

**FINAL AGENDA
FAYETTEVILLE CITY COUNCIL
MAY 18, 1999**

A meeting of the Fayetteville City Council will be held on May 18, 1999 at 6:30 p.m. in room 219 of the City Administration Building, 113 West Mountain Street, Fayetteville, Arkansas.

The following items will be considered:

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** Approval of the minutes from the May 4, 1999 meeting.
2. **CAUDLE PROPERTY:** A resolution authorizing the Mayor and City Clerk to enter into documentation for the sale of the remainder (1.15 acres) of the Caudle property, located at 295 S. Crossover Road, to Eastside Missionary Baptist Church for a purchase price of \$17,400.00. The subject property was originally purchased by the City for Hwy 265 right-of-way purposes.
3. **SUNRAY SERVICES:** A resolution approving amendment #3 to the contract with Sunray Services, Inc. to transport and dispose of municipal solid waste and for operation of the City's transfer station.

B. OLD BUSINESS

C. NEW BUSINESS

1. **BOARDWALK ADDITION, PHASE 3:** An ordinance authorizing the City Attorney to seek possession of certain land located south of Boardwalk Addition, Phase 3 and west of Highway 265 (Crossover Road) in the city of Fayetteville, Arkansas, by the power of eminent domain, in association with the required easements for the Londonderry Drainage Improvements. Such property owned by Nancy Witt Lewis and Robert Lewis. Contingent upon the city council also approving Bid 99-49, Drainage Improvements for Boardwalk Subdivision.
2. **DRAINAGE IMPROVEMENTS:** A resolution approving a construction contract and project contingency for the construction of the proposed Drainage Improvements to Boardwalk Subdivision and Ridgely Manor Drive Area. A budget adjustment to fully fund the project. Establishment of off-site assessment for future developments which utilized the proposed drainage improvements.

3. **TOBIN TRUST - COURT-ORDERED POSSESSION:** A resolution authorizing City Attorney to seek a court order for the possession of certain rights of way and easements from Patrick J. Tobin Trust on parcels of land located at 519 and 409 W. Poplar Street, Fayetteville in association with the City's Poplar Street Improvement project.
4. **VA 99-6:** An ordinance for VA99-6 vacating a utility easement located at 3385 Natchez Trace as requested by Keith and Yvonne Burns for a specified portion of an alley located to the south and east of Lot 11, Savannah Estates Subdivision, Phase I.
5. **RZ99-7:** An ordinance for RZ99-7 submitted by Neal Pendergraft for property located east of 2680 Joyce Street. The property is zoned R-1, Low Density Residential, and contains approximately 4.98 acres. The request is to rezone the property to R-O, Residential Office.
6. **RZ99-9:** An ordinance for RZ99-9 submitted by Alan Reid on behalf of Greta Smith for property located at 1755 and 1939 Hoot Owl Lane. The property is zoned A-1, Agricultural, and contains approximately 5.45 acres. The request is to rezone the property to R-1, Low Density Residential.
7. **RZ99-10:** An ordinance for RZ99-10 submitted by Glen Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 8.97 acres. The request is to rezone the property to R-O, Residential Office.
8. **RZ99-11:** An ordinance for RZ99-11 submitted by Glen Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 48.26 acres. The request is to rezone the property to R-1, Low Density Residential.
9. **FIRST NIGHT:** A resolution authorizing a request for funding from First Night of Fayetteville, a non-profit organization for \$12,000 to fund the Fayetteville Millennium Celebration.
10. **LIBRARY PRESENTATION:** General financing plan for Fayetteville Public Library expansion.
11. **BAKERY FEEDS:** Discussion of whether or not the City of Fayetteville should file suit against Bakery Feeds as a public nuisance.
12. **NO TAX INCREASES:** A resolution prohibiting the consideration of tax increases by the City Council until the Wastewater Treatment issue has been put to a vote of the public.

①.

MAY 18, 1999

~~CITY COUNCIL MAY 11, 1999~~

ROLL	Roll				
SANTOS	✓				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
MAYOR HANNA	✓				
	HD BD Consent				
SANTOS	✓				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
MAYOR HANNA					
	BOARDWALK				
SANTOS					
YOUNG					
RUSSELL					
REYNOLDS					
AUSTIN					
DAVIS					
TRUMBO					
DANIEL					
MAYOR HANNA					

CITY COUNCIL MAY 11, 1999 5/18/99

ROLL	DRAINAGE IMPROVE				
SANTOS					
YOUNG					
RUSSELL					
REYNOLDS					
AUSTIN					
DAVIS					
TRUMBO					
DANIEL					
MAYOR HANNA					
	TOBIN TRUST				
SANTOS					
YOUNG					
RUSSELL					
REYNOLDS					
AUSTIN					
DAVIS					
TRUMBO					
DANIEL					
MAYOR HANNA					
	BD ^{2nd} H. VA 99-10	KS HO 32D	PASS.		
SANTOS	✓	✓	✓		
YOUNG	✓	✓	✓		
RUSSELL	✓	✓	✓		
REYNOLDS	✓	✓	✓		
AUSTIN	✓	✓	✓		
DAVIS	✓	✓	✓		
TRUMBO	✓	✓	✓		
DANIEL	✓	✓	✓		
MAYOR HANNA					
	8-0-0.	8-0-0.	8-0-0		

CITY COUNCIL MAY 11, 1999

5/18/99

ROLL	RA HD R2-99-2	2ND BD R2-99-2	3RD BD R2-99-2	PASS.		
SANTOS	✓	✓	✓	✓		
YOUNG	✓	✓	✓	✓		
RUSSELL	✓	✓	✓	✓		
REYNOLDS	✓	✓	✓	✓		
AUSTIN	✓	✓	✓	✓		
DAVIS	✓	✓	✓	✓		
TRUMBO	✓	✓	✓	✓		
DANIEL	✓	✓	✓	✓		
MAYOR HANNA						
	8-0-0. BD HD R2-99-2	8-0-0 CU R2-99-2	8-0-0. PASS.			
SANTOS	✓	✓	✓	✓		
YOUNG	✓	✓	✓	✓		
RUSSELL	✓	✓	✓	✓		
REYNOLDS	✓	✓	✓	✓		
AUSTIN	✓	✓	✓	✓		
DAVIS	✓	✓	✓	✓		
TRUMBO	✓	✓	✓	✓		
DANIEL	✓	✓	✓	✓		
MAYOR HANNA						
	8-0-0. RA BD 2ND R2-99-2	8-0-0. KS 10 BD 3RD	8-0-0. PASS			
SANTOS	✓	✓	✓	✓		
YOUNG	✓	✓	✓	✓		
RUSSELL	✓	✓	✓	✓		
REYNOLDS	✓	✓	✓	✓		
AUSTIN	✓	✓	✓	✓		
DAVIS	✓	✓	✓	✓		
TRUMBO	✓	✓	✓	✓		
DANIEL	✓	✓	✓	✓		
MAYOR HANNA						
	7-1-0.	7-1-0.	7-1-0.			

CITY COUNCIL MAY 11, 1999

5/18/99

ROLL	VR KS 2ND R2 99-10 3RD	KS 2R.	PASS.		
SANTOS	✓	✓	✓		
YOUNG	✓	✓	✓		
RUSSELL	✓	✓	✓		
REYNOLDS	✓	✓	✓		
AUSTIN	✓	✓	✓		
DAVIS	✓	✓	✓		
TRUMBO	✓	✓	✓		
DANIEL	✓	✓	✓		
MAYOR HANNA					
	8-0-0.	8-0-0.	8-0-0.		
	8-0-0.				
SANTOS					
YOUNG					
RUSSELL					
REYNOLDS					
AUSTIN					
DAVIS					
TRUMBO					
DANIEL					
MAYOR HANNA					
	8-0-0. ATTENDED 1ST	2A. 2R. NIGHT			
SANTOS	✓	✓			
YOUNG	✓	✓			
RUSSELL	✓	✓			
REYNOLDS	✓	✓			
AUSTIN	✓	✓			
DAVIS	✓	✓			
TRUMBO	✓	✓			
DANIEL	✓	✓			
MAYOR HANNA					
	8-0-0	8-0-0			

5

5/18/99.

CITY COUNCIL MAY 11, 1999

ROLL	LIBRARY PRES.				
SANTOS					
YOUNG					
RUSSELL					
REYNOLDS					
AUSTIN					
DAVIS					
TRUMBO					
DANIEL					
MAYOR HANNA					
	HP RR. BAKER FEEDS				
SANTOS	✓				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
MAYOR HANNA					
	8-0-0. RA KR RA RR TAX INCREASE				
SANTOS	* N	N			
YOUNG	✓	N			
RUSSELL	✓	N			
REYNOLDS	✓	✓			
AUSTIN	✓	✓			
DAVIS	✓	N			
TRUMBO	✓	N			
DANIEL	N	N			
MAYOR HANNA					
	6-2-0. 2-6-0.				

Need
handout
from Jerry Rose

adj 8:50pm.

**AGENDA SESSION
MAY 11, 1999**

FOR

**CITY COUNCIL MEETING
MAY 18, 1999**

NEW ITEMS:

1. Planning Commission Appeal from Simmons First Bank.
2. Resolution for prohibiting tax increases by the City Council.

ADDITIONAL INFORMATION:

1. Resolution for First Night funding.

**AGENDA SESSION
MAY 11, 1999**

FOR

**CITY COUNCIL MEETING
MAY 18, 1999**

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1. Planning Commission Appeal from Simmons First Bank.
2. Resolution for prohibiting tax increases by the City Council.

ADDITIONAL INFORMATION:

1. Resolution for First Night funding.

**CITY COUNCIL
FINAL AGENDA COVER
MAY 18, 1999**

GIVEN AT AGENDA SESSION:

1. **First Night: Additional Info** - A resolution approving funding for First Night Fayetteville, a non-profit organization, in the amount of \$12,000, for activities for New Year's 1999; and approval of a budget adjustment
2. **No Tax Increase: New Item** - A resolution prohibiting the consideration of tax increases by the City Council until the Wastewater Treatment issue has been put to a vote of the public
3. **Appeal of Planning Commission/Simmons Bank:** Ruled to be an invalid appeal and will not be brought before City Council

FINAL AGENDA:

1. **VA 99-6:** Additional information for vacation submitted by Keith and Yvonne Burns for property located at 3385 Natchez Trace
2. **RZ99-7:** Additional information for a rezoning submitted by Neal Pendergraft for property located east of 2680 Joyce Street.

FILED IN MY OFFICE THIS

10 DAY OF May 1999
Heather Woodruff City Clerk

May 5, 1999

Heather Woodruff, City Clerk
City Clerks Office
20 West Mountain
Fayetteville, Arkansas 72701

Ms. Woodruff,

This letter is to serve as an official request of an appeal to the Fayetteville City Council in regards to the ruling by the Fayetteville Planning Commission concerning agenda item AD 99-4.00: Administrative Item (Simmons First Bank, pp135). This item was in regards to semi-permeable parking that was requested to be placed in the rear of the structure in the employee parking places. The requirement is that the 8 places be placed in a semi-permeable material. The initial request was that the bank be allowed 24 parking places to accommodate its employees and its customers. The eight places behind the building are to be used for the employee parking. The building is approximately 3,000 square feet, which by ordinance would allow the bank a total of 18 parking places with the 20% allowable overage. Which brings the first item of contention with the ruling of the Planning Commission, I believe that by ordinance we are only asking for 6 parking spaces in excess of that allowed. However, the request is that all places be able to remain asphalt.

During the Planning Commission meeting there was some question as to the sincerity of the fact that Simmons Bank and Nabholz Corporation had inadvertently paved the area with asphalt. I believe the words were a blatant disregard for their ruling. However, if I may explain the sequence of events that led to where we are today, I believe that you will see that the bank is making every effort to be in compliance with the planning commissions ruling. First lets start at the Planning Commission's ruling of the placement of semi-permeable parking. At that time, we asked what the makeup of semi-permeable parking was. We were referred to the Planning Division office. It was at that time that we received the information in regards to a Geoblock Poursous Pavement System by Presto. We felt that there must be other products out there that were as applicable or better. We began our own research while the construction of the building started. Thinking in our minds the whole time that the parking lot would be the last part to complete. We spent six months evaluating the appropriateness of the products and during such time the laying of the asphalt took place. The area preparation for semi-permeable parking and asphalt is the same in regards to the base of SB2. Hence, when the asphalt layer was working his way around the building the asphalt was placed in the semi-permeable area. It was noticed immediately. In discussion with Nabholz and Simmons

Bank the decision was made to leave the asphalt in place and remove it when we determined the appropriate product to use for the semi-permeable parking. Otherwise, the area would have been an open gravel area that would have prevented the access to the building from the rear. Our final determination on the semi-permeable parking was that given the products that we had researched there was not an applicable product with a cost-effective approach. The cost of the eight parking places ranged from \$10,000.00 to \$100,000.00. Additionally, the less expensive products were deemed unacceptable as the area is full time parking for employees and the products we have found were for auxiliary parking and fire lanes. The salesman of the company, who stood to make the sell to Simmons First Bank, stated this point. The product will deteriorate quicker and have to be replaced more often under the circumstances of vehicles being parked on the area for eight to ten hours per day, five days a week. It is our conclusion that the products that are available for this sight is either not applicable or too expensive to cost justify their implementation. Additional problems associated with the use of this type of product are the deterioration of the surrounding asphalt and deterioration of the surrounding curbing. Especially during the winter months, as the water will be trapped in this area will have to dissipate under the curbing and asphalt. Should this water freeze under these areas, it would subsequently begin to break up the concrete and asphalt and place an undue burden of replacement. During the Planning Commission meeting on the 26th of April, 1999, a commissioner questioned the use of brick pavers as a product approved by the Planning Division as semi-permeable. This was the first time we had heard of this as a qualified product by the city and as such were not in an appropriate position to discuss its applicableness in this area. This application would consist of a sand base and the pavers being placed on top of that area. However, to keep the area semi-permeable they can not be grouted in and subsequently over time would begin to shift and break from the weight of vehicles being parked in the area. There is also still the problem of the deterioration of the curbing and asphalt. In conclusion of the circumstances that bring us here today, Simmons First Bank feels that semi-permeable parking does have applicable uses, but that this is not one of them.

In addition to the aforementioned background of the project, I would like to note that Simmons First Bank placed sod and a sprinkler system in the area between the street and the sidewalk, which represents the area opposite of our right of way. The square footage of this area is 2,270 square feet and the square footage of the area in regards to the parking places is 1,150 square feet. This represents an area almost double the required semi-permeable parking area that the bank has beautified and committed to maintain, that apparently is not a requirement. If you were to look east of the bank on Joyce this area associated with Circuit City is not sodded and has six-inch and higher weeds that are continually growing out of the area. This is not said to cast aspersions towards Circuit City. Instead it is to state that this is a semi-permeable area that we are already taking care of that might not have been necessary, except that Simmons First wants to be proud of its facilities and wants the City of Fayetteville to view the site as aesthetically pleasing.

In conclusion Simmons First Bank has in many instances gone above and beyond the letter of the guidelines for this construction project. We feel that we have built a building that both Simmons First Bank and The City of Fayetteville can be proud of. The

landscaping of the building went well beyond the scope of the plan submitted and approved by the Planning Commission. Simmons First Bank is willing to comply with any and all requirements of the planning commission. The exception would appear to be this parking issue, but it is not that we wish to be out of compliance, but that through a series of circumstances we are. We feel that given the cost of installation and the cost of maintenance that a request for the approval of the parking areas as they are currently is warranted.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Ruddell", with a large, stylized "VP" written to the right of the signature.

Joe Ruddell
Vice President

FILED IN MY OFFICE THIS

10 DAY OF May 1999
Heather Woodruff City Clerk

May 5, 1999

Heather Woodruff, City Clerk
City Clerks Office
20 West Mountain
Fayetteville, Arkansas 72701

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During the Planning Commission meeting there was some question as to the sincerity of the fact that Simmons Bank and Nabholz Corporation had inadvertently paved the area with asphalt. I believe the words were a blatant disregard for their ruling. However, if I may explain the sequence of events that led to where we are today, I believe that you will see that the bank is making every effort to be in compliance with the planning commissions ruling. First lets start at the Planning Commission's ruling of the placement of semi-permeable parking. At that time, we asked what the makeup of semi-permeable parking was. We were referred to the Planning Division office. It was at that time that we received the information in regards to a Geoblock Poursous Pavement System by Presto. We felt that there must be other products out there that were as applicable or better. We began our own research while the construction of the building started. Thinking in our minds the whole time that the parking lot would be the last part to complete. We spent six months evaluating the appropriateness of the products and during such time the laying of the asphalt took place. The area preparation for semi-permeable parking and asphalt is the same in regards to the base of SB2. Hence, when the asphalt layer was working his way around the building the asphalt was placed in the semi-permeable area. It was noticed immediately. In discussion with Nabholz and Simmons

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In addition to the aforementioned background of the project, I would like to note that Simmons First Bank placed sod and a sprinkler system in the area between the street and the sidewalk, which represents the area opposite of our right of way. The square footage of this area is 2,270 square feet and the square footage of the area in regards to the parking places is 1,150 square feet. This represents an area almost double the required semi-permeable parking area that the bank has beautified and committed to maintain, that apparently is not a requirement. If you were to look east of the bank on Joyce this area associated with Circuit City is not sodded and has six-inch and higher weeds that are continually growing out of the area. This is not said to cast aspersions towards Circuit City. Instead it is to state that this is a semi-permeable area that we are already taking care of that might not have been necessary, except that Simmons First wants to be proud of its facilities and wants the City of Fayetteville to view the site as aesthetically pleasing.

In conclusion Simmons First Bank has in many instances gone above and beyond the letter of the guidelines for this construction project. We feel that we have built a building that both Simmons First Bank and The City of Fayetteville can be proud of. The

landscaping of the building went well beyond the scope of the plan submitted and approved by the Planning Commission. Simmons First Bank is willing to comply with any and all requirements of the planning commission. The exception would appear to be this parking issue, but it is not that we wish to be out of compliance, but that through a series of circumstances we are. We feel that given the cost of installation and the cost of maintenance that a request for the approval of the parking areas as they are currently is warranted.

Sincerely,

A handwritten signature in black ink, appearing to read "JR", with the letters "VP" written to the right of the signature.

Joe Ruddell
Vice President

OLD BUSINESS

AD99-4: ADMINISTRATIVE ITEM SIMMONS FIRST BANK, PP135

This item was submitted by Joe Ruddell for Simmons First Bank for property located at 670 East Joyce Boulevard. The property is zoned C-2, Thoroughfare Commercial, and contains approximately 1.7 acres. The request is to reconsider the previous requirement of semi-permeable parking spaces.

Joe Ruddell was present on behalf of the request.

Commission Discussion

Johnson: Simmons Bank is asking for a reconsideration of the action that we took some time last year having to do with parking.

Ruddell: The asphalt is in place. It got there by the machine going around the bank, anything that had SB2 in it, they laid asphalt. As soon as it happened, we told them it wasn't supposed to be there but we were also in a situation where the request for semi permeable surface, we had no idea what semi permeable parking was or what it was suppose be. We were in a position where we were trying to evaluate what products were out there and what product to use. While we were trying to do that, the asphalt got laid. If we cut the asphalt out, there will be a big hole until we could figure out what product to put. We have just in the last month, actually determined what products are available and what products are applicable. That is where we are now. The reason we are here is the products that we have found are not appropriate. These are parking spaces that are used on a daily full time basis while the bank is open. With parking on those spaces full time the grass would never grow. It will be parked on 8 hours a day. There will be heat from the cars, oil leaking from the cars, all those types of things will be adverse to the grass. There is a letter in the packet from the person who is actually selling this product that the it is made to be utilized as auxiliary parking, fire lanes, and golf course cart paths. It is not a product to be utilized on a daily full time basis. That is my presentation. It is not an issue of why the asphalt is there and how it got there. The products that we have to use for semi permeable parking are not appropriate in this instance. This is full time parking that we are utilizing. We have to park in the back. Our security guidelines state that the employees have to be provided a safe and secure entry and exit area. It faces our lock door which can only be entered with a key. That is the reason we have to have this area in the back. If this is an issue of the beautification of the site, we have gone above and beyond the landscaping requirements. We doubled the amount of plants. We installed an irrigation system. Circuit City has 9 inch weeds and we sodded and installed an irrigation system. We've done a lot to beautify the site and we feel like putting in grass and trying to maintain that back there will cause an undue burden on the

bank. It costs \$10,000 not including the removal of the asphalt to install this product. Then it is a minimum of \$1,000 per year in maintenance not including replacing sod. We spent a lot to make this a nice site for both Simmons and City of Fayetteville. Our engineer stated that when semi permeable surfacing is done, the reduction in runoff is 1%. Water is not running across the back, it is running across the side and down. We have good drainage control. The installation of semi permeables would interfere with the drainage flow. The water will settle in that area. The placement of the system against asphalt and against the curbing allows the water to settle in there and with the seasons, it will crack and subsequently we will have to replace that all the time. Semi permeable pavers are not appropriate. We would like to leave the asphalt.

Hoffman: Did you consider an alternate location for the same square footage of semi permeables if you can't park on it 8 hours a day? Can it be relocated?

Ruddell: If we put it in the front, how would our customers know that it is parking?

Hoffman: Did you look at any driveway areas?

Ruddell: We only have one entrance, so to get to our drive through, you have to circle the whole building. It would be driven on all day.

Hoffman: You have in excess of the allowable parking.

Ruddell: We have 9 employees. There are 8 parking spaces in the back. Those are all taken by the employees and that only leaves the places in the front for customer parking. Virtually every place in the front is full at certain times. We have 2 ADA handicap spaces. If you aren't handicap, you can't park there. I respect your opinion. This is an excellent product in specific circumstances but not for this project.

Hoover: Did you consider any other products? I understand the staff gave you some other suggestions.

Ruddell: There is a gravel pave product. Our problem with it is the majority of our employees are ladies who wear heels and it poses a safety risk to them and increases the bank's liability. It is basically dirt which will get tracked into the bank and it deters from the beauty of the structure. There is one product that would work. It is concrete that has holes in it. It would cost \$100,000 to install it in 8 parking places. That is undue burden.

Hoover: Did you consider pave stone set on a sand base? I talked to staff about that and they said that could be approved as permeable material.

Ruddell: I would have to consult with the project manager. You'll still have water seeping

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April 26, 1999

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through which will freeze around your asphalt and curbing which will deteriorate and crack it. A site that is broken like that doesn't work.

Hoover: Staff, did you give them some other products?

Conklin: There was the concrete with the holes in it and they mentioned it cost \$100,000 to put in 8 spaces. We also have approved brick pavers on a conditional use on Spring Street. We have allowed brick or concrete pavers to be utilized for semi permeable soil pavers.

Hoover: I do know that the grass pavers he proposed here are being used by a chiropractic clinic that we approved on Spring Street.

Conklin: That is correct. They are currently installing the grass pave for Dr. Roma Lisa Gray's office on Spring Street.

Ruddell: Is that an area they will be parking in full time?

Hoover: It's for their clients?

Conklin: That is for their clients.

Ruddell: That is the difference. The clients will come in for 30 minutes and they won't be there full time. We come in at 7:30 in the morning and be there until 6:00 in the evening.

Hoover: I guess you're thinking about putting it in the rear. I think of it being used in the front and incorporated into the design.

Ruddell: How will a customer know it's parking? Would you park on the grass?

Hoover: It seems to me that it is overflow. We looked at this on tour and there was one car in front the bank at 3:30 on Thursday. I was disappointed that when this was approved that you didn't go back and look at the design. It sounds as if all of this is an after thought. The chiropractic clinic thought about it in the beginning and incorporated it into their design.

Ruddell: We originally requested regular asphalt parking. When you asked us to reduce it to semi permeable paving, we had no idea what the product was. We did a lot of research on this to find products and get cost estimates. It was at the end of the project before we tallied everything.

Johnson: Did you do the research on the semi permeable pavers before you built the parking lot or after?

Ruddell: While it was being done. They ran the machine and poured it and as soon as it happened realized it was wrong. We said we could dig it up now and have a hole where you can't get in and out of the bank or we can wait until we have the product that we wanted to use and put it in. We have the necessary information and are waiting for your determination as to whether or not you agree that this product is not applicable.

Public Comment

None.

Further Commission Discussion

Hoffman: In the future, I would suggest that the Commission seriously consider what we are about to vote on tonight in terms of approving additional parking in excess of that required have we always required semi permeable pavers?

Conklin: No. You have not. You have approved parking over the 20% amount as a conditional use for asphalt parking for restaurants.

Ward: The main thing we are having trouble with is that we feel sometimes there is a blatant disregard for our decisions. We probably don't allow enough parking under our regulations. You need more parking.

Ruddell: What we have is sufficient if we can keep the 8 spaces in the rear.

Ward: I'm not of the opinion that if they want to leave it there that we should fine them or penalize them. That would open a can of worms.

Marr: I was not seated on the Commission at the time of the original approval. It seems that the Commission went above and beyond to approve additional parking. I am bothered by the fact that the construction was started before a resolution of the semi permeable paving material. That is sending a message that the requirement wasn't taken seriously. I would hate to set precedent that you can disregard a requirement then come back and ask our approval on what you chose to do.

Odom: I know Joe Ruddell personally and I know that he would never do anything intentional or blatantly disregarding any authority. I don't think that is the issue. If we allow this we set a potential precedent for working with a developer and perhaps a blatant disregard of the conditions placed upon them and next coming back and asking for forgiveness later.

MOTION

Planning Commission Minutes

April 26, 1999

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Mr. Odom made a motion to deny the request for reconsideration of the semi permeable parking spaces.

Mr. Forney seconded the motion.

Johnson: I accept the motion and second to deny administrative time AD99-4. Is there discussion? Is the motion clear? That is to say that we would not allow the change that the applicant is requesting and they would have to remove the asphalt and replace it with another material.

Roll Call

Upon roll call, the motion passed with a vote of 7-1-0. Mr. Shackelford voted against the motion.

Further Discussion

Ruddell: In the requirements that you approved the parking overage, we were granted 18 places with 6 spaces being semi permeable. Now we have 8 semi permeable. Is it 6 or 8?

Johnson: I think the staff needs to deal with that.

Conklin: On page 3.10 of the packet:

“Jones: He noted one of the items of concern was the parking issue.

Little: She stated the applicant would need to provide further information about the parking issue. She inquired if (the) applicant was requesting 24 spaces.

Jones: He confirmed (the) applicant was requesting 24 spaces.

Little: She stated 18 parking spaces would be allowed by ordinance.”

So the answer to your question is 18 total parking spaces.

Johnson: You need to address that with staff.

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
MAY 4, 1999**

A meeting of the Fayetteville City Council was held on May 4, 1999 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street Fayetteville, Arkansas.

The following items were considered:

ITEM	ACTION TAKEN
Approval of the Minutes	Approved
Drake Field Deli/Gift Shop	Approved Res. 59-99
Bid 99-43: Purchase of six 4-wheel drive vehicles	Approved Res 60-99
Bid 99-46: Walker Park pavilion	Approved Res. 61-99
Hwy 16 W. Widening	Approved Res. 62-99
Assembly Road Storm Drainage	Approved Res. 63-99
Sunbridge Drive Extension	Approved Res. 64-99
Research and Technology	Approved Res. 65-99
Chief Executive Officer	Withdrawn
Odor Control of Sewer Treatment Plant	Tabled
Water and Sewer Treatment Plant	Approved Res. 66-99
VA 99-4: Regional National Cemetery	Passed Ord. 4160
VA 99-5: Regional National Cemetery	Passed Ord. 4161
Cardinal Cab: Certificate of Public Necessity	Approved Res. 68-99
Wastewater Treatment Plant Data Review	Approved Res. 69-99

PRESENT

Present: Mayor Hanna; Aldermen Reynolds, Austin, Davis, Trumbo, Daniel, Santos, Young and Russell; Assistant City Attorney LaGayle McCarty; City Clerk Heather Woodruff; Staff; Audience and Press.

Absent: City Attorney Jerry Rose.

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
MAY 4, 1999**

A meeting of the Fayetteville City Council was held on May 4, 1999 at 6:30 p.m in room 219 of the City Administration Building, 113 W. Mountain Street, Fayetteville, Arkansas.

Present: Mayor Hanna; Aldermen Reynolds, Austin, Davis, Trumbo, Daniel, Santos, Young and Russell; Assistant City Attorney LaGayle McCarty; City Clerk Heather Woodruff; Staff; Audience and Press.

Absent: City Attorney Jerry Rose.

INFORMATIONAL ITEMS

Mayor Hanna stated the City of Fayetteville has sent some equipment to Oklahoma City to help in the tornado cleanup.

There would be a Town Meeting discussing the issue of school violence sponsored by the City of Fayetteville and the School District. It would be open to all parents and interested citizens, Thursday, May 20, 1999 from 7:00 to 8:30 p.m. at the Walton Art Center. He noted the center could hold approximately 2,000 people.

CONSENT AGENDA

APPROVAL OF MINUTES

The approval of the minutes from the April 20, 1999 City Council meeting.

DRAKE FIELD DELI/GIFT SHOP

A resolution approving the modification to a lease with Air Host, Inc,. The modification provides for the cancellation of their lease to operate the Deli and Gift Shop in the Drake Field Terminal building. Air Host has requested the cancellation because their customer volume has decreased with the relocation of four of the five airlines to another airport.

RESOLUTION 59-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK

BID 99-43

A resolution accepting Ron Blackwell Ford as the lowest qualified bidder meeting specifications for the purchase of six 4-wheel drive utility vehicles, Bid 99-43. These units will be utilized by the Fire Department and the Police Department.

RESOLUTION 60-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK

City Council
May 4, 1999

BID 99-46

A resolution awarding Bid 99-46 for Walker Park pavilion to Heckathorn Construction in the amount of \$64,618 plus a project contingency of \$3,500 for a total of \$68,118.

RESOLUTION 61-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK

HIGHWAY 16 WEST WIDENING

A resolution approving Bid 99-35, a construction contract, to Northwest Excavation, a division of Nabholz Construction, in the amount of \$601,075.50 and a project contingency of \$93,925 for widening of Highway 16 West for the relocation of water and sewer lines.

RESOLUTION 62-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ASSEMBLY ROAD STORM DRAINAGE

A resolution approving a contract for Assembly Road Storm Drainage improvements with Jerry D. Sweetser, Inc. in the amount of \$58,575, plus a contingency of 20% (\$11,715), totaling \$70,290.

RESOLUTION 63-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SUNBRIDGE DRIVE EXTENSION

A resolution approving a contract for Sunbridge Drive Extension with Red Deer Inc. in the amount of \$268,174 plus a contingency of 11.1% (\$29,825.25) totaling \$298,000. Approval of a budget adjustment adding funds to the project and a project contingency of \$19,461 is also requested.

RESOLUTION 64-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RESEARCH AND TECHNOLOGY PARK

A resolution approving a contract for Research and Technology Park for tree and shrub removal with erosion control with Tomlinson Asphalt Co., Inc. in the amount of \$31,306.00 plus a contingency of 19.8% (\$6,194.00), totaling \$37,500.00.

RESOLUTION 65-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Davis moved to approve the consent agenda. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

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OLD BUSINESS

ODOR CONTROL OF SEWAGE TREATMENT PLANT

Mayor Hanna introduced a resolution establishing odor abatement and control as a priority in the design and operation of the City's sewage facilities.

Alderman Trumbo thought the resolution was at the front of their going forward with the proposed secondary wastewater treatment plant.

Alderman Daniel thought this was very important. She noted the city could be very demanding in the operation and construction of the facility in regards to the odor control.

Mr. Millard Goff, an area resident near the proposed plant, commended them on trying to be a good neighbor. He has seen the resolution and thought it was a good start. He questioned the source of funding and suggested setting money aside for the abatement of odor.

In response to questions, Mr. Venable stated odor abatement would be included in with the design of the project itself.

Mr. Goff asked if the city could set aside money to insure the plant would not smell. He stated a resolution without anything to back it up did not say a whole lot.

Alderman Daniel thought it was premature to set money aside. She thought it would be included in the cost of the facility. She could not approve a fund at this point.

Alderman Santos explained Mr. Goff was asking for a contingency allocation similar to a construction contract for cost overrun, with the exception this would be for odor abatement.

Mr. Crosson replied they could not allocate money past their current budget year according to state law.

Alderman Russell thought the resolution was a good start. When they contracted to design the plant and operate it there would be a clause in the contract which would hold people responsible for design and operation of the plant, and they would pay the city a penalty for the city to compensate people.

In response to questions from Aldermen, Ms. McCarty stated the council would approve all contracts for the sewer plant.

Alderman Russell stated he would not vote for a contract which did not include a clause where

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the city could hold them liable for failure to abide by the upmost technology that was in existence for odor abatement.

Alderman Austin asked Ms. McCarty if they could require the contractor to put up the money in a bond or insurance, so they would have the money to fall back on to abate the odor problem.

Ms. Carty stated they could look into it.

Mr. Crosson added there would have to be a time frame attached to it.

Mr. Venable stated it will be part of the contract.

Alderman Santos explained the resolution was to state the city's intent on how they were going to negotiate when they come to the contract.

Mr. Clarence Starr, 54th Street, stated over a year ago they had voted down this thing. He asked how they got it back on the agenda.

Mayor Hanna replied they had voted down an annexation.

Mr. Russell agreed with Mr. Starr. The last time the citizens had been campaigning because they did not want a sewer plant. The whole city of Fayetteville had the right to vote in that election. The city should have promoted it better before the election. He thought part of the problem was the citizens did not have all the information.

In response to a question from Mr. Starr, Alderman Young stated the bonds for the facility would be voted on by the people.

Alderman Russell stated he had to go with the results of the election, that the citizens did not want a sewer plant.

Ms. Donna Starr, an area resident, stated they had voted the issue down in an election. Now they were discussing bonds, she asked how they city had managed to go around the people who had voted this down and to spend all this money for the property. She asked why they were buying the land if they were not going to build a sewer plant there.

Alderman Trumbo stated one of the options they were looking at was to build a wastewater treatment plant on the land. In his personal opinion it was money well spent for the option because of the current state statutes and the contiguous land with people willing to sell within the city limits. The city's first option was to construct a plant there. If the people voted down the

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bonds then they would look at other options such as a golf course or sell the land. In his opinion it was money well spent because of the additional land which would provide added buffer and screening from the plant. He lived within a mile of the city's existing plant.

Ms. Starr stated they had lived there thirty years. When it comes time to vote on the bonds, they lived outside the city limits. They would not have the right to vote on the issuance of bonds because they were outside of the city limits.

Alderman Trumbo added they were able to organize their opposition to the issuance of the bonds.

In response to comments from Alderman Russell, Ms. Starr stated they did not vote against annexation. They would not have minded being annexed, but they knew from the beginning that the city intended to build a sewer plant.

Alderman Russell thought a lot of his constituents would not be interested in the growth that would be allowed by the new sewer plant.

Mr. Gary Adams, 46th Street, stated if they did not do something about the odor it would drift through the main part of the city and the university.

Mr. Bob Nickovicks, an area resident, stated the plant had gotten voted down. The land they were going to purchase was swamp land and was not what it was worth. He stated he would trade property with anyone else on the council or sell them his land.

Mr. Bill Jowers thought the city needed to take time out to work out the details on the resolution.

Mayor Hanna stated this resolution could be postponed until they got closer to what they were going to do.

Alderman Austin moved to table the resolution until the details could be worked out.

Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

WATER AND SEWER TREATMENT PLANT

A resolution to exercise the city's purchase options on three tracts of land on the west side of Fayetteville for the construction of a new sewage treatment facility. Land tracts to be considered are currently owned by James McClelland, H. M. and Norma Shipp, and the Broyles Farm.

Alderman Trumbo stated they had looked at several options. The state has passed a law which required them to come within their city limits. He thought this was the best option the city had available at the moment with willing sellers and the current state statutes. The three hundred

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acres was more land than what they needed for a treatment plant, but they had planned a buffer in consideration of the surrounding people.

Mayor Hanna explained this was part of an overall picture, the city was trying to get their permit approved. They had tried to cut down on the city's discharge permit, because the city was not moving forward with their plans for taking care of their wastewater problems. Whether or not they decided to build a plant on the west side, they still had to show the people who controlled their permits that they were making every effort to do something about their problem. They were being put in this situation by the state and federal laws. It was a tough decision.

Alderman Daniel stated she had received calls from people who thought this was necessary and they needed to move on it.

Alderman Santos stated he had requested the council to consider the odor abatement resolution first at Mr. Goff's suggestion so that it would ease the minds of people who lived in the area. He thought they needed to be up front with the fact that they were going to do everything they could to abate the odors. If they had to construct the plant they needed to do the best they could.

Alderman Austin asked how the issue would be put to the public for a vote.

Mayor Hanna explained it would be brought to the people as a bond issue for the construction of the waste water plant.

Alderman Young stated he was in favor of purchasing the land to give the citizens of Fayetteville the option to let them decide what they wanted to do. If they voted down the bonds they would probably place a moratorium on A-1 property.

Alderman Russell encouraged citizens to not give up the fight. He personally voted against the annexation because he did not know that the city needed the plant. He did not have a problem submitting another vote to the people. The only thing that could make him support another sewer plant would be another vote by the people supporting the plant.

Mr. Miller Goff, an area resident, stated there had been plenty of opportunities for them to take a different stance. He did not recall the city protesting Act 13-36. He asked if they had asked the attorney general for his opinion. He asked if they were in partnership with another town if the law would still apply to them. The city's engineers thought another site was the best site. He thought the city had decided to proceed in this way because it would require less effort for the city to take on the neighbors rather than taking on the best site the engineers had recommended.

Mayor Hanna stated the city had been trying to get the plant on the Illinois River. Those people

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came to the public hearings, 200 strong. It had been some of the worst meetings he had ever seen. The city had no support from people like him. They were sitting up there all by themselves. The hearing did not change their minds. A state law had changed their minds. He had gone to the Municipal League and called other mayors all over the state. He could not even get the support of their own representatives. Act 13-36 had required them to locate the sewer plant within the city limits. He did not like the idea of having the plant within city limits, but it was not his fault or idea.

Alderman Russell stated he liked Act 13-36. He was not convinced it was a bad law.

Mr. Jeff Erf, an area resident, asked the relationship between the engineering firm and one property owner, since they both shared the name McClelland. Charles Venable stated there was a relationship between the two.

Mr. Jowers, an area resident, asked if there was a possibility to bring this decision to a vote of the people before they purchased the land.

Mayor Hanna did not believe they could.

Mr. Jowers stated there were other cities going through the same thing they were. He discussed the history of the development and the sewer meetings. He questioned why there had not been any more committee meetings. He asked what the intent of the committee had been.

Alderman Trumbo stated that as chairman of the Water and Sewer Committee he had asked them to the meetings to get constructive criticism. They had aired all their views and he did not know what more could have been done.

Mr. Jowers stated Alderman Young had questions which had never been answered. He stated the existing plant had been designed to service 69,000 people. They currently had 56,000 people. He questioned what had happened to the contract.

Alderman Trumbo stated he felt that he had done a very thorough job of taking public input and gathering information. He felt due diligence was done in extreme measures.

Mr. Jowers stated the purchase of the property was against the people's wishes. He thought that other people other than the City of Fayetteville that they were serving would join in a regional plant as soon as it was constructed. He thought the existing plant might be sufficient if a regional plant were to come along. He felt the land had been appraised too high and it would be difficult to sell. There were four other golf courses within five miles. He felt they needed to be better stewards of the taxpayers' money. He thought they needed another opinion. They had studies

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and no opinion. He asked the aldermen to vote by secret ballot, then reveal how they voted.

Alderman Austin stated he had voted for the resolution to bring before the council on odor control which he thought they wanted.

Mr. Jowers stated he had spoken with Mayor Hanna about a resolution on odor control. He had wanted to work on the resolution before it was in concrete. He had not been notified of the meeting. He asked for people to be up front with them.

Alderman Austin asked what could have been added to the resolution that would have made it palatable to him.

Mr. Jowers thought some money needed to be set aside and he did not think a million dollars was enough.

Alderman Russell questioned if it would be more cost effective to put it to a vote or to go ahead and buy the property.

Mayor Hanna stated they could not have a bond issue vote until they had let the contract.

Alderman Russell replied they could expend the money on the six month option and then have a vote on the land acquisition. If it failed then the city had not spent their three million dollars. It would take longer, but he was willing to wait.

Alderman Trumbo stated he was in favor of purchasing now. They could continue with their premitting process. In the worst case, they would own a nice property.

Mayor Hanna thought time was important.

Mr. Venable stated the permit was the most important. They had the possiblity of having their permit lowered. He thought they needed to purchase the property.

Mayor Hanna explained if they did not have a specific piece of property the state would not conduct their study and they would not give them a permit. If they did not have the property then they would have to consider a moratorium on sewer taps or expanding the plant on the east side of the city.

Alderman Young stated they were looking at the site short term. He was looking at the 300 acres as a potential sewer plant. He questioned what would happen 40 years from now. They might not build one now, but the people of Fayetteville may want to build one some day.

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Alderman Austin asked what would happen if they purchased the property and the bond issue was turned down.

Mr. Venable stated the two plants cost about the same, whether we build a new plant or added to the existing plant. The problem with the existing plant was the cost of maintaining the existing plant with all the pumping they had to do. It was higher for the operations and maintenance of it because of the way Fayetteville drained a lot of the water to the west and to the east. They did not know all the things that had to be done yet.

Alderman Austin asked if the public voted down the issuance of the bonds and they had purchased the property how they were going to fund the east plant.

Mr. Venable explained it would be funded the same way the west plant would be funded, with bonds.

Mr. Jowers asked why they did not expand what they currently had.

Mr. Venable explained over the life of the plants they would pay a lot more money for the operation of that, because of the required pump stations.

Mr. Jowers suggested expanding the existing plant until the regional plant had been constructed. They had done it with Beaver Water. He thought this could work just as well, but they had to put some energy into it.

Alderman Daniel stated she had attended a meeting on a regional sewer system and had been disappointed because it was a managerial system of multiple sewer treatment plants.

Alderman Reynolds stated he felt for the neighbors because he lived across from the Industrial Park. He thought the committee had been very positive. He thought they had been in favor of a sewer plant if the odor could be treated and the plant was built right. He thought they needed to get the city's representatives to reverse the law so they could go back to their first site. If they could not do that, they still had to have a sewer plant on the west side of town. They could not continue by doing everything to the east plant.

Ms. Donna Starr, 54th Street, said she knew there would be odor from the plant. There were too many people who talked about the odor problem on the east side of town.

Alderman Reynolds stated they had been working on the problem and people were currently constructing \$300,000 homes around it.

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Ms. Starr replied most of those people kept their homes closed up. She lived in the country and they liked to have their windows open to get fresh air. She did not believe they would be able to do it if they constructed the plant.

Alderman Davis felt that she would be able to if the plant was constructed properly. He added there were children playing outside everyday on the east side because they had corrected the problem.

Ms. Starr stated when they were considering this before people from the east side had complained about the odor. She asked that if in the last year that they had taken care of all the problems.

Alderman Reynolds stated they were trying. They had to have a sewer plant. They were at capacity.

Alderman Austin stated he did not like the idea of placing the plant that close to the city. But they had their hands tied. Tonight they either had to buy the property or extend their options. He asked if they took the purchase of the property to the voter could she live with what the public said.

Ms. Starr replied she could not because she would not be allowed to vote.

Alderman Trumbo moved to approve the resolution as presented. Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 66-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK

NEW BUSINESS

VA 99-4

An ordinance approving VA 99-4 vacating an alley located at 903 South Government Street as requested by the Regional National Cemetery Improvement Corporation lying contiguous to the east side of Lot 10 and to the west side of lot 11 of the Dowell Addition.

Ms. McCarty read the ordinance for the first time.

Alderman Austin moved to suspend the rules and go to the second reading. Alderman Davis seconded the motion. Upon roll call the motion carried.

City Council
May 4, 1999

Ms. Carty read the ordinance for the second time.

Alderman Davis moved to suspend the rules and move to the third and final reading. Alderman Austin seconded the motion. Upon roll call the motion carried unanimously.

Ms. McCarty read the ordinance for the third time.

Alderman Reynolds explained they needed to square up the property in order for the federal government to take it. The federal government would not take property unless it was square.

Upon roll call the motion carried unanimously.

ORDINANCE 4160 AS RECORDED IN THE OFFICE OF THE CITY CLERK

VA 99-5

An ordinance approving VA 99-5 vacating an alley located at 898 Hill Street as requested by the Regional National Cemetery Improvement Corporation for that portion of a 20 foot alley lying contiguous to the west side of a part of lot 9 and all of lots 10, 13, and 14 in the Dowell Addition.

Ms. McCarty read the ordinance for the first time.

Alderman Santos moved to suspend the rules and move to the second reading. Alderman Trumbo seconded the motion. Upon roll call the motion carried unanimously.

Ms. McCarty read the ordinance for the second time.

Alderman Austin moved to suspend the rules and to go to the third and final reading. Alderman Russell seconded the motion. Upon roll call the motion carried unanimously.

Ms. McCarty read the ordinance for the third and final time.

Upon roll call the ordinance passed unanimously.

ORDINANCE 4161 AS RECORDED IN THE OFFICE OF THE CITY CLERK

CARDINAL CAB

A resolution authorizing a Certificate of Public Convenience and Necessity be issued to Cardinal Cab Co. of Springdale, Arkansas for operating a transportation service within the City of Fayetteville.

City Council
May 4, 1999

The cab owner stated they were not wanting to take anyone's business away from them. They were wanting to be able to pick up their customers that they had dropped off. He explained they had a number of elderly customers that used them who wanted them to come back and pick them up. Currently, they could not pick them back up in Fayetteville. If there was a need for a cab service in Fayetteville they were equipped to take care of it. They would move in when the city felt there was a need for it. They mainly wanted permission to pick their people back up. They had been in business four weeks and had guaranteed customers in Springdale that there would not be more than a 15 minute wait. They had started their company to give people the service they deserved and to stop the waiting time.

Mayor Hanna asked if they had checked the requirements for operating in Fayetteville.

The owner replied they were 95% fulfilled, the only thing they lacked was the driving permit and permission from the chief of police. He presented a picture of their car and explained that all of their cars were inspected every three months. They were all clean cars with air conditioning. He explained they ran meters and did not go by a zone map. He explained their rates.

In response to questions from aldermen, he stated they accepted the vouchers from Community Development. Their insurance was more than what Fayetteville required.

He stated they currently had two cabs running and had a third cab coming, which was being painted. They had been open three weeks. His partner had driven for Smiley Cab for three years. He had owned his own company for three years before he sold it.

In response to questions from Alderman Reynolds, Ms. Woodruff stated the city currently had four companies. All four were current on their insurance and other requirements.

Alderman Reynolds stated he had spoken with two of them who expressed concern about them not needing another company.

Mayor Hanna explained this company was wanting the right to pick up their customers they had dropped off at the doctor's office or other businesses.

The owner stated they did not want to run the streets of Fayetteville, they wanted to be able to pick their customers back up.

Alderman Santos moved to approve the resolution and authorize a certificate. Alderman Russell seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 67-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK

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WASTEWATER TREATMENT PLAN DATA REVIEW

A resolution authorizing a review of data related to the Paul R. Noland Wastewater Treatment Facility by an independent engineer to determine flow processing capabilities.

Alderman Young explained the current facility plant was based on the premise that the Noland Plant was nearing capacity. They were not anywhere near the population projects for the year 2005 which the Noland plant had been designed for, but they were supposedly near capacity. He felt there were some conflicts and inconsistencies in the numbers that he would like to have cleared up.

Mayor Hanna explained that if everything went as it was planned, it would take approximately four to five years to reach capacity.

Alderman Trumbo thought it was a good idea to have a third person come in to verify the flow.

Mayor Hanna stated if they passed the resolution, he would like to see two things. He wanted to see a limit on the amount of money they would spend to do the study and a time frame for it to be done in. He stated he wanted Alderman Young to sit in on the drawing up of the specifications for the bids, so they could be certain they were getting what he wanted.

Mr. Venable recommended they hire someone out of state, because most of the local people had worked on the plant. A contract would come before the council before it was approved.

Alderman Austin moved to approve the resolution. Alderman Santos seconded the motion.

Mr. Jeff Erf, an area resident, hoped they would endorse the resolution, because CH2M Hill had a lot to do with the construction and operation of the existing plant.

Alderman young thought it would take approximately a month to conduct the study.

Mayor Hanna thought Alderman Young needed to be on the selection committee and to work with the staff on drawing up the specifications for the bids.

Upon roll call the motion carried unanimously.

RESOLUTION 68-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

The meeting adjourned at about 8:00 p.m.

STAFF REVIEW FORM

☒ AGENDA REQUEST
☐ CONTRACT REVIEW
☐ GRANT REVIEW

For the Fayetteville City Council meeting of May 18, 1999

FROM:

Ed Connell EC
 Name

Engineering
 Division

Public Works
 Department

ACTION REQUIRED: Resolution authorizing Mayor and City Clerk to enter into documentation for the sale of the remainder (1.15 acres) of the Caudle property, located at 295 S. Crossover Road, to Eastside Missionary Baptist Church for a purchase price of \$17,400.00. The subject property was originally purchased by the City for Hwy 265 right of way purposes.

COST TO CITY:

\$ -17,400.00
 Cost of this Request

\$
 Category/Project Budget

Hwy 265 Widening R.O.W.
 Category/Project Name

4470-9470-5810.00
 Account Number

\$
 Funds Used To Date

Program Name

94083-30
 Project Number

\$
 Remaining Balance

Fund

BUDGET REVIEW:

☒ Budgeted Item

Budget Adjustment Attached

A. H. Scott
 Budget Coordinator

Kevin D. Cross
 Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

Marilyn J. Cramer 4-20-99
 Accounting Manager Date

[Signature] 4-20-99
 City Attorney Date

[Signature] 4-20-99
 Purchasing Officer Date

GRANTING AGENCY:

Yolanda Stultz 4-20-99
 Internal Auditor Date

ADA Coordinator Date

STAFF RECOMMENDATION: Staff recommends sale of land to the adjacent property owner, Eastside Missionary Baptist Church. Property is approx. 175 ft. ± deep by 295 ft. ± frontage and not considered suitable for any City purpose. Church owns property to the South and West of the parcel.

[Signature] 4/19/99
 Division Head Date

[Signature] 4-20-99
 Department Director Date

[Signature] 20 APR 99
 Administrative Services Director Date

[Signature] 4/21/99
 Mayor Date

Cross Reference

New Item: Yes ☒ No ☐

Prev Ord/Res #: _____

Orig Contract Date: _____

DEPARTMENTAL CORRESPONDENCE

TO: Fayetteville City Council

THRU: Fred Hanna, Mayor
Charles Venable, Public Works Director
Jim Beavers, City Engineer *JB*

FROM: Ed Connell, Land Agent *EDC*

DATE: April 15, 1999

RE: Sale of "Caudle" Property to
Eastside Missionary Baptist Church
295 S. Crossover Road, Fayetteville

In March of 1998, the City purchased 1.82 acres of land, including a residence, at the intersection of Wyman Road and Hwy 265. This property was purchased because, at the time, the property was vacant and it was known that a relatively large portion of the land, and the house, would have to be purchased to accommodate the projected expansion of Hwy 265. The City paid \$50,000 for the land and improvements. Early in 1999, the City conveyed $\frac{2}{3}$ acre to the state, including the residence, leaving a remainder of 1.15 acres, more or less. This remaining 1.15 acres would be a parcel approx. 174 feet deep by approx 295 foot of frontage on Hwy 265.

Eastside Missionary Baptist Church owns property (4.5 acres) on the South side and West side of the property described hereinabove (see attached diagram). After the highway department took approx $\frac{1}{2}$ acre of frontage from the church, trustees inquired to see if the City was interested in selling the remainder of the Caudle property.

City staff took a look at the remainder of the Caudle property and decided that there was little application that this property could be used for. The area is zoned for residential purposes; the depth of the parcel is 174 $\pm$ feet with the west 30-40 feet being of minimum use due to a sizeable elevation difference, thus it was decided by the administration to pursue the possible sale of the land to the church.

In the acquisition of right of way by the Arkansas State Highway Commission, the church was paid \$8,000 for the $\frac{1}{2}$ of land acquired. The City agreed to sell the remainder of the Caudle property (1.15 acres) to the church at the same unit value paid by the highway department, or \$16,000/acre. Thus, the 1.15 acres of land would have a purchase price of \$18,400.00. The City, on the other hand, needed to acquire utility easements for itself and Arkansas Western Gas Co. across both the church property and the Caudle remainder that would be sold to the church. Utilizing our standard of permanent easement value being 15% of land value, the easement portion of both properties were reconciled, resulting in a \$1,000.00 credit to the church. When this credit is applied, the resultant purchase price becomes ~~\$16,400.00~~.

17,400.00

EDC

OFFER AND ACCEPTANCE CONTRACT

1. The Eastside Missionary Baptist Church, hereinafter referred to as the Buyer, offers to buy, subject to the terms and conditions set forth herein, the following described property:

SEE ATTACHED EXHIBIT "A"

2. **Purchase Price:** Subject to the following conditions, the Buyer shall pay for the property at closing, the total and cash payment of \$17,400.00
3. **Contingent Earnest Money Deposit:** The Buyer herewith tenders a check for \$1,000.00 to the City of Fayetteville, Arkansas, a municipal corporation, hereinafter referred to as the Seller, as earnest money, which shall apply on the purchase price. This offer of ~~sale~~ is contingent upon approval of the City Council of the City of Fayetteville, Arkansas, and, if they do not so approve, the earnest money deposit will be returned to the Buyer by the Seller. If title requirements are not fulfilled or the Seller fails to fulfill any obligations under this contract, the earnest money shall be promptly refunded to the Buyer. If the Buyer fails to fulfill his obligations under this contract or after all conditions have been met, the Buyer fails to close this transaction, the earnest money may, at the option of the Seller, become liquidated damages to the Seller. Alternatively, the Seller may assert legal or equitable rights which it may have because of breach of this contract. The contingency earnest money deposit shall be held in escrow by the Seller.
SALE
4. Conveyance will be made to the Buyer by general Warranty Deed, except it shall be subject to recorded instruments and easements, if any, which do not materially affect the value of the property. Such conveyance shall include mineral rights owned by the Seller.
5. The Seller shall furnish, at the Seller's cost, a policy of title insurance in the amount of the purchase price from a title insurance company selected by the Seller.
6. Seller agrees to allow Buyer, if Buyer so desires, at Buyer's expense, to survey the property. Seller agrees to cure any title problems which may result from any differences between the recorded legal descriptions of the property and the survey description. Said title problems, if any, must be solved prior to closing to the satisfaction of the Buyer. Seller agrees to provide Buyer with a copy of Seller's survey on said property, said survey having been conducted by Alan Reid & Associates dated January 26, 1998 as Job No. 98007, and said survey being subject to lands conveyed to the Arkansas State Highway Commission and filed as Deed Record 99-014845 with the Office of the Circuit Clerk, Washington County, Arkansas.
7. Taxes and special assessments due on or before closing shall be paid by the Seller. Insurance, general taxes, ad valorem taxes, special assessments and rental payments shall be prorated as of closing.

CAUDLE PROP.

A.2.4

Fayetteville City Council

Caudle Property Remainder Sale

Page 2

Please find herewith an *Offer and Acceptance* contract between the Eastside Missionary Baptist Church and the City for the purchase of this land. For your information, the unit value on the sale of this land is greater than the land value (\$/Ac) at purchase. This is a result of the recent AHTD purchase of land for ROW purposes.

OFFER AND ACCEPTANCE CONTRACT
Page 2 of 6

8. The closing date is designated to be July 1, 1999, ^{subject to the} ~~days after~~ approval to sell by the Fayetteville City Council. If such date of closing falls on a weekend or holiday, it will be held the following working day. Closing shall be held at the offices of the Seller.
9. Possession of the property shall be delivered to the Buyer on the date of closing. It is understood by both Buyer and Seller that the property described herewith has been designated as a staging area for the reconstruction of State Highway No. 265, AHTD Project No. 04999.
10. Seller hereby grants permission for the Buyer or designates to enter the above described property and improvements for the purpose of inspection and survey.
11. All fixtures, improvements and attached equipment are included in the purchase price. It is understood that the residential improvement associated with the original property (property description prior to the LESS and ACCEPT) has been conveyed to the Arkansas State Highway Commission and is part of the LESS and ACCEPT portion of the property description set forth in Exhibit "A". Seller retains the right, at Seller's option, to remove, or have removed by others, improvements consisting of three metal roof sheds or barns that are part of this property transaction but contribute no value to the purchase price. The metal roof sheds or barns will be removed on or before completion of the highway reconstruction utilization indicated in Item #9 above.
12. Risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by the Seller.
13. Seller shall disclose to Buyer any and all environmental hazards of which Seller has actual knowledge.
14. Seller shall be responsible, at Seller's expense, for the removal of any improvements provided for in Item #9 hereinabove.
15. This agreement shall be governed by the laws of the State of Arkansas.
16. This agreement, when executed by both the Buyer and the Seller shall contain the entire understanding and agreement of the parties with respect to the matters referred to herein and shall supersede all price or contemporaneous agreements, representations and understanding with respect to such matters, and no oral representations or statements shall be considered a part hereof.
17. This contract expires, if not accepted on or before the ____ day of _____, 1999.

OFFER AND ACCEPTANCE CONTRACT
Page 3 of 6

18. NOTICE: SELLER ASSERTS AND BUYER HEREBY ACKNOWLEDGES THAT THIS OFFER IS EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS OFFER OF SALE BY THE CITY COUNCIL OF FAYETTEVILLE AND THAT THE FAILURE OF THE COUNCIL TO SO APPROVE WILL MAKE ALL PORTIONS OF THIS OFFER NULL AND VOID, INCLUDING, BUT NOT LIMITED TO, THE RETURN TO BUYER OF THE \$1,000.00 EARNEST MONEY DEPOSIT.

SELLER: CITY OF FAYETTEVILLE, ARKANSAS, a municipal corporation

Fred Hanna
Fred Hanna, Mayor

Date: 4/5/99

Heather Woodruff
Heather Woodruff, City Clerk

Date: 4/5/99

BUYER: EASTSIDE MISSIONARY BAPTIST CHURCH
325 South Crossover Road, Fayetteville, Arkansas

Alfred Sagely
Alfred Sagely

Date: 3-31-99

Danny Farrar
Danny Farrar

Date: 4-4-99

Phillip A. Smith
Phillip Smith

Date: 3-31-99

Gene Gray
Gene Gray

Date: 4-4-99

OFFER AND ACCEPTANCE CONTRACT
Page 4 of 6EXHIBIT "A"
PROPERTY DESCRIPTION

A part of the part of the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) and a part of the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼), all in Section Fourteen (14) of Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas, being more particularly described as follows, to-wit: Beginning at the Southeast corner of the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of said Section 14, said point being an existing railroad spike in State Highway 265 (Crossover Road); thence South 02° 55' 31" West along the East line of the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) of said section, a distance of 30.00 feet to a point from which a reference set iron pin on the West right of way of said highway bears North 86° 37' 03" West 31.30 feet; thence North 86° 37' 03" West 268.00 feet to a set iron pin; thence North 02° 34' 35" East 295.32 feet to a set iron pin; thence South 86° 37' 03" East 268.18 feet to a point on the East line of the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of said section from which a reference iron set on the West right of way of said highway bears North 86° 37' 03" West 16.64 feet; thence South 02° 34' 35" West 265.32 feet to the Point of Beginning, containing 1.82 acres, more or less, and being subject to right of way of State Highway 265 along the entire East boundary and easements of record; LESS AND EXCEPT a portion of the above described property conveyed to the Arkansas State Highway Commission and filed with the Circuit Clerk of Washington County, Arkansas, as Deed Record 99-014845 and being more particularly described, after rotation, as follows: Beginning at the Northeast Corner of the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) of said Section 14 and running South 02° 55' 31" West along the East line of said SW¼ of the SE¼, a distance of 30.00 feet; thence North 86° 37' 03" West a distance of 102.13 feet to a point; thence North 03° 55' 55" East a distance of 228.50 feet; thence North 05° 38' 34" East a distance of 66.86 feet; thence South 86° 37' 03" East 93.33 feet; thence South 02° 34' 35" West 265.32 feet to the Point of Beginning, said Less and Except containing 0.668 acre, more or less. Bearings for the hereinabove descriptions are based upon City of Fayetteville Monumentation and State Plane Coordinate System and may vary from descriptions previously used in describing these properties.

SIGNED FOR IDENTIFICATION:

SELLER: City of Fayetteville, Arkansas;

Fred Hanna
Fred Hanna, Mayor

4/5/99
DATE

BUYER: Eastside Missionary Baptist Church

Alfred Sagely
Alfred Sagely

3-31-99
DATE

DATE

OFFER AND ACCEPTANCE CONTRACT

Page 5 of 6

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
 COUNTY OF Benton) ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Alfred Sagely, Phillip A. Smith, Danny Farrar, and Gene Gray, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are duly authorized to execute the foregoing instrument for and in the name and behalf of the Eastside Missionary Baptist Church, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

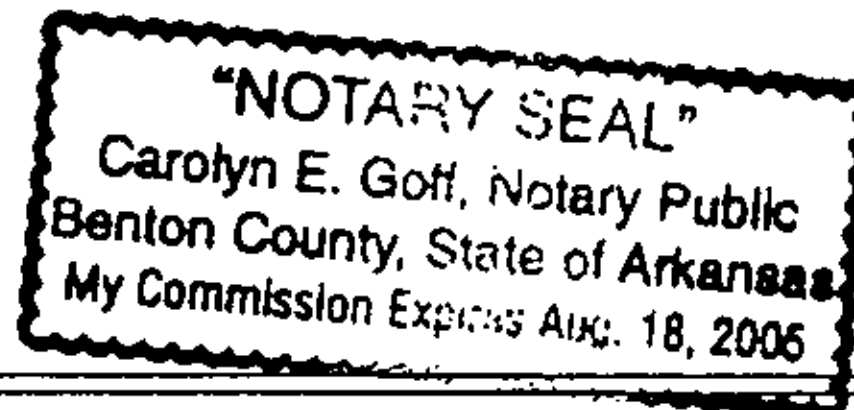
WITNESS my hand and seal on this 4th day of April, 1999.

Carolyn E. Goff

Notary Public

MY COMMISSION EXPIRES:

8-18-2005



ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
 COUNTY OF WASHINGTON) ss.

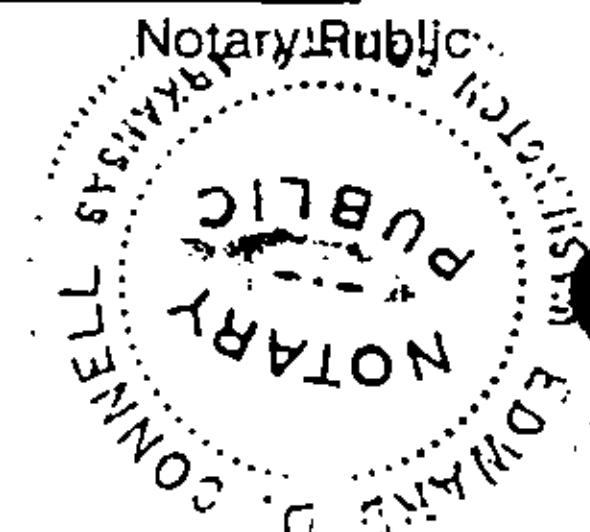
BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Fred Hanna and Heather Woodruff, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the Mayor and City Clerk of the City of Fayetteville, Arkansas, a municipal corporation, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said municipal corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 5th day of April, 1999.

Edward D. Connell

MY COMMISSION EXPIRES:

05-01-2000





CITY OF FAYETTEVILLE
113 WEST MOUNTAIN STREET
FAYETTEVILLE, AR 72701

DATE: 4/19/1999

RECEIPT NO.: 990087181

RECEIPT DESCRIPTION		AMOUNT
Misc Recpt E Baptist Ch-Ernst \$ 295 Cross Eastside Baptist Church		\$ 1,000.00
Thank You!		
RECEIVED FROM E Baptist Ch-Ernst \$ 295 Cross	TOTAL AMOUNT	\$ 1,000.00

ACCTG

RECEIVED BY:

LMC

ORIGINAL



113 WEST MOUNTAIN STREET
FAYETTEVILLE, AR 72701

RECEIPT NO.: 990087181

RECEIPT DESCRIPTION		AMOUNT
Misc Recpt E Baptist Ch-Ernst \$ 295 Cross Eastside Baptist Church		\$ 1,000.00
<i>Thank You!</i>		
RECEIVED FROM E Baptist Ch-Ernst \$ 295 Cross	TOTAL AMOUNT	\$ 1,000.00

ACCTG

RECEIVED BY:

KMC

DUPLICATE



CITY OF FAYETTEVILLE
113 WEST MOUNTAIN STREET
FAYETTEVILLE, AR 72701

DATE: 4/5/99

RECEIPT NO.:

ACCOUNT NUMBER	RECEIPT DESCRIPTION	AMOUNT
	Eastside Baptist Church	1000.00
	Earnest money on City Owned Property	

EASTSIDE BAPTIST CHURCH

325 CROSSOVER RD.
FAYETTEVILLE, AR 72701

3515

81-161/829

DATE 4-5-99

PAY
TO THE
ORDER OF

City of Fayette

\$ 1000.00

One Thousand Dollars & 00/100

DOLLARS



THE BANK OF FAYETTEVILLE, N.A.
ONE SOUTH BLOCK STREET
FAYETTEVILLE, ARKANSAS 72701

FOR Deposit/Earnest - Caudle Property

Alfred Sagely

⑈003515⑈⑈082901619⑈

70006024⑈

Thank You!

TOTAL
AMOUNT

\$ 1,000.00

RECEIVED
BY

Garin McClelland

ck # 3515

ORIGINAL



CITY OF FAYETTEVILLE
113 WEST MOUNTAIN STREET
FAYETTEVILLE, AR 72701

DATE: 4/5/99

RECEIPT NO.:

ACCOUNT NUMBER	RECEIPT DESCRIPTION	AMOUNT
	Eastside Baptist Church	1000.00
	Earnest money on City Owned Property	

EASTSIDE BAPTIST CHURCH
325 CROSSOVER RD.
FAYETTEVILLE, AR 72701

3515

81-161/829

DATE 4-5-99

PAY
TO THE
ORDER OF

City of Fayette

\$ 1000.00

One Thousand Dollars & No/100

DOLLARS



THE BANK OF FAYETTEVILLE, N.A.
ONE SOUTH BLOCK STREET
FAYETTEVILLE, ARKANSAS 72701

FOR Deposit/Earnest - Caudle Property

Alfred Sagely

⑈003515⑈ ⑈082901619⑈ 70006024⑈

Thank You!

TOTAL
AMOUNT

\$ 1,000.00

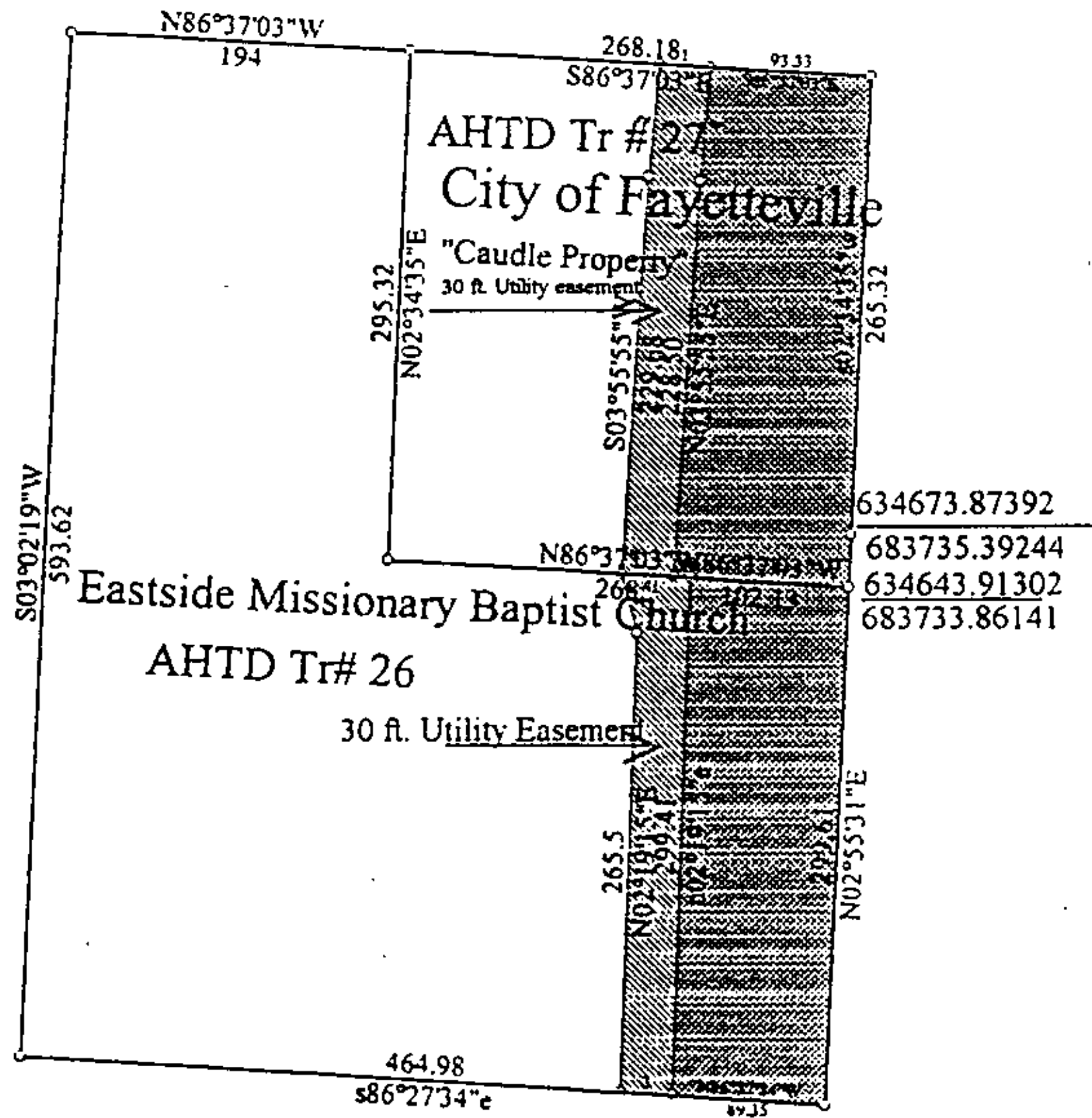
RECEIVED
BY

Xarin McClelland

ck # 3515

CAUDLE PROP.

A.2.14



Tract # 27, City of Fayetteville

Total Property = 79,189 sq. ft. (1.818 acres)

Existing & New ROW = 29,111 sq. ft. (0.668 acre)

Remainder = 50,078 sq. ft. (1.150 acres)

Tr # 27 Utility Easement = 8860 sq. ft. @ 15% = 1329 sq. ft.

Tr # 26 Utility Easement = 9142 sq. ft. @ 15% = 1371 sq. ft.

Total = 2700 sq. ft.

Basis of Purchase: 50,078 sq. ft. less 2,700 sq. ft. = 47,378 sq. ft. = 1.088 acres

and @ \$16,000/Ac = \$ 17,408 , Say \$17,400.00
(excludes closing costs)

Tract # 26, Eastside Missionary Baptist Church

Total Property = 196,557 sq. ft. (4.512 Acres)

Existing and New ROW = 27,227 sq. ft. (0.625 Acre)

TR # 26 Remainder = 169,330 sq. ft. (3.887 Acres)

Purchase from City = 50,078 sq. ft. (1.150 Acres)

Total Property After Purchase= 219,408 sq. ft. (5.037 Acres)

Basis of Bearings: The bearings of the information presented herein are based upon G.P.S. observation or rotation to G.P.S. System, City of Fayetteville Monumentation, Arkansas State Plane Coordinate System (North Zone).

STAFF REVIEW FORM

XXX AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Council meeting of May 18, 1999

FROM:

Willie Newman Solid Waste Public Works
Name Division Department

ACTION REQUESTED:

Approval of amendment #3 to the contract with Sunray Services, Inc. to transport and dispose of municipal solid waste and for operation of City's transfer station.

COST TO CITY:

\$21,450 est.	\$679,320	
<u>\$11,550 est.</u>	<u>\$327,516</u>	<u>Services & Charges</u>
Cost of this request	Category/Project Budget	Category/Project Name
5500-5010-5316.00	\$151,688	Commercial Collections
5500-5020-5316.00	\$ 70,668	Residential Collections
Account Number	Funds Used to Date	Program Name
	\$527,632	
	<u>\$256,848</u>	<u>Solid Waste</u>
Project Number	Remaining balance	Fund

BUDGET REVIEW:

X Budgeted Item

Stephen D. Davis
Budget Coordinator

Budget Adjustment Attached

Kevin D. Cross
Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

Marion G. Kramer 4-16-99
Accounting Manager Date
[Signature] 4-19-99
City Attorney Date
P. Vice 4-19-99
Purchasing Officer Date

GRANT AGENCY: _____

ADA Coordinator Date
Golanda Fields 4-18-99
Internal Auditor Date

STAFF RECOMMENDATION:

Division Head Date
[Signature] 4-19-99
Department Director Date
Kevin D. Cross 4/19/99
Admin. Services Director Date
[Signature] 4/19/99
Mayor Date

Cross Reference

New Item: Yes No

Prev Ord/Res #: _____

Orig Contract Date: _____

DEPARTMENTAL CORRESPONDENCE

TO: Fayetteville City Council

THRU: Fred Hanna, Mayor
Charles Venable, Public Works Director

FROM: Willie Newman, Waste Reduction Coordinator *Wen*

DATE: April 16, 1999

RE: Sunray Services, Inc. Contract - Amendment #3

Staff requests approval of amendment #3 to the contract with Sunray Services, Incorporated for transport and disposal of municipal solid waste and for operation of the City's transfer station. Approval of amendment #3 would modify our contractual agreement by increasing our disposal fees from \$18.00 per ton to \$19.00 per ton, a \$1.00 increase. In addition, Sunray is requesting a slight fee increase associated with non-City waste delivered to the Transfer Station in the amount of \$0.50 per ton to \$42.75 per ton or \$0.05 per bag to \$1.30 per bag. Furthermore, Sunray requests the approval of the five year contract renewal as set forth in the original contract.

Currently, the City pays \$4.13 per ton for operating our Transfer Station, \$5.07 per ton for transporting our waste to the Tontitown Landfill, and \$18.00 per ton for disposal which totals \$27.20 per ton. The \$1.00 increase requested would increase the disposal portion of the contract to \$19.00 per ton. Regarding the non-City waste delivered to the Transfer Station, the City receives a 5% franchise fee on all non-City waste and the requested increase is minimal. Sunray is requesting these fee increases because they have started a two-phase site expansion at the Tontitown Landfill Facility that will add over 10 million cubic yards of airspace at a cost in excess of \$2 million dollars for the first phase of site expansion. These site expansions are projected to provide adequate airspace through the year 2006. Staff feels these fee increases are justified and support their approval.

The contract terms specified six years with 3 five year renewal options totaling twenty years. The first five year period is set to expire on August 31, 2001. Sunray has requested approval of the second five year renewal option. Sunray has provided a very good service at a very reasonable price; therefore, staff would support the approval of the early contract renewal option contingent upon the following. Sunray requested discussion of annual cost of living increases for the renewal period instead of increases that occur with cell development. Staff feels that an annual cost of living increase is not in the best interest of the City, but would support a \$1 per ton increase on disposal fees for the renewal period which is projected to coincide with the second phase of Sunray's site

expansion.

Staff recommends approval of this amendment with the changes set forth above. Maintaining a long term relationship with Sunray is in the best economic and environmental interest of the City. Please approve amendment #3 to this contract at your meeting scheduled for May 18. Staff and a representative from Sunray will attend both the agenda session and the city council meetings for further discussion. If you should have any questions prior to the meeting, please contact me at 444-3497 at your convenience.



WASTE MANAGEMENT

11979 Arbor Acres Rd.
P.O. Box 1310
Springdale, AR 72765
(501) 751-7024
(501) 751-7924 Fax

February 15, 1999

Mr. Willie Newman
City of Fayetteville Solid Waste
1455 Happy Hollow Road
Fayetteville, AR 72701

Dear Mr. Newman,

Sunray Services, Inc., a Waste Management Company, is the current operator of the City of Fayetteville Transfer Station. Sunray currently hauls the solid waste from this transfer station to our Tontitown Landfill Facility for disposal. The current contractual agreement allows for increases from time to time (Section 3(e)). Please consider this letter as a request for a \$1 per ton increase in disposal fees.

Currently, the Tontitown Landfill Facility has an expansion underway that adds an estimated 1.02 million cubic yards of airspace. The cost of this airspace addition will exceed \$2 million dollars when completed. This landfill will meet all the Arkansas Department of Environmental Quality regulations along with the additional regulatory burdens of the Four County Solid Waste District. The requested increase in disposal fees will be retroactive to January 1, 1999 and be in effect for the remainder of the contract.

The asset of a long-term solid waste disposal facility in the immediate area is valuable to Northwest Arkansas. The growth that has occurred makes these types of facilities even that much more important. Recognizing that we have long term disposal needs, reasonable disposal rates, and long term population growth, it makes sense to look into our contract renewal early and take advantage of the available disposal airspace. Sunray would also like to discuss the possibility of annual cost of living increases on the renewal instead of the increases that occur with the cell development updates. This feature would look to future for the City of Fayetteville to help plan with annual budgets and future cost controls.

Additionally, Sunray is requesting to increase the fees charged to the public for use of the transfer station. These fees are as follows:

Current Price: \$41.25 per ton
Bag Rate: \$ 1.25 per bag

Requested Price: \$42.75 per ton
Requested Price: \$ 1.30 per bag

Thank you in advance for your consideration of these requests. If you have any questions concerning these increases, please forward them to my attention or phone me at (501) 361-1111.

Yours truly,

W. Todd Carlton
District Manager

AMENDMENT #3

**Contract with Sunray Services, Incorporated
for the Operation of Transfer Station,
and Transport and Disposal of Municipal Solid Waste**

The City of Fayetteville, by agreement dated September 25, 1995, contracted with Sunray Services, Inc. for the operation of Fayetteville's transfer station, and transport and disposal of municipal solid waste. Amendment #3 does hereinafter amend the contracted terms of agreement as specified in Section 1 and fee structure as specified in Section 3 of the contract document. The approved amendments to Section 1 and 3 of the contract document are as follows:

- Section 1. The City executes the first five year renewal option.
- Section 3. (c) For its disposal of waste delivered to the City Transfer Station, \$19.00 per ton; effective August 31, 2001, for its disposal of waste delivered to the City Transfer Station, \$20.00 per ton;
- Section 3. (d) For disposal of solid waste delivered to Contractor's landfill or transfer station, \$28.20 per ton; effective August 31, 2001, for disposal of solid waste delivered to Contractor's landfill or transfer station, \$29.20;
- Section 3. (f) A minimum charge for accepting solid waste from sources other than the City of Fayetteville, \$1.30 per bag until exceeds \$20.65, or \$20.65 minimum up to 1,000 pounds, after 1,000 pounds other sources will be charged \$42.75 per ton.

IN WITNESS WHEREOF, the parties to these presents have executed this Amendment #3 of the contract for the operation of Fayetteville's transfer station, and transport and disposal of municipal solid waste to be retroactive to January 1, 1999.

ATTEST:

(City Clerk)

(Seal)

(Secretary)

(Witness)

City of Fayetteville, Arkansas
(City)

By: _____

(Title)

Sunray Service, Inc.
(Contractor)

By: _____

(Title)

(Address and Zip Code)

**AGREEMENT TO TRANSPORT AND DISPOSE
OF MUNICIPAL SOLID WASTE
AND FOR OPERATION OF TRANSFER STATION**

This agreement is made and entered this ^{11/}25 day of September, 1995, by and between the City of Fayetteville, Arkansas ("City") and Sunray Services, Inc., a Delaware corporation ("Contractor").

RECITALS

The City has responsibility for proper disposal of all residential and commercial solid waste generated within its boundaries, the current volume of which solid waste is presently estimated to be thirty-two thousand (32,000) tons per year. In order to properly dispose of such solid waste, the City has planned and is constructing a transfer station comprised of approximately nine-thousand six-hundred (9,600) square feet, including a scale house, a platform scale for weighing incoming and outgoing solid waste vehicles and suitable facilities to allow direct dumping of the City's waste collection vehicles into transport trailers. The City has solicited bids for the operation of the Transfer Station and the proper transport and disposal of solid waste generated therein. Contractor is the successful bidder thereon and, in addition, has proposed to provide its own transfer and/or landfill facilities for the disposal of such solid waste pending completion of the Transfer Station, which additional proposal has been accepted by the City of Fayetteville. The parties have therefore entered this agreement pursuant to which Contractor will operate the to be built Fayetteville Transfer Station, properly transport and dispose of solid waste delivered there, and provide interim transfer station and/or landfill facilities for the residential and commercial solid waste stream of the City of Fayetteville.

MMH

TERMS AND CONDITIONS

Therefore, in consideration of the recitals set forth above and the terms and conditions set forth below, which constitute good and enforceable consideration, it is agreed:

1. TERM OF AGREEMENT: Performance of this agreement shall begin on September 1, 1995, with respect to City's use of Contractor's transfer station and/or landfill for disposition of the City's residential and commercial solid wastes. The term of the Contract shall be five years from the date the City's Transfer Station is properly permitted and operational, which is presently estimated to be April 1, 1996, but in no event shall the term of this Contract exceed six years from the date hereof. The City shall have the option to renew this agreement for three, successive, five-year terms, subject to mutual renegotiation of terms. The City shall provide Contractor written notice of its intent to renew at least ninety days prior to the expiration of the current Contract. The Contract will be subject to annual approval of the budget by the Fayetteville City Council.

2. SCOPE OF SERVICE: Pending the date of permitted, operational status of the City's Transfer Station, Contractor shall perform all services reasonably necessary to provide disposal of the residential and commercial waste generated within the City at Contractor's own landfill or transfer station. Upon the City's Transfer Station being fully and properly permitted and operational, Contractor shall operate the City's Transfer Station and transport and dispose of the residential and commercial solid waste delivered to the City's Transfer Station during the term of its Contract. Those goods and services which Contractor shall provide shall include but not be limited to the following:

- (a) Operating supplies including fuel;
- (b) Operating equipment (front-end loader(s) with any necessary compaction equipment). Front-end loader buckets shall be equipped with attached

brushes or sweeps to prevent metal-to-concrete floor contact during any tipping floor loading operations. Truck scales and other permanent fixtures of the building and grounds will be provided by the City.

- (c) Scale house attendant services;
- (d) Tipping floor supervision and load spotting services;
- (e) Equipment maintenance services for all of Contractor's equipment;
- (f) Regular housekeeping and cleaning services for the Transfer Station, the scale house, and for the portion of the ground occupied by Transfer Station operations;
- (g) Operators for waste handling equipment including loading and compaction equipment;
- (h) Documentation of inbound and outbound tonnages of solid waste;
- (i) Regular billing statements to all Transfer Station customers; and
- (j) General administrative oversight and supervision.
- (k) Preparation of regular, required reports to all applicable government agencies, as well as a quarterly, summary report to the City.

119.20

3. FEES: For its services hereunder, Sunray shall be entitled to the following fees:

- (a) For operation of the City Transfer Station, \$4.00 per ton of solid waste delivered to the Transfer Station; ^{4.13 (224)}
- (b) For outgoing transport of solid waste delivered to the City Transfer Station, \$6.85 per ton, based on incoming weight delivered to the Transfer Station; ^{6.07 24}
- (c) For its disposal of waste delivered to the City Transfer Station, \$18.00 per ton;
- (d) For disposal of solid waste delivered to Contractor's landfill or transfer station, \$28.85 per ton; and
- (e) For accepting at the City's Transfer Station and disposing of solid waste generated from sources other than the City of Fayetteville, \$40.00 per ton, of waste delivered to the Transfer Station, which shall be billed by Contractor to such sources. The City shall receive a franchise fee equal to 5% of the remainder of such fee after deducting applicable governmental solid waste fees.

These fees shall be inclusive of all, present, applicable governmental fees and licenses, surcharges, taxes, materials, overhead, profit, insurance and equipment. However, the fees shall be equitably adjusted between the parties, not more frequently than twice a year, based upon demonstrable and material changes in Contractor's cost of doing business which are beyond Contractor's control and occur after the date of this Contract including but not limited to revisions of existing laws, ordinances, taxes, fees or regulations. Contractor shall bill the City on a monthly basis for its services hereunder, itemizing such bills to show the tonnage and resulting fee for each component of service processed hereunder. Bills shall be paid within fourteen (14) days of presentation. Contractor shall account and pay to the City the City's franchise fee pursuant to (e) above, within fourteen (14) days of contractor's receipt thereof. Contractor shall keep accurate records which shall be available to the City at all times during the period of this Contract, and for a term of three years after the termination thereof, to justify the franchise fee, Contractor's billing and the proper transport and disposition of solid waste.

4. SECURITY FOR PERFORMANCE: Contractor has provided a performance bond issued by a corporate surety which is satisfactory to the City and authorized to do business in the State of Arkansas in the amount of two million dollars (\$2,000,000.00) to secure faithful performance of this Contract. The bond shall remain in full force and effect during the term of this Contract and all premiums thereon shall be paid by the Contractor.

5. QUANTITIES: The City makes no warranties as to the quantities of solid waste available for transfer and disposal. However, the City, during the term of this contract shall deliver to Contractor, at either Contractor's own landfill or transfer station, or through the City's Transfer Station, all of the municipal, residential and commercial solid waste streams generated within or by the City which it presently collects, except recyclable waste recycled as such.

6. DISPOSAL SITES: Contractor shall dispose of all waste tendered it in disposal sites that are properly permitted and operating in accordance with all applicable State and Federal law and regulation. Contractor shall at all times have a commitment for adequate landfill air space adequate to meet the projected needs of the waste to be disposed of hereunder during the term of the Contract. The present commitment satisfying this requirement is with the Cherokee Nation Landfill, and is evidenced by Exhibit A, attached hereto. Prior to any change by Contractor of the disposal site, Contractor shall provide documentation to the City that such site meets specifications hereunder.

7. CONTRACTOR'S EQUIPMENT: Contractor warrants that its transport tractors, trailers and equipment used in the operation of the Transfer Station and the transport of accepted solid waste, will be maintained in a mechanically sound, clean and painted manner at all times, and that Contractor shall have sufficient spare equipment available to insure daily loading, transport and disposal of all waste received pursuant to this Contract. All equipment shall be painted uniformly with respect to the Contractor. Transport trailers shall be marked with the name and telephone number of the Contractor on each side of the vehicle.

8. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY: The City represents, covenants and warrants:

(a) That the City's Transfer Station, at the time it is tendered to Contractor for operation, shall be properly and fully permitted as a solid waste transfer station by all applicable governmental authorities, and shall be designed, constructed and operable, within industry standards, as a transfer station.

(b) The City Transfer Station shall be erected adjacent to the present City of Fayetteville shop facilities.

(c) That in its delivery of waste to the City's Transfer Station or to the

Contractor's transfer station or landfill for disposal, the City, its customers, agents and employees shall obey all reasonably adopted rules and regulations that may be posted from time to time by the Contractor for the proper, efficient and safe operation of the respective facility, and shall exercise reasonable prudence and care in disposing of waste at the facility.

9. DEFAULT AND TERMINATION: Upon the breach of either party to this Contract of any of its material terms and conditions, and written notice to the breaching party of said breach and demand for cure, the breaching party shall fully cure said breach within sixty (60) days. Failure to so cure shall entitle the party providing said notice to declare a default and terminate the Contract, which termination must be set forth in writing and delivered to the defaulting party.

10. GENERAL SPECIFICATIONS: The terms and conditions of this Contract include each and every general specification set forth hereinafter.

11. EXCUSED PERFORMANCE: Neither party hereto shall be liable for its failure to perform hereunder due to contingencies beyond its reasonable control including, but not limited to strikes, riots, fires, acts of God, and acts of Federal and State governments, governmental agencies or Courts.

12. ADMINISTRATIVE PROVISIONS: The agreement constitutes the entire agreement between the parties and there are no representations, warranties, promises, covenants, agreements or contracts except as set forth herein. This agreement may not be amended except as set forth in writing and signed by authorized representatives for both parties. This agreement shall be construed under the laws of the State of Arkansas, and shall inure to the benefit of the parties hereto, their successors, assigns and representatives. This agreement may be assigned by either party only with the prior written consent of the other party, which consent shall not be unreasonably withheld. The persons signing on behalf of the respective parties hereto warrant

SUNRAY SERV.
A.3.12

that they have full and proper authority to execute this agreement on behalf of the parties so represented.

In witness whereof, the parties hereto have caused their signatures to be set by their authorized representatives effective the date per set forth herein above:

SUNRAY SERVICES ("Contractor")

By:


Glenn R. Holcomb, President

CITY OF FAYETTEVILLE

By:


Fred Hanna, Mayor

ATTEST:

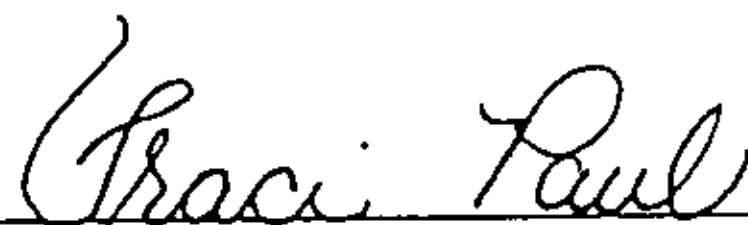

City Clerk

EXHIBIT A

AMENDMENT #1

Contract with Sunray Services, Incorporated for the Operation of Transfer Station, and Transport and Disposal of Municipal Solid Waste

The City of Fayetteville, by agreement dated September 25, 1995, contracted with Sunray Services, Inc. for the operation of Fayetteville's transfer station, and transport and disposal of municipal solid waste. Amendment #1 does hereinafter amend the contracted fee structure as specified in Section 3 of the contract document. The approved amendments to Section 3 of the contract document are as follows:

- Section 3. (a) For operation of the City Transfer Station, \$4.13 per ton of solid waste delivered to the Transfer Station;
- Section 3. (b) For outgoing transport of solid waste delivered to the City Transfer Station, \$7.07 per ton, based on incoming weight delivered to the Transfer Station;
- Section 3. (d) For disposal of solid waste delivered to Contractor's landfill or transfer station, \$29.20 per ton;
- Section 3. (e) For accepting at the City's Transfer Station and disposing of solid waste generated from sources other than the City of Fayetteville, \$41.28 per ton, of waste delivered to the Transfer Station, which shall be billed by Contractor to such sources. The City shall receive a franchise fee equal to 5% of the remainder of such fee after deducting applicable governmental solid waste fees;
- Section 3. (f) A minimum charge for accepting solid waste from sources other than the City of Fayetteville, \$1.25 per bag until exceeds \$20.65, or \$20.65 minimum up to 1,000 pounds, after 1,000 pounds other sources will be charged \$41.28 per ton.

IN WITNESS WHEREOF, the parties to these presents have executed this Amendment #1 of the contract for the operation of Fayetteville's transfer station, and transport and disposal of municipal solid waste to be retroactive to January 1, 1997.

ATTEST:

Grace Paul
(City Clerk)



(Secretary)

(Witness)

City of Fayetteville, Arkansas

(City)

By: Paul Hume

Mayor

(Title)

Sunray Service, Inc.

(Contractor)

By: Dale Steun

GENERAL MANAGER

(Title)

Springdale, AR 72765

(Address and Zip Code)

AMENDMENT #2

**Contract with Sunray Services, Incorporated
for the Operation of Transfer Station,
and Transport and Disposal of Municipal Solid Waste**

The City of Fayetteville, by agreement dated September 25, 1995, contracted with Sunray Services, Inc. For the operation of Fayetteville's transfer station, and transport and disposal of municipal solid waste. Amendment #2 does hereinafter amend the contracted fee structure as specified in Section 3 of the contract document. The approved amendment to Section 3 of the contract document is as follows:

Section 3.(b) For outgoing transport of solid waste delivered to the City Transfer Station, \$5.07 per ton, based on incoming weight delivered to the Transfer Station;

IN WITNESS WHEREOF, the parties to these presents have executed this Amendment #2 of the contract for the operation of Fayetteville's transfer station, and transport and disposal of municipal solid waste to be retroactive to ~~December 16, 1997~~.

JANUARY 1, 1998. DS

ATTEST:

Jane Heck
(City Clerk)
Deputy

City of Fayetteville, Arkansas
(City)
By: Fred Mann
Mayor
(Title)

Sunray Services, Inc.
(Contractor)
By: Dale Steen
GENERAL MANAGER
(Title)

Springdale AR. 72765
(Address and Zip Code)



STAFF REVIEW FORM

For the Fayetteville City Council meeting of May 18, 1999

Orig Contract Date: _____

DEPARTMENTAL CORRESPONDENCE

DATE: April 12, 1999

TO: Charles Venable, Public Works Director

THRU: Donald Bunn, Assistant Public Works Director
Jim Beavers, City Engineer *JB*

FROM: Jill Goddard, Land Agent *JG*

RE: Londonderry Drainage Improvements
Project No. 98038
Condemnation

As the signing of a contract for implementation of this project draws near, Nancy and Robert Lewis are the only property owners who have not signed our proposed documents. Accordingly, it is necessary that the City initiate condemnation proceedings as soon as possible in order to obtain court possession of this land so as not to interfere with the construction schedule.

This project is associated with the planned drainage system improvements of Boardwalk Addition, Phase III. This particular property is located south of Boardwalk Addition, Phase III. Land is needed both for permanent and temporary drainage easements to install part of an underground piping system directing storm water drainage into the proposed improvements to the existing system within the subdivision and ultimately to the pond area north of the subdivision.

Initially, Mr. and Mrs. Lewis were offered \$985.00 for the conveyance of rights associated with a twenty foot wide permanent drainage easement (9,810 square feet) and \$705.00 for the rental of the land associated with a ten foot wide temporary construction and grading easement (12,791 square feet), for a total offer amount of \$1,690.00. This offer was presented and explained by Holly Jones, Field Services Company, the City's contractual representative, and Jill Goddard, Land Agent. (See attached case history.)

Mr. and Mrs. Lewis have been reluctant to sign as they view this project as a detriment to the future development of their property and would prefer to somehow confine any drainage improvements to Boardwalk Addition. However, it has been pointed out that although there may be some wide utility and drainage easements across the back edge of some future lots, they probably wouldn't need to create a separate drainage area for their development.

This is a much needed and requested project as the existing drainage system has shown to be inadequate.

CASE HISTORY

Nancy Witt Lewis

Londonderry Drainage Project

9-30-98 Date of Offer Letter. \$1,690.00 offered for Permanent Easement and Temporary Construction Easement. Packet including offer letter, easement document, and drawings prepared.

10-6-98 Holly Jones, Field Services Company, contractual representative for City of Fayetteville, started contacting property owners on this project.

10-12-98 Meeting with Robert Lewis (husband of Nancy Lewis), Holly Jones, and Jill Goddard to discuss project. Mr. Lewis said he had to meet with accountant and lawyer. He had questions regarding hooking up utilities of future development to those currently in Boardwalk Addition, Phase III. This does not appear to be a problem, but will need to check with Engineering.

Over next 2-3 weeks, Ms. Jones contacted the Lewises several times checking on status. Mr. Lewis apparently out of town much of this time.

Nov. 1998 First 3 weeks in November, 1998, Ms. Jones called Mr. Lewis every few days--usually leaving message. Was told several times that she'd have documentation by the "end of the week".

11-23-98 Message from Ms. Jones. Mr. Lewis (after talking to attorney and developer) apparently has questions regarding drainage situation on rest of their property. Wants to talk to Alett Little, Planning Director, before signing.

11-24-98 Meeting regarding Stonegate (formerly referred to as Marvin Gardens)--new development immediately west of Lewis property.

Dave Jorgensen, engineer, has verbally cleared with Mr. Lewis the easement they need across his property for the Stonegate development. Lewis apparently does not have plans of proceeding with any development of his own at this time. However, Stonegate plans have been designed to easily tie in to any future development of Lewis property.

Jorgensen has not been officially retained by Mr. Lewis; however, it is assumed because of their discussions, that Lewis is considering Jorgensen to be his "developer/engineer".

CASE HISTORY

Nancy Witt Lewis

Page 2 of 2

- 11-24-98 Called Ms. Jones to try Mr. Lewis one more time as Jorgensen indicated that Lewis was favorable to our project and that he (Jorgensen) had encouraged him to sign. Also, Ms. Little indicated that she would be available to talk 11-24-98 p.m. or 11-25-98 a.m., if Lewis wanted to meet.
- 12-7-98 Ms. Jones tried twice in the last week and is now turning this over to the City to finalize--through condemnation, if necessary.
- 12-14-98 Letter sent to Mr. and Mrs. Lewis informing them that condemnation proceedings are to be initiated by going before City Council on Jan. 19, 1999, unless the matter is settled before then.
- 12-23-98 Received faxed letter from E. Lamar Pettus, attorney for the Lewises, to Jim Beavers, City Engineer, requesting information on the project.
- 12-24-98 Letter from Jim Beavers to Mr. Pettus proposing setting up a meeting sometime after Dec. 29, 1998, to address issues.
- 1-6-99 Left message for Lamar Pettus, trying to set up meeting with Pettus, Lewis, Beavers, Connell.
- 1-13-99 Meeting between Rob Lewis, Lamar Pettus, Jim Beavers, Ron Petrie, and Jill Goddard at City Hall. Discussion of project, effects (good and bad) on any future Lewis development, whether project would be done. Beavers looking into budget adjustment for project.
- 1-27-99 Three letters from Mr. Pettus requesting: 1) being advised of any meetings discussing Londonderry project; 2) review of budget and budget adjustments; 3) being advised of any meetings regarding Marvin Gardens Subd. (adjacent project). Also commented on drainage study and the findings therein.
- 2-22-99 Letter from Jim Beavers to Mr. and Mrs. Lewis (copy to Mr. Pettus) changing easement to Drainage/General Utility Easement to allow future use of easement area by utilities. If not accepted by March 12, 1999, City will seek possession through condemnation.

THE CITY OF FAYETTEVILLE, ARKANSAS

April 13, 1999

Mr. Lamar Pettus
Pettus Law Firm, P.A.
151 West Dickson
P.O. Box 1665
Fayetteville, Arkansas 72702

Re: Boardwalk Subdivision area drainage improvements and Mr./Mrs. Lewis.

Dear sir,

The projected meeting date of the City Council for the staff requested approval of both the construction contract for the drainage improvements and the condemnation of easement from Lewis is May 18, 1999 (agenda setting meeting May 11).

If these dates change I will inform you.

Sincerely,


Jim Beavers, P.E.
City Engineer

cc: Mr./Mrs Lewis
Jill Goddard

THE CITY OF FAYETTEVILLE, ARKANSAS

February 22, 1999

Robert A. And Nancy W. Lewis
2137 E. Lensfield Place
Fayetteville, AR 72701-2747

RE: Londonderry Drainage Improvements
Boardwalk Addition, Phase III
Job No. 98038
Tract No. 2
Parcel No. 765-14195-000

Dear Mr. and Mrs. Lewis:

This letter is one last attempt to reach an agreement with you on the above mentioned project. The City will initiate this project soon; typically, we acquire all of the appropriate easements prior to project bidding.

The document has been changed to be a Drainage/General Utility Easement to allow future use of the permanent easement area by utility companies. However, please be aware that this does not mean that the utility companies will not require additional easement area in order to provide services.

Accordingly, we need to receive the executed documentation for this project by March 26, 1999, or we will be left only with the alternative to seek possession through the courts.

If the City must condemn, the City will take bids in March or April and take both the proposed construction contract and the proposed condemnation to the same City Council Meeting. This will satisfy the previous discussion of assuring that the City Council will fund the project prior to, or with, the condemnation if required. The City will notify you and Mr. Pettus of meeting dates if condemnation is required.

Our basis is our original offer (dated September 30, 1998) of \$1,690.00 which was for a twenty foot wide permanent easement (9,810 square feet) and a ten foot wide temporary construction and grading easement (12,791 square feet).

If you have any questions or comments, or if there is a possibility of resolving the matter prior to the Council meeting, please contact Ed Connell at 444-3415, Jill Goddard at 444-3407, or myself at myself at 575-8206.

Sincerely yours,



Jim Beavers
City Engineer

JB/jsg

c: E. Lamar Pettus

Project No. 98038
Project: Londonderry Drainage Improvements
Parcel No. 765-14195-000
Tract No. 2

DRAINAGE / GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Nancy Witt Lewis, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement and a temporary construction and grading easement to excavate, construct, maintain, repair and/or replace, enlarge and operate an earthen retaining levy, drainage tile area, open ditch, concrete channel and/or concrete inlet box, a water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone and television communication line or lines, and appurtenances thereto on, over, across, under and through the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

A part of the Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eleven (11), Township 16 North of Range 30 West, being more particularly described as follows, to-wit: Beginning at the Northwest corner of said forty acre (40) tract and running thence East 461.73 feet; thence South 00° 32' East 307.99 feet; thence West 465.9 feet, more or less, to a point which is 307.15 feet South 00° 15' West of the point of beginning; thence North 00° 15' East 307.15 feet to the point of beginning, containing 3.27 acres, more or less.

ALSO, part of the Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section 11, Township 16 North, Range 30 West of the 5th P.M., and being more particularly described as follows, to-wit: Beginning at a point on the North line of said 40 acre tract at a point 461.73 feet East of the Northwest corner of said 40 acre tract; thence East along the North line thereof, 800.27 feet, to the Westerly right of way of a County Road; thence with the right of way of said road, South 22° 56' West 217.30 feet; thence South 25° 58' West 113.11 feet; thence South 89° 28' West 663.30 feet; thence North 00° 32' West 307.99 feet, to the point of beginning, containing in all 5.133 acres, more or less.

LESS AND EXCEPT: Part of the Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section 11, Township 16 North, Range 30 West of the Fifth Principal Meridian in Washington County, Arkansas, being more particularly described as follows, to-wit: Commencing at the Northwest corner of said SE $\frac{1}{4}$ of the NE $\frac{1}{4}$; thence North 89° 50' 44" East 829.11 feet to the Point of Beginning; thence North 89° 50' 44" East 430.00 feet to the West right of way of Highway 265; thence along said West right of way South 22° 56' West 217.30 feet; thence South 26° 07' 36" West 115.53 feet; thence leaving said west right of way South 89° 28' West 294.97 feet; thence North 305.43 feet to the Point of Beginning, containing 2.55 acres, more or less.

PERMANENT EASEMENT DESCRIPTION:

A twenty (20) foot wide permanent drainage easement across the above described property, being parallel with and contiguous to the North line of the above described property and situated on the South side thereof, being more particularly described as follows: Commencing at the Northwest corner of said SE $\frac{1}{4}$ of the NE $\frac{1}{4}$; thence with the North property line, East 832.0 feet, more or less, to a point on the East property line, said point also being the Point of Beginning; thence with the North property line, West 490.51 feet; thence South 20.0 feet; thence East 490.51 feet; thence North 20.0 feet, to the Point of Beginning and containing 9,810 square feet (0.225 acre), more or less.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary construction and grading easement across the above described property, being more particularly described as follows: Commencing at the Northwest corner of said SE $\frac{1}{4}$ of the NE $\frac{1}{4}$; thence East 832.0 feet, more or less, to a point on the East property line; thence with said east line, South 20.0 feet, to the Point of Beginning; thence with the South line of the above described permanent easement, West 490.51 feet; thence North 20.0 feet to the North property line; thence with said North line, West 114.40 feet; thence South 47° 57' 19" East 126.92 feet; thence East 45.0 feet; thence North 27° 54' 02" East 62.23 feet; thence East 436.54 feet to the East property line; thence with said East line, North 10.0 feet, to the Point of Beginning and containing 12,791 square feet (0.294 acre), more or less.

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that this temporary construction and grading easement shall exclude any permanent structure presently located within the above described temporary construction and grading easement area.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to pay any damages which may arise to growing crops or fences from the above described construction, maintenance and operation as determined by three disinterested persons. One of whom shall be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

The Grantor agrees not to erect any buildings or structures in said permanent easement other than fences and said fences shall not exceed six (6) feet in height.

The Grantee shall have the right to construct additional drainage structures, pipe lines, electrical power lines, telephone and/or television lines or cables within or upon the above described permanent easement at any time in the future and agrees to pay any damages as a result of such future construction as set out in this easement.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the _____ day of _____, 1999.

Nancy Witt Lewis

Robert A. Lewis

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Nancy Witt Lewis and Robert A. Lewis, her husband, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 1999.

Notary Public

MY COMMISSION EXPIRES:

PETTUS LAW FIRM, P.A.
151 WEST DICKSON
P.O. BOX 1685
FAYETTEVILLE, ARKANSAS 72702

E. LAMAR PETTUS
DONNA C. PETTUS
MATTHEW R. KING*

* ALSO LICENSED IN KANSAS

TELEPHONE (501) 443-2363
TELECOPIER (501) 443-0300
E-MAIL pettus@iso.net

January 27, 1999

Via Hand Delivery

Mayor Fred B. Hanna
CITY OF FAYETTEVILLE
Administration Building
113 West Mountain Street
Fayetteville, AR 72701

RECEIVED
JAN 28 1999
CITY OF FAYETTEVILLE
MAYOR'S OFFICE

Re: Londonderry Drainage Development
Drainage Improvement Boardwalk Addition - Phase III
Job Number 98038
Tract No. 2
Parcel No. 765-14195-000

Dear Mayor:

Pursuant to the Freedom of Information Act as codified by A.C.A. 25-19-102 and on behalf of Mr. Robert Alan Lewis and Mrs. Nancy Lynn Lewis, I request Mr. and Mrs. Lewis and myself be advised of any and all meetings at which the City Council discusses or is presented information concerning the above-referenced drainage projects; a review of the budget for the proposed project; or any requests for adjustments to the budget in order to have adequate money to fund the project.

I am enclosing a copy of a letter I wrote to Mr. Jim Beavers.

I do feel the City of Fayetteville should pass on the majority of the costs of this project to the designers and developers of the storm drainage system and the subdivision where this flooding is occurring.

The property and the value of the property most affected by the flooding is within that subdivision. The City might suggest the owners of the property within the subdivision organize an improvement district and bear the burden of some of the cost or they might also seek damages against the engineers who designed the storm drainage system which was installed and the developer who developed the subdivision in an inadequate manner.

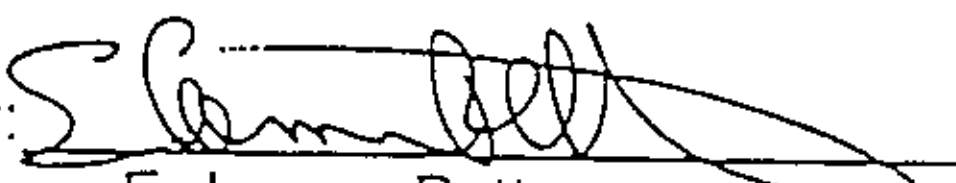
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BOARDWALK
C.1.10

Mr. and Mrs. Lewis and I would also appreciate any notice of meetings at which the City Council is presented requests or arguments that a portion of Mr. and Mrs. Lewis' property should be condemned for purposes of installing a drainage system.

Sincerely,

PETTUS LAW FIRM, P.A.

By: 
E. Lamar Pettus

ELP/trf
Enclosure

cc: Mr. & Mrs. Lewis

Alderman Robert Reynolds
Alderman Ron Austin
Alderman Cyrus Young
Alderman Kyle Russell
Alderman Trent Trumbo
Alderman Bob Davis
Alderman Kevin Santos
Alderwoman Heather Daniel

Jerry E. Rose
City Attorney

PETTUS LAW FIRM, P.A.
151 WEST DICKSON
P.O. BOX 1665
FAYETTEVILLE, ARKANSAS 72702

E. LAMAR PETTUS
DONNA C. PETTUS
MATTHEW R. KING*

* ALSO LICENSED IN KANSAS

January 27, 1999

TELEPHONE (501) 443-2363
TELECOPIER (501) 443-0390
E-MAIL pettus@iso.net

Via Hand Delivery

Mr. Jim Beavers
City Engineer
CITY OF FAYETTEVILLE
113 West Mountain
Fayetteville, AR 72701

Re: Londonderry Drainage Development
Drainage Improvement Boardwalk Addition - Phase III
Job Number 98038
Tract No. 2
Parcel No. 765-14195-000

Dear Mr. Beavers:

I appreciate you and your staff meeting with Mr. Lewis and myself on January 13, 1999.

I am returning to your offices the following:

1. *A Partial Drainage Study of "Mud Creek Tributary" and "White River Tributary", E-487;*
2. *A Partial Drainage Study of "Mud Creek Tributary" and "White River Tributary" - Exhibits, E-487;*
3. *Agreement for Engineering Services for A Partial Drainage Study of "Mud Creek Tributary" and "White River Tributary" E-487; and*
4. *A Drainage Report for the Boardwalk Subdivision and Ridgely/Manor Drive Area Drainage Improvements, E-525.*

I thought it was interesting to note the existing drainage improvements in the Boardwalk Subdivision, specifically along Londonderry Drive and Meandering Way, have a capacity of "less than a two year frequency rainfall."

It is also interesting to note the findings are:

- a. A 100-year flood will flood the house at 2447 Londonderry;
- b. A 100-year flood will flood the house at 2610 Meandering Way;
- c. A 100-year flood will flood the yard at 2616 Meandering Way, but not the house;
- d. If the lot south of 1604 Arthur Court remain vacant, the lot itself, without additional improvements, can "easily carry the overflow without causing flooding in the subdivision;"
- e. 1604 Arthur Court is actually built into the easement for and over the 48-inch CMP storm sewer pipe.

You know, Mr. Beavers, it would appear, if any of the above facts were publicized or placed in the real estate records of Washington County, Arkansas, this problem would take care of itself. The houses located at 2610 Meandering Way, 2616 Meandering Way, and 2747 Londonderry simply would not sell or would sell at less value to compensate for the flooding. The persons who purchased these homes have good private causes of action against their real estate agent, the former owner, and, depending on what was placed in the Title Report, possibly the title insurance company. The Lewises are not happy about the prospect of having their property taken because of an inadequate drainage design for a subdivision which was eventually approved by the City of Fayetteville. I do think the City of Fayetteville needs to put the owner of 1604 Arthur Court on notice of the encroachment of that building into the easement.

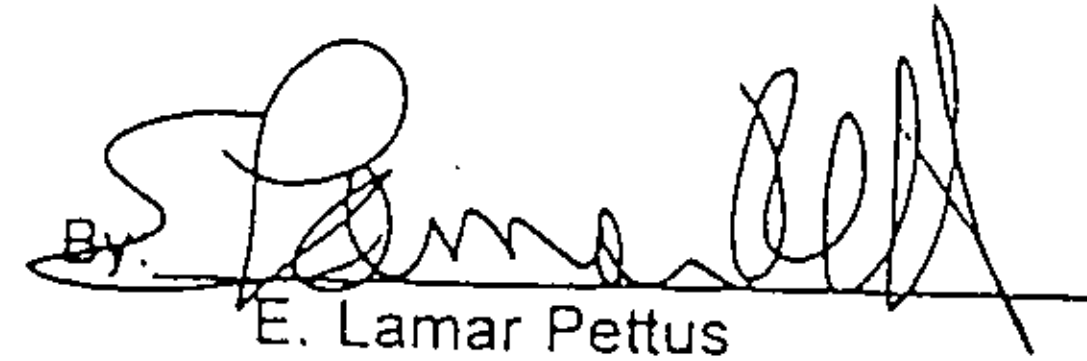
In any event, my understanding is that before this matter is submitted to the City Council, City staff will recommend the Council address the cost of the project which is substantially higher than the projected cost.

I would appreciate being advised of meetings of the City Council at which a budget adjustment or the cost of the project is to be discussed. I definitely want notice of any meeting at which condemnation of the Lewis property is discussed.

I am sending a copy of this letter to each of the Aldermen.

Sincerely,

PETTUS LAW FIRM, P.A.

By: 
E. Lamar Pettus

ELP/trf
Enclosures

cc: Mr. & Mrs. Lewis

Mayor Fred B. Hanna
Alderman Robert Reynolds
Alderman Ron Austin
Alderman Cyrus Young
Alderman Kyle Russell
Alderman Trent Trumbo
Alderman Bob Davis
Alderman Kevin Santos
Alderwoman Heather Daniel

Jerry E. Rose
City Attorney

BOARDWALK
C.1.14

PETTUS LAW FIRM, P.A.
151 WEST DICKSON
P.O. BOX 1665
FAYETTEVILLE, ARKANSAS 72702

E. LAMAR PETTUS
DONNA C. PETTUS
MATTHEW R. KING*

* ALSO LICENSED IN KANSAS

TELEPHONE (501) 443-2363
TELECOPIER (501) 443-0390
E-MAIL pettus@iso.net

January 27, 1999

Via Hand Delivery

Mayor Fred B. Hanna
CITY OF FAYETTEVILLE
Administration Building
113 West Mountain Street
Fayetteville, AR 72701

Re: Londonderry Drainage Development
Drainage Improvement Boardwalk Addition - Phase III
Job Number 98038
Tract No. 2
Parcel No. 765-14195-000

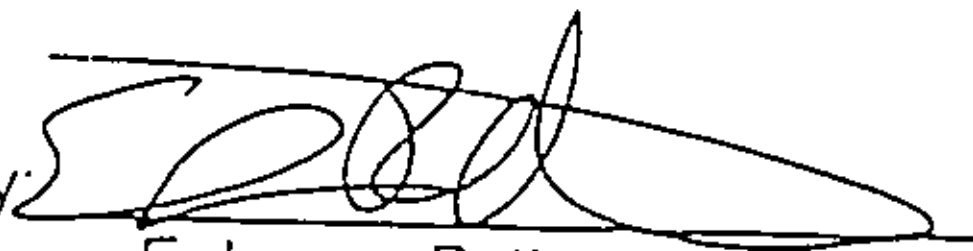
Dear Mayor:

Pursuant to the Freedom of Information Act as codified by A.C.A. 25-19-102 and on behalf of Mr. Robert Alan Lewis and Mrs. Nancy Lynn Lewis, I request that Mr. and Mrs. Lewis and myself be advised of any and all meetings of any board, commission, or committee, including the Board of Adjustments, Subdivision Committee, Planning Commission, and/or City Council Meeting at which the City reviews plans presented for the development of a subdivision on the land previously proposed to be developed as Marvin Gardens Subdivision. I understand from the City Engineer and the City Planning Department a new proposal is to be submitted. The request should come from Dr. Hayes and Mr. Foster and may be submitted with the assistance of David L. Jorgensen of Jorgensen & Associates. I am not sure of the name under which this renewed request will be submitted. Please pass this letter to Ms. Alett Little and any other appropriate staff members so Mr. and Mrs. Lewis and myself can be notified of these meetings.

I have provided Mr. Rose, City Attorney, a copy of this letter.

Sincerely,

PETTUS LAW FIRM, P.A.

By: 
E. Lamar Pettus

ELP/trf

cc: Mr. & Mrs. Lewis

Alderman Robert Reynolds
Alderman Ron Austin
Alderman Cyrus Young
Alderman Kyle Russell
Alderman Trent Trumbo
Alderman Bob Davis
Alderman Kevin Santos
Alderwoman Heather Daniel

Jerry E. Rose
City Attorney

THE CITY OF FAYETTEVILLE, ARKANSAS

December 24, 1998

Mr. Lamar Pettus
Pettus Law Firm, P.A.
151 West Dickson
P.O. Box 1665
Fayetteville, Arkansas 72702

Re: Boardwalk Subdivision area drainage improvements and Mr./Mrs. Lewis.

Dear sir,

With respect to your letter of December 23 the following is offered:

I only have one copy of the drainage report, this report, along with the proposed construction plans are available for your inspection at our office.

We can not find an "existing" easement which may be used for the proposed drainage improvements. If you have records of such easements please share those with us.

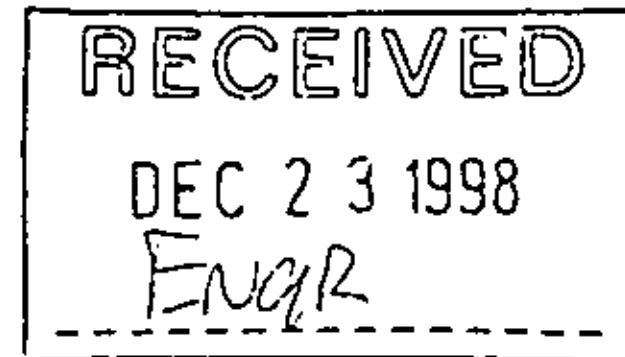
I am available to meet at your convenience after December 29 to go over the plans, report, utilities, easements, trees...

Sincerely,



Jim Beavers, P.E.
City Engineer

cc: Ed Connell

BOARDWALK
C.1.17PETTUS LAW FIRM, P.A.
151 WEST DICKSON
P.O. BOX 1665
FAYETTEVILLE, ARKANSAS 72702E. LAMAR PETTUS
DONNA C. PETTUS
MATTHEW R. KING*

* ALSO LICENSED IN KANSAS

TELEPHONE (501) 443-2363
TELECOPIER (501) 443-0390
E-MAIL pettus@iso.netFACSIMILE TRANSMISSION COVER LETTER

CONFIDENTIALITY NOTE: The information transmitted in this facsimile message is sent by an attorney or his/her agent, is intended to be confidential and for the use of only the individual or entity named herein. If the recipient is a client, this message may also be for the purpose of rendering legal advice and thereby privileged. If the reader of this message is not the intended recipient, you are hereby notified that any retention, dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original message to us at the address above via the mail service. We will reimburse postage. Thank you.

TRANSMISSION AND DELIVER TO:

Via Facsimile & U.S. Mail:
(501)575-8257Mr. Jim Beavers
City Engineer
CITY OF FAYETTEVILLEDATE: December 23, 1998TIME: 1:40NUMBER OF PAGES TRANSMITTED (EXCLUDING COVER): 2

If you do not receive the complete transmission, please call the individual named below at (501) 443-2363.

MESSAGE:

SENT BY E. Lamar Pettus

Original(s): to be mailed

**BOARDWALK
C.1.18****PETTUS LAW FIRM, P.A.**

151 WEST DICKSON

P.O. BOX 1665

FAYETTEVILLE, ARKANSAS 72702

E. LAMAR PETTUS
DONNA C. PETTUS
MATTHEW R. KING*

* ALSO LICENSED IN KANSAS

TELEPHONE (501) 443-2363
TELECOPIER (501) 443-0390
E-MAIL pettus@iso.net

December 23, 1998

Via Facsimile & U.S. Mail:
(501)575-8257

Mr. Jim Beavers
City Engineer
CITY OF FAYETTEVILLE
113 West Mountain
Fayetteville, AR 72701

Re: Londonderry Drainage Development
Drainage Improvement Boardwalk Addition - Phase III
Job Number 98038
Tract No. 2
Parcel No. 765-14195-000

Dear Mr. Beavers:

I am representing Mr. and Mrs. Lewis in reference the City's request for an easement.

It is my understanding the City of Fayetteville already has a drainage easement in existence which is not being used.

I would appreciate your pulling those documents and providing me a copy of your existing drainage easement and copies of the engineering studies which indicate there is a need or a necessity for taking an additional drainage easement on Mr. and Mrs. Lewis' property.

In addition, Mr. and Mrs. Lewis are concerned about the heavy growth of trees which will fall within the requested easement. Are the trees to be destroyed if drainage is constructed in this particular area?

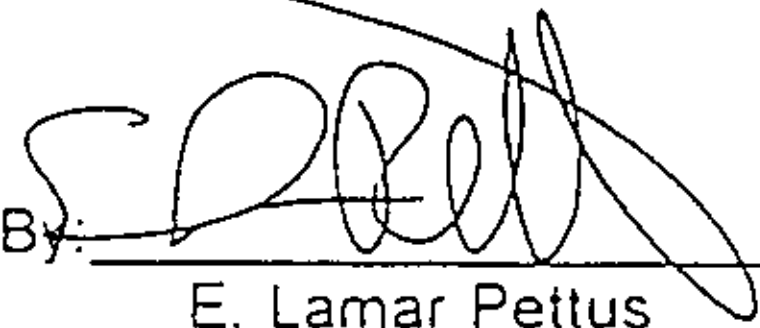
City Planning has told me the easement will become the future lot line setback should Mr. and Mrs. Lewis develop the property. In addition Mr. and Mrs. Lewis are also interested in connecting to any city utilities which run adjacent to this property. Will Mr. and Mrs. Lewis be able to run utility lines with this proposed drainage easement?

**BOARDWALK
C.1.19**

If you will contact me, maybe we can meet between Christmas and New Year's Day and work towards a resolution which would be satisfactory to Mr. and Mrs. Lewis as well as the City of Fayetteville.

Sincerely,

PETTUS LAW FIRM, P.A.

By: 
E. Lamar Pettus

ELP/pae

cc: Mr. & Mrs. Lewis

THE CITY OF FAYETTEVILLE, ARKANSAS

December 14, 1998

Robert A. And Nancy W. Lewis
2137 E. Lensfield Place
Fayetteville, AR 72701-2747

RE: Londonderry Drainage Improvements
Boardwalk Addition, Phase III
Job No. 98038
Tract No. 2
Parcel No. 765-14195-000

Dear Mr. and Mrs. Lewis:

The above mentioned project is almost ready to go to bid for construction purposes. However, the City must secure possession before bids are accepted.

This letter is to inform you that due to lack of an agreement having been reached regarding the offer made to you (dated September 30, 1998), the City is proceeding with condemnation procedures in regard to your property located south of Boardwalk Addition, Phase III and west of Highway 265 (Crossover Road).

We will be requesting approval of the City Council at their January 19, 1999, meeting authorizing the City Attorney to seek possession of your property through the court. Please be so advised and we would welcome your attendance at such meeting to explain your position before the Council. Council meetings normally begin at 6:30 p.m.

Our basis is our offer of \$1,690.00 which was for a twenty-foot wide permanent easement (9,810 square feet) and a ten foot wide temporary construction and grading easement (12,791 square feet). But please keep in mind that negotiation efforts do not necessarily need to end here. If an agreement is reached before the court date, procedures will be discontinued.

If you have any questions or comments, or if there is a possibility of resolving the matter prior to the Council meeting, please contact Ed Connell at 444-3415 or Jill Goddard at 444-3407.

Sincerely yours,



Jim Beavers
City Engineer

JB/jsg

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

September 30, 1998

Nancy Witt Lewis
2137 E. Lensfield Place
Fayetteville, AR 72701-2747

RE: Londonderry Drainage Improvements
Boardwalk Addition, Phase III
Job No. 98038
Tract No. 2
Offer Letter

Dear Ms. Lewis:

The City of Fayetteville is planning to improve the drainage system within Boardwalk Addition, Phase III, by redirecting the storm water crossing Highway 265 to a new underground system just south of the subdivision. This then will be directed through the subdivision via underground piping, then into a concrete channel before being ultimately directed to the pond area north of Boardwalk Addition, Phase III.

It is therefore necessary to obtain a 20 foot wide permanent easement and a 10 foot wide temporary construction easement along the north edge of your property for this project. The temporary construction easement will terminate upon completion and acceptance of the project by the City.

Included is a general map of the subject area, as well as a drawing of your specific property depicting the anticipated areas required for permanent and temporary easements. The City of Fayetteville hereby offers \$985.00 for the conveyance of rights associated with the Permanent Easement (9,810 square feet) and \$705.00 as rental of the lands associated with the Temporary Construction and Grading Easement (12,791 square feet); making the total offer amount \$1,690.00.

Should you elect to accept this offer, the *Drainage Easement* (which contains both the Permanent and Temporary Construction Easements) contained herein should be executed by all parties with current ownership interest in the particular property. The document should be notarized and returned to the City of Fayetteville. A City Land Agent will be pleased to witness and notarize the execution of the document if you will advise our office accordingly. Upon receipt of this document, a check will be requested and you will be paid the amount indicated in this offer letter.

BOARDWALK
C.1.22

Ms. Lewis
Offer Letter, Page 2 of 2

If you make a final rejection of this offer, you do have certain legal rights which are outlined hereafter. Upon your final rejection of this offer, and if the City of Fayetteville elects to do so, a suit of condemnation may be filed. The amount of just compensation for the use of your property will be determined by an independent appraisal and deposited with the Registry of the Circuit Court of Washington County. You may, at that time, elect to accept the amount deposited as just compensation and the amount will be paid to you thereby disposing of the condemnation suit.

If you do not elect to accept the amount deposited as just compensation, then you may withdraw the amount placed on deposit without prejudice to your rights to claim additional compensation. In this event, you will be entitled to a trial by jury in the Circuit Court to determine just compensation for your lands condemned. In either event, payment of the estimated just compensation will be made available to you.

We, however, ask that you accept the offer made herein by executing the attached *Drainage Easement*. A reduced copy of the document is included for your records. We can provide a copy of the recorded document upon your request and at the appropriate time. Please provide us with a Tax Identification Number (Corporation) or Social Security Number so that a check can be written. A Vendor Form is provided for this purpose.

A City Land Agent will be glad to meet with you at your convenience and discuss all phases of this project and the associated easements. Please contact Ed Connell at 444-3415, Jill Goddard at 444-3407, or I can be reached at 575-8206.

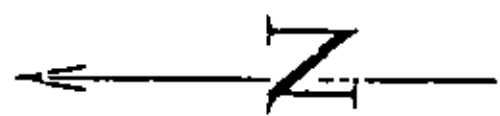
Sincerely yours,



Donald R. Bunn
City Engineer

DRB/jsg

Enclosures



Nancy Witt Lewis

P-83-37

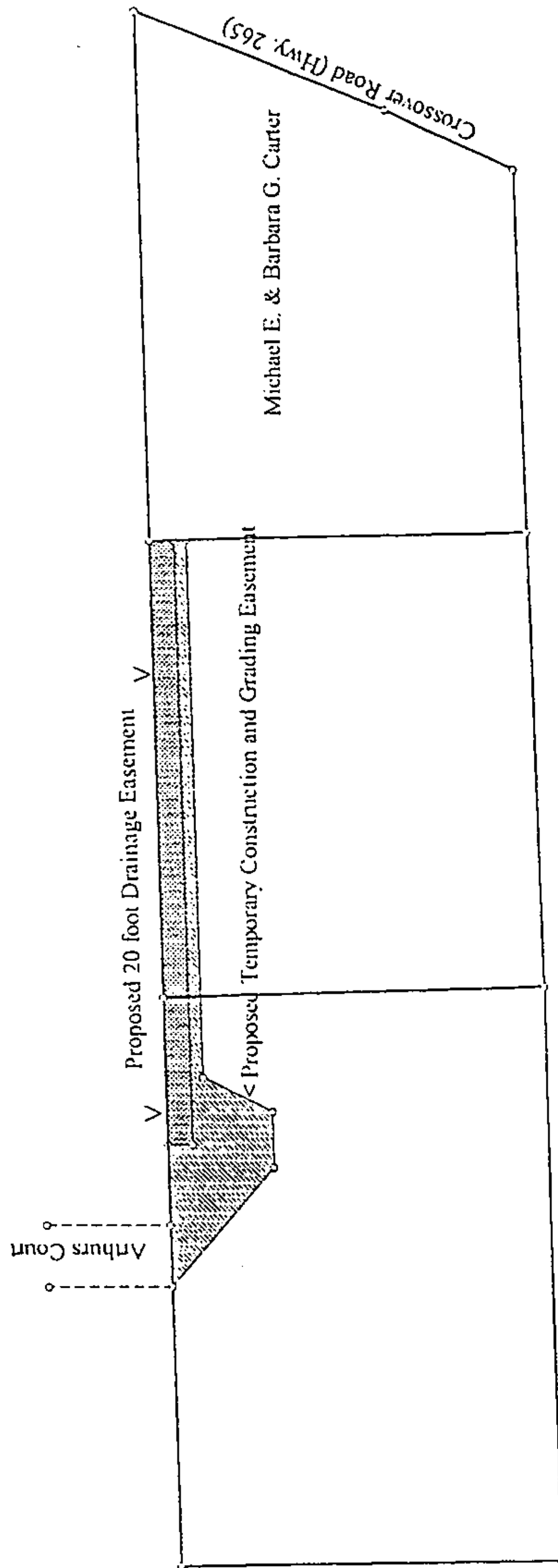
Deed Ref. 727/085

Deed Ref. 841/513

Deed Ref. 1430/946

Parcel No. 765-14195-000

Scale: 1" = 150'



BOARDWALK
C.1.23

BOARDWALK

C.1.24

Data and Deed Call Listing of File: LEWIS-2.DES

+Tract 1: 3.274 Acres: 142630 Sq Feet: 13250.8 Sq Meters: No significant closure error. : Perimeter = 1543 feet
Tract 2: 5.148 Acres: 224238 Sq Feet: 20832.3 Sq Meters: No significant closure error. : Perimeter = 2104 feet
-Tract 3: 2.546 Acres: 110916 Sq Feet: 10304.4 Sq Meters: No significant closure error. : Perimeter = 1363 feet
Tract 4: 0.225 Acres: 9810 Sq Feet: 911.4 Sq Meters: No significant closure error. : Perimeter = 1021 feet
Tract 5: 0.294 Acres: 12790 Sq Feet: 1188.2 Sq Meters: No significant closure error. : Perimeter = 1306 feet
Tract 6: 0.046 Acres: 1999 Sq Feet: 185.7 Sq Meters: Closure = s88.2831w 50.00 feet: Precision = 1/5: Perimeter = 250 feet
Net Area= 0.728 Acres: 31714 Sq Feet: 2946.3 Sq Meters

001=n88.2831e 461.73
002=s01.3823e 307.87
003=s88.3347w 465.90
004=n00.5144w 307.18
005=@1 orig. east lot
006=/n88.2831e 461.73
007=n88.2831e 800.27
008=s21.3347w 217.30
009=s24.4523w 115.53
010=s88.0547w 663.30
011=n01.3823w 307.87
012=@1- sold to Carters
013=/n88.2831e 832
014=n88.2831e 430
015=s21.3347w 217.30
016=s24.4523w 115.53
017=s88.0547w 294.47
018=n01.2209w 305.43
019=@1 Drainage limit.
020=/n88.2831e 832
021=s88.2831w 490.51
022=s01.2209e 20
023=n88.2831e 490.51
024=n01.2209w 20
025=@1 TCGE
026=/n88.2831e 832
027=/s88.2831w 490.51
028=s88.2831w 114.40
029=s49.2716e 126.86
030=n88.2831e 45
031=n26.2233e 62.23
032=n88.2831e 436.54
033=n01.2209w 10
034=s88.2831w 490.51
035=n01.2209w 20
036=@1 Arthur's Court
037=/n88.2831e 227.02
038=/n00.00e 100
039=s00.00w 100
040=n88.2831e 50
041=n00.00e 100

Project No. 98038
Project: Londonderry Drainage Improvements
Parcel No. 765-14195-000
Tract No. 2

BOARDWALK C.1.25

DRAINAGE EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Nancy Witt Lewis, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement and a temporary construction and grading easement to excavate, construct, maintain, repair and/or replace an earthen retaining levy, drainage tile area, open ditch, concrete channel and/or concrete inlet box on, over, and through the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

A part of the Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eleven (11), Township 16 North of Range 30 West, being more particularly described as follows, to-wit: Beginning at the Northwest corner of said forty acre (40) tract and running thence East 461.73 feet; thence South 00° 32' East 307.99 feet; thence West 465.9 feet, more or less, to a point which is 307.15 feet South 00° 15' West of the point of beginning; thence North 00° 15' East 307.15 feet to the point of beginning, containing 3.27 acres, more or less.

ALSO, part of the Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section 11, Township 16 North, Range 30 West of the 5th P.M., and being more particularly described as follows, to-wit: Beginning at a point on the North line of said 40 acre tract at a point 461.73 feet East of the Northwest corner of said 40 acre tract; thence East along the North line thereof, 800.27 feet, to the Westerly right of way of a County Road; thence with the right of way of said road, South 22° 56' West 217.30 feet; thence South 25° 58' West 113.11 feet; thence South 89° 28' West 663.30 feet; thence North 00° 32' West 307.99 feet, to the point of beginning, containing in all 5.133 acres, more or less.

LESS AND EXCEPT: Part of the Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section 11, Township 16 North, Range 30 West of the Fifth Principal Meridian in Washington County, Arkansas, being more particularly described as follows, to-wit: Commencing at the Northwest corner of said SE $\frac{1}{4}$ of the NE $\frac{1}{4}$; thence North 89° 50' 44" East 829.11 feet to the Point of Beginning; thence North 89° 50' 44" East 430.00 feet to the West right of way of Highway 265; thence along said West right of way South 22° 56' West 217.30 feet; thence South 26° 07' 36" West 115.53 feet; thence leaving said west right of way South 89° 28' West 294.97 feet; thence North 305.43 feet to the Point of Beginning, containing 2.55 acres, more or less.

PERMANENT EASEMENT DESCRIPTION:

A twenty (20) foot wide permanent drainage easement across the above described property, being parallel with and contiguous to the North line of the above described property and situated on the South side thereof, being more particularly described as follows: Commencing at the Northwest corner of said SE $\frac{1}{4}$ of the NE $\frac{1}{4}$; thence with the North property line, East 832.0 feet, more or less, to a point on the East property line, said point also being the Point of Beginning; thence with the North property line, West 490.51 feet; thence South 20.0 feet; thence East 490.51 feet; thence North 20.0 feet, to the Point of Beginning and containing 9,810 square feet (0.225 acre), more or less.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary construction and grading easement across the above described property, being more particularly described as follows: Commencing at the Northwest corner of said SE $\frac{1}{4}$ of the NE $\frac{1}{4}$; thence East 832.0 feet, more or less, to a point on the East property line; thence with said east line, South 20.0 feet, to the Point of Beginning; thence with the South line of the above described permanent easement, West 490.51 feet; thence North 20.0 feet to the North property line; thence with said North line, West 114.40 feet; thence South 47° 57' 19" East 126.92 feet; thence East 45.0 feet; thence North 27° 54' 02" East 62.23 feet; thence East 436.54 feet to the East property line; thence with said East line, North 10.0 feet, to the Point of Beginning and containing 12,791 square feet (0.294 acre), more or less.

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that this temporary construction and grading easement shall exclude any permanent structure presently located within the above described temporary construction and grading easement area.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to pay any damages which may arise to growing crops or fences from the above described construction, maintenance and operation as determined by three disinterested persons. One of whom shall be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

The Grantor agrees not to erect any buildings or structures in said permanent easement other than fences and said fences shall not exceed six (6) feet in height.

The Grantee shall have the right to construct additional drainage structures within the above described permanent easement at any time in the future and agrees to pay any damages as a result of such future construction as set out in this easement.

— The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the _____ day of _____, 1998.

Nancy Witt Lewis

(Spouse)

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Nancy Witt Lewis and _____ to me well known as the person(s) who executed the foregoing document, and who stated and acknowledged that she/they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 1998.

Notary Public

MY COMMISSION EXPIRES:

Washington County Real Estate Assessment Record

BOARDWALK
C.1.27

Parcel Number Property Type

Location Address

Owner

Mailing Address

Value Information

Current year

	Appraised	Assessed
Land value	29,250	5,850
Imp. value	0	0
Total value	29,250	5,850

Legal Description

Lot Block

Section-Township-Range

Addition

Legal

Deed

School District City description

P-83-37

147319-000-00

727-85

147319-000-C0 REAL ESTATE
ASSESSMENT RECORD
Washington County, Arkansas

Map

PARCEL # 765-14195-000

NAME
WITT, JAMES O. JR. & ILDRED M.

BOOK: 7275 PAGE:

P-83-37

TAX DESCRIPTION
FAYETTEVILLE (OUTLOTS)

PT SE NE 11-16-30 5.133A

PT SE NE 3.27 A.

LEGAL DESCRIPTION S.D.#: 011

For 1992:

Pt SE NE 11-16-30 5.853 A.

NEW OWNER DATE BOOK

Lewis, Nancy Witt	P-83-37

YEAR	ASSESSED VALUATION			EQUAL BOARD	Remarks:
	LAND	IMPMNT	TOTAL		
1985	2400	20880	23280		
1986	2400	20880	23280		
1987	2400	20880	23280		
1988	2400	20880	23280		
1989	8950	20880	29830		
1990	8950	20880	29830		
1991	8950	20880	29830		
1992	3860	-	3860		
1993	3860	0	3860		
1994					
1995					
1996					

Panel value corrected for '89

2.55 A. to Carter #001 filed 9-4-9.

NAME

147319

Map

Book Page

Witt, James O. Jr. & Mildred M.
841-513 727-85

TAX DESCRIPTION

Fayetteville (Outlots) 1
Pt SE NE 11-16-30 5.133 A.
Pt SE NE 3.27

LEGAL DESCRIPTION

REAL ESTATE ASSESSMENT RECORD

Washington County, Arkansas

ADDRESS

NEW OWNER

VALUE

DATE

BOOK

PAGE

YEAR	ASSESSED VALUATION LAND IMPVMT TOTAL	EQUAL BOARD	Remarks:
1974	2180 6470 8650	1140 6430 7570	11-13-80
1975	2180 6470 8650	1140 6430 7570	11-13-80
1976	2180 6470 8650	1140 6430 7570	
1977	2180 6470 8650	1140 6430 7570	11-13-80
1978	2180 6470 8650	1140 6430 7570	11-13-80
1979	2180 4340 9520	1140 7340 8480	11-13-80
1980	2180 7340 9520	1430 7340 8770	11-13-80
1981	2180 7340 9520		
1982	2180 7340 9520		
1983	2180 7340 9520		
1984	2180 7340 9520		
1985			

new owner applying DB 7-18

BOARDWALK
C.1.29

017dew

765-14195-000

REAL ESTATE

ASSESSMENT RECORD

Washington County, Arkansas

BOARDWALK

C.1.30

NAME Carter, Michael E. & Barbara G.

BOOK: 1430 PAGE: 946

TAX DESCRIPTION

Fayetteville (Outlots)
Pt SE NE 11-16-30 2.55 A.

[illegible]

LEGAL DESCRIPTION

SD#011

[illegible]

WARRANTY DEED

Single Person

KNOW ALL MEN BY THESE PRESENTS:

That I, Jean P. Krudener, a married woman in her own right,

for and in consideration of the sum of one dollar (1.00) and other valuable considerations,
to me in hand paid by James O. Witt, Jr. and Mildred M. Witt, husband and wife,

do hereby grant, bargain and sell unto the said James O. Witt, Jr. and Mildred M. Witt, husband and wife, and unto their

heirs and assigns, the following described land, situate in
Washington County, State of Arkansas, to-wit:

A part of the Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eleven (11),
Township 16 North of Range 30 West; being more particularly described, as follows, to-wit:
Beginning at the Northwest corner of said forty acre (40) tract and running thence East 461.73
feet; thence South 0° 32' M East 307.99 feet; thence West 465.9 feet; more or less, to a point
which is 307.15 feet South 0° 15' West of the point of beginning; thence North 0° 15' East 307.15
feet to the point of beginning, containing 3.27 acres, more or less.

TO HAVE AND TO HOLD the said lands and appurtenances thereunto belonging unto the said
heirs and assigns, forever. And I, the said Jean P. Krudener
hereby covenant that we are lawfully seized of said land and premises; that the same is unincumbered, and I
will forever warrant and defend the title to the said lands against all legal claims whatever.

WITNESS my hand and seal on this 2nd day of November 1972.

Jean P. Krudener [Seal]

ACKNOWLEDGMENT

STATE OF ARKANSAS

County of Washington

BE IT REMEMBERED, That on this day came before the undersigned, a Notary Public
within and for the County aforesaid, duly commissioned and act-
ing, Jean P. Krudener

to me well known as the Grantor in the foregoing Deed, and stated that she had executed the same for the
consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such this 2nd day of
November 1972.

My Commission expires

October 10 1973

Elizabeth J. Krudener

FILED FOR RECORD

1972 NOV -2 PM 3:11

WASHINGTON COUNTY, ARK
ALMA HOLMEYER
Do not write in this space

550 Rev



WARRANTY DEED

Revised 1968

KNOW ALL MEN BY THESE PRESENTS:

That I, Jean P. Krudener

for and in consideration of the sum of One Dollar and other valuable consideration to me in hand paid by James O. Witt, Jr., and Mildred M. Witt, husband and wife,

do hereby grant, bargain and sell unto the said James O. Witt, Jr., and Mildred M. Witt, husband and wife, their

heirs and assigns, the following described land, situate in Washington County, State of Arkansas, to-wit:

Part of the Southeast quarter of the Northeast quarter of Section 11, Township 16 North, Range 30 West of the 5th P.M., and being more particularly described as follows, to-wit: Beginning at a point on the North line of said 40 acre tract at a point 461.73 feet East of the Northwest corner of said 40 acre tract, thence East along the North line thereof, 800.27 feet, to the Westerly right of way of a County Road, thence with the right of way of said road, South 22° 56' West, 217.30 feet, thence South 25° 58' West, 113.11 feet, thence South 89° 28' West, 663.30 feet, thence North 0° 32' West, 307.99 feet, to the point of beginning, containing in all 5.133 acres, more or less.

The within conveyance is subject to an existing easement of Arkansas Western Gas Company which appears of record in Book 580 at Page 177 of the official records of Washington County, Arkansas.

TO HAVE AND TO HOLD the said lands and appurtenances therunto belonging unto the said James O. Witt, Jr., and Mildred M. Witt, husband and wife, their heirs and assigns, forever. And I the said Jean P. Krudener

hereby covenant that I am lawfully seized of said land and premises; that the same is unincumbered, and I will forever warrant and defend the title to the said lands against all legal claims whatever.

WITNESS my hand and seal on this 22nd day of March 1968

Jean P. Krudener [Seal]

ACKNOWLEDGMENT

STATE OF ARKANSAS

County of Washington

BE IT REMEMBERED, That on this day came before the undersigned, a Notary Public within and for the County aforesaid, duly commissioned and acting, Jean P. Krudener

to me well known as the Grantor in the foregoing Deed, and stated that she had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such Notary Public this 22nd day of March 1968.

My Commission Expires *727 MAR 85*
Notary Public

This instrument prepared by Leonard Greenhaw, Attorney, Fayetteville, Ark.

FILE
68 MAR 22 P. 2:27
WASHINGTON COUNTY
Do not write in this space

J.O. WITT, JR., CLARENCE, Fayetteville

KNOW ALL MEN BY THESE PRESENTS:

That I, Nancy Jane Lewis

hereinafter called Grantor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to me in hand paid by Michael E. Carter and Barbara G. Carter, husband and wife

hereinafter called Grantee, do hereby grant, bargain and sell unto the said Grantee and Grantee's heirs and assigns, the following described land, situate in

Washington County, State of Arkansas, to-wit:

Part of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 11, Township 16 North, Range 30 West of the Fifth Principal Meridian in Washington County, Arkansas, being more particularly described as follows, to-wit: Commencing at the Northwest corner of said SE $\frac{1}{4}$ of the NE $\frac{1}{4}$, thence North 89 degrees 50 minutes 44 seconds East 829.11 feet to the POINT OF BEGINNING, thence North 89 degrees 50 minutes 44 seconds East 430.00 feet to the West right of way of Highway 265, thence along said West right of way South 22 degrees 56 minutes West 217.30 feet, thence South 26 degrees 07 minutes 36 seconds West 115.53 feet, thence leaving said West right of way South 89 degrees 28 minutes West 294.47 feet, thence North 305.43 feet to the POINT OF BEGINNING, containing 2.55 acres, more or less.

Grantors also reserve a 25 foot wide ingress and egress easement over and across the North 25 feet of aforesaid property for their use and their heirs and assigns.

I certify under penalty of law
that this is a true and correct
copy of the original instrument
as the same appears of record in the
Public Records of the State of Arkansas.

Witness my hand and seal of office
this 13th day of September, 1991
at Fayetteville, Arkansas.

TO HAVE AND TO HOLD the said lands and appurtenances thereto belonging unto the said Grantee and Grantee's heirs and assigns, forever. And I, the said Grantor, hereby covenant that I am lawfully seized of said land and premises, that the same is unincumbered, and that I will forever warrant and defend the title to the said lands against all legal claims whatever.

And I, the said Grantor, hereby release and relinquish unto the said Grantee my dower, curtesy and homestead in and to said lands.

I, Robert Alan Lewis, spouse of said Grantor, do hereby release and relinquish unto the said Grantee my dower, curtesy and homestead in and to said lands and quitclaim unto said Grantee any interest, right and title I may have therein.

WITNESS our hands and seals on this 13th day of September, 1991.

THIS INSTRUMENT PREPARED BY:
BAC, Fayetteville, AR

STATE OF ARKANSAS

County of Washington

ACKNOWLEDGMENT

On this the 13th day of September, 1991, before me, a notary public, personally appeared Nancy Jane Lewis and Robert Alan Lewis, her husband

known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they had executed the same for the purposes therein set forth.

In witness whereof, I hereunto set my hand and official seal.

My Commission Expires

9-1-93

1430-1946

Copy to: Lindsey - Hays, P.O. Box 1078, Fayetteville, AR 72702

DEPARTMENTAL CORRESPONDENCE

To: Fred Hanna, Mayor

Thru: Charles Venable, Public Works Director *CV*
Don Bunn, Asst. PW Director *DB*
Steve Davis, Budget Coordinator *SD*

From: Jim Beavers, City Engineer *JB*

Date: 10 May 99

Re: Agenda Request, Council Meeting of May 18, 1999.

Supplemental information - Bid opening results and recommendation - proposed construction contract and project contingency for the construction of the proposed "Drainage Improvements to Boardwalk Subdivision and Ridgely/Manor Drive Area".

Bids were opened Monday May 3, 1999 for the Drainage Improvements to Boardwalk Subdivision and Ridgely/Manor Drive Area.

The City received two bids as follows:

Mobley Construction - \$433,361.48.

Sweetser Construction - \$462,898.75.

The engineer's estimate (Milholland) was within 10% of the low bid.

The engineer has reviewed the bids and recommends awarding the bid to the low bidder, Mobley Construction with a bid of \$433,361.48.

Staff requests that the City Council:

A) Award the construction contract to Mobley Construction in the amount of \$433,361.48,

B) Approve a budget adjustment to fully fund the project.

Approve a project contingency for potential changes to the construction contract , material testing, utility relocations, easements/ lands, additional drainage to the south . . .

Authorize the Mayor to expend the approved project contingency funds as necessary for completion of the project.

Please refer to the estimated project costs below.

C) Establish an off-site assessment for future developments which utilize the proposed drainage improvements (refer to agenda memorandum).

D) Concurrent condemnation of easements within the Lewis property (separate agenda item also on the May 18 agenda).

The estimated total project costs are:

Engineering (Milholland)	\$38,000
Cost-share with the AHTD	45,000
land (estimated)	44,000
utility relocations (estimated)	22,584
future improvements south in connection with the AHTD cost-share)	10,000
construction	433,361
Construction contingency	43,361
Materials testing	5,000
general contingency	<u>10,000</u>
total estimated project costs	\$651,806

Original budget (CIP) \$200,000.

Budget adjustment required \$451,306.

Estimated future developer contributions \$80,000 (\$74,258 from Summersby (Marvin Gardens) and \$5,742 from other).

A budget adjustment, in the amount of \$451,500 is attached for review and approval.

**City of Fayetteville, Arkansas
Budget Adjustment Form**

Budget Year 1999	Department: Sales Tax Capital Improvement Fund Division: Program:	Date Requested 05/11/99	Adjustment #
----------------------------	--	-----------------------------------	---------------------

Project or Item Requested: Additional funding is requested for the Londonderry Drainage Improvements project.	Project or Item Deleted: None Use of fund balance and a portion of Drainage Study and Master Plan is proposed for this adjustment.
---	--

Justification of this Increase: The additional funds are needed to fully fund the project cost based on bids received.	Justification of this Decrease: Sufficient cash and investments exist in Sales Tax Capital Improvement Fund to fund the additional cost of this project when combined with a portion of the project funds from the Drainage Study and Master Plan Project.
--	--

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number	Project Number
Bridge and Drainage Improvem	451,500	4470 9470 5817 00	98038 20

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number	Project Number
Bridge and Drainage Improvem	75,000	4470 9470 5314 00	96004 20
Use of Fund Balance	376,500	4470 0947 4999 99	

Approval Signatures

<i>Jim Bevan</i>	5/11/99
Requested By	Date
<i>[Signature]</i>	5/11/99
Budget Manager	Date
<i>[Signature]</i>	5-11-99
Department Director	Date
<i>[Signature]</i>	11 MAY 99
Admin. Services Director	Date
<i>[Signature]</i>	5/12/99
Mayor	Date

Budget Office Use Only

Type: A B C D E

Date of Approval _____

Posted to General Ledger _____

Posted to Project Accounting _____

Entered in Category Log _____

STAFF REVIEW FORM

DRAINAGE IMP.
C.2.1

☒ AGENDA REQUEST
☒ CONTRACT REVIEW
☐ GRANT REVIEW

For the Fayetteville City Council meeting of May 18, 1999

FROM:

Jim Beavers Engineering Public Works
Name Division Department

ACTION REQUIRED: Approval of:

- a) Proposed construction contract and project contingency for the construction of the proposed "Drainage Improvements to Boardwalk Subdivision and Ridgely/Manor Drive Area "
- b) a budget adjustment to fully fund the project
- c) establishing off-site assessment for future developments which utilize the proposed drainage improvements
- d) concurrent condemnation of easements within the Lewis property - separate agenda item also on the May 18, 1999 agenda.

The Contract bid opening will be held Monday May 3, 1999. The proposed contract, costs and budget adjustment will be furnished prior to, or at, the May 11, 1999 agenda session.

COST TO CITY:

\$ To be provided	\$ 166,819	Londonderry Drainage
Cost of this Request	Category/Project Budget	Category/Project Name
4470-9470-5817.00	\$48,680	Drainage Improvements
Account Number	Funds Used To Date	Program Name
98038-0020	\$118,139	Sales tax
Project Number	Remaining Balance	Fund

BUDGET REVIEW:

4/28/99 ☒ Budgeted Item 4/28/99 ☒ Budget Adjustment Attached (to be furnished)
Budget Coordinator Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

Marilyn J. Cramer 4/28/99
Accounting Manager Date
Ruth A. Jones 4/28/99
City Attorney Date

GRANTING AGENCY:

Yolanda Fields 4-28-99
Internal Auditor Review of Contract Form only Date
ADA Coordinator Date

Purchasing Officer Date

STAFF RECOMMENDATION: Approval of items a -d above.

Jim Beavers 4/28/99
Division Head Date
Carol Venal 4-28-99
Department Director Date
Kevin D. Cross 30 APR 99
Administrative Services Director Date
Fred Hamner 4/30/99
Mayor Date

Cross Reference

New Item: Yes ___ No ☒Prev Ord/Res #: 22-98

Orig Contract Date: _____

DEPARTMENTAL CORRESPONDENCE

To: Fred Hanna, Mayor

Thru: Charles Venable, Public Works Director

From: Jim Beavers, City Engineer *JB*

Date: 27 April 1999

Re: Agenda Request, Council Meeting of May 18, 1999.

(A) Proposed construction contract and project contingency for the construction of the proposed "Drainage Improvements to Boardwalk Subdivision and Ridgely/Manor Drive Area".

(B) Proposed budget adjustment to fully fund the project.

(C) Establishing a off-site assessment for future developments which utilize the proposed drainage improvements.

(D) Concurrent condemnation of easements within the Lewis property (separate agenda item also on the May 18 agenda).

1. Project Background.

During the development review and Planning Commission process in 1996 for the proposed Marvin Gardens subdivision (west of Highway 265, north of Manor Drive and south of Boardwalk Subdivision) citizens voiced concerns over existing drainage problems in the area.

The Planning Commission recommended that the City perform a drainage study and improvements in the Ridgely, Manor and Crossover areas (September 23, 1996).

After a formal selection process, in compliance with state law and City purchasing regulations, the City entered into a contract with Milholland Engineering on October 29, 1996 for the "Partial Drainage Study of Mud Creek Tributary and White River Tributary" (a.k.a. the drainage study in connection with the proposed Marvin Gardens Subdivision).

The drainage study was performed by Milholland Engineering in December 1996. The drainage study noted existing problems along Highway 265, Ridgely and Manor Drives and within the Boardwalk Subdivision.

The report includes the following:

Ridgely Drive - existing road side ditches and driveway culverts undersized (for today's standards)

Manor Drive - street culverts undersized.

Londonderry and Meandering Way - existing system undersized, calculated flooding in one home, flooding of yards in other areas.

The report also investigated the effects of the propose development (Marvin Gardens).

Based upon this drainage study the 1998 CIP and Budget included \$200,000 for drainage problems in the Boardwalk area and the Ridgely/Manor area. The \$200,000.00 was a rough predesign estimate and in retrospect too low.

2. Design contract.

The City Council approved an engineering contract with Milholland Engineering on February 17, 1998 for the design and construction management of drainage improvements for the Boardwalk area and the Ridgely/Manor area.

3. Alternate designs.

Milholland Company's engineering design included the review of different routing options.

a. The Boardwalk area and north.

For the Boardwalk area, Milholland Company considered:

additional pipes at the locations of the existing pipes in the Boardwalk subdivision,

combining the flow with the AHDT improvements and routing north along Highway 265 and then west to the pond,

new pipe routing in the rear of the existing homes (the south side on Londonderry and Meandering Way),

new pipe routing off-site, in the undeveloped areas south of the property line of the subdivision.

Based upon considerations of pipe lengths, utilities, rough costs and citizen inconveniences, Milholland Company recommenced the routing the storm water along the off-site southern boundary of the Boardwalk Subdivision approximately 800 lf to the existing creek and then improving the drainage from the creek to the pond north of the subdivision. Please note that the majority of the storm water currently on Londonderry comes from across Highway 265 at Lover's Lane.

DRAINAGE IMP.

C.2.4

After site visits and reviews by the City (Mr. Bunn and Beavers) the proposed routing was approved to proceed to final design including locating the new drainage pipe south of the existing property lines along the Boardwalk subdivision.

The system designed and proposed for construction includes a new 54 inch pipe along the off-site southern boundary of the subdivision to the existing creek and then a new box culvert and concrete channel system to the north.

Please note that the design of the box culvert and concrete channel system to the north is based upon receiving the storm water drainage from all drainage basins based upon future development without upstream detention. This will allow the construction of the proposed Stonegate subdivision (formerly Marvins Gardens) along with the development of the Carter and Lewis properties without detention.

b. For the Ridgely, Manor Drive and southern areas Milholland Company designed a system of twin 30 inch pipes along Ridgely and across Manor Drive.

The City has subsequently negotiated with the AHTD to relocate the cross drainage at Highway 265/Ridgely Drive south approximately 875 feet. The City Council approved a resolution on July 21, 1998 to fund the additional drainage improvements to be included within the Highway 265 widening project (estimated at \$45,000). This will allow the City to leave Ridgely Drive as is and omit the proposed twin 30 inch pipes from the drainage project. The City will have future additional costs downstream, yet to be determined, but estimated at \$5,000 or less for one replacement drive culvert.

The replacement culvert under Manor Drive west of Ridgely remains in the proposed construction contract.

4. Easement acquisition.

Easement acquisition has proceeded for drainage easements along the southern boundary (off-site) within the development and at the outfall for the relocated Highway drainage.

For the Boardwalk area improvements 7 property owners are effected. The City has acquired easements from 6 of the owners. The City has been unable to acquire easement from one owner (the Lewis property).

5. Requested condemnation.

A separate agenda request is presented at the May 18 Council meeting requesting condemnation of permanent drainage easement and temporary construction easement generally along the northern side of the Lewis property.

Please refer to the agenda item, complete with exhibits describing the property and offer.

Per staff's discussions with the owner and their attorney, the proposed construction contract and proposed condemnation of easements are presented at the same Council meeting. The construction may not proceed without easements and the easements are unnecessary if the Council does not fully fund the construction contract and project.

Staff has reviewed the concerns of the property owner and does not believe that the proposed drainage improvements will damage their property or prevent them from future development of their land.

6. Estimated project costs.

The current estimated total project costs, including engineering, construction, AHTD cost-share, utility relocations, easements, material testing is roughly estimated at \$600,000.00.

A formal estimate is not presented at this time as the project is currently being advertised for bids.

The actual bids will be opened Monday, May 3 with the results and recommendation furnished to the City Council prior to, or at, the May 11 agenda session

The Current budget for the project is \$200,000 (project number 98038).

7. Budget adjustment.

A budget adjustment, in the estimated amount of \$400,000.00 will be prepared and presented prior to, or at the Council agenda session on May 11, 1999. The proposed budget adjustment will include a proposed source of funds.

8. Requested future development cost-shares and proposed off-site assessments.

The design of the box culvert and concrete channel system to the north is based upon receiving the storm water drainage from all drainage basins based upon future development without upstream detention. This will allow the construction of the proposed Stonegate subdivision (formerly Marvins Gardens) along with the development of the Carter and Lewis properties without detention.

In discussions with the owner and engineer for the proposed Stonegate (the former Marvin Gardens) they have agreed that their development will benefit by eliminating the need for detention or downstream improvements and they have agreed in principal to pay for a percentage of the costs based upon percentages of drainage areas (they have agreed upon percentages but not cost estimates). The developer's engineer has a much lower cost estimate for the project and they may reconsider their proposed agreement depending upon the City's bid prices.

Jorgensen estimates, and staff concurs that the developers of Stonegate contribute 26.2% of the construction costs for the improvements through the Boardwalk subdivision and 14.6% of the costs of the improvements at Manor Drive.

DRAINAGE IMP.

C.2.6

The agreement in principal is also contingent upon Planning Commission considerations, approval of the preliminary plat and the ability of the developers of Stonegate to acquire a drainage easement across the Lewis property to the new box culvert. This easement is west of, and separate from the easement requested by the City from Lewis.

Staff requests that the City Council establish and require an assessment based upon drainage area percentages and actual construction costs of the improvements. Such assessments shall be returned to the budget category from which the project was funded.

Additional information, based upon the actual bid results will be presented prior to, or at , the agenda session May 11, 1999.

9. Construction contract

Bids will be opened Monday, May 3 with the results and recommendation furnished to the City Council prior to, or at, the May 11 agenda session.

enclosures:

1. Project and vicinity map.
2. Construction contract and specifications.

STAFF REVIEW FORM

TOBIN TRUST
C.3.1

☒ AGENDA REQUEST
☐ CONTRACT REVIEW
☐ GRANT REVIEW

For the Fayetteville City Council meeting of May 18, 1999

FROM:

Ed Connell
Name

Engineering
Division

Public Works
Department

ACTION REQUIRED: Approval of a resolution authorizing City Attorney to seek a court order for the possession of certain rights of way and easements from Patrick J. Tobin Trust on parcels of land located at 519 and 409 W. Poplar St., Fayetteville in association with the City's Poplar Street Improvement project.

COST TO CITY:

\$ 6,200.00
Cost of this Request

\$914,591
Category/Project Budget

Poplar St. Improvement
Category/Project Name

4470-9470-5809.00
Account Number

\$ 11,316
Funds Used To Date

Program Name

97023
Project Number

\$903,275
Remaining Balance

Sales Tax CIP
Fund

BUDGET REVIEW: ☒ Budgeted Item ☐ Budget Adjustment Attached

Budget Coordinator

Marvin D. Crook
Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

Marion D. Crook
Accounting Manager

4-19-99
Date

Patrice
City Attorney

4-19-99
Date

P. Vice
Purchasing Officer

4-19-99
Date

GRANTING AGENCY:

Glenda Stultz
Internal Auditor

4-19-99
Date

ADA Coordinator

Date

STAFF RECOMMENDATION: Staff recommends approval of resolution so that project can be bid. City will continue to try and negotiate a settlement if Mr. Tobin indicates a willingness to respond.

Jim Brainer
Division Head 4/15/99
Date

Cross Reference

Charles Deane
Department Director 4-20-99
Date

New Item: Yes ☒ No ☐

Marvin D. Crook
Administrative Services Director 20 APR 99
Date

Prev Ord/Res #:

Fred Horne
Mayor 4/20/99
Date

Orig Contract Date:

DEPARTMENTAL CORRESPONDENCE

TO: Fayetteville City Council

THRU: Fred Hanna, Mayor
Charles Venable, Director of Public Works *CV*
Jim Beavers, City Engineer *JB*

FROM: Ed Connell, City Land Agent *EC*

DATE: April 15, 1999

RE: Poplar Street Improvement, P-97023
Tract Nos. 4 & 5
Patrick J. Tobin Trust
Possession by Eminent Domain

Since early in 1998, the City has been trying to obtain adequate right of way and drainage easement so as to make a modest improvement along Poplar Street, between Gregg Ave. and Leverett Ave. The West end of this project will involve locating or replacing sidewalks on both sides of the street, while the East end of the project, from Gregg to Scull Creek, will require an expansion of the roadway itself, a complete reconstruction of the storm drainage system and, of course, sidewalks on both sides of the roadway.

All of the road rights of way and easements have been obtained on this project except for two parcels, both owned by Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Trust. Since September, 1998, the City has made three different offers to Mr. Tobin with regard to the road right of way and easements on these parcels, the latest being April 14, 1999. To date, staff has not heard a word of response from Mr. Tobin. Phone messages have been left, with no call back; which leaves no other avenue except to seek possession of the required areas via the court. An independent appraiser also was unable to make contact with Mr. Tobin. This project is set to go to bid at this time and possession of these rights of way and easement areas are necessary before any bid is accepted.

Tract #4: 519 W. Poplar Street

Lots 1 & 2, Block 8, Parker's Valley View Acres
SW corner of Birch Ave. & Poplar St.

This property is impacted by both the street widening and the storm drainage reconstruction. Currently, the street drainage and the area storm water from the South converge in the NW corner of this property and are directed North across Poplar St. toward Scull Creek. The open ditch on the south side of Poplar will be enclosed into piped drainage, thus the open ditch will be eliminated. At the NW corner of this property, however, it will converge will open ditch drainage that flows North along the West property line. The junction box is a major underground structure, all of which requires considerable easement area.

Tract # 4 continued-----

Included herewith is an independent appraisal of the rights of way and easements required from this property. The building is located close to the road, thus the area for parking is limited. The roadway expansion will eliminate the current ditch area and shorten the distance from the roadway to the parking area, however, a five foot sidewalk will replace most of this lost area. In effect, there will be no loss of parking to this property of Mr. Tobin's. Damages were compensated for his loss of concrete to go from the old (current) pavement to his parking area.

Tract #5: 405 W. Poplar Street

Lots 4 & 5, Block 7, Parker's Valley View Acres
SE corner of Birch Ave. & Poplar St.

The building on this lot(s) is set back further than the one on Tract #4, thus allowing a considerable larger parking area. This area is zoned I-1 and comprises smaller industrial businesses. Five (5) feet of additional right of way is required for the roadway expansion, along with a ten (10) foot temporary construction easement. There are four small trees that will have to come out as a result of this project and the property owner is compensated for such.

Again, we do not know Mr. Tobin's view on this matter since we have been unable to get a response from him.

Ownership:

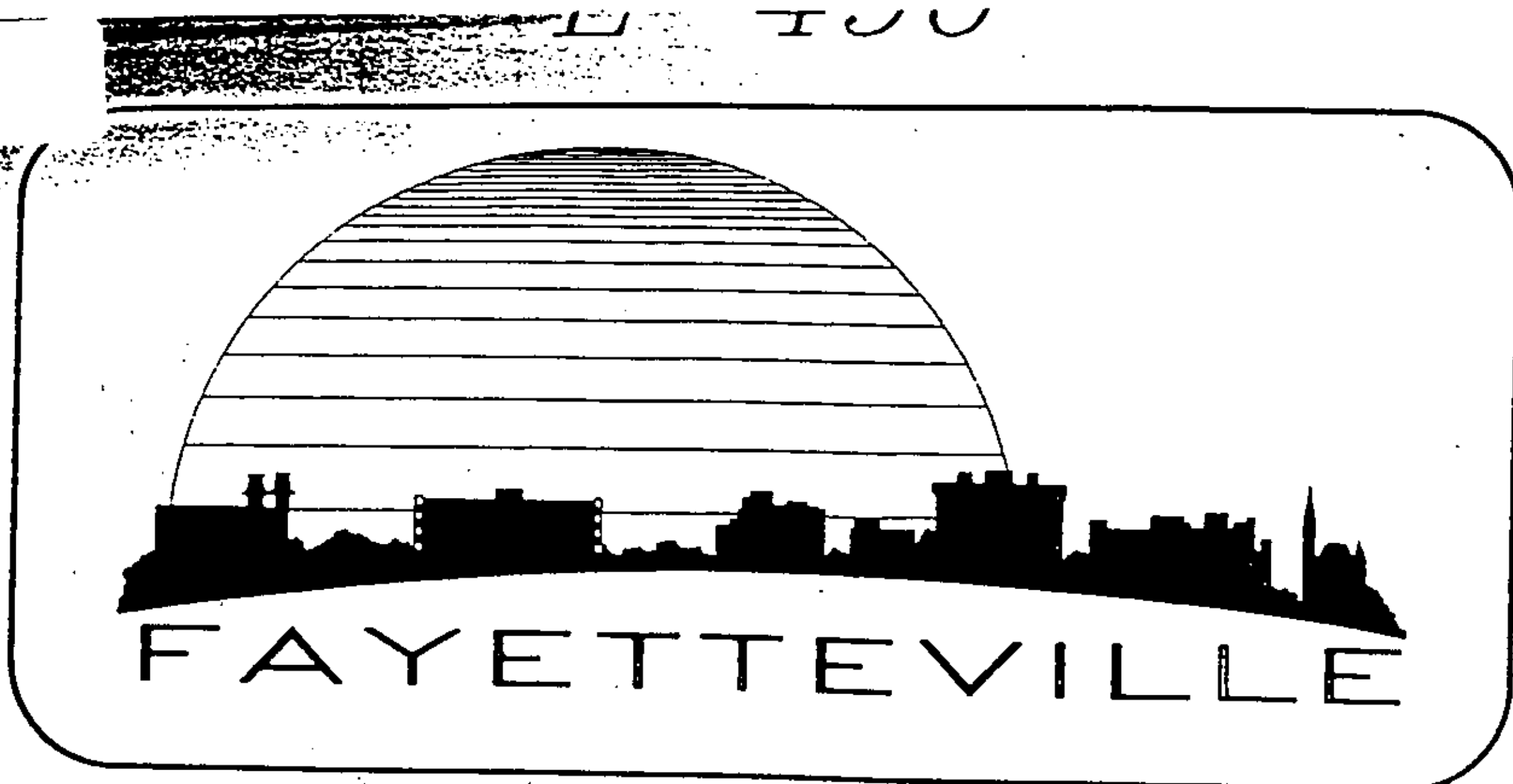
Patrick J. Tobin, Trustee
Patrick J. Tobin Trust, dated March 4, 1997
2901 N. Tobin Lane
Fayetteville, AR 72703

Phone: 443-1338

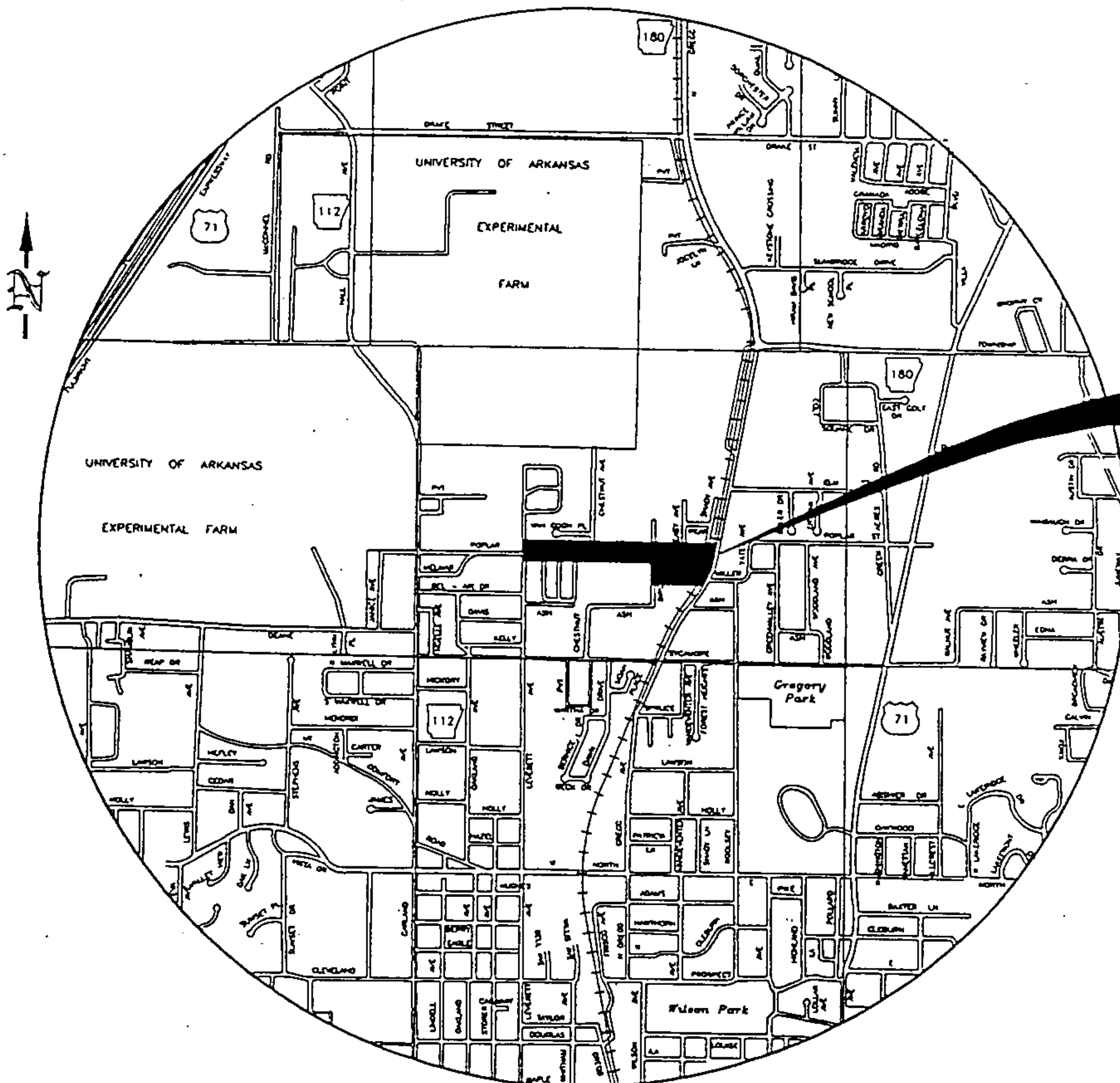
General:

Please find herewith three offer letters sent to Mr. Tobin on these properties. Our original offer in September, 1998 was based upon estimated land values in the area. With some modifications to the plans, as well as some updated appraisal information on similar lands, the City modified the offer with our letter of January 4, 1999. In March of this year and in preparation for this potential condemnation, a complete and independent appraisal was made on both parcels. As a result of those appraisals, our third offer was made via letter of April 12, 1999, amounting to \$6,200 for the requirement from both parcels.

The City Council is hereby requested, via resolution, to authorize the City Attorney to seek possession of the required rights of way and easements on the subject properties through the courts.



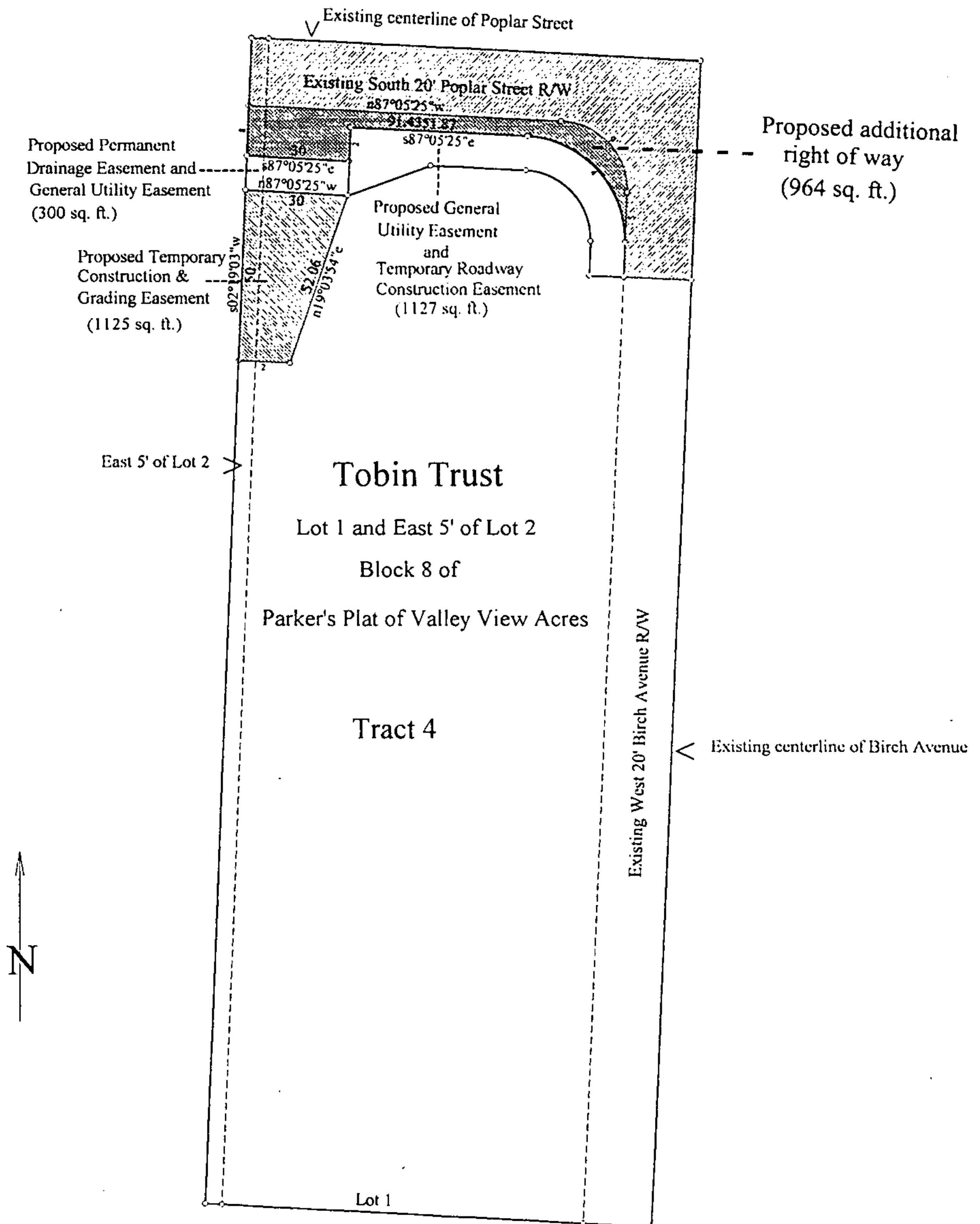
©1999 City of Fayetteville/CBA



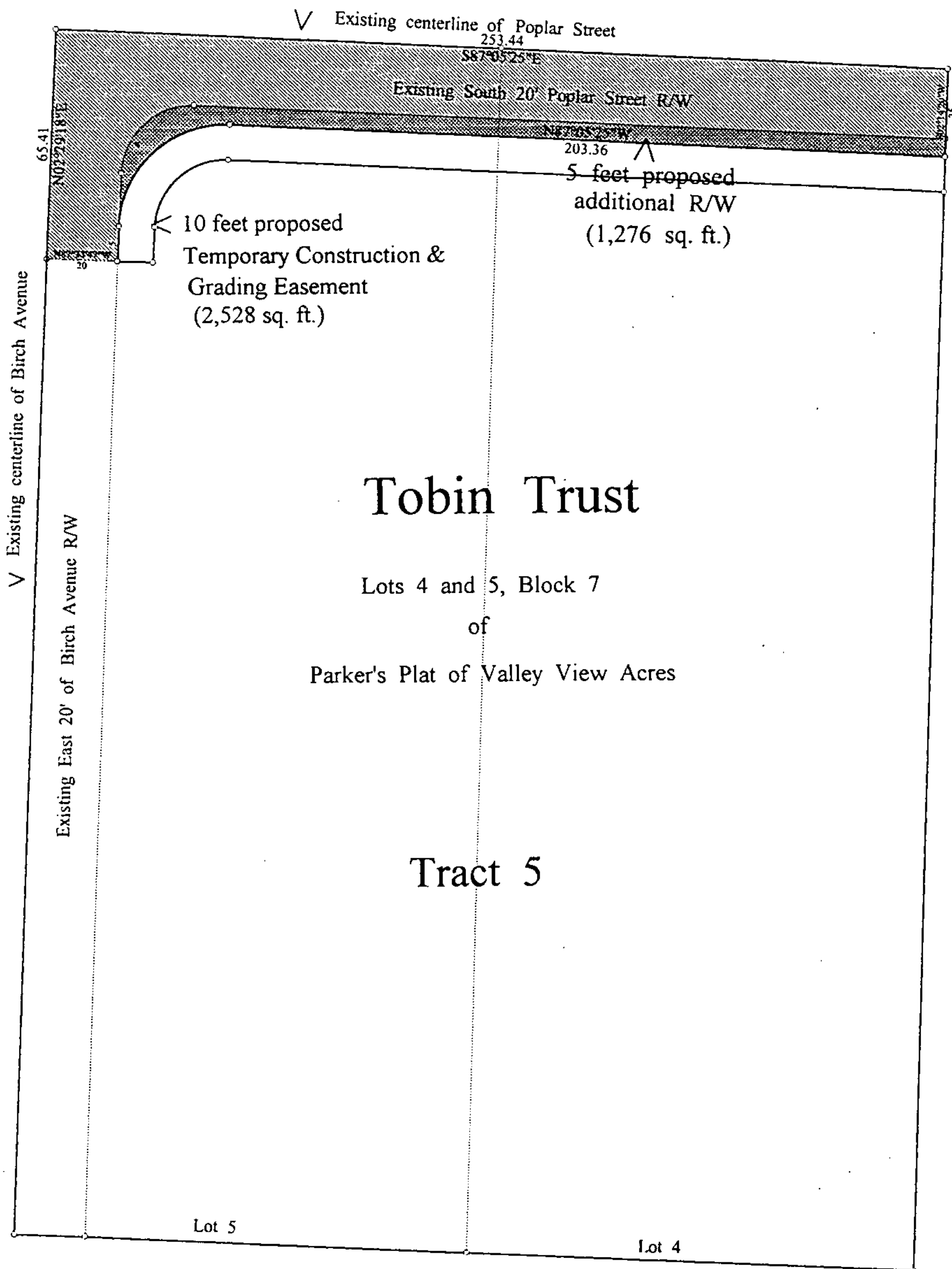
VICINITY MAP

POPULAR STREET PROJECT
IMPROVEMENT PROJECT

TOBIN TRUST
C.3.5



TOBIN TRUST
C.3.6



Scale: 1" = 40'

FAYETTEVILLE

TOBIN TRUST
C.3.7

THE CITY OF FAYETTEVILLE, ARKANSAS

April 12, 1999

Patrick J. Tobin, Trustee
Patrick J. Tobin Revocable Trust
2901 N. Tobin Lane
Fayetteville, AR 72703

RE: Poplar Street Improvements
Job No. 97023
Tracts 4 & 5
Third Offer Letter

Dear Mr. Tobin:

As previous offer letters of September 1, 1998 and January 4, 1999 have indicated, the City plans for the widening of Poplar Street, between Gregg Street and Leverett. The City anticipates a letting of a construction contract within the next month for this project. This project will further involve considerable modification to the storm water drainage system between the railroad tracks on the east and the creek on the west. As previously noted, the widening of the road and the modifications to the drainage will also result in the need to relocate a number of general utilities.

In an effort to reach an agreement with you, the city has had an independent appraisal performed on the acquisition of right of way and easements associated with this project on both your properties at Birch and Poplar. Enclosed is the summary sheet of these appraisals. Accordingly, the City of Fayetteville hereby offers the following as compensation for the right of way and easements previously submitted to you for execution:

Compensation:

Tract #4; 519 W. Poplar St.

Road Right of Way; 964 ft ²	\$	1,700
Temporary Roadway & Drainage Easement: 2252 ft ²		400
Perm. Drainage Easement; 300 ft ²		100
Utility Easement; 1427 ft ²		500
Damages: 200 ft ² Concrete Loss	\$	<u>500</u>
Total Compensation, Tract #4	\$	3,200

Tract #5; 405 W. Poplar St.

Road Right of Way; 1,276 ft ²	\$	2,250
Temporary construction Easement; 2,528 ft ²		450
Damages; (4) small trees		<u>300</u>
Total Compensation, Tract #5	\$	3,000

TOBIN TRUST

C.3.8

Mr. Pat Tobin, Trustee
Patrick J. Tobin Trust
January 4, 1999
Page 2 of 2

We hope that you will elect to accept this revised offer before this item goes before the City Council on May 18, 1999 for condemnation purposes. If you need for us to provide new documentation, please inform the undersigned at 444-3415. The documents should be executed by all parties with current ownership interest in the particular properties. The documents should further be notarized and returned to the City of Fayetteville. A city Land Agent will be pleased to witness and notarize the execution of the documents if you will advise this office accordingly. Upon receipt of the documents, a check will be requested and you will be paid the amount indicated in this offer letter.

If you make a final rejection of this offer, you do have certain legal rights which are outlined hereafter. Upon your final rejection of this offer, and if the City of Fayetteville elects to do so, a suit of condemnation may be filed and the amount that the City has determined, and offered herein, to be just compensation for the use of your property will be deposited with the Registry of the Circuit Court of Washington County. You may, at that time, elect to accept the amount deposited as just compensation and the amount will be paid to you thereby disposing of the condemnation suit.

If you do not elect to accept the amount deposited as just compensation, then you may withdraw the amount placed on deposit without prejudice to your rights to claim additional compensation. In this event, you will be entitled to a trial by jury in the Circuit Court to determine just compensation for your lands condemned. In either event, payment of the estimated just compensation will be made available to you.

We, however, ask that you accept the offer made herein by executing the associated *Warranty Deeds* and easements. Please provide us with a Tax Identification Number (Corporation) or Social Security Number so that a check can be written. A Vendor Form was previously provided for this purpose.

Sincerely yours,



Ed Connell
City Land Agent

\edc

APPRAISAL REPORT
FOR
CITY OF FAYETTEVILLE

Limited Summary Appraisal Report

PROJECT Poplar Street Improvement (Project No. 97023)

COUNTY Washington

PARCEL # 765-09495-000

LOCATION 519 W. Poplar, Fayetteville, AR (Pt. Of Lots 1 & 2, Block 8 of Parker's Valley View Acres)

FEE OWNER Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997

ADDRESS 2901 N. Tobin Lane, Fayetteville, AR 72703

ESTATE APPRAISED Fee Simple

AREA OF WHOLE 0.835 acres AREA OF RESIDUAL 0.812 acres

AREA OF PERMANENT ACQUISITION 964 Sq. Ft.
(Descriptions attached)

Drainage Easement 300 Sq. Ft.

General Utility Easement 1,427 Sq. Ft.

Temporary Construction and Grading Easement 1,125 Sq. Ft.
1,127 Sq. Ft.

ESTIMATED FAIR MARKET VALUE OF THE PROPERTY:

	Before		
Land		\$ 64,000	
Improvements		\$ 0*	
Total			\$ 64,000
	After		
Land		\$ 61,700	
Improvements		\$ 0*	
Total			\$ 61,700
FAIR MARKET VALUE OF PERMANENT R-O-W & UTILITY ACQUISITION			\$ 2,300

As of 24th day of March, 1999

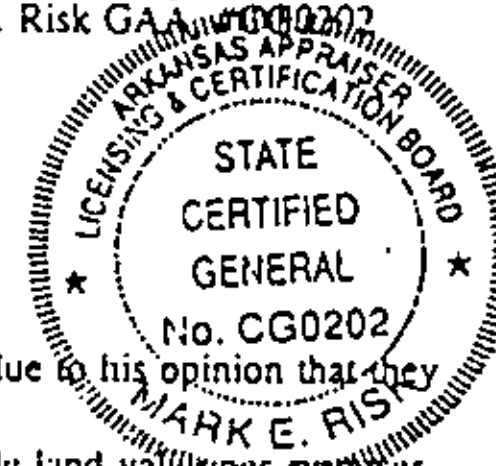
ALLOCATION OF F.M.V. OF TOTAL ACQUISITION

R-O-W	964 SF @ \$1.75/SF	= \$ 1,687	Say	\$ 1,700
Drainage Esmt.**	300 SF @ \$1.75/SF x 0.20	= \$ 105	Say	\$ 100
Utility Easement	1,427 SF @ \$1.75/SF x 0.20	= \$ 499	Say	\$ 500
T.C.E.**	2,252 SF @ \$1.75/SF x 0.10	= \$ 394	Say	\$ 400
Trees	None	= \$ 0		
Improvements:	None	= \$ 0		
Total R-O-W, T.C.E., Trees, & Improvements				\$ 2,700
Damages or Benefits:	200 SF Concrete @ \$2.50 = \$ 500			\$ 500
Total Compensation				\$ 3,200

ATTACHMENTS:

- ☒ Certificate of Appraiser
- ☒ Photographs
- ☒ Site, Improvement, H&B Use Narrative
- ☒ Legal Descriptions
- ☒ Market Data Approach
- ☒ Survey
- ☒ Tax Assessment Card

Mark E. Risk
Appraiser, Mark E. Risk GA 11000202



- * The appraiser has not determined the value of the existing subject improvements due to his opinion that they are not significant affected by the partial taking.
- ** Drainage and General Utility Easement Value is based upon 20% of the fee simple land value per appraiser research. Temporary Construction Easement (T.C.E.) value is based upon the fee simple land value multiplied times 10% to reflect a fair return plus a premium for inconvenience.

APPRAISAL REPORT
FOR
CITY OF FAYETTEVILLE

Limited Summary Appraisal Report

PROJECT Poplar Street Improvement (Project No. 97023)

COUNTY Washington

PARCEL # 765-09489-000 & 765-09490-000

LOCATION 405 W. Poplar, Fayetteville, AR (Lots 4 & 5, Block 7 of Parker's Valley View Acres)

FEE OWNER Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997

ADDRESS 2901 N. Tobin Lane, Fayetteville, AR 72703

ESTATE APPRAISED Fee Simple

AREA OF WHOLE 1.75 acres AREA OF RESIDUAL 1.72 acres

AREA OF PERMANENT ACQUISITION 1,276 Sq. Ft.
(Descriptions attached)

Temporary Construction and Grading Easement 2,528 Sq. Ft.

ESTIMATED FAIR MARKET VALUE OF THE PROPERTY:

	Before		
Land		\$ 133,400	
Improvements		\$ 0*	
Total			\$ 133,400
	After		
Land		\$ 131,150	
Improvements		\$ 0*	
Total			\$ 131,150

FAIR MARKET VALUE OF PERMANENT R-O-W ACQUISITION \$ 2,250

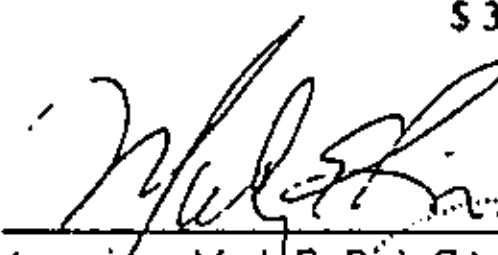
As of 24th day of March, 1999

ALLOCATION OF F.M.V. OF TOTAL ACQUISITION

R-O-W	1,276 SF @ \$1.75/SF	= \$ 2,233	Say	\$ 2,250
T.C.E.**	2,528 SF @ \$1.75/SF x 0.10	= \$ 442	Say	\$ 450
Trees	(4) Small Trees	=	\$ 300	
Improvements:	None	=	\$ 0	
Total R-O-W, T.C.E., Trees, & Improvements				\$ 3,000
Damages or Benefits:				\$ 0
Total Compensation				\$ 3,000

ATTACHMENTS:

☒ Certificate of Appraiser
☒ Photographs
☒ Site, Improvement, H&B Use Narrative
☒ Legal Descriptions
☒ Market Data Approach
☒ Survey
☒ Tax Assessment Card


Appraiser, Mark E. Risk GAA, #CG0202



- * The appraiser has not determined the value of the existing subject improvements due to his opinion that they are not significantly affected by the partial taking.
- ** Temporary Construction Easement (T.C.E.) value is based upon the fee simple land value multiplied times 10% to reflect a fair return, plus a premium for inconvenience.

January 4, 1999

Patrick J. Tobin, Trustee
Patrick J. Tobin Revocable Trust
2901 N. Tobin Lane
Fayetteville, AR 72703

RE: Poplar Street Improvements
Job No. 97023
Tracts 4 & 5
Second Revision Offer Letter

Dear Mr. Tobin:

As previous letters have indicated, the City plans for the widening of Poplar Street, between Gregg Street and Leverett, is fast coming to a close and we anticipate an early letting of a construction contract early next year. This project will further involve considerable modification to the storm water drainage system between the railroad tracks on the east and the creek on the west. Any time road widening and drainage modifications occur, there is usually the need to relocate a number of general utilities.

You are the owner of properties on both the west side and east side of Birch Avenue at Poplar Street. Both of these properties are affected by this improvement project and certain rights of way and easements are required of these properties. The following is a brief overview of the requirements for each of these tracts:

TRACT No. 4: Lot 1 and 5' of Lot 2, Block 8, Parker's Plat of Valley View Acres

- ▷ Existing right of way consists of; (1) the North 20 feet of this lot along Poplar Street and (2) the East 20 feet of this lot along Birch Avenue.
- ▷ An additional 5 feet of road right of way is required for roadway expansion of Poplar Street. A new drainage headwall/culvert system is necessary on the West side of this property to direct the storm drainage across Poplar to the North. As a result, the City is requesting an additional 10 ft. of road right of way over the west 30 feet of this property to include the headwall and culvert inlet. This area is west of your parking lot.
- ▷ The East end of the new right of way for Poplar Street is slightly greater than 5 feet in that the radius of the curve onto Birch is increased from 20 feet to 30 feet. In total, approximately 964 square feet of additional right of way is required as shown in the attached diagram. Based upon engineers drawings, the new south right of way line will intrude into your existing parking lot by about one (1) foot. This land is to be conveyed to the city in fee simple title. The city has given further consideration to this acquisition and hereby raises the offer for this land to \$1.25/ft² or \$1,205.00 for the 964 ft².

TOBIN TRUST

C.3.12

WILLIAM J. TOBIN, Trustee

Patrick J. Tobin Trust

January 4, 1999

Page 2 of 5

- ▷ City ordinances require that we put in sidewalks any time a street is modified or expanded. Most of the additional right of way noted above will be devoted to the installation of this required sidewalk. The new street will have curb and gutter, thus the current ditch along Poplar will be eliminated. The back of curb (BOC) on the expanded street will be located approximately 9 feet south of the current edge of pavement, thus the entry into your parking lot will be shorter.
- ▷ The new sidewalk (5 feet in width) will be located 1-2 feet inside the road right of way with grass located on that 1-2 foot strip. We have asked our engineers to specify that the concrete be re-poured from your parking lot to the sidewalk and not leave the 1-2 ft. gap. The overall result of this is that you will have no loss of parking lot area. It should be kept in mind that the sidewalk area cannot be used for parking purposes.
- ▷ As previously mentioned, the new road will be curbed and guttered. A 30" reinforced concrete pipe(RCP), buried beneath the sidewalk area, will serve for storm water drainage, replacing the 18" culverts currently used for driveway entry and road intersections. Water from this collection system, along with drainage water from the West side of your property will converge at the box culvert located in the Northwest corner of this property and be directed north, under Poplar Street, toward the creek area. The city is requesting a 10 foot permanent drainage easement south of and adjacent to the new right of way which will contain the major inlet to the box culvert. This 300 ft² area would be used to maintain the entry into the box culvert and would also be used to relocate some of the underground utilities which have to be moved as a result of the project.
- ▷ A temporary construction and grading easement is also requested along the ditch on the west side of this property so that the ditch can be graded and landscaped to direct the storm water flow into the new box culvert system. This TCGE is adjacent to and south of the permanent drainage easement; is 50' long, 30' wide on the north, 15' wide on the south, and contains 1125 ft². This area is shown on the attached diagrams. The temporary construction and grading easement will terminate upon the completion and acceptance of the project by the City of Fayetteville.
- ▷ As noted above, the permanent drainage easement area will also serve as an area to relocate utilities across the ditch area. These utilities will probably include gas, telephone, overhead electric, etc. To carry these utilities further down Poplar Street, a 10 foot wide General Utility Easement is requested, lying adjacent to and South of the new right of way line. This permanent utility easement would then angle to a point midway through the entry and about ten (10) feet south of the new right of way line. These utilities will be installed prior to the road expansion and will involve saw cutting the North 10 feet of the existing parking lot. This portion of the parking lot will be available for parking/entry, except during periods of utility installation, with the temporary use of a gravel base. Once all utilities are installed, this area will be re-poured to the sidewalk. If, at a later date, any of the utility companies that cause damage to the parking lot/entry drive will then be responsible for repair.

Mr. Pat Tobin, Trustee
Patrick J. Tobin Trust
January 4, 1999
Page 3 of 5

- ▷ So as to make the connection between the new entry and the existing concrete pad, a temporary construction easement (new item) overlaps the general utility easement. This easement will terminate at job completion.

TRACT No. 5: Lot #4 and Lot #5, Block #7, Parker's Plat of Valley View Acres

- ▷ Existing right of way consists of the North 20 feet of this lot along Poplar Street.
- ▷ An additional 5 feet of road right of way is required for roadway expansion of Poplar Street. This will bring the new right of way down to about 6 feet north of the west end of the parking lot on lot #4 and about 5 ft. north of the east end of the parking lot on lot #5. In all, approximately 1,276 ft² is required, including a change in the radius (from 20 feet to 30 feet) of the curve onto Birch Avenue. This area of existing and new right of way is shown in the attached diagram.
- ▷ A 10 foot temporary construction easement (TCE) for road way purposes is required south of the new right of way line. The trees in this TCE area will not be disturbed by the road or storm water drainage construction, which will be in the road right of way. This same area may be required by other (non-public) utility companies, however they will approach you if necessary.
- ▷ There is one tree which borders on the new right of way line which will be removed. Special compensation for that tree is included in the determination provided hereafter.
- ▷ The current sidewalk will be removed and rebuilt, somewhat south of the existing sidewalk, to allow for the installation of the storm water drainage line (36"). The sidewalk will be a couple of feet of the new right of way line.
- ▷ There should be no loss of parking lot area due to road and drainage construction.

Compensation:

Tract # 4:

Road Right of Way: 964 ft ²	\$	1,205
Temp. Roadway Easement: 1127 ft ²	\$	115
Permanent Drainage Easement: 300 ft ²	\$	75
Temp. Drainage Easement: 1125 ft ²	\$	115
General Utility Easement: 1236 ft ²	\$	<u>360</u>
Total, Tract #4	\$	1,870

Tract # 5:

Road Right of Way: 1276 ft ²	\$	1,595
Temporary Construction Easement: 2528 ft ²	\$	255
Landscape Damages: (one tree)	\$	<u>450</u>
Total, Tract #5	\$	2,300

Total Compensation, TR# 4 & 5	\$	4,170
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TOBIN TRUST

C.3.14 trustee

 Tobin Trust

January 4, 1999

Page 4 of 5

In accordance with the above determination, the City hereby offers \$ 1,870 for the acquisition of additional right of way, permanent drainage easement, general utility easement and temporary construction and grading easement associated with Tract #4; and \$ 2,300 for the acquisition of additional road right of way, a temporary construction and grading easement and landscape damages associated with Tract #5.

We hope that you will elect to accept this revised offer since time is quickly passing before this project must go to bid. We are including another set of documentation for each of these tracts just in case the previous documents are misplaced. The roadway temporary easements are new documents. These documents should be executed by all parties with current ownership interest in the particular properties. The documents should be notarized and returned to the City of Fayetteville. A city Land Agent will be pleased to witness and notarize the execution of the documents if you will advise this office accordingly. Upon receipt of the documents, a check will be requested and you will be paid the amount indicated in this offer letter.

If you make a final rejection of this offer, you do have certain legal rights which are outlined hereafter. Upon your final rejection of this offer, and if the City of Fayetteville elects to do so, a suit of condemnation may be filed and the amount that the City has determined, and offered herein, to be just compensation for the use of your property will be deposited with the Registry of the Circuit Court of Washington County. You may, at that time, elect to accept the amount deposited as just compensation and the amount will be paid to you thereby disposing of the condemnation suit.

If you do not elect to accept the amount deposited as just compensation, then you may withdraw the amount placed on deposit without prejudice to your rights to claim additional compensation. In this event, you will be entitled to a trial by jury in the Circuit Court to determine just compensation for your lands condemned. In either event, payment of the estimated just compensation will be made available to you.

We, however, ask that you accept the offer made herein by executing the associated *Warranty Deeds* and easements. A reduced copy of the documents are included for your records. We can provide a copy of the recorded document upon your request and at the appropriate time. Please provide us with a Tax Identification Number (Corporation) or Social Security Number so that a check can be written. A Vendor Form is provided for this purpose.

Mr. Pat Tobin, Trustee
Patrick J. Tobin Trust
January 4, 1999
Page 5 of 5

We apologize for the length of this letter, however, we felt that more detailed explanation of the drainage system and roadway improvement was probably necessary in order to move this project along. A City Land Agent will be glad to meet with you at your convenience and discuss all phases of this project and the associated documents. Please contact Ed Connell at (501) 444-3415, Jill Goddard at 444-3407 or I can be reached at 575-8206.

Sincerely yours,

Jim Beavers
City Engineer

Enclosures

JB\edc

TOBIN TRUST
C.3.16

September 21, 1998

Patrick J. Tobin, Trustee
2901 N. Tobin Lane
Fayetteville, AR 72703

RE: Poplar Street Improvements
Job No. 97023
Tract No. 4
Revised Offer Letter

Dear Mr. Tobin:

The City of Fayetteville is planning the widening of Poplar Street between Gregg Avenue to just west of Birch Avenue. This commences where a previous widening project left off and continues the widening to Gregg Avenue/railroad right of way. In order to extend the alignment of the previously widened street it is necessary to obtain a small amount of additional right of way across a portion of your property. Also, associated with any road project of this nature, improvements to drainage systems are also necessary. A rather large box culvert will be located in the new right of way area. However, a small drainage easement and a temporary construction and grading easement are necessary to allow stormwater flow to be directed to the culvert. South of the new right of way area is a general utility easement to allow for the relocation of necessary utilities. (The specifics are shown on the attached diagram.) The temporary construction and grading easement will terminate upon completion and acceptance of the project by the City.

Included is a general map of the subject area, as well as a drawing of your specific property depicting the anticipated areas required for new right of way and the easements. The existing right of way is also shown and is considered public property by prescription. The City of Fayetteville hereby offers \$965.00 for the acquisition of additional right of way (964 square feet), \$45.00 for the conveyance of rights associated with the Permanent Drainage Easement (300 square feet), \$90.00 as rental of the lands associated with the Temporary Construction and Grading Easement (1,125 square feet), and \$185.00 for the conveyance of rights associated with the General Utility Easement (1,236 square feet); making the total offer amount \$1,285.00.

You will find enclosed a *Quit Claim Deed* from Geraldine R. St. John to your Trust for the east five (5) feet of Lot 2, Block 8. As far as I can tell, when Mrs. St. John quit claimed her interest in the property to you in 1987 (Document Record 1241/149), this 5-foot strip was omitted. This Quit Claim Deed is in an effort to convey the entire parcel to your Trust. This document needs to be signed, notarized, and recorded in order to consider you to be sole owner of the property.

Mr. Tobin
Poplar Street Improvements
Offer Letter, Page 2 of 2

Should you elect to accept this offer, the *Warranty Deed*, *Drainage Easement*, and the *General Utility Easement* contained herein should be executed by all parties with current ownership interest in the particular property. The documents should be notarized and returned to the City of Fayetteville. A City Land Agent will be pleased to witness and notarize the execution of the documents if you will advise our office accordingly. Upon receipt of these documents, a check will be requested and you will be paid the amount indicated in this offer letter.

If you make a final rejection of this offer, you do have certain legal rights which are outlined hereafter. Upon your final rejection of this offer, and if the City of Fayetteville elects to do so, a suit of condemnation may be filed and the amount that the City has determined, and offered herein, to be just compensation for the use of your property will be deposited with the Registry of the Circuit Court of Washington County. You may, at that time, elect to accept the amount deposited as just compensation and the amount will be paid to you thereby disposing of the condemnation suit.

If you do not elect to accept the amount deposited as just compensation, then you may withdraw the amount placed on deposit without prejudice to your rights to claim additional compensation. In this event, you will be entitled to a trial by jury in the Circuit Court to determine just compensation for your lands condemned. In either event, payment of the estimated just compensation will be made available to you.

We, however, ask that you accept the offer made herein by executing the attached *Warranty Deed*, *Drainage Easement*, and *General Utility Easement*. Reduced copies of the documents are included for your records. We can provide copies of the recorded documents upon your request and at the appropriate time. Please provide us with a Tax Identification Number (Corporation) or Social Security Number so that a check can be written. A Vendor Form is provided for this purpose.

A City Land Agent will be glad to meet with you at your convenience and discuss all phases of this project and the associated documents. Please contact Ed Connell at (501) 444-3415, Jill Goddard at 444-3407 or I can be reached at 575-8206.

Sincerely yours,

Donald R. Bunn
City Engineer

DRB/jsg
Attachments

TOBIN TRUST
C.3.18

September 21, 1998

Patrick J. Tobin, Trustee
2901 N. Tobin Lane
Fayetteville, AR 72703

RE: Poplar Street Improvements
Job No. 97023
Tract No. 5
Revised Offer Letter

Dear Mr. Tobin:

The City of Fayetteville is planning the widening of Poplar Street between Gregg Avenue to just west of Birch Avenue. This commences where a previous widening project left off and continues the widening to Gregg Avenue/railroad right of way. In order to extend the alignment of the previously widened street, it is necessary to obtain a small amount of additional right of way across a portion of your property for this project. (The specifics are shown on the attached diagram.)

Included is a general map of the subject area, as well as a drawing of your specific property depicting the anticipated new area required for right of way. The existing right of way is also shown and is considered public property by prescription. The City of Fayetteville hereby offers \$1,280.00 for the acquisition of additional right of way (1,276 square feet), and \$450.00 in landscape damages; making the total offer amount \$1,730.00.

Should you elect to accept this offer, the *Warranty Deed* contained herein should be executed by all parties with current ownership interest in the particular property. The document should be notarized and returned to the City of Fayetteville. A City Land Agent will be pleased to witness and notarize the execution of the document if you will advise our office accordingly. Upon receipt of this document, a check will be requested and you will be paid the amount indicated in this offer letter.

If you make a final rejection of this offer, you do have certain legal rights which are outlined hereafter. Upon your final rejection of this offer, and if the City of Fayetteville elects to do so, a suit of condemnation may be filed and the amount that the City has determined, and offered herein, to be just compensation for the use of your property will be deposited with the Registry of the Circuit Court of Washington County. You may, at that time, elect to accept the amount deposited as just compensation and the amount will be paid to you thereby disposing of the condemnation suit.

Mr. Tobin
Poplar Street Improvements
Offer Letter, Page 2 of 2

If you do not elect to accept the amount deposited as just compensation, then you may withdraw the amount placed on deposit without prejudice to your rights to claim additional compensation. In this event, you will be entitled to a trial by jury in the Circuit Court to determine just compensation for your lands condemned. In either event, payment of the estimated just compensation will be made available to you.

We, however, ask that you accept the offer made herein by executing the attached *Warranty Deed*. A reduced copy of the document is included for your records. We can provide a copy of the recorded document upon your request and at the appropriate time. Please provide us with a Tax Identification Number (Corporation) or Social Security Number so that a check can be written. A Vendor Form is provided for this purpose.

A City Land Agent will be glad to meet with you at your convenience and discuss all phases of this project and the associated documents. Please contact Ed Connell at (501) 444-3415, Jill Goddard at 444-3407 or I can be reached at 575-8206.

Sincerely yours,

Donald R. Bunn
City Engineer

DRB/jsg

Attachments

TK #4

**APPRAISAL REPORT
FOR
CITY OF FAYETTEVILLE**

Limited Summary Appraisal Report

PROJECT Poplar Street Improvement (Project No. 97023)

COUNTY Washington

PARCEL # 765-09495-000

LOCATION 519 W. Poplar, Fayetteville, AR (Pt. Of Lots 1 & 2, Block 8 of Parker's Valley View Acres)

FEE OWNER Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997

ADDRESS 2901 N. Tobin Lane, Fayetteville, AR 72703

ESTATE APPRAISED Fee Simple

AREA OF WHOLE	0.835 acres	AREA OF RESIDUAL	0.812 acres
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AREA OF PERMANENT ACQUISITION	964 Sq. Ft.
(Descriptions attached)	
Drainage Easement	300 Sq. Ft.
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Total			\$ 61,700

FAIR MARKET VALUE OF PERMANENT R-O-W & UTILITY ACQUISITION	\$ 2,300
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As of 24th day of March, 1999

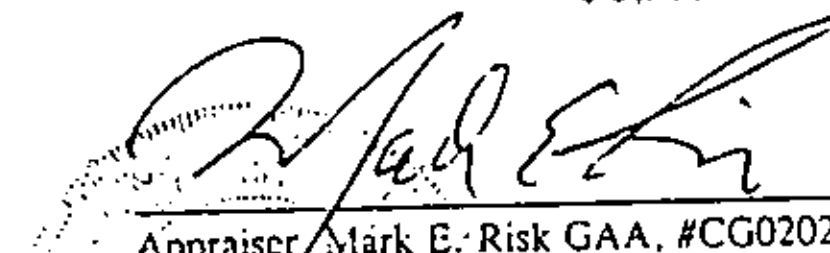
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T.C.E.**	2,252 SF @ \$1.75/SF x 0.10	= \$ 394	Say	\$ 400
Trees	None	= \$ 0		
Improvements:	None	= \$ 0		
Total R-O-W, T.C.E., Trees, & Improvements				\$ 2,700
Damages or Benefits:	200 SF Concrete @ \$2.50 = \$ 500			\$ 500
Total Compensation				\$ 3,200

ATTACHMENTS:

- ☒ Certificate of Appraiser
- ☒ Photographs
- ☒ Site, Improvement, H&B Use Narrative
- ☒ Legal Descriptions
- ☒ Market Data Approach
- ☒ Survey
- ☒ Tax Assessment Card

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- ** Drainage and General Utility Easement Value is based upon 20% of the fee simple land value per appraiser research. Temporary Construction Easement (T.C.E.) value is based upon the fee simple land value multiplied times 10% to reflect a fair return plus a premium for inconvenience.


Appraiser Mark E. Risk GAA, #CG0202

CERTIFICATE OF APPRAISER

I hereby certify:

That I have personally inspected the property herein appraised, that I have made a personal field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented by the photographs and data contained in said appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct. That the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.

That I understand that such appraisal may be used in connection with the permanent acquisition of right of way for the for roadway and drainage improvements along Poplar Street. The project is to be performed by the City of Fayetteville.

This project has been initiated by the City of Fayetteville.

That such appraisal has been made in conformity with the appropriate City laws, regulations, and policies and procedures applicable to appraisal of right of ways and easements for such purposes; that in appraising the value before acquisition, no consideration has been given to increases or decreases in Fair Market Value caused by the public improvement; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said City.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect, present or contemplated future personal interest in such property, and no personal interest or bias with respect to the parties involved, or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the City of Fayetteville, and I will not do so until so authorized by said City officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

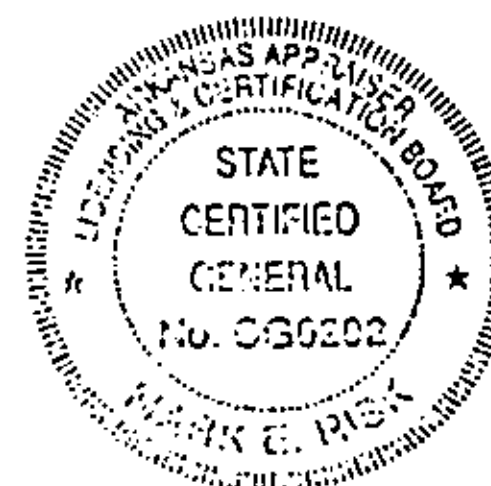
That my analyses, opinions, and conclusions were developed and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice and no one provided significant professional assistance to the persons signing this report.

That in my opinion the just compensation for the acquisition as of the 24th day of March, 1999, is \$3,200 based upon my independent appraisal and the exercise of my professional judgment.

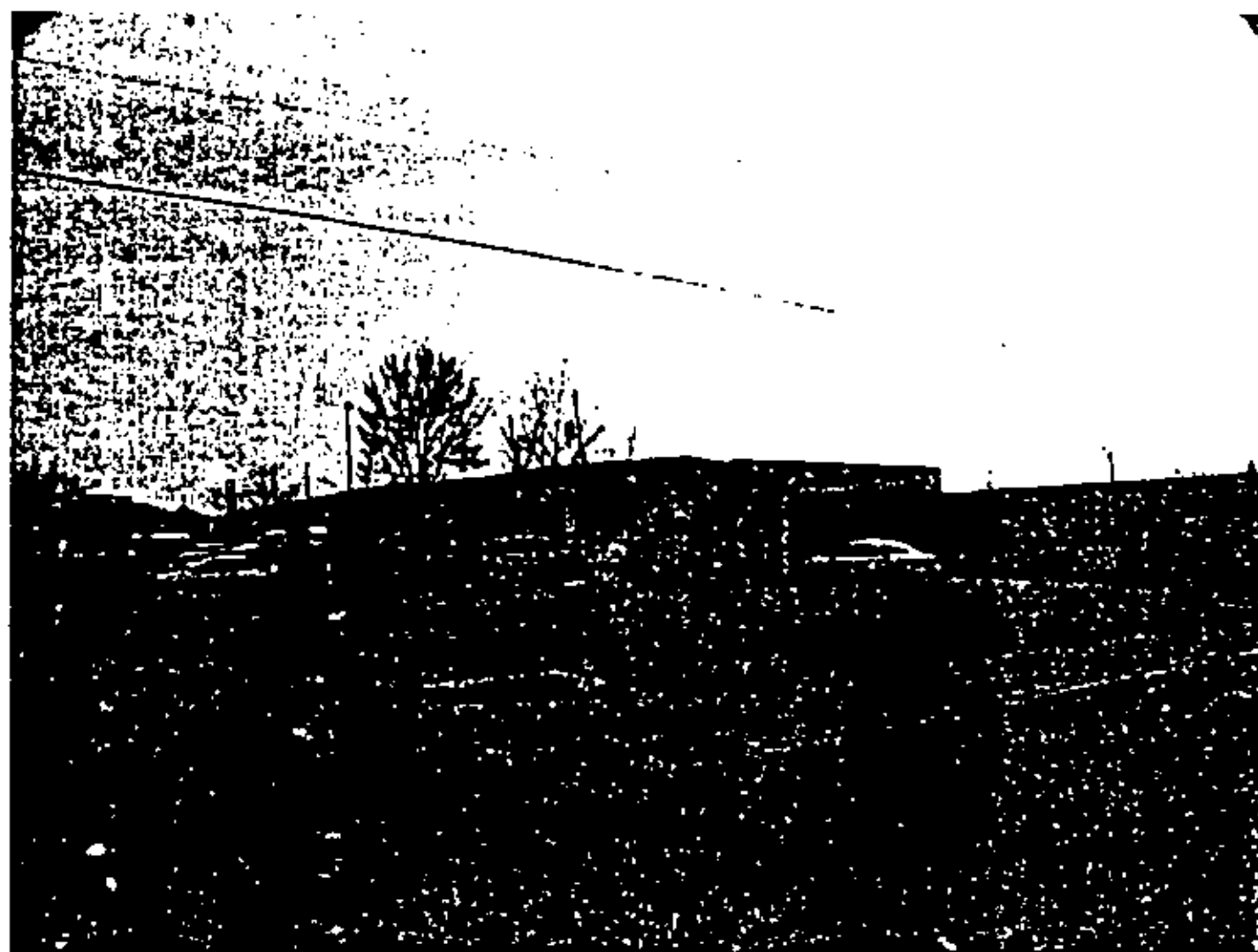
4-8-99
Date

[Signature]
Signature

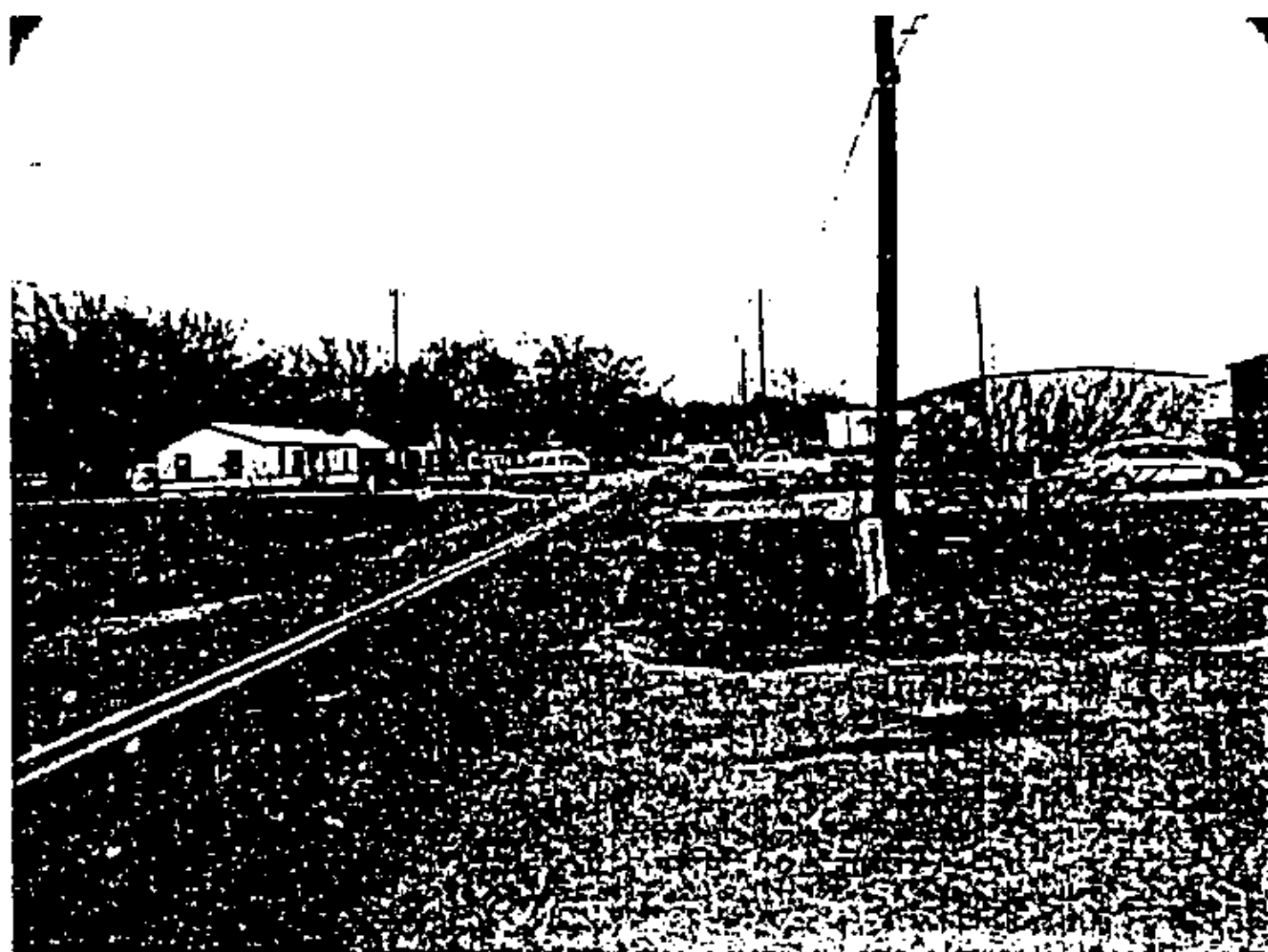
JOB Poplar Street Improvements
PARCEL 765-09495-000



PICTURES



Front View of Subject Property



Street Scene of Poplar St. Looking East

PICTURES



Street Scene of Birch Ave. Looking South

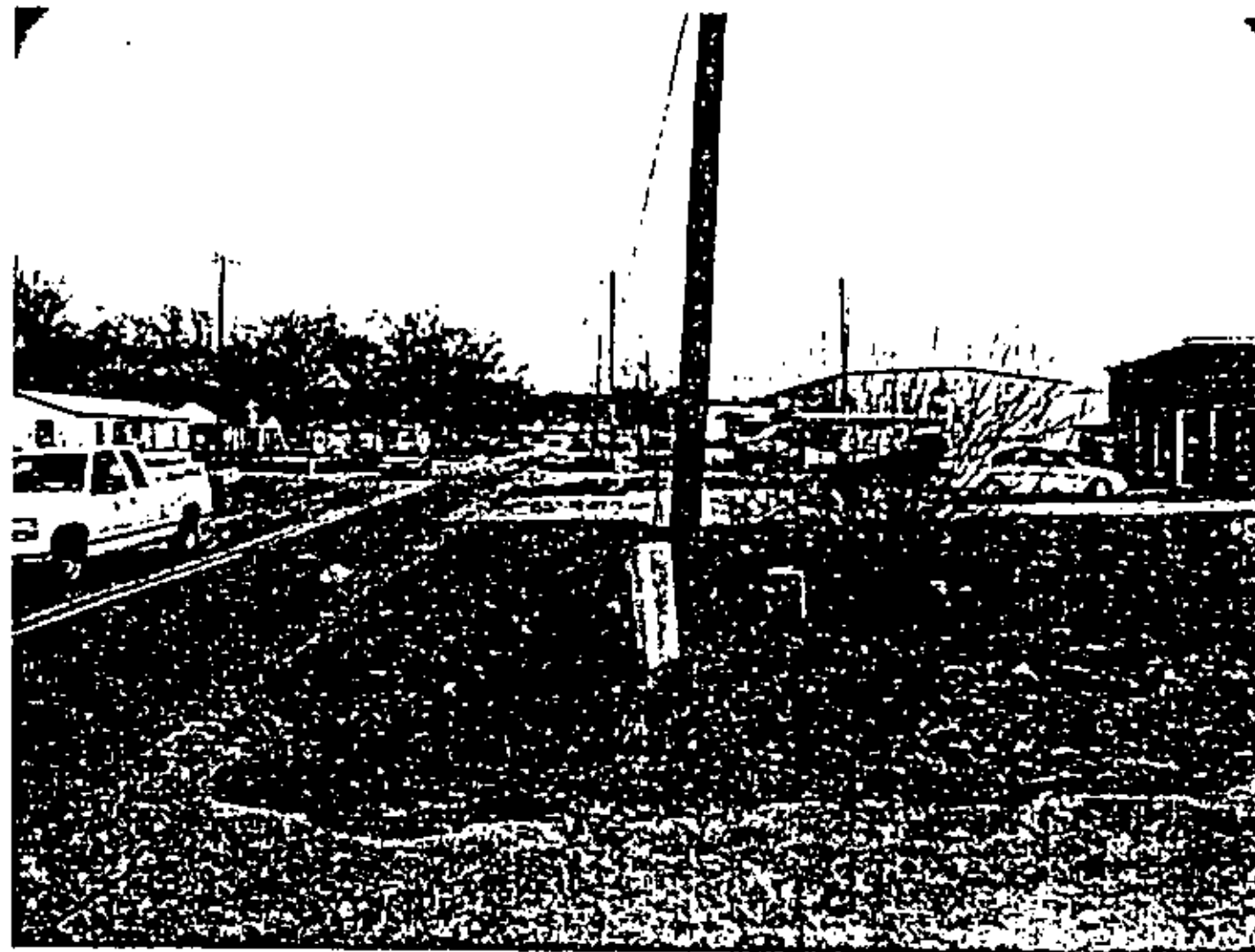


Right-of-Way and Easement Acquisition Area Looking West

PICTURES



Drainage Easement Looking South



Right-of-Way and Easement Area Looking East

CONTACTED FOR APPRAISAL INSPECTION AND COMMENTS

DATE: March 23, 1999

NAME: Pat Tobin

COMMENTS: The appraiser visually inspected the acquisition area on the above date. The appraiser attempted to reach Mr. Tobin by phone. To date the appraiser has not been able to contact Mr. Tobin.

GENERAL REMARKS: Mr. Tobin has not returned the appraiser's phone calls so there has been no input received from the property owner. The existing buildings on the site are currently rented to Gaylord's Auto Connection and Servicemaster. The amount of rent is unknown to the appraiser.

3 YR. SALE HISTORY: The subject property has been owned by Mr. Pat Tobin, or related entities, for many years. There have been no transactions to the appraiser's knowledge affecting the subject property within the past three years.

**CHANGES IN
PROPERTY SINCE
DATE OF PURCHASE:** None

**METHOD OF
APPRAISAL:** The appraiser has utilized the Market Data or Sales Comparison Approach to value the subject land before and after the taking. Due to the appraiser's opinion that the subject improvements are not negatively affected by the partial taking, the value of these improvements has not been considered.

The appraiser has not utilized the Market Data, Cost, or Income Approaches in valuing the subject improvements. This is considered a departure from the Uniform Standards of Professional Appraisal Practice as permitted under Standard I.

In addition, the appraiser has determined the subject property will not be negatively affected as a result of the taking.

GENERAL INFORMATION

MARKET VALUE DEFINED

The Appraisal Foundation defines market value as follows:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1. Buyer and seller are typically motivated.*
- 2. Both parties are well informed or well advised, and each acting in what he considers his own best interest.*
- 3. A reasonable time is allowed for exposure in the open market.*
- 4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto.*
- 5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."*

PURPOSE OF THE APPRAISAL

This appraisal is made for the purpose of estimating the Fair Market Value of the subject property acquired by the City of Fayetteville under its right of eminent domain in connection with the improvements to Poplar Street. Said acquisition is for the purpose of widening Poplar St., and to improve drainage in the subject neighborhood. The appraisal will include all damages and/or benefits, if any, to the extent that benefits are allowed under state law, to the remaining property as just compensation for the property taken.

PROPERTY RIGHTS APPRAISED

The property is appraised as though owned in fee simple and unencumbered. A fee simple title is the fullest type of private ownership possible, subject to all public limitations including zoning, taxation, and eminent domain; and also subject to private limitations which may exist, such as easements and restrictions of record.

CONTINGENT AND LIMITING CONDITIONS

This property is appraised in fee simple subject to the following limiting conditions:

1. It is assumed by the appraiser that the maps, construction plans, and/or tract descriptions furnished to him are correct.
2. It is assumed by the appraiser that the attached deed furnished to him is correct and reflects the fee owner and all holders of less than fee interests in the property.
3. It is the opinion of the appraiser that information gathered by him from various sources, including dates, estimates and opinions, which are contained in this report were obtained from sources considered reliable; however, no liability for them can be assumed or guaranteed by this appraiser.
4. No responsibility for matters legal in character is assumed by your appraiser. All existing liens and encumbrances have been disregarded, and the property is appraised as though free and clear.
5. The various sketches and exhibits included in this appraisal are placed herein to assist the reader in visualizing the property under appraisal. Your appraiser made no surveys and accepts no responsibility for them.

THE APPRAISAL PROCESS

A professional appraisal begins with a thorough inspection of the property being appraised. This includes a physical inspection of the site and all improvements which have contributory value. It also includes an inspection of the neighborhood and of site improvements which may positively or negatively affect the value of the subject property. And finally, it includes a review of the general area of the subject in order to ascertain any favorable or unfavorable environmental or economic conditions which may exist, such as proximity to markets, poultry and swine, industries, schools, etc..

After a thorough analysis of the subject property, its neighborhood, and its general area, the appraiser then attempts to ascertain a fair market value. Three time-tested appraisal approaches or techniques are utilized in the profession in order to develop a value indication. These three approaches are the Market Data Approach, the Cost Approach, and the Income Approach. Each approach is briefly described as follows:

The Market Data Approach - A comparison is made between the subject property and similar properties which have sold recently in the market place.

The Cost Approach - A replacement cost new of the improvements is determined and the applicable amount of depreciation is deducted in order to obtain a value estimate.

The Income Approach - Bases a value estimate upon the amount of net income the property can reasonably produce over its expected lifetime.

Each approach utilizes the various principles of value which exist in the marketplace. These value principles include supply and demand, balance, contribution, conformity, external items, opportunity costs, and utmost - substitution. The principal of substitution states simply that a knowledgeable, prudent purchaser has three alternatives. That is, 1) to buy a vacant site and construct a duplicate or similar property without delay (Cost Approach), 2) to purchase another existing property with equal or similar desirability and utility (Market Data Approach), or 3) to invest in or acquire a comparably yielding income stream of similar quality, quantity and longevity (Income Approach).

All three approaches may not be used in all appraisal assignments depending upon the applicability of the approach to the property being appraised and the scope of the appraisal assignment.

After the appraiser applies the applicable approaches to the subject property, he must reconcile the differences in value so indicated. Based upon the appraiser's experience and judgment, this may involve selecting one of the three approaches which is deemed more reliable or it may involve employing a weighted average of the three approaches in his final correlation or conclusion of value.

With regards to the subject appraisal, only the Market Data or Sales Comparison Approach is deemed applicable.

SCOPE OF THE APPRAISAL

The scope of the appraisal encompasses the necessary research and analysis to prepare a report in accordance with its intended use, the *Standards of Professional Practice of the Appraisal Institute*, and the *Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation*.

This appraisal is based upon the information gathered by the appraiser from the public records, other identified sources, and an inspection of the subject property and neighborhood. Data believed to be unreliable was not included in this report nor used as a basis for the value conclusion.

The subject property was physically inspected by the appraiser on March 24, 1999. The subject photographs were taken on those dates.

Area, city, and neighborhood data were based on information in the Real Estate Consultants library and files. The neighborhood section was based upon a physical inspection of the area as well as data from the City of Fayetteville.

The subject property data was based upon the physical inspection of the property and information obtained from municipal authorities.

In evaluating the highest and best use for the subject property, an analysis was made of data compiled in the steps noted above. In addition, a study of the commercial market in the subject area has been made to help determine the feasibility of future uses.

In developing the appraisal approaches to value, market data used were collected from the Real Estate Consultants' office files; other appraisers, Realtors, courthouse records, or persons knowledgeable of the subject property marketplace; and the municipal offices in the Northwest Arkansas area.

It is the appraiser's opinion that the subject improvements are not significantly affected by the partial taking consequently the appraiser has not valued the existing improvements.

After assembling and analyzing the data defined in this scope of the appraisal, a final estimate of market value was made.

NEIGHBORHOOD DATA AND ANALYSIS

For appraisal purposes, a neighborhood is considered to be a portion of a large community in which there is a homogeneous grouping of inhabitants, buildings, or business enterprises. Inhabitants of a neighborhood usually have a more casual community of interest and a similarity of economic level and cultural background. Neighborhood boundaries may consist of well-defined natural or man-made barriers or they may be more or less well-defined by a distinct change in land use or in the character of the inhabitants.

The subject property is located along Poplar Street, in the north central portion of the city of Fayetteville. Neighborhood boundaries could be the U of A Agri. Farm to the north, Gregg Ave. to the east, Sycamore St. to the south, and Garland Ave. to the west.

The neighborhood is characterized by a wide variety of land uses including industrial and heavy commercial type land uses, single-family home sites on small urban lots, and multi-family housing. The commercial uses in the neighborhood are primarily along the more frequented roadways such as Poplar St., Sycamore St., and N. Gregg Ave.. There are also some multi-family structures in the neighborhood. The single-family uses are generally of small, modest, older residences. This area of Fayetteville is an older area of town and was developed many years ago. It is in the Fayetteville School System, Leverett Elementary School.

The neighborhood is supplied police and fire protection from the City of Fayetteville. Municipal water and sewer is available to most of the neighborhood, and is supplied by the City of Fayetteville. Electrical service is available to all of the neighborhood, and is supplied by SWEPCO. Natural gas is also available to most the neighborhood, and is supplied by Arkansas Western Gas Company.

Access to and from the area is provided by Gregg Ave., Garland Ave., and Sycamore St., with numerous city improved side streets.

DESCRIPTION OF THE SUBJECT PROPERTY BEFORE THE TAKING

Site

The subject site is a rectangular shaped parcel containing approximately 0.835 acre. The site has direct access from both Poplar St. and Birch with appx. 106.72' of frontage along Poplar St. and 325.70' along Birch Avenue. These roadways are two-lane city improved routes with asphalt surface. The tract is level and cleared land. The site is level at road grade, then gradually slopes upward. Drainage appeared to be adequate upon inspection. The site is presently encumbered with regular utility easements. The subject site lies within the City Limits of Fayetteville, and is zoned Heavy Commercial and Light Industrial (I-1).

Improvements

The subject is improved with (3) older metal buildings. The building facing Poplar St. is approximately 3,000 Sq. Ft. while one of the buildings facing Birch Ave. is approximately 1,500 Sq. Ft.. The larger building is currently occupied by Gaylord's Auto Connection. The buildings are older structures with an estimated age of 25+ years. The appraiser has not performed an interior inspection of the buildings. There is also a concrete parking area in front of the buildings.

DESCRIPTION OF THE PARTIAL TAKING

The partial taking includes a 964 Sq. Ft. permanent acquisition for additional right-of-way along the entire north portion of the subject site. The area is south and will run parallel to the existing Poplar St. right-of-way. In addition, the taking will include a General Utility Easement (1,127 Sq. Ft.) just south of the proposed right-of-way acquisition. Furthermore, the partial taking includes an additional general utility and drainage easement through a portion of the remaining subject land south of Poplar St. and along the subject's northwest corner. This area contains 300 Sq. Ft.. The entire acquisition area will be used for roadway and drainage improvements along Poplar Street. It is this permanent acquisition which is considered to be a compensable acquisition by the City of Fayetteville. Furthermore, there will be a 1,125 Sq. Ft. Temporary Construction and Grading Easement. See attached survey provided by client.

LEGAL DESCRIPTIONS

See following page for property, permanent easement, drainage easement, and temporary easement descriptions provided by the client.

PROPERTY OWNERS COPY

BE IT KNOWN BY THESE PRESENTS,

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, the following described land situated in the County of Washington, State of Arkansas, to-wit:

Part of Lots One (1) and Two (2) of Block Eight (B) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5'00 feet from the Northeast corner of said planted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 03" West 42.18 feet, thence North 87° 05' 25" West 51.07 feet; thence South 02° 19' 03" West 10.0 feet, thence North 87° 05' 25" West 30.0 feet, to a point 5.00 feet West of the East boundary of said Lot 2, thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less.

It is the intention of this deed to convey both the present Poplar Street and Birch Avenue rights of way, at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

TO HAVE AND TO HOLD the said lands and appurtenances thereunto belonging unto the said Grantee and Grantee's successors and assigns, forever. And said Trustee, in behalf of the said Trust, hereby covenants with the said Grantee that said Trust is lawfully seized of said lands and premises, that the same is unencumbered, and that the said Trust will forever warrant and defend the title to the said lands against all legal claims whatsoever.

WITNESS the execution hereof on this _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY:

Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON) 59

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Trust dated March 4, 1997, and that he is duly authorized to execute the foregoing instrument for and in the name and behalf of said Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES:

Notary Public

Project No. 97023
Project, Poplar Street
Parcel No. 765-09495-000
Tract No. 4

PROPERTY OWNERS COPY

DRAINAGE EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement and a temporary construction and grading easement to excavate, construct, maintain, repair and/or replace an earthen retaining levy, drainage tile area, open ditch, concrete channel and/or concrete inlet box on, over, and through the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

Lot Numbered One (1) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas. ALSO, the East Five (5) feet of Lot Numbered Two (2) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas

LESS AND EXCEPT: Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 07° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less. The above described LESS and EXCEPT, was conveyed to the City of Fayetteville, as road right of way, under separate deed. In that deed, it was the intention to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way

PERMANENT EASEMENT DESCRIPTION:

Commencing at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2; thence South 02° 19' 03" West 35.0 feet, to the point of beginning, said point also being on the new south right of way line of Poplar Street; thence South 87° 05' 25" East 30.0 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.0 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 10.0 feet, to the Point of Beginning, containing 300 square feet, more or less.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION

Commencing at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2; thence South 02° 19' 03" West 45.0 feet; to the point of beginning; thence South 87° 05' 25" East 30.0 feet; thence South 19° 03' 54" West 52.06 feet; thence North 87° 05' 25" West 15.0 feet to a point 5.0 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 50.0 feet, to the Point of Beginning, containing 1,125 square feet, more or less.

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that this temporary construction and grading easement shall exclude any permanent structure presently located within the above described temporary construction and grading easement area.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

TOBIN TRUST
C.3.34

Project No. 97021
Project Poplar Street
Parcel No. 265-09-195-000
Tract No. 4

PROPERTY OWNERS COPY

GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL, and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement to construct, maintain, repair and/or replace, enlarge and operate a water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone and television communication line or lines, and appurtenances thereto, on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

Lot Numbered One (1) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas. ALSO, the East Five (5) feet of Lot Numbered Two (2) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT: Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less. The above described LESS and EXCEPT was conveyed to the City of Fayetteville via Warranty Deed for land to be used for street right of way. It was the intention of that deed to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

PERMANENT EASEMENT DESCRIPTION:

Commencing at a point that is North 87° 05' 25" West 5.0 feet from the Northeast corner of said platted Lot 2; thence South 02° 19' 03" West 35.0 feet, to the Point of Beginning, said point also being on the new south right of way line of Poplar Street; thence South 87° 05' 25" East 30.0 feet; thence North 02° 19' 03" East 10.0 feet; thence South 87° 05' 25" East 51.87 feet to a curve to the right, said curve having a radius of 30.0 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of South 42° 25' 33" East 42.18 feet; thence South 02° 29' 18" West 10.00 feet; thence North 87° 34' 11" West 10.0 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 20.0 feet; thence along said curve an arc distance of 31.15 feet with a chord bearing and distance of North 42° 28' 48" West 28.09 feet; thence North 87° 05' 25" West 27.09 feet; thence South 70° 06' 49" West 25.79 feet; thence North 87° 05' 25" West 30.0 feet, to a point 5.0 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 10.0 feet to the Point of Beginning, containing 1,427 square feet, more or less.

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes, lines and/or cables, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water, and to pay any damages which may arise to growing crops or fences from the said construction, maintenance and operation as determined by three disinterested persons, one thereof to be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

Project No. 97023
Project: Poplar Street Improvements
Parcel No. 765-09495-000
Tract No. 4

PROPERTY OWNERS COPY

TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust, dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a temporary construction and grading easement on, over, and through the following described land situated in the County of Washington, State of Arkansas, for the sole purposes necessary for roadway and/or drainage improvements associated with the above noted project, to-wit:

PROPERTY DESCRIPTION:

Lot Numbered One (1) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas. ALSO, the East Five (5) feet of Lot Numbered Two (2) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT: Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 07° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 07° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 07° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 07° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 07° 05' 25" West 30.0 feet to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less. The above described LESS and EXCEPT, was conveyed to the City of Fayetteville, as road right of way, under separate deed. In that deed, it was the intention to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary construction and grading easement across the above described property, being parallel with and contiguous to the South side of the above described LESS and EXCEPT and being more particularly described as follows, to-wit: Commencing at a point that is North 07° 05' 25" West 5.0 feet from the Northwest corner of said platted Lot 2; thence South 02° 19' 03" West 35.0 feet; thence South 07° 05' 25" East 30.0 feet, to the Point of Beginning; thence North 02° 19' 03" East 10.0 feet; thence South 07° 05' 25" East 51.87 feet to a curve to the right, said curve having a radius of 30.0 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of South 42° 25' 33" East 42.18 feet; thence South 02° 29' 18" West 10.0 feet; thence North 07° 34' 11" West 10.0 feet; thence North 02° 29' 18" East 10.0 feet, to a curve to the left, said curve having a radius of 20.0 feet; thence along said curve an arc distance of 31.15 feet with a chord bearing and distance of North 42° 28' 48" West 28.09 feet; thence North 07° 05' 25" West 27.89 feet; thence South 70° 06' 49" West 25.79 feet; thence North 02° 19' 03" East 10.0 feet, to the Point of Beginning, containing 1,127 square feet, more or less.

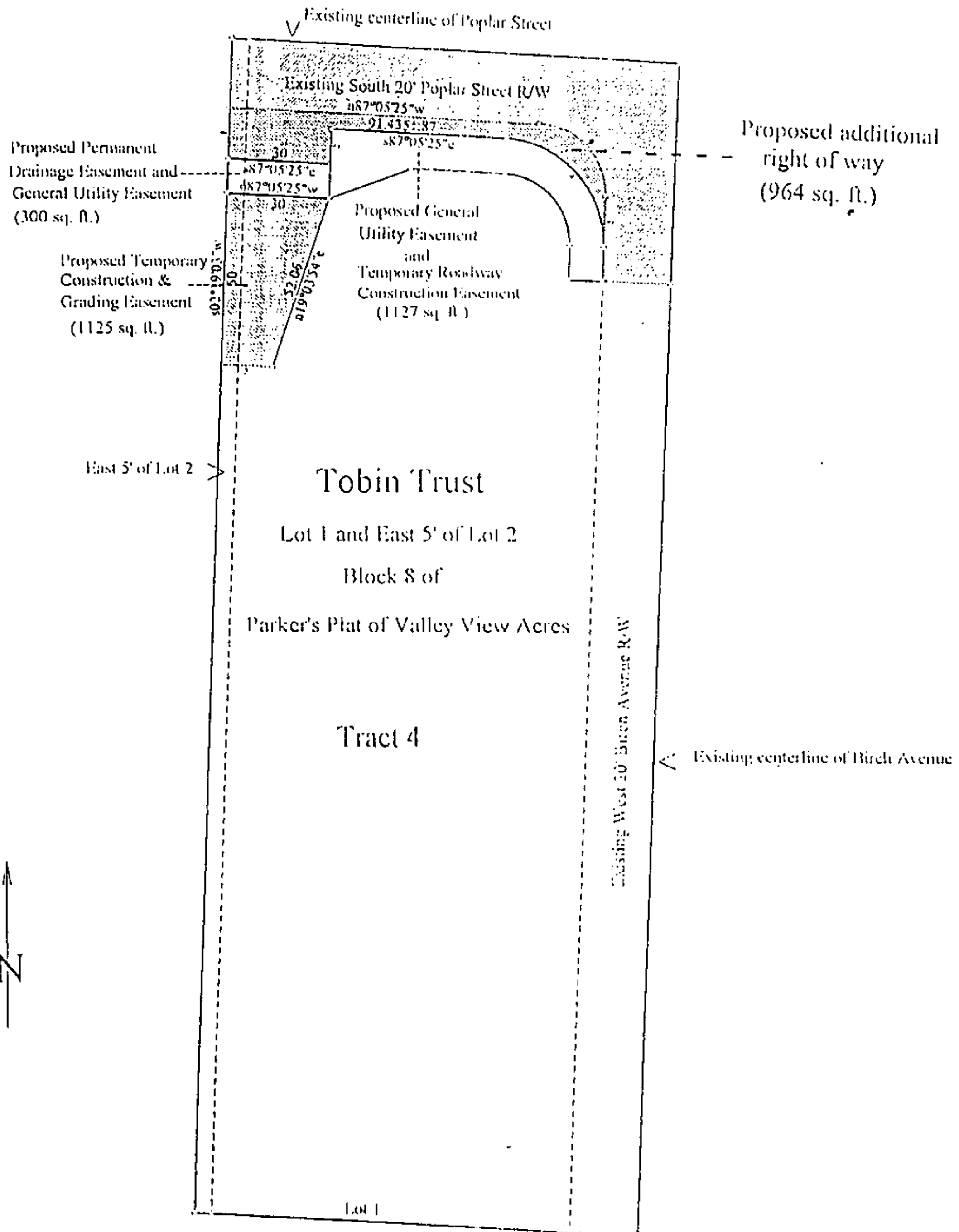
together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that the above temporary construction and grading easement shall exclude any permanent structure presently located within said temporary construction and grading easement area.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

TOBIN TRUST
C.3.36



HIGHEST AND BEST USE

By "Highest and Best Use" is meant the most likely and profitable use to which a property can be put. It is sometimes called the most profitable or optimum use. It is that use which, at the time of the appraisal, would most likely produce the greatest net return in money or amenities. The appraiser has analyzed the highest and best use of the subject property before and after the taking as follows:

Before the taking: The subject property is currently improved with metal, industrial type buildings presently utilized for auto repair type businesses. The site is located inside the Fayetteville city limits and has I-1 zoning. The immediate neighborhood of the subject consists mainly of commercial/industrial type uses with some single family homes and multi-family structures. It is the opinion of the appraiser that the subject's highest and best use "as improved" is its present use as a metal industrial type building utilized for auto repair.

After the taking: After the taking by the city, the subject will be left a slightly smaller lot. The metal buildings will not be disturbed. There may be a possibility that some of the concrete parking may be lost but not significantly enough to affect the use of the property. Therefore, the highest and best use of the subject after the taking will also be its present use as a metal building utilized for auto repair or other light commercial type use.

DISCUSSION OF SEVERANCE DAMAGE

Where there is a partial taking of property, such as the case of the subject property, any loss in value of the remaining property caused by the partial taking is known as severance damage. The Appraisal Institute defines severance damages as follows:

"It is the diminution of the market value of the remainder area, in the case of a partial taking, which arises (a) by reason of the taking (severance), and/or (b) the construction of the improvement in the manner proposed."

Severance damages are compensable to the property owner if a decline in value is attributable to the partial taking.

In the case of the said property, the partial taking is permanent, will be used for a roadway expansion, and will run parallel to the existing Poplar St.. A sidewalk is also planned in the acquisition area. The proposed drainage easement and improvements should actually improve the drainage and appearance of the subject property. On the other hand, the acquisition will likely infringe upon the parking area in front of the subject building, facing Poplar St.. It is possible that the subject may lose a small amount of parking and concrete in this area of the subject. It is the appraiser's opinion that this potential loss of parking/concrete is not significant, but a form of severance damage to the remaining property. The amount of severance damage is estimated based upon the cost to cure the problem, which is to construct additional parking area on the remaining subject land not located in the area of the partial taking. Therefore, it is the appraiser's opinion that the remaining subject property will suffer severance damages. The appraiser has not conducted an extensive market search for comparable data with similar conditions. However, the appraiser is basing his above stated opinion and the following estimate of severance damage upon his knowledge of the market and personal judgement. Severance damage is estimated to be the cost to construct 200 sq.ft. of additional concrete parking. That is, approximately 200 Sq. Ft. @ \$2.50/Sq. Ft. = \$500.

DISCUSSION OF ENHANCED VALUE OR SPECIAL BENEFIT

In some eminent domain cases which result in partial takings, the remaining property may actually increase in value as a result of some improvement made by the condemning authority. In these cases the remaining property is considered to receive an Enhanced Value or Special Benefit. Thus, if the condemning authority takes a portion of a property for an improvement and this improvement actually increases the value of the remaining land, the amount of just compensation will be reduced by the value of the special benefit.

It is the appraiser's opinion that the future value of the remaining subject property will not be enhanced by the taking.

MARKET DATA APPROACH

ANALYSIS OF THE MARKET DATA AND CONCLUSION OF VALUE

The Market Data Approach is an attempt to measure the reaction of typical buyers and sellers in the market. In this approach a direct comparison is made between the property being appraised and comparable properties which have sold recently. The value of the property being appraised is inferred from the selling prices of comparable properties. To be "comparable," a property need not be identical to the subject. The word "comparable" is used in its ordinary sense, meaning something which is capable of being compared with or worthy of comparison.

The appraiser has conducted an extensive search for recent land sales in the vicinity of the subject property which would be considered comparable to the subject land. These sales are included in this report.

After analysis of the land sales, the comparable sales reflect a value range from \$0.73 to \$3.33/Sq. Ft. for the land. The low end of this range is property with inferior location, access and appeal. The upper end of the value range is sites with Thoroughfare Commercial (C-2) zoning and superior locations. It is the appraiser's opinion that the subject's land value would fall within the low to mid-section of this value spectrum due to its size, land characteristics, location, zoning classification and other characteristics.

Based upon the above sales and analysis thereof, and after adjustments are made for differences in size, location, terrain, availability of utilities, access, zoning and other economic factors, it is the opinion of this appraiser that the Fair Market Value of the subject property as of the date of this appraisal is as follows:

Fee Simple Land Value	0.835 Acre or 36,373 Sq. Ft. @ \$1.75/Sq. Ft. = \$ 63,653 Say \$ 64,000
Fee Simple Structure Value	Not Determined
Fee Simple Parking Lot Value	\$ 2.50/Sq. Ft.

Value Before the Taking:	Land:	\$ 64,000	
	Imps:	\$ 0*	
	Total:		\$ 64,000

Value After the Taking:	Land:	\$ 61,700	
	Imps:	\$ 0	
	Total:		\$ 61,700

Value of the Partial Taking: (Permanent Easement & R-O-W)	\$ 2,300
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* Improvement value was not determined due to appraiser's opinion that the subject improvements are not significantly affected by the partial taking.

[illegible]

FARMINGTON
ROAD AREA (3)

SUBJECT

Land Sale 5

Land Sale 6

Land Sale

Land Sale 3

Land Sale 2

Land Sale 1

Land Sale

Land Sale 7

COMPARABLE LAND SALES

LAND SALE #1

Grantor: Rastall Enterprises, Inc.
Grantee: Tim Owen Development, Inc.
Date: 07/11/94
Legal Description: Lot 12 & E 116.72' of Lot 11, Block 9 of Parker's Plat of Valley View Acres
Location: Ash Street
Sales Price: \$53,000
Size: Appx. 72,339 SF or 1.66 Acres
Indicated Price: \$0.73/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Located southwest of subject site, but has no major road frontage or access. Much inferior visibility and access.

LAND SALE #2

Grantor: Liner-Wimberly Properties
Grantee: Alano Foundation, Inc.
Date: 11/91
Legal Description: Lot 11, Block 11, Parker's Plat of Valley View Acres
Location: Sycamore Street
Sales Price: \$60,000
Size: Appx. 41,026 SF or 0.94 Acres
Indicated Price: \$1.46/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: An older sale of similar lot with frontage and access via Sycamore.

LAND SALE #3

Grantor: Max A. & Cynthia Parker
Grantee: Wayne & Robbye Ridout
Date: 10/28/94
Legal Description: Pt. NW/4 of SE/4 Sec. 4-16-30
Location: Gregg Street, just West of RR R.O.W.
Sales Price: \$225,000
Size: Appx. 204,296 SF or 4.69 Acres
Indicated Price: \$1.10/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Current site of Ridout Contractor Outlet. Site is located off of Gregg on the W side of RR tracks.

LAND SALE #4

Grantor: Freeland Romans
Grantee: Tom January
Date: 5/15/97
Legal Description: Pt. of the S/2, SW/4 of Section 35, T17N, R30W
Location: Township Rd.
Sales Price: \$350,000
Size: 3.07 Acres
Indicated Price: \$114,007/Acre or \$2.62/SF
Zoning: Thoroughfare Commercial (C-2)
Remarks: Commercially zoned land on Township Road just W of Nelms Chevrolet and the North College Avenue intersection. Old stone house with no contributory value has been removed and property has been commercially developed. Recorded Deed Book 97-033164. Verified by agent.

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C.3.42

LAND SALE #5

Grantor: Marjorie Niblock, et.al.
Grantee: Randy & Gerri Shankle
Date: 2/26/98
Legal Description: Lot 6 Hammond Plaza
Location: Corner of Appleby & McKee Street
Sales Price: \$45,000
Size: 13,520 SF or 0.31 Acre
Indicated Price: \$3.33/SF
Zoning: Commercial Thoroughfare (C-2)
Remarks: Located near Fiesta Square shopping center. Corner type location off of College Avenue (Hwy. 71B).

LAND SALE #6

Grantor: Mae B. Nettleship
Grantee: Virginia R. Krauft & Sally H. Wimberly
Date: 8/17/98
Legal Description: Sunbridge Center
Location: Sunbridge Drive
Sales Price: \$83,000
Size: Appx. 53,993 SF or 1.24 Acres
Indicated Price: \$1.54/SF
Zoning: Residential Office (R-O)
Remarks: Cleared, level land on Sunbridge Drive off of N. Gregg Avenue.

LAND SALE #7

Grantor: James E. & Elizabeth Potts
Grantee: Dennis Prater
Date: 8/1/97
Legal Description: Lot 2, Block C, Point West S/D Phase II
Location: Shiloh Drive
Sales Price: \$60,000
Size: Appx. 34,486 Sq. Ft. or 0.79 acres
Indicated Price: \$1.74/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Located on Shiloh Dr. just off the Hwy. 71 Bypass. Purchased for site of retail automotive center with parts machine shop area. Recorded Book 97, Page 53250.

LAND SALE #8

Grantor: Sterling P. & Kay Z. Anders and Arkansas Book Store, Inc.
Grantee: William J. & Katherine M. Eddy
Date: 4/30/96
Legal Description: Lot 2, Block B, Point West S/D Phase I
Location: Shiloh Drive
Sales Price: \$60,000
Size: Appx. 28,500 Sq. Ft. or 0.65 acre
Indicated Price: \$2.10/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Located on Shiloh Dr. just off the Hwy. 71 Bypass. Good visibility from the bypass. Recorded Book 96, Page 27579.

Project No. 97023
Project: Poplar Street Right of Way
Parcel No. 765-09495-000
Tract No. 4

TR#4

TRUSTEE'S
WARRANTY DEED

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, the following described land situated in the County of Washington, State of Arkansas, to-wit:

Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet, to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less.

It is the intention of this deed to convey both the present Poplar Street and Birch Avenue rights of way, at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

TO HAVE AND TO HOLD the said lands and appurtenances thereunto belonging unto the said Grantee and Grantee's successors and assigns, forever. And said Trustee, in behalf of the said Trust, hereby covenants with the said Grantee that said Trust is lawfully seized of said lands and premises; that the same is unencumbered, and that the said Trust will forever warrant and defend the title to the said lands against all legal claims whatsoever.

WITNESS the execution hereof on this _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY: _____
Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Trust dated March 4, 1997, and that he is duly authorized to execute the foregoing instrument for and in the name and behalf of said Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES: _____

Notary Public

Project No. 97023
Project: Poplar Street
Parcel No. 765-09495-000
Tract No. 4

TR #4

GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement to construct, maintain, repair and/or replace, enlarge and operate a water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone and television communication line or lines, and appurtenances thereto, on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

Lot Numbered One (1) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas. ALSO, the East Five (5) feet of Lot Numbered Two (2) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT: Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less. The above described LESS and EXCEPT was conveyed to the City of Fayetteville via Warranty Deed for land to be used for street right of way. It was the intention of that deed to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

PERMANENT EASEMENT DESCRIPTION:

Commencing at a point that is North 87° 05' 25" West 5.0 feet from the Northeast corner of said platted Lot 2; thence South 02° 19' 03" West 35.0 feet, to the Point of Beginning, said point also being on the new south right of way line of Poplar Street; thence South 87° 05' 25" East 30.0 feet; thence North 02° 19' 03" East 10.0 feet; thence South 87° 05' 25" East 51.87 feet to a curve to the right, said curve having a radius of 30.0 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of South 42° 25' 33" East 42.18 feet; thence South 02° 29' 18" West 10.00 feet; thence North 87° 34' 11" West 10.0 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 20.0 feet; thence along said curve an arc distance of 31.15 feet with a chord bearing and distance of North 42° 28' 48" West 28.09 feet; thence North 87° 05' 25" West 27.89 feet; thence South 70° 06' 49" West 25.79 feet; thence North 87° 05' 25" West 30.0 feet, to a point 5.0 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 10.0 feet to the Point of Beginning, containing 1,427 square feet, more or less.

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes, lines and/or cables, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water, and to pay any damages which may arise to growing crops or fences from the said construction, maintenance and operation as determined by three disinterested persons, one thereof to be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

GENERAL UTILITY EASEMENT
Tobin Trust
Page 2 of 2

The Grantor agrees not to erect any buildings or structures in said permanent easement other than fences and said fences shall not exceed six (6) feet in height.

The Grantee shall have the right to construct additional pipe lines, electrical power lines, telephone and/or television lines or cables upon the above described permanent easement at any time in the future and agrees to pay any damages as a result of such future construction as set out in this document.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY: _____

Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, and the he is duly authorized to execute the foregoing instrument for and in the name and behalf of said Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

Notary Public

MY COMMISSION EXPIRES:

No. 97023
Project: Poplar Street
Parcel No. 765-09495-000
Tract No. 4

TR #4

DRAINAGE EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement and a temporary construction and grading easement to excavate, construct, maintain, repair and/or replace an earthen retaining levy, drainage tile area, open ditch, concrete channel and/or concrete inlet box on, over, and through the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

Lot Numbered One (1) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas. ALSO, the East Five (5) feet of Lot Numbered Two (2) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT: Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less. The above described LESS and EXCEPT, was conveyed to the City of Fayetteville, as road right of way, under separate deed. In that deed, it was the intention to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

PERMANENT EASEMENT DESCRIPTION:

Commencing at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2; thence South 02° 19' 03" West 35.0 feet, to the point of beginning, said point also being on the new south right of way line of Poplar Street; thence South 87° 05' 25" East 30.0 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.0 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 10.0 feet, to the Point of Beginning, containing 300 square feet, more or less.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

Commencing at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2; thence South 02° 19' 03" West 45.0 feet; to the point of beginning; thence South 87° 05' 25" East 30.0 feet; thence South 19° 03' 54" West 52.06 feet; thence North 87° 05' 25" West 15.0 feet to a point 5.0 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 50.0 feet, to the Point of Beginning, containing 1,125 square feet, more or less.

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that this temporary construction and grading easement shall exclude any permanent structure presently located within the above described temporary construction and grading easement area.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

DRAINAGE EASEMENT
Tobin
Page 2 of 2

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to pay any damages which may arise to growing crops or fences from the above described construction, maintenance and operation as determined by three disinterested persons. One of whom shall be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

The Grantor agrees not to erect any buildings or structures in said permanent easement.

The Grantee shall have the right to construct additional drainage structures within the above described permanent easement at any time in the future and agrees to pay any damages as a result of such future construction as set out in this easement.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY: _____
Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, and that he is duly authorized to execute the foregoing instrument for and in the name and behalf of said Trust, and further stated and acknowledged that he had so signed, executed and delivered said Instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

Notary Public

MY COMMISSION EXPIRES:

TR #4

TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust, dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a temporary construction and grading easement on, over, and through the following described land situated in the County of Washington, State of Arkansas, for the sole purposes necessary for roadway and/or drainage improvements associated with the above noted project, to-wit:

PROPERTY DESCRIPTION:

Lot Numbered One (1) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas. ALSO, the East Five (5) feet of Lot Numbered Two (2) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT: Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less. The above described LESS and EXCEPT, was conveyed to the City of Fayetteville, as road right of way, under separate deed. In that deed, it was the intention to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary construction and grading easement across the above described property, being parallel with and contiguous to the South side of the above described LESS and EXCEPT and being more particularly described as follows, to-wit: Commencing at a point that is North 87° 05' 25" West 5.0 feet from the Northwest corner of said platted Lot 2; thence South 02° 19' 03" West 35.0 feet; thence South 87° 05' 25" East 30.0 feet, to the Point of Beginning; thence North 02° 19' 03" East 10.0 feet; thence South 87° 05' 25" East 51.87 feet to a curve to the right, said curve having a radius of 30.0 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of South 42° 25' 33" East 42.18 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 34' 11" West 10.0 feet; thence North 02° 29' 18" East 10.0 feet, to a curve to the left, said curve having a radius of 20.0 feet; thence along said curve an arc distance of 31.15 feet with a chord bearing and distance of North 42° 28' 48" West 28.09 feet; thence North 87° 05' 25" West 27.89 feet; thence South 70° 06' 49" West 25.79 feet; thence North 02° 19' 03" East 10.0 feet, to the Point of Beginning, containing 1,127 square feet, more or less,

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that the above temporary construction and grading easement shall exclude any permanent structure presently located within said temporary construction and grading easement area.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The consideration first above recited as being paid to the Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this easement on behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY: _____
Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON) ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, a/k/a P. J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, and that he is authorized to execute the foregoing instrument for and in the name and behalf of the Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES: _____

Notary Public

**APPRAISAL REPORT
FOR
CITY OF FAYETTEVILLE**

Limited Summary Appraisal Report

PROJECT Poplar Street Improvement (Project No. 97023)
COUNTY Washington
PARCEL # 765-09489-000 & 765-09490-000
LOCATION 405 W. Poplar, Fayetteville, AR (Lots 4 & 5, Block 7 of Parker's Valley View Acres)
FEE OWNER Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997
ADDRESS 2901 N. Tobin Lane, Fayetteville, AR 72703
ESTATE APPRAISED Fee Simple
AREA OF WHOLE 1.75 acres **AREA OF RESIDUAL** 1.72 acres
AREA OF PERMANENT ACQUISITION 1,276 Sq. Ft.
(Descriptions attached)
Temporary Construction and Grading Easement 2,528 Sq. Ft.

ESTIMATED FAIR MARKET VALUE OF THE PROPERTY:

	Before	
Land	\$ 133,400	
Improvements	\$ 0*	
Total		\$ 133,400
	After	
Land	\$ 131,150	
Improvements	\$ 0*	
Total		\$ 131,150

FAIR MARKET VALUE OF PERMANENT R-O-W ACQUISITION \$ 2,250

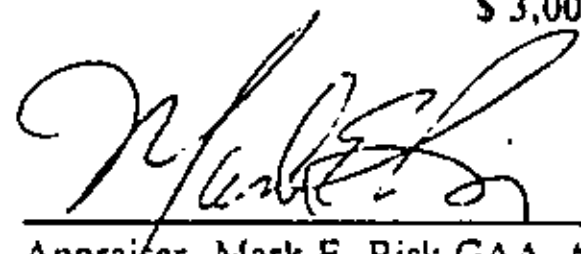
As of 24th day of March, 1999

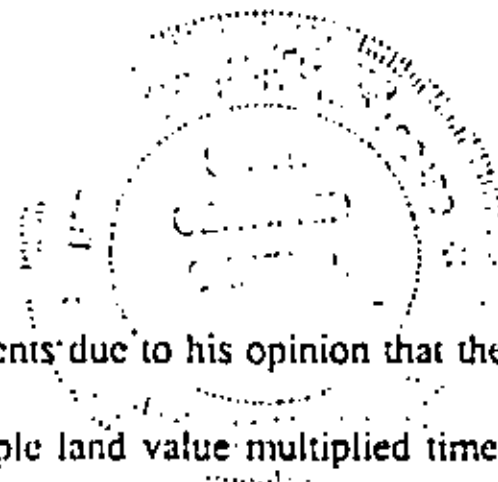
ALLOCATION OF F.M.V. OF TOTAL ACQUISITION

R-O-W	1,276 SF @ \$1.75/SF	= \$ 2,233	Say	\$ 2,250
T.C.E.**	2,528 SF @ \$1.75/SF x 0.10	= \$ 442	Say	\$ 450
Trees	(4) Small Tress		=	\$ 300
Improvements:	None		=	\$ 0
Total R-O-W, T.C.E., Trees, & Improvements				\$ 3,000
Damages or Benefits:				\$ 0
Total Compensation				\$ 3,000

ATTACHMENTS:

- ☒ Certificate of Appraiser
- ☒ Photographs
- ☒ Site, Improvement, H&B Use Narrative
- ☒ Legal Descriptions
- ☒ Market Data Approach
- ☒ Survey
- ☒ Tax Assessment Card


Appraiser, Mark E. Risk GAA, #CG0202



- * The appraiser has not determined the value of the existing subject improvements due to his opinion that they are not significantly affected by the partial taking.
- ** Temporary Construction Easement (T.C.E.) value is based upon the fee simple land value multiplied times 10% to reflect a fair return, plus a premium for inconvenience.

CERTIFICATE OF APPRAISER

I hereby certify:

That I have personally inspected the property herein appraised, that I have made a personal field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented by the photographs and data contained in said appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct. That the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.

That I understand that such appraisal may be used in connection with the permanent acquisition of right of way for roadway improvements along Poplar St.. The project is to be performed by the City of Fayetteville.

This project has been initiated by the City of Fayetteville.

That such appraisal has been made in conformity with the appropriate City laws, regulations, and policies and procedures applicable to appraisal of right of ways and easements for such purposes; that in appraising the value before acquisition, no consideration has been given to increases or decreases in Fair Market Value caused by the public improvement; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said City.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect, present or contemplated future personal interest in such property, and no personal interest or bias with respect to the parties involved, or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the City of Fayetteville, and I will not do so until so authorized by said City officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That my analyses, opinions, and conclusions were developed and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice and no one provided significant professional assistance to the persons signing this report.

That in my opinion the just compensation for the acquisition as of the 24th day of March, 1999, is \$ 3,000 based upon my independent appraisal and the exercise of my professional judgment.

4.8.99

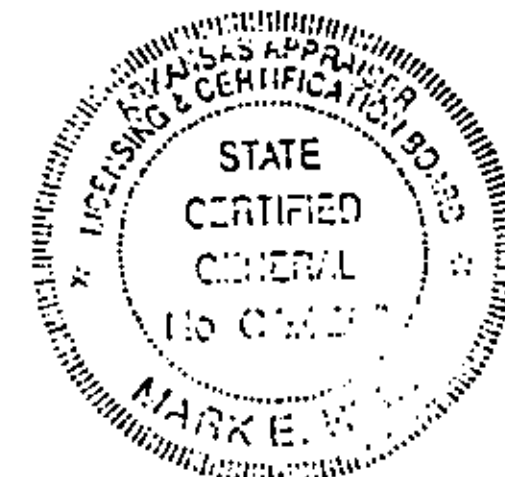
Date

[Signature]

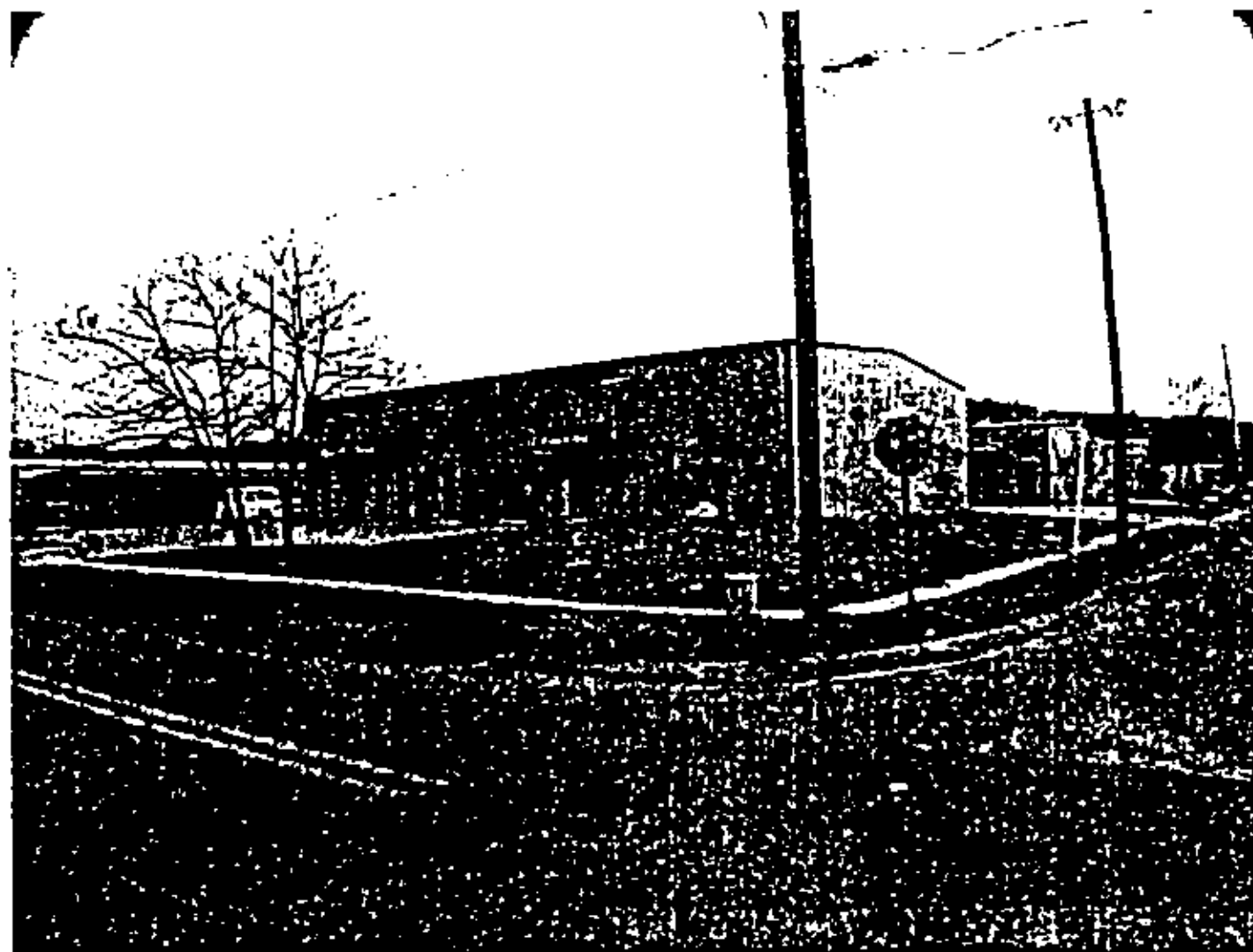
Signature

JOB Poplar Street Improvements

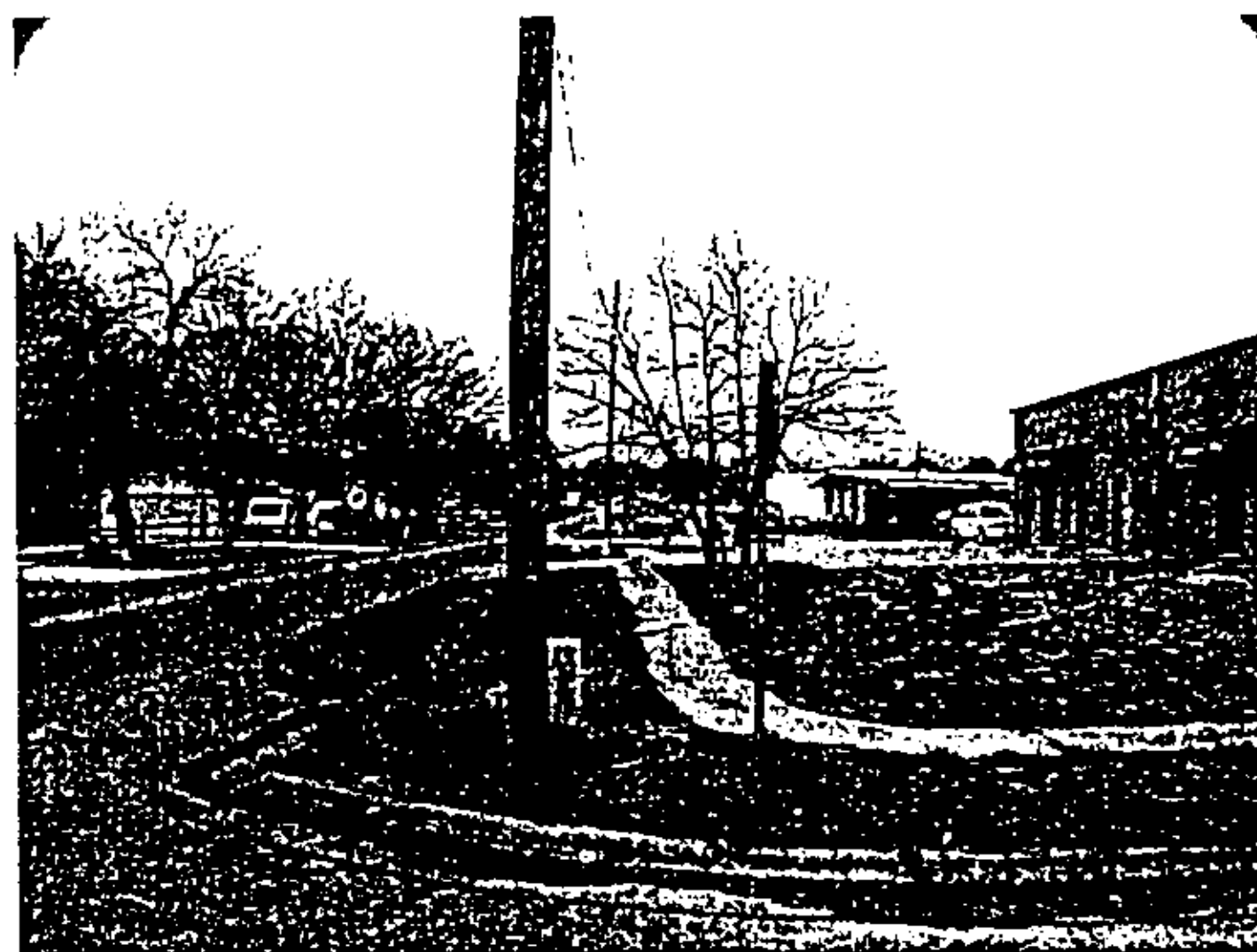
PARCEL 765-09489-000 & 765-09490-000



PICTURES

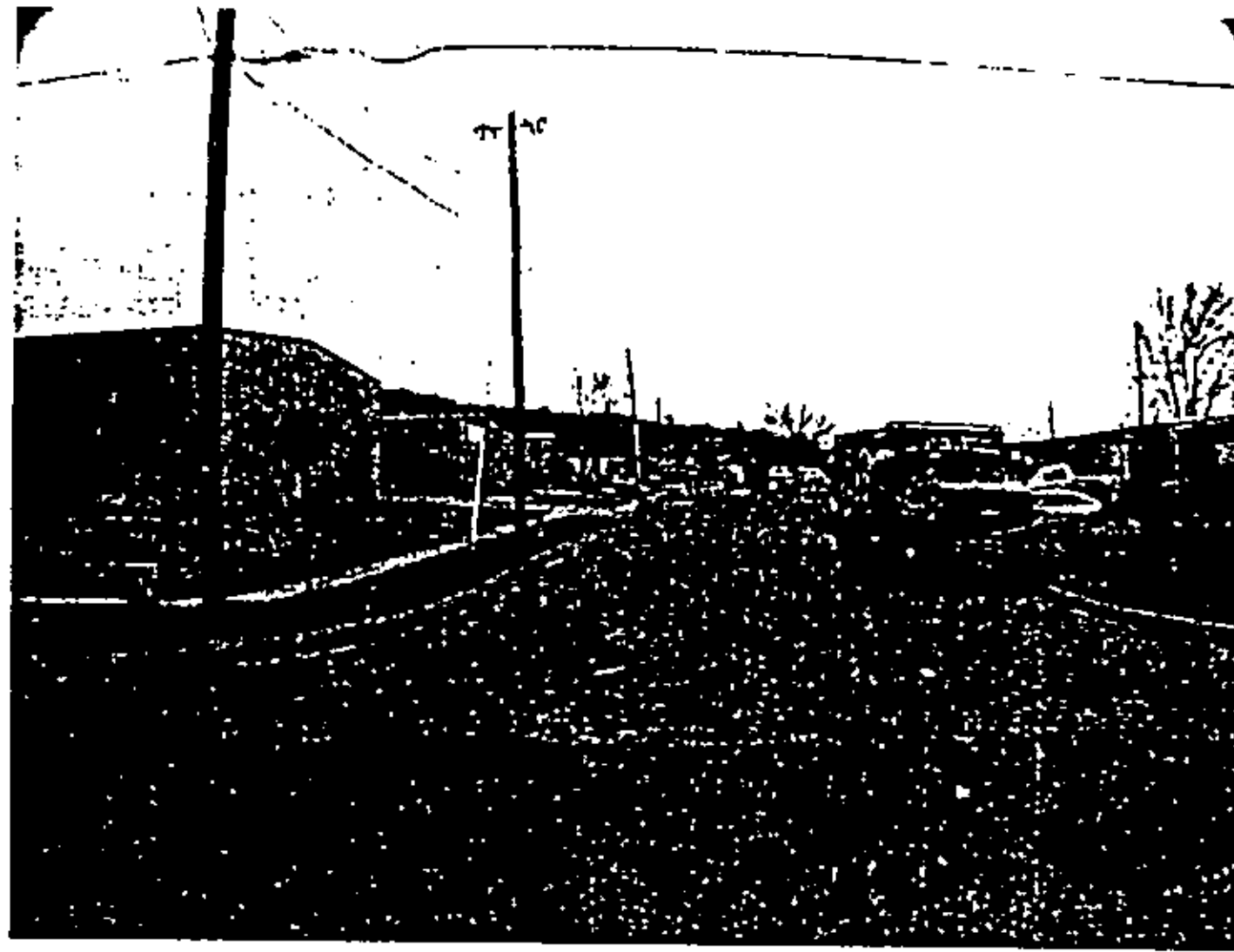


Front View of Subject Property



Street Scene of Poplar St. and Right-of-Way Acquisition Area Looking East

PICTURES



Street Scene of Birch Ave. Looking South



Right-of-Way and Easement Acquisition Area Looking West

CONTACTED FOR APPRAISAL INSPECTION AND COMMENTS

DATE: March 24, 1999

NAME: Pat Tobin

COMMENTS: The appraiser visually inspected the acquisition area on the above date. The appraiser attempted to reach Mr. Tobin by phone. To date Mr. Tobin has not responded.

GENERAL REMARKS: The appraiser has not had the opportunity to discuss with Mr. Tobin the subject appraisal so there has been no input received from the property owner. The existing buildings on the site are currently rented to King's Floor Company and other unidentified tenants. The amount of rent is unknown to the appraiser. There appears to be four small trees in the area of the taking.

3 YR. SALE HISTORY: The subject property has been owned by Mr. Pat Tobin or related entities since 1993. On January 16, 1998 Patrick J. Tobin deeded the property to the Patrick J. Tobin Revocable Trust. There have been no arm's length transactions to the appraiser's knowledge affecting the subject property within the past three years.

CHANGES IN
PROPERTY SINCE
DATE OF PURCHASE: Constructed new buildings.

METHOD OF
APPRAISAL: The appraiser has utilized the Market Data or Sales Comparison Approach to value the subject land before and after the taking. Due to the appraiser's opinion that the subject improvements are not negatively affected by the partial taking, the value of these improvements has not been considered.

The appraiser has not utilized the Market Data, Cost, or Income Approaches in valuing the subject improvements. This is considered a departure from the Uniform Standards of Professional Appraisal Practice as permitted under Standard I.

In addition, the appraiser has determined the subject property will not be negatively affected as a result of the taking.

GENERAL INFORMATION

MARKET VALUE DEFINED

The Appraisal Foundation defines market value as follows:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1. Buyer and seller are typically motivated.*
- 2. Both parties are well informed or well advised, and each acting in what he considers his own best interest.*
- 3. A reasonable time is allowed for exposure in the open market.*
- 4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto.*
- 5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."*

PURPOSE OF THE APPRAISAL

This appraisal is made for the purpose of estimating the Fair Market Value of the subject property acquired by the City of Fayetteville under its right of eminent domain in connection with the improvements to Poplar St.. Said acquisition is for the purpose of widening Poplar St. and to improve drainage in the subject neighborhood. The appraisal will include all damages and/or benefits, if any, to the extent that benefits are allowed under state law, to the remaining property as just compensation for the property taken.

PROPERTY RIGHTS APPRAISED

The property is appraised as though owned in fee simple and unencumbered. A fee simple title is the fullest type of private ownership possible, subject to all public limitations including zoning, taxation, and eminent domain; and also subject to private limitations which may exist, such as easements and restrictions of record.

CONTINGENT AND LIMITING CONDITIONS

This property is appraised in fee simple subject to the following limiting conditions:

1. It is assumed by the appraiser that the maps, construction plans, and/or tract descriptions furnished to him are correct.
2. It is assumed by the appraiser that the attached deed furnished to him is correct and reflects the fee owner and all holders of less than fee interests in the property.
3. It is the opinion of the appraiser that information gathered by him from various sources, including dates, estimates and opinions, which are contained in this report were obtained from sources considered reliable; however, no liability for them can be assumed or guaranteed by this appraiser.
4. No responsibility for matters legal in character is assumed by your appraiser. All existing liens and encumbrances have been disregarded, and the property is appraised as though free and clear.
5. The various sketches and exhibits included in this appraisal are placed herein to assist the reader in visualizing the property under appraisal. Your appraiser made no surveys and accepts no responsibility for them.

THE APPRAISAL PROCESS

A professional appraisal begins with a thorough inspection of the property being appraised. This includes a physical inspection of the site and all improvements which have contributory value. It also includes an inspection of the neighborhood and of site improvements which may positively or negatively affect the value of the subject property. And finally, it includes a review of the general area of the subject in order to ascertain any favorable or unfavorable environmental or economic conditions which may exist, such as proximity to markets, poultry and swine, industries, schools, etc..

After a thorough analysis of the subject property, its neighborhood, and its general area, the appraiser then attempts to ascertain a fair market value. Three time-tested appraisal approaches or techniques are utilized in the profession in order to develop a value indication. These three approaches are the Market Data Approach, the Cost Approach, and the Income Approach. Each approach is briefly described as follows:

The Market Data Approach - A comparison is made between the subject property and similar properties which have sold recently in the market place.

The Cost Approach - A replacement cost new of the improvements is determined and the applicable amount of depreciation is deducted in order to obtain a value estimate.

The Income Approach - Bases a value estimate upon the amount of net income the property can reasonably produce over its expected lifetime.

Each approach utilizes the various principles of value which exist in the marketplace. These value principles include supply and demand, balance, contribution, conformity, external items, opportunity costs, and utmost - substitution. The principal of substitution states simply that a knowledgeable, prudent purchaser has three alternatives. That is, 1) to buy a vacant site and construct a duplicate or similar property without delay (Cost Approach), 2) to purchase another existing property with equal or similar desirability and utility (Market Data Approach), or 3) to invest in or acquire a comparably yielding income stream of similar quality, quantity and longevity (Income Approach).

All three approaches may not be used in all appraisal assignments depending upon the applicability of the approach to the property being appraised and the scope of the appraisal assignment.

After the appraiser applies the applicable approaches to the subject property, he must reconcile the differences in value so indicated. Based upon the appraiser's experience and judgment, this may involve selecting one of the three approaches which is deemed more reliable or it may involve employing a weighted average of the three approaches in his final correlation or conclusion of value.

With regards to the subject appraisal, only the Market Data or Sales Comparison Approach is deemed applicable.

SCOPE OF THE APPRAISAL

The scope of the appraisal encompasses the necessary research and analysis to prepare a report in accordance with its intended use, the *Standards of Professional Practice of the Appraisal Institute*, and the *Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation*.

This appraisal is based upon the information gathered by the appraiser from the public records, other identified sources, and an inspection of the subject property and neighborhood. Data believed to be unreliable was not included in this report nor used as a basis for the value conclusion.

The subject property was physically inspected by the appraiser on March 24, 1999. The subject photographs were taken on those dates.

Area, city, and neighborhood data were based on information in the Real Estate Consultants library and files. The neighborhood section was based upon a physical inspection of the area as well as data from the City of Fayetteville.

The subject property data was based upon the physical inspection of the property and information obtained from municipal authorities.

In evaluating the highest and best use for the subject property, an analysis was made of data compiled in the steps noted above. In addition, a study of the commercial market in the subject area has been made to help determine the feasibility of future uses.

In developing the appraisal approaches to value, market data used were collected from the Real Estate Consultants' office files; other appraisers, Realtors, courthouse records, or persons knowledgeable of the subject property marketplace; and the municipal offices in the Northwest Arkansas area.

It is the appraiser's opinion that the subject improvements are not significantly affected by the partial taking consequently the appraiser has not valued the existing improvements.

After assembling and analyzing the data defined in this scope of the appraisal, a final estimate of market value was made.

NEIGHBORHOOD DATA AND ANALYSIS

For appraisal purposes, a neighborhood is considered to be a portion of a large community in which there is a homogeneous grouping of inhabitants, buildings, or business enterprises. Inhabitants of a neighborhood usually have a more casual community of interest and a similarity of economic level and cultural background. Neighborhood boundaries may consist of well-defined natural or man-made barriers or they may be more or less well-defined by a distinct change in land use or in the character of the inhabitants.

The subject property is located along Poplar St. in the north central portion of the city of Fayetteville. Neighborhood boundaries could be the U of A Agri. Farm to the north, Gregg Ave. to the east, Sycamore St. to the south, and Garland Ave. to the west.

The neighborhood is characterized by a wide variety of land uses including industrial and heavy commercial type land uses, single-family home sites on small urban lots, and multi-family housing. The commercial uses in the neighborhood are primarily along the more frequented roadways such as Poplar St., Sycamore St., and N. Gregg Ave.. There are also some multi-family structures in the neighborhood. The single-family uses are generally of small, modest, older residences. This area of Fayetteville is an older area of town and was developed many years ago. It is in the Fayetteville School System, Leverett Elementary School.

The neighborhood is supplied police and fire protection from the City of Fayetteville. Municipal water and sewer is available to most of the neighborhood, and is supplied by the City of Fayetteville. Electrical service is available to all of the neighborhood, and is supplied by SWEPCO. Natural gas is also available to most the neighborhood, and is supplied by Arkansas Western Gas Company.

Access to and from the area is provided by Gregg Ave., Garland Ave., and Sycamore St., with numerous city improved side streets.

DESCRIPTION OF THE SUBJECT PROPERTY BEFORE THE TAKING

Site

The subject site is a rectangular shaped parcel containing two lots and approximately 1.75 acres. The site has direct access from both Poplar St. and Birch with appx. 233.4' of frontage along Poplar St. and 325.70' along Birch Ave... These roadways are two-lane city improved routes with asphalt surface. The tract is level and cleared land. The site is level at road grade then gradually slopes upward. Drainage appeared adequate upon inspection. The site is presently encumbered with regular utility easements. The subject site lies within the City Limits of Fayetteville and is zoned Heavy Commercial and Light Industrial (I-1).

Improvements

The subject is improved with several commercial/industrial type buildings. There is a large newer metal building facing Poplar St., as well as an older masonry type building. There are also several newer warehouse type metal buildings accessed off of Birch Avenue. The larger building is currently occupied by King's Floor Co., while the smaller masonry building is occupied by the Bottoms Up Club. The appraiser did not identify who was occupying the additional metal buildings. The appraiser has not performed an interior inspection of the buildings. There is also a concrete parking area in front of the buildings.

DESCRIPTION OF THE PARTIAL TAKING

The partial taking includes a 1,276 Sq. Ft. permanent acquisition for additional right-of-way along the entire north portion of the subject site. The area is south and will run parallel to the existing Poplar St. right-of-way. In addition, the taking will include a Temporary Construction and Grading Easement (2,528 Sq. Ft.) just south of the proposed right-of-way acquisition. The entire acquisition area will be used for roadway improvements along Poplar St.. Furthermore, there appears to be four small trees in the area of the taking. It is this permanent acquisition which is considered to be a compensable acquisition by the City of Fayetteville. See attached survey provided by client.

LEGAL DESCRIPTIONS

See following page for property, permanent right of way and temporary easement descriptions provided by the client.

Project No. 97033
Project: Poplar Street Right of Way
Part Parcel Nos. 765-09490-000 & 765-09489-000
Tract No. 5

TOBIN TRUST
C.3.61

PROPERTY OWNERS COPY

TRUSTEE'S
WARRANTY DEED

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, the following described land situated in the County of Washington, State of Arkansas, to-wit:

Part of Lots Four (4) and Five (5) of Block Seven (7) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at the Northwest corner of said platted Lot 5, said point being the intersection of the centerline of Poplar Street and Birch Avenue; thence along said centerline of Poplar Street South 87° 05' 25" East 253.44 feet to the Northeast corner of said Lot 4; thence along the East boundary of said Lot 4 South 02° 14' 20" West 25.00 feet; thence North 87° 05' 25" West 203.36 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 90° 24' 02"; thence along said curve an arc distance of 47.33 feet with a chord bearing and distance of South 47° 38' 14" West 42.57 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 33' 47" West 20.00 to the centerline of Birch Avenue, said point being on the West boundary of said Lot 5; thence along said West boundary North 02° 29' 18" East 65.41 feet to the Point of Beginning, containing 7,340 square feet, more or less.

It is the intention of this deed to convey both the present Poplar Street and Birch Avenue rights of way, at that intersection, and an additional area of 1,276 square feet, more or less, adjacent to said present rights of way.

TO HAVE AND TO HOLD the said lands and appurtenances thereunto belonging unto the said Grantee and Grantee's successors and assigns, forever. And said Trustee, in behalf of the said Trust, hereby covenants with the said Grantee that said Trust is lawfully seized of said lands and premises; that the same is unencumbered, and that the said Trust will forever warrant and defend the title to the said lands against all legal claims whatsoever.

WITNESS the execution hereof on this _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY: _____

Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, a/k/a P.J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Trust dated March 4, 1997, and that he is duly authorized to execute the foregoing instrument for and in the name and behalf of said Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES: _____

Notary Public

TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust, dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a temporary construction and grading easement on, over, and through the following described land situated in the County of Washington, State of Arkansas, for the sole purposes necessary for roadway and/or drainage improvements associated with the above noted project, to-wit:

PROPERTY DESCRIPTION:

Lots Numbered Four (4) and Five (5), Block Numbered Seven (7) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT parts of Lots Four (4) and Five (5) of Block Seven (7) of said Subdivision which have been conveyed to the City of Fayetteville under separate deed as roadway right of way and being more particularly described as follows, to-wit: Beginning at the Northwest corner of said platted Lot 5, said point being the intersection of the centerline of Poplar Street and Birch Avenue; thence along said centerline of Poplar Street South 87° 05' 25" East 253.44 feet to the Northeast corner of said Lot 4; thence along the East boundary of said Lot 4 South 02° 14' 20" West 25.00 feet; thence North 87° 05' 25" West 203.36 feet to a curve to the left, said curve to the left having a radius of 30.00 feet and a delta angle of 90° 24' 02"; thence along said curve an arc distance of 47.33 feet with a chord bearing and distance of South 47° 38' 14" West 42.57 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 33' 47" West 20.00 to the centerline of Birch Avenue, said point being on the West boundary of said Lot 5; thence along said West boundary North 02° 29' 18" East 65.41 feet to the Point of Beginning, containing 7,340 square feet, more or less. The above described LESS AND EXCEPT was conveyed to the City of Fayetteville, as road right of way, under separate deed. In that deed, it was the intention to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 1,276 square feet, more or less, adjacent to said present rights of way.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary construction and grading easement ten (10) feet in width across the above described property being parallel with and contiguous to the South side of the above described LESS AND EXCEPT portion and being more particularly described as follows, to-wit: Beginning at a point which is South 02° 29' 18" West 65.41 feet and South 87° 33' 47" East 20.0 feet from the Northwest corner of said platted Lot 5, said point being on the East right of way line of Birch Avenue; thence North 02° 29' 18" East 10.0 feet to a curve to the right, said curve having a radius of 30.0 feet and a delta angle of 90° 24' 02"; thence along said curve an arc distance of 47.33 feet with a chord bearing and distance of North 47° 38' 14" East 42.57 feet; thence South 87° 05' 25" East 203.36 feet, to the East boundary line of said platted Lot 4; thence with said East boundary, South 02° 14' 20" West 10.0 feet; thence North 87° 05' 25" West 203.48 feet to a curve to the left, said curve having a radius of 20.0 feet; thence along said curve an arc distance of 31.55 feet with a chord bearing and distance of South 47° 36' 50" West 28.37 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 33' 47" West 10.0 feet, to the Point of Beginning, containing 2,528 square feet, more or less.

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

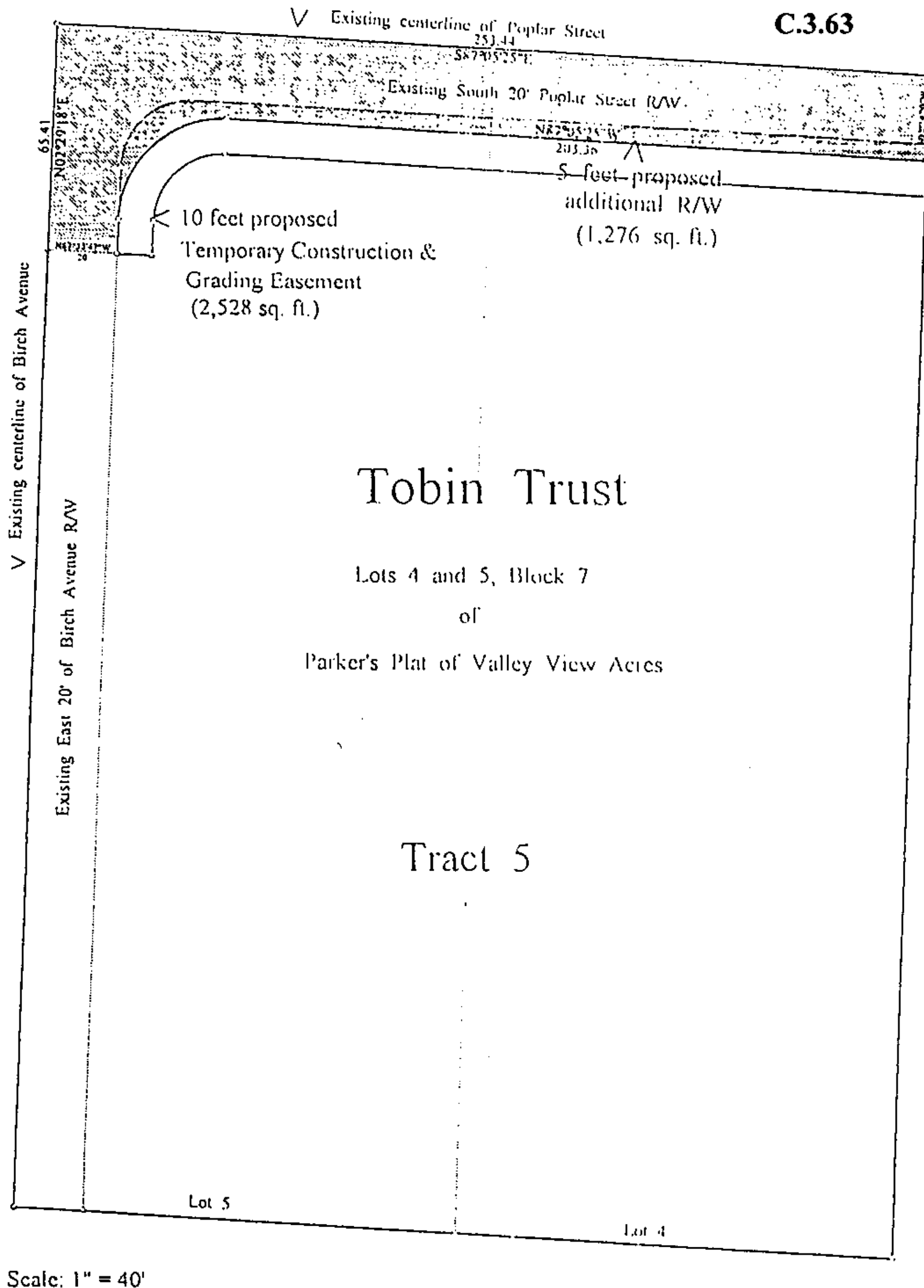
This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that the above temporary construction and grading easement shall exclude any permanent structure presently located within said temporary construction and grading easement area.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The consideration first above recited as being paid to the Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

TOBIN TRUST
C.3.63



HIGHEST AND BEST USE

By "Highest and Best Use" is meant the most likely and profitable use to which a property can be put. It is sometimes called the most profitable or optimum use. It is that use which, at the time of the appraisal, would most likely produce the greatest net return in money or amenities. The appraiser has analyzed the highest and best use of the subject property before and after the taking as follows:

Before the taking: The subject property is currently improved with metal industrial type and masonry commercial type buildings presently used as a floor covering business and night club respectively. The site is located inside the Fayetteville city limits and has I-1 zoning. The immediate neighborhood of the subject consists mainly of commercial/industrial type uses with some single family homes and multi-family structures. It is the opinion of the appraiser that the subject's highest and best use "as improved" is its present use as a metal industrial type building utilized for floor covering business and the nightclub.

After the taking: After the taking by the city, the subject will be left a slightly smaller lot. The buildings will not be disturbed. Therefore, the highest and best use of the subject after the taking will also be its present use or other light commercial type use.

DISCUSSION OF SEVERANCE DAMAGE

Where there is a partial taking of property, such as the case of the subject property, any loss in value of the remaining property caused by the partial taking is known as severance damage. The Appraisal Institute defines severance damages as follows:

"It is the diminution of the market value of the remainder area, in the case of a partial taking, which arises (a) by reason of the taking (severance), and/or (b) the construction of the improvement in the manner proposed."

Severance damages are compensable to the property owner if a decline in value is attributable to the partial taking.

In the case of the subject property, the partial taking is permanent, will be used for a roadway expansion, and will run parallel to the existing Poplar St.. It is the appraiser's opinion that the location of this right-of-way acquisition will have no negative effect on the remaining property and hence no severance damage will occur to the subject land and improvements due to the partial taking.

DISCUSSION OF ENHANCED VALUE OR SPECIAL BENEFIT

In some eminent domain cases which result in partial takings, the remaining property may actually increase in value as a result of some improvement made by the condemning authority. In these cases the remaining property is considered to receive an Enhanced Value or Special Benefit. Thus, if the condemning authority takes a portion of a property for an improvement and this improvement actually increases the value of the remaining land, the amount of just compensation will be reduced by the value of the special benefit.

It is the appraiser's opinion that the future value of the remaining subject property will not be enhanced by the taking.

MARKET DATA APPROACH

Analysis of the Market Data and Conclusion of Value

The Market Data Approach is an attempt to measure the reaction of typical buyers and sellers in the market. In this approach a direct comparison is made between the property being appraised and comparable properties which have sold recently. The value of the property being appraised is inferred from the selling prices of comparable properties. To be "comparable," a property need not be identical to the subject. The word "comparable" is used in its ordinary sense, meaning something which is capable of being compared with or worthy of comparison.

The appraiser has conducted an extensive search for recent land sales in the vicinity of the subject property which would be considered comparable to the subject land. These sales are included in this report.

After analysis of the land sales, the comparable sales reflect a value range from \$0.73 to \$3.33/Sq. Ft. for the land. The low end of this range is of property with inferior location, access and appeal. The upper end of the value range are of sites with Thoroughfare Commercial (C-2) zoning and superior locations. It is the appraiser's opinion that the subject's land value would fall within the low to mid-section of this value spectrum due to its size, land characteristics, location, zoning classification and other characteristics.

Based upon the above sales and analysis thereof, and after adjustments are made for differences in size, location, terrain, availability of utilities, access, zoning and other economic factors, it is the opinion of this appraiser that the Fair Market Value of the subject property as of the date of this appraisal is as follows:

Fee Simple Land Value	1.75 Acres or 76,230 Sq. Ft. @ \$1.75/Sq. Ft.	= \$ 133,403
	Say	\$ 133,400

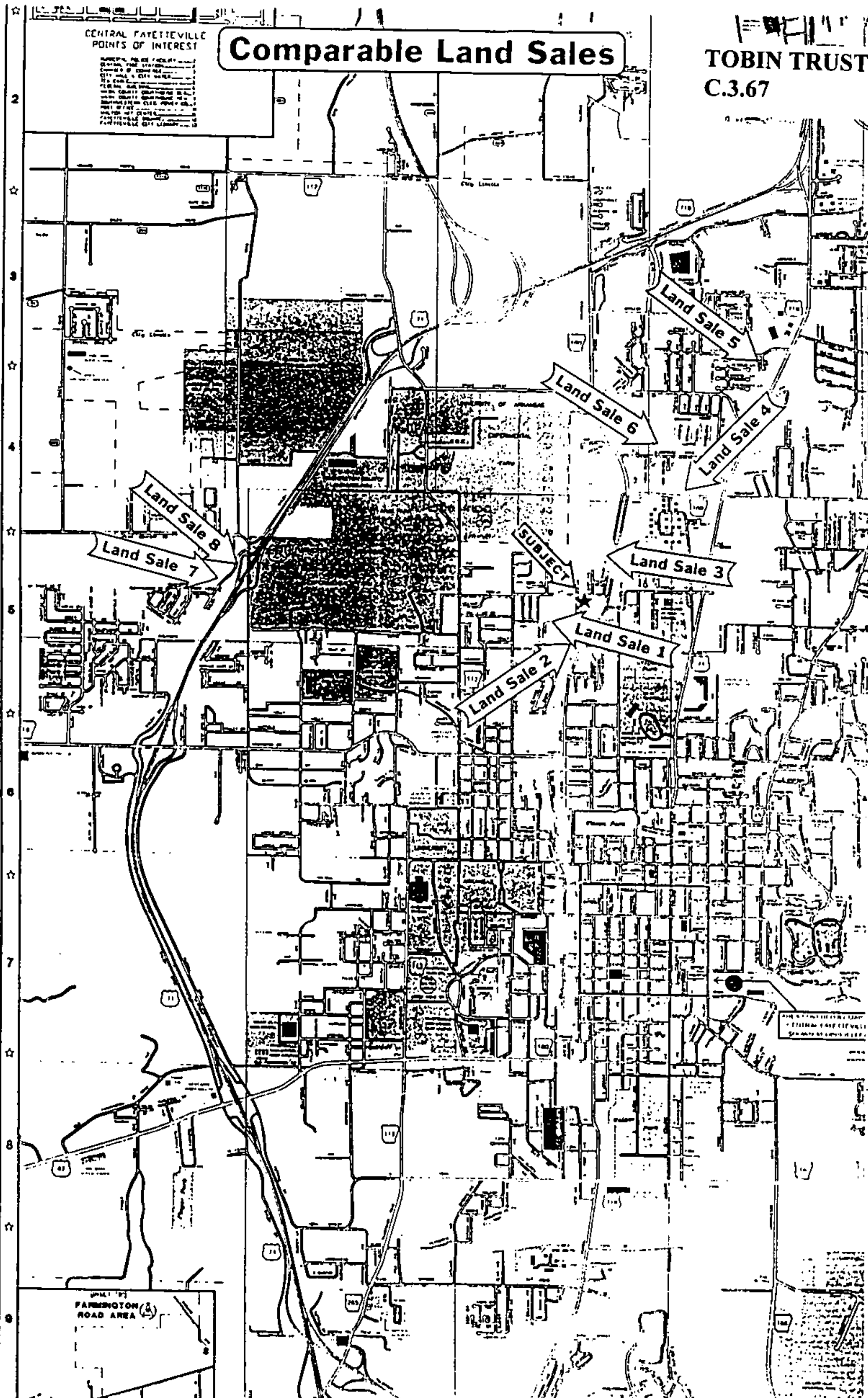
Fee Simple Improvement Value Not Determined

Value Before the Taking:	Land:	\$ 133,400	
	Imps:	\$ 0*	
	Total:		\$ 133,400

Value After the Taking:	Land:	\$ 131,150	
	Imps:	\$ 0	
	Total:		\$ 131,150

Value of the Partial Taking: (Permanent Easement & R-O-W)	\$ 2,250
--	----------

- * Improvement value was not determined due to appraiser's opinion that the subject improvements are not affected by the partial taking.



COMPARABLE LAND SALES

LAND SALE #1

Grantor: Rastall Enterprises, Inc.
Grantee: Tim Owen Development, Inc.
Date: 07/11/94
Legal Description: Lot 12 & E 116.72' of Lot 11, Block 9 of Parker's Plat of Valley View Acres
Location: Ash Street
Sales Price: \$53,000
Size: Appx. 72,339 SF or 1.66 Acres
Indicated Price: \$0.73/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Located southwest of subject site, but has no major road frontage or access. Much inferior visibility and access.

LAND SALE #2

Grantor: Liner-Wimberly Properties
Grantee: Alano Foundation, Inc.
Date: 11/91
Legal Description: Lot 11, Block 11, Parker's Plat of Valley View Acres
Location: Sycamore Street
Sales Price: \$60,000
Size: Appx. 41,026 SF or 0.94 Acres
Indicated Price: \$1.46/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: An older sale of similar lot with frontage and access via Sycamore.

LAND SALE #3

Grantor: Max A. & Cynthia Parker
Grantee: Wayne & Robbye Ridout
Date: 10/28/94
Legal Description: Pt. NW/4 of SE/4 Sec. 4-16-30
Location: Gregg Street, just West of RR R.O.W.
Sales Price: \$225,000
Size: Appx. 204,296 SF or 4.69 Acres
Indicated Price: \$1.10/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Current site of Ridout Contractor Outlet. Site is located off of Gregg on the W side of RR tracks.

LAND SALE #4

Grantor: Freeland Romans
Grantee: Tom January
Date: 5/15/97
Legal Description: Pt. of the S/2, SW/4 of Section 35, T17N, R30W
Location: Township Rd.
Sales Price: \$350,000
Size: 3.07 Acres
Indicated Price: \$114,007/Acre or \$2.62/SF
Zoning: Thoroughfare Commercial (C-2)
Remarks: Commercially zoned land on Township Road just W of Nelms Chevrolet and the North College Avenue intersection. Old stone house with no contributory value has been removed and property has been commercially developed. Recorded Deed Book 97-033164. Verified by agent.

LAND SALE #5

Grantor: Marjorie Niblock, et.al.
Grantee: Randy & Gerri Shankle
Date: 2/26/98
Legal Description: Lot 6 Hammond Plaza
Location: Corner of Appleby & McKee Street
Sales Price: \$45,000
Size: 13,520 SF or 0.31 Acre
Indicated Price: \$3.33/SF
Zoning: Commercial Thoroughfare (C-2)
Remarks: Located near Fiesta Square shopping center. Corner type location off of College Avenue (Hwy. 71B).

LAND SALE #6

Grantor: Mae B. Nettleship
Grantee: Virginia R. Krauft & Sally H. Wimberly
Date: 8/17/98
Legal Description: Sunbridge Center
Location: Sunbridge Drive
Sales Price: \$83,000
Size: Appx. 53,993 SF or 1.24 Acres
Indicated Price: \$1.54/SF
Zoning: Residential Office (R-O)
Remarks: Cleared, level land on Sunbridge Drive off of N. Gregg Avenue.

LAND SALE #7

Grantor: James E. & Elizabeth Potts
Grantee: Dennis Prater
Date: 8/1/97
Legal Description: Lot 2, Block C, Point West S/D Phase II
Location: Shiloh Drive
Sales Price: \$60,000
Size: Appx. 34,486 Sq. Ft. or 0.79 acres
Indicated Price: \$1.74/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Located on Shiloh Dr. just off the Hwy. 71 Bypass. Purchased for site of retail automotive center with parts machine shop area. Recorded Book 97, Page 53250.

LAND SALE #8

Grantor: Sterling P. & Kay Z. Anders and Arkansas Book Store, Inc.
Grantee: William J. & Katherine M. Eddy
Date: 4/30/96
Legal Description: Lot 2, Block B, Point West S/D Phase I
Location: Shiloh Drive
Sales Price: \$60,000
Size: Appx. 28,500 Sq. Ft. or 0.65 acre
Indicated Price: \$2.10/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Located on Shiloh Dr. just off the Hwy. 71 Bypass. Good visibility from the bypass. Recorded Book 96, Page 27579.

TR #5

TRUSTEE'S
WARRANTY DEED

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, the following described land situated in the County of Washington, State of Arkansas, to-wit:

Part of Lots Four (4) and Five (5) of Block Seven (7) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at the Northwest corner of said platted Lot 5, said point being the intersection of the centerline of Poplar Street and Birch Avenue; thence along said centerline of Poplar Street South 87° 05' 25" East 253.44 feet to the Northeast corner of said Lot 4; thence along the East boundary of said Lot 4 South 02° 14' 20" West 25.00 feet; thence North 87° 05' 25" West 203.36 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 90° 24' 02"; thence along said curve an arc distance of 47.33 feet with a chord bearing and distance of South 47° 38' 14" West 42.57 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 33' 47" West 20.00 to the centerline of Birch Avenue, said point being on the West boundary of said Lot 5; thence along said West boundary North 02° 29' 18" East 65.41 feet to the Point of Beginning, containing 7,340 square feet, more or less.

It is the intention of this deed to convey both the present Poplar Street and Birch Avenue rights of way, at that intersection, and an additional area of 1,276 square feet, more or less, adjacent to said present rights of way.

TO HAVE AND TO HOLD the said lands and appurtenances thereunto belonging unto the said Grantee and Grantee's successors and assigns, forever. And said Trustee, in behalf of the said Trust, hereby covenants with the said Grantee that said Trust is lawfully seized of said lands and premises; that the same is unencumbered, and that the said Trust will forever warrant and defend the title to the said lands against all legal claims whatsoever.

WITNESS the execution hereof on this _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY:

Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, a/k/a P.J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Trust dated March 4, 1997, and that he is duly authorized to execute the foregoing instrument for and in the name and behalf of said Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES:

Notary Public

Project No. 97023
Project: Poplar Street Improvements
Parcel No. 765-09489-000 &
Parcel No. 765-09490-000
Tract No. 5

TR #5
TOBIN TRUST
C.3.71

TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust, dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a temporary construction and grading easement on, over, and through the following described land situated in the County of Washington, State of Arkansas, for the sole purposes necessary for roadway and/or drainage improvements associated with the above noted project, to-wit:

PROPERTY DESCRIPTION:

Lots Numbered Four (4) and Five (5), Block Numbered Seven (7) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT parts of Lots Four (4) and Five (5) of Block Seven (7) of said Subdivision which have been conveyed to the City of Fayetteville under separate deed as roadway right of way and being more particularly described as follows, to-wit: Beginning at the Northwest corner of said platted Lot 5, said point being the intersection of the centerline of Poplar Street and Birch Avenue; thence along said centerline of Poplar Street South 87° 05' 25" East 253.44 feet to the Northeast corner of said Lot 4; thence along the East boundary of said Lot 4 South 02° 14' 20" West 25.00 feet; thence North 87° 05' 25" West 203.36 feet to a curve to the left, said curve to the left having a radius of 30.00 feet and a delta angle of 90° 24' 02"; thence along said curve an arc distance of 47.33 feet with a chord bearing and distance of South 47° 38' 14" West 42.57 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 33' 47" West 20.00 to the centerline of Birch Avenue, said point being on the West boundary of said Lot 5; thence along said West boundary North 02° 29' 18" East 65.41 feet to the Point of Beginning, containing 7,340 square feet, more or less. The above described LESS AND EXCEPT was conveyed to the City of Fayetteville, as road right of way, under separate deed. In that deed, it was the intention to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 1,276 square feet, more or less, adjacent to said present rights of way.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary construction and grading easement ten (10) feet in width across the above described property being parallel with and contiguous to the South side of the above described LESS AND EXCEPT portion and being more particularly described as follows, to-wit: Beginning at a point which is South 02° 29' 18" West 65.41 feet and South 87° 33' 47" East 20.0 feet from the Northwest corner of said platted Lot 5, said point being on the East right of way line of Birch Avenue; thence North 02° 29' 18" East 10.0 feet to a curve to the right, said curve having a radius of 30.0 feet and a delta angle of 90° 24' 02"; thence along said curve an arc distance of 47.33 feet with a chord bearing and distance of North 47° 38' 14" East 42.57 feet; thence South 87° 05' 25" East 203.36 feet, to the East boundary line of said platted Lot 4; thence with said East boundary, South 02° 14' 20" West 10.0 feet; thence North 87° 05' 25" West 203.48 feet to a curve to the left, said curve having a radius of 20.0 feet; thence along said curve an arc distance of 31.55 feet with a chord bearing and distance of South 47° 36' 50" West 28.37 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 33' 47" West 10.0 feet, to the Point of Beginning, containing 2,528 square feet, more or less.

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that the above temporary construction and grading easement shall exclude any permanent structure presently located within said temporary construction and grading easement area.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The consideration first above recited as being paid to the Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this easement on behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY: _____
Patrick j. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, a/k/a P. J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, and that he is authorized to execute the foregoing instrument for and in the name and behalf of the Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES: _____ Notary Public

STAFF REVIEW FORM

☒ Agenda Request
☐ Contract Review
☐ Grant Review

For the Fayetteville City Council meeting of May 18, 1999.

FROM:

Tim Conklin

Planning

Public Works

Name

Division

Department

ACTION REQUESTED: To approve an ordinance for VA99-6 vacating a utility easement located at 3385 Natchez Trace as requested by the Keith and Yvonne Burns for a specified portion of an alley located to the south and east of Lot 11, Savanna Estates Subdivision, Phase I.

COST TO CITY:

\$0

Cost of this request

Category/Project Budget

Category/Project Name

Account Number

Funds used to date

Program Name

Project Number

Remaining balance

Fund

BUDGET REVIEW:

Budgeted Item

Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Accounting Manager

Date

ADA Coordinator

Date

City Attorney

Date

Internal Auditor

Date

Purchasing Officer

Date

STAFF RECOMMENDATION: This item will be considered by the Planning Commission at their regular meeting of May 10, 1999. Their recommendation and minutes will be forwarded to the City Council.

Division Head

4-30-99

Date

Department Director

5-4-99

Date

Administrative Services

4 MAY 1999

Date

Director

5/4/99

Date

Mayor

Cross Reference

New Item: Yes No

Prev Ord/Res#:

Orig Contract Date:

April 19, 1999

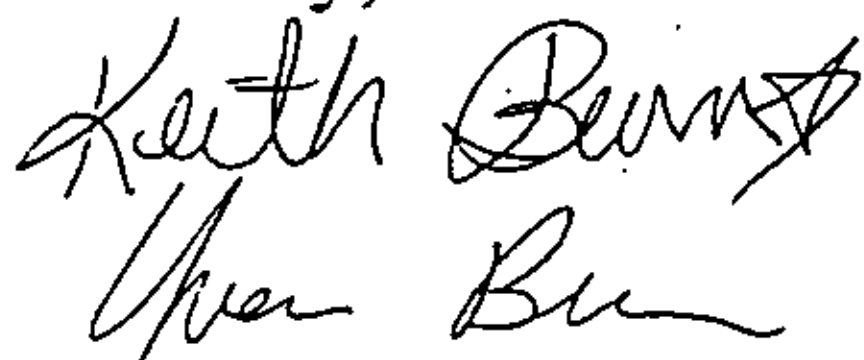
Keith and Yvonne Burns
3385 Natchez Trace
Fayetteville, AR 72703
582-4142

Attached you will find the required forms needed for a utility easement vacation. All the utility companies have stated that they have no objections to our request and all adjacent neighbors also have no objections.

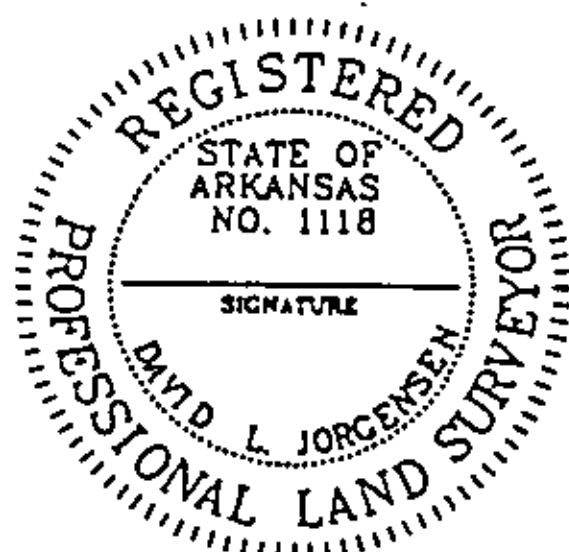
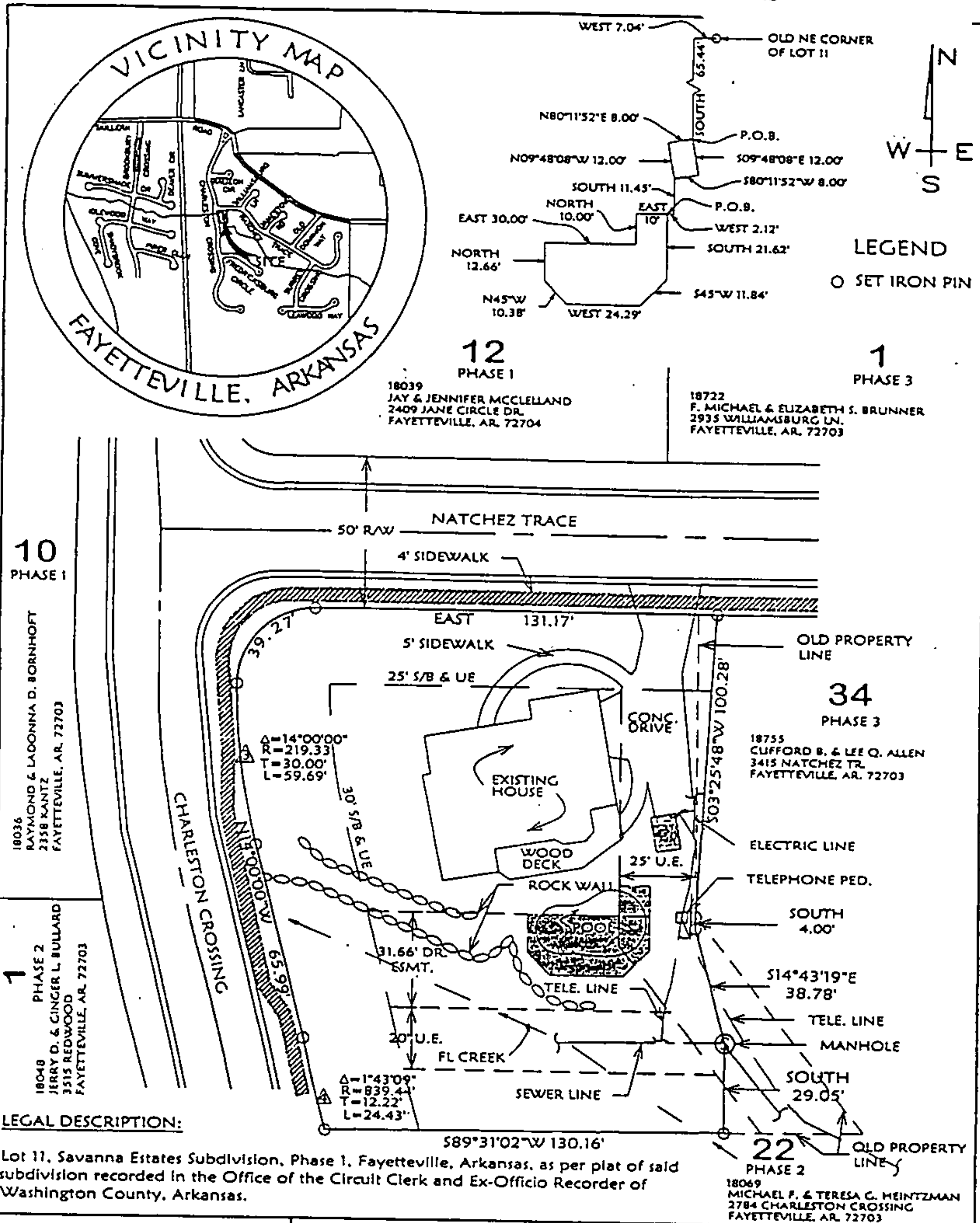
We would like to ask Alett Little or Dawn Warrick that this utility easement vacation request be reviewed at the city meeting scheduled for May 18th. This would really be appreciated as we would like to get started on our pool as soon as possible.

If you have any questions please contact us or Dave Jorgensen at 442-9127. Thank you.

Sincerely,

The block contains two handwritten signatures. The first signature is "Keith Burns" written in a cursive, flowing script. The second signature is "Yvonne Burns" also in a cursive script, positioned directly below the first signature.

Keith and Yvonne Burns



JORGENSEN & ASSOCIATES, INC.

ENGINEERS SURVEYORS

2013 GREEN ACRES RD.
FAYETTEVILLE, -AR -72703

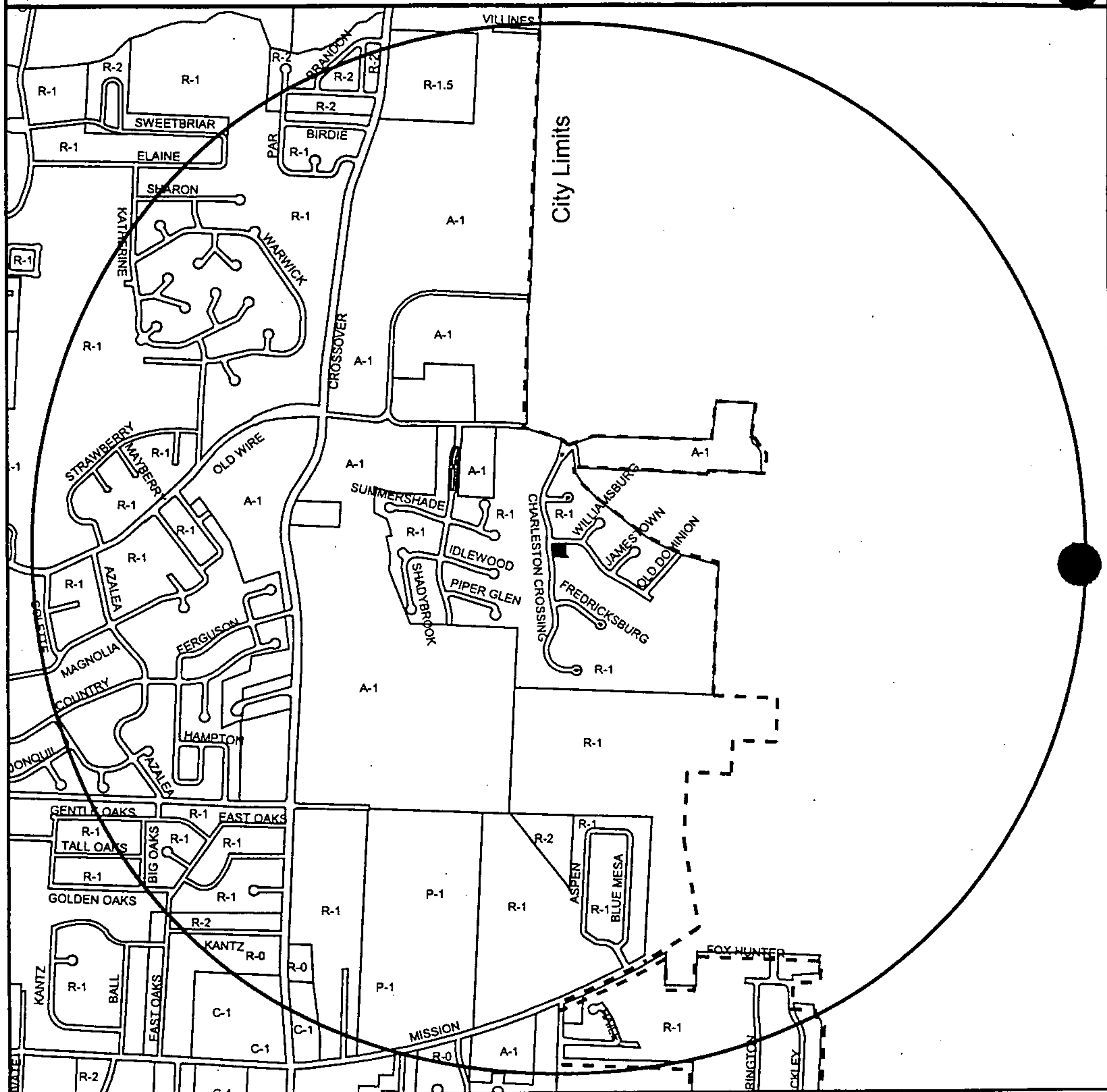
PH 501-442-9127

FAX 501-582-4807

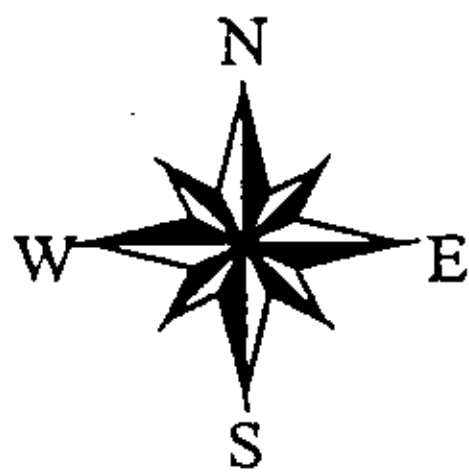
SCALE: 1"=40'	JOB #:	CHECKED BY: DLJ	DRAWN BY: BJR
DATE: 02APRIL99			D:\LOTS\BURNSLOT.DWG

PROPERTY SURVEY FOR KIETH BURNS

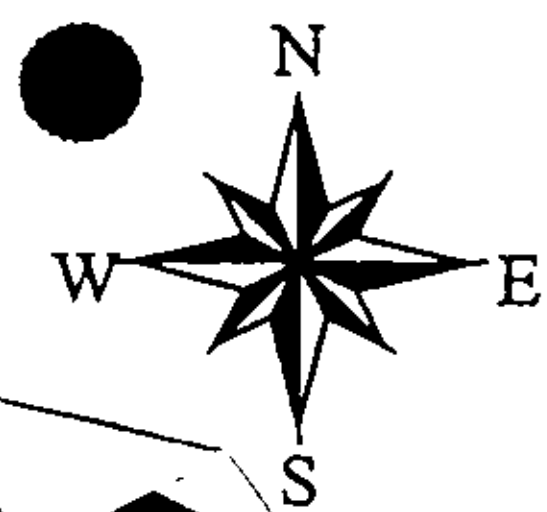
VA99-6.00 - Burns - One Mile Diameter



1400 0 1400 Feet



VA99-6.00 - Burns - Close Up



100 0 100 Feet

PETITION TO VACATE A PORTION OF A UTILITY AND DRAINAGE
EASEMENT LOCATED ON LOT 11 OF SAVANNA ESTATES SUBDIVISION,
PHASE I, CITY OF FAYETTEVILLE, ARKANSAS.

To: The Fayetteville City Planning Commission and
The Fayetteville City Council

We, the undersigned, being the owners of the real estate abutting the easement hereinafter sought to be abandoned and vacated, on Lot 11 of Savanna Estates Subdivision Phase I to the City of Fayetteville, Arkansas, a municipal corporation, petition to vacate a portion of an easement which is described as follows:

A part of Lot 11 of Savanna Estates Subdivision Phase 1 and being more particularly described as follows; Commencing at the NE Corner of said Lot 11, thence WEST 7.04 Feet, thence SOUTH 65.44 Feet to the P.O.B. thence S 09°48'08"E 12.00 Feet, thence S 80°11'52"W 8.00 Feet, thence N 09°48'08"W 12.00 Feet, thence N 80°11'52"E 8.00 Feet, to the P.O.B.; and also commencing at the NE Corner of said Lot 11 thence WEST 15.00 Feet, thence SOUTH 90.07 Feet to the P.O.B. thence SOUTH 21.62 Feet, thence S 45°W 11.84 Feet, thence WEST 24.29 Feet, thence N 45°W 10.38 Feet, thence NORTH 12.66 Feet, EAST 30.00 Feet, thence NORTH 10.00 Feet, thence EAST 10.00 Feet to the P.O.B.

The petitioners request that the City of Fayetteville, Arkansas abandon and vacate the above described easement.

The petitioner further request that the above described easement be vested in the abutting property owner as provided by law.

WHEREFORE, the undersigned petitioners respectfully request that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate and that title to said real estate sought to be abandoned by vested in the abutting property owner as provided by law, and as to that particular land the owner be free from the easements of the public.

Dated this 15 day of April, 19 99

Keith Burns
Keith Burns

4/15/99
Date

Yvonne Burns
Yvonne Burns

4/15/99
Date

CONSENT AGENDA

Approval of minutes from the April 26, 1999 meeting.

**VA99-6: VACATION
BURNS, pp256**

This item was submitted by Keith and Yvonne Burns for property located at 3385 Natchez Trace. The property is zoned R-1, Low Density Residential, and contains approximately 0.24 acres. The request is to vacate a portion of a 25 foot utility easement on the east side of the property.

Staff recommends approval of the request.

Public Comment

None.

Roll Call

Upon roll call, the Consent Agenda was approved with a unanimous vote of 7-0-0.

STAFF REVIEW FORM

☒ Agenda Request
☐ Contract Review
☐ Grant Review

For the Fayetteville City Council meeting of May 18, 1999.

FROM:

Tim Conklin

Planning

Public Works

Name

Division

Department

ACTION REQUESTED: To approve an ordinance for RZ99-7 submitted by Neal Pendergraft for property located east of 2680 Joyce Street. The property is zoned R-1, Low Density Residential, and contains approximately 4.98 acres. The request is to rezone the property to R-O, Residential Office.

COST TO CITY:

\$0

Cost of this request

Category/Project Budget

Category/Project Name

Account Number

Funds used to date

Program Name

Project Number

Remaining balance

Fund

BUDGET REVIEW:

Budgeted Item

Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Accounting Manager

Date

ADA Coordinator

Date

City Attorney

Date

Internal Auditor

Date

Purchasing Officer

Date

STAFF RECOMMENDATION: Staff recommends approval and the Planning Commission recommended to City Council that the rezoning be approved with a vote of 5-3-0. Commissioners Forney, Hoffman, and Hoover voted against the rezoning. Commissioner Estes was not present.

Division Head

4-30-99
Date

Department Director

5-4-99
Date

Administrative Services Director

4 MAY 4 1999
Date

Director

Mayor

4/5/99
Date

Cross Reference

New Item: Yes No

Prev Ord/Res#: _____

Orig Contract Date: _____

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April 26, 1999
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**RZ99-7: REZONING
PENDERGRAFT, pp176**

This item was submitted by Neal Pendergraft for property located east of 2680 Joyce Street. The property is zoned R-1, Low Density Residential, and contains approximately 4.98 acres. The request is to rezone the property to R-O, Residential Office.

Mr. Neal Pendergraft was present on behalf of the project.

Commission Discussion

Pendergraft: I'm representing myself and the three other owners of the property. As you know, Dr. Smith and I own the property immediately to the east that is Paradise Valley. Prior to purchasing this property that is at issue now, I look back at the zoning regulations and it appeared to me that R-O zoning with medium to high density housing which is what is across the street where I believe most of our objections are coming -- I also appear as one of the owners of the property next door. We have no objection to the property being R-O. I feel like the people that have the most at risk here would be the people that are actually on the north side of the street, Dr. Smith, Dr. Hudson, and the Lades. I stated in my application that none of those people have any objections. Dr. Hudson and Dr. Smith are here. They can speak for themselves as to whether or not they have any objections. I was a little puzzled by the trouble that this had when it went through the first time and I tried to explain in a letter what took place there when this came up and I believe it was 96-13. When we rezoned the paradise valley property, the people objecting then had concerns about not building cheap duplexes on the property that is now Paradise Valley and in the last part of the minutes, Swifty Reynolds, who was then on the Commission asked if I would enter into a Bill of Assurance that we wouldn't put any duplexes on this property. I have no interest in going into the residential market, I immediately agreed to that for the Paradise Valley property. I did have some confusion as to why now they are objecting to this request. All of the inquiries we have had about purchasing the property have been from individuals who want R-O property. I don't think it is properly suited for R-1. As much as the people objecting may say that they live in an exclusive residential area, that quite simply is not the fact. If you look going east on Joyce Street, there is commercial property there. There is R-O property there. Immediately across the street from them, I have R-O property.

Johnson: Does staff have anything to add to the applicant's presentation or any questions?

Conklin: Mr. Pendergraft is correct. This did go before the Planning Commission on June 10, 1996. It was tabled at that meeting. On July 22, 1996, the Planning Commission approved a tract that was 6.37 acres; a tract larger than this one. Planning Commission recommended R-O zoning. It then went to the City Council on November 19, 1996. At that time, the applicant requested that the property be rezoned R-1. That is the reason why the property is zoned R-1 at

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the request of the applicant in 1996. This property is shown on our 2020 Future Land Use Map as office and staff has recommended residential office zoning for this piece of property.

Pendergraft: I mentioned to every potential purchaser that there probably would be objection from people who lived across the street and they should be prepared to go through a large scale development with the Planning Commission and deal with the tree issue and that they may be better served by putting berms, trees, landscaping, or something along Joyce Street. They should anticipate that their access being from Sunbest Place which was built by myself and Dr. Smith and the Lattas and consider putting their parking in the back. Now that is not a condition of my contract of sale but everyone who has looked at that property is considering Sunbest Place to be the access to the property.

Public Comment

Ted Brewer residing at 2607 E. Joyce Blvd. which is directly across the street from the property in question spoke in opposition to the rezoning request.

Bob Shaw residing at 2633 E. Joyce Blvd. spoke in opposition to the requested rezoning.

Harvey Smith residing at 2600 E. Joyce Blvd. spoke in support of the requested rezoning.

Loyde Hudson residing at 2488 E. Joyce Blvd. spoke in support of the requested rezoning.

Robert Frans residing at 2517 E. Joyce Blvd. which is across the street from Dr. Hudson spoke in opposition to the rezoning request.

Further Commission Discussion

Johnson: There are 2 observations that I would make. First, looking at what is allowed in an R-1 zone - City Wide Uses By Right, Government Facilities, Single Family and Two Family Dwellings, Offices, Studios and Related Services, and Professional Offices. There are other of things allow by conditional uses if approved by the Planning Commission. The other observation is that on the General Plan 2020 this stretch of Joyce Street on the north side is shown to be offices in that location.

Hoffman: Staff, in looking at the one mile diameter zoning map on page 6.30, could you tell me of the six R-O properties, are those full or leased to capacity or are they vacant.

Conklin: Starting at the top of Zion Road, I believe that property is currently vacant on Randall. I don't think there is any development up there. The R-O that is on Hwy 265, that is Charter Vista and Youth Bridge. There could be some parcels that are undeveloped but there is

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the medical offices and HealthSouth.

Hoffman: Going west toward Parkview, there are three parcels over in that area.

Conklin: I believe that is developed with the medical clinic and west of Parkview there are Dr.'s offices and Collier's Drug Store in that location.

Hoffman: That you for refreshing my memory on that. The reason I asked is that we not only have this rezoning tonight but I think we have another 2. I'm curious if there is a need based on the sale of the existing zoning.

Pendergraft: I can respond to the Paradise Valley property. There was a comment that a part of it was empty. The reason being is that we have a planned use development in process. I think Commissioner Ward will explain that we have turned down several potential tenants because we are looking for a certain size of building in there. The fourth building we plan to build in there is not ready to be built yet. We don't feel there is the need or the size building requested.

Hoover: Staff, can the 2020 Plan that is laid out -- what was the criteria? I can understand the commercial at intersections.

Conklin: We looked at office development along the north side of Joyce. We did extend that further to the west. That was one of the reasons we showed those on the 2020 Plan as office. We thought it was appropriate at that time with the Master Street Plan designating Joyce Boulevard as an arterial.

Hoover: Because of the type of street.

Conklin: The street and the existing development patten in that area.

Hoover: On R-O is there a height limitation?

Conklin: That is based on additional setback. The higher you go, you have additional setbacks.

Hoover: There's no maximum height you could be. I am just concerned in this situation that someone might want to put a 4 or 5 story building right there. It wouldn't be very appropriate.

Conklin: "There shall be no maximum height limits in R-O districts provided however that any building which exceeds a height of 20 feet shall be setback from any additional or boundary line of any R-1, R-2, or R-3 district an additional distance of 1 foot for each foot of height in

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excess of 20 feet." Any additional height over 20 feet, you also have additional setback which is a 1:1 ratio.

Johnson: Wouldn't this development come back before us as a large scale so that the Commission would see and have a say over the height of the building?

Conklin: It would come back as a large scale development. As long as they met the ordinance requirement, they could potentially build a two story building.

Odom: Is Dr. Dill involved in any way?

Pendergraft: There are only 4 people involved. That is myself, my sister, Laurie Mason, Mike Hill and David Johnson. We are the four co-owners.

Ward: I feel like it's less obtrusive to have an R-O zoning along an arterial street. The few residents out there are backing up to a golf course.

MOTION

Mr. Ward made a motion to approve RZ99-7.

Mr. Marr seconded the motion.

Johnson: The affect of this motion should it carry would be to recommend this to the City Council.

Forney: I think this is a tough call. Rezoning is one of the most important things we do. This is situation where we have a couple of conflicting influences. On the one hand, if you think we should follow our General Land Use Plan which does indicate that this should be Residential Office. On the other hand, we should consider this as a matter of timing. Is this the right time to rezone? Is there a need for additional R-O? I appreciate Commissioner Hoffman's adjoining zoning clarification. The concern I have while I think that this should ultimately go R-O and it is appropriate is that I am a little concerned that we are setting a trend of path where relatively less expensive land is rezoned further out from existing zoned land which is not yet developed. We do have a good bit of existing R-O land which is closer to the center and is also adjacent. There is cheaper property further out. We intend to encourage more spread, more sprawl, and more traffic problems. I think we need to mull this over.

Odom: Call the question.

Roll Call

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Upon roll call the motion passed with a vote of 5-3-0. Commissioner Forney, Commissioner Hoffman, and Commissioner Hoover voted against the motion.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission Members
THRU: Tim Conklin, City Planner
FROM: Brent Vinson, Associate Planner
DATE: April 26, 1999

RZ 99-7.00: Rezoning (Pendergraft, pp 176) was submitted by Neal Pendergraft for property located east of 2680 Joyce Street. The property is zoned R-1, Low Density Residential, and contains approximately 4.98 acres. The request is to rezone the property to R-O, Residential Office.

RECOMMENDED MOTION:

Staff recommends the requested rezoning from R-1 to R-O based on the findings included as part of this report.

PLANNING COMMISSION ACTION: YES Required
_____Approved _____Denied

Date: April 26, 1999

Comments:

CITY COUNCIL ACTION: YES Required
_____Approved _____Denied

Date: / /

INFRASTRUCTURE:

- Streets:** Joyce Blvd. is a Principal Arterial with 110' of right of way (55' on both sides from the centerline of the road). Joyce Blvd. has recently been widened two four lanes.
- Water:** A 36" waterline exists along the north side of Joyce Blvd on the southern border of the property.
- Sewer:** An 8" sewer line exists along the north side of Joyce Blvd. on the southern border of the property.

LAND USE PLAN:

General Plan 2020 shows this area as Office. The area to the south of Joyce Blvd. is shown as Residential surrounded by Open Space/ Recreation.

RZ 99.00-6.00 FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The Land Use Plan (General Plan 2020) shows this area as Office, therefore a zone of Residential-Office is consistent with the plan.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning is justified at this time to meet the goals of the Land Use Plan for office development.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning would not appreciably increase traffic danger or congestion.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed zoning would not increase the population density and would not undesirably increase the load on the water and sewer facilities.



Figure 1

The Subject Property from Sunbest Place



Figure 2

Professional Offices East of Sunbest Place

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Mr. Odom inquired as to who owned the subject property and Mr. Jones stated that Dr. Crawford was selling the parcel to Charlie Sloan and Mike Hill.

Mr. Head stated he was involved in the financing of this transaction and he stated he would abstain.

Upon roll call, the motion passed with a vote of 6-0-1. Mr. Head abstained.

MOTION

Mr. Reynolds made a motion to deny RZ96-13 rezoning 6.37 acres from A-1, Agricultural to R-O, ~~Low Density Residential~~ - *Office*.

The motion failed for lack of a second.

MOTION

Mr. Allred made a motion to approve RZ96-13 rezoning 6.37 acres from A-1, Agricultural to R-2, Medium Density Residential. Mr. Allred stated the neighborhood had indicated they would support R-2 and he recognized it was a deviation from the General Plan 2020.

Mr. Reynolds seconded the motion.

Ms. Johnson inquired if R-2 zoning would allow any office development and Ms. Little responded Unit 25 would allowed under conditional use upon appeal to the Planning Commission. Discussion ensued.

Mr. Jones stated he was aware that rezoning approval required five positive votes and he inquired if he had the option to table the request. Ms. Johnson stated the request could be tabled. Discussion ensued and Mr. Jones requested the roll call.

Discussion ensued regarding staff recommendation since the R-O rezoning request failed. Ms. Little stated staff recommended R-O and she expressed concern regarding rezoning to R-2 because of the high density allowed in that zone.

Upon roll call, the motion failed with a vote of 3-2-1. Ms. Johnson and Mr. Tucker voted against the motion and Mr. Head abstained.

MOTION

Mr. Tucker made a motion to approve RZ96-13 rezoning 6.37 acres from A-1, Agricultural to R-O, Residential Office.

The motion failed due to lack of a second.

MOTION

Mr. Allred made a motion to table the request until the next meeting to allow the developer and staff time to reevaluate and formulate a new plan and new staff recommendation.

Mr. Reynolds seconded the motion.

MINUTES OF A MEETING OF THE
FAYETTEVILLE PLANNING COMMISSION

A meeting of the Fayetteville Planning Commission was held on July 22, 1996 at 5:30 p.m. in Room 219 of the City Administration Building, 113 West Mountain, Fayetteville, Arkansas.

MEMBERS PRESENT: Jerry Allred, Phyllis Johnson, Bob Reynolds, Lorel Hoffman, John Forney and Gary Tucker

MEMBERS ABSENT: Mark Sugg, John Harbison, and Conrad Odom

STAFF PRESENT: Alett Little, Jim Beavers and Sharon Langley

INTRODUCTION OF NEW MEMBER

Ms. Johnson introduced Lorel Hoffman, a new Planning Commissioner, explaining she replaced Gary Head.

APPROVAL OF THE JULY 8, 1996 MINUTES

The minutes were approved as distributed.

OLD BUSINESS:

RZ96-13: REZONING REQUEST FOR CANTERBURY PLACE
PERRY F. & VERNAL L. CRAWFORD - N OF JOYCE & W OF CROSSOVER

The first item on the agenda was a rezoning request for Canterbury Place, submitted by Northwest Engineers for Perry F. and Vernal L. Crawford for property located north of Joyce Boulevard and west of Crossover Road. The property is currently zoned A-1, Agricultural, and the request is to rezone the property to R-O, Residential-Office. The property contains 6.37 acres.

Ms. Johnson reminded the Commission this matter had been reviewed at the June 10 meeting and it had been tabled. She noted staff had previously recommended approval of the rezoning request. She stated the staff report had contended the rezoning would be consistent with General Plan 2020. She pointed out they had, at the June 10th meeting, rezoned a portion of the tract R-1, Low Density Residential. She advised the staff report stated the R-O would allow a mix of uses, compliment the adjacent residential property and discourage commercial strip development.

Ms. Little advised staff had two additional items: (1) the president of the Home Owners Association, Ted Brewer, had contacted staff and stated they had not received mailed notification of the meeting (however, he believed an adequate number of the residents were aware of the meeting); and (2) she wanted to review Neighborhood Commercial with the Commission. She explained Neighborhood Commercial would allow buildings 2,000 - 3,000 square feet in area within residential areas. She went on to say the building would have to be strictly residential in character. She contended a tract of 6.37 acres would not fit under the Neighborhood Commercial category.

Ms. Johnson stated Joyce Street was classified as a major arterial and was scheduled to be widened to 4 lanes within the next two years. She added the right-of-way would be left at 80 feet and there would be a 10-foot trail on the north side of the street. She reminded the Commission the 10-foot trail was a new trail width for the City and the developer of the project would have to bear one-half the cost of the trail.

Kurt Jones, Northwest Engineers, pointed out the rezoning request did conform with the 2020 Plan. He noted the Commission had worked quite some time forming the 2020 Plan. He advised the developers planned a subdivision with single-family residential lots at the rear and professional offices similar to the offices to the east of the subject tract at the front of the tract. He stated the City was spending close to a million dollars to widen Joyce Boulevard for

Planning Commission Meeting
July 22, 1996
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In response to a question from Mr. Jones, Ms. Johnson explained that, when the developer had discussed only offices, the Commission assumed that only offices would be constructed; but, if they merely rezoned the property, there was no assurance that only offices would be constructed. She stated the zoning classification was broader than just offices and, if they rezoned the property to R-O, they could not require just offices to be constructed at a later date.

Mr. Pendergraft advised he had no intention of putting any residences of any type on the lots. He stated he would be happy to draft a Bill of Assurance stating there would be no duplexes or apartments on the lots. He asked, however, how they would handle an apartment in connection with an office for someone who would be in town periodically.

Ms. Little stated the Bill of Assurance would have to be carefully crafted in order to allow an apartment within an office.

Upon request of Mr. Allred, Ms. Little read the uses by right allowed in R-O zoning: governmental facilities; single family and two-family dwellings; offices, studios, and related services; and professional offices.

Mr. Allred stated the rezoning concerned the land use, not land development and he was concerned about construction of duplexes.

Mr. Forney stated he did not share Mr. Allred's concern regarding duplexes. He pointed out there was R-2 zoning across the street. He stated he would not encourage duplexes but could not see how it would be more objectionable than R-O zoning.

Mr. Allred stated that, if there were assurances the duplexes would be of high quality, he would have no objections. He pointed out, however, that when discussing rezonings, there were no assurances.

Mr. Forney stated he shared Mr. Allred's concern but pointed out there was R-2 on the south side of the street. He asked how deep was the R-O zoning in the 2020 Plan. He contended they had the worst of both worlds -- on the south side residential facing commercial and on the north side residential facing commercial. He explained he would rather see a depth of residential lots on the north side of the street.

Ms. Little pointed out immediately to the east of the subject tract was an R-O parcel which was greater in depth than the proposal. She also noted further to the west were some R-O parcels which were greater in depth. She asked if Mr. Forney was saying that lots 4 and 17 (on the proposed rendering) would be better suited to R-1.

Mr. Forney stated he believed lots 4, 21, 18 and 17 were all going to be office properties with access on a street which had residential properties on the other side of the street. He advised that, while he sympathized with the residents, he would follow the Land Use Plan which anticipated office on the north side. He explained the intentions on the General Land Use Plan was to make a buffer of office space along a high traffic road and then behind have residential properties. He asked if the adjacent R-O lots had stub-outs to residential areas.

Ms. Little stated she believed the Smith/Dill property had a stub-out to the north and she did not remember if the parcel to the west had a stub-out. She further stated there was quite a bit of undeveloped land on the north side of Joyce Street and, at the time the property was subdivided, there would be an opportunity to create linkages. She advised she believed it was better for residential traffic to pass thru office areas than office traffic passing through residential areas.

Mr. Forney stated his concern was there was a street which was half office and half residential.

Ms. Johnson advised the decision was whether to rezone the property to R-O. She reminded the Commission the developer had offered a promise that no duplexes would be constructed.

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Mr. Pendergraft made a formal offer of the Bill of Assurance.

The motion carried unanimously.

November 19, 1996

City Attorney Rose read a resolution meant to eliminate confusion about this being taken from the agenda and the application being withdrawn by the proponents.

Alderman Williams so moved. Alderman Bassett seconded.

Alderman Young stated the company he works for is presenting this so he would not participate in the discussion and would abstain on the vote.

Upon roll call, the resolution passed on a vote of 5-0-1 with Daniel not present for the vote and Young abstaining.

RESOLUTION 121-96 AS RECORDED IN THE CITY CLERK'S OFFICE.

City Attorney Rose read the ordinance for the first time.

Rose stated the abstention went with the majority.

Alderman Williams moved to suspend the rules and go to the second reading. Alderman Bassett seconded. Upon roll call, the motion passed on a vote of 5-0-1, with Daniel absent for the vote and Young abstaining.

Rose read the ordinance for the second time.

Mayor Hanna opened the discussion to the audience.

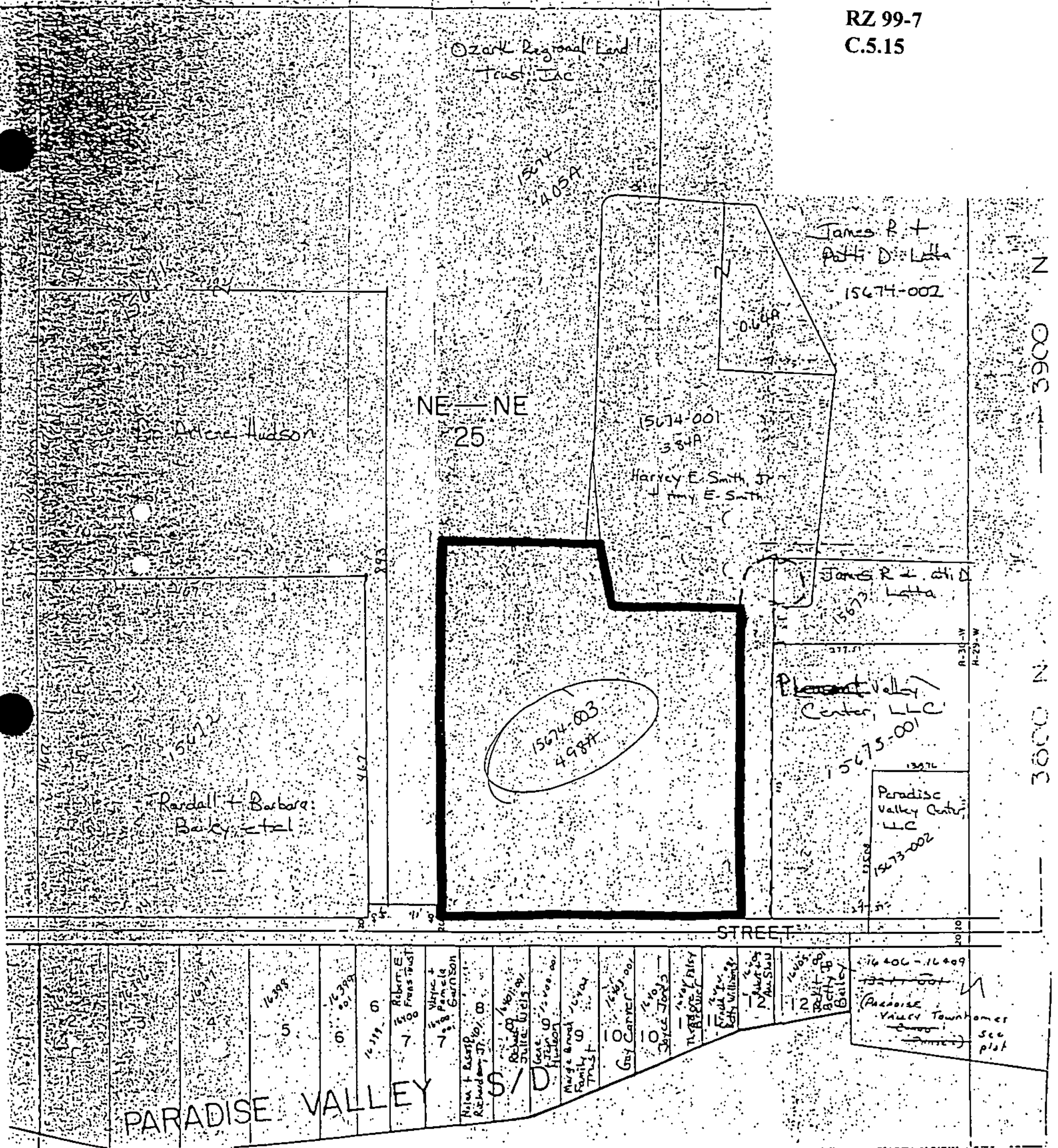
Kurt Jones, Northwest Engineers, represented the owner. We did decide to withdraw the request for the R-O zoning to get time to evaluate the feasibility of developing this as a residential subdivision. We have since prepared a preliminary plat for this project contingent on this property being rezoned R-1, Single Family Residential.

Alderman Hill asked if this is the exact same piece of property.

Jones replied it is. The property to the north was acted on. This is the lower piece that had been requested R-O.

Ted Brewer, 2607 Joyce Street, asked for an explanation of the resolution just passed.

Rose explained there had been confusion about whether or not this needed to be taken back through the complete process, from the Planning Commission on through. The City Council tried to figure out a way not to do that since it had been well discussed a few weeks back. We do have a provision in our ordinance which allows the Council, on their own initiative, to take on rezonings. To make it clear that is what they are doing, they passed a resolution



Parcel Map of Pendergraft Property and Surrounding Properties

RZ 99-7

C.5.16

E. J. Ball
Kenneth R. Mourton
Neal R. Pendergraft ^
John T. "Terry" Lee-
Rayburn W. Green

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James L. Moore, III ^
David G. Bercaw*
J. Michael Threet"
Joseph D. Reece
Shannon L. Poore

*Also Licensed in Oklahoma
"Also Licensed in Texas
-Siloam Springs Office
^ Of Counsel

April 20, 1999

Ms. Liz Clark
Senior Planning Clerk
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

Re: Request for Re-zoning on Joyce Street
Your File No.: RZ 99-7.00

Dear Ms. Scott:

I have copies of several letters your office has received objecting to our proposed re-zoning. I would like to respond to some of those objections in this letter and hopefully save some of the Planning Commission's discussion time on this project.

The Subject Property and the properties now owned by Dr. Harvey Smith, Mr. Dick Latta and the Ozark Nature Conservancy were all one tract of property owned by Perry and Vernal Crawford. As a part of our application to re-zone, I included a large plat (the "Plat") showing all of the Crawford's property as it is currently owned. In June, 1996, three entities entered into a purchase agreement with the Crawfords wherein Dr. Smith would purchase the home site and live there, we would purchase the Subject Property for office use, and Custom Building Products, Inc. ("Custom") would purchase the balance of the property for a small home housing development. For numerous reasons, Dr. Smith and I (and the other three owners of the Subject Property) became at odds with the principal owner of Custom to the point I was preparing to file suit. To avoid suit, Dr. Smith and our group set out to determine a manner in which we could get Custom out of the property, have fewer homes built and, hopefully, have a better overall development of the property. To achieve those goals, Dr. Smith worked with the Lattas and Dr. Hudson in arranging their purchase of the tracts shown

Ms. Liz Clark
April 20, 1999
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on the Plat. My partners and I agreed to pick up more than \$40,000.00 of additional development costs in the process and gave up property for Sunbest Place and the sidewalk. Dr. Smith and I also agreed for Paradise Valley to give up land for Sunbest Place. Once everyone agreed on terms, we filed a lot split request with the City proposing the property be split into the parts shown on the Plat.

In order to get the lot split approved, the City required the construction of Sunbest Place. That street, running along the East side of the Subject Property, is now complete with a sidewalk and was paid for by Dr. Smith, the Lattas, and our group. The lot split was approved and now, instead of having a lot of small houses across the street, the objecting parties have two residences, a large park area and our empty lot.

Each of the objecting letters states that the objecting party lives in a "residential area". As you know, Dr. Smith and I own the Paradise Valley Center offices immediately East of the Subject Property and North across Joyce Street from the objecting parties. A block or so East on Joyce is a car wash and convenience store. To the South from that store are several office buildings housing medical offices. As well, the objecting parties live on a commercial golf course. I would assume that complete strangers playing golf come by their doors almost everyday. As a part of the golf course, and approximately one block West of the objecting properties at the intersection of Joyce and Old Missouri, is the clubhouse for the golf course. Going West from that intersection, other than Butterfield Trail Village, the vast majority of the property is office space of some sort.

Therefore, I must respectfully disagree with the premise that the objecting parties live in an exclusively "residential" area. I do not believe the Paradise Valley property damages the value of the objecting properties. Nor do I believe that re-zoning the Subject Property to "R-O" will damage those values. For quite some time the City has espoused mixed use areas whereby residential, commercial, and office uses are all served by neighboring properties, if not the same building. From looking at the use of Joyce Street from Highway 71 to Highway 265, mixed use is exactly what has occurred. As well, that use conforms with the 2020 Land Use Plan set out by the City.

In response to the letter from Richard K. Weis, even though I do not live in that part of Fayetteville, I do care what happens there. Fayetteville is my home as well.

Ms. Liz Clark

April 20, 1999

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Finally, I would like to respond to some of the comments in Mr. Brewer's letter of April 11, 1999. When application for re-zoning RZ96-13 was submitted, Custom Building Products was still involved. As owner of the majority of the then unsplit parcel, Custom had the right to control the request for re-zoning. I spoke before the Planning Commission and Custom took control from there. Having had no problem getting the Paradise Valley Center property zoned "R-O" and considering the City's land use plan, I did not foresee problems with re-zoning the Subject Property. It was not until I started this re-zoning request, that I learned the Subject Property is "R-1" and not its original "A-1". I was told by the Custom people that request RZ96-13 was completely pulled down. I will admit I have waited for Joyce Street to be widened to four lanes and for the completion of Sunbest Place prior to submitting this request. So, while I did plan to wait until this later date to submit this request for re-zoning, the "R-1" change was not part of some grand scheme.

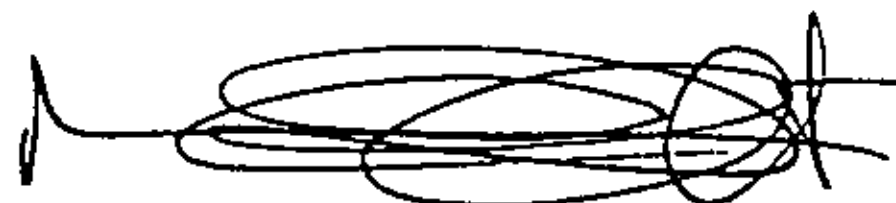
The objecting parties complain about additional traffic. This was also their complaint when Joyce Street was two lane. Joyce Street is always going to be busy, with or without any more development. By using "R-O" zoning, the office traffic will be limited to normal working hours. Residential use would be around the clock. The objecting parties seem to think that houses across the street would compliment their homes. I think that assumes we would build homes as nice as theirs.

The argument here is fairly clear. I believe that "R-O" zoning is the highest and best use for the Subject Property, conforms with the City's land use plan, and will compliment our neighborhood. The objecting parties feel just the opposite.

I appreciate the Planning Commission's time and review of my request. I will gladly answer any other questions at the meeting on April 26th.

With highest personal regards.

Sincerely,



Neal R. Pendergraft

NRP/lr

Ms. Liz Clark
April 20, 1999
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cc: Mr. and Mrs. Theodore Brewer
Mr. and Mrs. Robert Shaw
Mr. Richard Weis
Ms. Betty Bailey
Mr. Jim Lindsey

April 12, 1999

Office of City Planning
City Administration Building
113 West Mountain
Fayetteville, AR 72701

My wife and I are owners of our home at 2633 E. Joyce Blvd. We have owned it since Nov. 1987 prior to it being built. We strongly oppose RZ99-7.00(prendergraft,pp176). We are in a residential neighborhood and do not see any reason to put more residential offices in the middle of a beautiful neighborhood.

We appreciate you notifying us again. The present three office building across the street from us were built with out any notification to us.

Very Respectfully,

Robert Shaw
Anne T. Shaw

Robert and Anne Shaw
2633 E. Joyce Blvd.
Fayetteville, AR 72703

Planning Division
Record of Conversation

Brent Vinson Date: 4/12/99 Walk-in Telephone Consultation PP # 176

Name of Client: Jim Lindsey Phone #: 501-521-6618

Company Name, etc. Developer

Nature of Call or Visit: Opposes Pendergraft Rezoning

Mr. Lindsey called to voice his opposition of the rezoning to R-O. He told the residents who bought condos across the street that the land would remain R-1 or residential. He does agree, however, that the land would be better suited R-O than apartments. He questioned why the 2020 plan would show this area to be office in the future. Mr. Lindsey would like to recommend that the first 75' of property closest to the road (Joyce) be condos or some other PUD and the property behind this could be office. He also asked ^{the possibility of} if the existing condos across the street ~~could~~ changing to offices. I believe they could with the proper rezoning and change in the configuration of the parking lots (reduce egress/ingress's and connections

Synopsis of Discussion:

Necessary Follow-Up: none

RZ 99-7
C.5.22

Kenneth R. Mourtou
Neal R. Pendergraft
John T. "Terry" Lee
Rayburn W. Green

James L. Moore, III
David G. Bercaw
J. Michael Threet
Joseph D. Reece
Shannon L. Poore

Law Offices of
BALL & MOURTON, LTD., PLLC

A Professional Limited Liability Company
E.J. BALL PLAZA - 112 W. CENTER, SUITE 700
POST OFFICE BOX 1948
FAYETTEVILLE, ARKANSAS 72702
TELEPHONE: 501/442-6213 - FACSIMILE: 501/442-6233

Est. 1950

*Also Licensed in Oklahoma
*Also Licensed in Texas
-Siloam Springs Office
^ Of Counsel

March 24, 1999

Ms. Liz Scott
Senior Planning Clerk
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

Re: Request for Re-Zoning Joyce Street Property

Dear Liz:

Today I filed a request to re-zone property we own on Joyce Street. Prior to filing the application I attempted to contact several of the neighbors across the street at the Paradise Valley Townhouses. I wanted to include their position in my application.

After filing, I spoke to Mr. Ted Brewer, past president of their property owners' association. I explained that, as a courtesy, I wanted him to know we had filed for re-zoning. Mr. Brewer stated he is no longer president, but that he personally opposes our request.

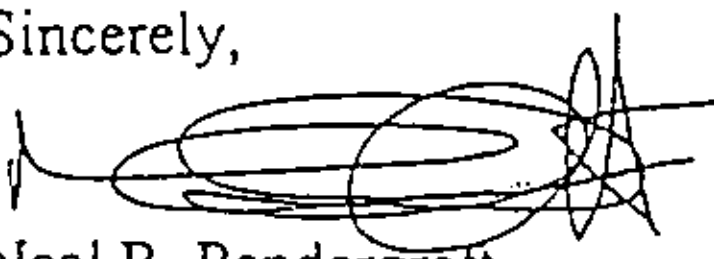
I also spoke to Mr. Gene Hudson, another owner of one of the townhouses. Mr. Hudson stated he thought the best use for the property was for professional offices and he did not believe the property would be best used for residential purposes.

I would appreciate your including a copy of this letter with my application. I feel it is in the best interest of everyone involved for the Planning Commission members to have as much information as possible prior to our April 26th scheduled meeting.

Thank you for your time and attention to this matter.

With highest personal regards.

Sincerely,



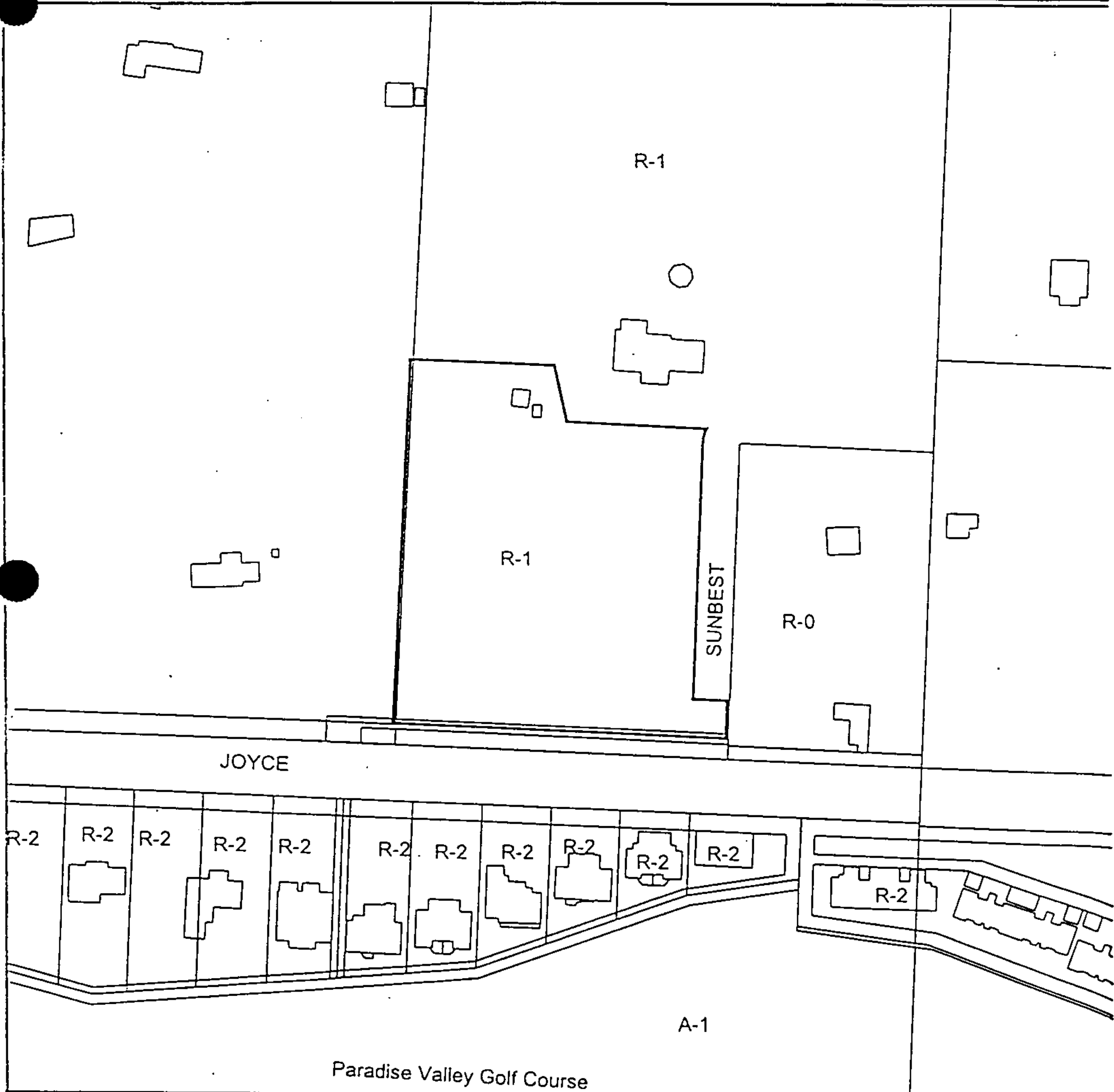
Neal R. Pendergraft

cc: Mr. Ted Brewer
Mr. Gene Hudson

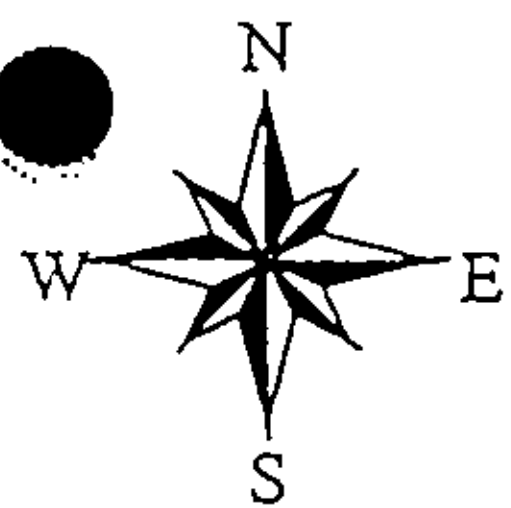
f:\neal\letters\joycezone1.wpd

Planning Commission Meeting
April 26, 1999
RZ 99-7 Pendergraft
Page 6.29

RZ99-7.00 - Pendergraft - Close Up



200 0 200 Feet



RZ 99-7

C.5.24

FILED FOR RECORD

CORRECTION WARRANTY DEED

99 JAN 14 PM 1 45

WASHINGTON CO AR
K. HARNESS

KNOW ALL MEN BY THESE PRESENTS:

That CUSTOM BUILDING PRODUCTS, INC., an Arkansas Corporation, and MICHAEL E. HILL, Tenants in Common, hereinafter called Grantor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to me in land paid by NEAL R. PENDERGRAFT, LAURI MYERS, MICHAEL E. HILL and DAVID E. JOHNSON, as Tenants in Common, hereinafter called Grantee, do hereby grant, bargain and sell unto the said Grantee and Grantee's heirs and assigns, the following described land, situate in Washington County, State of Arkansas, to-wit:

A tract of land in the NE 1/4 of the NE 1/4 of Section 25, Township 17 North, Range 30 West in Washington County, Arkansas, being more fully described as follows: Commencing at the Northeast corner of said Section 25; thence S 01 degrees 12 minutes 01 seconds E, 914.61 feet; thence S 89 degrees 05 minutes 27 seconds W, 277.51 feet; thence S 01 degrees 12 minutes 01 seconds E, 350.55 feet to the Point of Beginning; thence S 01 degrees 12 minutes 01 seconds E, 55.0 feet; thence S 89 degrees 05 minutes 27 seconds W, 480.85 feet; thence N 00 degrees 39 minutes 57 seconds W, 536.68 feet; thence N 88 degrees 47 minutes 59 seconds E, 206.91 feet; thence S 15 degrees 57 minutes 56 seconds E, 85.35 feet; thence N 89 degrees 02 minutes 07 seconds E, 201.44 feet; thence along a curve to the left having a radius of 50 feet, a central angle of 23 degrees 48 minutes 47 seconds, and an arc distance of 20.78 feet (chord = S 10 degrees 42 minutes 23 seconds W, 20.63 feet); thence S 01 degrees 12 minutes 01 seconds E, 380.03 feet; thence N 89 degrees 05 minutes 27 seconds E, 50.0 feet to the Point of Beginning, containing 4.98 acres, more or less.

ALSO A RIGHT OF WAY EASEMENT for Ingress and Egress over a tract of land in the NE 1/4 of the NE 1/4 of Section 25, Township 17 North, Range 30 West in Washington County, Arkansas, being more fully described as follows: Commencing at the Northeast corner of said Section 25; thence S 01 degrees 12 minutes 01 seconds E, 914.61 feet; thence S 89 degrees 05 minutes 27 seconds W, 277.51 feet; to the point of beginning; thence S 01 degrees 12 minutes 01 seconds E, 350.55 feet; thence S 89 degrees 05 minutes 27 seconds W, 50.00 feet; thence N 01 degrees 12 minutes 01 seconds W, 361.05 feet; thence along a curve to the right having a radius of 50.0 feet, a central angle of 217 degrees 07 minutes 34 seconds, and an arc distance of 189.51 feet, (chord = S 72 degrees 36 minutes 07 seconds E, 94.80 feet); to the point of Beginning, Containing 0.5 acres, more or less.

This Correction Deed is given to correct the legal description in the original deed of the parties filed March 7, 1997 at Document No. 97-13889 of the records of the Washington County Circuit Clerk and Recorder.

TO HAVE AND TO HOLD the said lands and appurtenances thereto belonging unto the said Grantees and Grantees' heirs and assigns, forever. And we, the said Grantors, hereby covenant that we are lawfully seized of said land and premises, that the same is unincumbered, and that we will forever warrant and defend the title to the said lands against all legal claims whatever.

I, Jeannie Hill, wife of Michael E. Hill, Grantor, do hereby release and relinquish unto the said Grantee my dower/curtesy and homestead in and to said lands and quitclaim unto said Grantee any interest, right and title I may have therein.

Michael Hill
2623 Charleston Crossing
Fayetteville Ark 72703

99003853

FAYETTEVILLE CITY COUNCIL PROPERTY RE-ZONING

RZ99-7.00

PENDERGRAFT, HILL, ETAL.

MAY 18, 1999

LOCATION OF PROPERTY: JOYCE BOULEVARD NEXT TO DR. HARVEY SMITH'S OFFICE COMPLEX, KNOWN AS PARADISE VALLEY CENTER.

SIZE OF PROPERTY: 4.98 ACRES

CURRENT ZONING: R-1 FUTURE LAND USE PLAN 2020 SHOWS THIS PROPERTY ZONING AS R-O (SEE ATTACHED MAP)

RE-ZONING REQUEST: RE-ZONE FROM R-1 TO R-O.
FAYETTEVILLE PLANNING COMMISSION RECOMMENDED APPROVING RE-ZONING REQUEST ON APRIL 26, 1999

UTILITIES: ALL CITY UTILITIES SERVICES TO PROPERTY.

TRAFFIC COUNTS: THE 1997 TRAFFIC COUNTS BY THE ARKANSAS HIGHWAY DEPARTMENT SHOW DAILY TRAFFIC ON CROSSOVER ROAD OF 13,000 NORTH OF JOYCE BLVD AND 14,000 SOUTH OF JOYCE BLVD. THE TRAFFIC COUNT ON JOYCE BLVD WEST OF OLD MISSOURI ROAD IS 11,300.

LOCATION REMARKS: THE PROPERTY IS SITUATED IN A HIGH GROWTH AND STRATEGIC LOCATION IN NORTHEAST FAYETTEVILLE. THE IMMEDIATE AREA CONTAINS SUCH USES AS A CONVENIENCE STORE, CAR WASH, MEDICAL OFFICES, DENTAL OFFICES, GENERAL OFFICES, GOLF COURSE AND ATHLETIC CLUB, CONDOMINIUMS AND OPEN LAND.

CROSSOVER ROAD IS THE MAJOR NORTH/SOUTH THOROUGHFARE BETWEEN FAYETTEVILLE AND SPRINGDALE. JOYCE BOULEVARD IS A FOUR LANE THOROUGHFARE. JOYCE BOULEVARD CONNECTS TO U.S. HIGHWAY 71 BUSINESS (NORTH COLLEGE AVENUE) AT THE NORTHWEST ARKANSAS MALL, WHICH IS LESS THAN ONE MILE FROM THE SUBJECT PROPERTY. THE MALL AREA CONTAINS IN EXCESS OF 1,500,000 SQUARE FEET OF RETAIL AND OFFICE SPACE AND IS THE TRADE CENTER FOR AN ESTIMATED 400,000+ PEOPLE.

LOOKING WEST FROM SUBJECT PROPERTY

WAL-MART SUPERCENTER

HOME DEPOT

BUTTERFIELD TRAIL
RETIREMENT VILLAGE

US HWY 71 FREEWAY CONNECTION

NW ARKANSAS MALL

SUBJECT
PROPERTY

JOYCE BOULEVARD

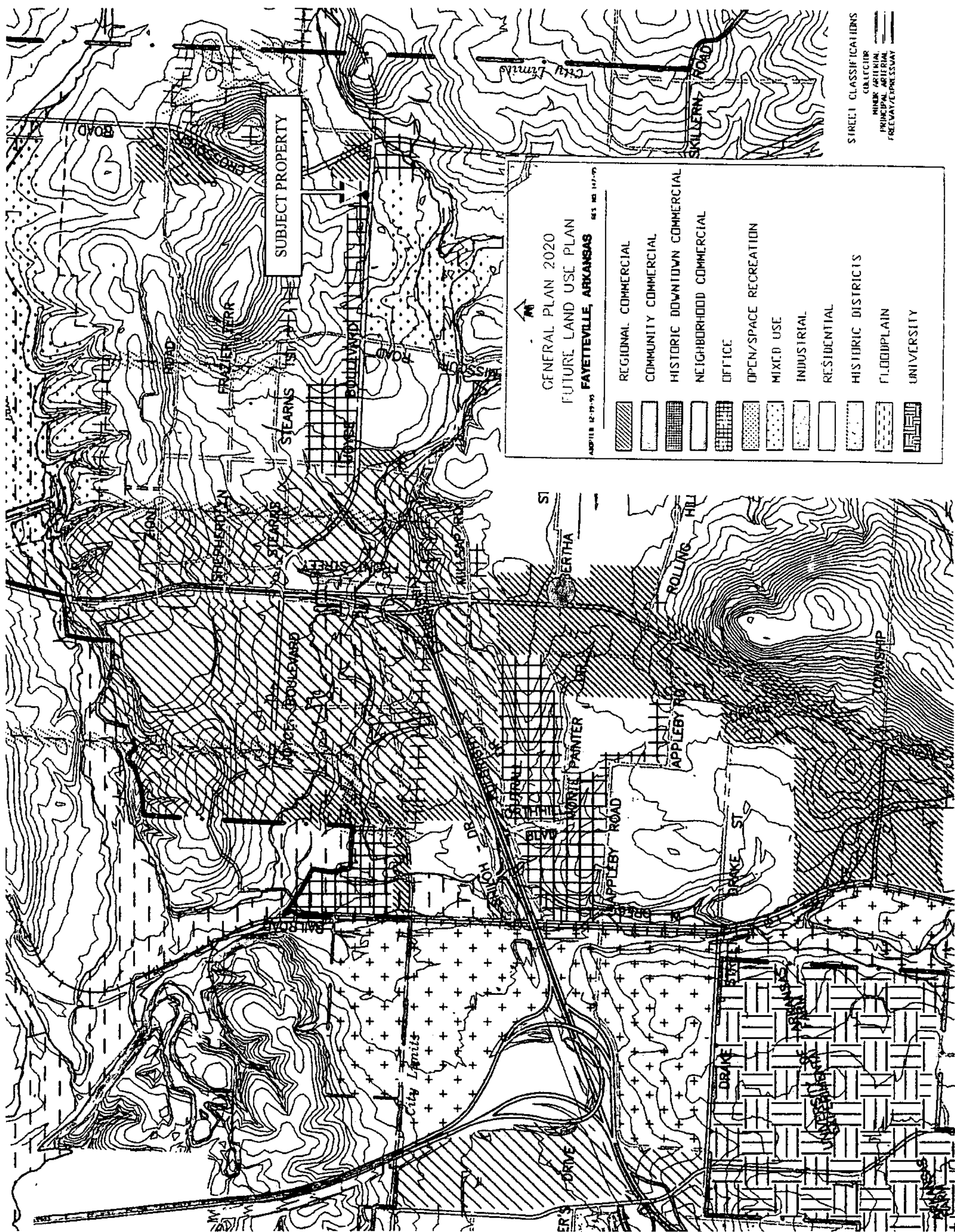
PARADISE VALLEY ATHLETIC CLUB
& GOLF COURSE

DENTAL OFFICE COMPLEX

11.2 ACRES
ZONED R-O
AND C-1

MEDICAL CLINIC

CROSSOVER ROAD(HWY 265)



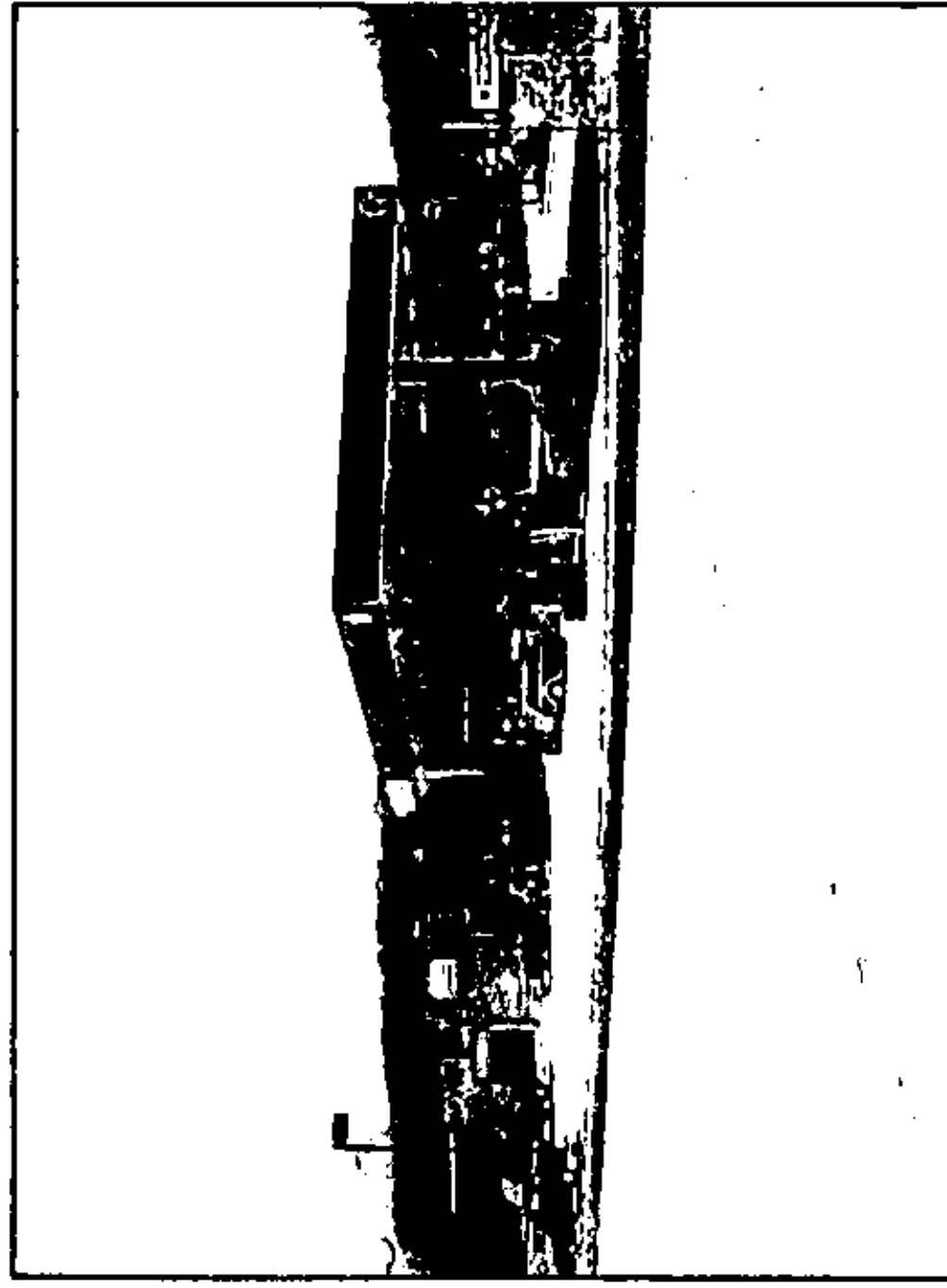
GENERAL PLAN 2020
FUTURE LAND USE PLAN
FAYETTEVILLE, ARKANSAS
APRIL 12-19-95 REV. NO. 11-7-95

AM

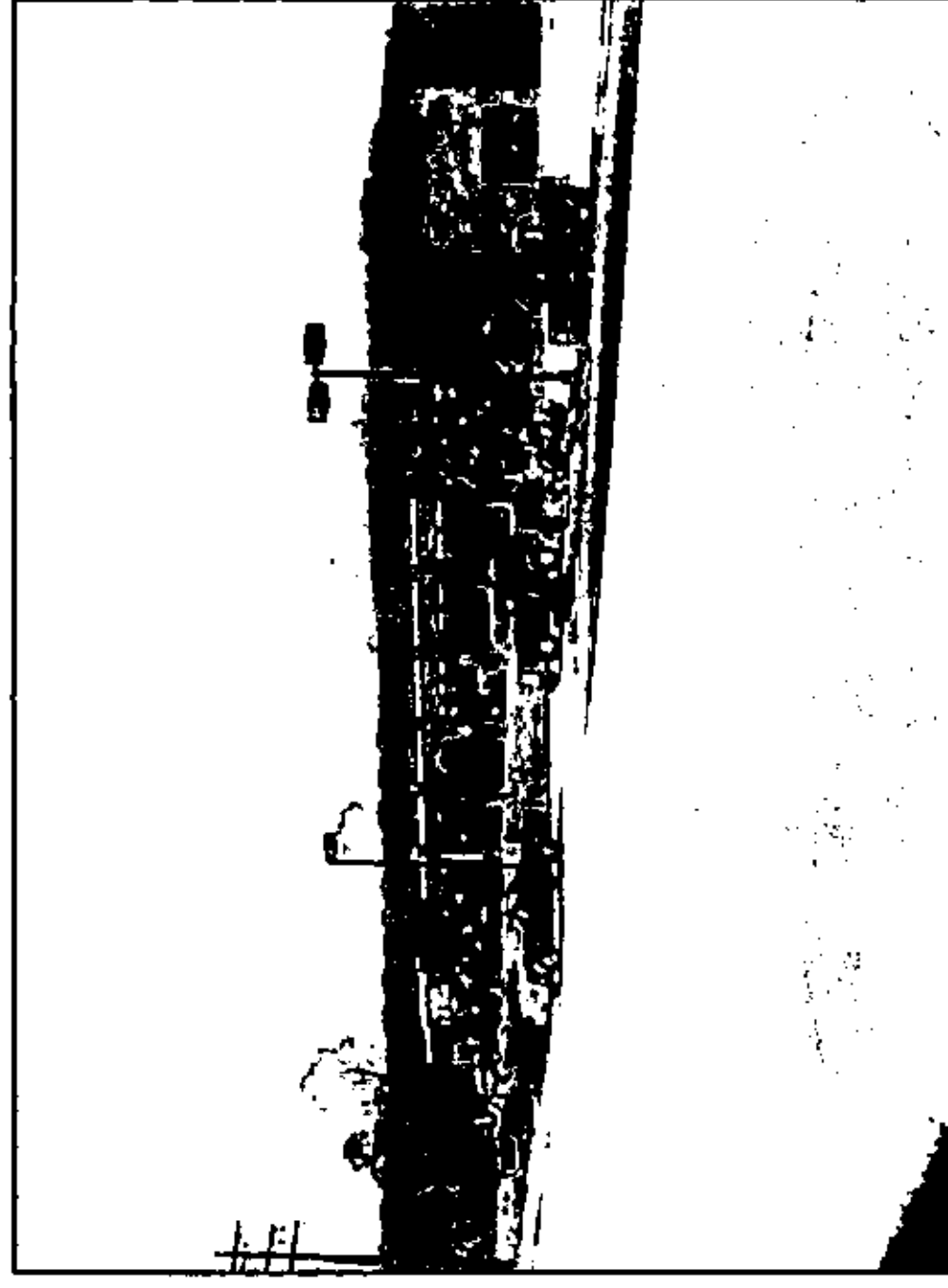
[Symbol]	REGIONAL COMMERCIAL
[Symbol]	COMMUNITY COMMERCIAL
[Symbol]	HISTORIC DOWNTOWN COMMERCIAL
[Symbol]	NEIGHBORHOOD COMMERCIAL
[Symbol]	OFFICE
[Symbol]	OPEN/SPACE RECREATION
[Symbol]	MIXED USE
[Symbol]	INDUSTRIAL
[Symbol]	RESIDENTIAL
[Symbol]	HISTORIC DISTRICTS
[Symbol]	FLOODPLAIN
[Symbol]	UNIVERSITY

STREET CLASSIFICATIONS

[Symbol]	COLLECTOR
[Symbol]	MINOR ARTERIAL
[Symbol]	PRINCIPAL ARTERIAL
[Symbol]	FREWAY/EXPRESSWAY



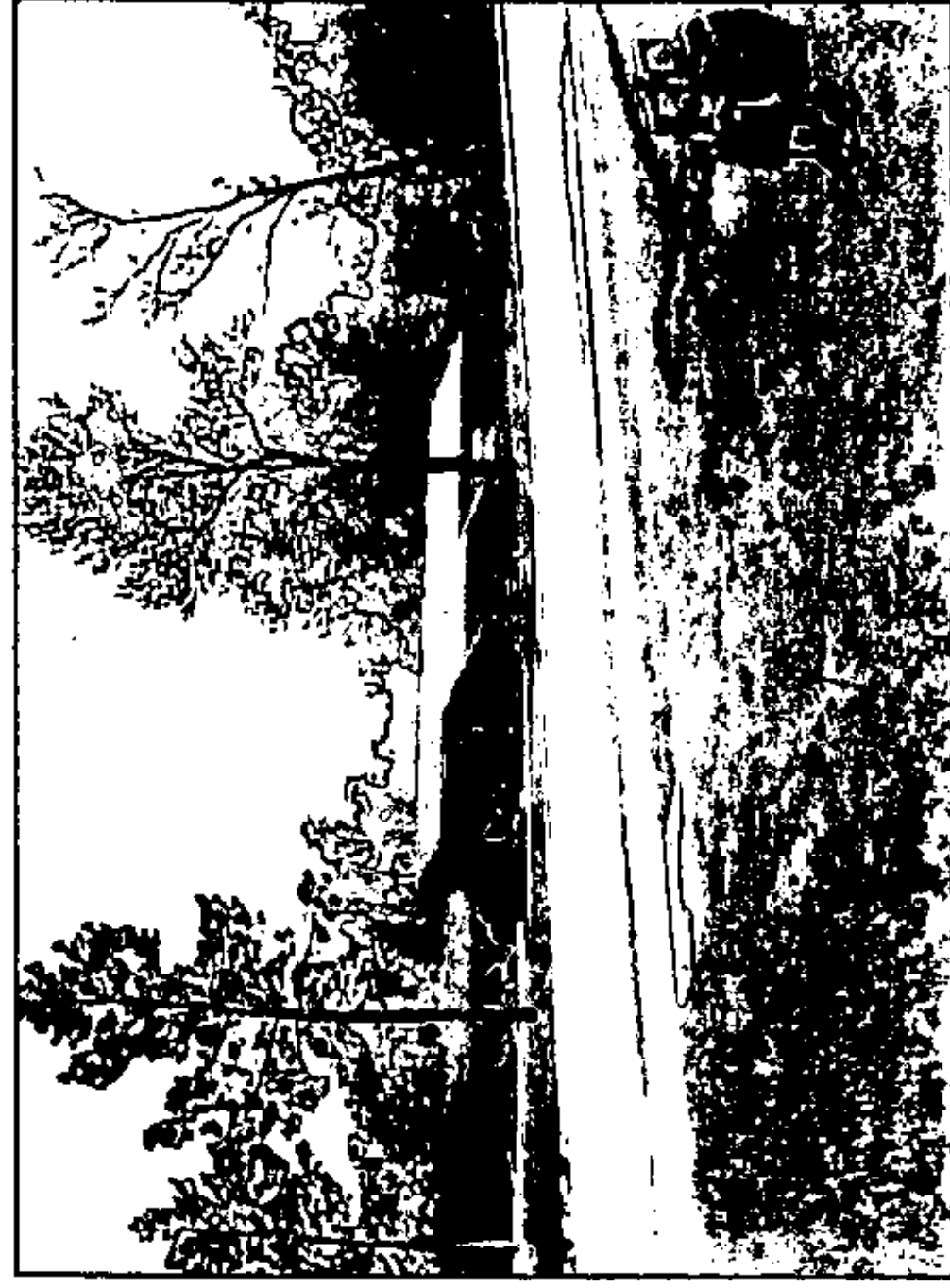
Convenience Store Located at North-
West Corner of Joyce Boulevard and
Highway and 265



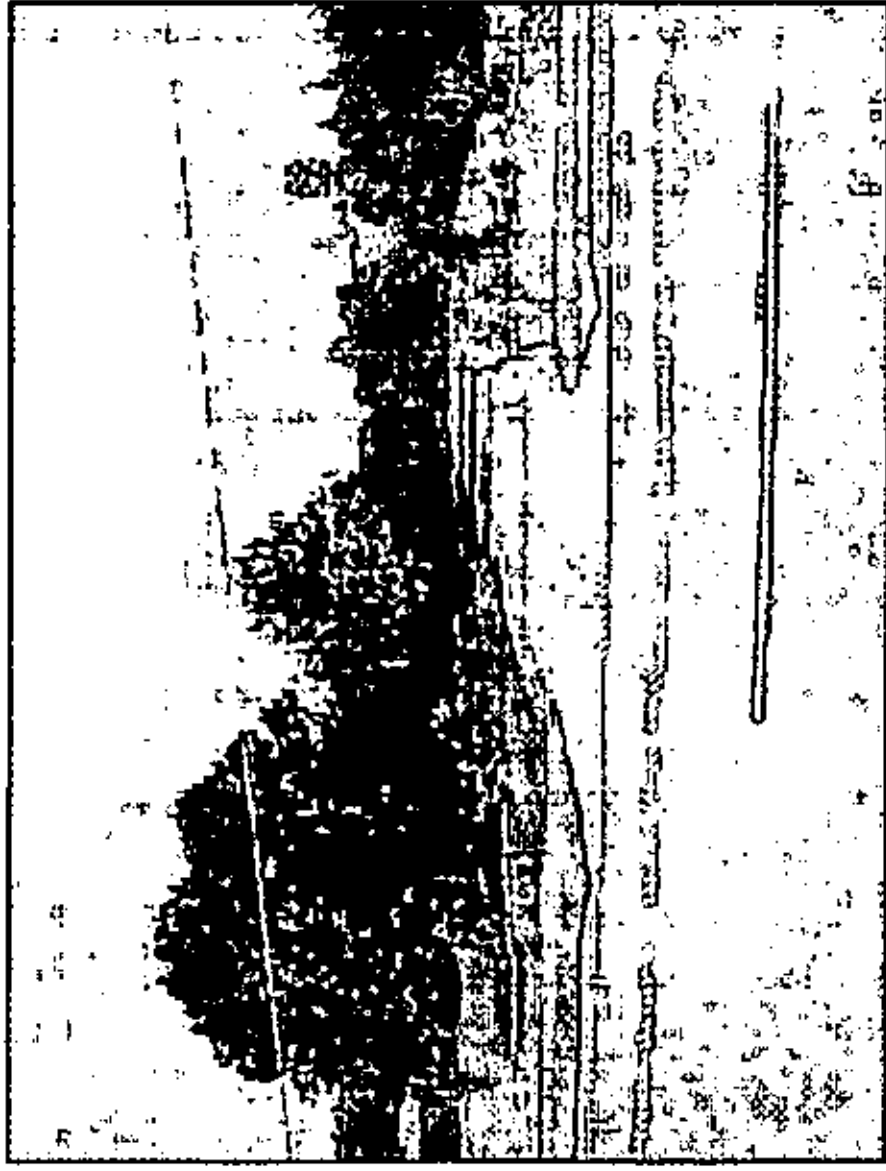
Car Wash Located East of
Convenience Store On Joyce
Boulevard



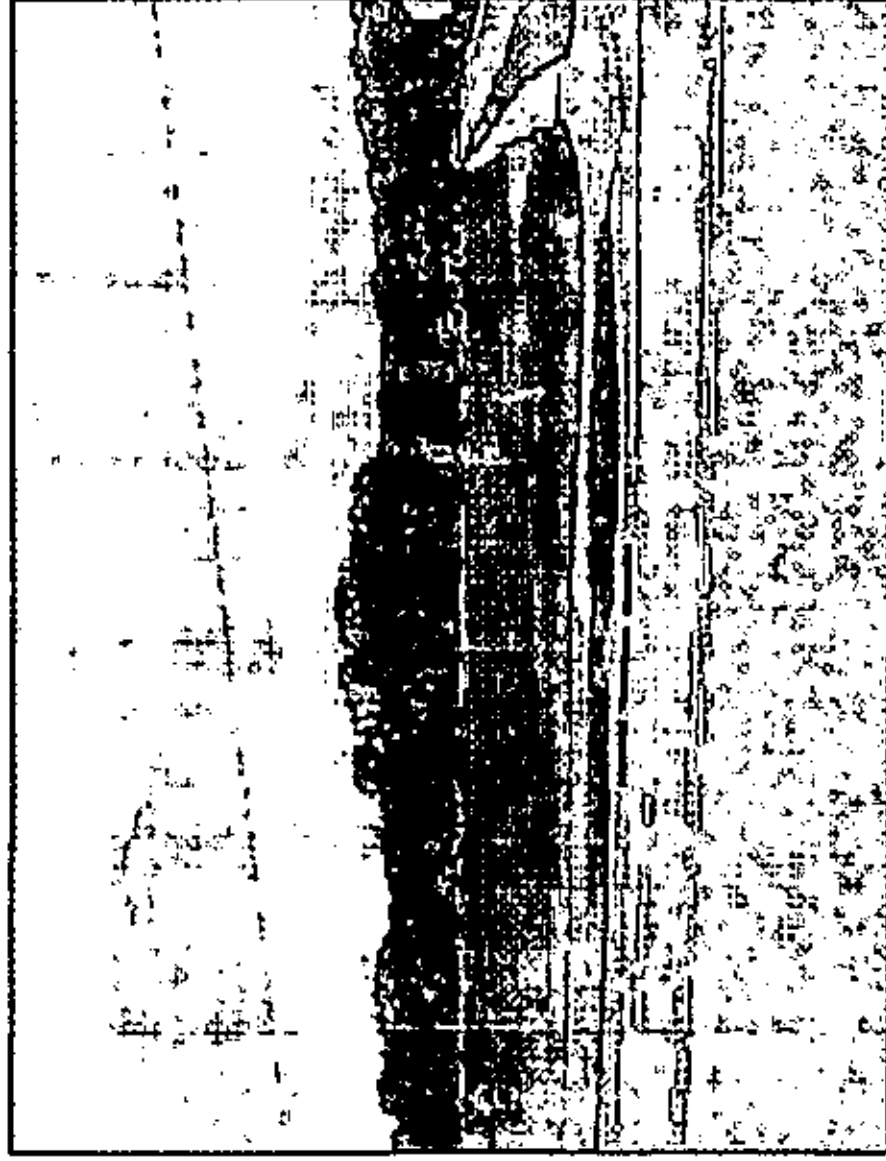
Family Medical Center on South-
West Corner of Joyce Boulevard and
Highway 265.



Arkansas Sports and Medical Located
South-Side of Joyce Boulevard West
of Family Medical Center.



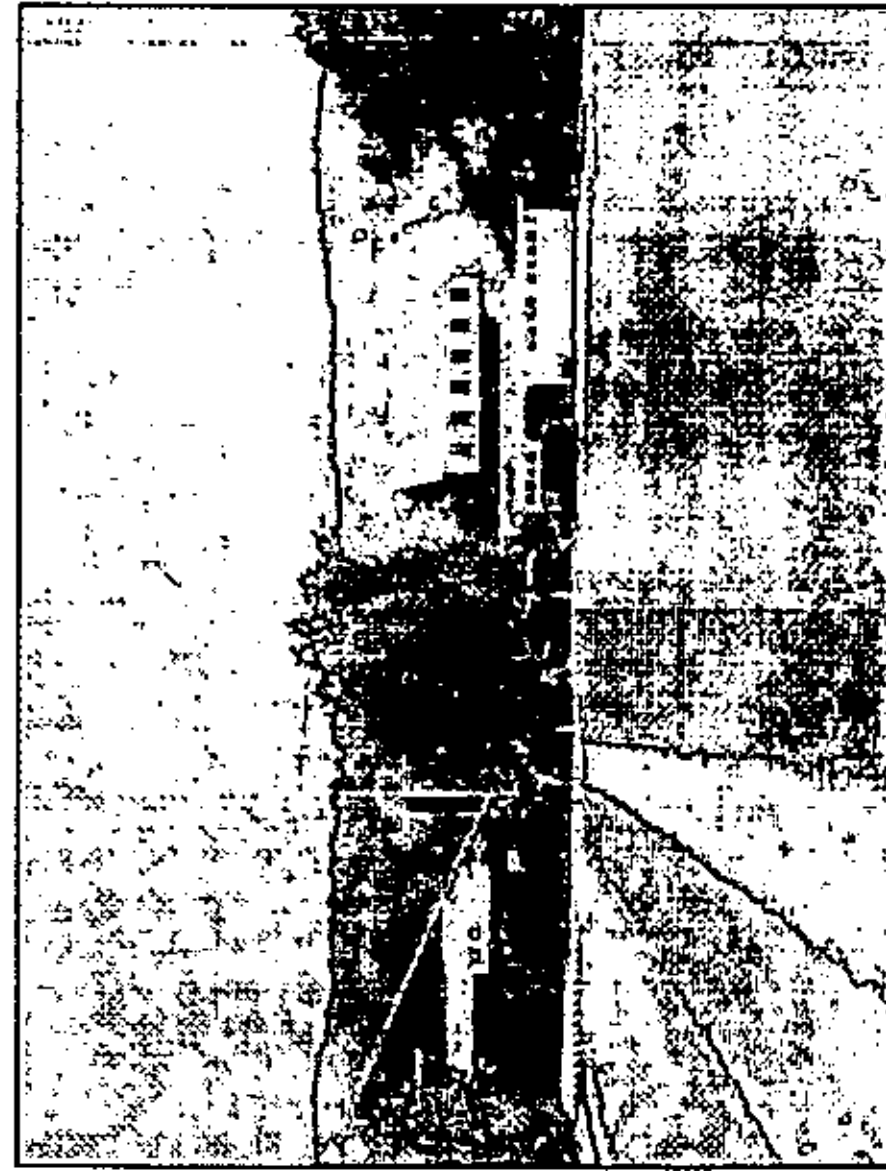
Dr. Loyde Hudson's Nature
Conservatory Property Located
Immediately West of Subject
Property On Joyce Boulevard.



Subject Property - 4.98 Acres
On Joyce Boulevard



Dr. Harvey Smith's Dental Office
Complex - Paradise Valley Center
Located Immediately East of Subject
Property On Joyce Boulevard.



Paradise Valley Condominiums
Located South of Subject
Property



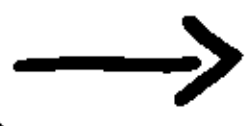
Paradise Valley Athletic Club
Golf Course Located Directly
South of Subject Property



Paradise Valley Athletic Club
Extending to the Corner of Old
Missouri and Joyce Blvd.

Ozark Land Trust

Dr. Hudson Residence



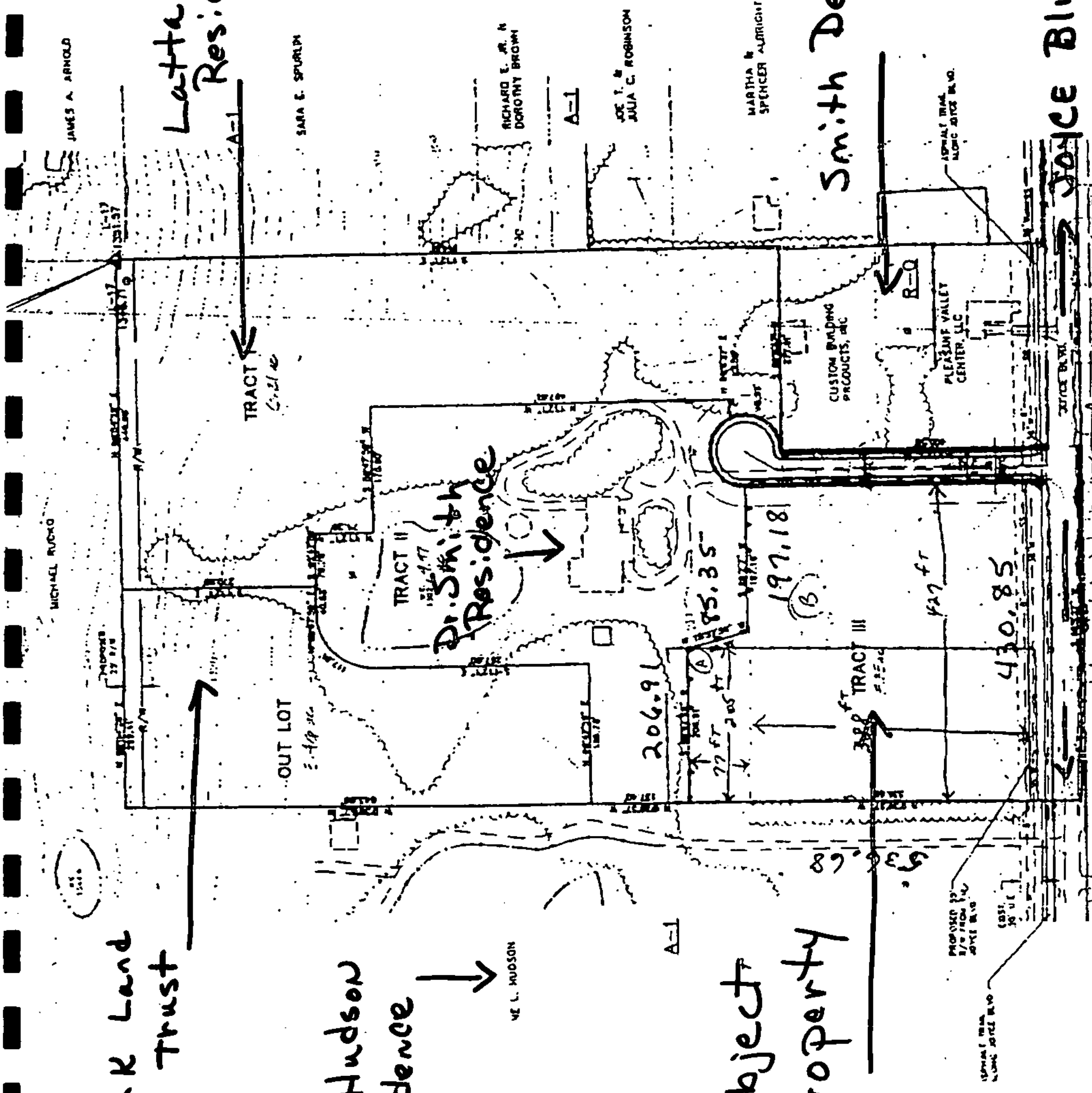
VE L. HUDSON

Subject Property

Smith Dental

Latta Residence

Joyce Blvd.

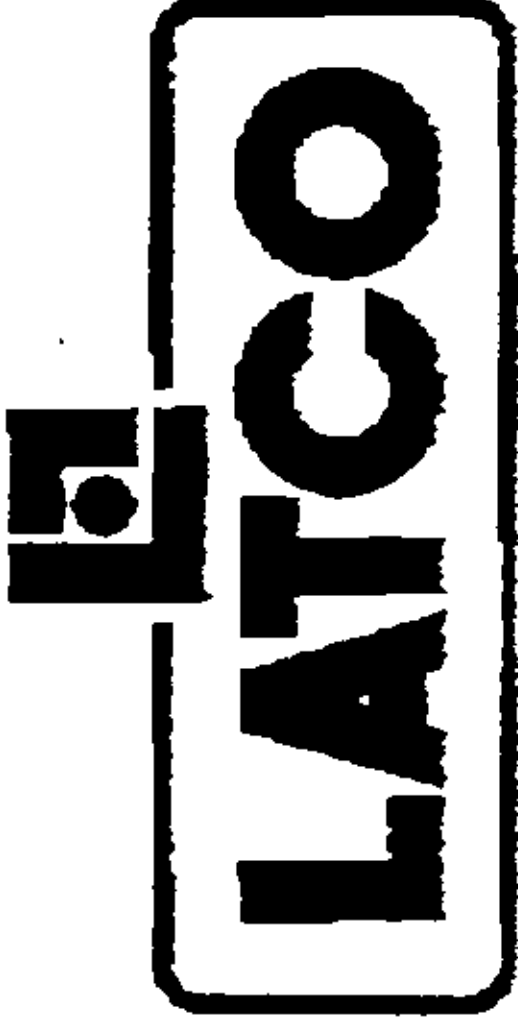


05/14/99 09:33 FAX 5014422643

LATTA RESIDENCE

002

Highway 68 East
P.O. Box 9
Lincoln, Arkansas 72744



Telephone 501-824-3282
Fax 501-824-3883

May 14, 1999

City Council
City of Fayetteville, Arkansas

Mr. Neal Pendergraft asked me to submit in writing to the City Council my opinion regarding the rezoning of the property located east of 2680 Joyce street since I am an adjoining property owner. Ideally, I would like to see one house built on the property, and the land remain residential. However, I do understand that this "ideal" situation is not economically feasible. I also agree with Dr. Hudson that an R-O zoning could provide a better surrounding environment for the Ozark Regional Land Trust

As an adjoining property owner, I approve Mr. Pendergraft's request for rezoning the property located east of 2680 Joyce from R-1 to R-O.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dick Latta".

Dick Latta

Farm Buildings • Poultry Buildings • Poultry Equipment • Steel Trusses • Wood Trusses

STAFF REVIEW FORM

☒ Agenda Request
☐ Contract Review
☐ Grant Review

For the Fayetteville City Council meeting of May 18, 1999.

FROM:		
Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To approve an ordinance for RZ99-9 submitted by Alan Reid on behalf of Greta Smith for property located at 1755 and 1939 Hoot Owl Lane. The property is zoned A-1, Agricultural, and contains approximately 5.45 acres. The request is to rezone the property to R-1, Low Density Residential.

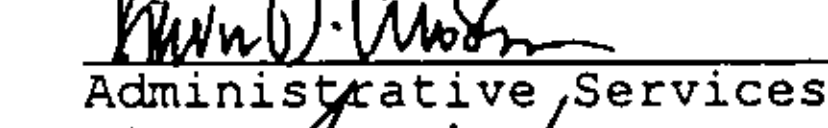
COST TO CITY:

\$0		
Cost of this request	Category/Project Budget	Category/Project Name
Account Number	Funds used to date	Program Name
Project Number	Remaining balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached _____
Budget Coordinator _____ Administrative Services Director _____

CONTRACT/GRANT/LEASE REVIEW:		GRANTING AGENCY: _____	
Accounting Manager	Date	ADA Coordinator	Date
City Attorney	Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and the Planning Commission recommended to City Council that the rezoning be approved with a unanimous vote of 8-0-0. Commissioner Estes was not present.

	4-30-99	<u>Cross Reference</u>
Division Head	Date	
	5-4-99	
Department Director	Date	
	4 MAY 4 1999	New Item: Yes No
Administrative Services Director	Date	Prev Ord/Res#: _____
	5/4/99	Orig Contract Date: _____
Mayor	Date	

Planning Commission Minutes
April 26, 1999
Page 11

**RZ99-9: REZONING
SMITH, pp595**

This item was submitted by Alan Reid on behalf of Greta Smith for property located at 1755 and 1939 Hoot Owl Lane. The property is zoned A-1, Agricultural, and contains approximately 5.45 acres. The request is to rezone the property to R-1, Low Density Residential.

Alan Reid was present on behalf of the request.

Commission Discussion

Reid: I am representing Greta Smith to help her try and get through the rezoning process and allow her to split her land into 2 tracts under R-1 zoning.

Johnson: This area is off Highway 62 West in the direction of Farmington and it's behind the Ozark Mountain Smokehouse.

Public Comment

None.

MOTION

Ms. Hoffman made a motion to approve RZ99-9 subject to staff comments.

Mr. Forney seconded the motion.

Johnson: Be aware that our action regarding rezoning is a recommendation to the City Council which must pass an ordinance to rezone the property.

Roll Call

Upon roll call, the motion with a unanimous vote of 8-0-0.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission Members
THRU: Tim Conklin, City Planner
FROM: Brent Vinson, Associate Planner
DATE: April 26, 1999

RZ 99-9.00: Rezoning (Smith, pp 595) was submitted by Alan Reid on behalf of Greta Smith for property located at 1755 and 1939 Hoot Owl Lane. The property is zoned A-1, Agricultural, and contains approximately 5.19 acres. The request is to rezone the property to R-1, Low Density Residential. 45

RECOMMENDED MOTION:

Staff recommends the requested rezoning from A-1 to R-1 based on the findings included as part of this report.

PLANNING COMMISSION ACTION: YES Required
_____Approved _____Denied

Date: April 26, 1999

Comments:

CITY COUNCIL ACTION: YES Required
_____Approved _____Denied

Date: / /

BACKGROUND :

The applicant and her representative request to rezone property from A-1 (Agricultural) to R-1 (Low Density Residential). The applicant has obtained a lot split and must have her land rezoned before the lot split and deed can be filed. This property is located south of Highway 62 behind the Ozark Mountain Smokehouse.

ADJACENT LAND USE AND ZONING:

- North:** The area to the north is wooded with one residence.
- South:** There are a few single family residences scattered around the hillside to the south along with the Ozark Mountain Smokehouse before coming to Highway 62 West.
- East:** The area to the east is wooded with a few single family residences.
- West:** The area to the west is wooded with a few single family residences.

INFRASTRUCTURE:

- Streets:** Hoot Owl Lane is not designated on the Master Street Plan.
- Water:** A 6" waterline exists along Hoot Owl Lane.
- Sewer:** A 6" sewer line exists along Hoot Owl Lane.

LAND USE PLAN:

General Plan 2020 shows this area as Mixed Use.

RZ 99.00-6.00 FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The Land Use Plan (General Plan 2020) shows this area as mixed use which is consistent with the plan.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning is justified at this time to meet the goals of the Land Use Plan for infill development.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning would not appreciably increase traffic danger or congestion.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed zoning would not increase the population density and would not undesirably increase the load on the water and sewer facilities.

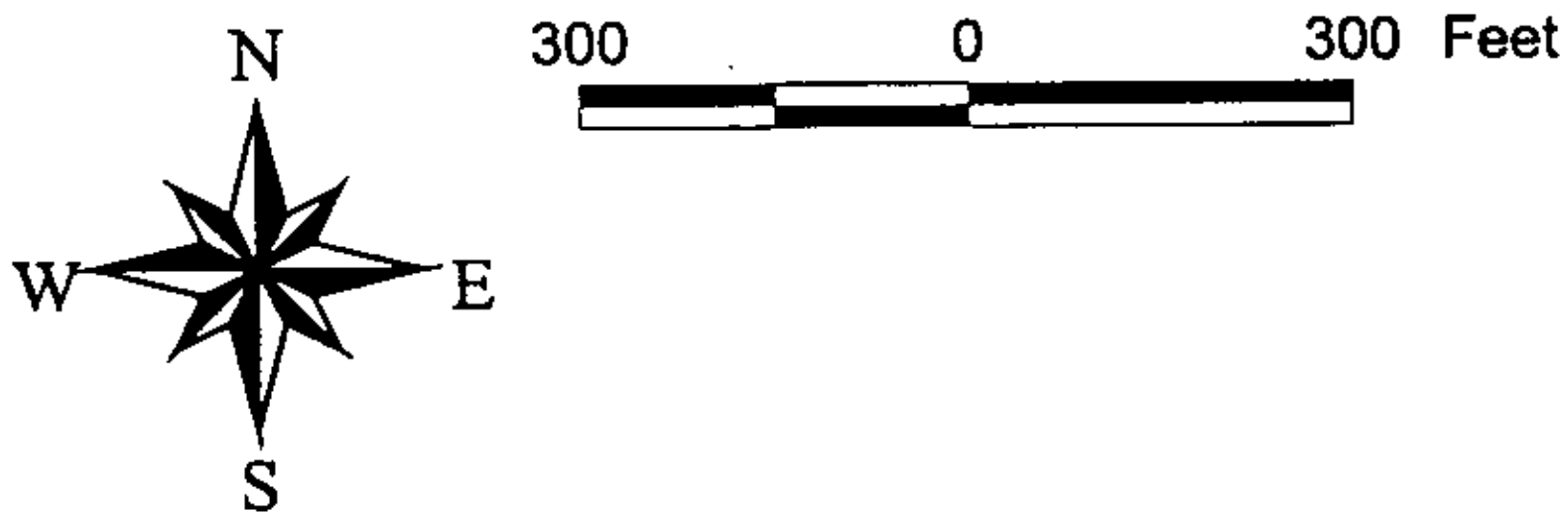
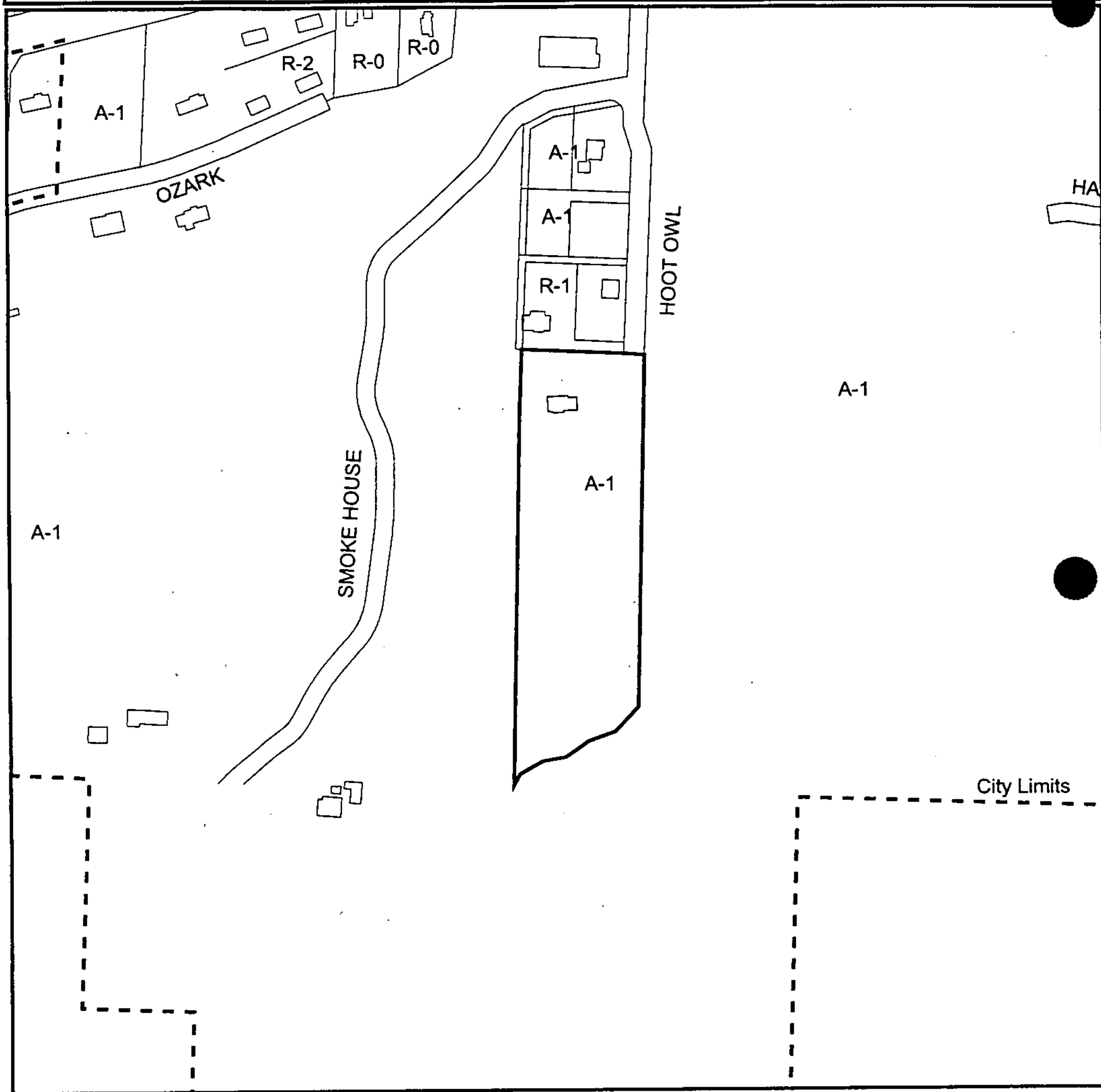
5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

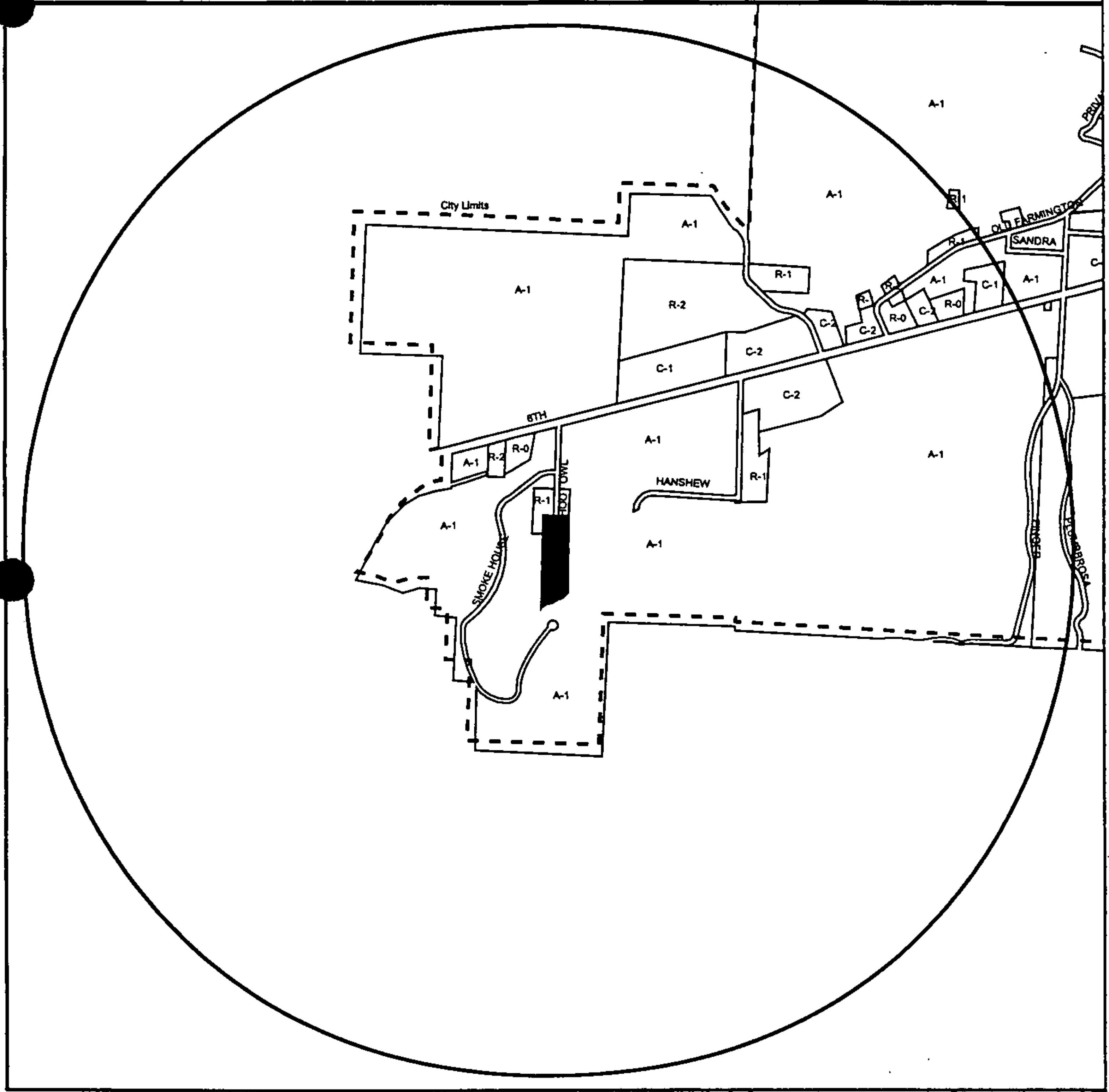


The Residence of the Applicant on the Subject Property

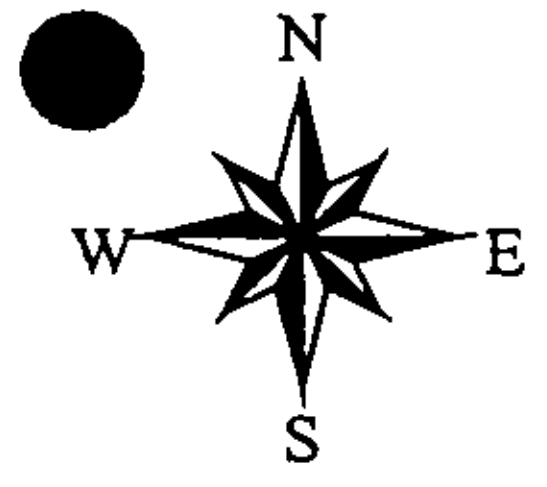
RZ99-9.00 Smith - Close Up



RZ99-9.00 - Smith - One Mile Diameter



1400 0 1400 Feet



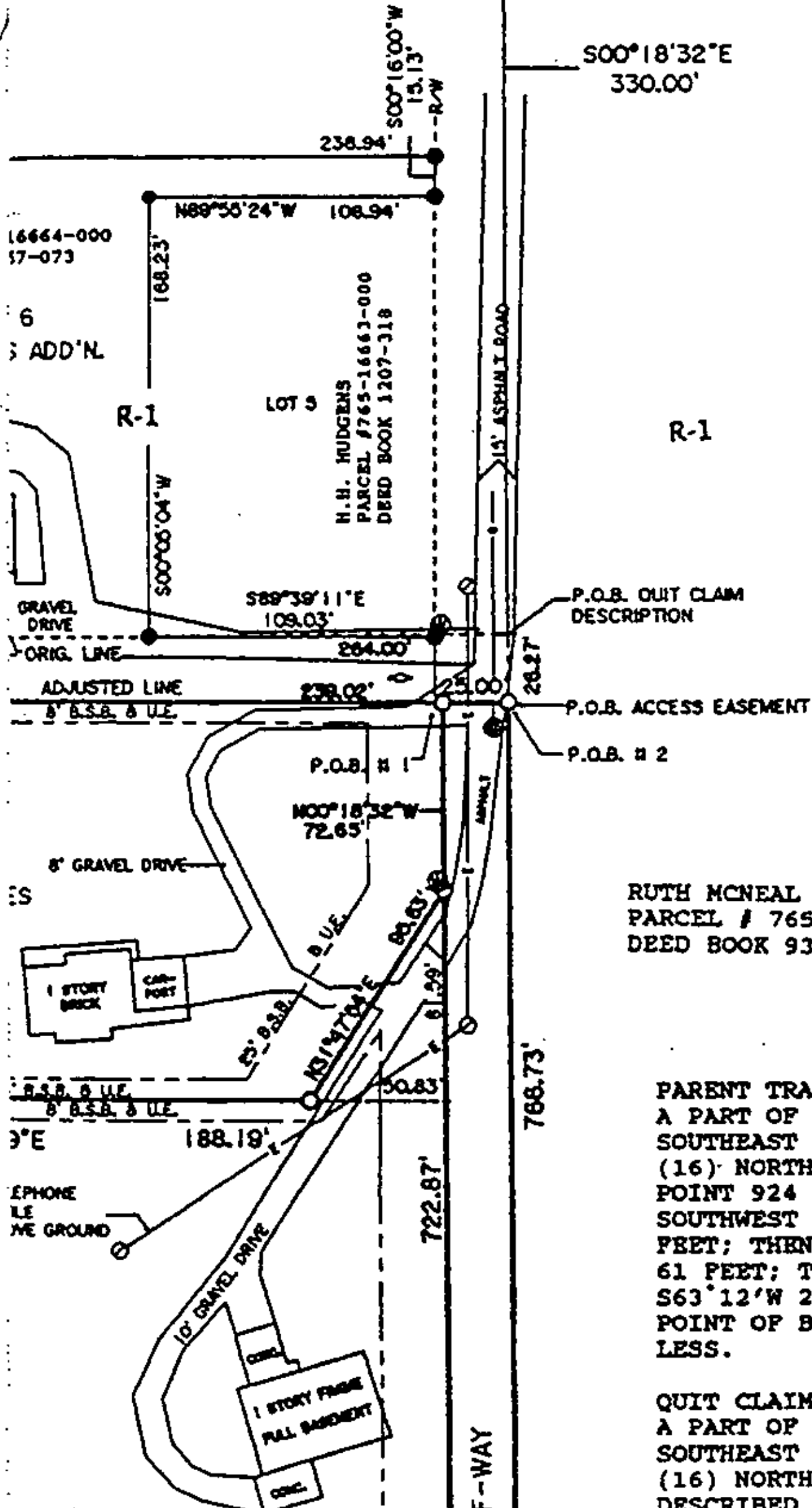


14

W

264.00'

FOUND STONE
NE CORNER
SW 1/4, SE 1/4
SECTION 24
T-16-N, R-31-W



RUTH MCNEAL
PARCEL # 765-16301-000
DEED BOOK 93-19580

A-1

PARENT TRACT (GRETA SMITH QCD 95-047463)
A PART OF THE EAST HALF (E½) OF THE SOUTHWEST QUARTER (SW¼) OF THE
SOUTHEAST QUARTER (SE¼) OF SECTION TWENTY-FOUR (24), TOWNSHIP SIXTEEN
(16) NORTH, RANGE THIRTY-ONE (31) WEST, DESCRIBED AS BEGINNING AT A
POINT 924 EAST AND 330 FEET SOUTH OF THE NORTHWEST CORNER OF THE
SOUTHWEST QUARTER (SW¼) OF THE SOUTHEAST QUARTER (SE¼); THENCE SOUTH 793
FEET; THENCE S41°15'W 76 FEET; THENCE S53°28'W 64 FEET; THENCE S54°15'W
61 FEET; THENCE S78°41'W 51 FEET; THENCE S59°00'W 58 FEET; THENCE
S63°12'W 28 FEET; THENCE NORTH 990 FEET; THENCE EAST 264 FEET TO THE
POINT OF BEGINNING, CONTAINING FIVE AND ONE-HALF (5½) ACRES, MORE OR
LESS.

QUIT CLAIM TO ADJOINER TO NORTH
A PART OF THE EAST HALF (E½) OF THE SOUTHWEST QUARTER (SW¼) OF THE
SOUTHEAST QUARTER (SE¼) OF SECTION TWENTY-FOUR (24), TOWNSHIP SIXTEEN
(16) NORTH, RANGE THIRTY-ONE (31) WEST, BEING MORE PARTICULARLY
DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID 20
ACRE TRACT; THENCE N89°47'21"E ALONG THE NORTH LINE OF SAID 20 ACRE
TRACT 264.00 FEET; THENCE S00°18'32"E 330.00 FEET TO THE TRUE POINT OF
BEGINNING; THENCE S00°18'32"E 26.27 FEET TO A SET IRON; THENCE
N89°39'04"W ALONG THE SOUTH LINE OF LOT NUMBERED SIX (6) OF HUDGENS
ADDITION, PAYETTEVILLE, ARKANSAS, 264.02 FEET TO A SET IRON ON THE WEST
LINE OF SAID 20 ACRE TRACT; THENCE N00°18'32"W ALONG THE WEST LINE OF
SAID 20 ACRE TRACT 23.67 FEET; THENCE N89°47'21"E 264.00 FEET TO THE
POINT OF BEGINNING, CONTAINING 0.15 ACRES, MORE OR LESS.

TRACT 2
4.05 ACRES

TRACT #1 (PROPOSED SPLIT)
A PART OF THE EAST HALF (E $\frac{1}{2}$) OF THE SOUTHWEST QUARTER (SW $\frac{1}{4}$) OF THE
SOUTHEAST QUARTER (SE $\frac{1}{4}$) OF SECTION TWENTY-FOUR (24), TOWNSHIP SIXTEEN
(16) NORTH, RANGE THIRTY-ONE (31) WEST, BEING MORE PARTICULARLY DESCRIBED
AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID 20 ACRE TRACT;
THENCE N89°47'21"E ALONG THE NORTH LINE OF SAID 20 ACRE TRACT 264.00
FEET; THENCE S00°18'32"E 356.27 FEET TO A SET IRON; THENCE N89°20'45"W
25.00 FEET TO A SET IRON FOR THE TRUE POINT OF BEGINNING; THENCE

STAFF REVIEW FORM

☒ Agenda Request
☐ Contract Review
☐ Grant Review

For the Fayetteville City Council meeting of May 18, 1999.

FROM: _____
Tim Conklin _____ Planning _____ Public Works _____
Name _____ Division _____ Department _____

ACTION REQUESTED: To approve an ordinance for RZ99-10 submitted by Glen Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 8.97 acres. The request is to rezone the property to R-O, Residential Office.

COST TO CITY:

\$0
Cost of this request _____ Category/Project Budget _____ Category/Project Name _____
Account Number _____ Funds used to date _____ Program Name _____
Project Number _____ Remaining balance _____ Fund _____

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached _____
Budget Coordinator _____ Administrative Services Director _____

CONTRACT/GRANT/LEASE REVIEW: _____ GRANTING AGENCY: _____
Accounting Manager _____ Date _____ ADA Coordinator _____ Date _____
City Attorney _____ Date _____ Internal Auditor _____ Date _____
Purchasing Officer _____ Date _____

STAFF RECOMMENDATION: Staff recommended approval and the Planning Commission recommended to City Council that the rezoning be approved with a vote of 5-3-0. Commissioners, Forney, Hoffman, and Hoover voted against the motion. Commissioner Estes was absent.

Tim Conklin _____ 4-30-99 _____ Cross Reference
Division Head _____ Date _____
Tim Conklin _____ 5-9-99 _____ New Item: Yes No
Department Director _____ Date _____
Tim Conklin _____ 4/14/99 _____ Prev Ord/Res#: _____
Administrative Services Director _____ Date _____
Tim Conklin _____ 5/4/99 _____ Orig Contract Date: _____
Mayor _____ Date _____

Planning Commission Minutes
April 26, 1999
Page 33

RZ99-10 AND RZ99-11: REZONINGS
FOSTER, pp99 and 60

These items were submitted by Glenn Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 57.23.

Glenn Carter was present on behalf of the project.

Staff Recommendation

Staff recommends approval of the request rezonings from A-1 to R-1 and A-1 to R-O.

Commission Discussion

Johnson: The request is to rezone an 8.97 acres tract to the west to R-O, Residential Office, and a 48.26 acre tract to the east to R-1, Low Density Residential.

Conklin: With regard to the R-O zoning, this is consistent with past actions that the Planning Commission and City Council have approved. For example, David Lyle Subdivision on Huntsville Road, Deerfield on Huntsville Road, Meadowlands on Highway 16 west, Magnolia Crossing on 6th Street, Walnut Grove, Willow Springs, and Owl Creek have all had an R-O or C-1 type zoning that has been approved as a buffer to the R-1.

Carter: I would like to add that the R-O provides a buffer between R-1 and highway traffic. In the staff report I received the word "wall" is used and that will be a decorative concrete fence similar to what you see on Skillern Road at Savannah Estates.

Public Comment

John Nooncaster was present and spoke in opposition to the zonings. He noted that he believed that the application was incomplete.

Further Commission Discussion

Hoffman: Are we to vote on these independently?

Johnson: Yes.

MOTION

Planning Commission Minutes
April 26, 1999
Page 34

Ms. Hoffman made a motion to deny RZ99-10.

Ms. Hoover seconded the motion.

Johnson: What does the 2020 Plan show for this area?

Conklin: It is shown to be residential.

Ward: I really don't think the motion is inconsistent with what we have been doing in the past because a lot of subdivisions have residential offices along highways. It's been proven that most people don't want to live on a major highway. It's better to have a buffer between the highway and houses and I'm not sure R-O is the one to buffer but it is ludicrous for us to try to put homes right up against a state highway.

Johnson: There is R-1 already built on Crossover but arguably the problem is urban sprawl because all those lots are huge. I think if this is residential up to the highway then we would have a lot of urban sprawl.

Hoffman: I think it is premature to zone at this stage.

Johnson: This couldn't come back for a year if this is denied.

Hoffman: I'm not adverse to rezoning to Commercial if there is need but I also feel it is our duty to be responsible and not create too much empty zoning.

Ward: This is not being asked to be zoned C-1 or C-2. This is residential office zoning which seems to me to be close to what we want out there. Apartments out there is not the best thing either. R-O is the best buffer between highways and residential homes.

Carter: I agree with Commissioner Ward. What we are trying to do is create a buffer between the highway traffic and the residential. If we don't create a buffer it's going to encourage large lots and reduced density. I just feel like if we had a buffer zone there with R-O which is not high commercial like C-1 or C-2, it would encourage a less dense type of development with larger lots and it wouldn't worsen the traffic. We feel this is consistent with what has been done in Fayetteville. I would like for you to consider the R-O buffer and the decorative fence.

Forney: I'm going to support the motion to deny the rezoning. R-O is a residential zoning which is an attempt to make an office that is relatively unobtrusive.

Roll Call

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April 26, 1999
Page 35

Upon roll call, the motion failed with a vote 3-5-0. Commissioners Johnson, Odom, Shackelford, Marr, and Ward voted against the motion

MOTION

Mr. Odom made a motion to approve RZ99-10.

Mr. Shackelford seconded the motion.

Roll Call

Upon roll call, the motion passed with a vote of 5-3-0. Commissioners Forney, Hoffman, and Hoover voted against the motion.

MOTION

Mr. Forney made a motion to approve RZ99-11.

Ms. Hoffman seconded the motion.

Roll Call

Upon roll call the motion passed with unanimous vote of 8-0-0.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission Members
THRU: Tim Conklin, City Planner
FROM: Brent Vinson, Associate Planner
DATE: April 26, 1999

RZ 99- 10.00, 11.00: Rezoning (Foster, pp 99, 60) was submitted by Glen Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 57.23 acres. The request is to rezone an 8.97 acre tract to the west to R-O, Residential Office, and a 48.26 acre tract to the east to R-1, Low Density Residential.

RECOMMENDED MOTION:

Staff recommends for approval of the requested rezonings from A-1 to R-1 and A-1 to R-O based on the findings included as part of this report.

PLANNING COMMISSION ACTION: YES Required
_____Approved _____Denied

Date: April 26, 1999

Comments:

CITY COUNCIL ACTION: YES Required
_____Approved _____Denied

Date: / /

BACKGROUND :

The applicant requests to rezone approximately 48 acres of land to R-1 and approximately 9 acres to R-O. The R-O property would run along Hwy. 265 on the eastside with the R-1 property located to the east. The applicant plans to build a subdivision with a wall dividing the two zonings. The land includes one residence and property which is currently being used as farmland. The applicant plans to convert the existing residence into office space. A creek cuts through the southern portion of the site. Springdale's city limits are approximately 200' away from the property to be rezoned.

The applicant desires to have two entrances onto the property at the time it is developed. According to the applicant, a strip of "landscaping and green space" will be provided along the highway and the creek and this would include a park area at the time of development. The applicant is interested in incorporating a trail along the creek to connect with the future botanical garden and Lake Fayetteville's parks.

ADJACENT LAND USE AND ZONING:

- North:** Clear Creek Acres Subdivision exists north of the property.
- South:** Farmland and a single family residence exist to the south. Further south at Zion Road there is a small strip center and Fayetteville Athletic Club.
- East:** Farmland and single family residences exist to the east.
- West:** The area between Highway 265 and Lake Fayetteville is proposed to become the Fayetteville Botanical Garden in the future.

INFRASTRUCTURE:

- Streets:** Highway 265 is a Principal Arterial with 110' of right of way (55' on each side from the centerline of the road).
- Water:** No sewer lines exists on the site. The closest sewer line in Fayetteville is an 8" sewer line at Randal Place approximately 140' south of the site. The applicant is advised that off-site water improvements will be at the cost of the developer.
- Sewer:** No waterlines exist on the site. The nearest waterline in Fayetteville is a 12" waterline at Zion Road East approximately 100' from the site. The applicant is advised that off-site sewer improvements will be at the cost of the developer.

LAND USE PLAN:

The Land Use Plan (General Plan 2020) shows this area as Residential. The area to the west of Highway 265 is shown as Open Space/ Recreation.

RZ 99.00-6.00 FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The Land Use Plan (General Plan 2020) shows this area as residential. The zoning of Residential-Office is consistent with the plan. Low Density Residential would also be consistent with the Land Use Plan.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zonings of R-O and R-1 are justified at this time to meet the goals of the Land Use Plan.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning would not appreciably increase traffic danger and congestion.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed zoning would increase the population density and would increase the load on public services including schools, water, and sewer facilities. On-site and off-site improvements will be required at the time of Large Scale Development and Pre-plat approval.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A



Figure 1

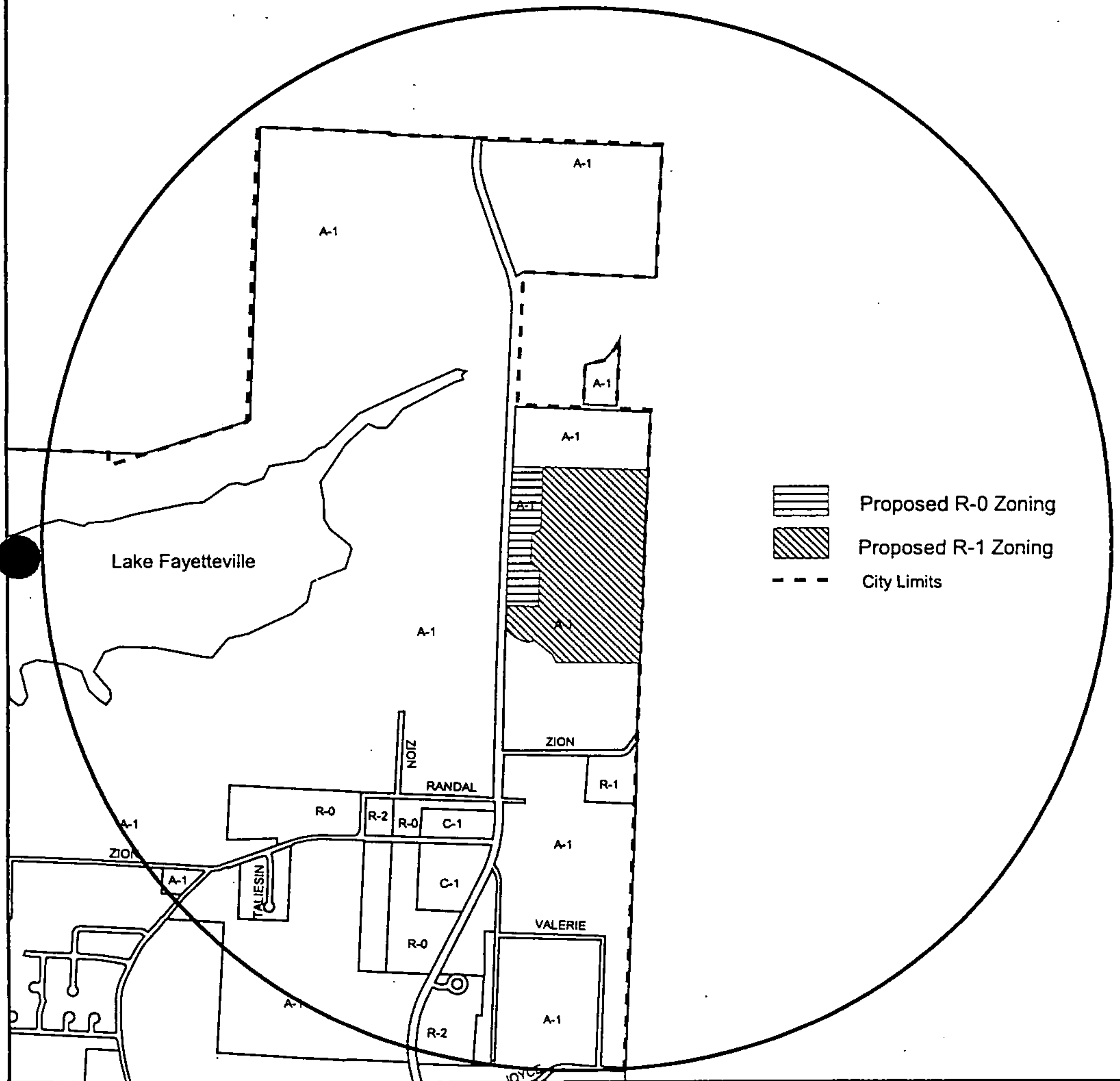
View of Residence on Subject Property



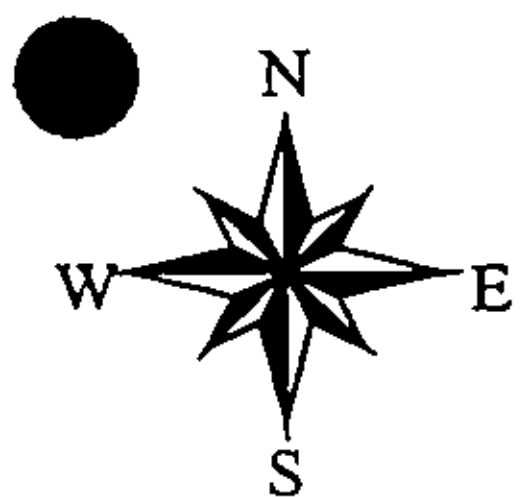
Figure 2

View of Subject Property from Highway 265

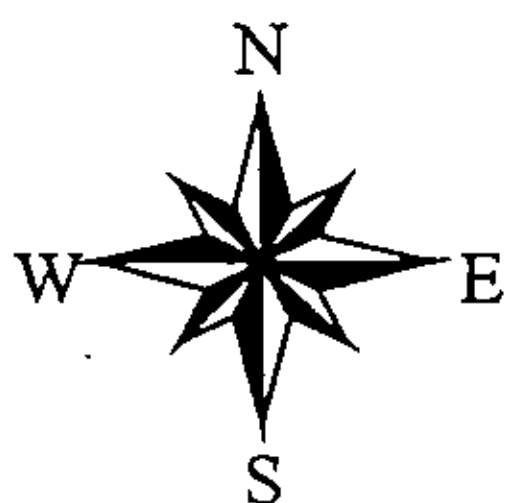
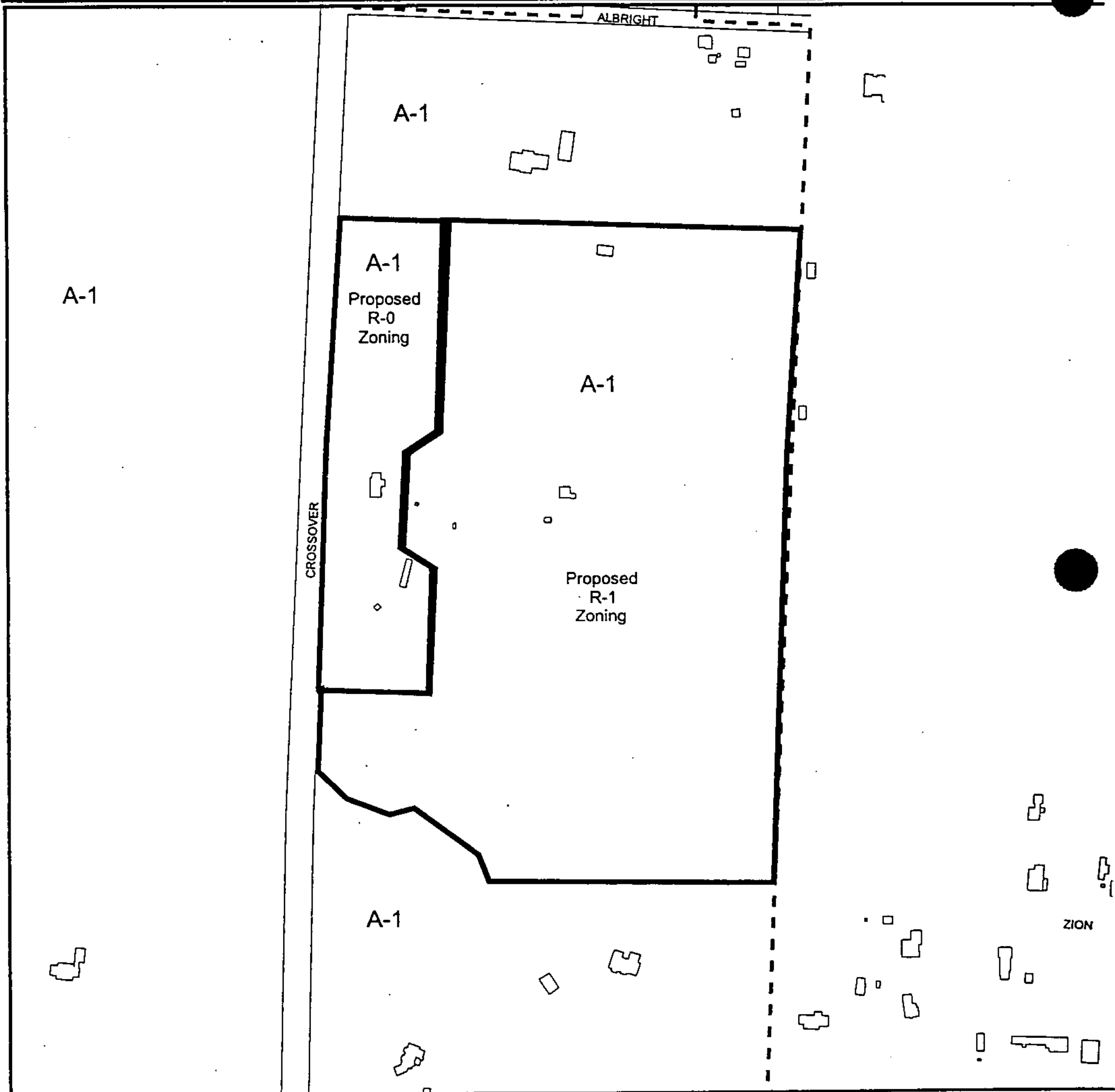
RZ99-10.00,11.00 - Foster - One Mile Diameter



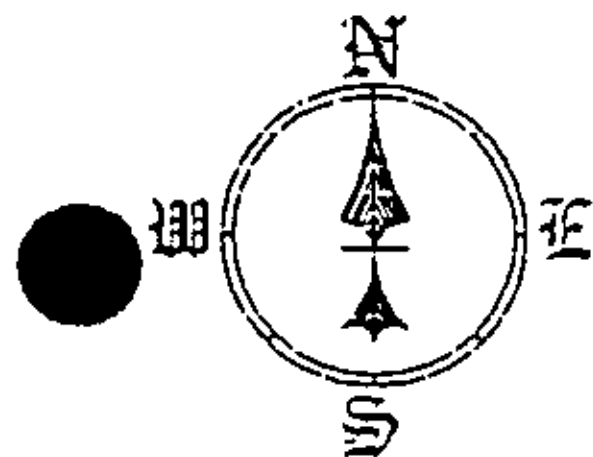
1400 0 1400 Feet



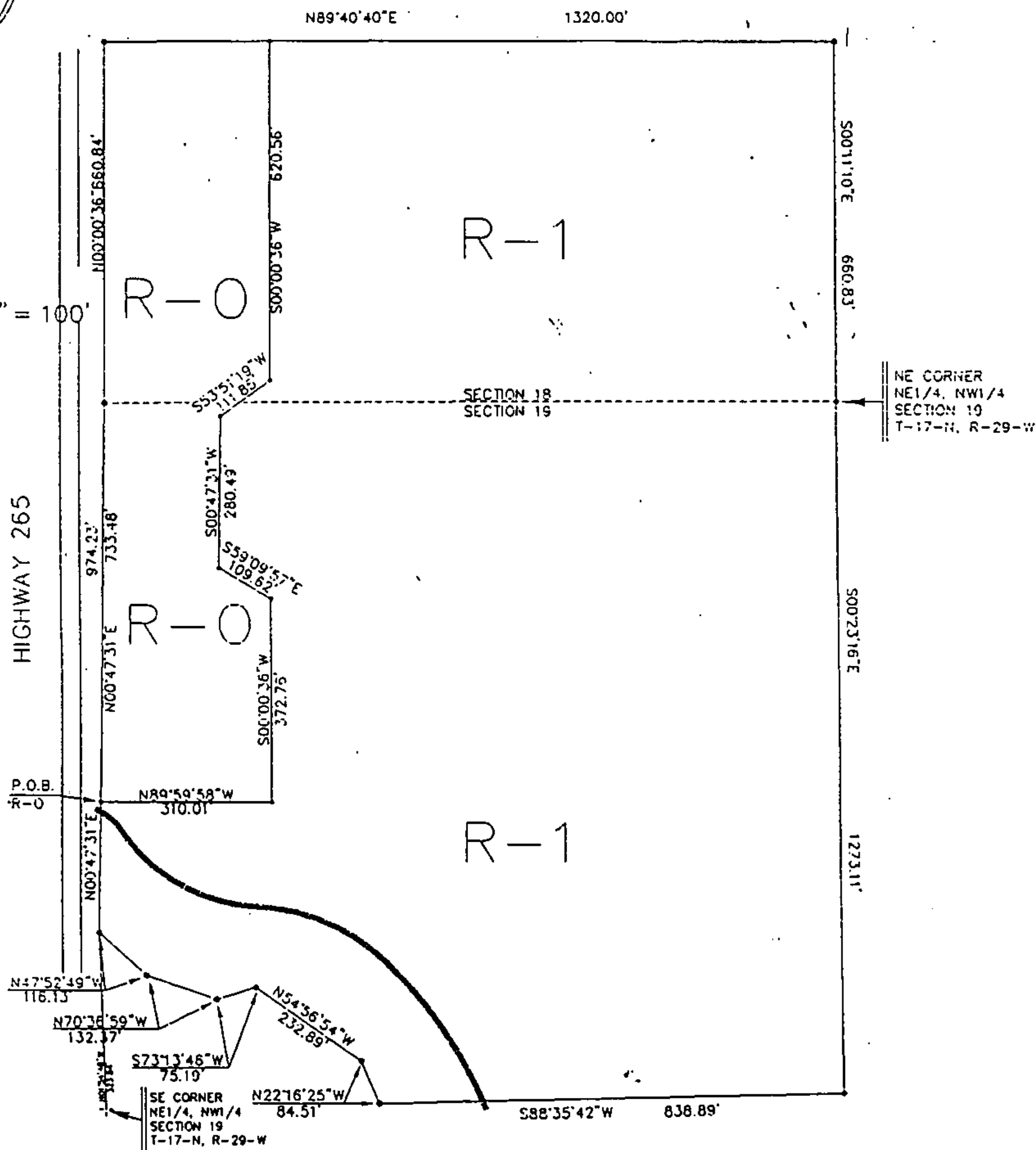
RZ99-10.00, 11.00 - Foster - Close Up



400 0 400 Feet



SCALE: 1" = 100'



"revised legal"

LEGAL DESCRIPTION R-0

Part of the Northeast Quarter of the Northwest Quarter of Section 19 and Part of the Southeast Quarter of the Southwest Quarter of Section 18, all in Township 17 North, Range 29 West in Washington County, Arkansas and being more particularly described as follows to wit:

Beginning at a point which lies N00°45'33"W 564.14 Feet from the southwest corner of said northeast quarter of the northwest quarter, section 19, and running thence, N00°47'31"E 733.48 Feet, thence N00°00'36"E 660.84 Feet, thence N89°40'40"E 300.01 Feet, thence S00°00'36"W 620.56 Feet, thence S53°51'19"W 111.85 Feet, thence S00°47'31"W 280.49 Feet, thence S59°09'57"E 109.62 Feet, thence S00°00'36"W 372.76 Feet, thence N89°59'58"W 310.01 Feet to the point of beginning containing 8.97 acres more or less.

LEGAL DESCRIPTION: R-1

Part of the Northeast Quarter of the Northwest Quarter of section 19 and part of the Southeast Quarter of the Southwest Quarter of Section 18 all in township 17 north, range 29 west in Washington County, Arkansas and being more particularly described as follows to wit:

Beginning at a point which lies N00°45'33"W 564.14 feet from the Southwest corner of said Northeast Quarter of the Northwest Quarter of Section 19, and running thence S89°59'58"E 310.01 feet, thence N00°00'36"E 372.76 feet, thence N59°09'57"W 109.62 feet, thence N00°47'31"E 280.49 feet, thence N53°51'19"E 112.78 feet, thence N00°03'35"W 620.01 feet, thence N89°40'40"E 1019.99 feet, thence S00°11'10"E 660.83 feet, thence S00°23'16"E 1273.11 feet, thence S88°35'42"W 838.89 feet, thence N22°16'25"W 84.51 feet, thence N54°56'54"W 232.89 feet, thence S73°13'46"W 75.19 feet, thence N70°36'59"W 132.37 feet, thence N47°52'49"W 116.13 feet, thence N00°47'31"E 240.75 feet to the point of beginning containing 48.26 acres more or less.

STAFF REVIEW FORM

☒ Agenda Request
☐ Contract Review
☐ Grant Review

For the Fayetteville City Council meeting of May 18, 1999.

FROM:		
Tim Conklin	Planning	Public Works
_____ Name	_____ Division	_____ Department

ACTION REQUESTED: To approve an ordinance for R299-11 submitted by Glen Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 48.26 acres. The request is to rezone the property to R-1, Low Density Residential.

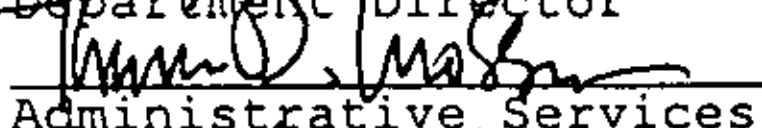
COST TO CITY:

\$0		
Cost of this request	Category/Project Budget	Category/Project Name
Account Number	Funds used to date	Program Name
Project Number	Remaining balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached _____
Budget Coordinator _____ Administrative Services Director _____

CONTRACT/GRANT/LEASE REVIEW:		GRANTING AGENCY: _____	
Accounting Manager _____	Date _____	ADA Coordinator _____	Date _____
City Attorney _____	Date _____	Internal Auditor _____	Date _____
Purchasing Officer _____	Date _____		

STAFF RECOMMENDATION: Staff recommended approval and the Planning Commission recommended to City Council that the rezoning be approved with a vote of 8-0-0. Commissioner Estes was absent.

 Division Head	4-30-99 Date	Cross Reference New Item: Yes No Prev Ord/Res#: _____ Orig Contract Date: _____
 Department Director	5-4-99 Date	
 Administrative Services Director	4 MAY 99 Date	
 Mayor	5/4/99 Date	

Planning Commission Minutes
April 26, 1999
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**RZ99-10 AND RZ99-11: REZONINGS
FOSTER, pp99 and 60**

These items were submitted by Glenn Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 57.23.

Glenn Carter was present on behalf of the project.

Staff Recommendation

Staff recommends approval of the request rezonings from A-1 to R-1 and A-1 to R-O.

Commission Discussion

Johnson: The request is to rezone an 8.97 acres tract to the west to R-O, Residential Office, and a 48.26 acre tract to the east to R-1, Low Density Residential.

Conklin: With regard to the R-O zoning, this is consistent with past actions that the Planning Commission and City Council have approved. For example, David Lyle Subdivision on Huntsville Road, Deerfield on Huntsville Road, Meadowlands on Highway 16 west, Magnolia Crossing on 6th Street, Walnut Grove, Willow Springs, and Owl Creek have all had an R-O or C-1 type zoning that has been approved as a buffer to the R-1.

Carter: I would like to add that the R-O provides a buffer between R-1 and highway traffic. In the staff report I received the word "wall" is used and that will be a decorative concrete fence similar to what you see on Skillern Road at Savannah Estates.

Public Comment

John Nooncaster was present and spoke in opposition to the zonings. He noted that he believed that the application was incomplete.

Further Commission Discussion

Hoffman: Are we to vote on these independently?

Johnson: Yes.

MOTION

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April 26, 1999
Page 34

Ms. Hoffman made a motion to deny RZ99-10.

Ms. Hoover seconded the motion.

Johnson: What does the 2020 Plan show for this area?

Conklin: It is shown to be residential.

Ward: I really don't think the motion is inconsistent with what we have been doing in the past because a lot of subdivisions have residential offices along highways. It's been proven that most people don't want to live on a major highway. It's better to have a buffer between the highway and houses and I'm not sure R-O is the one to buffer but it is ludicrous for us to try to put homes right up against a state highway.

Johnson: There is R-1 already built on Crossover but arguably the problem is urban sprawl because all those lots are huge. I think if this is residential up to the highway then we would have a lot of urban sprawl.

Hoffman: I think it is premature to zone at this stage.

Johnson: This couldn't come back for a year if this is denied.

Hoffman: I'm not adverse to rezoning to Commercial if there is need but I also feel it is our duty to be responsible and not create too much empty zoning.

Ward: This is not being asked to be zoned C-1 or C-2. This is residential office zoning which seems to me to be close to what we want out there. Apartments out there is not the best thing either. R-O is the best buffer between highways and residential homes.

Carter: I agree with Commissioner Ward. What we are trying to do is create a buffer between the highway traffic and the residential. If we don't create a buffer it's going to encourage large lots and reduced density. I just feel like if we had a buffer zone there with R-O which is not high commercial like C-1 or C-2, it would encourage a less dense type of development with larger lots and it wouldn't worsen the traffic. We feel this is consistent with what has been done in Fayetteville. I would like for you to consider the R-O buffer and the decorative fence.

Forney: I'm going to support the motion to deny the rezoning. R-O is a residential zoning which is an attempt to make an office that is relatively unobtrusive.

Roll Call

Planning Commission Minutes

April 26, 1999

Page 35

Upon roll call, the motion failed with a vote 3-5-0. Commissioners Johnson, Odom, Shackelford, Marr, and Ward voted against the motion

MOTION

Mr. Odom made a motion to approve RZ99-10.

Mr. Shackelford seconded the motion.

Roll Call

Upon roll call, the motion passed with a vote of 5-3-0. Commissioners Forney, Hoffman, and Hoover voted against the motion.

MOTION

Mr. Forney made a motion to approve RZ99-11.

Ms. Hoffman seconded the motion.

Roll Call

Upon roll call the motion passed with unanimous vote of 8-0-0.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission Members
THRU: Tim Conklin, City Planner
FROM: Brent Vinson, Associate Planner
DATE: April 26, 1999

RZ 99- 10.00, 11.00: Rezoning (Foster, pp 99, 60) was submitted by Glen Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 57.23 acres. The request is to rezone an 8.97 acre tract to the west to R-O, Residential Office, and a 48.26 acre tract to the east to R-1, Low Density Residential.

RECOMMENDED MOTION:

Staff recommends for approval of the requested rezonings from A-1 to R-1 and A-1 to R-O based on the findings included as part of this report.

PLANNING COMMISSION ACTION: YES Required
_____Approved _____Denied

Date: April 26, 1999

Comments:

CITY COUNCIL ACTION: YES Required
_____Approved _____Denied

Date: / /

BACKGROUND :

The applicant requests to rezone approximately 48 acres of land to R-1 and approximately 9 acres to R-O. The R-O property would run along Hwy. 265 on the eastside with the R-1 property located to the east. The applicant plans to build a subdivision with a wall dividing the two zonings. The land includes one residence and property which is currently being used as farmland. The applicant plans to convert the existing residence into office space. A creek cuts through the southern portion of the site. Springdale's city limits are approximately 200' away from the property to be rezoned.

The applicant desires to have two entrances onto the property at the time it is developed. According to the applicant, a strip of "landscaping and green space" will be provided along the highway and the creek and this would include a park area at the time of development. The applicant is interested in incorporating a trail along the creek to connect with the future botanical garden and Lake Fayetteville's parks.

ADJACENT LAND USE AND ZONING:

- North:** Clear Creek Acres Subdivision exists north of the property.
- South:** Farmland and a single family residence exist to the south. Further south at Zion Road there is a small strip center and Fayetteville Athletic Club.
- East:** Farmland and single family residences exist to the east.
- West:** The area between Highway 265 and Lake Fayetteville is proposed to become the Fayetteville Botanical Garden in the future.

INFRASTRUCTURE:

- Streets:** Highway 265 is a Principal Arterial with 110' of right of way (55' on each side from the centerline of the road).
- Water:** No sewer lines exists on the site. The closest sewer line in Fayetteville is an 8" sewer line at Randal Place approximately 140' south of the site. The applicant is advised that off-site water improvements will be at the cost of the developer.
- Sewer:** No waterlines exist on the site. The nearest waterline in Fayetteville is a 12" waterline at Zion Road East approximately 100' from the site. The applicant is advised that off-site sewer improvements will be at the cost of the developer.

LAND USE PLAN:

The Land Use Plan (General Plan 2020) shows this area as Residential. The area to the west of Highway 265 is shown as Open Space/ Recreation.

RZ 99.00-6.00 FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The Land Use Plan (General Plan 2020) shows this area as residential. The zoning of Residential-Office is consistent with the plan. Low Density Residential would also be consistent with the Land Use Plan.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zonings of R-O and R-1 are justified at this time to meet the goals of the Land Use Plan.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning would not appreciably increase traffic danger and congestion.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed zoning would increase the population density and would increase the load on public services including schools, water, and sewer facilities. On-site and off-site improvements will be required at the time of Large Scale Development and Pre-plat approval.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A



Figure 1

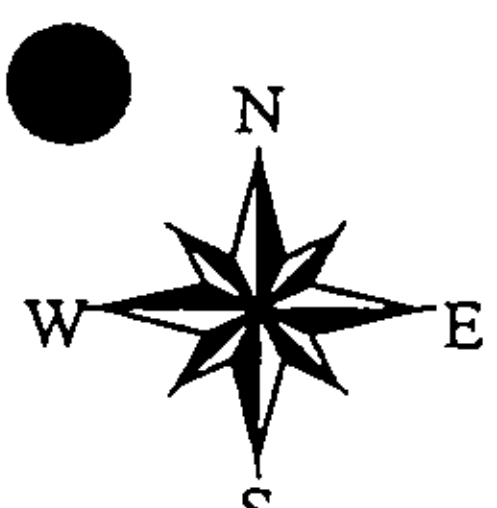
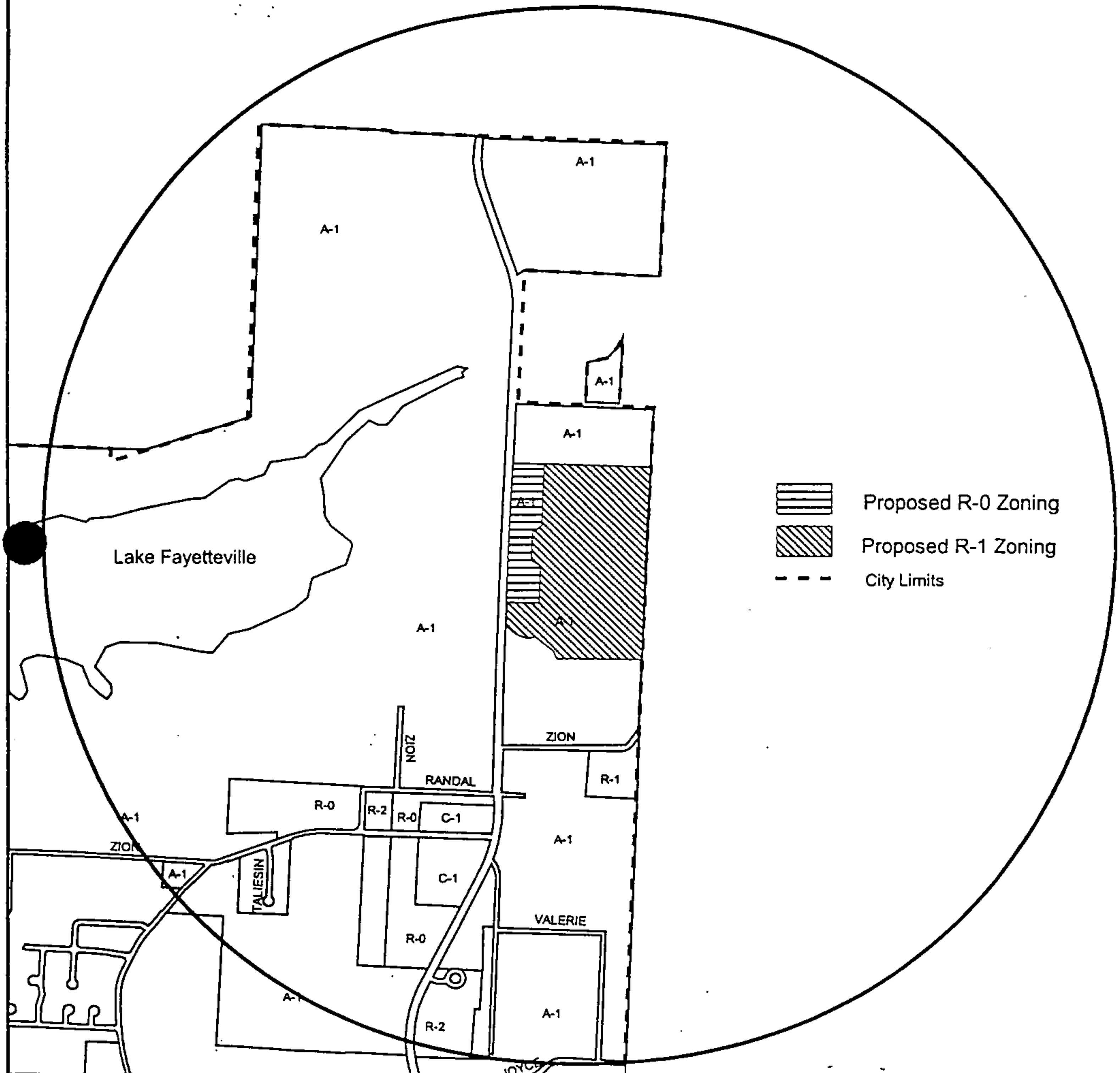
View of Residence on Subject Property



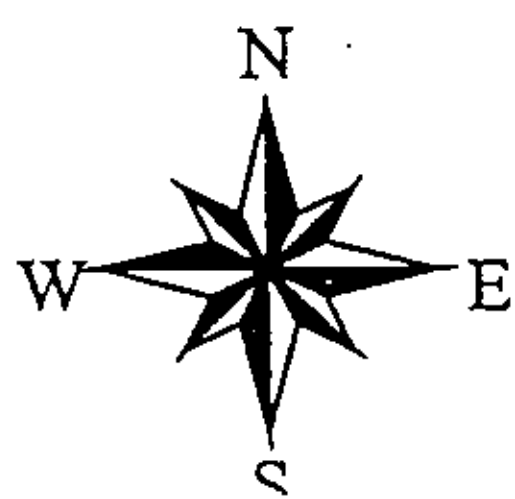
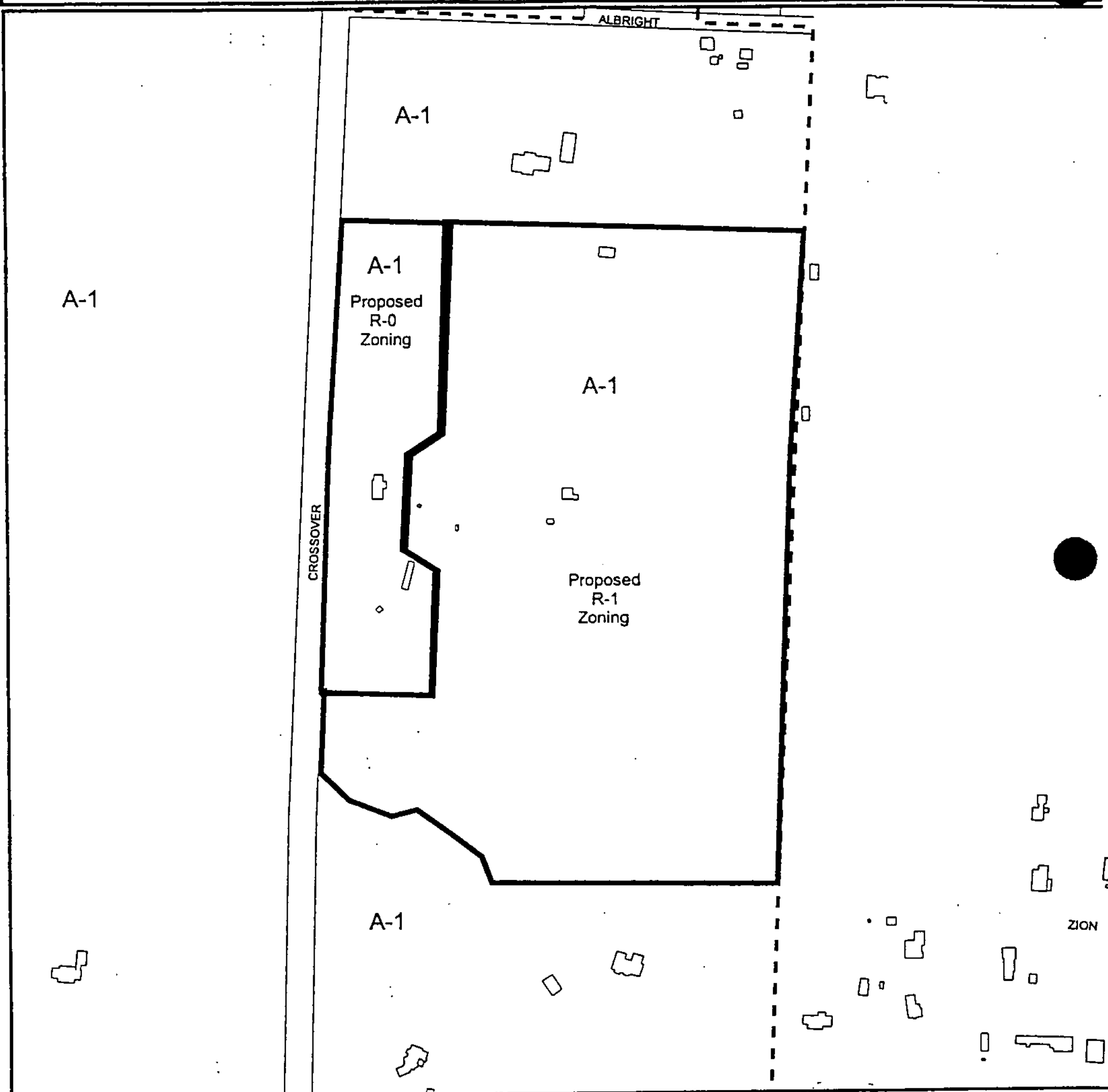
Figure 2

View of Subject Property from Highway 265

RZ99-10.00,11.00 - Foster - One Mile Diameter

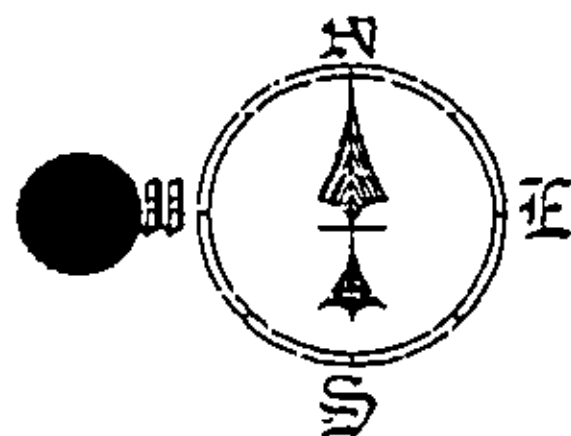


RZ99-10.00, 11.00 - Foster - Close Up

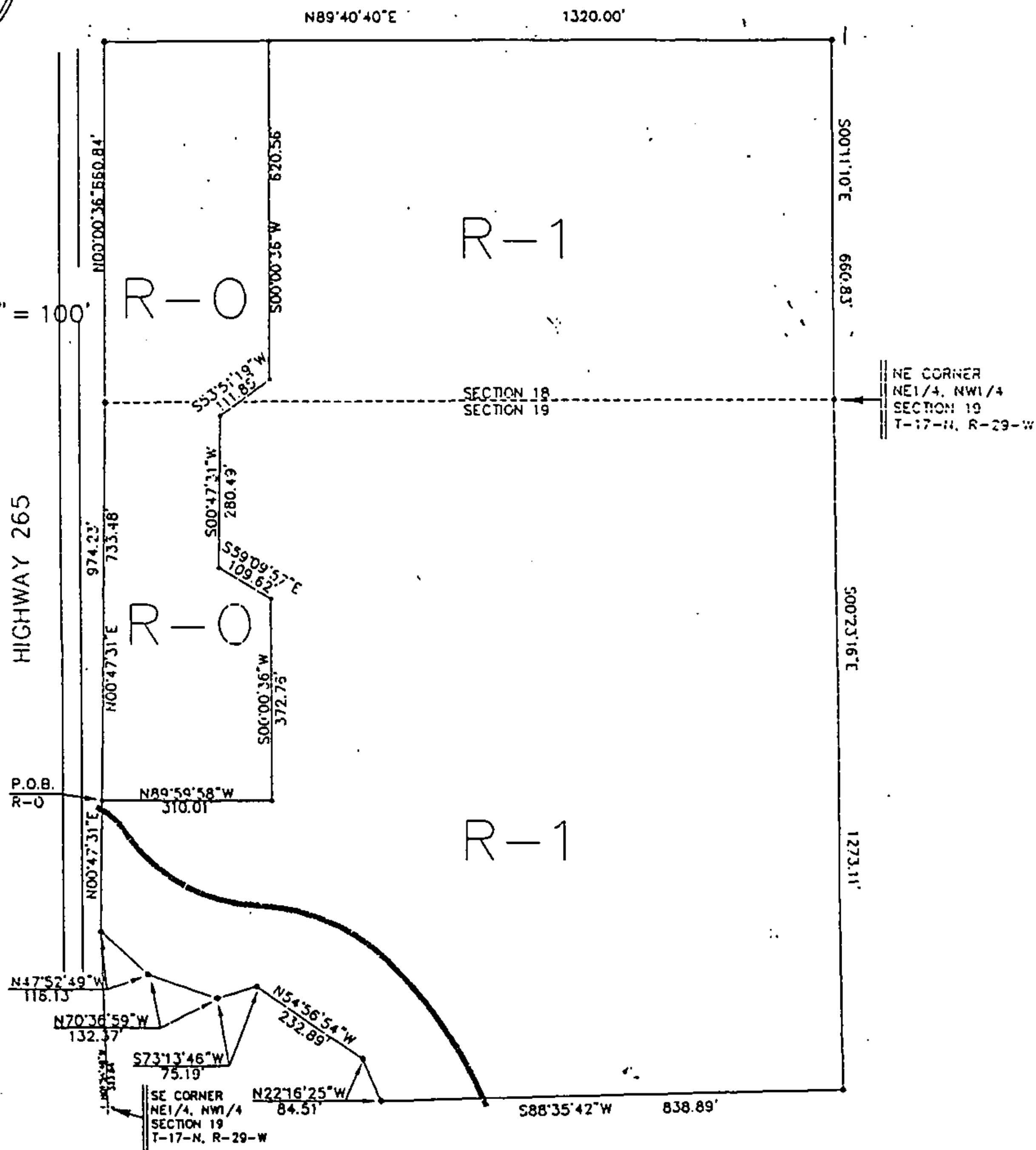


400 0 400 Feet

RZ 99-11
C.8.11



SCALE: 1" = 100'



"revised legal"

LEGAL DESCRIPTION R-0

Part of the Northeast Quarter of the Northwest Quarter of Section 19 and Part of the Southeast Quarter of the Southwest Quarter of Section 18, all in Township 17 North, Range 29 West in Washington County, Arkansas and being more particularly described as follows to wit:

Beginning at a point which lies N00°45'33"W 564.14 Feet from the southwest corner of said northeast quarter of the northwest quarter, section 19, and running thence, N00°47'31"E 733.48 Feet, thence N00°00'36"E 660.84 Feet, thence N89°40'40"E 300.01 Feet, thence S00°00'36"W 620.56 Feet, thence S53°51'19"W 111.85 Feet, thence S00°47'31"W 280.49 Feet, thence S59°09'57"E 109.62 Feet, thence S00°00'36"W 372.76 Feet, thence N89°59'58"W 310.01 Feet to the point of beginning containing 8.97 acres more or less.

LEGAL DESCRIPTION: R-1

Part of the Northeast Quarter of the Northwest Quarter of section 19 and part of the Southeast Quarter of the Southwest Quarter of Section 18 all in township 17 north, range 29 west in Washington County, Arkansas and being more particularly described as follows to wit:

Beginning at a point which lies N00°45'33"W 564.14 feet from the Southwest corner of said Northeast Quarter of the Northwest Quarter of Section 19, and running thence S89°59'58"E 310.01 feet, thence N00°00'36"E 372.76 feet, thence N59°09'57"W 109.62 feet, thence N00°47'31"E 280.49 feet, thence N53°51'19"E 112.78 feet, thence N00°03'35"W 620.01 feet, thence N89°40'40"E 1019.99 feet, thence S00°11'10"E 660.83 feet, thence S00°23'16"E 1273.11 feet, thence S88°35'42"W 838.89 feet, thence N22°16'25"W 84.51 feet, thence N54°56'54"W 232.89 feet, thence S73°13'46"W 75.19 feet, thence N70°36'59"W 132.37 feet, thence N47°52'49"W 116.13 feet, thence N00°47'31"E 240.75 feet to the point of beginning containing 48.26 acres more or less.

DRAFT

RESOLUTION NO. _____

A RESOLUTION APPROVING FUNDING FOR FIRST NIGHT FAYETTEVILLE, A NON-PROFIT ORGANIZATION, IN THE AMOUNT OF \$12,000, FOR ACTIVITIES FOR NEW YEARS 1999; AND APPROVAL OF A BUDGET ADJUSTMENT.

WHEREAS, First Night Fayetteville '98 was a great success; and,

WHEREAS, The City of Fayetteville would like to celebrate the beginning of the new century; and,

WHEREAS, First Night Fayetteville promotes an alcohol-free family oriented New Years celebration.

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

Section 1. That the City Council hereby approves funding for First Night Fayetteville, a non-profit organization, in the amount of \$12,000, for activities for New Years 1999.

Section 2. The City Council hereby approves a budget adjustment increasing _____, Acct. No. _____ in the amount of \$_____ and decreasing _____ Acct. No. _____ in the amount of \$_____. A copy of the budget adjustment is attached hereto marked exhibit "A" and made a part hereof.

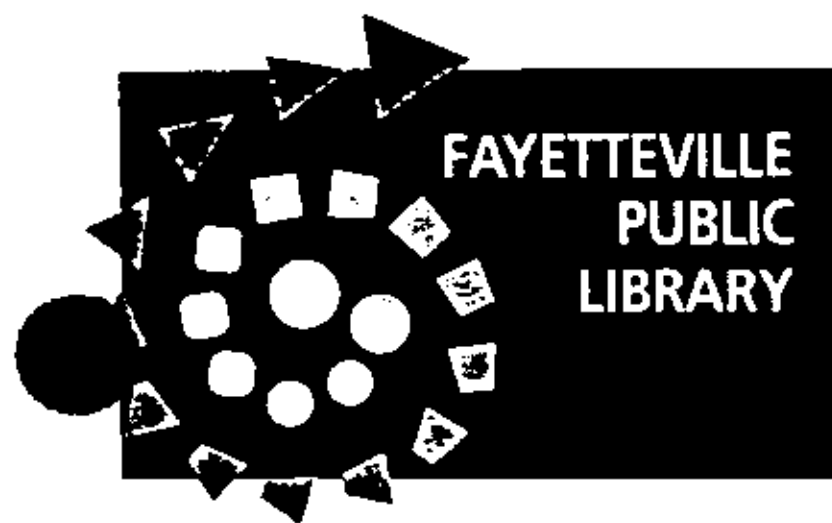
PASSED AND APPROVED this ____ day of _____, 1999.

APPROVED:

By: _____
Fred Hanna, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk



**LIBRARY PRES.
C.10.1**

TO: Fayetteville City Council
THRU: Fred B. Hanna, Mayor
Charles Venable, Public Works Director
FROM: Louise Schaper, Library Director
DATE: April 27, 1999

RE: General financing plan for Fayetteville Public Library expansion

The Fayetteville Public Library Board of Trustees asks your permission to present the attached general financing plan for the library expansion to the City Council on May 18. The purpose is to have an open discussion of the issues, ideas and timeframe as presented in the attached document. At this time we are not asking the Council members for anything except their input.

Should you have any questions, please feel free to contact me. Thank you for your consideration of this matter.

LS

LIBRARY PRES.
C.10.2

TO: Fayetteville City Council
THRU: Fred B. Hanna, Mayor
Charles Venable, Public Works Director
FROM: Louise Schaper, Library Director
DATE: April 27, 1999

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LS

General Financing Plan for New Fayetteville Public Library Building April 29, 1999

(Submitted to Fayetteville City Council by Library Board of Trustees)

I. Introduction

The Fayetteville Public Library Board of Trustees, after months of study and over two dozen public meetings, decided on April 6, 1999 to build a new central library of 90,000 square feet on the land north of City Hospital presently owned by the Washington Regional Medical Center. The immediate next steps are to determine the funding mix, select the design team and do a preliminary design for the building. In a project of this scope there will need to be community dialogue throughout the process of funding, planning and designing.

This document attempts to identify and outline the issues that must be addressed in determining the funding for the new library building. The purpose of this document is to serve as a platform for discussion.

II. Cost estimates

A 90,000 square foot library building, with parking garage for 212 cars built to the standards used for the new Fort Smith Public Library is estimated to cost \$22,223,292 in total if design starts in the fall of 1999 and construction in the spring of 2001 with completion eighteen months later in the fall of 2002. If construction inflation is 4% per annum (best estimate based on *Engineering News Record* for projects over last few years and professional cost estimators experience—actual could be more or less), the total cost will increase by \$50,000 for each month that construction is delayed beyond the spring of 2001. This cost includes:

- Excavation
- Foundations, slab, structural steel
- Exterior enclosure (walls, windows, detailing)
- Roofing and roof components
- Interior finishes
- Millwork, book drop, stair railings, A/V, rough carpentry
- Vertical transportation (elevators, specialty conveyors)
- Plumbing and drainage
- Fire suppression
- Heating, air conditioning and ventilation
- Electrical power, lighting and specialty systems
- Data cabling
- Site work (paving, retaining walls, landscaping, lighting, utilities)
- Parking garage
- Building program
- Furnishings
- Land acquisition
- Equipment for technology applications
- Shelving
- Interior design services
- Site survey
- Geotechnical investigation
- Traffic engineering study
- Data and telecommunications design
- Moving costs
- Opening day collection
- Architectural services
- Engineering services
- Printing of bid documents
- Master plan and site selection study (already completed)
- Project contingency

III. Funding sources

From the start of the Library's building expansion process, the Board has expressed a desire to fund the project with both public and private sources. The questions that must be answered are (1) what is the funding mix and (2) what is the sequence of funding efforts? We are creating an exploratory committee made up of Fayetteville citizens who will help assess the private and public potential for support.

The three potential funding sources are listed below:

A. *Public funding*

There are two types of public funds: (1) sales tax and (2) property tax. The use of sales tax for such projects is authorized by Amendment 62. Up to 1% is available for capital improvements for libraries, playgrounds and parks. Fort Smith's new library is funded from sales tax. A new library in Saline County is funded from a combination of sales tax and property tax. The recently built and renovated Little Rock libraries were funded from a 2 mill property tax. The City Administration does not want the available sales tax used on this project. Therefore, the property tax alternative is the only viable source of public funding.

Public funding would take the form of a special property millage of not more than 3 mills. Given today's assessment values and interest rate market 3 mills would yield enough to fund a library of about \$20-21M; 2 mills would yield enough to fund \$13.5M with a thirty-year bond issue. The thirty-year period strengthens the security for the investment community. As the assessment values grow, the bonds can be paid off sooner. If there is 3% growth in valuation, the bonds could be paid off in 18 years, with zero growth the bonds could be paid off in 22 years. For a \$200,000 home, 1 mill would add \$40 to property tax. For a \$75,000 home, 1 mills would add \$15 to property tax. We need to determine an acceptable and reasonable mill increase.

Excerpts from enabling legislation are below:

Section 14-142-202 states:

(a) The people of the State of Arkansas by the adoption of the Arkansas Constitution, Amendment 72, which amends the Arkansas Constitution, Amendment 30 and 38, have expressed their intention to provide cities having a population of not less than five thousand (5000) expanded powers and authority with respect to the creation of bonded indebtedness for capital improvements or to construction of a public city libraries...

Section 14-142-207 states:

- (a) Whenever one hundred (100) or more tax-paying electors of any municipality shall file a petition with the mayor;
 - (1) Asking that an ad valorem tax on real and personal property tax be levied for capital improvements, which petition shall specify a rate of taxation not to exceed three (3) mills on the dollar; and
 - (2) Authorizing the legislative body of the municipality to issue bonds as prescribed by this subchapter for capital improvements to or construction of a public library and to pledge all or any part of the tax for the purpose of retiring the bonds, a legislative body shall authorize the issuance of the bonds by ordinance specifying the maximum principal amount of bonds to be issued, and the rate of any ad valorem tax to be levied and pledged to the retirement of the bonds as specified in Arkansas Constitution, Amendment 30, as amended by Arkansas Constitution, Amendment 72.

Section 14-142-208 states:

- (a) The question of the issuance of such bonds shall be submitted to the electors of the municipality or county at the general election, or at a special election called for that purpose, as provided in the ordinance or order and held in the manner provided in this subchapter...

B. State funding:

Federal funds for library construction are no longer available. The Arkansas State Library asked the legislature for funds to support matching grants to local governments for construction of local libraries. While enacted by the legislature it is not anticipated it will be funded. However, some large requests for library construction funds for specific libraries were passed:

- \$1,500,000 to the Department of Finance and Administration for the construction, equipping and associated costs for the Prescott-Nevada County Library and Education Center. ACT 831
- \$60,000 to Education Department to equip a children's wing in the Cross County Library. ACT 288 (funded)
- \$500,000 to Finance and Administration Department for construction and maintenance of the Hot Springs County Library. ACT 345

If this proves to be an acceptable route for future aid for library construction, then we will need our legislators to present this at the next legislative session.

C. Private funding:

Sources for private funding are individuals and foundations in the City and region. The Library has had a good track record in raising private funds. On the national level, libraries are finding success in raising private funds for at least some of their expansion and construction projects.

A key question is the sequencing of private fundraising. Some private givers have said they would not want to commit until the public votes, yet the public vote would be encouraged by the gifts of private donors. We would like to announce a kick-off gift, perhaps to name the building, prior to the public referendum. The feasibility of this happening is uncertain.

The Library has established the Fayetteville Public Library Foundation. An application for 501(C)(3) is being filed with the IRS. We believe this will be a visible and logical entity for charitable giving.

The Library Board will consider hiring a professional fundraiser to be used in much the same way as the Walton Arts Center used their fundraising consultant.

IV. Outline of Next Steps

- A. Library Board (with City) work out agreement with WRMC for land acquisition (April-June)
- B. Plan building program, do site work and do preliminary design (May - August)
 1. Select building consultant (either separate or with design team)
 - a. Prepare RFP for building consultant
 - b. Develop building program
 2. Select design team
 - a. Prepare request for proposal for design team
 - b. City Selection Committee selects several to interview
 - c. Interview candidates
 - d. Select finalist
 3. Conduct environmental site assessment, geotechnical survey, and topographic survey
 4. Design building and develop model- preliminary
- C. FPL Board and City Council approve underwriter and bond counsel (May-June)
- D. FPL Board form exploratory committee for funding mix (April-June)
- E. FPL Board and City Council approve funding mix (private and public) (May-July)
- F. FPL Board interview and select private fundraiser (June-July)
- G. Form campaign group (July)
- H. Form fundraising group and begin campaign (August-October)
- I. Conduct fundraising campaign (October '99-'01)
- J. Create petition, solicit signatures, submit to Mayor (August-Sept.)
- K. City Council passes ordinance to call election (October)
- L. Thirty day wait period (November)
- M. Referendum (January '00)
- N. If passed, proceed with issuance of the bonds. (May '00)

O. Do final design work

(Jan. '00-Spring '01)

V. Conclusion

The Fayetteville Public Library Board of Trustees and staff hope this document gives you a sense of the issues pertaining to the financing of the new Fayetteville Public Library building. We look forward to meeting with you to hear your ideas and thoughts.

We recognize that this project will take the support of Fayetteville citizens and their elected officials, as well as much hard work on the part of the Trustees, staff, and volunteer supporters. We believe this is a project that all citizens will be proud to point to as a major civic amenity and will be an aid in individual and organizational enrichment in all areas of life from birth to through the retirement years. We are proud of the process we have used to involve citizens, to be sensitive to historic and neighborhood issues, and to listen to all. We believe there is significant public support to make take our vision of the library of tomorrow and make it our library of the 21st century. We look forward to working with citizens, elected officials, and City staff on this project.

DRAFT

RESOLUTION NO. _____

A RESOLUTION PROHIBITING THE CONSIDERATION OF TAX
INCREASES BY THE CITY COUNCIL UNTIL THE WASTEWATER
TREATMENT ISSUE HAS BEEN PUT TO A VOTE OF THE PUBLIC.

WHEREAS, the City of Fayetteville has been studying the need for a new or expanded wastewater treatment plant for some two years; and,

WHEREAS, the City Council has recently undertaken to secure a "second opinion" on the status of our present wastewater treatment situation by a third party engineering firm; and,

WHEREAS, the land has been purchased that could be used for a second treatment plant; and,

WHEREAS, the public would decide whether we should pass a bond issue to fund this expensive project; and,

WHEREAS, out of pocket expenses would increase for the residents of Fayetteville should the voters approve a bond issue; and,

WHEREAS, the wastewater issue is highly critical to the essential needs of a growing city; and,

WHEREAS, all city government and its committees, departments and support groups should respect the desire to present the public a clear issue, unencumbered by other project promotions tied to tax increases.

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

Section 1. No tax increases shall be considered by the City Council until the wastewater treatment issue has been put to a vote of the public.

PASSED AND APPROVED this ____ day of _____, 1999.

APPROVED:

By: _____
Fred Hanna, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

**FINAL AGENDA
FAYETTEVILLE CITY COUNCIL
MAY 18, 1999**

A meeting of the Fayetteville City Council will be held on May 18, 1999 at 6:30 p.m. in room 219 of the City Administration Building, 113 West Mountain Street, Fayetteville, Arkansas.

The following items will be considered:

A. CONSENT AGENDA

1. ✓ **APPROVAL OF THE MINUTES:** Approval of the minutes from the May 4, 1999 meeting.
- 69-99 2. ✓ **CAUDLE PROPERTY:** A resolution authorizing the Mayor and City Clerk to enter into documentation for the sale of the remainder (1.15 acres) of the Caudle property, located at 295 S. Crossover Road, to Eastside Missionary Baptist Church for a purchase price of \$17,400.00. The subject property was originally purchased by the City for Hwy 265 right-of-way purposes.
- 70-99 3. ✓ **SUNRAY SERVICES:** A resolution approving amendment #3 to the contract with Sunray Services, Inc. to transport and dispose of municipal solid waste and for operation of the City's transfer station.

B. OLD BUSINESS

C. NEW BUSINESS

1. **BOARDWALK ADDITION, PHASE 3:** An ordinance authorizing the City Attorney to seek possession of certain land located south of Boardwalk Addition, Phase 3 and west of Highway 265 (Crossover Road) in the city of Fayetteville, Arkansas, by the power of eminent domain, in association with the required easements for the Londonderry Drainage Improvements. Such property owned by Nancy Witt Lewis and Robert Lewis. Contingent upon the city council also approving Bid 99-49, Drainage Improvements for Boardwalk Subdivision. *Left in 1st reading*
2. **DRAINAGE IMPROVEMENTS:** A resolution approving a construction contract and project contingency for the construction of the proposed Drainage Improvements to Boardwalk Subdivision and Ridgely Manor Drive Area. A budget adjustment to fully fund the project. Establishment of off-site assessment for future developments which utilized the proposed drainage improvements. *Tabled*

Order needs to be reversed

- removed*
3. **TOBIN TRUST - COURT-ORDERED POSSESSION:** ^{ORDINANCE.} ~~A resolution~~ authorizing City Attorney to seek a court order for the possession of certain rights of way and easements from Patrick J. Tobin Trust on parcels of land located at 519 and 409 W. Poplar Street, Fayetteville in association with the City's Poplar Street Improvement project.
- 4162 *4.* **VA 99-6:** An ordinance for VA99-6 vacating a utility easement located at 3385 Natchez Trace as requested by Keith and Yvonne Burns for a specified portion of an alley located to the south and east of Lot 11, Savannah Estates Subdivision, Phase I.
- 4163 *5.* **RZ99-7:** An ordinance for RZ99-7 submitted by Neal Pendergraft for property located east of 2680 Joyce Street. The property is zoned R-1, Low Density Residential, and contains approximately 4.98 acres. The request is to rezone the property to R-O, Residential Office.
- 4164 *6.* **RZ99-9:** An ordinance for RZ99-9 submitted by Alan Reid on behalf of Greta Smith for property located at 1755 and 1939 Hoot Owl Lane. The property is zoned A-1, Agricultural, and contains approximately 5.45 acres. The request is to rezone the property to R-1, Low Density Residential.
- 4165 *7.* **RZ99-10:** An ordinance for RZ99-10 submitted by Glen Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 8.97 acres. The request is to rezone the property to R-O, Residential Office.
- 4166 *8.* **RZ99-11:** An ordinance for RZ99-11 submitted by Glen Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 48.26 acres. The request is to rezone the property to R-1, Low Density Residential.
- 71-99 *9.* **FIRST NIGHT:** A resolution authorizing a request for funding from First Night of Fayetteville, a non-profit organization for \$12,000 to fund the Fayetteville Millennium Celebration.
- approved as amended*
no action
10. **LIBRARY PRESENTATION:** General financing plan for Fayetteville Public Library expansion.
- will file suit*
11. **BAKERY FEEDS:** Discussion of whether or not the City of Fayetteville should file suit against Bakery Feeds as a public nuisance.
- FAILED*
12. **NO TAX INCREASES:** A resolution prohibiting the consideration of tax increases by the City Council until the Wastewater Treatment issue has been put to a vote of the public.

THURS - TOWN mtg. - school violence.
7:00.

mtg adj
8:50

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
MAY 4, 1999**

A meeting of the Fayetteville City Council was held on May 4, 1999 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street Fayetteville, Arkansas.

The following items were considered:

ITEM	ACTION TAKEN
Approval of the Minutes	Approved
Drake Field Deli/Gift Shop	Approved Res. 59-99
Bid 99-43: Purchase of six 4-wheel drive vehicles	Approved Res 60-99
Bid 99-46: Walker Park pavilion	Approved Res. 61-99
Hwy 16 W. Widening	Approved Res. 62-99
Assembly Road Storm Drainage	Approved Res. 63-99
Sunbridge Drive Extension	Approved Res. 64-99
Research and Technology	Approved Res. 65-99
Chief Executive Officer	Withdrawn
Odor Control of Sewer Treatment Plant	Tabled
Water and Sewer Treatment Plant	Approved Res. 66-99
VA 99-4: Regional National Cemetery	Passed Ord. 4160
VA 99-5: Regional National Cemetery	Passed Ord. 4161
Cardinal Cab: Certificate of Public Necessity	Approved Res. 68-99
Wastewater Treatment Plant Data Review	Approved Res. 69-99

PRESENT

Present: Mayor Hanna; Aldermen Reynolds, Austin, Davis, Trumbo, Daniel, Santos, Young and Russell; Assistant City Attorney LaGayle McCarty; City Clerk Heather Woodruff; Staff; Audience and Press.

Absent: City Attorney Jerry Rose.

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
MAY 4, 1999**

A meeting of the Fayetteville City Council was held on May 4, 1999 at 6:30 p.m in room 219 of the City Administration Building, 113 W. Mountain Street, Fayetteville, Arkansas.

Present: Mayor Hanna; Aldermen Reynolds, Austin, Davis, Trumbo, Daniel, Santos, Young and Russell; Assistant City Attorney LaGayle McCarty; City Clerk Heather Woodruff; Staff; Audience and Press.

Absent: City Attorney Jerry Rose.

INFORMATIONAL ITEMS

Mayor Hanna stated the City of Fayetteville has sent some equipment to Oklahoma City to help in the tornado cleanup.

There would be a Town Meeting discussing the issue of school violence sponsored by the City of Fayetteville and the School District. It would be open to all parents and interested citizens, Thursday, May 20, 1999 from 7:00 to 8:30 p.m. at the Walton Art Center. He noted the center could hold approximately 2,000 people.

CONSENT AGENDA

APPROVAL OF MINUTES

The approval of the minutes from the April 20, 1999 City Council meeting.

DRAKE FIELD DELI/GIFT SHOP

A resolution approving the modification to a lease with Air Host, Inc,. The modification provides for the cancellation of their lease to operate the Deli and Gift Shop in the Drake Field Terminal building. Air Host has requested the cancellation because their customer volume has decreased with the relocation of four of the five airlines to another airport.

RESOLUTION 59-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK

BID 99-43

A resolution accepting Ron Blackwell Ford as the lowest qualified bidder meeting specifications for the purchase of six 4-wheel drive utility vehicles, Bid 99-43. These units will be utilized by the Fire Department and the Police Department.

RESOLUTION 60-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK

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BID 99-46

A resolution awarding Bid 99-46 for Walker Park pavilion to Heckathorn Construction in the amount of \$64,618 plus a project contingency of \$3,500 for a total of \$68,118.

RESOLUTION 61-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK

HIGHWAY 16 WEST WIDENING

A resolution approving Bid 99-35, a construction contract, to Northwest Excavation, a division of Nabholz Construction, in the amount of \$601,075.50 and a project contingency of \$93,925 for widening of Highway 16 West for the relocation of water and sewer lines.

RESOLUTION 62-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ASSEMBLY ROAD STORM DRAINAGE

A resolution approving a contract for Assembly Road Storm Drainage improvements with Jerry D. Sweetser, Inc. in the amount of \$58,575, plus a contingency of 20% (\$11,715), totaling \$70,290.

RESOLUTION 63-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SUNBRIDGE DRIVE EXTENSION

A resolution approving a contract for Sunbridge Drive Extension with Red Deer Inc. in the amount of \$268,174 plus a contingency of 11.1% (\$29,825.25) totaling \$298,000. Approval of a budget adjustment adding funds to the project and a project contingency of \$19,461 is also requested.

RESOLUTION 64-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RESEARCH AND TECHNOLOGY PARK

A resolution approving a contract for Research and Technology Park for tree and shrub removal with erosion control with Tomlinson Asphalt Co., Inc. in the amount of \$31,306.00 plus a contingency of 19.8% (\$6,194.00), totaling \$37,500.00.

RESOLUTION 65-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Davis moved to approve the consent agenda. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

OLD BUSINESS

ODOR CONTROL OF SEWAGE TREATMENT PLANT

Mayor Hanna introduced a resolution establishing odor abatement and control as a priority in the design and operation of the City's sewage facilities.

Alderman Trumbo thought the resolution was at the front of their going forward with the proposed secondary wastewater treatment plant.

Alderman Daniel thought this was very important. She noted the city could be very demanding in the operation and construction of the facility in regards to the odor control.

Mr. Millard Goff, an area resident near the proposed plant, commended them on trying to be a good neighbor. He has seen the resolution and thought it was a good start. He questioned the source of funding and suggested setting money aside for the abatement of odor.

In response to questions, Mr. Venable stated odor abatement would be included in with the design of the project itself.

Mr. Goff asked if the city could set aside money to insure the plant would not smell. He stated a resolution without anything to back it up did not say a whole lot.

Alderman Daniel thought it was premature to set money aside. She thought it would be included in the cost of the facility. She could not approve a fund at this point.

Alderman Santos explained Mr. Goff was asking for a contingency allocation similar to a construction contract for cost overrun, with the exception this would be for odor abatement.

Mr. Crosson replied they could not allocate money past their current budget year according to state law.

Alderman Russell thought the resolution was a good start. When they contracted to design the plant and operate it there would be a clause in the contract which would hold people responsible for design and operation of the plant, and they would pay the city a penalty for the city to compensate people.

In response to questions from Aldermen, Ms. McCarty stated the council would approve all contracts for the sewer plant.

Alderman Russell stated he would not vote for a contract which did not include a clause where

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the city could hold them liable for failure to abide by the upmost technology that was in existence for odor abatement.

Alderman Austin asked Ms. McCarty if they could require the contractor to put up the money in a bond or insurance, so they would have the money to fall back on to abate the odor problem.

Ms. Carty stated they could look into it.

Mr. Crosson added there would have to be a time frame attached to it.

Mr. Venable stated it will be part of the contract.

Alderman Santos explained the resolution was to state the city's intent on how they were going to negotiate when they come to the contract.

Mr. Clarence Starr, 54th Street, stated over a year ago they had voted down this thing. He asked how they got it back on the agenda.

Mayor Hanna replied they had voted down an annexation.

Mr. Russell agreed with Mr. Starr. The last time the citizens had been campaigning because they did not want a sewer plant. The whole city of Fayetteville had the right to vote in that election. The city should have promoted it better before the election. He thought part of the problem was the citizens did not have all the information.

In response to a question from Mr. Starr, Alderman Young stated the bonds for the facility would be voted on by the people.

Alderman Russell stated he had to go with the results of the election, that the citizens did not want a sewer plant.

Ms. Donna Starr, an area resident, stated they had voted the issue down in an election. Now they were discussing bonds, she asked how they city had managed to go around the people who had voted this down and to spend all this money for the property. She asked why they were buying the land if they were not going to build a sewer plant there.

Alderman Trumbo stated one of the options they were looking at was to build a wastewater treatment plant on the land. In his personal opinion it was money well spent for the option because of the current state statutes and the contiguous land with people willing to sell within the city limits. The city's first option was to construct a plant there. If the people voted down the

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bonds then they would look at other options such as a golf course or sell the land. In his opinion it was money well spent because of the additional land which would provide added buffer and screening from the plant. He lived within a mile of the city's existing plant.

Ms. Starr stated they had lived there thirty years. When it comes time to vote on the bonds, they lived outside the city limits. They would not have the right to vote on the issuance of bonds because they were outside of the city limits.

Alderman Trumbo added they were able to organize their opposition to the issuance of the bonds.

In response to comments from Alderman Russell, Ms. Starr stated they did not vote against annexation. They would not have minded being annexed, but they knew from the beginning that the city intended to build a sewer plant.

Alderman Russell thought a lot of his constituents would not be interested in the growth that would be allowed by the new sewer plant.

Mr. Gary Adams, 46th Street, stated if they did not do something about the odor it would drift through the main part of the city and the university.

Mr. Bob Nickovicks, an area resident, stated the plant had gotten voted down. The land they were going to purchase was swamp land and was not what it was worth. He stated he would trade property with anyone else on the council or sell them his land.

Mr. Bill Jowers thought the city needed to take time out to work out the details on the resolution.

Mayor Hanna stated this resolution could be postponed until they got closer to what they were going to do.

Alderman Austin moved to table the resolution until the details could be worked out.

Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

WATER AND SEWER TREATMENT PLANT

A resolution to exercise the city's purchase options on three tracts of land on the west side of Fayetteville for the construction of a new sewage treatment facility. Land tracts to be considered are currently owned by James McClelland, H. M. and Norma Shipp, and the Broyles Farm.

Alderman Trumbo stated they had looked at several options. The state has passed a law which required them to come within their city limits. He thought this was the best option the city had available at the moment with willing sellers and the current state statutes. The three hundred

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acres was more land than what they needed for a treatment plant, but they had planned a buffer in consideration of the surrounding people.

Mayor Hanna explained this was part of an overall picture, the city was trying to get their permit approved. They had tried to cut down on the city's discharge permit, because the city was not moving forward with their plans for taking care of their wastewater problems. Whether or not they decided to build a plant on the west side, they still had to show the people who controlled their permits that they were making every effort to do something about their problem. They were being put in this situation by the state and federal laws. It was a tough decision.

Alderman Daniel stated she had received calls from people who thought this was necessary and they needed to move on it.

Alderman Santos stated he had requested the council to consider the odor abatement resolution first at Mr. Goff's suggestion so that it would ease the minds of people who lived in the area. He thought they needed to be up front with the fact that they were going to do everything they could to abate the odors. If they had to construct the plant they needed to do the best they could.

Alderman Austin asked how the issue would be put to the public for a vote.

Mayor Hanna explained it would be brought to the people as a bond issue for the construction of the waste water plant.

Alderman Young stated he was in favor of purchasing the land to give the citizens of Fayetteville the option to let them decide what they wanted to do. If they voted down the bonds they would probably place a moratorium on A-1 property.

Alderman Russell encouraged citizens to not give up the fight. He personally voted against the annexation because he did not know that the city needed the plant. He did not have a problem submitting another vote to the people. The only thing that could make him support another sewer plant would be another vote by the people supporting the plant.

Mr. Miller Goff, an area resident, stated there had been plenty of opportunities for them to take a different stance. He did not recall the city protesting Act 13-36. He asked if they had asked the attorney general for his opinion. He asked if they were in partnership with another town if the law would still apply to them. The city's engineers thought another site was the best site. He thought the city had decided to proceed in this way because it would require less effort for the city to take on the neighbors rather than taking on the best site the engineers had recommended.

Mayor Hanna stated the city had been trying to get the plant on the Illinois River. Those people

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came to the public hearings, 200 strong. It had been some of the worst meetings he had ever seen. The city had no support from people like him. They were sitting up there all by themselves. The hearing did not change their minds. A state law had changed their minds. He had gone to the Municipal League and called other mayors all over the state. He could not even get the support of their own representatives. Act 13-36 had required them to locate the sewer plant within the city limits. He did not like the idea of having the plant within city limits, but it was not his fault or idea.

Alderman Russell stated he liked Act 13-36. He was not convinced it was a bad law.

Mr. Jeff Erf, an area resident, asked the relationship between the engineering firm and one property owner, since they both shared the name McClelland. Charles Venable stated there was a relationship between the two.

Mr. Jowers, an area resident, asked if there was a possibility to bring this decision to a vote of the people before they purchased the land.

Mayor Hanna did not believe they could.

Mr. Jowers stated there were other cities going through the same thing they were. He discussed the history of the development and the sewer meetings. He questioned why there had not been any more committee meetings. He asked what the intent of the committee had been.

Alderman Trumbo stated that as chairman of the Water and Sewer Committee he had asked them to the meetings to get constructive criticism. They had aired all their views and he did not know what more could have been done.

Mr. Jowers stated Alderman Young had questions which had never been answered. He stated the existing plant had been designed to service 69,000 people. They currently had 56,000 people. He questioned what had happened to the contract.

Alderman Trumbo stated he felt that he had done a very thorough job of taking public input and gathering information. He felt due diligence was done in extreme measures.

Mr. Jowers stated the purchase of the property was against the people's wishes. He thought that other people other than the City of Fayetteville that they were serving would join in a regional plant as soon as it was constructed. He thought the existing plant might be sufficient if a regional plant were to come along. He felt the land had been appraised too high and it would be difficult to sell. There were four other golf courses within five miles. He felt they needed to be better stewards of the taxpayers' money. He thought they needed another opinion. They had studies

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and no opinion. He asked the aldermen to vote by secret ballot, then reveal how they voted.

Alderman Austin stated he had voted for the resolution to bring before the council on odor control which he thought they wanted.

Mr. Jowers stated he had spoken with Mayor Hanna about a resolution on odor control. He had wanted to work on the resolution before it was in concrete. He had not been notified of the meeting. He asked for people to be up front with them.

Alderman Austin asked what could have been added to the resolution that would have made it palatable to him.

Mr. Jowers thought some money needed to be set aside and he did not think a million dollars was enough.

Alderman Russell questioned if it would be more cost effective to put it to a vote or to go ahead and buy the property.

Mayor Hanna stated they could not have a bond issue vote until they had let the contract.

Alderman Russell replied they could expend the money on the six month option and then have a vote on the land acquisition. If it failed then the city had not spent their three million dollars. It would take longer, but he was willing to wait.

Alderman Trumbo stated he was in favor of purchasing now. They could continue with their premitting process. In the worst case, they would own a nice property.

Mayor Hanna thought time was important.

Mr. Venable stated the permit was the most important. They had the possiblity of having their permit lowered. He thought they needed to purchase the property.

Mayor Hanna explained if they did not have a specific piece of property the state would not conduct their study and they would not give them a permit. If they did not have the property then they would have to consider a moratorium on sewer taps or expanding the plant on the east side of the city.

Alderman Young stated they were looking at the site short term. He was looking at the 300 acres as a potential sewer plant. He questioned what would happen 40 years from now. They might not build one now, but the people of Fayetteville may want to build one some day.

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Alderman Austin asked what would happen if they purchased the property and the bond issue was turned down.

Mr. Venable stated the two plants cost about the same, whether we build a new plant or added to the existing plant. The problem with the existing plant was the cost of maintaining the existing plant with all the pumping they had to do. It was higher for the operations and maintenance of it because of the way Fayetteville drained a lot of the water to the west and to the east. They did not know all the things that had to be done yet.

Alderman Austin asked if the public voted down the issuance of the bonds and they had purchased the property how they were going to fund the east plant.

Mr. Venable explained it would be funded the same way the west plant would be funded, with bonds.

Mr. Jowers asked why they did not expand what they currently had.

Mr. Venable explained over the life of the plants they would pay a lot more money for the operation of that, because of the required pump stations.

Mr. Jowers suggested expanding the existing plant until the regional plant had been constructed. They had done it with Beaver Water. He thought this could work just as well, but they had to put some energy into it.

Alderman Daniel stated she had attended a meeting on a regional sewer system and had been disappointed because it was a managerial system of multiple sewer treatment plants.

Alderman Reynolds stated he felt for the neighbors because he lived across from the Industrial Park. He thought the committee had been very positive. He thought they had been in favor of a sewer plant if the odor could be treated and the plant was built right. He thought they needed to get the city's representatives to reverse the law so they could go back to their first site. If they could not do that, they still had to have a sewer plant on the west side of town. They could not continue by doing everything to the east plant.

Ms. Donna Starr, 54th Street, said she knew there would be odor from the plant. There were too many people who talked about the odor problem on the east side of town.

Alderman Reynolds stated they had been working on the problem and people were currently constructing \$300,000 homes around it.

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Ms. Starr replied most of those people kept their homes closed up. She lived in the country and they liked to have their windows open to get fresh air. She did not believe they would be able to do it if they constructed the plant.

Alderman Davis felt that she would be able to if the plant was constructed properly. He added there were children playing outside everyday on the east side because they had corrected the problem.

Ms. Starr stated when they were considering this before people from the east side had complained about the odor. She asked that if in the last year that they had taken care of all the problems.

Alderman Reynolds stated they were trying. They had to have a sewer plant. They were at capacity.

Alderman Austin stated he did not like the idea of placing the plant that close to the city. But they had their hands tied. Tonight they either had to buy the property or extend their options. He asked if they took the purchase of the property to the voter could she live with what the public said.

Ms. Starr replied she could not because she would not be allowed to vote.

Alderman Trumbo moved to approve the resolution as presented. Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 66-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK

NEW BUSINESS

VA 99-4

An ordinance approving VA 99-4 vacating an alley located at 903 South Government Street as requested by the Regional National Cemetery Improvement Corporation lying contiguous to the east side of Lot 10 and to the west side of lot 11 of the Dowell Addition.

Ms. McCarty read the ordinance for the first time.

Alderman Austin moved to suspend the rules and go to the second reading. Alderman Davis seconded the motion. Upon roll call the motion carried.

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Ms. Carty read the ordinance for the second time.

**Alderman Davis moved to suspend the rules and move to the third and final reading.
Alderman Austin seconded the motion. Upon roll call the motion carried unanimously.**

Ms. McCarty read the ordinance for the third time.

Alderman Reynolds explained they needed to square up the property in order for the federal government to take it. The federal government would not take property unless it was square.

Upon roll call the motion carried unanimously.

ORDINANCE 4160 AS RECORDED IN THE OFFICE OF THE CITY CLERK

VA 99-5

An ordinance approving VA 99-5 vacating an alley located at 898 Hill Street as requested by the Regional National Cemetery Improvement Corporation for that portion of a 20 foot alley lying contiguous to the west side of a part of lot 9 and all of lots 10, 13, and 14 in the Dowell Addition.

Ms. McCarty read the ordinance for the first time.

Alderman Santos moved to suspend the rules and move to the second reading. Alderman Trumbo seconded the motion. Upon roll call the motion carried unanimously.

Ms. McCarty read the ordinance for the second time.

**Alderman Austin moved to suspend the rules and to go to the third and final reading.
Alderman Russell seconded the motion. Upon roll call the motion carried unanimously.**

Ms. McCarty read the ordinance for the third and final time.

Upon roll call the ordinance passed unanimously.

ORDINANCE 4161 AS RECORDED IN THE OFFICE OF THE CITY CLERK

CARDINAL CAB

A resolution authorizing a Certificate of Public Convenience and Necessity be issued to Cardinal Cab Co. of Springdale, Arkansas for operating a transportation service within the City of Fayetteville.

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The cab owner stated they were not wanting to take anyone's business away from them. They were wanting to be able to pick up their customers that they had dropped off. He explained they had a number of elderly customers that used them who wanted them to come back and pick them up. Currently, they could not pick them back up in Fayetteville. If there was a need for a cab service in Fayetteville they were equipped to take care of it. They would move in when the city felt there was a need for it. They mainly wanted permission to pick their people back up. They had been in business four weeks and had guaranteed customers in Springdale that there would not be more than a 15 minute wait. They had started their company to give people the service they deserved and to stop the waiting time.

Mayor Hanna asked if they had checked the requirements for operating in Fayetteville.

The owner replied they were 95% fulfilled, the only thing they lacked was the driving permit and permission from the chief of police. He presented a picture of their car and explained that all of their cars were inspected every three months. They were all clean cars with air conditioning. He explained they ran meters and did not go by a zone map. He explained their rates.

In response to questions from aldermen, he stated they accepted the vouchers from Community Development. Their insurance was more than what Fayetteville required.

He stated they currently had two cabs running and had a third cab coming, which was being painted. They had been open three weeks. His partner had driven for Smiley Cab for three years. He had owned his own company for three years before he sold it.

In response to questions from Alderman Reynolds, Ms. Woodruff stated the city currently had four companies. All four were current on their insurance and other requirements.

Alderman Reynolds stated he had spoken with two of them who expressed concern about them not needing another company.

Mayor Hanna explained this company was wanting the right to pick up their customers they had dropped off at the doctor's office or other businesses.

The owner stated they did not want to run the streets of Fayetteville, they wanted to be able to pick their customers back up.

Alderman Santos moved to approve the resolution and authorize a certificate. Alderman Russell seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 67-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK

City Council
May 4, 1999

WASTEWATER TREATMENT PLAN DATA REVIEW

A resolution authorizing a review of data related to the Paul R. Noland Wastewater Treatment Facility by an independent engineer to determine flow processing capabilities.

Alderman Young explained the current facility plant was based on the premise that the Noland Plant was nearing capacity. They were not anywhere near the population projects for the year 2005 which the Noland plant had been designed for, but they were supposedly near capacity. He felt there were some conflicts and inconsistencies in the numbers that he would like to have cleared up.

Mayor Hanna explained that if everything went as it was planned, it would take approximately four to five years to reach capacity.

Alderman Trumbo thought it was a good idea to have a third person come in to verify the flow.

Mayor Hanna stated if they passed the resolution, he would like to see two things. He wanted to see a limit on the amount of money they would spend to do the study and a time frame for it to be done in. He stated he wanted Alderman Young to sit in on the drawing up of the specifications for the bids, so they could be certain they were getting what he wanted.

Mr. Venable recommended they hire someone out of state, because most of the local people had worked on the plant. A contract would come before the council before it was approved.

Alderman Austin moved to approve the resolution. Alderman Santos seconded the motion.

Mr. Jeff Erf, an area resident, hoped they would endorse the resolution, because CH2M Hill had a lot to do with the construction and operation of the existing plant.

Alderman young thought it would take approximately a month to conduct the study.

Mayor Hanna thought Alderman Young needed to be on the selection committee and to work with the staff on drawing up the specifications for the bids.

Upon roll call the motion carried unanimously.

RESOLUTION 68-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

The meeting adjourned at about 8:00 p.m.

STAFF REVIEW FORM

☒ AGENDA REQUEST
☐ CONTRACT REVIEW
☐ GRANT REVIEW

For the Fayetteville City Council meeting of May 18, 1999

FROM:

Ed Connell
Name

Engineering
Division

Public Works
Department

ACTION REQUIRED: Approval of a resolution authorizing City Attorney to seek a court order for the possession of certain rights of way and easements from Patrick J. Tobin Trust on parcels of land located at 519 and 409 W. Poplar St., Fayetteville in association with the City's Poplar Street Improvement project.

COST TO CITY:

\$ 6,200.00
Cost of this Request

\$914,591
Category/Project Budget

Poplar St. Improvement
Category/Project Name

4470-9470-5809.00
Account Number

\$ 11,316
Funds Used To Date

Program Name

97023
Project Number

\$903,275
Remaining Balance

Sales Tax CIP
Fund

BUDGET REVIEW:

☒ Budgeted Item

☐ Budget Adjustment Attached

Budget Coordinator

Kevin D. Crook
Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Marilyn D. Cramer 4-19-99
Accounting Manager Date
City Attorney 4-19-99
Date
P. Vice 4-19-99
Purchasing Officer Date

Yolanda Fields 4-19-99
Internal Auditor Date
ADA Coordinator Date

STAFF RECOMMENDATION: Staff recommends approval of resolution so that project can be bid. City will continue to try and negotiate a settlement if Mr. Tobin indicates a willingness to respond.

Jim Brullen 4/15/99
Division Head Date
Charles Venetel 4-20-99
Department Director Date
Kevin D. Crook 20 APR 99
Administrative Services Director Date
Fred Horne 4/20/99
Mayor Date

Cross Reference

New Item: Yes ☒ No ☐

Prev Ord/Res #: _____

Orig Contract Date: _____

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Fayetteville City Council

THRU: Fred Hanna, Mayor
Charles Venable, Director of Public Works *CV*
Jim Beavers, City Engineer *JB*

FROM: Ed Connell, City Land Agent *EC*

DATE: April 15, 1999

RE: Poplar Street Improvement, P-97023
Tract Nos. 4 & 5
Patrick J. Tobin Trust
Possession by Eminent Domain

Since early in 1998, the City has been trying to obtain adequate right of way and drainage easement so as to make a modest improvement along Poplar Street, between Gregg Ave. and Leverett Ave. The West end of this project will involve locating or replacing sidewalks on both sides of the street, while the East end of the project, from Gregg to Scull Creek, will require an expansion of the roadway itself, a complete reconstruction of the storm drainage system and, of course, sidewalks on both sides of the roadway.

All of the road rights of way and easements have been obtained on this project except for two parcels, both owned by Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Trust. Since September, 1998, the City has made three different offers to Mr. Tobin with regard to the road right of way and easements on these parcels, the latest being April 14, 1999. To date, staff has not heard a word of response from Mr. Tobin. Phone messages have been left, with no call back; which leaves no other avenue except to seek possession of the required areas via the court. An independent appraiser also was unable to make contact with Mr. Tobin. This project is set to go to bid at this time and possession of these rights of way and easement areas are necessary before any bid is accepted.

Tract #4: 519 W. Poplar Street

Lots 1 & 2, Block 8, Parker's Valley View Acres
SW corner of Birch Ave. & Poplar St.

This property is impacted by both the street widening and the storm drainage reconstruction. Currently, the street drainage and the area storm water from the South converge in the NW corner of this property and are directed North across Poplar St. toward Scull Creek. The open ditch on the south side of Poplar will be enclosed into piped drainage, thus the open ditch will be eliminated. At the NW corner of this property, however, it will converge with open ditch drainage that flows North along the West property line. The junction box is a major underground structure, all of which requires considerable easement area.

Tract # 4 continued-----

Included herewith is an independent appraisal of the rights of way and easements required from this property. The building is located close to the road, thus the area for parking is limited. The roadway expansion will eliminate the current ditch area and shorten the distance from the roadway to the parking area, however, a five foot sidewalk will replace most of this lost area. In effect, there will be no loss of parking to this property of Mr. Tobin's. Damages were compensated for his loss of concrete to go from the old (current) pavement to his parking area.

Tract #5: 405 W. Poplar Street

Lots 4 & 5, Block 7, Parker's Valley View Acres
SE corner of Birch Ave. & Poplar St.

The building on this lot(s) is set back further than the one on Tract #4, thus allowing a considerable larger parking area. This area is zoned I-1 and comprises smaller industrial businesses. Five (5) feet of additional right of way is required for the roadway expansion, along with a ten (10) foot temporary construction easement. There are four small trees that will have to come out as a result of this project and the property owner is compensated for such.

Again, we do not know Mr. Tobin's view on this matter since we have been unable to get a response from him.

Ownership:

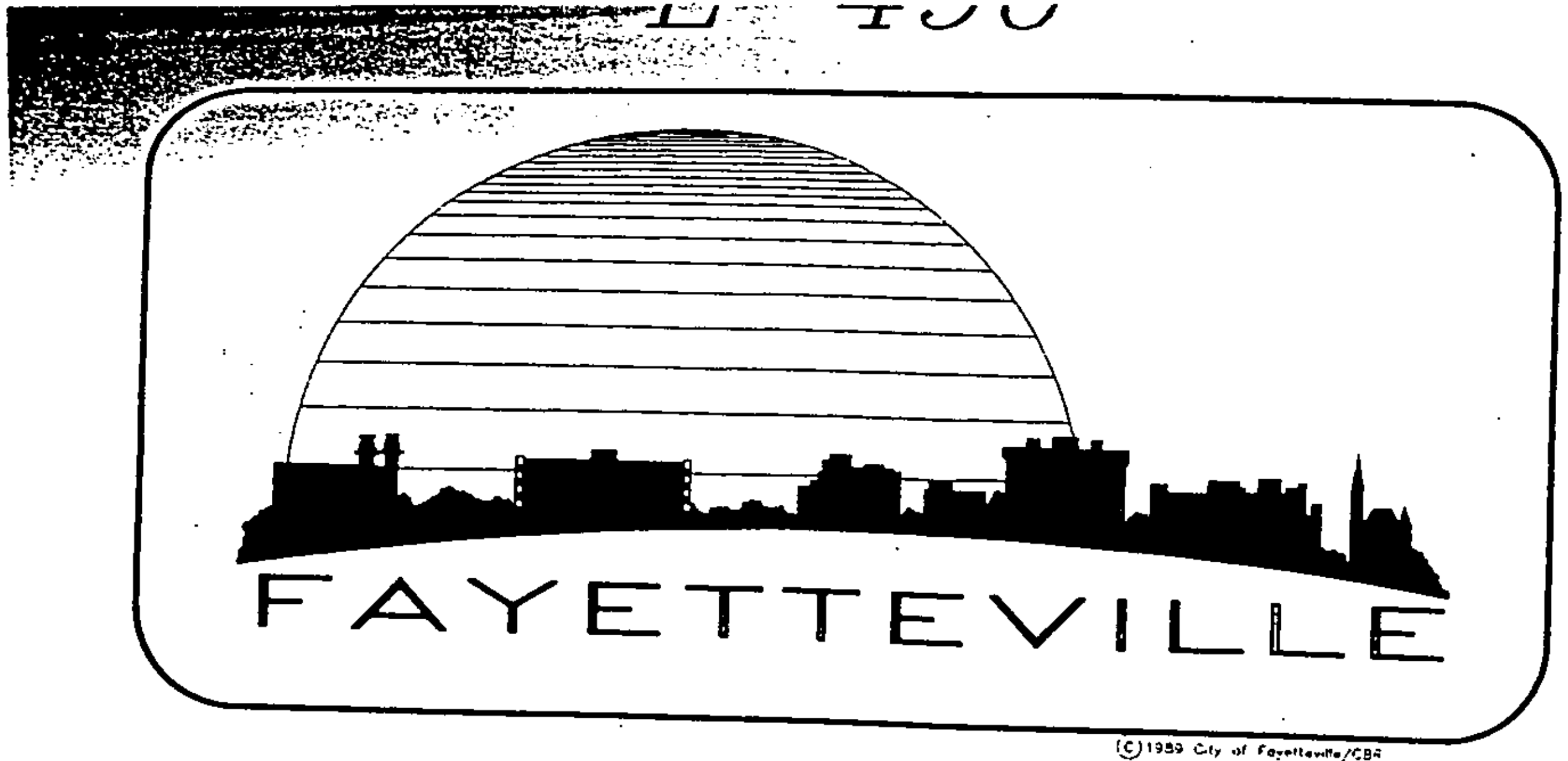
Patrick J. Tobin, Trustee
Patrick J. Tobin Trust, dated March 4, 1997
2901 N. Tobin Lane
Fayetteville, AR 72703

Phone: 443-1338

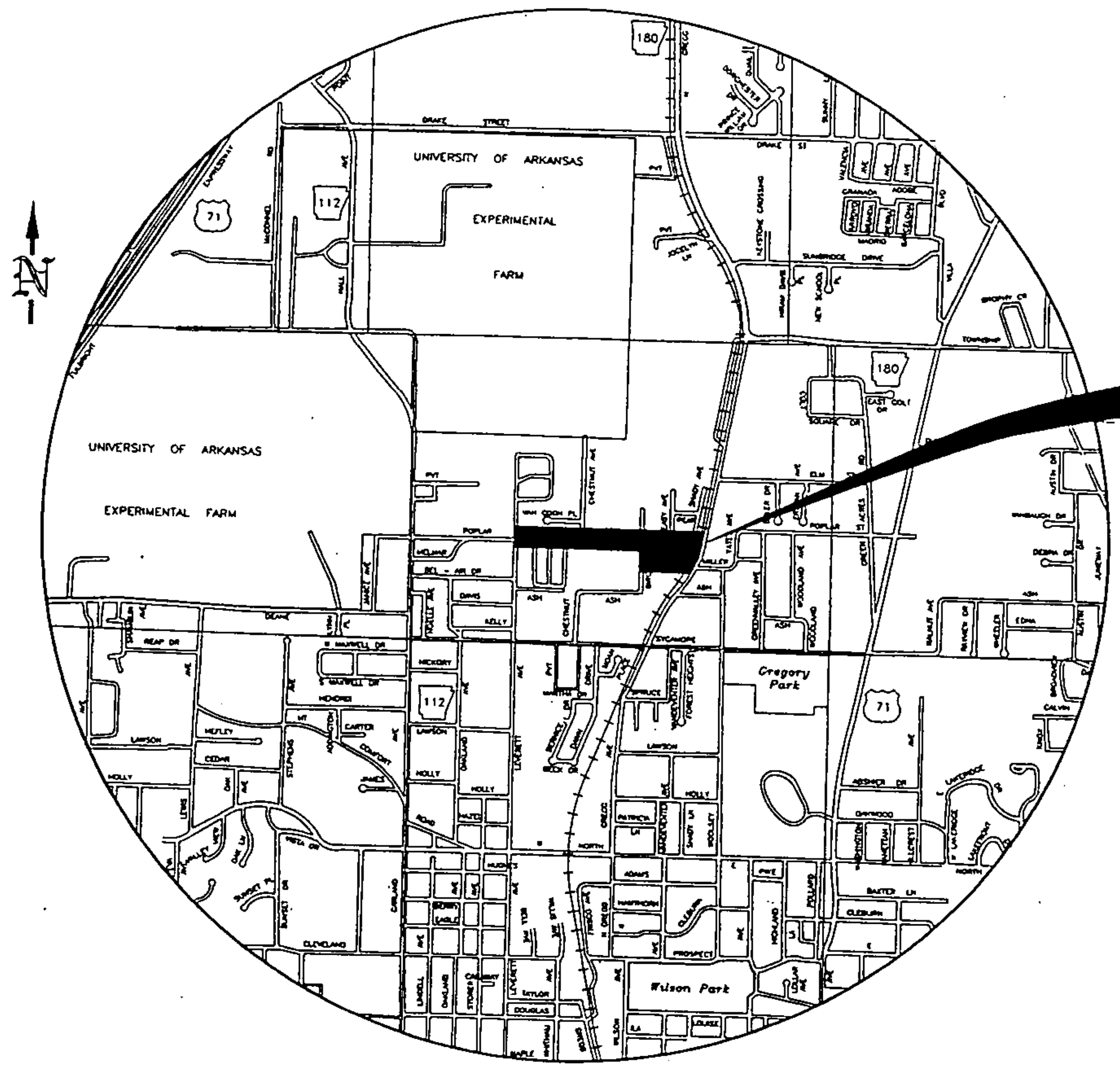
General:

Please find herewith three offer letters sent to Mr. Tobin on these properties. Our original offer in September, 1998 was based upon estimated land values in the area. With some modifications to the plans, as well as some updated appraisal information on similar lands, the City modified the offer with our letter of January 4, 1999. In March of this year and in preparation for this potential condemnation, a complete and independent appraisal was made on both parcels. As a result of those appraisals, our third offer was made via letter of April 12, 1999, amounting to \$6,200 for the requirement from both parcels.

The City Council is hereby requested, via resolution, to authorize the City Attorney to seek possession of the required rights of way and easements on the subject properties through the courts.



(C) 1989 City of Fayetteville/CBR



*Poplar Street Project
Improvement Project*

VICINITY MAP

MILLIOTT AND COMPANY



Proposed Permanent
Drainage Easement and
General Utility Easement
(300 sq. ft.)

Proposed Temporary
Construction &
Grading Easement
(1125 sq. ft.)

East 5' of Lot 2

Tobin Trust

Lot 1 and East 5' of Lot 2

Block 8 of

Parker's Plat of Valley View Acres

Tract 4

Lot 1

Existing centerline of Poplar Street

Existing South 20' Poplar Street R/W

$s87^{\circ}05'25''w$

91.4351.87

$s87^{\circ}05'25''e$

$s87^{\circ}05'25''e$

$n87^{\circ}05'25''w$

30

Proposed General
Utility Easement
and
Temporary Roadway
Construction Easement
(1127 sq. ft.)

$s02^{\circ}19'03''w$

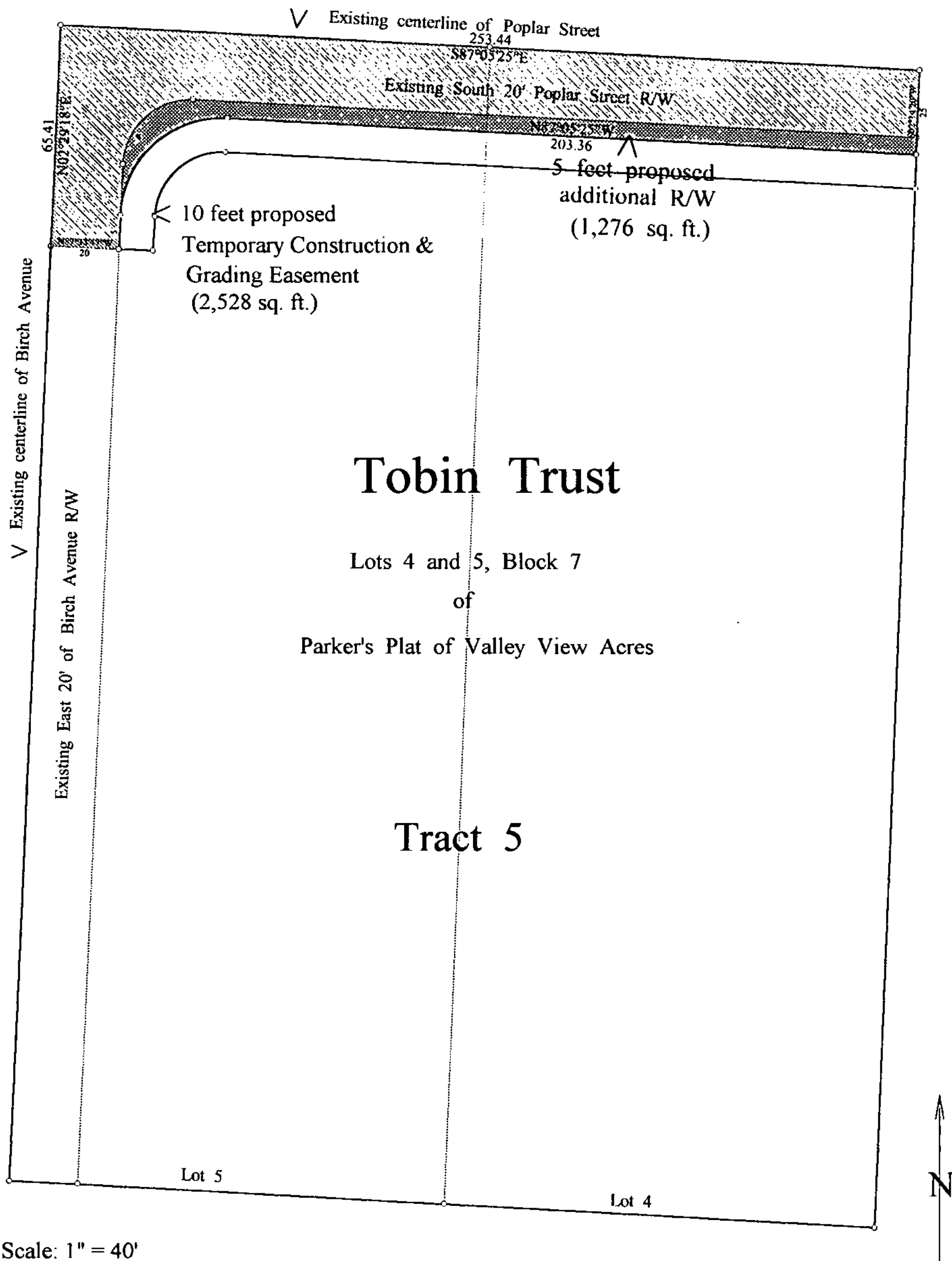
52.06

$n19^{\circ}03'54''e$

Proposed additional
right of way
(964 sq. ft.)

Existing West 20' Birch Avenue R/W

Existing centerline of Birch Avenue



Scale: 1" = 40'

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

April 12, 1999

Patrick J. Tobin, Trustee
Patrick J. Tobin Revocable Trust
2901 N. Tobin Lane
Fayetteville, AR 72703

RE: Poplar Street Improvements
Job No. 97023
Tracts 4 & 5
Third Offer Letter

Dear Mr. Tobin:

As previous offer letters of September 1, 1998 and January 4, 1999 have indicated, the City plans for the widening of Poplar Street, between Gregg Street and Leverett. The City anticipates a letting of a construction contract within the next month for this project. This project will further involve considerable modification to the storm water drainage system between the railroad tracks on the east and the creek on the west. As previously noted, the widening of the road and the modifications to the drainage will also result in the need to relocate a number of general utilities.

In an effort to reach an agreement with you, the city has had an independent appraisal performed on the acquisition of right of way and easements associated with this project on both your properties at Birch and Poplar. Enclosed is the summary sheet of these appraisals. Accordingly, the City of Fayetteville hereby offers the following as compensation for the right of way and easements previously submitted to you for execution:

Compensation:

Tract #4; 519 W. Poplar St.

Road Right of Way; 964 ft ²	\$	1,700
Temporary Roadway & Drainage Easement: 2252 ft ²		400
Perm. Drainage Easement; 300 ft ²		100
Utility Easement; 1427 ft ²		500
Damages: 200 ft ² Concrete Loss	\$	<u>500</u>
Total Compensation, Tract #4	\$	3,200

Tract #5; 405 W. Poplar St.

Road Right of Way; 1,276 ft ²	\$	2,250
Temporary construction Easement; 2,528 ft ²		450
Damages; (4) small trees		<u>300</u>
Total Compensation, Tract #5	\$	3,000

Mr. Pat Tobin, Trustee
Patrick J. Tobin Trust
January 4, 1999
Page 2 of 2

We hope that you will elect to accept this revised offer before this item goes before the City Council on May 18, 1999 for condemnation purposes. If you need for us to provide new documentation, please inform the undersigned at 444-3415. The documents should be executed by all parties with current ownership interest in the particular properties. The documents should further be notarized and returned to the City of Fayetteville. A city Land Agent will be pleased to witness and notarize the execution of the documents if you will advise this office accordingly. Upon receipt of the documents, a check will be requested and you will be paid the amount indicated in this offer letter.

If you make a final rejection of this offer, you do have certain legal rights which are outlined hereafter. Upon your final rejection of this offer, and if the City of Fayetteville elects to do so, a suit of condemnation may be filed and the amount that the City has determined, and offered herein, to be just compensation for the use of your property will be deposited with the Registry of the Circuit Court of Washington County. You may, at that time, elect to accept the amount deposited as just compensation and the amount will be paid to you thereby disposing of the condemnation suit.

If you do not elect to accept the amount deposited as just compensation, then you may withdraw the amount placed on deposit without prejudice to your rights to claim additional compensation. In this event, you will be entitled to a trial by jury in the Circuit Court to determine just compensation for your lands condemned. In either event, payment of the estimated just compensation will be made available to you.

We, however, ask that you accept the offer made herein by executing the associated *Warranty Deeds* and easements. Please provide us with a Tax Identification Number (Corporation) or Social Security Number so that a check can be written. A Vendor Form was previously provided for this purpose.

Sincerely yours,



Ed Connell
City Land Agent

\edc

APPRAISAL REPORT FOR CITY OF FAYETTEVILLE

Limited Summary Appraisal Report

PROJECT Poplar Street Improvement (Project No. 97023)

COUNTY Washington

PARCEL # 765-09495-000

LOCATION 519 W. Poplar, Fayetteville, AR (Pt. Of Lots 1 & 2, Block 8 of Parker's Valley View Acres

FEE OWNER Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997

ADDRESS 2901 N. Tobin Lane, Fayetteville, AR 72703

ESTATE APPRAISED Fee Simple

AREA OF WHOLE 0.835 acres **AREA OF RESIDUAL** 0.812 acres

AREA OF PERMANENT ACQUISITION 964 Sq. Ft.
(Descriptions attached)

Drainage Easement 300 Sq. Ft.

General Utility Easement 1,427 Sq. Ft.

Temporary Construction and Grading Easement 1,125 Sq. Ft.
1,127 Sq. Ft.

ESTIMATED FAIR MARKET VALUE OF THE PROPERTY:

	Before		
Land		\$ 64,000	
Improvements		\$ 0*	
Total			\$ 64,000
	After		
Land		\$ 61,700	
Improvements		\$ 0*	
Total			\$ 61,700

FAIR MARKET VALUE OF PERMANENT R-O-W & UTILITY ACQUISITION \$ 2,300

As of 24th day of March, 1999

ALLOCATION OF F.M.V. OF TOTAL ACQUISITION

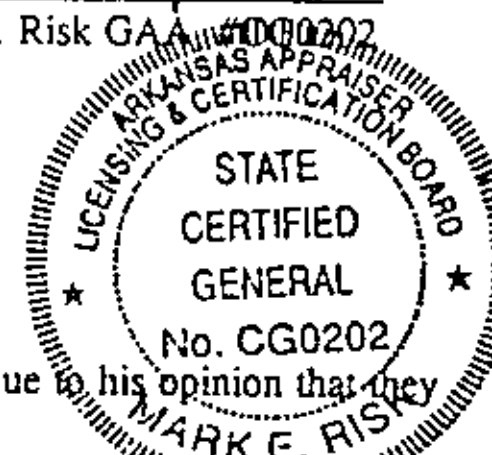
R-O-W	964 SF @ \$1.75/SF	= \$ 1,687	Say	\$ 1,700
Drainage Esmt.**	300 SF @ \$1.75/SF x 0.20	= \$ 105	Say	\$ 100
Utility Easement	1,427 SF @ \$1.75/SF x 0.20	= \$ 499	Say	\$ 500
T.C.E.**	2,252 SF @ \$1.75/SF x 0.10	= \$ 394	Say	\$ 400
Trees	None	= \$ 0		
Improvements:	None	= \$ 0		
Total R-O-W, T.C.E., Trees, & Improvements				\$ 2,700
Damages or Benefits:	200 SF Concrete @ \$2.50 = \$ 500			\$ 500
Total Compensation				\$ 3,200

ATTACHMENTS:

- ☒ Certificate of Appraiser
- ☒ Photographs
- ☒ Site, Improvement, H&B Use Narrative
- ☒ Legal Descriptions
- ☒ Market Data Approach
- ☒ Survey
- ☒ Tax Assessment Card

- * The appraiser has not determined the value of the existing subject improvements due to his opinion that they are not significant affected by the partial taking.
- ** Drainage and General Utility Easement Value is based upon 20% of the fee simple land value per appraiser research. Temporary Construction Easement (T.C.E.) value is based upon the fee simple land value multiplied times 10% to reflect a fair return plus a premium for inconvenience.


Appraiser, Mark E. Risk GAA #1000202



APPRAISAL REPORT
FOR
CITY OF FAYETTEVILLE

Limited Summary Appraisal Report

PROJECT Poplar Street Improvement (Project No. 97023)
COUNTY Washington
PARCEL # 765-09489-000 & 765-09490-000
LOCATION 405 W. Poplar, Fayetteville, AR (Lots 4 & 5, Block 7 of Parker's Valley View Acres)
FEE OWNER Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997
ADDRESS 2901 N. Tobin Lane, Fayetteville, AR 72703
ESTATE APPRAISED Fee Simple

AREA OF WHOLE 1.75 acres **AREA OF RESIDUAL** 1.72 acres

AREA OF PERMANENT ACQUISITION 1,276 Sq. Ft.
(Descriptions attached)
Temporary Construction and Grading Easement 2,528 Sq. Ft.

ESTIMATED FAIR MARKET VALUE OF THE PROPERTY:

	Before	
Land	\$ 133,400	
Improvements	\$ 0*	
Total		\$ 133,400
	After	
Land	\$ 131,150	
Improvements	\$ 0*	
Total		\$ 131,150

FAIR MARKET VALUE OF PERMANENT R-O-W ACQUISITION \$ 2,250

As of 24th day of March, 1999

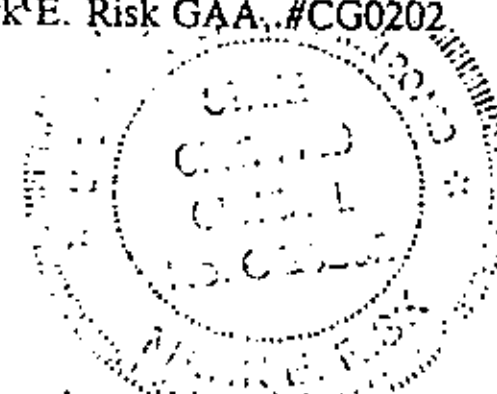
ALLOCATION OF F.M.V. OF TOTAL ACQUISITION

R-O-W	1,276 SF @ \$1.75/SF	= \$ 2,233	Say	\$ 2,250
T.C.E.**	2,528 SF @ \$1.75/SF x 0.10	= \$ 442	Say	\$ 450
Trees	(4) Small Trees	=	\$ 300	
Improvements:	None	=	\$ 0	
Total R-O-W, T.C.E., Trees, & Improvements				\$ 3,000
Damages or Benefits:				\$ 0
Total Compensation				\$ 3,000

ATTACHMENTS:

☒ Certificate of Appraiser
☒ Photographs
☒ Site, Improvement, H&B Use Narrative
☒ Legal Descriptions
☒ Market Data Approach
☒ Survey
☒ Tax Assessment Card


Appraiser, Mark E. Risk GAA, #CG0202



- * The appraiser has not determined the value of the existing subject improvements due to his opinion that they are not significantly affected by the partial taking.
** Temporary Construction Easement (T.C.E.) value is based upon the fee simple land value multiplied times 10% to reflect a fair return, plus a premium for inconvenience.

January 4, 1999

Patrick J. Tobin, Trustee
Patrick J. Tobin Revocable Trust
2901 N. Tobin Lane
Fayetteville, AR 72703

RE: Poplar Street Improvements
Job No. 97023
Tracts 4 & 5
Second Revision Offer Letter

Dear Mr. Tobin:

As previous letters have indicated, the City plans for the widening of Poplar Street, between Gregg Street and Leverett, is fast coming to a close and we anticipate an early letting of a construction contract early next year. This project will further involve considerable modification to the storm water drainage system between the railroad tracks on the east and the creek on the west. Any time road widening and drainage modifications occur, there is usually the need to relocate a number of general utilities.

You are the owner of properties on both the west side and east side of Birch Avenue at Poplar Street. Both of these properties are affected by this improvement project and certain rights of way and easements are required of these properties. The following is a brief overview of the requirements for each of these tracts:

TRACT No. 4: Lot 1 and 5' of Lot 2, Block 8, Parker's Plat of Valley View Acres

- ▶ Existing right of way consists of; (1) the North 20 feet of this lot along Poplar Street and (2) the East 20 feet of this lot along Birch Avenue.
- ▶ An additional 5 feet of road right of way is required for roadway expansion of Poplar Street. A new drainage headwall/culvert system is necessary on the West side of this property to direct the storm drainage across Poplar to the North. As a result, the City is requesting an additional 10 ft. of road right of way over the west 30 feet of this property to include the headwall and culvert inlet. This area is west of your parking lot.
- ▶ The East end of the new right of way for Poplar Street is slightly greater than 5 feet in that the radius of the curve onto Birch is increased from 20 feet to 30 feet. In total, approximately 964 square feet of additional right of way is required as shown in the attached diagram. Based upon engineers drawings, the new south right of way line will intrude into your existing parking lot by about one (1) foot. This land is to be conveyed to the city in fee simple title. The city has given further consideration to this acquisition and hereby raises the offer for this land to \$1.25/ft² or \$1,205.00 for the 964 ft².

- ▶ City ordinances require that we put in sidewalks any time a street is modified or expanded. Most of the additional right of way noted above will be devoted to the installation of this required sidewalk. The new street will have curb and gutter, thus the current ditch along Poplar will be eliminated. The back of curb (BOC) on the expanded street will be located approximately 9 feet south of the current edge of pavement, thus the entry into your parking lot will be shorter.
- ▶ The new sidewalk (5 feet in width) will be located 1-2 feet inside the road right of way with grass located on that 1-2 foot strip. We have asked our engineers to specify that the concrete be re-poured from your parking lot to the sidewalk and not leave the 1-2 ft. gap. The overall result of this is that you will have no loss of parking lot area. It should be kept in mind that the sidewalk area cannot be used for parking purposes.
- ▶ As previously mentioned, the new road will be curbed and guttered. A 30" reinforced concrete pipe(RCP), buried beneath the sidewalk area, will serve for storm water drainage, replacing the 18" culverts currently used for driveway entry and road intersections. Water from this collection system, along with drainage water from the West side of your property will converge at the box culvert located in the Northwest corner of this property and be directed north, under Poplar Street, toward the creek area. The city is requesting a 10 foot permanent drainage easement south of and adjacent to the new right of way which will contain the major inlet to the box culvert. This 300 ft² area would be used to maintain the entry into the box culvert and would also be used to relocate some of the underground utilities which have to be moved as a result of the project.
- ▶ A temporary construction and grading easement is also requested along the ditch on the west side of this property so that the ditch can be graded and landscaped to direct the storm water flow into the new box culvert system. This TCGE is adjacent to and south of the permanent drainage easement; is 50' long, 30' wide on the north, 15' wide on the south, and contains 1125 ft². This area is shown on the attached diagrams. The temporary construction and grading easement will terminate upon the completion and acceptance of the project by the City of Fayetteville.
- ▶ As noted above, the permanent drainage easement area will also serve as an area to relocate utilities across the ditch area. These utilities will probably include gas, telephone, overhead electric, etc. To carry these utilities further down Poplar Street, a 10 foot wide General Utility Easement is requested, lying adjacent to and South of the new right of way line. This permanent utility easement would then angle to a point midway through the entry and about ten (10) feet south of the new right of way line. These utilities will be installed prior to the road expansion and will involve saw cutting the North 10 feet of the existing parking lot. This portion of the parking lot will be available for parking/entry, except during periods of utility installation, with the temporary use of a gravel base. Once all utilities are installed, this area will be re-poured to the sidewalk. If, at a later date, any of the utility companies that cause damage to the parking lot/entry drive will then be responsible for repair.

- ▶ So as to make the connection between the new entry and the existing concrete pad, a temporary construction easement (new item) overlaps the general utility easement. This easement will terminate at job completion.

TRACT No. 5: Lot #4 and Lot #5, Block #7, Parker's Plat of Valley View Acres

- ▶ Existing right of way consists of the North 20 feet of this lot along Poplar Street.
- ▶ An additional 5 feet of road right of way is required for roadway expansion of Poplar Street. This will bring the new right of way down to about 6 feet north of the west end of the parking lot on lot #4 and about 5 ft. north of the east end of the parking lot on lot #5. In all, approximately 1,276 ft² is required, including a change in the radius (from 20 feet to 30 feet) of the curve onto Birch Avenue. This area of existing and new right of way is shown in the attached diagram.
- ▶ A 10 foot temporary construction easement (TCE) for road way purposes is required south of the new right of way line. The trees in this TCE area will not be disturbed by the road or storm water drainage construction, which will be in the road right of way. This same area may be required by other (non-public) utility companies, however they will approach you if necessary.
- ▶ There is one tree which borders on the new right of way line which will be removed. Special compensation for that tree is included in the determination provided hereafter.
- ▶ The current sidewalk will be removed and rebuilt, somewhat south of the existing sidewalk, to allow for the installation of the storm water drainage line (36"). The sidewalk will be a couple of feet of the new right of way line.
- ▶ There should be no loss of parking lot area due to road and drainage construction.

Compensation:

Tract # 4:

Road Right of Way: 964 ft ²	\$	1,205
Temp. Roadway Easement: 1127 ft ²	\$	115
Permanent Drainage Easement: 300 ft ²	\$	75
Temp. Drainage Easement: 1125 ft ²	\$	115
General Utility Easement: 1236 ft ²	\$	<u>360</u>
Total, Tract #4	\$	1,870

Tract # 5:

Road Right of Way: 1276 ft ²	\$	1,595
Temporary Construction Easement: 2528 ft ²	\$	255
Landscape Damages: (one tree)	\$	<u>450</u>
Total, Tract #5	\$	2,300

Total Compensation, TR# 4 & 5	\$	4,170
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Mr. Pat Tobin, Trustee
Patrick J. Tobin Trust
January 4, 1999
Page 4 of 5

In accordance with the above determination, the City hereby offers \$ 1,870 for the acquisition of additional right of way, permanent drainage easement, general utility easement and temporary construction and grading easement associated with Tract #4; and \$ 2,300 for the acquisition of additional road right of way, a temporary construction and grading easement and landscape damages associated with Tract #5.

We hope that you will elect to accept this revised offer since time is quickly passing before this project must go to bid. We are including another set of documentation for each of these tracts just in case the previous documents are misplaced. The roadway temporary easements are new documents. These documents should be executed by all parties with current ownership interest in the particular properties. The documents should be notarized and returned to the City of Fayetteville. A city Land Agent will be pleased to witness and notarize the execution of the documents if you will advise this office accordingly. Upon receipt of the documents, a check will be requested and you will be paid the amount indicated in this offer letter.

If you make a final rejection of this offer, you do have certain legal rights which are outlined hereafter. Upon your final rejection of this offer, and if the City of Fayetteville elects to do so, a suit of condemnation may be filed and the amount that the City has determined, and offered herein, to be just compensation for the use of your property will be deposited with the Registry of the Circuit Court of Washington County. You may, at that time, elect to accept the amount deposited as just compensation and the amount will be paid to you thereby disposing of the condemnation suit.

If you do not elect to accept the amount deposited as just compensation, then you may withdraw the amount placed on deposit without prejudice to your rights to claim additional compensation. In this event, you will be entitled to a trial by jury in the Circuit Court to determine just compensation for your lands condemned. In either event, payment of the estimated just compensation will be made available to you.

We, however, ask that you accept the offer made herein by executing the associated *Warranty Deeds* and easements. A reduced copy of the documents are included for your records. We can provide a copy of the recorded document upon your request and at the appropriate time. Please provide us with a Tax Identification Number (Corporation) or Social Security Number so that a check can be written. A Vendor Form is provided for this purpose.

Mr. Pat Tobin, Trustee
Patrick J. Tobin Trust
January 4, 1999
Page 5 of 5

We apologize for the length of this letter, however, we felt that more detailed explanation of the drainage system and roadway improvement was probably necessary in order to move this project along. A City Land Agent will be glad to meet with you at your convenience and discuss all phases of this project and the associated documents. Please contact Ed Connell at (501) 444-3415, Jill Goddard at 444-3407 or I can be reached at 575-8206.

Sincerely yours,

Jim Beavers
City Engineer

Enclosures

JB\edc

September 21, 1998

Patrick J. Tobin, Trustee
2901 N. Tobin Lane
Fayetteville, AR 72703

RE: Poplar Street Improvements
Job No. 97023
Tract No. 4
Revised Offer Letter

Dear Mr. Tobin:

The City of Fayetteville is planning the widening of Poplar Street between Gregg Avenue to just west of Birch Avenue. This commences where a previous widening project left off and continues the widening to Gregg Avenue/railroad right of way. In order to extend the alignment of the previously widened street it is necessary to obtain a small amount of additional right of way across a portion of your property. Also, associated with any road project of this nature, improvements to drainage systems are also necessary. A rather large box culvert will be located in the new right of way area. However, a small drainage easement and a temporary construction and grading easement are necessary to allow stormwater flow to be directed to the culvert. South of the new right of way area is a general utility easement to allow for the relocation of necessary utilities. (The specifics are shown on the attached diagram.) The temporary construction and grading easement will terminate upon completion and acceptance of the project by the City.

Included is a general map of the subject area, as well as a drawing of your specific property depicting the anticipated areas required for new right of way and the easements. The existing right of way is also shown and is considered public property by prescription. The City of Fayetteville hereby offers \$965.00 for the acquisition of additional right of way (964 square feet), \$45.00 for the conveyance of rights associated with the Permanent Drainage Easement (300 square feet), \$90.00 as rental of the lands associated with the Temporary Construction and Grading Easement (1,125 square feet), and \$185.00 for the conveyance of rights associated with the General Utility Easement (1,236 square feet); making the total offer amount \$1,285.00.

You will find enclosed a *Quit Claim Deed* from Geraldine R. St. John to your Trust for the east five (5) feet of Lot 2, Block 8. As far as I can tell, when Mrs. St. John quit claimed her interest in the property to you in 1987 (Document Record 1241/149), this 5-foot strip was omitted. This Quit Claim Deed is in an effort to convey the entire parcel to your Trust. This document needs to be signed, notarized, and recorded in order to consider you to be sole owner of the property.

Mr. Tobin
Poplar Street Improvements
Offer Letter, Page 2 of 2

Should you elect to accept this offer, the *Warranty Deed*, *Drainage Easement*, and the *General Utility Easement* contained herein should be executed by all parties with current ownership interest in the particular property. The documents should be notarized and returned to the City of Fayetteville. A City Land Agent will be pleased to witness and notarize the execution of the documents if you will advise our office accordingly. Upon receipt of these documents, a check will be requested and you will be paid the amount indicated in this offer letter.

If you make a final rejection of this offer, you do have certain legal rights which are outlined hereafter. Upon your final rejection of this offer, and if the City of Fayetteville elects to do so, a suit of condemnation may be filed and the amount that the City has determined, and offered herein, to be just compensation for the use of your property will be deposited with the Registry of the Circuit Court of Washington County. You may, at that time, elect to accept the amount deposited as just compensation and the amount will be paid to you thereby disposing of the condemnation suit.

If you do not elect to accept the amount deposited as just compensation, then you may withdraw the amount placed on deposit without prejudice to your rights to claim additional compensation. In this event, you will be entitled to a trial by jury in the Circuit Court to determine just compensation for your lands condemned. In either event, payment of the estimated just compensation will be made available to you.

We, however, ask that you accept the offer made herein by executing the attached *Warranty Deed*, *Drainage Easement*, and *General Utility Easement*. Reduced copies of the documents are included for your records. We can provide copies of the recorded documents upon your request and at the appropriate time. Please provide us with a Tax Identification Number (Corporation) or Social Security Number so that a check can be written. A Vendor Form is provided for this purpose.

A City Land Agent will be glad to meet with you at your convenience and discuss all phases of this project and the associated documents. Please contact Ed Connell at (501) 444-3415, Jill Goddard at 444-3407 or I can be reached at 575-8206.

Sincerely yours,

Donald R. Bunn
City Engineer

DRB/jsg
Attachments

September 21, 1998

Patrick J. Tobin, Trustee
2901 N. Tobin Lane
Fayetteville, AR 72703

RE: Poplar Street Improvements
Job No. 97023
Tract No. 5
Revised Offer Letter

Dear Mr. Tobin:

The City of Fayetteville is planning the widening of Poplar Street between Gregg Avenue to just west of Birch Avenue. This commences where a previous widening project left off and continues the widening to Gregg Avenue/railroad right of way. In order to extend the alignment of the previously widened street, it is necessary to obtain a small amount of additional right of way across a portion of your property for this project. (The specifics are shown on the attached diagram.)

Included is a general map of the subject area, as well as a drawing of your specific property depicting the anticipated new area required for right of way. The existing right of way is also shown and is considered public property by prescription. The City of Fayetteville hereby offers \$1,280.00 for the acquisition of additional right of way (1,276 square feet), and \$450.00 in landscape damages; making the total offer amount \$1,730.00.

Should you elect to accept this offer, the *Warranty Deed* contained herein should be executed by all parties with current ownership interest in the particular property. The document should be notarized and returned to the City of Fayetteville. A City Land Agent will be pleased to witness and notarize the execution of the document if you will advise our office accordingly. Upon receipt of this document, a check will be requested and you will be paid the amount indicated in this offer letter.

If you make a final rejection of this offer, you do have certain legal rights which are outlined hereafter. Upon your final rejection of this offer, and if the City of Fayetteville elects to do so, a suit of condemnation may be filed and the amount that the City has determined, and offered herein, to be just compensation for the use of your property will be deposited with the Registry of the Circuit Court of Washington County. You may, at that time, elect to accept the amount deposited as just compensation and the amount will be paid to you thereby disposing of the condemnation suit.

Mr. Tobin
Poplar Street Improvements
Offer Letter, Page 2 of 2

If you do not elect to accept the amount deposited as just compensation, then you may withdraw the amount placed on deposit without prejudice to your rights to claim additional compensation. In this event, you will be entitled to a trial by jury in the Circuit Court to determine just compensation for your lands condemned. In either event, payment of the estimated just compensation will be made available to you.

We, however, ask that you accept the offer made herein by executing the attached *Warranty Deed*. A reduced copy of the document is included for your records. We can provide a copy of the recorded document upon your request and at the appropriate time. Please provide us with a Tax Identification Number (Corporation) or Social Security Number so that a check can be written. A Vendor Form is provided for this purpose.

A City Land Agent will be glad to meet with you at your convenience and discuss all phases of this project and the associated documents. Please contact Ed Connell at (501) 444-3415, Jill Goddard at 444-3407 or I can be reached at 575-8206.

Sincerely yours,

Donald R. Bunn
City Engineer

DRB/jsg

Attachments

TK #4

**APPRAISAL REPORT
FOR
CITY OF FAYETTEVILLE**

Limited Summary Appraisal Report

PROJECT Poplar Street Improvement (Project No. 97023)

COUNTY Washington

PARCEL # 765-09495-000

LOCATION 519 W. Poplar, Fayetteville, AR (Pt. Of Lots 1 & 2, Block 8 of Parker's Valley View Acres)

FEE OWNER Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997

ADDRESS 2901 N. Tobin Lane, Fayetteville, AR 72703

ESTATE APPRAISED Fee Simple

AREA OF WHOLE 0.835 acres **AREA OF RESIDUAL** 0.812 acres

AREA OF PERMANENT ACQUISITION 964 Sq. Ft.
(Descriptions attached)

Drainage Easement 300 Sq. Ft.
General Utility Easement 1,427 Sq. Ft.
Temporary Construction and Grading Easement 1,125 Sq. Ft.
1,127 Sq. Ft.

ESTIMATED FAIR MARKET VALUE OF THE PROPERTY:

	Before		
Land		\$ 64,000	
Improvements		\$ 0*	
Total			\$ 64,000
	After		
Land		\$ 61,700	
Improvements		\$ 0*	
Total			\$ 61,700

FAIR MARKET VALUE OF PERMANENT R-O-W & UTILITY ACQUISITION \$ 2,300

As of 24th day of March, 1999

ALLOCATION OF F.M.V. OF TOTAL ACQUISITION

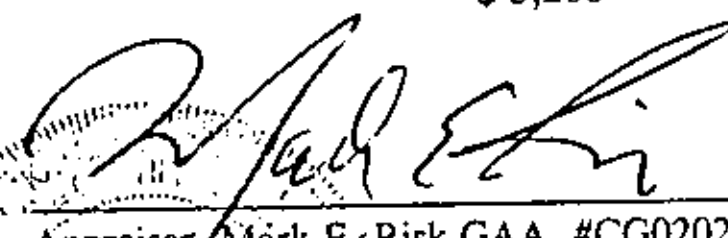
R-O-W	964 SF @ \$1.75/SF	= \$ 1,687	Say	\$ 1,700
Drainage Esmt. **	300 SF @ \$1.75/SF x 0.20	= \$ 105	Say	\$ 100
Utility Easement	1,427 SF @ \$1.75/SF x 0.20	= \$ 499	Say	\$ 500
T.C.E. **	2,252 SF @ \$1.75/SF x 0.10	= \$ 394	Say	\$ 400
Trees	None	= \$ 0		
Improvements:	None	= \$ 0		
Total R-O-W, T.C.E., Trees, & Improvements				\$ 2,700
Damages or Benefits:	200 SF Concrete @ \$2.50 = \$ 500			\$ 500
Total Compensation				\$ 3,200

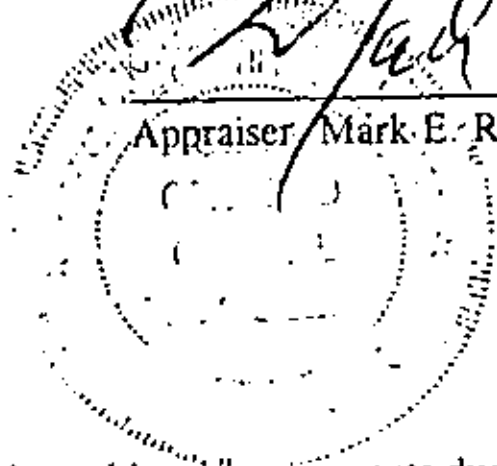
ATTACHMENTS:

- ☒ Certificate of Appraiser
- ☒ Photographs
- ☒ Site, Improvement, H&B Use Narrative
- ☒ Legal Descriptions
- ☒ Market Data Approach
- ☒ Survey
- ☒ Tax Assessment Card

* The appraiser has not determined the value of the existing subject improvements due to his opinion that they are not significant affected by the partial taking.

** Drainage and General Utility Easement Value is based upon 20% of the fee simple land value per appraiser research. Temporary Construction Easement (T.C.E.) value is based upon the fee simple land value multiplied times 10% to reflect a fair return plus a premium for inconvenience.


Appraiser Mark E. Risk GAA, #CG0202



CERTIFICATE OF APPRAISER

I hereby certify:

That I have personally inspected the property herein appraised, that I have made a personal field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented by the photographs and data contained in said appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct. That the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.

That I understand that such appraisal may be used in connection with the permanent acquisition of right of way for the for roadway and drainage improvements along Poplar Street. The project is to be performed by the City of Fayetteville.

This project has been initiated by the City of Fayetteville.

That such appraisal has been made in conformity with the appropriate City laws, regulations, and policies and procedures applicable to appraisal of right of ways and easements for such purposes; that in appraising the value before acquisition, no consideration has been given to increases or decreases in Fair Market Value caused by the public improvement; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said City.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect, present or contemplated future personal interest in such property, and no personal interest or bias with respect to the parties involved, or in any benefit from the acquisition of such property appraised.

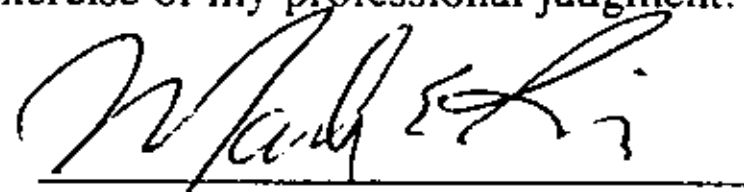
That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the City of Fayetteville, and I will not do so until so authorized by said City officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That my analyses, opinions, and conclusions were developed and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice and no one provided significant professional assistance to the persons signing this report.

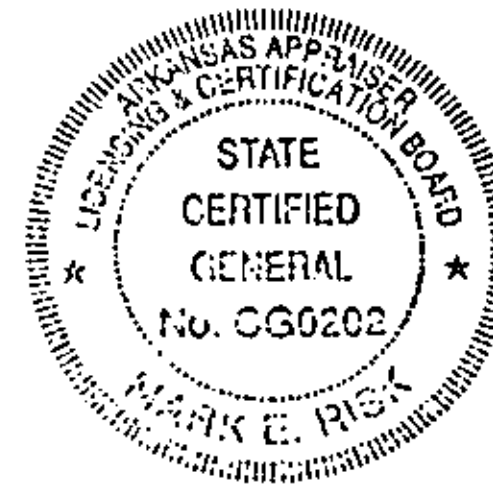
That in my opinion the just compensation for the acquisition as of the 24th day of March, 1999, is \$3,200 based upon my independent appraisal and the exercise of my professional judgment.

4-8-99

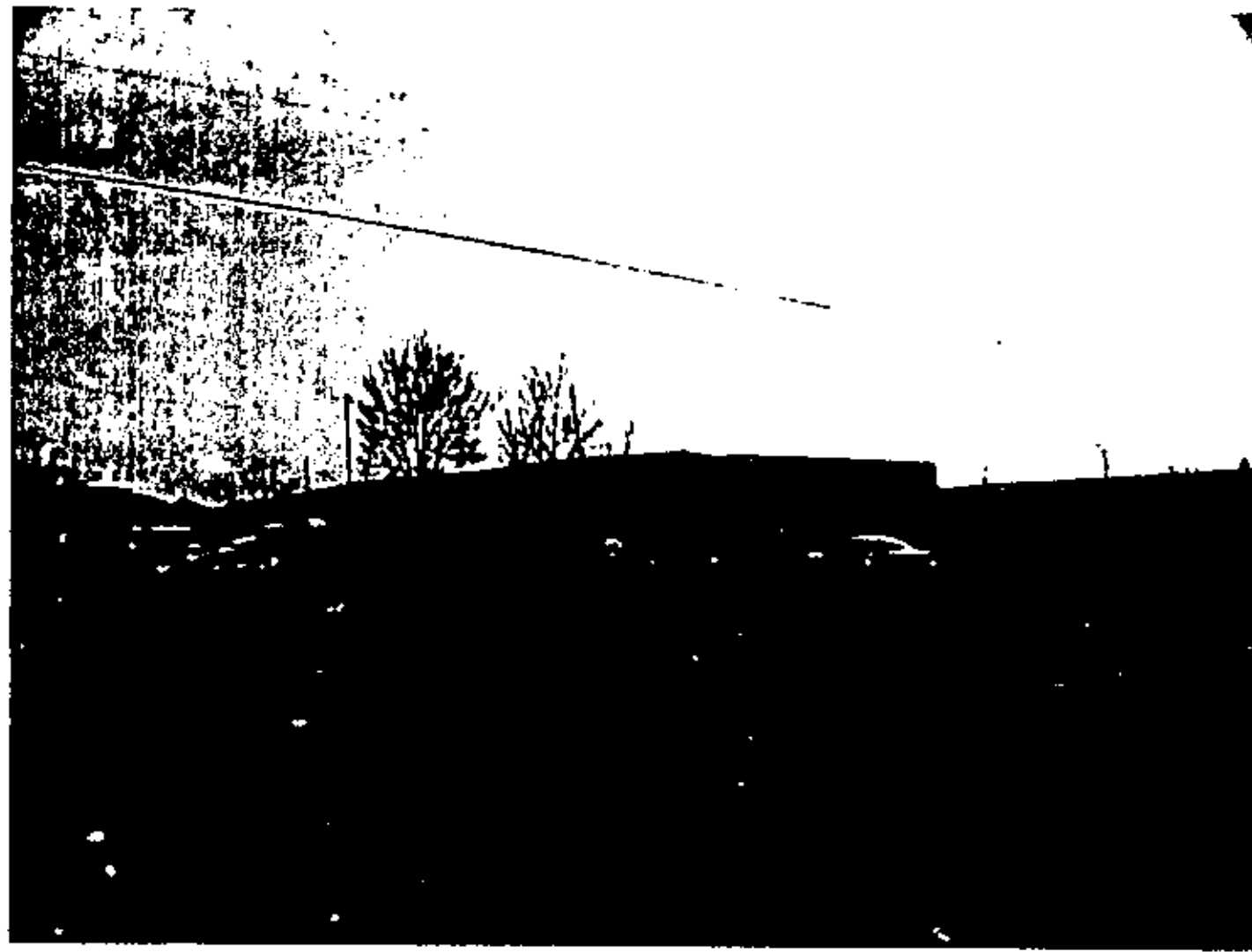
Date


Signature

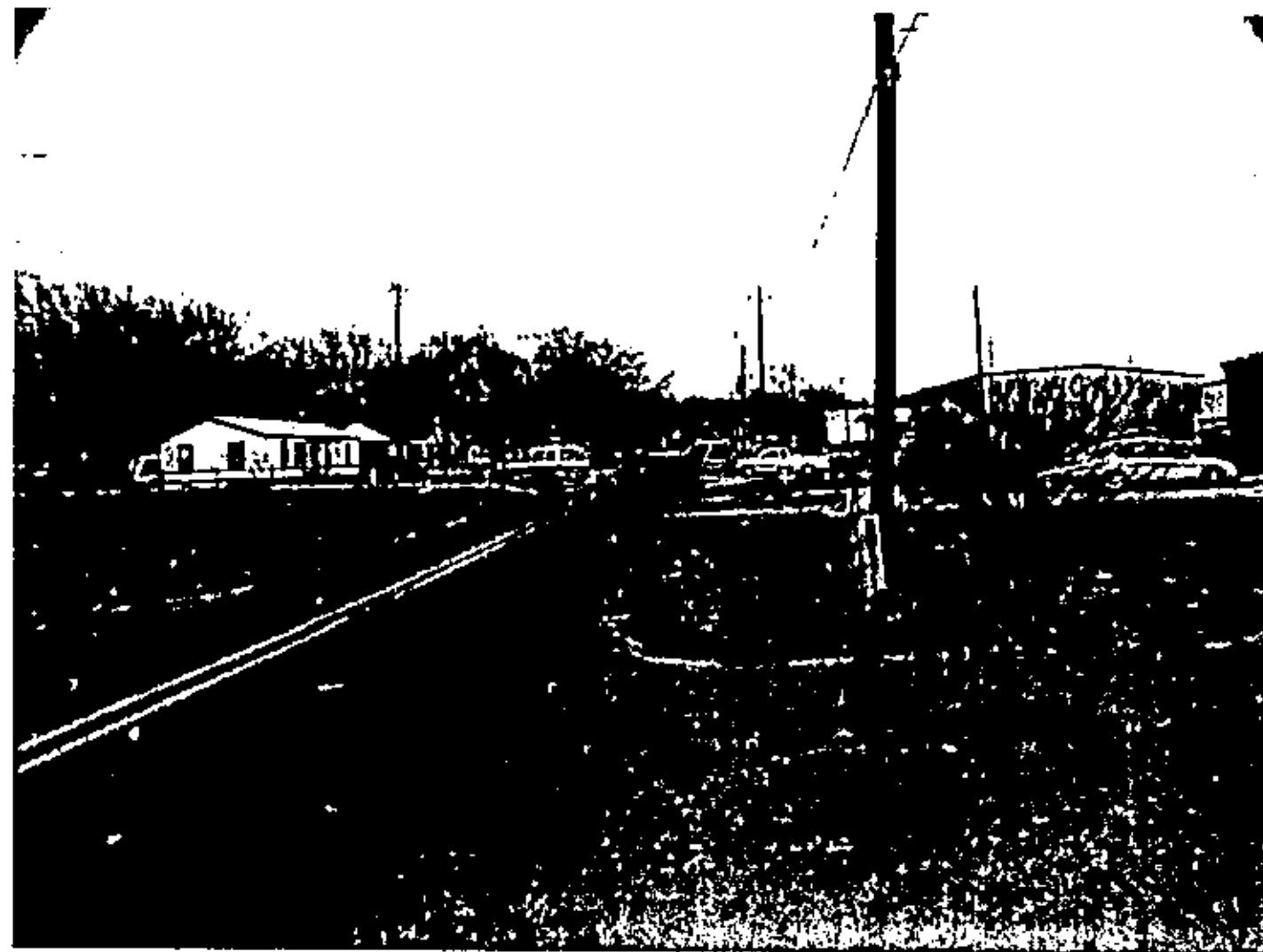
JOB Poplar Street Improvements
PARCEL 765-09495-000



PICTURES



Front View of Subject Property



Street Scene of Poplar St. Looking East

PICTURES



Street Scene of Birch Ave. Looking South

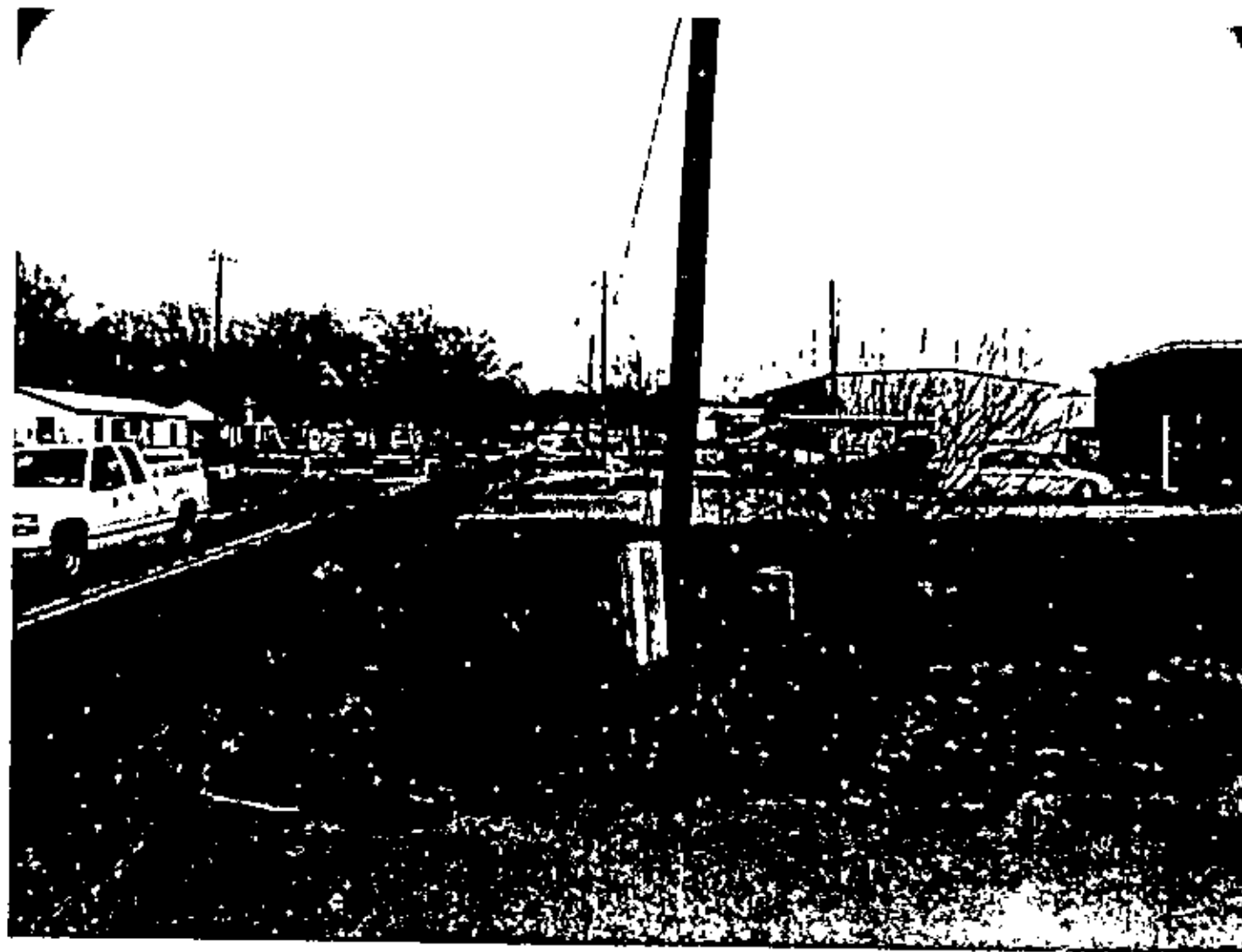


Right-of-Way and Easement Acquisition Area Looking West

PICTURES



Drainage Easement Looking South



Right-of-Way and Easement Area Looking East

CONTACTED FOR APPRAISAL INSPECTION AND COMMENTS

DATE: March 23, 1999

NAME: Pat Tobin

COMMENTS: The appraiser visually inspected the acquisition area on the above date. The appraiser attempted to reach Mr. Tobin by phone. To date the appraiser has not been able to contact Mr. Tobin.

GENERAL REMARKS: Mr. Tobin has not returned the appraiser's phone calls so there has been no input received from the property owner. The existing buildings on the site are currently rented to Gaylord's Auto Connection and Servicemaster. The amount of rent is unknown to the appraiser.

3 YR. SALE HISTORY: The subject property has been owned by Mr. Pat Tobin, or related entities, for many years. There have been no transactions to the appraiser's knowledge affecting the subject property within the past three years.

**CHANGES IN
PROPERTY SINCE
DATE OF PURCHASE:** None

**METHOD OF
APPRAISAL:** The appraiser has utilized the Market Data or Sales Comparison Approach to value the subject land before and after the taking. Due to the appraiser's opinion that the subject improvements are not negatively affected by the partial taking, the value of these improvements has not been considered.

The appraiser has not utilized the Market Data, Cost, or Income Approaches in valuing the subject improvements. This is considered a departure from the Uniform Standards of Professional Appraisal Practice as permitted under Standard I.

In addition, the appraiser has determined the subject property will not be negatively affected as a result of the taking.

GENERAL INFORMATION

MARKET VALUE DEFINED

The Appraisal Foundation defines market value as follows:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1. Buyer and seller are typically motivated.*
- 2. Both parties are well informed or well advised, and each acting in what he considers his own best interest.*
- 3. A reasonable time is allowed for exposure in the open market.*
- 4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto.*
- 5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."*

PURPOSE OF THE APPRAISAL

This appraisal is made for the purpose of estimating the Fair Market Value of the subject property acquired by the City of Fayetteville under its right of eminent domain in connection with the improvements to Poplar Street. Said acquisition is for the purpose of widening Poplar St., and to improve drainage in the subject neighborhood. The appraisal will include all damages and/or benefits, if any, to the extent that benefits are allowed under state law, to the remaining property as just compensation for the property taken.

PROPERTY RIGHTS APPRAISED

The property is appraised as though owned in fee simple and unencumbered. A fee simple title is the fullest type of private ownership possible, subject to all public limitations including zoning, taxation, and eminent domain; and also subject to private limitations which may exist, such as easements and restrictions of record.

CONTINGENT AND LIMITING CONDITIONS

This property is appraised in fee simple subject to the following limiting conditions:

1. It is assumed by the appraiser that the maps, construction plans, and/or tract descriptions furnished to him are correct.
2. It is assumed by the appraiser that the attached deed furnished to him is correct and reflects the fee owner and all holders of less than fee interests in the property.
3. It is the opinion of the appraiser that information gathered by him from various sources, including dates, estimates and opinions, which are contained in this report were obtained from sources considered reliable; however, no liability for them can be assumed or guaranteed by this appraiser.
4. No responsibility for matters legal in character is assumed by your appraiser. All existing liens and encumbrances have been disregarded, and the property is appraised as though free and clear.
5. The various sketches and exhibits included in this appraisal are placed herein to assist the reader in visualizing the property under appraisal. Your appraiser made no surveys and accepts no responsibility for them.

THE APPRAISAL PROCESS

A professional appraisal begins with a thorough inspection of the property being appraised. This includes a physical inspection of the site and all improvements which have contributory value. It also includes an inspection of the neighborhood and of site improvements which may positively or negatively affect the value of the subject property. And finally, it includes a review of the general area of the subject in order to ascertain any favorable or unfavorable environmental or economic conditions which may exist, such as proximity to markets, poultry and swine, industries, schools, etc..

After a thorough analysis of the subject property, its neighborhood, and its general area, the appraiser then attempts to ascertain a fair market value. Three time-tested appraisal approaches or techniques are utilized in the profession in order to develop a value indication. These three approaches are the Market Data Approach, the Cost Approach, and the Income Approach. Each approach is briefly described as follows:

The Market Data Approach - A comparison is made between the subject property and similar properties which have sold recently in the market place.

The Cost Approach - A replacement cost new of the improvements is determined and the applicable amount of depreciation is deducted in order to obtain a value estimate.

The Income Approach - Bases a value estimate upon the amount of net income the property can reasonably produce over its expected lifetime.

Each approach utilizes the various principles of value which exist in the marketplace. These value principles include supply and demand, balance, contribution, conformity, external items, opportunity costs, and utmost - substitution. The principal of substitution states simply that a knowledgeable, prudent purchaser has three alternatives. That is, 1) to buy a vacant site and construct a duplicate or similar property without delay (Cost Approach), 2) to purchase another existing property with equal or similar desirability and utility (Market Data Approach), or 3) to invest in or acquire a comparably yielding income stream of similar quality, quantity and longevity (Income Approach).

All three approaches may not be used in all appraisal assignments depending upon the applicability of the approach to the property being appraised and the scope of the appraisal assignment.

After the appraiser applies the applicable approaches to the subject property, he must reconcile the differences in value so indicated. Based upon the appraiser's experience and judgment, this may involve selecting one of the three approaches which is deemed more reliable or it may involve employing a weighted average of the three approaches in his final correlation or conclusion of value.

With regards to the subject appraisal, only the Market Data or Sales Comparison Approach is deemed applicable.

SCOPE OF THE APPRAISAL

The scope of the appraisal encompasses the necessary research and analysis to prepare a report in accordance with its intended use, the *Standards of Professional Practice of the Appraisal Institute*, and the *Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation*.

This appraisal is based upon the information gathered by the appraiser from the public records, other identified sources, and an inspection of the subject property and neighborhood. Data believed to be unreliable was not included in this report nor used as a basis for the value conclusion.

The subject property was physically inspected by the appraiser on March 24, 1999. The subject photographs were taken on those dates.

Area, city, and neighborhood data were based on information in the Real Estate Consultants library and files. The neighborhood section was based upon a physical inspection of the area as well as data from the City of Fayetteville.

The subject property data was based upon the physical inspection of the property and information obtained from municipal authorities.

In evaluating the highest and best use for the subject property, an analysis was made of data compiled in the steps noted above. In addition, a study of the commercial market in the subject area has been made to help determine the feasibility of future uses.

In developing the appraisal approaches to value, market data used were collected from the Real Estate Consultants' office files; other appraisers, Realtors, courthouse records, or persons knowledgeable of the subject property marketplace; and the municipal offices in the Northwest Arkansas area.

It is the appraiser's opinion that the subject improvements are not significantly affected by the partial taking consequently the appraiser has not valued the existing improvements.

After assembling and analyzing the data defined in this scope of the appraisal, a final estimate of market value was made.

NEIGHBORHOOD DATA AND ANALYSIS

For appraisal purposes, a neighborhood is considered to be a portion of a large community in which there is a homogeneous grouping of inhabitants, buildings, or business enterprises. Inhabitants of a neighborhood usually have a more casual community of interest and a similarity of economic level and cultural background. Neighborhood boundaries may consist of well-defined natural or man-made barriers or they may be more or less well-defined by a distinct change in land use or in the character of the inhabitants.

The subject property is located along Poplar Street, in the north central portion of the city of Fayetteville. Neighborhood boundaries could be the U of A Agri. Farm to the north, Gregg Ave. to the east, Sycamore St. to the south, and Garland Ave. to the west.

The neighborhood is characterized by a wide variety of land uses including industrial and heavy commercial type land uses, single-family home sites on small urban lots, and multi-family housing. The commercial uses in the neighborhood are primarily along the more frequented roadways such as Poplar St., Sycamore St., and N. Gregg Ave.. There are also some multi-family structures in the neighborhood. The single-family uses are generally of small, modest, older residences. This area of Fayetteville is an older area of town and was developed many years ago. It is in the Fayetteville School System, Leverett Elementary School.

The neighborhood is supplied police and fire protection from the City of Fayetteville. Municipal water and sewer is available to most of the neighborhood, and is supplied by the City of Fayetteville. Electrical service is available to all of the neighborhood, and is supplied by SWEPCO. Natural gas is also available to most the neighborhood, and is supplied by Arkansas Western Gas Company.

Access to and from the area is provided by Gregg Ave., Garland Ave., and Sycamore St., with numerous city improved side streets.

DESCRIPTION OF THE SUBJECT PROPERTY BEFORE THE TAKING

Site

The subject site is a rectangular shaped parcel containing approximately 0.835 acre. The site has direct access from both Poplar St. and Birch with appx. 106.72' of frontage along Poplar St. and 325.70' along Birch Avenue. These roadways are two-lane city improved routes with asphalt surface. The tract is level and cleared land. The site is level at road grade, then gradually slopes upward. Drainage appeared to be adequate upon inspection. The site is presently encumbered with regular utility easements. The subject site lies within the City Limits of Fayetteville, and is zoned Heavy Commercial and Light Industrial (I-1).

Improvements

The subject is improved with (3) older metal buildings. The building facing Poplar St. is approximately 3,000 Sq. Ft. while one of the buildings facing Birch Ave. is approximately 1,500 Sq. Ft.. The larger building is currently occupied by Gaylord's Auto Connection. The buildings are older structures with an estimated age of 25+ years. The appraiser has not performed an interior inspection of the buildings. There is also a concrete parking area in front of the buildings.

DESCRIPTION OF THE PARTIAL TAKING

The partial taking includes a 964 Sq. Ft. permanent acquisition for additional right-of-way along the entire north portion of the subject site. The area is south and will run parallel to the existing Poplar St. right-of-way. In addition, the taking will include a General Utility Easement (1,127 Sq. Ft.) just south of the proposed right-of-way acquisition. Furthermore, the partial taking includes an additional general utility and drainage easement through a portion of the remaining subject land south of Poplar St. and along the subject's northwest corner. This area contains 300 Sq. Ft.. The entire acquisition area will be used for roadway and drainage improvements along Poplar Street. It is this permanent acquisition which is considered to be a compensable acquisition by the City of Fayetteville. Furthermore, there will be a 1,125 Sq. Ft. Temporary Construction and Grading Easement. See attached survey provided by client.

LEGAL DESCRIPTIONS

See following page for property, permanent easement, drainage easement, and temporary easement descriptions provided by the client.

Project No. 97023
Project: Poplar Street Right of Way
Parcel No. 765-09-195-000
Tract No. 4

TRUSTEE'S
WARRANTY DEED

PROPERTY OWNERS COPY

BE IT KNOWN BY THESE PRESENTS.

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, the following described land situated in the County of Washington, State of Arkansas, to-wit:

Part of Lots One (1) and Two (2) of Block Eight (B) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet, thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet, to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less.

It is the intention of this deed to convey both the present Poplar Street and Birch Avenue rights of way, at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

TO HAVE AND TO HOLD the said lands and appurtenances thereunto belonging unto the said Grantee and Grantee's successors and assigns, forever. And said Trustee, in behalf of the said Trust, hereby covenants with the said Grantee that said Trust is lawfully seized of said lands and premises, that the same is unencumbered, and that the said Trust will forever warrant and defend the title to the said lands against all legal claims whatsoever.

WITNESS the execution hereof on this _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY:

Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON)

ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Trust dated March 4, 1997, and that he is duly authorized to execute the foregoing instrument for and in the name and behalf of said Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES:

Notary Public

Project No. 97023
Project: Poplar Street
Parcel No. 765-09495-000
Tract No. 4

PROPERTY OWNERS COPY

DRAINAGE EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement and a temporary construction and grading easement to excavate, construct, maintain, repair and/or replace an earthen retaining levy, drainage tile area, open ditch, concrete channel and/or concrete inlet box on, over, and through the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

Lot Numbered One (1) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas. ALSO, the East Five (5) feet of Lot Numbered Two (2) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT: Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less. The above described LESS and EXCEPT, was conveyed to the City of Fayetteville, as road right of way, under separate deed. In that deed, it was the intention to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

PERMANENT EASEMENT DESCRIPTION:

Commencing at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2; thence South 02° 19' 03" West 35.0 feet, to the point of beginning, said point also being on the new south right of way line of Poplar Street; thence South 87° 05' 25" East 30.0 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.0 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 10.0 feet, to the Point of Beginning, containing 300 square feet, more or less.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

Commencing at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2; thence South 02° 19' 03" West 45.0 feet; to the point of beginning; thence South 87° 05' 25" East 30.0 feet; thence South 19° 03' 54" West 52.06 feet; thence North 87° 05' 25" West 15.0 feet to a point 5.0 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 50.0 feet, to the Point of Beginning, containing 1,125 square feet, more or less.

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that this temporary construction and grading easement shall exclude any permanent structure presently located within the above described temporary construction and grading easement area.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

Project No. 97023
Project: Poplar Street
Parcel No. 765-09-195-000
Tract No. 4

PROPERTY OWNERS COPY

GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement to construct, maintain, repair and/or replace, enlarge and operate a water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone and television communication line or lines, and appurtenances thereto, on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

Lot Numbered One (1) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas. ALSO, the East Five (5) feet of Lot Numbered Two (2) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT: Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less. The above described LESS and EXCEPT was conveyed to the City of Fayetteville via Warranty Deed for Land to be used for street right of way. It was the intention of that deed to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way

PERMANENT EASEMENT DESCRIPTION:

Commencing at a point that is North 87° 05' 25" West 5.0 feet from the Northeast corner of said platted Lot 2; thence South 02° 19' 03" West 35.0 feet, to the Point of Beginning, said point also being on the new south right of way line of Poplar Street; thence South 87° 05' 25" East 30.0 feet; thence North 02° 19' 03" East 10.0 feet; thence South 87° 05' 25" East 51.87 feet to a curve to the right, said curve having a radius of 30.0 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of South 42° 25' 33" East 42.18 feet; thence South 02° 29' 18" West 10.00 feet; thence North 87° 34' 11" West 10.0 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 20.0 feet; thence along said curve an arc distance of 31.15 feet with a chord bearing and distance of North 42° 28' 48" West 28.09 feet; thence North 87° 05' 25" West 27.89 feet; thence South 70° 06' 49" West 25.79 feet; thence North 87° 05' 25" West 30.0 feet, to a point 5.0 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 10.0 feet to the Point of Beginning, containing 1,427 square feet, more or less.

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes, lines and/or cables, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water, and to pay any damages which may arise to growing crops or fences from the said construction, maintenance and operation as determined by three disinterested persons, one thereof to be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust, dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a temporary construction and grading easement on, over, and through the following described land situated in the County of Washington, State of Arkansas, for the sole purposes necessary for roadway and/or drainage improvements associated with the above noted project, to-wit:

PROPERTY DESCRIPTION:

Lot Numbered One (1) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas. ALSO, the East Five (5) feet of Lot Numbered Two (2) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas:

LESS AND EXCEPT: Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less. The above described LESS and EXCEPT, was conveyed to the City of Fayetteville, as road right of way, under separate deed. In that deed, it was the intention to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

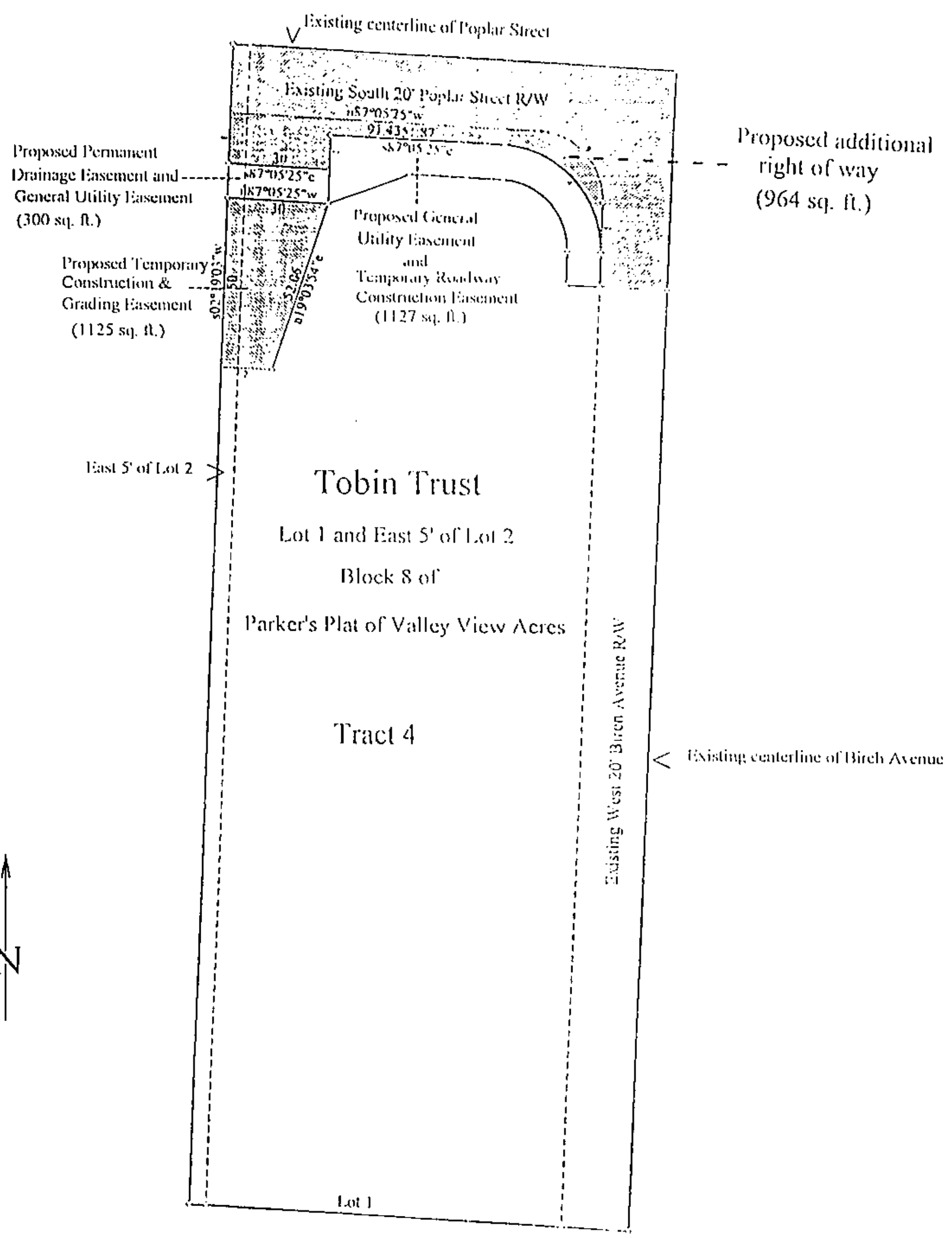
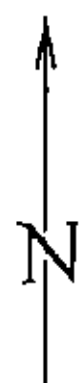
A temporary construction and grading easement across the above described property, being parallel with and contiguous to the South side of the above described LESS and EXCEPT and being more particularly described as follows, to-wit: Commencing at a point that is North 87° 05' 25" West 5.0 feet from the Northwest corner of said platted Lot 2; thence South 02° 19' 03" West 35.0 feet; thence South 87° 05' 25" East 30.0 feet, to the Point of Beginning; thence North 02° 19' 03" East 10.0 feet; thence South 87° 05' 25" East 51.87 feet to a curve to the right, said curve having a radius of 30.0 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of South 42° 25' 33" East 42.18 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 34' 11" West 10.0 feet; thence North 02° 29' 18" East 10.0 feet, to a curve to the left, said curve having a radius of 20.0 feet; thence along said curve an arc distance of 31.15 feet with a chord bearing and distance of North 42° 28' 48" West 28.09 feet; thence North 87° 05' 25" West 27.89 feet; thence South 70° 06' 49" West 25.79 feet; thence North 02° 19' 03" East 10.0 feet, to the Point of Beginning, containing 1,127 square feet, more or less.

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that the above temporary construction and grading easement shall exclude any permanent structure presently located within said temporary construction and grading easement area.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.



HIGHEST AND BEST USE

By "Highest and Best Use" is meant the most likely and profitable use to which a property can be put. It is sometimes called the most profitable or optimum use. It is that use which, at the time of the appraisal, would most likely produce the greatest net return in money or amenities. The appraiser has analyzed the highest and best use of the subject property before and after the taking as follows:

Before the taking: The subject property is currently improved with metal, industrial type buildings presently utilized for auto repair type businesses. The site is located inside the Fayetteville city limits and has I-1 zoning. The immediate neighborhood of the subject consists mainly of commercial/industrial type uses with some single family homes and multi-family structures. It is the opinion of the appraiser that the subject's highest and best use "as improved" is its present use as a metal industrial type building utilized for auto repair.

After the taking: After the taking by the city, the subject will be left a slightly smaller lot. The metal buildings will not be disturbed. There may be a possibility that some of the concrete parking may be lost but not significantly enough to affect the use of the property. Therefore, the highest and best use of the subject after the taking will also be its present use as a metal building utilized for auto repair or other light commercial type use.

DISCUSSION OF SEVERANCE DAMAGE

Where there is a partial taking of property, such as the case of the subject property, any loss in value of the remaining property caused by the partial taking is known as severance damage. The Appraisal Institute defines severance damages as follows:

"It is the diminution of the market value of the remainder area, in the case of a partial taking, which arises (a) by reason of the taking (severance), and/or (b) the construction of the improvement in the manner proposed."

Severance damages are compensable to the property owner if a decline in value is attributable to the partial taking.

In the case of the said property, the partial taking is permanent, will be used for a roadway expansion, and will run parallel to the existing Poplar St.. A sidewalk is also planned in the acquisition area. The proposed drainage easement and improvements should actually improve the drainage and appearance of the subject property. On the other hand, the acquisition will likely infringe upon the parking area in front of the subject building, facing Poplar St.. It is possible that the subject may lose a small amount of parking and concrete in this area of the subject. It is the appraiser's opinion that this potential loss of parking/concrete is not significant, but a form of severance damage to the remaining property. The amount of severance damage is estimated based upon the cost to cure the problem, which is to construct additional parking area on the remaining subject land not located in the area of the partial taking. Therefore, it is the appraiser's opinion that the remaining subject property will suffer severance damages. The appraiser has not conducted an extensive market search for comparable data with similar conditions. However, the appraiser is basing his above stated opinion and the following estimate of severance damage upon his knowledge of the market and personal judgement. Severance damage is estimated to be the cost to construct 200 sq.ft. of additional concrete parking. That is, approximately 200 Sq. Ft. @ \$2.50/Sq. Ft. = \$500.

DISCUSSION OF ENHANCED VALUE OR SPECIAL BENEFIT

In some eminent domain cases which result in partial takings, the remaining property may actually increase in value as a result of some improvement made by the condemning authority. In these cases the remaining property is considered to receive an Enhanced Value or Special Benefit. Thus, if the condemning authority takes a portion of a property for an improvement and this improvement actually increases the value of the remaining land, the amount of just compensation will be reduced by the value of the special benefit.

It is the appraiser's opinion that the future value of the remaining subject property will not be enhanced by the taking.

MARKET DATA APPROACH

ANALYSIS OF THE MARKET DATA AND CONCLUSION OF VALUE

The Market Data Approach is an attempt to measure the reaction of typical buyers and sellers in the market. In this approach a direct comparison is made between the property being appraised and comparable properties which have sold recently. The value of the property being appraised is inferred from the selling prices of comparable properties. To be "comparable," a property need not be identical to the subject. The word "comparable" is used in its ordinary sense, meaning something which is capable of being compared with or worthy of comparison.

The appraiser has conducted an extensive search for recent land sales in the vicinity of the subject property which would be considered comparable to the subject land. These sales are included in this report.

After analysis of the land sales, the comparable sales reflect a value range from \$0.73 to \$3.33/Sq. Ft. for the land. The low end of this range is property with inferior location, access and appeal. The upper end of the value range is sites with Thoroughfare Commercial (C-2) zoning and superior locations. It is the appraiser's opinion that the subject's land value would fall within the low to mid-section of this value spectrum due to its size, land characteristics, location, zoning classification and other characteristics.

Based upon the above sales and analysis thereof, and after adjustments are made for differences in size, location, terrain, availability of utilities, access, zoning and other economic factors, it is the opinion of this appraiser that the Fair Market Value of the subject property as of the date of this appraisal is as follows:

Fee Simple Land Value	0.835 Acre or 36,373 Sq. Ft. @ \$1.75/Sq. Ft. = \$ 63,653 Say \$ 64,000
Fee Simple Structure Value	Not Determined
Fee Simple Parking Lot Value	\$ 2.50/Sq. Ft.

Value Before the Taking:	Land:	\$ 64,000	
	Imps:	\$ 0*	
	Total:		\$ 64,000
Value After the Taking:	Land:	\$ 61,700	
	Imps:	\$ 0	
	Total:		\$ 61,700
Value of the Partial Taking: (Permanent Easement & R-O-W)			\$ 2,300

* Improvement value was not determined due to appraiser's opinion that the subject improvements are not significantly affected by the partial taking.

New years

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COMPANY
Part of the
North West System



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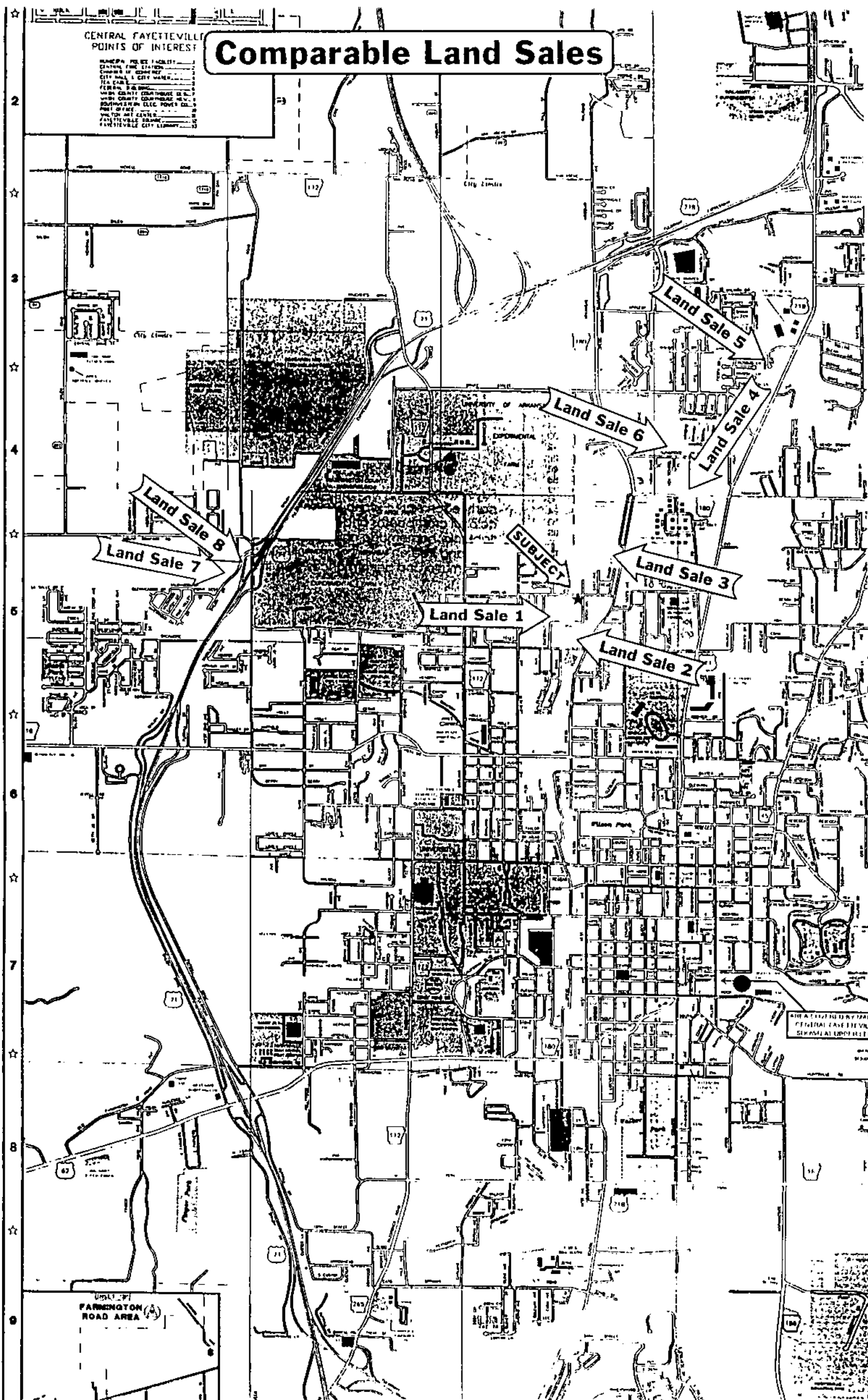
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CENTRAL FAYETTEVILLE
POINTS OF INTEREST

Municipal Police Station
Central Fire Station
Courthouse
City Hall & City Manager's Office
City Clerk's Office
City Engineer's Office
City Planning Commission
City Public Works Department
City Parks & Recreation Department
City Health Department
City Social Services Department
City Housing Department
City Library
City Auditor's Office
City Treasurer's Office
City Attorney's Office
City Clerk's Office
City Engineer's Office
City Planning Commission
City Public Works Department
City Parks & Recreation Department
City Health Department
City Social Services Department
City Housing Department
City Library
City Auditor's Office
City Treasurer's Office
City Attorney's Office

Comparable Land Sales



COMPARABLE LAND SALES

LAND SALE #1

Grantor: Rastall Enterprises, Inc.
Grantee: Tim Owen Development, Inc.
Date: 07/11/94
Legal Description: Lot 12 & E 116.72' of Lot 11, Block 9 of Parker's Plat of Valley View Acres
Location: Ash Street
Sales Price: \$53,000
Size: Appx. 72,339 SF or 1.66 Acres
Indicated Price: \$0.73/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Located southwest of subject site, but has no major road frontage or access. Much inferior visibility and access.

LAND SALE #2

Grantor: Liner-Wimberly Properties
Grantee: Alano Foundation, Inc.
Date: 11/91
Legal Description: Lot 11, Block 11, Parker's Plat of Valley View Acres
Location: Sycamore Street
Sales Price: \$60,000
Size: Appx. 41,026 SF or 0.94 Acres
Indicated Price: \$1.46/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: An older sale of similar lot with frontage and access via Sycamore.

LAND SALE #3

Grantor: Max A. & Cynthia Parker
Grantee: Wayne & Robbye Ridout
Date: 10/28/94
Legal Description: Pt. NW/4 of SE/4 Sec. 4-16-30
Location: Gregg Street, just West of RR R.O.W.
Sales Price: \$225,000
Size: Appx. 204,296 SF or 4.69 Acres
Indicated Price: \$1.10/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Current site of Ridout Contractor Outlet. Site is located off of Gregg on the W side of RR tracks.

LAND SALE #4

Grantor: Freeland Romans
Grantee: Tom January
Date: 5/15/97
Legal Description: Pt. of the S/2, SW/4 of Section 35, T17N, R30W
Location: Township Rd.
Sales Price: \$350,000
Size: 3.07 Acres
Indicated Price: \$114,007/Acre or \$2.62/SF
Zoning: Thoroughfare Commercial (C-2)
Remarks: Commercially zoned land on Township Road just W of Nelms Chevrolet and the North College Avenue intersection. Old stone house with no contributory value has been removed and property has been commercially developed. Recorded Deed Book 97-033164. Verified by agent.

LAND SALE #5

Grantor: Marjorie Niblock, et.al.
Grantee: Randy & Gerri Shankle
Date: 2/26/98
Legal Description: Lot 6 Hammond Plaza
Location: Corner of Appleby & McKee Street
Sales Price: \$45,000
Size: 13,520 SF or 0.31 Acre
Indicated Price: \$3.33/SF
Zoning: Commercial Thoroughfare (C-2)
Remarks: Located near Fiesta Square shopping center. Corner type location off of College Avenue (Hwy. 71B).

LAND SALE #6

Grantor: Mae B. Nettleship
Grantee: Virginia R. Krauft & Sally H. Wimberly
Date: 8/17/98
Legal Description: Sunbridge Center
Location: Sunbridge Drive
Sales Price: \$83,000
Size: Appx. 53,993 SF or 1.24 Acres
Indicated Price: \$1.54/SF
Zoning: Residential Office (R-O)
Remarks: Cleared, level land on Sunbridge Drive off of N. Gregg Avenue.

LAND SALE #7

Grantor: James E. & Elizabeth Potts
Grantee: Dennis Prater
Date: 8/1/97
Legal Description: Lot 2, Block C, Point West S/D Phase II
Location: Shiloh Drive
Sales Price: \$60,000
Size: Appx. 34,486 Sq. Ft. or 0.79 acres
Indicated Price: \$1.74/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Located on Shiloh Dr. just off the Hwy. 71 Bypass. Purchased for site of retail automotive center with parts machine shop area. Recorded Book 97, Page 53250.

LAND SALE #8

Grantor: Sterling P. & Kay Z. Anders and Arkansas Book Store, Inc.
Grantee: William J. & Katherine M. Eddy
Date: 4/30/96
Legal Description: Lot 2, Block B, Point West S/D Phase I
Location: Shiloh Drive
Sales Price: \$60,000
Size: Appx. 28,500 Sq. Ft. or 0.65 acre
Indicated Price: \$2.10/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Located on Shiloh Dr. just off the Hwy. 71 Bypass. Good visibility from the bypass. Recorded Book 96, Page 27579.

Project No. 97023
Project: Poplar Street Right of Way
Parcel No. 765-09495-000
Tract No. 4

TR#4

TRUSTEE'S WARRANTY DEED

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, the following described land situated in the County of Washington, State of Arkansas, to-wit:

Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet, to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less.

It is the intention of this deed to convey both the present Poplar Street and Birch Avenue rights of way, at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

TO HAVE AND TO HOLD the said lands and appurtenances thereunto belonging unto the said Grantee and Grantee's successors and assigns, forever. And said Trustee, in behalf of the said Trust, hereby covenants with the said Grantee that said Trust is lawfully seized of said lands and premises; that the same is unencumbered, and that the said Trust will forever warrant and defend the title to the said lands against all legal claims whatsoever.

WITNESS the execution hereof on this _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY: _____

Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Trust dated March 4, 1997, and that he is duly authorized to execute the foregoing instrument for and in the name and behalf of said Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES: _____

Notary Public

Project No. 97023
Project: Poplar Street
Parcel No. 765-09495-000
Tract No. 4

TR #4

GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement to construct, maintain, repair and/or replace, enlarge and operate a water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone and television communication line or lines, and appurtenances thereto, on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

Lot Numbered One (1) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas. ALSO, the East Five (5) feet of Lot Numbered Two (2) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT: Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less. The above described LESS and EXCEPT was conveyed to the City of Fayetteville via Warranty Deed for land to be used for street right of way. It was the intention of that deed to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

PERMANENT EASEMENT DESCRIPTION:

Commencing at a point that is North 87° 05' 25" West 5.0 feet from the Northeast corner of said platted Lot 2; thence South 02° 19' 03" West 35.0 feet, to the Point of Beginning, said point also being on the new south right of way line of Poplar Street; thence South 87° 05' 25" East 30.0 feet; thence North 02° 19' 03" East 10.0 feet; thence South 87° 05' 25" East 51.87 feet to a curve to the right, said curve having a radius of 30.0 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of South 42° 25' 33" East 42.18 feet; thence South 02° 29' 18" West 10.00 feet; thence North 87° 34' 11" West 10.0 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 20.0 feet; thence along said curve an arc distance of 31.15 feet with a chord bearing and distance of North 42° 28' 48" West 28.09 feet; thence North 87° 05' 25" West 27.89 feet; thence South 70° 06' 49" West 25.79 feet; thence North 87° 05' 25" West 30.0 feet, to a point 5.0 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 10.0 feet to the Point of Beginning, containing 1,427 square feet, more or less,

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes, lines and/or cables, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water, and to pay any damages which may arise to growing crops or fences from the said construction, maintenance and operation as determined by three disinterested persons, one thereof to be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

GENERAL UTILITY EASEMENT
Tobin Trust
Page 2 of 2

The Grantor agrees not to erect any buildings or structures in said permanent easement other than fences and said fences shall not exceed six (6) feet in height.

The Grantee shall have the right to construct additional pipe lines, electrical power lines, telephone and/or television lines or cables upon the above described permanent easement at any time in the future and agrees to pay any damages as a result of such future construction as set out in this document.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY: _____

Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, and that he is duly authorized to execute the foregoing instrument for and in the name and behalf of said Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES:

Notary Public

Project No. 97023
Project: Poplar Street
Parcel No. 765-09495-000
Tract No. 4

TR #4

DRAINAGE EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement and a temporary construction and grading easement to excavate, construct, maintain, repair and/or replace an earthen retaining levy, drainage tile area, open ditch, concrete channel and/or concrete inlet box on, over, and through the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

Lot Numbered One (1) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas. ALSO, the East Five (5) feet of Lot Numbered Two (2) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT: Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less. The above described LESS and EXCEPT, was conveyed to the City of Fayetteville, as road right of way, under separate deed. In that deed, it was the intention to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

PERMANENT EASEMENT DESCRIPTION:

Commencing at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2; thence South 02° 19' 03" West 35.0 feet, to the point of beginning, said point also being on the new south right of way line of Poplar Street; thence South 87° 05' 25" East 30.0 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.0 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 10.0 feet, to the Point of Beginning, containing 300 square feet, more or less.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

Commencing at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2; thence South 02° 19' 03" West 45.0 feet; to the point of beginning; thence South 87° 05' 25" East 30.0 feet; thence South 19° 03' 54" West 52.06 feet; thence North 87° 05' 25" West 15.0 feet to a point 5.0 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 50.0 feet, to the Point of Beginning, containing 1,125 square feet, more or less.

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that this temporary construction and grading easement shall exclude any permanent structure presently located within the above described temporary construction and grading easement area.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

DRAINAGE EASEMENT

Tobin

Page 2 of 2

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to pay any damages which may arise to growing crops or fences from the above described construction, maintenance and operation as determined by three disinterested persons. One of whom shall be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

The Grantor agrees not to erect any buildings or structures in said permanent easement.

The Grantee shall have the right to construct additional drainage structures within the above described permanent easement at any time in the future and agrees to pay any damages as a result of such future construction as set out in this easement.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY: _____

Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON)

ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, and that he is duly authorized to execute the foregoing instrument for and in the name and behalf of said Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES:

Notary Public

TR #4

TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust, dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a temporary construction and grading easement on, over, and through the following described land situated in the County of Washington, State of Arkansas, for the sole purposes necessary for roadway and/or drainage improvements associated with the above noted project, to-wit:

PROPERTY DESCRIPTION:

Lot Numbered One (1) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas. ALSO, the East Five (5) feet of Lot Numbered Two (2) Block Numbered Eight (8) in Parker's Plat of Valley View Addition to the City of Fayetteville, Arkansas, as on record in the office of the Ex-Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT: Part of Lots One (1) and Two (2) of Block Eight (8) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at a point that is North 87° 05' 25" West 5.00 feet from the Northeast corner of said platted Lot 2, said point being on the present centerline of Poplar Street; thence along said centerline South 87° 05' 25" East 131.72 feet to the intersection of the centerlines of Poplar Street and Birch Avenue; thence along said centerline of Birch Avenue South 02° 29' 18" West 64.48 feet; thence North 87° 34' 11" West 20.00 feet; thence North 02° 29' 18" East 10.0 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of North 42° 25' 33" West 42.18 feet; thence North 87° 05' 25" West 51.87 feet; thence South 02° 19' 03" West 10.0 feet; thence North 87° 05' 25" West 30.0 feet to a point 5.00 feet West of the East boundary of said Lot 2; thence North 02° 19' 03" East 35.00 feet to the Point of Beginning, containing 4,573 square feet, more or less. The above described LESS and EXCEPT, was conveyed to the City of Fayetteville, as road right of way, under separate deed. In that deed, it was the intention to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 964 square feet, more or less, adjacent to said present rights of way.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary construction and grading easement across the above described property, being parallel with and contiguous to the South side of the above described LESS and EXCEPT and being more particularly described as follows, to-wit: Commencing at a point that is North 87° 05' 25" West 5.0 feet from the Northwest corner of said platted Lot 2; thence South 02° 19' 03" West 35.0 feet; thence South 87° 05' 25" East 30.0 feet, to the Point of Beginning; thence North 02° 19' 03" East 10.0 feet; thence South 87° 05' 25" East 51.87 feet to a curve to the right, said curve having a radius of 30.0 feet and a delta angle of 89° 19' 45"; thence along said curve an arc distance of 46.72 feet with a chord bearing and distance of South 42° 25' 33" East 42.18 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 34' 11" West 10.0 feet; thence North 02° 29' 18" East 10.0 feet, to a curve to the left, said curve having a radius of 20.0 feet; thence along said curve an arc distance of 31.15 feet with a chord bearing and distance of North 42° 28' 48" West 28.09 feet; thence North 87° 05' 25" West 27.89 feet; thence South 70° 06' 49" West 25.79 feet; thence North 02° 19' 03" East 10.0 feet, to the Point of Beginning, containing 1,127 square feet, more or less,

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that the above temporary construction and grading easement shall exclude any permanent structure presently located within said temporary construction and grading easement area.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The consideration first above recited as being paid to the Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this easement on behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY: _____
Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, a/k/a P. J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, and that he is authorized to execute the foregoing instrument for and in the name and behalf of the Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES:

Notary Public

TR #5

**APPRAISAL REPORT
FOR
CITY OF FAYETTEVILLE**

Limited Summary Appraisal Report

PROJECT Poplar Street Improvement (Project No. 97023)

COUNTY Washington

PARCEL # 765-09489-000 & 765-09490-000

LOCATION 405 W. Poplar, Fayetteville, AR (Lots 4 & 5, Block 7 of Parker's Valley View Acres)

FEE OWNER Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997

ADDRESS 2901 N. Tobin Lane, Fayetteville, AR 72703

ESTATE APPRAISED Fee Simple

AREA OF WHOLE 1.75 acres **AREA OF RESIDUAL** 1.72 acres

AREA OF PERMANENT ACQUISITION 1,276 Sq. Ft.
(Descriptions attached)

Temporary Construction and Grading Easement 2,528 Sq. Ft.

ESTIMATED FAIR MARKET VALUE OF THE PROPERTY:

	Before	
Land	\$ 133,400	
Improvements	\$ 0*	
Total		\$ 133,400
	After	
Land	\$ 131,150	
Improvements	\$ 0*	
Total		\$ 131,150

FAIR MARKET VALUE OF PERMANENT R-O-W ACQUISITION \$ 2,250

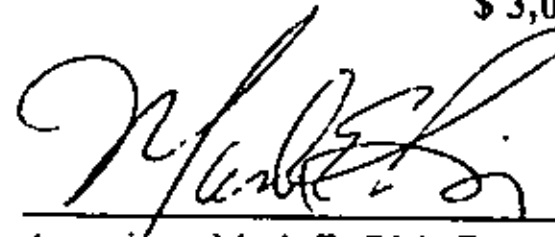
As of 24th day of March, 1999

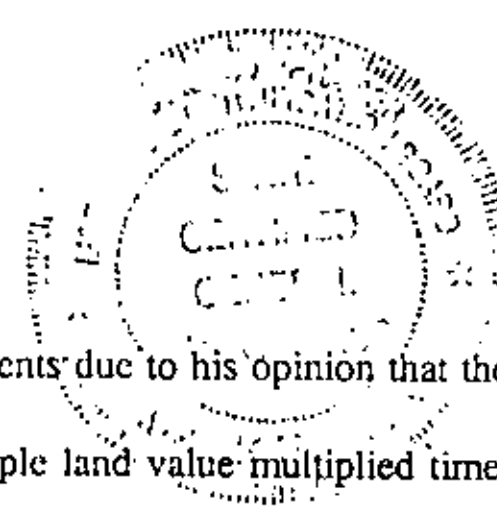
ALLOCATION OF F.M.V. OF TOTAL ACQUISITION

R-O-W	1,276 SF @ \$1.75/SF	= \$ 2,233	Say	\$ 2,250
T.C.E.**	2,528 SF @ \$1.75/SF x 0.10	= \$ 442	Say	\$ 450
Trees	(4) Small Tress	=	\$ 300	
Improvements:	None	=	\$ 0	
Total R-O-W, T.C.E., Trees, & Improvements				\$ 3,000
Damages or Benefits:				\$ 0
Total Compensation				\$ 3,000

ATTACHMENTS:

☒ Certificate of Appraiser
☒ Photographs
☒ Site, Improvement, H&B Use Narrative
☒ Legal Descriptions
☒ Market Data Approach
☒ Survey
☒ Tax Assessment Card


Appraiser, Mark E. Risk GAA, #CG0202



* The appraiser has not determined the value of the existing subject improvements due to his opinion that they are not significantly affected by the partial taking.

** Temporary Construction Easement (T.C.E.) value is based upon the fee simple land value multiplied times 10% to reflect a fair return, plus a premium for inconvenience.

CERTIFICATE OF APPRAISER

I hereby certify:

That I have personally inspected the property herein appraised, that I have made a personal field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented by the photographs and data contained in said appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct. That the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.

That I understand that such appraisal may be used in connection with the permanent acquisition of right of way for roadway improvements along Poplar St.. The project is to be performed by the City of Fayetteville.

This project has been initiated by the City of Fayetteville.

That such appraisal has been made in conformity with the appropriate City laws, regulations, and policies and procedures applicable to appraisal of right of ways and easements for such purposes; that in appraising the value before acquisition, no consideration has been given to increases or decreases in Fair Market Value caused by the public improvement; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said City.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect, present or contemplated future personal interest in such property, and no personal interest or bias with respect to the parties involved, or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the City of Fayetteville, and I will not do so until so authorized by said City officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That my analyses, opinions, and conclusions were developed and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice and no one provided significant professional assistance to the persons signing this report.

That in my opinion the just compensation for the acquisition as of the 24th day of March, 1999, is \$ 3,000 based upon my independent appraisal and the exercise of my professional judgment.

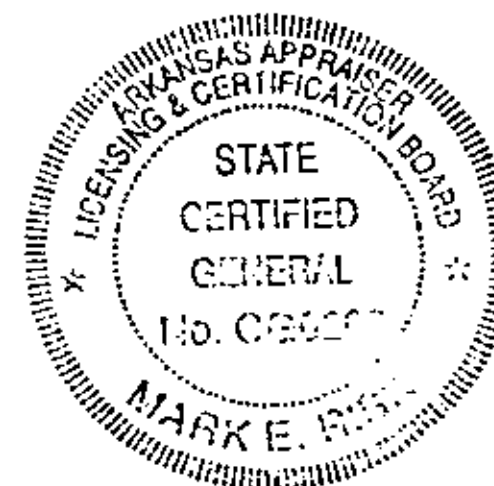
4-8-99

Date

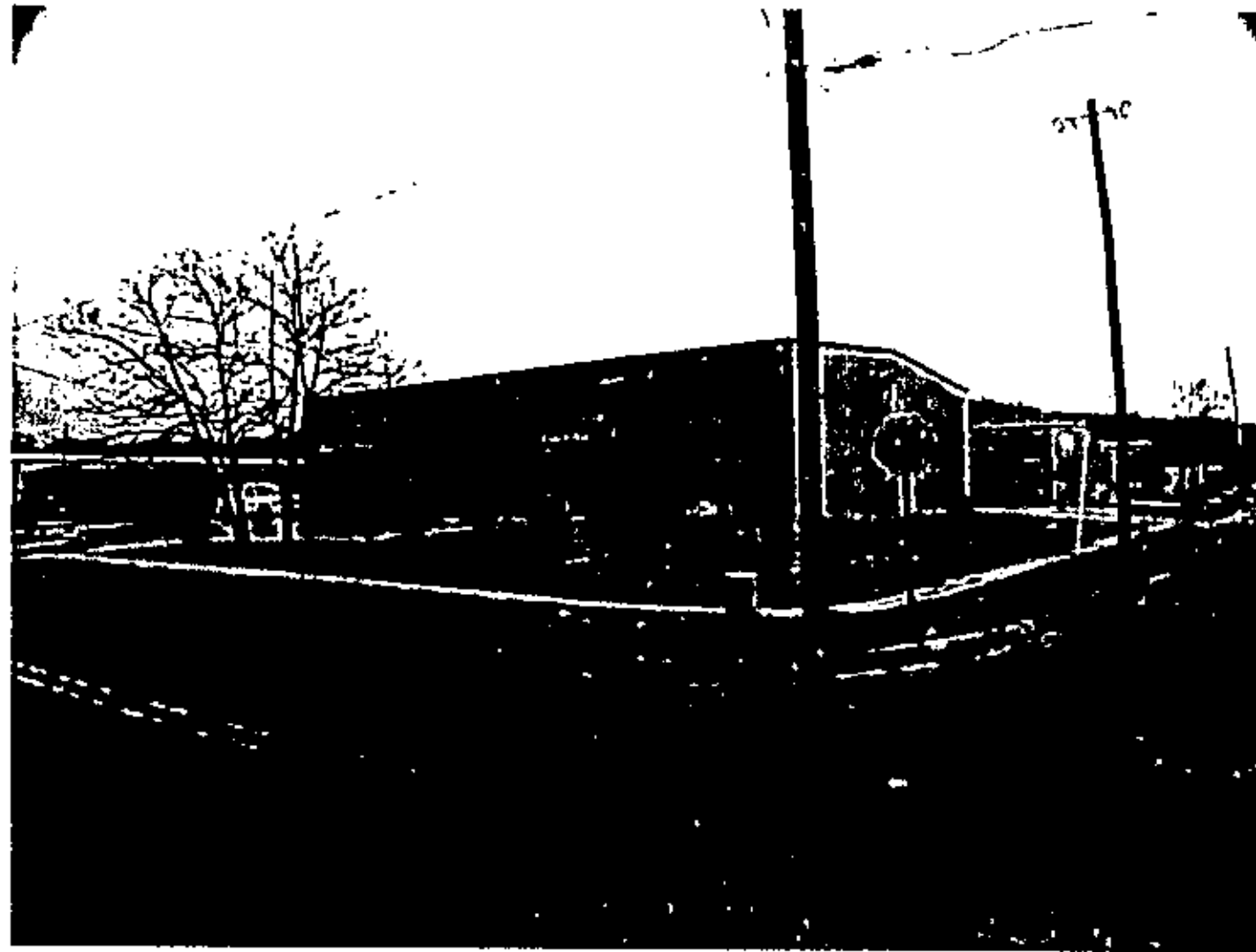
[Signature]

Signature

JOB Poplar Street Improvements
PARCEL 765-09489-000 & 765-09490-000



PICTURES



Front View of Subject Property



Street Scene of Poplar St. and Right-of-Way Acquisition Area Looking East

PICTURES



Street Scene of Birch Ave. Looking South



Right-of-Way and Easement Acquisition Area Looking West

CONTACTED FOR APPRAISAL INSPECTION AND COMMENTS

DATE: March 24, 1999

NAME: Pat Tobin

COMMENTS: The appraiser visually inspected the acquisition area on the above date. The appraiser attempted to reach Mr. Tobin by phone. To date Mr. Tobin has not responded.

GENERAL REMARKS: The appraiser has not had the opportunity to discuss with Mr. Tobin the subject appraisal so there has been no input received from the property owner. The existing buildings on the site are currently rented to King's Floor Company and other unidentified tenants. The amount of rent is unknown to the appraiser. There appears to be four small trees in the area of the taking.

3 YR. SALE HISTORY: The subject property has been owned by Mr. Pat Tobin or related entities since 1993. On January 16, 1998 Patrick J. Tobin deeded the property to the Patrick J. Tobin Revocable Trust. There have been no arm's length transactions to the appraiser's knowledge affecting the subject property within the past three years.

**CHANGES IN
PROPERTY SINCE
DATE OF PURCHASE:** Constructed new buildings.

**METHOD OF
APPRAISAL:**

The appraiser has utilized the Market Data or Sales Comparison Approach to value the subject land before and after the taking. Due to the appraiser's opinion that the subject improvements are not negatively affected by the partial taking, the value of these improvements has not been considered.

The appraiser has not utilized the Market Data, Cost, or Income Approaches in valuing the subject improvements. This is considered a departure from the Uniform Standards of Professional Appraisal Practice as permitted under Standard I.

In addition, the appraiser has determined the subject property will not be negatively affected as a result of the taking.

GENERAL INFORMATION

MARKET VALUE DEFINED

The Appraisal Foundation defines market value as follows:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1. Buyer and seller are typically motivated.*
- 2. Both parties are well informed or well advised, and each acting in what he considers his own best interest.*
- 3. A reasonable time is allowed for exposure in the open market.*
- 4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto.*
- 5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."*

PURPOSE OF THE APPRAISAL

This appraisal is made for the purpose of estimating the Fair Market Value of the subject property acquired by the City of Fayetteville under its right of eminent domain in connection with the improvements to Poplar St.. Said acquisition is for the purpose of widening Poplar St. and to improve drainage in the subject neighborhood. The appraisal will include all damages and/or benefits, if any, to the extent that benefits are allowed under state law, to the remaining property as just compensation for the property taken.

PROPERTY RIGHTS APPRAISED

The property is appraised as though owned in fee simple and unencumbered. A fee simple title is the fullest type of private ownership possible, subject to all public limitations including zoning, taxation, and eminent domain; and also subject to private limitations which may exist, such as easements and restrictions of record.

CONTINGENT AND LIMITING CONDITIONS

This property is appraised in fee simple subject to the following limiting conditions:

1. It is assumed by the appraiser that the maps, construction plans, and/or tract descriptions furnished to him are correct.
2. It is assumed by the appraiser that the attached deed furnished to him is correct and reflects the fee owner and all holders of less than fee interests in the property.
3. It is the opinion of the appraiser that information gathered by him from various sources, including dates, estimates and opinions, which are contained in this report were obtained from sources considered reliable; however, no liability for them can be assumed or guaranteed by this appraiser.
4. No responsibility for matters legal in character is assumed by your appraiser. All existing liens and encumbrances have been disregarded, and the property is appraised as though free and clear.
5. The various sketches and exhibits included in this appraisal are placed herein to assist the reader in visualizing the property under appraisal. Your appraiser made no surveys and accepts no responsibility for them.

THE APPRAISAL PROCESS

A professional appraisal begins with a thorough inspection of the property being appraised. This includes a physical inspection of the site and all improvements which have contributory value. It also includes an inspection of the neighborhood and of site improvements which may positively or negatively affect the value of the subject property. And finally, it includes a review of the general area of the subject in order to ascertain any favorable or unfavorable environmental or economic conditions which may exist, such as proximity to markets, poultry and swine, industries, schools, etc..

After a thorough analysis of the subject property, its neighborhood, and its general area, the appraiser then attempts to ascertain a fair market value. Three time-tested appraisal approaches or techniques are utilized in the profession in order to develop a value indication. These three approaches are the Market Data Approach, the Cost Approach, and the Income Approach. Each approach is briefly described as follows:

The Market Data Approach - A comparison is made between the subject property and similar properties which have sold recently in the market place.

The Cost Approach - A replacement cost new of the improvements is determined and the applicable amount of depreciation is deducted in order to obtain a value estimate.

The Income Approach - Bases a value estimate upon the amount of net income the property can reasonably produce over its expected lifetime.

Each approach utilizes the various principles of value which exist in the marketplace. These value principles include supply and demand, balance, contribution, conformity, external items, opportunity costs, and utmost - substitution. The principal of substitution states simply that a knowledgeable, prudent purchaser has three alternatives. That is, 1) to buy a vacant site and construct a duplicate or similar property without delay (Cost Approach), 2) to purchase another existing property with equal or similar desirability and utility (Market Data Approach), or 3) to invest in or acquire a comparably yielding income stream of similar quality, quantity and longevity (Income Approach).

All three approaches may not be used in all appraisal assignments depending upon the applicability of the approach to the property being appraised and the scope of the appraisal assignment.

After the appraiser applies the applicable approaches to the subject property, he must reconcile the differences in value so indicated. Based upon the appraiser's experience and judgment, this may involve selecting one of the three approaches which is deemed more reliable or it may involve employing a weighted average of the three approaches in his final correlation or conclusion of value.

With regards to the subject appraisal, only the Market Data or Sales Comparison Approach is deemed applicable.

SCOPE OF THE APPRAISAL

The scope of the appraisal encompasses the necessary research and analysis to prepare a report in accordance with its intended use, the *Standards of Professional Practice of the Appraisal Institute*, and the *Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation*.

This appraisal is based upon the information gathered by the appraiser from the public records, other identified sources, and an inspection of the subject property and neighborhood. Data believed to be unreliable was not included in this report nor used as a basis for the value conclusion.

The subject property was physically inspected by the appraiser on March 24, 1999. The subject photographs were taken on those dates.

Area, city, and neighborhood data were based on information in the Real Estate Consultants library and files. The neighborhood section was based upon a physical inspection of the area as well as data from the City of Fayetteville.

The subject property data was based upon the physical inspection of the property and information obtained from municipal authorities.

In evaluating the highest and best use for the subject property, an analysis was made of data compiled in the steps noted above. In addition, a study of the commercial market in the subject area has been made to help determine the feasibility of future uses.

In developing the appraisal approaches to value, market data used were collected from the Real Estate Consultants' office files; other appraisers, Realtors, courthouse records, or persons knowledgeable of the subject property marketplace; and the municipal offices in the Northwest Arkansas area.

It is the appraiser's opinion that the subject improvements are not significantly affected by the partial taking consequently the appraiser has not valued the existing improvements.

After assembling and analyzing the data defined in this scope of the appraisal, a final estimate of market value was made.

NEIGHBORHOOD DATA AND ANALYSIS

For appraisal purposes, a neighborhood is considered to be a portion of a large community in which there is a homogeneous grouping of inhabitants, buildings, or business enterprises. Inhabitants of a neighborhood usually have a more casual community of interest and a similarity of economic level and cultural background. Neighborhood boundaries may consist of well-defined natural or man-made barriers or they may be more or less well-defined by a distinct change in land use or in the character of the inhabitants.

The subject property is located along Poplar St. in the north central portion of the city of Fayetteville. Neighborhood boundaries could be the U of A Agri. Farm to the north, Gregg Ave. to the east, Sycamore St. to the south, and Garland Ave. to the west.

The neighborhood is characterized by a wide variety of land uses including industrial and heavy commercial type land uses, single-family home sites on small urban lots, and multi-family housing. The commercial uses in the neighborhood are primarily along the more frequented roadways such as Poplar St., Sycamore St., and N. Gregg Ave.. There are also some multi-family structures in the neighborhood. The single-family uses are generally of small, modest, older residences. This area of Fayetteville is an older area of town and was developed many years ago. It is in the Fayetteville School System, Leverett Elementary School.

The neighborhood is supplied police and fire protection from the City of Fayetteville. Municipal water and sewer is available to most of the neighborhood, and is supplied by the City of Fayetteville. Electrical service is available to all of the neighborhood, and is supplied by SWEPCO. Natural gas is also available to most the neighborhood, and is supplied by Arkansas Western Gas Company.

Access to and from the area is provided by Gregg Ave., Garland Ave., and Sycamore St., with numerous city improved side streets.

DESCRIPTION OF THE SUBJECT PROPERTY BEFORE THE TAKING

Site

The subject site is a rectangular shaped parcel containing two lots and approximately 1.75 acres. The site has direct access from both Poplar St. and Birch with appx. 233.4' of frontage along Poplar St. and 325.70' along Birch Ave... These roadways are two-lane city improved routes with asphalt surface. The tract is level and cleared land. The site is level at road grade then gradually slopes upward. Drainage appeared adequate upon inspection. The site is presently encumbered with regular utility easements. The subject site lies within the City Limits of Fayetteville and is zoned Heavy Commercial and Light Industrial (I-1).

Improvements

The subject is improved with several commercial/industrial type buildings. There is a large newer metal building facing Poplar St., as well as an older masonry type building. There are also several newer warehouse type metal buildings accessed off of Birch Avenue. The larger building is currently occupied by King's Floor Co., while the smaller masonry building is occupied by the Bottoms Up Club. The appraiser did not identify who was occupying the additional metal buildings. The appraiser has not performed an interior inspection of the buildings. There is also a concrete parking area in front of the buildings.

DESCRIPTION OF THE PARTIAL TAKING

The partial taking includes a 1,276 Sq. Ft. permanent acquisition for additional right-of-way along the entire north portion of the subject site. The area is south and will run parallel to the existing Poplar St. right-of-way. In addition, the taking will include a Temporary Construction and Grading Easement (2,528 Sq. Ft.) just south of the proposed right-of-way acquisition. The entire acquisition area will be used for roadway improvements along Poplar St.. Furthermore, there appears to be four small trees in the area of the taking. It is this permanent acquisition which is considered to be a compensable acquisition by the City of Fayetteville. See attached survey provided by client.

LEGAL DESCRIPTIONS

See following page for property, permanent right of way and temporary easement descriptions provided by the client.

Project No. 97023
Project: Poplar Street Right of Way
Part Parcel Nos. 765-09490-000 & 765-09489-000
Tract No. 5

PROPERTY OWNERS COPY

TRUSTEE'S WARRANTY DEED

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, the following described land situated in the County of Washington, State of Arkansas, to-wit:

Part of Lots Four (4) and Five (5) of Block Seven (7) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at the Northwest corner of said platted Lot 5, said point being the intersection of the centerline of Poplar Street and Birch Avenue; thence along said centerline of Poplar Street South 87° 05' 25" East 253.44 feet to the Northeast corner of said Lot 4; thence along the East boundary of said Lot 4 South 02° 14' 20" West 25.00 feet; thence North 87° 05' 25" West 203.36 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 90° 24' 02"; thence along said curve an arc distance of 47.33 feet with a chord bearing and distance of South 47° 38' 14" West 42.57 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 33' 47" West 20.00 to the centerline of Birch Avenue, said point being on the West boundary of said Lot 5; thence along said West boundary North 02° 29' 18" East 65.41 feet to the Point of Beginning, containing 7,340 square feet, more or less.

It is the intention of this deed to convey both the present Poplar Street and Birch Avenue rights of way, at that intersection, and an additional area of 1,276 square feet, more or less, adjacent to said present rights of way.

TO HAVE AND TO HOLD the said lands and appurtenances thereunto belonging unto the said Grantee and Grantee's successors and assigns, forever. And said Trustee, in behalf of the said Trust, hereby covenants with the said Grantee that said Trust is lawfully seized of said lands and premises; that the same is unencumbered, and that the said Trust will forever warrant and defend the title to the said lands against all legal claims whatsoever.

WITNESS the execution hereof on this _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY:

Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, a/k/a P.J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Trust dated March 4, 1997, and that he is duly authorized to execute the foregoing instrument for and in the name and behalf of said Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES:

Notary Public

Project No. 97023
Project: Poplar Street Improvements
Parcel No. 765-09489-000 &
Parcel No. 765-09490-000
Tract No. 5

PROPERTY OWNERS COPY

TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust, dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a temporary construction and grading easement on, over, and through the following described land situated in the County of Washington, State of Arkansas, for the sole purposes necessary for roadway and/or drainage improvements associated with the above noted project, to-wit:

PROPERTY DESCRIPTION:

Lots Numbered Four (4) and Five (5), Block Numbered Seven (7) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT parts of Lots Four (4) and Five (5) of Block Seven (7) of said Subdivision which have been conveyed to the City of Fayetteville under separate deed as roadway right of way and being more particularly described as follows, to-wit: Beginning at the Northwest corner of said platted Lot 5, said point being the intersection of the centerline of Poplar Street and Birch Avenue; thence along said centerline of Poplar Street South 87° 05' 25" East 253.44 feet to the Northeast corner of said Lot 4; thence along the East boundary of said Lot 4 South 02° 14' 20" West 25.00 feet; thence North 87° 05' 25" West 203.36 feet to a curve to the left, said curve to the left having a radius of 30.00 feet and a delta angle of 90° 24' 02"; thence along said curve an arc distance of 47.33 feet with a chord bearing and distance of South 47° 38' 14" West 42.57 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 33' 47" West 20.00 to the centerline of Birch Avenue, said point being on the West boundary of said Lot 5; thence along said West boundary North 02° 29' 18" East 65.41 feet to the Point of Beginning, containing 7,340 square feet, more or less. The above described LESS AND EXCEPT was conveyed to the City of Fayetteville, as road right of way, under separate deed. In that deed, it was the intention to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 1,276 square feet, more or less, adjacent to said present rights of way.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary construction and grading easement ten (10) feet in width across the above described property being parallel with and contiguous to the South side of the above described LESS AND EXCEPT portion and being more particularly described as follows, to-wit: Beginning at a point which is South 02° 29' 18" West 65.41 feet and South 87° 33' 47" East 20.0 feet from the Northwest corner of said platted Lot 5, said point being on the East right of way line of Birch Avenue; thence North 02° 29' 18" East 10.0 feet to a curve to the right, said curve having a radius of 30.0 feet and a delta angle of 90° 24' 02"; thence along said curve an arc distance of 47.33 feet with a chord bearing and distance of North 47° 38' 14" East 42.57 feet; thence South 87° 05' 25" East 203.36 feet, to the East boundary line of said platted Lot 4; thence with said East boundary, South 02° 14' 20" West 10.0 feet; thence North 87° 05' 25" West 203.48 feet to a curve to the left, said curve having a radius of 20.0 feet; thence along said curve an arc distance of 31.55 feet with a chord bearing and distance of South 47° 36' 50" West 28.37 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 33' 47" West 10.0 feet, to the Point of Beginning, containing 2,528 square feet, more or less.

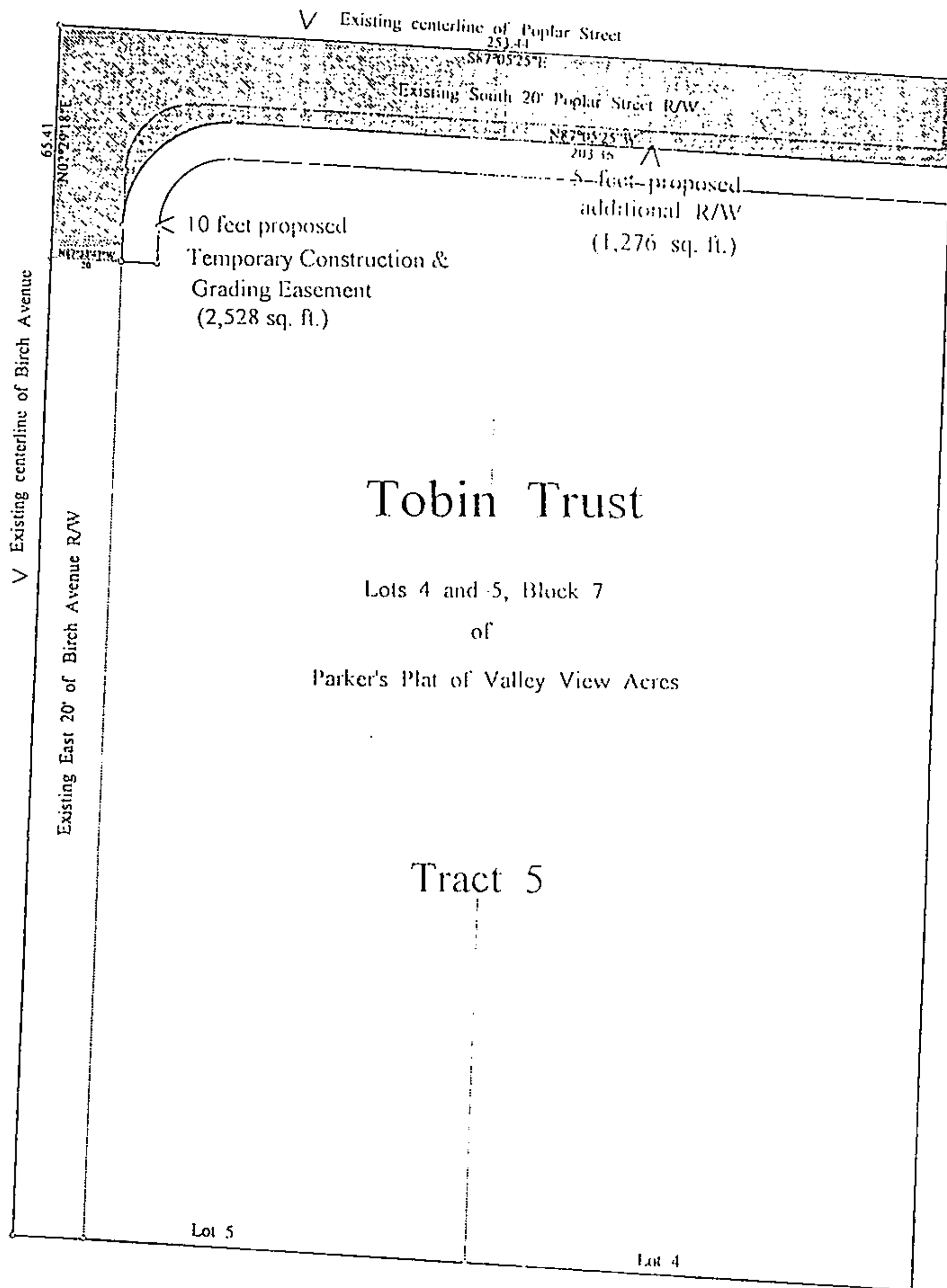
together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that the above temporary construction and grading easement shall exclude any permanent structure presently located within said temporary construction and grading easement area.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The consideration first above recited as being paid to the Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.



Scale: 1" = 40'

HIGHEST AND BEST USE

By "Highest and Best Use" is meant the most likely and profitable use to which a property can be put. It is sometimes called the most profitable or optimum use. It is that use which, at the time of the appraisal, would most likely produce the greatest net return in money or amenities. The appraiser has analyzed the highest and best use of the subject property before and after the taking as follows:

Before the taking: The subject property is currently improved with metal industrial type and masonry commercial type buildings presently used as a floor covering business and night club respectively. The site is located inside the Fayetteville city limits and has I-1 zoning. The immediate neighborhood of the subject consists mainly of commercial/industrial type uses with some single family homes and multi-family structures. It is the opinion of the appraiser that the subject's highest and best use "as improved" is its present use as a metal industrial type building utilized for floor covering business and the nightclub.

After the taking: After the taking by the city, the subject will be left a slightly smaller lot. The buildings will not be disturbed. Therefore, the highest and best use of the subject after the taking will also be its present use or other light commercial type use.

DISCUSSION OF SEVERANCE DAMAGE

Where there is a partial taking of property, such as the case of the subject property, any loss in value of the remaining property caused by the partial taking is known as severance damage. The Appraisal Institute defines severance damages as follows:

"It is the diminution of the market value of the remainder area, in the case of a partial taking, which arises (a) by reason of the taking (severance), and/or (b) the construction of the improvement in the manner proposed."

Severance damages are compensable to the property owner if a decline in value is attributable to the partial taking.

In the case of the subject property, the partial taking is permanent, will be used for a roadway expansion, and will run parallel to the existing Poplar St.. It is the appraiser's opinion that the location of this right-of-way acquisition will have no negative effect on the remaining property and hence no severance damage will occur to the subject land and improvements due to the partial taking.

DISCUSSION OF ENHANCED VALUE OR SPECIAL BENEFIT

In some eminent domain cases which result in partial takings, the remaining property may actually increase in value as a result of some improvement made by the condemning authority. In these cases the remaining property is considered to receive an Enhanced Value or Special Benefit. Thus, if the condemning authority takes a portion of a property for an improvement and this improvement actually increases the value of the remaining land, the amount of just compensation will be reduced by the value of the special benefit.

It is the appraiser's opinion that the future value of the remaining subject property will not be enhanced by the taking.

MARKET DATA APPROACH

Analysis of the Market Data and Conclusion of Value

The Market Data Approach is an attempt to measure the reaction of typical buyers and sellers in the market. In this approach a direct comparison is made between the property being appraised and comparable properties which have sold recently. The value of the property being appraised is inferred from the selling prices of comparable properties. To be "comparable," a property need not be identical to the subject. The word "comparable" is used in its ordinary sense, meaning something which is capable of being compared with or worthy of comparison.

The appraiser has conducted an extensive search for recent land sales in the vicinity of the subject property which would be considered comparable to the subject land. These sales are included in this report.

After analysis of the land sales, the comparable sales reflect a value range from \$0.73 to \$3.33/Sq. Ft. for the land. The low end of this range is of property with inferior location, access and appeal. The upper end of the value range are of sites with Thoroughfare Commercial (C-2) zoning and superior locations. It is the appraiser's opinion that the subject's land value would fall within the low to mid-section of this value spectrum due to its size, land characteristics, location, zoning classification and other characteristics.

Based upon the above sales and analysis thereof, and after adjustments are made for differences in size, location, terrain, availability of utilities, access, zoning and other economic factors, it is the opinion of this appraiser that the Fair Market Value of the subject property as of the date of this appraisal is as follows:

Fee Simple Land Value	1.75 Acres or 76,230 Sq. Ft. @ \$1.75/Sq. Ft.	= \$ 133,403
	Say	\$ 133,400

Fee Simple Improvement Value Not Determined

Value Before the Taking:	Land:	\$ 133,400	
	Imps:	\$ 0*	
	Total:		\$ 133,400

Value After the Taking:	Land:	\$ 131,150	
	Imps:	\$ 0	
	Total:		\$ 131,150

Value of the Partial Taking: (Permanent Easement & R-O-W)	\$ 2,250
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- * Improvement value was not determined due to appraiser's opinion that the subject improvements are not affected by the partial taking.

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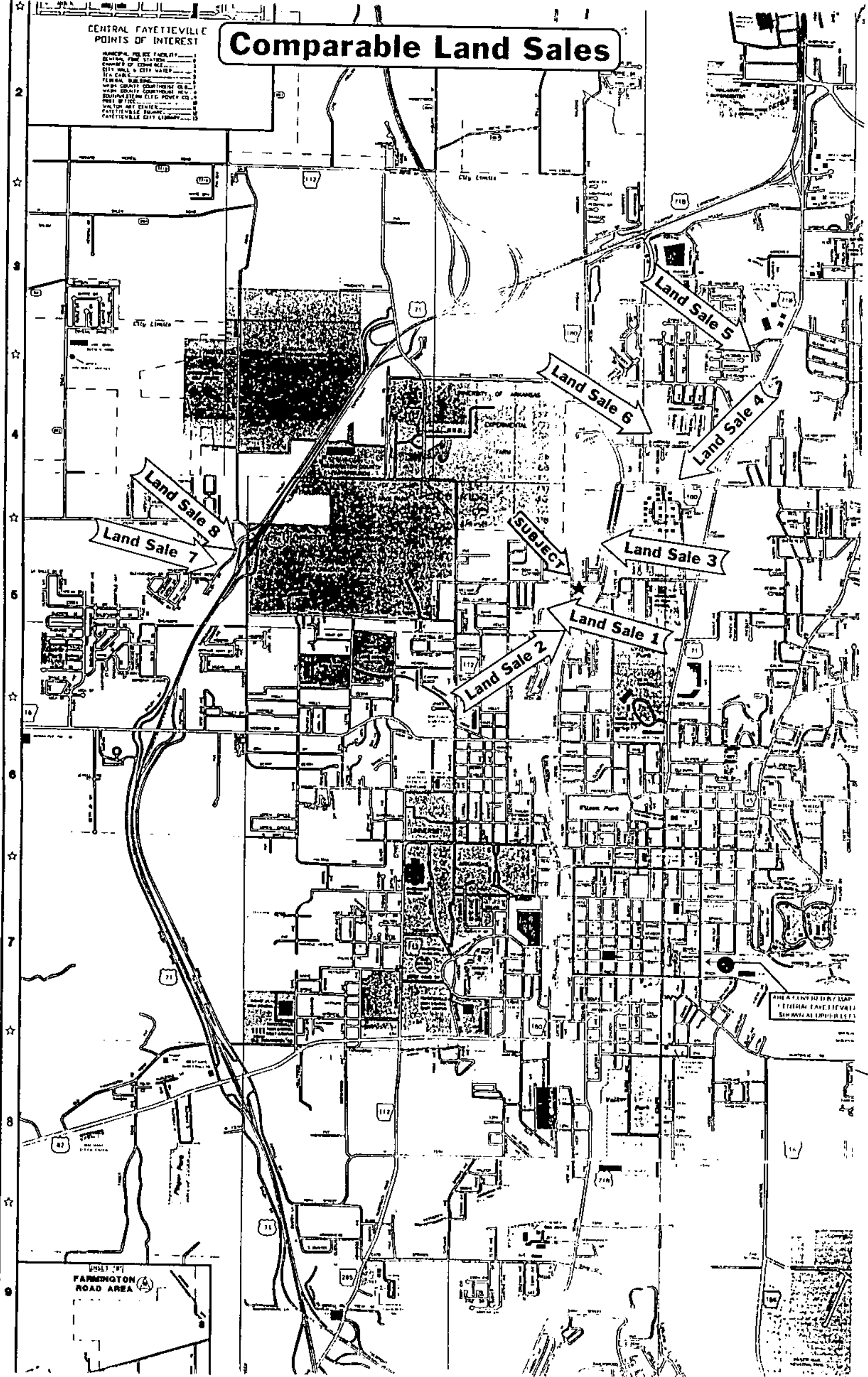
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CENTRAL FAYETTEVILLE
POINTS OF INTEREST
MUNICIPAL POLICE FACILITY
CENTRAL FIRE STATION
COURT OF COMMONS
CITY HALL & CITY WATER
TEA CAFE
FARMER BUILDING
WPA COUNTY COURTHOUSE
WPA COUNTY COURTHOUSE NEW
SOUTHWESTERN ELEC. POWER CO.
PWA BLDG.
VALLEY ART CENTER
FAYETTEVILLE MUSEUM
FAYETTEVILLE CITY LIBRARY

Comparable Land Sales



ARE A FAYETTEVILLE LAND
FAYETTEVILLE LAND
SHOWING ALL LANDS

COMPARABLE LAND SALES

LAND SALE #1

Grantor: Rastall Enterprises, Inc.
Grantee: Tim Owen Development, Inc.
Date: 07/11/94
Legal Description: Lot 12 & E 116.72' of Lot 11, Block 9 of Parker's Plat of Valley View Acres
Location: Ash Street
Sales Price: \$53,000
Size: Appx. 72,339 SF or 1.66 Acres
Indicated Price: \$0.73/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Located southwest of subject site, but has no major road frontage or access. Much inferior visibility and access.

LAND SALE #2

Grantor: Liner-Wimberly Properties
Grantee: Alano Foundation, Inc.
Date: 11/91
Legal Description: Lot 11, Block 11, Parker's Plat of Valley View Acres
Location: Sycamore Street
Sales Price: \$60,000
Size: Appx. 41,026 SF or 0.94 Acres
Indicated Price: \$1.46/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: An older sale of similar lot with frontage and access via Sycamore.

LAND SALE #3

Grantor: Max A. & Cynthia Parker
Grantee: Wayne & Robbye Ridout
Date: 10/28/94
Legal Description: Pt. NW/4 of SE/4 Sec. 4-16-30
Location: Gregg Street, just West of RR R.O.W.
Sales Price: \$225,000
Size: Appx. 204,296 SF or 4.69 Acres
Indicated Price: \$1.10/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Current site of Ridout Contractor Outlet. Site is located off of Gregg on the W side of RR tracks.

LAND SALE #4

Grantor: Freeland Romans
Grantee: Tom January
Date: 5/15/97
Legal Description: Pt. of the S/2, SW/4 of Section 35, T17N, R30W
Location: Township Rd.
Sales Price: \$350,000
Size: 3.07 Acres
Indicated Price: \$114,007/Acre or \$2.62/SF
Zoning: Thoroughfare Commercial (C-2)
Remarks: Commercially zoned land on Township Road just W of Nelms Chevrolet and the North College Avenue intersection. Old stone house with no contributory value has been removed and property has been commercially developed. Recorded Deed Book 97-033164. Verified by agent.

LAND SALE #5

Grantor: Marjorie Niblock, et.al.
Grantee: Randy & Gerri Shankle
Date: 2/26/98
Legal Description: Lot 6 Hammond Plaza
Location: Corner of Appleby & McKee Street
Sales Price: \$45,000
Size: 13,520 SF or 0.31 Acre
Indicated Price: \$3.33/SF
Zoning: Commercial Thoroughfare (C-2)
Remarks: Located near Fiesta Square shopping center. Corner type location off of College Avenue (Hwy. 71B).

LAND SALE #6

Grantor: Mae B. Nettleship
Grantee: Virginia R. Krauft & Sally H. Wimberly
Date: 8/17/98
Legal Description: Sunbridge Center
Location: Sunbridge Drive
Sales Price: \$83,000
Size: Appx. 53,993 SF or 1.24 Acres
Indicated Price: \$1.54/SF
Zoning: Residential Office (R-O)
Remarks: Cleared, level land on Sunbridge Drive off of N. Gregg Avenue.

LAND SALE #7

Grantor: James E. & Elizabeth Potts
Grantee: Dennis Prater
Date: 8/1/97
Legal Description: Lot 2, Block C, Point West S/D Phase II
Location: Shiloh Drive
Sales Price: \$60,000
Size: Appx. 34,486 Sq. Ft. or 0.79 acres
Indicated Price: \$1.74/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Located on Shiloh Dr. just off the Hwy. 71 Bypass. Purchased for site of retail automotive center with parts machine shop area. Recorded Book 97, Page 53250.

LAND SALE #8

Grantor: Sterling P. & Kay Z. Anders and Arkansas Book Store, Inc.
Grantee: William J. & Katherine M. Eddy
Date: 4/30/96
Legal Description: Lot 2, Block B, Point West S/D Phase I
Location: Shiloh Drive
Sales Price: \$60,000
Size: Appx. 28,500 Sq. Ft. or 0.65 acre
Indicated Price: \$2.10/SF
Zoning: Heavy Commercial and Light Industrial (I-1)
Remarks: Located on Shiloh Dr. just off the Hwy. 71 Bypass. Good visibility from the bypass. Recorded Book 96, Page 27579.

Project No. 97023
Project: Poplar Street Right of Way
Part Parcel Nos. 765-09490-000 & 765-09489-000
Tract No. 5

TR #5

TRUSTEE'S WARRANTY DEED

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, the following described land situated in the County of Washington, State of Arkansas, to-wit:

Part of Lots Four (4) and Five (5) of Block Seven (7) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, more particularly described as follows: Beginning at the Northwest corner of said platted Lot 5, said point being the intersection of the centerline of Poplar Street and Birch Avenue; thence along said centerline of Poplar Street South 87° 05' 25" East 253.44 feet to the Northeast corner of said Lot 4; thence along the East boundary of said Lot 4 South 02° 14' 20" West 25.00 feet; thence North 87° 05' 25" West 203.36 feet to a curve to the left, said curve having a radius of 30.00 feet and a delta angle of 90° 24' 02"; thence along said curve an arc distance of 47.33 feet with a chord bearing and distance of South 47° 38' 14" West 42.57 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 33' 47" West 20.00 to the centerline of Birch Avenue, said point being on the West boundary of said Lot 5; thence along said West boundary North 02° 29' 18" East 65.41 feet to the Point of Beginning, containing 7,340 square feet, more or less.

It is the intention of this deed to convey both the present Poplar Street and Birch Avenue rights of way, at that intersection, and an additional area of 1,276 square feet, more or less, adjacent to said present rights of way.

TO HAVE AND TO HOLD the said lands and appurtenances thereunto belonging unto the said Grantee and Grantee's successors and assigns, forever. And said Trustee, in behalf of the said Trust, hereby covenants with the said Grantee that said Trust is lawfully seized of said lands and premises; that the same is unencumbered, and that the said Trust will forever warrant and defend the title to the said lands against all legal claims whatsoever.

WITNESS the execution hereof on this _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY:

Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, a/k/a P.J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Trust dated March 4, 1997, and that he is duly authorized to execute the foregoing instrument for and in the name and behalf of said Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES:

Notary Public

Project No. 97023
Project: Poplar Street Improvements
Parcel No. 765-09489-000 &
Parcel No. 765-09490-000
Tract No. 5

TR#5

TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT I, Patrick J. Tobin, Trustee of the Patrick J. Tobin Revocable Living Trust, dated March 4, 1997, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a temporary construction and grading easement on, over, and through the following described land situated in the County of Washington, State of Arkansas, for the sole purposes necessary for roadway and/or drainage improvements associated with the above noted project, to-wit:

PROPERTY DESCRIPTION:

Lots Numbered Four (4) and Five (5), Block Numbered Seven (7) of Parker's Plat of Valley View Acres as per plat of said Subdivision on file in Book 5 at Page 73 of the records of the Office of the Circuit Clerk and Ex Officio Recorder of Washington County, Arkansas.

LESS AND EXCEPT parts of Lots Four (4) and Five (5) of Block Seven (7) of said Subdivision which have been conveyed to the City of Fayetteville under separate deed as roadway right of way and being more particularly described as follows, to-wit: Beginning at the Northwest corner of said platted Lot 5, said point being the intersection of the centerline of Poplar Street and Birch Avenue; thence along said centerline of Poplar Street South 87° 05' 25" East 253.44 feet to the Northeast corner of said Lot 4; thence along the East boundary of said Lot 4 South 02° 14' 20" West 25.00 feet; thence North 87° 05' 25" West 203.36 feet to a curve to the left, said curve to the left having a radius of 30.00 feet and a delta angle of 90° 24' 02"; thence along said curve an arc distance of 47.33 feet with a chord bearing and distance of South 47° 38' 14" West 42.57 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 33' 47" West 20.00 to the centerline of Birch Avenue, said point being on the West boundary of said Lot 5; thence along said West boundary North 02° 29' 18" East 65.41 feet to the Point of Beginning, containing 7,340 square feet, more or less. The above described LESS AND EXCEPT was conveyed to the City of Fayetteville, as road right of way, under separate deed. In that deed, it was the intention to convey both the present Poplar Street and Birch Avenue rights of way at that intersection, and an additional area of 1,276 square feet, more or less, adjacent to said present rights of way.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary construction and grading easement ten (10) feet in width across the above described property being parallel with and contiguous to the South side of the above described LESS AND EXCEPT portion and being more particularly described as follows, to-wit: Beginning at a point which is South 02° 29' 18" West 65.41 feet and South 87° 33' 47" East 20.0 feet from the Northwest corner of said platted Lot 5, said point being on the East right of way line of Birch Avenue; thence North 02° 29' 18" East 10.0 feet to a curve to the right, said curve having a radius of 30.0 feet and a delta angle of 90° 24' 02"; thence along said curve an arc distance of 47.33 feet with a chord bearing and distance of North 47° 38' 14" East 42.57 feet; thence South 87° 05' 25" East 203.36 feet, to the East boundary line of said platted Lot 4; thence with said East boundary, South 02° 14' 20" West 10.0 feet; thence North 87° 05' 25" West 203.48 feet to a curve to the left, said curve having a radius of 20.0 feet; thence along said curve an arc distance of 31.55 feet with a chord bearing and distance of South 47° 36' 50" West 28.37 feet; thence South 02° 29' 18" West 10.0 feet; thence North 87° 33' 47" West 10.0 feet, to the Point of Beginning, containing 2,528 square feet, more or less,

together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that the above temporary construction and grading easement shall exclude any permanent structure presently located within said temporary construction and grading easement area.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The consideration first above recited as being paid to the Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this easement on behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this _____ day of _____, 19____.

Patrick J. Tobin Revocable Living Trust
dated March 4, 1997

BY: _____
Patrick J. Tobin, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Patrick J. Tobin, a/k/a P. J. Tobin, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of the Patrick J. Tobin Revocable Living Trust dated March 4, 1997, and that he is authorized to execute the foregoing instrument for and in the name and behalf of the Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 19____.

MY COMMISSION EXPIRES: _____

Notary Public



CITY OF FAYETTEVILLE CITY COUNCIL FINAL AGENDA

FAYETTEVILLE CITY COUNCIL MAY 18, 1999

A meeting of the Fayetteville City Council will be held on May 18, 1999 at 6:30 p.m. in Room 219 of the City Administration Building, 113 West Mountain Street, Room 219, Fayetteville, Arkansas. The following items will be considered:

A. CONSENT AGENDA

1. **APPROVAL OF MINUTES:** Approval of minutes from the May 4, 1999 City Council meeting.
2. **CAUDLE PROPERTY:** A resolution authorizing the Mayor and City Clerk to enter into documentation for the sale of the remainder (1.15 acres) of the Caudle property, located at 295 S. Crossover Road, to Eastside Missionary Baptist Church for a purchase price of \$17,400.00. The subject property was originally purchased by the City for Hwy 265 right-of-way purposes.
3. **SUNRAY SERVICES:** A resolution approving amendment #3 to the contract with Sunray Services, Inc. to transport and dispose of municipal solid waste and for operation of the City's transfer station.

B. OLD BUSINESS

C. NEW BUSINESS

1. **BOARDWALK ADDITION, PHASE 3:** An ordinance authorizing the City Attorney to seek possession of certain land located south of Boardwalk Addition, Phase 3 and west of Highway 265 (Crossover Road) in the City of Fayetteville, Arkansas, by the power of eminent domain, in association with the required easements for the Londonderry Drainage Improvements. Such property owned by Nancy Witt Lewis and Robert Lewis. Contingent upon the city council also approving Bid 99-49, Drainage Improvements for Boardwalk Subdivision.
2. **DRAINAGE IMPROVEMENTS:** A resolution approving a construction contract and project contingency for the construction of the proposed Drainage Improvements to Boardwalk Subdivision and Ridgely Manor Drive Area. A budget adjustment to fully fund the project. Establishment of off-site assessment for future developments which utilized the proposed drainage improvements.
3. **TOBIN TRUST - COURT-ORDERED POSSESSION:** A resolution authorizing the City Attorney to seek a court order for the possession of certain rights of way and easements from Patrick J. Tobin Trust on parcels of land located at 519 and 409 W. Poplar Street, Fayetteville in association with the City's Poplar Street Improvement project.
4. **VA 99-6:** An ordinance for VA 99-6 vacating a utility easement located at 3385 Natchez Trace as requested by Keith and Yvonne Burns for a specified portion of an alley located to the south and east of Lot 11, Savannah Estates Subdivision, Phase I.
5. **RZ 99-7:** An ordinance for RZ99-7 submitted by Neal Pendergraft for property located east of 2680 Joyce Street. The property is zoned R-1, Low Density Residential, and contains approximately 4.98 acres. The request is to rezone the property to R-O, Residential Office.
6. **RZ99-9:** An ordinance for RZ99-9 submitted by Alan Reid on behalf of Greta Smith for property located at 1755 and 1939 Hoot Owl Lane. The property is zoned A-1, Agricultural, and contains approximately 5.45 acres. The request is to rezone the property to R-1, Low Density Residential.
7. **RZ99-10:** An ordinance for RZ99-10 submitted by Glen Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 8.97 acres. The request is to rezone the property to R-O, Residential Office.
8. **RZ99-11:** An ordinance for RZ99-11 submitted by Glen Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 48.26 acres. The request is to rezone the property to R-1, Low Density Residential.
9. **FIRST NIGHT:** A resolution authorizing a request for funding from First Night of Fayetteville, a non-profit organization for \$12,000 to fund the Fayetteville Millennium Celebration.
10. **LIBRARY PRESENTATION:** General financing plan for Fayetteville Public Library expansion.
11. **BAKERY FEEDS:** Discussion of whether or not the City of Fayetteville should file suit against Bakery Feeds as a public nuisance.
12. **NO TAX INCREASES:** A resolution prohibiting the consideration of tax increased by the City Council until the Wastewater Treatment issue has been put to a vote of the public.

Only items presented by the City Council or City Staff may be discussed during the meeting. If you have an item you wish to discuss, please contact your alderman to have it presented at the next City Council Agenda Session. For further assistance, please contact Heather Woodruff, City Clerk, at 575-8323.

**FINAL AGENDA
FAYETTEVILLE CITY COUNCIL
MAY 18, 1999**

A meeting of the Fayetteville City Council will be held on May 18, 1999 at 6:30 p.m. in room 219 of the City Administration Building, 113 West Mountain Street, Fayetteville, Arkansas.

The following items will be considered:

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** Approval of the minutes from the May 4, 1999 meeting.
- 69-99 2. **CAUDLE PROPERTY:** A resolution authorizing the Mayor and City Clerk to enter into documentation for the sale of the remainder (1.15 acres) of the Caudle property, located at 295 S. Crossover Road, to Eastside Missionary Baptist Church for a purchase price of \$17,400.00. The subject property was originally purchased by the City for Hwy 265 right-of-way purposes.
- 70-99 3. **SUNRAY SERVICES:** A resolution approving amendment #3 to the contract with Sunray Services, Inc. to transport and dispose of municipal solid waste and for operation of the City's transfer station.

B. OLD BUSINESS

C. NEW BUSINESS

- left 15 1. **BOARDWALK ADDITION, PHASE 3:** An ordinance authorizing the City Attorney to seek possession of certain land located south of Boardwalk Addition, Phase 3 and west of Highway 265 (Crossover Road) in the city of Fayetteville, Arkansas, by the power of eminent domain, in association with the required easements for the Londonderry Drainage Improvements. Such property owned by Nancy Witt Lewis and Robert Lewis. Contingent upon the city council also approving Bid 99-49, Drainage Improvements for Boardwalk Subdivision.
- 70-99 2. **DRAINAGE IMPROVEMENTS:** A resolution approving a construction contract and project contingency for the construction of the proposed Drainage Improvements to Boardwalk Subdivision and Ridgely Manor Drive Area. A budget adjustment to fully fund the project. Establishment of off-site assessment for future developments which utilized the proposed drainage improvements.

3.

Removed

TOBIN TRUST - COURT-ORDERED POSSESSION: A resolution authorizing City Attorney to seek a court order for the possession of certain rights of way and easements from Patrick J. Tobin Trust on parcels of land located at 519 and 409 W. Poplar Street, Fayetteville in association with the City's Poplar Street Improvement project.

4.

4162

VA 99-6: An ordinance for VA99-6 vacating a utility easement located at 3385 Natchez Trace as requested by Keith and Yvonne Burns for a specified portion of an alley located to the south and east of Lot 11, Savannah Estates Subdivision, Phase I.

5.

4163

RZ99-7: An ordinance for RZ99-7 submitted by Neal Pendergraft for property located east of 2680 Joyce Street. The property is zoned R-1, Low Density Residential, and contains approximately 4.98 acres. The request is to rezone the property to R-O, Residential Office.

6.

4164

RZ99-9: An ordinance for RZ99-9 submitted by Alan Reid on behalf of Greta Smith for property located at 1755 and 1939 Hoot Owl Lane. The property is zoned A-1, Agricultural, and contains approximately 5.45 acres. The request is to rezone the property to R-1, Low Density Residential.

7.

4165

RZ99-10: An ordinance for RZ99-10 submitted by Glen Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 8.97 acres. The request is to rezone the property to R-O, Residential Office.

8.

4166

RZ99-11: An ordinance for RZ99-11 submitted by Glen Carter on behalf of Mark Foster for property located at 4786 North Crossover Road. The property is zoned A-1, Agricultural, and contains approximately 48.26 acres. The request is to rezone the property to R-1, Low Density Residential.

9.

71-99

FIRST NIGHT: A resolution authorizing a request for funding from First Night of Fayetteville, a non-profit organization for \$12,000 to fund the Fayetteville Millennium Celebration.

10.

NO ACTION

LIBRARY PRESENTATION: General financing plan for Fayetteville Public Library expansion.

11.

*MOTION TO
JOIN CAUSUIT*

BAKERY FEEDS: Discussion of whether or not the City of Fayetteville should file suit against Bakery Feeds as a public nuisance.

12.

FAILED

NO TAX INCREASES: A resolution prohibiting the consideration of tax increases by the City Council until the Wastewater Treatment issue has been put to a vote of the public.