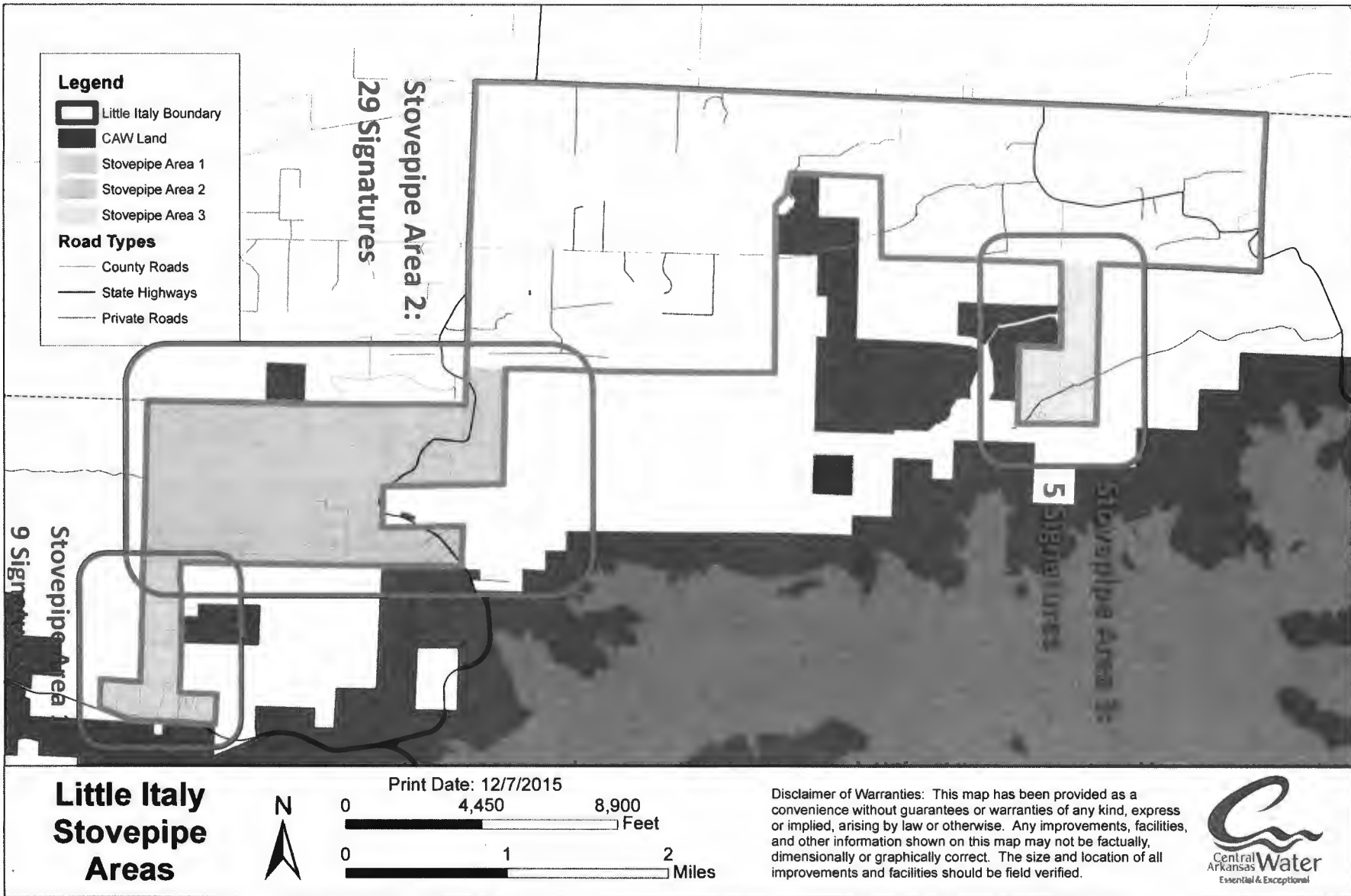
9-27-17





Attachment E

Stovepipe Area Map



# AFFIDAVIT OF EVE JORGENSEN

I, Eve Jorgensen, first being duly sworn, upon oath state of personal knowledge:

1. I am Eve Jorgensen, GIS Technician at Central Arkansas Water (“CAW”). I am authorized by CAW to submit this affidavit, which I understand will be used to support CAW’s Objections to the Petition for Incorporation of the Town of Little Italy.

2. CAW’s Objections states that “the proposed Town is approximately 5,606 acres or 8.8 square miles” and that “approximately 90%, or 5,044 acres, of the proposed Town is within the Lake Maumelle watershed.”

3. I personally reviewed and generated a map of the legal description of the proposed Town submitted with the Petition for Incorporation and completed the analysis to determine the above facts. I also reviewed the petition and assigned signatures to parcels based on addresses provided in the petition. This information was used to determine the number of signatures in each stovepipe area.

3. The facts alleged in this affidavit are true and accurate to the best of my knowledge, information, and belief.

FURTHER, AFFIANT SAYETH NOT.

  
Eve Jorgensen, GIS Technician

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF SALINE

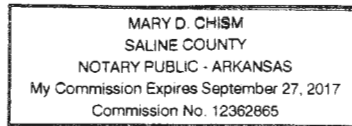
On this the 16<sup>th</sup> day of December, 2015, before me, a Notary Public, personally appeared Eve Jorgensen, an individual, who executed the foregoing instrument for the purposes therein contained, by signing his name thereto.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Mary Chism  
Notary Public

My Commission Expires:

9-27-17



# AFFIDAVIT OF MARY CHISM

I, Mary Chism, first being duly sworn, upon oath state of personal knowledge:

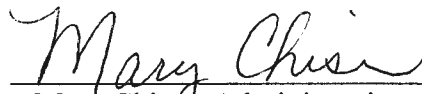
1. I am Mary Chism, Administrative Assistant at Central Arkansas Water ("CAW"). I am authorized by CAW to submit this affidavit, which I understand will be used to support CAW's Objections to the Petition for Incorporation of the Town of Little Italy.

2. CAW's Objections states "a survey of the 153 Arkansas municipalities with populations of 200 to 601, Little Italy would have the second lowest population density and the second largest geographic area" and "a survey of the 153 Arkansas municipalities with populations of 200 to 601, Little Italy would have the lowest revenue of any municipality."

4. I personally surveyed the Arkansas Legislative Audits for the municipalities mentioned above on or about June 4, 2015, at <http://www.legaudit.state.ar.us>. I placed the information into a database and created a table that ranked the municipalities according to population, geographic area, revenues and disbursements.

5. The facts alleged in this affidavit are true and accurate to the best of my knowledge, information, and belief.

FURTHER, AFFIANT SAYETH NOT.



---

Mary Chism, Administrative Assistant

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF PULASKI

On this the 15<sup>th</sup> day of December, 2015, before me, a Notary Public, personally appeared Mary Chism, an individual, who executed the foregoing instrument for the purposes therein contained, by signing his name thereto.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Judy Mallet  
Notary Public

My Commission Expires:

2-4-2025

